

Supplementary Information
for
Candidates Writing the Professional Practice Exam
regarding
Limitation Periods

Candidates writing Part B (Law) of the Professional Practice Exam (PPE) should be aware of important recent changes to the laws regarding limitation periods in Ontario. Candidates should study both chapter 5 of D.L. Marston's Law for Professional Engineers, 3rd Edition, 1996 and the supplementary information below. (A new edition of the textbook is being prepared and will contain more detailed information about the new changes.)

Application: On January 1, 2004, the *Limitations Act, 2002* came into force and introduced sweeping changes to the limitation periods that apply in Ontario. While the legislation affects many other limitation periods, candidates should be aware that the limitation periods described in the textbook (i.e. limitation periods related to tort and to contract claims and the twelve-month limitation period contained in the *Professional Engineers Act*) will be replaced by two new limitation periods. (Even though the Act has already come into force, it contains a set of detailed "transition provisions" which describe situations where the former limitation periods may still apply).

Basic Two-Year Limitation Period: The new Act provides for a basic limitation period that will run for two years from the date that the claim is discovered, whether in tort or in contract. Note that the concept of "discoverability" is still used.

Ultimate Fifteen-Year Limitation Period: The new Act also introduces a new "ultimate" limitation period of fifteen years running from the date that the act or omission on which the claim is based took place. Therefore, even claims that may not have been discovered (and still not barred under the basic two-year limitation period) may still be barred by this ultimate limitation period.

No Contracting Out: Unlike the former limitation periods, the new Act states that the new limitation periods apply despite any agreement to vary or exclude them. In other words, even if parties to a contract agree to exclude or change the limitation periods that will apply between them, the Act's limitation period will take precedence.

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This information is merely a very brief summary of some of the changes introduced by the *Limitations Act, 2002*, is given solely for the purpose of assisting candidates to study for the PPE and does not represent legal or other professional advice.