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LITIGATION

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THE LIMITATION PERIOD FOR THE ALBERTA MINOR INJURY REGULATION

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McIntyre v Babin, 2009 NBQB 65 is an interesting decision which may impact upon the limitation period that will be applied by Alberta Courts for *Minor Injury Regulation* claims.

In Ontario, claimants who sue for personal injuries must, in order to bring a lawsuit, surpass a threshold and establish that the accident in question has produced "serious disfigurement" or a "serious impairment".

This is different legislation than in Alberta as, under the Alberta *Minor Injury Regulation*, a claimant's damages for personal injuries and other forms of general non-pecuniary damages are capped unless they sustain spinal dislocation, spinal fracture, a form of whiplash that involves objective neurological signs or the injuries constitute a "serious impairment".

New Brunswick also has legislation that is designed to limit the ability of a claimant to recover damages for whiplash and other forms of soft tissue injury. As in the case of Alberta, this legislation creates a cap as opposed to a threshold.

Courts in Ontario have held that, as a result of the language of the threshold, a plaintiff does not have the ability to sue until he could have discovered that he sustained a serious disfigurement or a serious impairment. As a result, Ontario Courts have allowed personal injury actions to be commenced more than two years after the date of an accident.

The New Brunswick Court of Queen's Bench was recently asked to determine when the limitation period

for a plaintiff begins to run in the post cap era. The New Brunswick Court of Queen's Bench was encouraged to apply the principles that had been adopted by the Ontario Courts, and conclude that the limitation period begins to run when a claimant could have discovered that his or her injuries produced a serious impairment. The New Brunswick Court of Queen's Bench, however, refused to apply the principles that had found favour in Ontario, and concluded that a claimant in a personal injury action does not need to know the extent of his or her injuries in order for the limitation period to begin to run. Instead, a claimant must simply know the identity of the defendant and that **some** damage has occurred. As a result, the New Brunswick Court of Queen's Bench concluded that the limitation period for a cap claim will invariably begin to run on the day of the accident.

Obviously, this decision of the New Brunswick Court of Queen's Bench is not binding on an Alberta Court, but it may have persuasive value for Alberta Courts. It also increases the chances of the Alberta Courts concluding that the limitation period for a claimant who is pursuing personal injuries in the post-*Minor Injury Regulation* era will begin on the date of the accident, and not at some later date when the claimant could have discovered that his or her injuries were either excluded from the application of the *Minor Injury Regulation* or, alternatively, that the injuries constituted a "serious impairment."

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