



Peter Griffin
416-865-2921
pgriffin@litigate.com

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LegalWriter.Net's™ Top 10 Business Decisions of 2021, Part II “ and the Law Firm Players

Grant Thornton LLP v New Brunswick is featured as one of the top 10 business decisions of 2021 by LegalWriter.net. Peter Griffin, lead counsel for the successful appellant, was interviewed on the significance of the case.

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As Peter Griffin, a partner at Toronto litigation boutique Lenczner Slaght, who represented the successful appellant, accounting firm Grant Thornton, sees it, the formulation of a single standard should bring some certainty to a highly contentious area of law.

“There are so many limitation-period related disputes, motions and appeals that having a national standard for discoverability will be very useful,” he says.

A “plausible inference” of liability, the court explained, was one that requires a “permissible fact inference”, which means that a plaintiff need not necessarily be aware of the exact harm suffered or the precise cause of the harm for the limitation period to begin. Direct and circumstantial evidence, as well as constructive knowledge – – – where an individual should have discovered the material facts through reasonable diligence – – – were relevant in assessing a plaintiff’s degree of knowledge. The court did not elaborate, however, on the parameters of “reasonable diligence”, so the issue, common in limitation disputes, will remain controversial.

It is nonetheless important to remember that the SCC was dealing with common law discoverability. In this regard, the court was careful to note that limitations statutes can oust the common law rule, but require clear language to do so.

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