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The Limitation Period for the Enforcement of Foreign Judgments in Ontario

Like most jurisdictions, Ontario requires parties contemplating litigation to bring an action within a certain period of time. Pursuant to the *Limitations Act, 2002*, the standard limitation period applicable to most causes of action in Ontario is two years, after which a plaintiff will not be able to maintain the action. Like most jurisdictions, Ontario requires parties contemplating litigation to bring an action within a certain period of time. Pursuant to the *Limitations Act, 2002*, the standard limitation period applicable to most causes of action in Ontario is two years, after which a plaintiff will not be able to maintain the action.

The *Act* extends this timeline in some circumstances by providing that no limitation applies to certain types of cases and that the clock only starts ticking on the limitation period once the cause of action is said to be “discoverable” (i.e. the point at which a plaintiff reasonably ought to know that they have a cause of action and that it is appropriate to commence an action).

One continuing area of uncertainty has been the limitation period for proceedings to enforce foreign judgments. This issue arises because judgments of foreign Courts have no inherent force outside the jurisdiction in which they were rendered. In Ontario, a judgment creditor must apply to the Superior Court of Justice to have the judgment recognized before the judgment can then be enforced as an order of the Superior Court.

In *Independence Plaza 1 Associates, LLC v Figlioni*, the Court of Appeal provided some clarity as to what limitation period applies to proceedings to enforce a foreign judgment in Ontario and when the limitation period begins to run.

In *Figlioni*, the plaintiff, Mr. Figliolini, had obtained a judgment against Independence Plaza 1 Associates, LLC in the New Jersey Superior Court on January 24, 2013. An appeal by Independence to the Appellate Division was dismissed on July 17, 2014. On May 1, 2015 – more than two years after the New Jersey judgment was issued, but less than two years since the appeal was dismissed – Mr. Figlioni brought an application in

Ontario to recover damages based on the New Jersey judgment.

The Court of Appeal held that the applicable limitation period is the standard two year limitation period in the *Limitations Act, 2002*. However, the Court held that the limitation period only commences once the time to appeal the foreign judgment has expired or, if an appeal is taken, the date of the appeal decision. In this respect, the Court picked up on its recent decision in *407 ETR Concession Co v Day*, wherein the Court of Appeal held that a proceeding is not legally appropriate (and the limitation period therefore does not start to run) until other mechanisms for resolving a dispute have been exhausted.

The Court of Appeal's decision in *Figlioni* is a welcome clarification to the law. It makes little sense to require a party to commence a proceeding to recover on a foreign judgment until that judgment becomes final in the foreign jurisdiction. This approach also harmonizes Ontario's approach to the recognition and enforcement of foreign judgments with its approach to the recognition and enforcement of international arbitral awards, which the Supreme Court of Canada held in *Yugraneft Corp v Rexx Management Corp* commences on the date the appeal period expires or the date of the appeal decision if an appeal is taken.