



## BEWARE OF THE PHANTOM CLIENT IN A NEW GUISE

### *June 22, 1992 Motor Vehicle Limitation Date*

**T**he *Ontario Motorist Protection Act* "threshold" legislation came into force on June 22, 1990. People injured in motor vehicle accidents are limited to recovering the no-fault benefits from their own insurer and may not bring an action unless the injuries cross the "threshold".

Actions can be brought in cases of death or where the person has sustained:

- a) permanent serious disfigurement; or
- b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

### *The Two-year Limitation Period For Bringing These Actions Begins To Expire On June 22, 1992.*

You should be aware of potential liability for failing to commence actions for claims which may exceed this threshold.

Imagine the following:

A client came into your office a year ago and claimed to have a sore back as a result of a minor accident. "Clearly beneath the threshold", you mumble to yourself. You help the client fill out the no-fault form and close the file.

Next year the client calls and says, "My back is inoperable. I have never returned to work as a self-employed carpenter. What do I do next?". The phantom has returned in a new guise.

Do not let this happen to you. There is still time to protect your client by issuing a Statement of Claim and to protect yourself

**So:**

**REVIEW** all personal injury client contacts since June 22, 1990 and ask yourself:

“Could any of those people be depending on me to protect them?”

**WRITE** these people, warning them of the two-year limitation period.

Ask yourself:

“Is my letter sufficient to protect me in an E. & O. law suit?”

Ask yourself:

“Does my letter mention the limitation date and that the client’s rights are time limited?”

**Remember** with respect to claims of minors, the Court of Appeal says (in the decision of *Murphy v. Welsh* 3 O.R. (3d) 182) that minors do not enjoy any extended limitation period of the *Highway Traffic Act* and at the moment the limitation period is still two years. (This decision is under appeal in the Supreme Court of Canada.)

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