

ES&O BULLETIN



Published by
The Law Society of Upper Canada
Osgoode Hall, Toronto
for the information of
its members

Number 4

January 29th, 1980.

Missed limitation periods have caused 348 losses, that is 15% of the claims which have been paid out of the Society's insurance fund in the past three years. It was three years ago that the Society took on responsibility for the \$30,000 group deductible portion of each claim over and above the \$5,000 individual deductible which is paid by the member causing the loss. The 348 claims have a total value of \$235,987.

The requirement that members maintain a reminder or tickler system to warn of approaching limitation deadlines was introduced a year ago and has already brought about some reduction in the number of limitation claims.

Occasionally a limitation claim sheds some light on the law, for example, compare the following two cases.

A pregnant woman went into a Toronto subway station and mistakenly deposited a Hamilton tram ticket and the operator of the turnstile stopped it as she was going through so that she went heavily against the bar and was injured. Her solicitor did not realize that the Toronto Transit Commission is deemed to be a street railway company and is subject to the one year limitation period prescribed under The Railways Act and issued the Writ too late.

In another case the insured's client was struck from behind by a Toronto Transit Commission bus and the Writ was issued longer than one year later. The defendant relied on the Railways Act limitation of one year. The County Court Judge ruled that since the accident involved a bus it came under the provisions of The Highway Traffic Act rather than The Railways Act. The decision went forward to the Supreme Court where it was upheld and then leave to appeal to the Divisional Court was sought and Mr. Justice Craig said in his oral judgment "In my opinion both of these statutes, that is, The Railways Act and The Highway Traffic Act are of general application and there is a conflict between the two statutes. A provision for a one year limitation is repugnant to the provision in the other statute providing for a two year limitation. Accordingly, it is my opinion that the legislature intended that The Highway Traffic Act, which is later in point of time, would override the provisions of The Railways Act in the situation herein. It is also my view that the limitation period of The Highway Traffic Act cannot reasonably or sensibly be applied without extending that limitation period to motor buses. For these reasons, I am in complete agreement with the decision of Mr. Justice Galligan".

Kenneth Jarvis,

Secretary.