

ARCHITECTS MOVE CLOSER TO PROTECTION FROM LITIGATION AFTER 15 YEARS

What Pro-Demnity's win at the Court of Appeal means for Architects.

Pro-Demnity recently went to the Court of Appeal of Ontario, the highest level of court in the province, to argue that architects should never face litigation more than 15 years after a project is completed. The decision in this case, called *Lower William Properties v. Santaguida*, 2026 ONCA 581, was released on August 13, 2026, and we won our appeal, although the core issue remains undecided.

Does that sound confusing? Perhaps it is, and it certainly is complicated. In this article, we will try to unpack it.

WHAT DOES THE COURT OF APPEAL SAY ABOUT THE 15-YEAR LIMITATION PERIOD, AND WHERE DOES THIS LEAVE ARCHITECTS?

While we answer these questions below, be forewarned: this article will contain more legalese than my usual writing for architects.

WHAT ARE LIMITATION PERIODS?

How many years does it take after project completion for an architect to be safe from litigation? This question is supposed to be answered by Ontario's *Limitations Act 2002*, S.O. 2002 c 24 Sch B, which seems to set a basic period of two years after a problem is discovered, but never more than 15 years after work on the project would be complete. But there are some exceptions and gaps which make the full answer more complicated. I explored the provisions of that Act in [Limitation Periods: Is an architect ever safe from litigation?](#).

Today's article will discuss one particular aspect of limitations: whether the 15-year limitation

period extends to claims for **contribution and indemnity**.

A claim for contribution and indemnity is where a party to a lawsuit that is sued by a plaintiff believes someone else may have really caused the damages that are the subject of a lawsuit, and brings them into the case, usually by way of a Third Party Claim, to be able to point the finger at them. For example, often a contractor sued by a developer will bring a Third Party Claim against an architect alleging that design errors were to blame, not construction.

The *Limitations Act* is worded in a way that may permit claims for contribution and indemnity to be made for work that took place more than 15 years before a lawsuit began, even if a main plaintiff could not bring that claim. At Pro-Demnity, we view that interpretation as wrong, which is why we took the step of appealing a decision that endorsed it.

WHY THIS APPEAL? IT IS PART OF OUR PORTFOLIO APPROACH TO REDUCING CLAIMS AGAINST ARCHITECTS.

Lawyers, like architects, are guided by the interests of their clients. For architects, one project may be avant-garde environmentalist beauty, while the next may be a value engineered pastiche built to minimum code standards. Similarly for lawyers, on one case, it may be in the client's best interest to argue that the sky is blue, but on the next case, to argue that it is in fact grey, and we will do either if it is in the interest of the client.

For some legal questions, joining Pro-Demnity brought more clarity to my work as a legal advocate. There are certain legal position which are always in the interest of all architects. In other words, for certain legal questions, the sky is always blue, never grey.

Moving the needle on these types of legal questions can result in fewer claims being brought against architects in Ontario as a collective, reducing Pro-Demnity's risk overall to its portfolio of claims. Where risks are systemically reduced on Pro-Demnity's portfolio of present or future claims, the resulting benefits are shared across the broader policyholder community.

When we go after these types of legal issues, I call it part of our “**Portfolio Approach**” to litigation. Resolving a legal issue in one case will not only solve that case, but reduce risk to our litigation portfolio.

Upholding limitation periods are a clear win from the perspective of a Portfolio Approach. Buildings have very long lifespans, and making sure that architects can at some point, even if it is many years later, be free from liability risk is of benefit to the entire profession.

WHAT WAS THE “LOOPHOLE” IN THE ULTIMATE LIMITATION PERIOD UNDER THE *LIMITATIONS ACT*?

Section 15 of the *Limitations Act* is the one that makes it clear that litigation should not be commenced more than 15 years after the events giving rise to the claim. Specifically, Section 15 (2) reads:

“No proceeding shall be commenced in respect of any claim after the 15th anniversary of the day on which the act or omission on which the claim is based took place.”

For the provision of professional services, such as architectural services, there can be an open question as to when an act or omission took place. From an architectural perspective, it is generally safe to view section 15 as meaning no lawsuit can be brought against an architect more than 15 years after they provided their final services with respect to a project.

However, Section 18 of the *Limitations Act* qualifies section 15 by stating:

“For the purpose of subsection 5 (2) and section 15, in the case of a claim by one alleged wrongdoer against another for contribution and indemnity, the day on which the first alleged wrongdoer was served with the claim in respect of which contribution and indemnity is sought shall be deemed to be the day the act or omission on which that alleged wrongdoer’s claim is based took place”

As previously explained, the ability to claim contribution and indemnity, in simple terms, is the ability for someone who is sued to turn around and point the finger at someone yet else, and say, “I am not at fault, they are”, or even “if I am at fault, they are more at fault”.

You can see how it would be important to preserve the ability of someone who is sued on the 15th anniversary of an event to still be able to claim contribution and indemnity. We believe that Section 18 was meant to preserve that right to bring a claim for contribution and indemnity for the ordinary two-year limitation period even if the lawsuit was brought on the 15th anniversary.

BUT we believe that the contribution claim should only go no further than 15 years back from the date of the plaintiff’s own claim, whereas on the plain reading of section 18 together with 15, there is *no limit* on how far back a contribution claim can go.

This produces what we consider a loophole. A plaintiff making their initial claim can only sue for something that happened less than 15 years ago. How is it fair that the defendant can deflect to someone who’s work took place yet further back in time? It also means that there is no certainty for architects (or others who work on construction projects) that they can ever be free from a claim for contribution and indemnity. This is against the principles underlying the *Limitations Act*, and there is legal precedent that states legislation must be read in a way consistent with its purpose.

Pro-Defendant has been aware of this loophole for some time and looking for an appropriate case to try to get the Court to make a finding consistent with our view: that a new lawsuit can only be brought for 15 years, and then a claim for contribution can be brought for 2 years after a lawsuit is started, but only against those the plaintiff could have claimed.

WHY WE CHOSE THIS CASE: LOWER WILLIAM PROPERTIES V. SANTAGUIDA

The *Limitations Act* came into force in 2004, and the 15-year limitation period was therefore only effective as of 2019. Being aware of the loophole, we were on the lookout for post-2019 cases to try to close it. Lower William Properties v. Santaguida provided us with the perfect set of facts.

This case pertains to a fire at the Vittoria Trattoria restaurant in the ByWard Market area of Ottawa, which spread to surrounding buildings. The fire started in 2019 during hot-roofing work on the restaurant building. Various owners of the surrounding buildings and businesses all sued Vittoria Trattoria and the roofing company for the damage caused by the fire.

Vittoria Trattoria had been previously renovated in 2001. In 2023, they began a series of Third Party Claim against the architect from the 2001 renovation alleging that improper fire separation allowed the fire to spread.

That renovation took place more than 15 years prior to the 2019 fire, so the plaintiffs could not have sued the architect. But because of the loophole, Vittoria Trattoria took the position that they were allowed to sue for contribution and indemnity. Pro-Demnity wanted to shut them down.

ORIGINAL MOTION DECISION

Pro-Demnity brought a motion in the Ontario Superior Court of Justice in Ottawa, heard in January 2025, to dismiss the Third Party Claim against the architect on the basis that the 15-year ultimate limitation period had expired.

We asked the Court to interpret the *Limitations Act* the way that we saw it – as barring contribution claims being brought for matters occurring further back in time than the plaintiff could.

On our side, or so we thought, were the principles of statutory interpretation, that an act must be read consistent with its object and scheme. In the parliamentary debates that led to the *Limitations Act*, all parties were in support of an ultimate limitation period. Michael Bryant, a future Attorney General stated:

“Clearly, a number has to be set and a line has to be drawn somewhere. The ultimate limitation period of 15 years makes sense for a lot of the matters dealt with in the courts and in this particular act. **Does it make sense that architects and engineers can be sued 50 years after building a home?** Of course not. Interestingly, that is the current state of affairs, which doesn’t make much sense at all.”

We agree with Mr. Bryant and are of the opinion that the *Limitations Act* was clearly meant to fix this state of affairs that “didn’t make sense at all”.

The motion judge who first heard the case disagreed and issued a decision that found the simple interpretation prevailed and Vittoria Trattoria’s Third Party Claims could continue. This first decision is indexed as 2025 ONSC 1132.

Pro-Demnity appealed the decision, which was heard in November 2025. The decision was released nine months later in August 2026.

COURT OF APPEAL DECISION

The Court of Appeal agreed with Pro-Demnity that the motions judge was wrong, and overturned their decision.

However, the Court of Appeal did not dismiss the Third- Party Claims. In a lengthy 91 paragraph

decision, they determined that there are two different types of claims for contribution and indemnity. In simple terms, one type of claim is related to negligence law, and the other type of claim more to contract law. The Court decided they wanted the case to be more developed before they made a final decision on whether the 15-year ultimate limitation applied to each type of contribution claim.

While Pro-Demnity was disappointed by this non-decision of the issue in question, we were pleased that the motion judge's incorrect interpretation was overturned.

WHAT HAPPENS NEXT?

This was a good result in overturning the bad precedent that would have been set had the motion judge's decision been left to stand.

However, we do not have a final decision on whether the ultimate limitation period applied to contribution and indemnity claims.

Our Portfolio Approach suggests that we should continue to pursue the issue until we have a final determination of binding law on this legal question. We remain convinced that our position is the legally correct one. Even if we are wrong, a final decision that permits indefinite claims would give clarity, and we could move to advocate to amend the *Limitations Act*.

In the interim, we are continuing to look for appropriate ways to get a final decision from the Court on this issue, whether in this case or a future one.

In the meantime, are architects safe from lawsuits 15 years after they complete work on a project? It is not yet crystal clear, but we are step closer to that determination, and Pro-Demnity is doing all it can to eventually get to a resounding yes.

Our Contributor



Philip is an experienced litigator with a practice dedicated to defending architects against professional liability lawsuits as in-house Managing Legal Counsel at Pro-Demnity Insurance Company, which he joined in 2020. He has successfully represented clients at all levels of Court in Ontario, as well as at mediations, arbitrations, administrative tribunals and professional colleges. Philip was called to the bar in 2012 after graduating from Queen's University Law School in 2011. Further, he completed an internship at the Khmer Rouge Tribunal in Cambodia. He is a member in good standing of the Law Society of Ontario, the Ontario Bar Association and Canadian

Defence Lawyers. Recognized for his litigation expertise, Philip has contributed articles and been asked to present to insurance professionals, professional associations, and to fellow lawyers.