



Cochrane Moore LLP

Legal Services

57 Simcoe St. S., Suite 2A, Oshawa, ON. L1H 4G4

www.cctmlegal.com

P: (905)240-4529

F: (905)240-3030

The following paper is for academic use only and is not intended to be used or interpreted as legal advice.

The Basic Limitation Period and Statute Barred Causes of Action

You are here because you've been wronged and want to sue, or you are being sued and you are thinking the action took place so long ago, you can't possibly be sued for that! Well, in law, most legal professionals will tell you the answer is always maybe, but sometimes, just sometimes, the law is black and white. In civil law, the law of limitation periods can be one of those "sometimes".

If you are being sued for something that happened more than two years ago, pay close attention as we walk you through a motion to dismiss brought under s.12.02(1)(c) of the *Rules of Small Claims Court*.

The *Limitations Act*¹ outlines the basic limitation period at s.4:

Basic limitation period

4. Unless this Act provides otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered.

For most claims, a limitation period of two years applies. We say most, because exceptions always apply. One exception is where a different limitation period exists by statute, such as the one-year limitation period under the *Human Rights Code*, RSO 1990, c H19. Additionally, a further exception, and it's a big one, is discoverability.

¹ *Limitations Act*, 2002, S.O. 2002, c.24, Sched. B, section (4)

The *Limitations Act*² describes discovery at s.5(1):

Discovery

5. (1) A claim is discovered on the earlier of,
- (a) the day on which the person with the claim first knew,
 - (i) that the injury, loss or damage had occurred,
 - (ii) that the injury, loss or damage was caused by or contributed to by an act or omission,
 - (iii) that the act or omission was that of the person against whom the claim is made, and
 - (iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and
 - (b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a). 2002, c. 24, Sched. B, s. 5 (1).

So, you didn't discover the damages when a "reasonable person" would have, what does that mean for your claim? Will the court believe you? Who knows! Just kidding, the *Limitation Act*³ planned for this instance.

Presumption

- (2) A person with a claim shall be presumed to have known of the matters referred to in clause (1) (a) on the day the act or omission on which the claim is based took place, unless the contrary is proved. 2002, c. 24, Sched. B, s. 5 (2).

So, if you have evidence to show that you couldn't possibly have discovered the damage any earlier than you did, you can enter that by way of testimony, or documents to rebuke that presumption. As stated in the case of *Van de Vrande*⁴ "the claim had no chance of success because it was instituted after the applicable limitation period had expired" and furthered by *Onwuachu*⁵ "the claim cannot succeed and any further litigation of the claim would be a waste of time within the meaning of rule 12.02(1)(c)".

But wait, there's more! What if the cause of action arose six years ago, was discovered three years ago, but two years ago you sent a text, or an email apologizing for not paying the

² *Limitations Act*, 2002, S.O. 2002, c.24, Sched. B, section 5(1)

³ *Limitations Act*, 2002, SO 2002, c24, Sched. B, section 5(2)

⁴ *Van de Vrande v Butkowsky*, 99 OR (3d) 641, para 24

⁵ *Onwuachu v Trans Union of Canada*, [2013] OJ No. 923 states at para 15

outstanding amount, and promised to pay it in the next six months? Can you be spared that repayment by s.4 of the *Limitations Act*? Maybe. As mentioned, not everything gets to be black and white. This would really depend on exactly what your text, email, or even conversation included.

The *Limitations Act*⁶ states:

Acknowledgments

13. (1) If a person acknowledges liability in respect of a claim for payment of a liquidated sum, the recovery of personal property, the enforcement of a charge on personal property or relief from enforcement of a charge on personal property, the act or omission on which the claim is based shall be deemed to have taken place on the day on which the acknowledgment was made. 2002, c. 24, Sched. B, s. 13 (1).

Sounds pretty clear right, so why am I telling you the answer is maybe? It all depends on the acknowledgment. The recent ruling of *1702108 Ontario Inc.*⁷ affirmed the finding of *Middleton*⁸ where it was held that s.13(1) requires a “clear and unequivocal acknowledgement of the debt claimed”.

So, what happens when you have a loan with no repayment date? Can you lend out money and five years later request it be repaid? It depends entirely on the agreement. Was the agreement in writing? Was a repayment date outlined? Were terms clearly established for repayment on demand? What time-frame would be accepted for repayment upon demand? Did both parties sign the agreement? Was an interest term defined?

While this provides a brief overview, the law can be very complex, and many aspects are case specific. If you have an issue, call Cochrane Moore LLP for a free consultation.

(905) 240-4529

Last updated February 6, 2018

⁶ *Limitations Act*, SO 2002, c.24, Sched. B at paragraph 13

⁷ *1702108 Ontario Inc. v 3283313 Canada Inc.* 2016 ONCA 420 at paragraph 5

⁸ *Middleton v Aboutown Enterprises Inc.* 2009 ONCA 466