

LIMITATION PERIODS

No matter how righteous or provable your legal claim might be, you may be at risk of losing your right to claim if you wait too long to start your lawsuit. The basic idea is that if you have a claim, you should at least start it while documents can still be found and the parties and the witnesses are still alive and able to remember what happened. In short, the sooner you start your lawsuit, the better. Thereafter, the usual “glacial” speed of litigation generally prevails.

The other basic reason you shouldn't wait too long is that wrongdoers have some rights too (such as being presumed not to be wrongdoers until you prove it) and many of them are entitled to stop worrying about potential claims against them after a certain amount of time has passed. That time is called the limitation period.

Limitation periods are the specified times within which you must bring your legal claim and they are set out in the aptly named Limitation Act. Unfortunately, this act has, in the common parlance, more loopholes than you can shake a stick at. Some of them are big enough to accommodate the passage of the proverbial truck. Despite all of that, however, there are still quite a few limitations that are fairly straightforward.

Generally speaking, limitation periods vary according to the type of claim you have. For personal injury claims the limit is two years from the date of the injury. In most personal injury cases, that is the date of the car crash or the slip and fall. For claims under contracts or other actions not specifically provided for in the Limitations Act, the limit is six years.

Other claims that must be brought within two years include claims for trespass to property, defamation, false imprisonment, seduction, malicious prosecution and claims under the Privacy Act or section 27 of the Engineers and Geoscientists Act, whatever the dickens those last two might be.

Some claims, such as claims against a municipality and certain types of defamation, require you to inform the other side very quickly, failing which you may lose your right to claim.

Some claims can be brought at any time, no matter how long it has been since the cause of action arose. For example, claims for damages based on misconduct of a sexual nature, including sexual assault, can be brought years even decades later. The basic idea of that one is so that rapists and child molesters never get to stop worrying. Presumably, the legislature was expressing the wishes of the public that rapists, child molesters and other such disgusting people never get a good night's sleep and never get to stop worrying about getting sued for their egregious and abhorrent actions.

Other claims that can be brought at any time include claims under the Waste Management Act of BC against polluters for, and I quote, “the costs of restoring property”. Other such claims include actions on, and I quote again, “a judgment for the possession of land, by a debtor in possession of collateral to redeem that collateral, by a secured party in possession of collateral to realize on that collateral, by a landlord to recover possession of land from a tenant who is in default or over holding, relating to the enforcement of an injunction or a restraining order, to enforce an easement or restrictive covenant or profit, for a declaration as to personal status or for

title to property or for a declaration about the title to property by any person in possession of that property.”

The time limits also vary according to the kind of person you are. Although that sounds bad, even discriminatory, actually it depends on whether or not you have reached the age of majority.

For infants (in BC it is defined by statute as all those under the age of 19) the clock does not start to run until they reach their 19th birthday. The theory here is that infants are entitled to grow up before they have to make these types of decisions.

For some types of claims, if you don't know the identity of the person who injured you, you can wait until you find out who they are. Don't try that with a claim for injuries caused by an unknown driver, however, as the Insurance (Motor Vehicle) Act specifically deals with that scenario.

Sometimes the time limits can be set back to zero or otherwise extended. For example, if you have been defrauded but didn't know about it, the time doesn't start to run until you find out (or ought to have found out - that is a source of a fair amount of litigation) you've been swindled.

As another example, if your ex-brother-in-law owes you \$100 from five and a half years ago (six year limit on contract claims, remember) and makes a \$20 payment today, he has “confirmed” the cause of action and the six year limitation starts all over again from the date of the payment.

Obviously, this is a fairly complicated area of the law and if this article has not confused you then you are probably a lawyer. If so, would you please call me to explain how some of the

trickier stuff works. For the rest of you, don't drag your heels too long before starting your action or going to see a lawyer about your claim. Otherwise, it might vanish through the "passage of time", as they say in the courts.