

# Law makes civil sex assault litigation easier

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Civil sexual assault litigation will be less cumbersome and costly to plaintiffs now the Ontario government's has passed Bill 132, lawyers say.

The bill, which received Royal Assent March 8, means victims of sexual assault can launch a lawsuit any time after an alleged abuse, without having to prove they deserve an extension of the usual two-year limitation.

The old system had complex exceptions to the general two-year limitation period for civil cases. It created a "rather complicated scheme" where lawyers had to look at a number of different combined legal and factual issues before clients could be heard, says Loretta Merritt, who practises plaintiff-side civil sexual assault litigation at Tor-kin Manes LLP.

In the past, if plaintiffs wanted bring a case to civil court after the ordinary two-year deadline, they had to, for example, establish they didn't have the psychological capacity to come to court earlier than they did. They also had to show they only recently discovered the harm that was done to them and understood the cause of that harm to be the alleged sexual assault. Sometimes, plaintiffs would

have to call expert evidence to establish those facts.

"What it means is additional work throughout the file. When you first meet with clients, you have to ask all these questions and get all this information," Merritt says, adding lawyers also had to get records from therapists and scour those files.

"You have to spend time at the front end when you meet the client, you have to spend time when you're pleading, you have to spend time when you're doing the documentary disclosure, [and] a lot of time is spent on it on examinations for discovery," Merritt says. "A lot of work is devoted to this issue."

Bill 132, officially the Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), means lawyers representing plaintiffs will no longer be bogged down with this work.

"If we simply acknowledge that there should not be limitation periods in sexual abuse cases, then all that work goes by the wayside and you can get to the merit," Merritt told *Law Times*, before the bill passed.

Elizabeth Grace, a partner at Lerner LLP, said the bill broadens the "no limitation rule" to other forms of sexual misconduct. The old system didn't catch abuse over the Internet, such as



Elizabeth Grace says a new Ontario bill will help access to justice for victims and contribute to less costly litigation.

children being lured to expose themselves or cyberbullying of a sexual nature, Grace says. The new legislation also includes domestic violence under its umbrella.

"I think these [changes] put Ontario at the forefront of the issue along with Manitoba and British Columbia," Grace said. "It's certainly going to help access to justice for victims; it's going to contribute to less costly litigation, less risky litigation."

Grace said when the bill is implemented, there may be more litigation in this area because there may be victims who

haven't come forward because they believe it's too late.

"I keep hoping we're going to see the litigation in this area decline as we've had advances like vicarious liability and we get more conscious of the harm that's caused . . . but I haven't seen that happen," Grace said. "There are still historical cases coming forward and I must say contemporary cases. I think this [bill] will remove a barrier and result in more litigation."

To be sure, Merritt says lawyers are not seeing a lot of civil sexual assault cases being dismissed because they're statute-barred. But the additional work around the limitation period makes litigating these cases difficult and costly, she says.

"Another other side is there may be individuals out there — plaintiffs, abuse survivors — who have some notion that it's too long ago and there might be some obstacle that they cannot overcome," Merritt says.

"It's very easy for me to tell the world generally that there's no time limit. It's very hard for me to explain limitation period to people."

During Jian Ghomeshi's recent sexual assault criminal trial, several observers mused over the idea that the civil court may be a better alternative for alleged victims of sexual assault to have their day in court. If the limita-

tions requirements are removed on the civil side, as they are in the criminal justice system, there may be more argument in favour of choosing the civil court, Merritt says.

"I think there have always been significant advantages to civil as opposed to a criminal case . . . the lower burden of proof being the obvious one," Merritt says. "In the civil case, it's not just about getting money. It's about standing up for oneself. It's about holding people to account, it's about healing, justice, closure, [and] empowerment."

The survivor in a civil case works closely with a lawyer "whose only job is to advance their interest in the way that they instruct," which is not the case in criminal court, Merritt adds.

But Grace cautions against seeing civil courts as "the panacea," adding she's dealt with clients who said they found civil the process more grueling, intrusive, and difficult than the criminal side of their case. In civil courts, all of the plaintiffs' sexual past and history become relevant in the way they may not be in criminal courts, Grace says. "We shouldn't be too quick to think civil is the panacea; what's relevant in a civil case is much broader than a criminal case." **LT**