

The End of Limitation Periods for Sexual Abuse Cases in Ontario

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On October 27th, 2015, the Ontario government introduced Bill 132, Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment) 2015. Bill 132 is the legislative action plan arising from the Government's March 6, 2015 report "It's Never Ok: An Action Plan to Stop Sexual Violence and Harassment". The preamble to Bill 132 states that "The Government will not tolerate sexual violence, sexual harassment or domestic violence. Protecting all Ontarians from their devastating impact is a top Government priority and is essential for the achievement of a fair and equitable society. All

Ontarians would benefit from living without the threat and experience of sexual violence, sexual harassment, domestic violence and other forms of abuse, and all Ontarians have a role to play in stopping them." The Bill amends several laws in an effort to implement this priority. This article deals with the proposed amendments to The Compensation for Victims of Crime Act and the Limitations Act.

Limitation Periods are time lines for suing. If a limitation period is missed it provides a complete defence to a civil lawsuit and puts an end to the case. When I first started practising in the area of civil sexual assault over 25 years ago, limitation periods presented a significant obstacle in many cases

because so many claims arising from sexual assault are historical. It often takes survivors 20, 30, 40 years or even longer to come forward. There are many reasons why sexual abuse survivors do not come forward including misplaced shame, guilt and fear of coming forward or simply a desire to avoid thinking about and confronting the horrendous pain. Over a decade ago, the Province of Ontario introduced the new Limitations Act 2002 which significantly helped with this problem. Although there are now many ways around limitation periods because of those changes, it still takes a lot of time, effort and money to develop arguments and evidence to overcome potential limitation periods. Soon, this may all be over.

The Limitations Act

Bill 132 amends the Limitations Act 2002 to provide that there are no limitation periods for cases “based on a sexual assault”. There will also be **no limitation periods** for cases based on “any other misconduct of a sexual nature if, at the time of the misconduct, the person with the claim was a **minor** or if there is an authority, dependence or trust relationship. Bill 132 also eliminates limitation periods for cases based on **physical** assault if, “at the time of the assault, the person with the claim was a **minor** or if the parties had an intimate relationship or there is a relationship of dependence. Interestingly, Bill 132 provides that these changes are **retroactive** and apply whenever the acts occurred and regardless of the expiry of any previous limitation period, unless the case is over because it was settled or finally determined by the Court.

The Compensation for Victims of the Crime Act

The Compensation for Victims of Crime Act establishes the Criminal Injuries Compensation Board (“CICB”) and provides for compensation for victims of certain specified types of crimes including sexual offences. Compensation under the Act can be awarded for expenses incurred, financial losses (including income loss) and pain and suffering. The Act sets up a scheme for making an application

to the CICB. There does not have to be a criminal conviction against the perpetrator to get compensation from the CICB. The Board can make a lump sum award of up to \$25,000.00. The Board can also make awards for periodic payments. Currently under the Compensation for Victims of Crime Act there is a limitation period (time limit) for applying. An application for compensation must be made within two (2) years after the date of the injury but the Board may extend the time. In my experience, the CICB is fairly generous in granting extensions (even very long ones), if there is an explanation for the delay.

Bill 132 will amend the limitation period to provide that there is **no limitation period** with respect to CICB applications relating to crimes of sexual violence or violence that occurs within a relationship of

intimacy or dependency.

This change will be retroactive and will apply to applications commenced before Bill

132 is law unless the case is over and has been finally disposed of by the Board.

The effect of Bill 132 is that there will no longer be time limits for abuse survivors in private lawsuits

as well as in applications to the Criminal Injuries Compensation Board. I welcome these proposed amendments and they are very much in line with the suggestions I made when I was consulted by members of the Government’s Select Committee on Sexual Violence and Harassment and my submission to the Office of the Assistant Deputy Attorney General, Policy and Innovation Division. This Bill is a clear message to abuse survivors that their claims are important and should not be stopped simply because it has taken them time to be ready to address the issue legally. It will provide more access to justice for abuse survivors and will mean that survivors no longer have to justify why they took so long to come forward. In an area where there is a lot of self-blame, this is a very important step.

Any enquiries arising out of this article should be directed to: Loretta P. Merritt at (416) 777-5404. The issues raised in this release by Torkin Manes LLP are for information purposes only. The comments contained in this document should not be relied upon to replace specific legal advice. Readers should contact professional advisors prior to acting on the basis of material contained herein.

