

THE END OF LIMITATION PERIODS FOR SEXUAL ABUSE CASES IN ONTARIO

By Loretta P. Merritt

As of now there are no more time limits for suing for sexual assault, domestic violence or child abuse. On March 9, 2016, Bill 132 Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment) 2015 received Royal Assent which is the last step in making it a law. Bill 132 is the legislative action plan arising from the Government's 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 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 that law created many ways around limitation periods, it still took a lot of time, effort and money to develop arguments and evidence to overcome potential limitation periods. Now this is 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. 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 amended the time limit 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 is retroactive and applies 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 are 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 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 submissions to the Office of the Assistant Deputy Attorney General, Policy and Innovation Division and, on behalf of OTLA (Ontario Trial Lawyers Association) my submissions to the Standing Committee on Social Policy <https://www.youtube.com/watch?v=->

[K6tghVBUI8&feature=youtube](#). 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.