

Civil Procedure
Winter Term 2024

LECTURE NOTES NO. 6

V. LIMITATIONS

- A “limitation period” terminates the potential liability of a defendant, and the beginning of the time when one “should be secure in his reasonable expectation that he will not be held to account for ancient obligations;” *M.(K.) v. M.(H.)*, [1992] 3 S.C.R. 6 at para. 22 (S.C.C.).
- The prospect of a time bar to commence proceedings also acts to encourage litigants to move with reasonable dispatch in bringing their claims; this in turn allows for the collection and preservation of evidence as it is relatively fresh for the eventual trial.
- The principles rationalizing the limitations rules are thus easy to understand and to state, but difficult to apply due to those balancing mechanisms that may be present in a given context (such as ‘discoverability’) or context-specific complications (like disability) - that ensure that a party is not unfairly and unjustly deprived of his or her right to seek redress before the courts.
- Limitations are now largely statutory law. Originally this was governed by an equitable doctrine, The equitable maxim *vigilantibus et non dormientibus jura subveniunt* (the laws aid those who are vigilant, not those who sleep) gave rise to the doctrine of *laches*. The doctrine is not a defence and does not rely on merely the passage of time, but rather looks to acquiesce on the part of the claimant and detrimental reliance on the part of the defendant so as to recognize what is in essence a waiver or set up an estoppel.
- **Some friendly advice: after a first client meeting on a litigation file careful note of when the cause of action arose and IMMEDIATELY diarize the termination of the limitation period.** Failure to do so may result in omitting to bring proceedings in time, the client’s action becoming statute-barred, and you being held liable in negligence. Indeed, if you are consulted by a potential client and not retained, you should write the potential client to advise them that you met, that you aren’t retained, and that they ought to retain a lawyer or act to preserve their rights before the termination of the limitation period.
- Please also note that some types of claims have strict **notice periods** – if the defendant is not notified within the time period the claim is barred. Your car was damaged travelling over the Causeway because the bridge hadn’t been de-iced properly? You have 10 days to notify the city of your claim; see *Municipal Act, 2001*, S.O. 200 1, c. 25, s.44(10). As with the expiry of limitation period, be sure to warn

potential clients who consult you of the notice period whether you are retained to act for the potential client or not.

(i) *Limitations Act 2002, S.O. 2002, c.24*

- Limitations statutes encourage timely resolution of claims on an evidential record that is not inherently unfair to the defendant. We manage the applicable time period, depending on the statute, based on *discoverability* and *postponement* principles in addition to *fraudulent concealment*.
- **The *Limitations Act 2002* is the default limitations statute** and applies a 2-year limitation period with a 15-year maximum subject to certain statutory provisions that provide for atypical treatment.
- The limitations statute does not apply to statutes explicitly excluded or excepted from its operation, but does encompass all other claims be they in law and equity.

Thus, the basic provisions provides:

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.

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).

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.

...

Ultimate Limitation Periods

15. (1) Even if the limitation period established by any other section of this Act in respect of a claim has not expired, no proceeding shall be commenced in respect of the claim after the expiry of a limitation period established by this section.

General

(2) No proceeding shall be commenced in respect of any claim after the 15th anniversary of the day on which the act or omission on which the claim is based took place.

Period not to run

(4) The limitation period established by subsection (2) does not run during any time in which,

(a) the person with the claim,

(i) is incapable of commencing a proceeding in respect of the claim because of his or her physical, mental or psychological condition, and

(ii) is not represented by a litigation guardian in relation to the claim;

(b) the person with the claim is a minor and is not represented by a litigation guardian in relation to the claim; or

(c) the person against whom the claim is made,

(i) wilfully conceals from the person with the claim the fact that injury, loss or damage has occurred, that it was caused by or contributed to by an act or omission or that the act or omission was that of the person against whom the claim is made, or

(ii) wilfully misleads the person with the claim as to the appropriateness of a proceeding as a means of remedying the injury, loss or damage.

Burden

(5) Subject to section 10, the burden of proving that subsection (4) applies is on the person with the claim.

(ii) Does the Limitations Act 2002 Apply?

[See the [Schedule to section 19 of the Limitations Act 2002](#) for a list of statutes not effected by the statute.]

McConnell v. Huxtable **2014 ONCA 86 (Ont. C.A.)**

In this case the question posed was which statute governs a claim for a constructive trust over real property on grounds of unjust enrichment – the 10-year period set out in the *Real Property Limitations Act* or the 2-year period set out in the *Limitations Act 2002*? The former. Read the case to understand that the choice becomes formally an interpretive question, but is really one bound up with public policy. That is, how the law wishes to institutionalize liability in certain types of actions. The rationale for the distinction in this case is that the law deals atypically with land as it is a unique asset and that monetary compensation may not be an adequate remedy for a successful claim.

Rosenberg J.A.:

21 This brings us to the central question at issue in this appeal: whether the respondent's claim for a constructive trust based on unjust enrichment is an action for recovery of land. The appellant's broad submission is that, as developed in Canada, a constructive trust is "merely" a remedy, not an independent claim. Therefore, the claim in this case is for unjust enrichment and not an action for recovery of land.

...

23 The motion judge held that the plain meaning of recover any land includes seeking an equitable interest in land through imposition of a constructive trust. As he said at para. 59, "a case in which someone asks the court to award them ownership of part or all of a piece of land held by somebody else is an action to recover land." The motion judge then considered the entire context of s. 4 of the Real Property Limitations Act, the scheme and object of the Act and the intention of the Legislature. This context included the Limitations Act, 2002, and the historical context of

limitations law in the province. The motion judge reviewed at some length the historical context beginning with a 1969 Report on Limitation of Actions by the Ontario Law Reform Commission through various reports and iterations of proposed Bills that resulted in the 2002 legislation that came into force in 2004. The conclusion of his analysis is found in paras. 74-80. For present purposes it is sufficient to set out para. 77:

A party seeking an ownership interest by way of constructive trust must plead and then prove facts establishing entitlement to it. The fact that a claimant must prove enrichment of the other party and a corresponding deprivation of the claimant, with no juristic reason for the enrichment in order to establish a constructive trust, and must also show that damages alone are insufficient and only a proprietary remedy is adequate, does not alter the fact that the claimant has asked the court from the beginning to award an interest in land. To me, all this means is that the claimant has to plead and prove those key elements, usually called "material facts" in litigation, to justify the order sought. It should not matter how many material facts there are or whether the entitlement to land requires a two step analysis, so long as the application makes a claim of entitlement to ownership of land.

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38 With that background I return to the interpretive issue and specifically to the question of whether an application for the equitable remedy of a constructive trust in real property is an application for recovery of any land. In my view, the respondent is making a claim for recovery of land in the sense that she seeks to obtain land by judgment of the Court. That the court might provide her with the alternative remedy of a monetary award does not take away from the fact that her claim is for a share of the property. The repeated references to constructive trust as a remedy for unjust enrichment in Kerr demonstrate that a proprietary remedy is a viable remedy for unjust enrichment where there is a link or causal connection between her contributions and the acquisition, preservation, maintenance or improvement of the property.

39 In sum, I agree with the motion judge's conclusion at para. 80 of his reasons:

From the plain meaning of the words "action to recover any land" in section 4 of the Real Property Limitations Act, in their "entire context" as described above, I find that the applicant's claim in this case for an ownership interest in the house in question is an "action to recover any land" within the meaning of section 4 of the Real Property Limitations Act. It is subject to a ten year limitation period. Based on the record before me, it is not possible for me to conclude that the applicant's claim in this

case is barred by the ten year limitation. Accordingly, this part of her claim is entitled to proceed.