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A Mariner's Primer on Limitation Periods: Is It Too Late to Sue, or Be Sued?

Whether it is too late to be sued, or too late to sue, is an unfortunate question that every mariner will likely confront at some point in either their professional or their personal life. Knowing what time limits the law puts on the right to bring legal action, known as a "limitation period", is one of the first, and most important pieces of information you must have in order to protect your rights when conflict arises.

The Purpose of Limitation Periods:

The purpose of a limitation period is to allow parties to have certainty when they may no longer be legally responsible for an alleged wrong. Limitation periods force would-be claimants to advance their claim with reasonable speed so that defendants are not left with the indefinite specter of being sued, or having to rely on faded memories and lost documents to defend themselves. Before legislation was enacted by each of the provinces and the federal government that established written limitation periods for different types of claims, the right to sue was sometimes limited by courts under the principle of "laches", or unreasonable delay. While the concept of laches is still used in court, the bulk of limitation periods are dictated by federal or provincial legislation.

Which Limitation Period Applies?

Whether the limitation period for a claim is governed by federal or provincial law depends on what the nature of the claim is, and whether that claim relates more closely to matters within the federal government's jurisdiction, or the provincial government's jurisdiction. For example, with the federal government having jurisdiction over navigation and shipping, most marine related claims are governed by federal laws. On the other hand, with the provinces having jurisdiction over property and civil rights, most non-marine claims, such as disputes regarding commercial transactions or employment matters, are governed by provincial law and provincial limitation periods. However, because the facts of a case often involve aspects of both navigation and shipping, and property and civil rights, which limitation period applies is often up for debate. For simplicity, the examples discussed in this article are clearly either marine or non-marine, but because life is rarely as clear as we would like, readers are encouraged to seek individual legal advice to determine the limitation period for their specific case.

Common Non-Marine Limitation Periods:

Non-marine limitation periods are important to mariners because they determine their rights when the claim advanced is not integrally related to navigation and shipping. In such claims, several provincial laws, including the B.C. *Limitation Act*, apply in setting some of these common limitation periods:

- **SIX MONTHS:** claims for human rights breaches such as discrimination due to physical disability, race, sex or age; claims for unpaid wages under the *Employment Standards Act*; claims to vary a last will and testament that is unfair; any claim against a local government such as a city or municipalities (note that in addition to this short limitation period for bringing legal action

against local governments, such claims are also barred unless written notice of the claim is given to the local government within 60 days of the claim arising – this limitation catches many people by surprise).

- ONE YEAR: claims for breach of insurance contracts (time runs from the date the proof of loss document is submitted);
- TWO YEARS: claims for personal injury (or death) or property damage, and claims for economic loss arising from that personal injury or property damage; trespass to land; defamation such as slander or libel; false imprisonment or malicious prosecution;
- SIX YEARS: claims for breach of contract, such as commercial transactions and employment contracts;
- TEN YEARS: claims against executors of an estate, or a trustee for breach of trust.

These most common limitation periods outlined above are currently being reviewed by the B.C. government to harmonize them with other provinces. In most provinces, for example, breach of contract (including breach of employment contracts) must be sued on within two years, while in B.C it is six years. Civil (meaning non-criminal) claims arising from sexual misconduct have no limitation period.

Marine Limitation Periods:

Unlike provincially set limitation periods, which come from many different sources, federally set limitations periods come largely from the *Marine Liability Act* and international conventions that form schedule to that Act. Common marine limitation periods include:

- ONE YEAR: damage to cargo carried under a contract of carriage (from the date the cargo was delivered or should have been delivered); claim against a third-party for indemnity for a judgment or settlement;
- TWO YEARS: property damage resulting from the collision of two ships; claim for salvage services (from the date the services were rendered); claim for personal injury or death arising from a collision between two or more vessels where the victim is a passenger; claim of a dependant of a victim (measured from the date of death);
- THREE YEARS - personal injury or death arising from a collision between two or more vessels where the victim is not a passenger; damage to property not caused by a collision of two or more ships and not carried under a contract of carriage; claims for pollution damage from a vessel; all other claims governed by Canadian marine law including ship building or repair contracts, seaman's wage claims, and marine insurance disputes.

When Does a Limitation Period Begin to Run?

It is a general rule that the limitation period for a claim begins to run at the time the event giving rise to the claim occurs. For example, the limitation period for: a collision between vessels begins when the collision occurs; unpaid salvage charges when the salvage was completed; wrongful termination of employment when the employee was fired. However, the law is interesting not because of the general rules it entails, but because of the exceptions to the general rules.

An exception to the general rule above is that the limitation period for most claims does not begin to run until the would-be claimant, exercising due diligence, discovers they have a legal reason to sue. This is called the "discoverability rule". The provincial B.C. *Limitation Act* provides that the running of the limitation period in many cases is postponed until a reasonable person, having sought professional advice, discovers the identity of the proposed defendant and has sufficient knowledge of facts to allow them to determine there is a reasonable prospect of success. While the federal legislation does not express the discoverability principle, courts have applied the principle to postpone marine claims as well. For example, a defective engine is installed, but the defect does not affect the operation of the engine until several months after installation when it becomes apparent and is diagnosed by an engineer; in this case the limitation period would run from the date of discovering the defect, not from when the manufacturer caused the defect or when the engine was installed.

The start of a limitation period can also be delayed if the would-be claimant is a minor (time does not begin to run until they are 19 years old), or under a legal disability (such as mental incompetence). One other important exception is that a limitation period can be reset, after it has already begun to run, if the defendant acknowledges the claim in writing, or makes a payment on account of the claim. For example, under provincial law, non-payment of a debt must be sued on within 6 years of a party breaching the agreement to pay, but if the debtor makes a partial payment two years into the six year limitation period, the six year limitation period for suing for the balance of the debt restarts from the time the partial payment was made.

The purpose of this article has been to bring the attention of mariners to the important consequences that limitation periods have on their legal rights. This is, however, a complicated area of law that can be hazardous if over-simplified. The appropriate limitation date for any claim depends on many factors that are specific to each case. Readers are encouraged not to rely on this general description of the law, but rather to seek legal advice specific to their case.

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