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THE LIMITATION ACT – A TICKING TIME BOMB

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Injured cyclists are typically concerned about the time limits associated with claims for compensation. There is a tremendous amount of misinformation and confusion about when to report an accident, file a claim, and sue for damages. Every case is unique and requires a thorough understanding of the law and the many applicable statutes and regulations at play. However, there are some general guidelines pertaining to cyclists claiming an injury to person or property.

First, the most important statute relating to civil claims is the *Limitation Act*. The *Limitation Act* provides that claims in negligence in British Columbia must be commenced within two years after the date on which the right to do so arose. If you are a cyclist, and you are injured at the hands of a negligent motorist, you must file a lawsuit in a BC Court registry prior to the two-year anniversary of your accident, or your case will be statute barred and completely extinguished. If the Defendant is a municipality, the limitation period may be shorter, depending on the municipality.

There is nothing which strikes more fear in a lawyer's heart than the expiry of a limitation period. There is no way to breathe life back into a claim once it is statute barred. There is rarely any way to repair the damage in these circumstances.

In some cases, the running of the limitation period may be postponed. For example, if the injured cyclist is a minor (below the age of 19 in British Columbia), the clock does not begin ticking on the infant's claim for damages until the infant becomes an adult at the age of 19. If the wrong-doing was not "discoverable" by the victim until sometime after the actual loss, the clock does not begin to run until such time as a reasonable person would have discovered they had a cause of action. That kind of postponement does not typically apply to a case involving a cyclist injured in an accident. The wrongdoing is usually apparent immediately.

In a recent decision of the British Columbia Court of Appeal, the three-member panel considered whether or not the Insurance Corporation of British Columbia owed a duty of care to an infant cyclist to advise him or

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his mother of his entitlement to benefits through ICBC and any limitations on his entitlement owing to the *Limitation Act*. Let us examine the facts.

In 1995, the Plaintiff, age 6 at the time, was seriously injured when the bicycle he was riding collided with a motor vehicle. Loyal readers will know that cyclists actually have two claims when injured in a motor vehicle accident. First, they have a tort (negligence) claim against the driver/owner of the motor vehicle. Secondly, because they usually fall within the definition of "insured" in the regulations made pursuant to the *Insurance (Vehicle) Act*, they are entitled to insurance benefits from ICBC in respect of the injury suffered in the accident. Those benefits can consist of disability benefits and rehabilitation benefits.

In the case under consideration, the court was forced to consider the application of the *Insurance (Vehicle) Act* which provides that the limitation period for actions against ICBC for insurance benefits is <u>not</u> postponed by virtue of the fact that the cyclist was an infant.

Evidently, ICBC did not tell the child's mother about the two-year limitation. After it had expired, the mother sued ICBC alleging that ICBC knew the child was suffering from a brain injury, and knew that the child and his mother were relying on ICBC to give proper advice about his entitlement to rehabilitation benefits, and any applicable limitation periods.

In its two-part analysis, the court found that the claim against ICBC was not a simple statutory claim for no-fault benefits. Because the claim included allegations of negligence against ICBC, the court held the running of time could be postponed owing to the cyclist's age. ICBC argued that even if that were the case, the claim was not one *known to the law* in the sense that ICBC had no general duty to provide legal advice to cyclists relating to the time within which claims must be pursued. Again, the court disagreed, and allowed the action to proceed on the basis that it had merit. The court reviewed a long time of authorities involving insurance companies and individuals and found that there was a relationship between the cyclist and ICBC which disclosed "sufficient foreseeability and proximity to create a prima facie duty of care".

As dry and technical as this may all seem, the refusal to provide rehabilitation benefits to a brain injured infant is anything but devoid of emotion. Despite the court's ruling, cyclists everywhere, particularly adult cyclists, must recognize that ICBC is under no general obligation to provide them with legal advice. That is simply not the way in which the system works.

Other so-called time limits facing injured cyclists remain largely misunderstood. It seems to me there is a widely held perception that in order to make a claim for compensation, one must report the accident to ICBC within 24 hours (or is it 48?). There is no such legal requirement. Cyclists and motorists involved in motor vehicle accidents must remain at the scene. Once that obligation is discharged, it is the duty of the cyclist

to "promptly" give the Corporation written notice of the accident with particulars. The interpretation of "promptly" may vary from case to case but, absent prejudice, ICBC is hard pressed to rely on this section to deny a claim. A "notice of claim" for disability and rehabilitation benefits is required within 30 days from the date of the accident. That typically takes the form of a statement and application for benefits but again, absent prejudice, ICBC cannot deny benefits on the basis of a failure to comply with the section alone.

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