

## LIMITATION OF CIVIL ACTIONS

By James C. Morton (Toronto: Carswell, 1988) pp. xvii + 126

Limitations law has traditionally bedeviled lawyers and courts, while it has mystified litigants. Despite efforts by legislators to revise and clarify the laws relating to the time within which actions must be started, limitation rules remain a subject of technical and arcane learning. Both the terminology and the effect of the rules are often difficult to grasp. The applicable limitation provision is not necessarily found in a general limitations statute. Instead, it may be buried in a large and complex piece of legislation, thus forming a trap for the less diligent lawyer. Special limitation and notice periods abound in Alberta law. In addition, courts have interpreted limitation provisions in such a way that careful analysis is needed for a lawyer to determine whether the outside date for bringing an action has passed. A succinct and reliable guide through the bewildering maze of limitations rules would be of great assistance. Morton's slim book tries to describe the main features of the limitations regimes that operate at present in Canadian common law jurisdictions.

Morton adequately sums up those concepts at the heart of limitations, including the accrual rules, the effect of lapse, and how time is computed and in some circumstances suspended. To illustrate his discussion, he dwells specifically on typical actions in tort, contract, and real property. Although the book is titularly confined to a civil law context, one chapter deals with time limits affecting criminal prosecutions. Morton concludes with the various exceptions to the general limitations rules as they arise, for example, out of a claimant's disability or a defendant's fraud. The discussion reflects the standard contents of a modern provincial limitations statute. As an overview of this area of law, the book achieves its modest purpose of re-stating in a relatively small compass a great deal of the judicial commentary about limitations on actions.

Morton's treatment deserves criticism on four grounds. First, the style of presentation is blemished. The writing is remarkably dull, even for such a lawyerly topic. Morton tends to build his discussion around a series of selected quotations from the relevant case law or occasionally an exemplary statutory provision. This is a particularly feeble way to expound the meaning of a rule or a doctrine. Too much of the text resembles "hooked-on" judicial pronouncements or legislative enactments or academic insights. At best, Morton's prose approximates to what might be expected of a junior lawyer's memorandum of law.

Second, some of Morton's summaries of the law appear misguided. One instance is the following characterization:

Once title is governed by a land titles or Torrens system the right of the registered owner to bring an action to recover land is not affected by the passage of time.<sup>1</sup>

In Alberta, of course, our real property law (which encompasses more than just our lands titles statute) includes a statutorily stipulated ten-year limitation period on proceedings to recover land.<sup>2</sup> Perhaps Morton meant to venture the view that the notion of adverse possession was incompatible with the underlying premises of a Torrens system. That would be an interesting point, but unfortunately it is not conveyed by the above-quoted statement.

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1. *Limitation of Civil Actions* at 49.

2. *Limitation of Actions Act*, R.S.A. 1980, c. L-15, s. 18.

Third, the book is disfigured by its failure to show the emerging judicial and legislative trends that are significantly changing the shape of limitations regimes in Canada. Had Morton concentrated his energy more on this aspect of the subject, the book would amount to a weightier contribution to Canadian legal writing. For example, nowhere in the book is the presence or desirability of an "ultimate" period even mentioned. Under this concept a claim will be barred after a certain date, regardless of whether the claimant could have been expected to have discovered the cause of action. This is a crucial feature of contemporary efforts to revamp general limitations law. An ultimate period of thirty years has already been incorporated into B.C.'s Limitation Act.<sup>3</sup> The Law Reform Institute in Alberta indicated in its 1986 discussion that it was considering a ten-year ultimate period for civil claims brought in this province.<sup>4</sup>

The fourth defect of Morton's book is the most serious. Any critical content in his discussion is relegated to the safe obscurity of a footnote. A good example is Morton's reaction to the recent adoption by the Supreme Court of Canada of a "discoverability" rule for determining the commencement date of a limitation period. Morton has this to say:

This author would suggest that the occasional injustice worked by holding that tort actions accrue as of the date of the breach of duty is more than balanced by the increase in certainty of dealing.<sup>5</sup>

This is the sum total of Morton's discussion of the merits of a rule based on when a claimant discovered the damage, rather than the date on which the injury was inflicted. Morton's response is simply dismal as an attempt to understand and take issue with a major change in the approach of Canadian courts to the application of limitation periods. There are riveting issues of justice and rights at the core of this problem that Morton's summary dismissal never contemplates.

Morton's book will attract a readership that believes there are shortcuts to understanding how to find an applicable limitation period or how to interpret the relevant rule once it is identified. The book should not, however, be relied upon as the sole or even primary form of guidance for this purpose. To learn whether an action has been brought in time, or is time-barred, a lawyer must still consult an authoritative source. For nearly every chapter of Morton's book, there is a more comprehensive and incisive discussion that can be found in the legal periodical and law reform literature. Moreover, the crucial policy dimensions that have made limitations law a subject of renewed academic interest are explored in much greater depth elsewhere. In Alberta, Professor T. W. Mapp's work on behalf of the Institute to re-think and re-formulate limitations law is especially thorough and instructive on this score.

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3. Limitation Act, R.S.B.C. 1979, c. 236, s.8(1).

4. See *Limitations: Report for Discussion No. 4* (Edmonton: Institute of Law Research and Reform, 1986) at 138-40 and 154-70.

5. *Limitation of Actions* at 18 n. 6.