

Subsequent Discovery of Severity of Injuries and Limitation Periods: *Baig v. Mississauga*

Carol-Anne Wyseman
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In *Baig v. Mississauga*, 2020 ONCA 697, the Court of Appeal recently upheld a summary judgment finding that a man who fell off his bicycle and injured himself in 2013 was barred from suing the Corporation of the Town of Mississauga (“Mississauga”), as the two-year limitation period had expired.

Background

The plaintiff had fallen off his bicycle and injured himself on May 21, 2013.

On May 29, 2013, the plaintiff submitted a Claim Report to Mississauga, describing his injuries, seeking compensation, and recommending remediation of the hazard that had caused him to fall. On the Claim Report, it stated: “NOTE: THERE IS A 10 DAY NOTICE FOR PROVIDING THE CITY WITH NOTICE OF CERTAIN TYPES OF CLAIMS AND A TWO YEAR LIMITATION period for bringing an action in respect to all claims.”

On May 5, 2014, a claims analyst assigned to the claim by Mississauga wrote to the plaintiff to advise that he had unsuccessfully attempted to contact him many times and that, if the plaintiff did not contact him within 30 days, his file would be closed. The letter also advised of the limitation period. The file was closed in June 2014.

It was not until September 1, 2017 that the plaintiff issued a claim against Mississauga for damages.

Mississauga moved for summary judgment, arguing that the plaintiff’s claim was statute-barred, as the two-year limitation period under s. 4 of the *Limitations Act* had expired.

Summary Judgment Motion

At the summary judgment motion, the plaintiff argued that he did not discover the extent of his injuries until years after the accident.

He also argued that he lacked the capacity to commence litigation within the limitation period due to a disability and a compromised mental state.

The motion judge found that the plaintiff discovered the material facts of his claim as of May 22, 2013, which was the day that he went to the hospital, or at the latest, on May 29, 2013, when he submitted his claim to Mississauga.

She held that the subsequent discovery of the severity of the plaintiff's injuries did not extend the limitation period.

With respect to the plaintiff's capacity argument, the motion judge reasoned that, while the plaintiff had proffered evidence of a mental illness, there was no evidence that it rose to the level of incapacity contemplated by the *Limitations Act*. It was also noted that the plaintiff had received legal advice.

The motion judge held that there was no genuine issue for trial and granted Mississauga's motion.

Appeal

The Court of Appeal held that the motion judge had made no error with respect to the date that the claim was discovered, referencing *Liu v. Wong*, 2016 ONCA 366, for the proposition that "the law is quite well established that it is knowledge of the material facts necessary to support the cause of action that triggers the commencement of the limitation period" and that "knowledge of the extent of the damages is not necessary."

It added that the appellant was aware of the necessary facts to support a claim against Mississauga "almost immediately" after his fall, as confirmed by his claim for compensation from Mississauga a mere eight days later. Further, the appellant had been advised of the two-year limitation period twice.

With respect to the appellant's capacity argument, the Court of Appeal held that the motion judge correctly applied section 7(2) of the *Limitations Act*, which indicates that a plaintiff is presumed to have been capable of commencing a proceeding, unless the contrary is proved on a balance of probabilities.

The appeal from the summary judgment order was dismissed.

Conclusion

This decision acts as a reminder that, except in the context of some claims arising from automobile accidents, the subsequent discovery of the severity of a plaintiff's injuries does not extend the limitation period.