

Assumptions about credit card debt limitation periods often wrong

By AdvocateDaily.com Staff



Although many believe the limitation period for credit card debt starts when a default occurs and then restarts each time a card is used or a partial payment is made, this reasoning is incorrect, Toronto civil litigator [Sarah O'Connor](#) writes in [The Lawyer's Daily](#).

According to a [2010 decision](#), writes O'Connor, principal of [O'Connor Richardson Professional Corporation](#), the limitation period starts when the debt is discharged — the day the outstanding debt became immediately payable in full and was not satisfied.

"Discharge occurs when the account is closed by the credit card company and the full amount of the debt becomes payable all at once. This can happen up to three months after the last activity reported on the account," she says.

The decision of the motions judge, who granted summary judgment to the bank in the case, was appealed by the defendant.

"The central and determining issue was whether the action on the debt was barred by the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B. At the relevant times during this dispute the limitation period was six years instead of the current two years," writes O'Connor.

Although the parties in this case agreed that the six-year period begins to run on the breach of the agreement, the appellant's position was the breach occurred when the account was in default, when he failed to make the minimum payment. The bank took the position that the breach occurred two months later, when it terminated the card and the entire debt became payable and outstanding, O'Connor says in the article.

"The motions judge found that a breach of the cardholder agreement does not necessarily occur when there is a failure to make the minimum monthly payment and further, that the respondent has a discretion to allow this to happen without constituting a breach. He concluded that the six-year limitation period ended on July 16, 2006, and for this reason the action is not statute barred," she writes.

On appeal, the court agreed with the motions judge.

As O'Connor explains, the limitation period provides certainty to a defendant. There are several reasons for its enactment, including the fact that: a plaintiff with a valid cause of action should pursue it with reasonable diligence; a defendant may lose the evidence necessary to disprove a claim by the time a stale claim is litigated and; litigation of a long-dormant claim may result in more cruelty than justice.

However, she writes, this case allows a bank to circumvent the *Limitations Act* by waiving a missed payment for perpetuity.

"They do not have to accept a missed payment as a breach of the cardholder agreement and can therefore choose when the limitation period starts to run. This is not the purpose of that act," says O'Connor.

The case, she says, also appears to treat a credit card loan as a demand loan.

"A demand loan is one where a sum of money is loaned, but there is no repayment schedule. The *Limitations Act* specifically provides that the day on which the injury, loss or damage occurs is the first day on which there is a failure to repay, once a demand for payment is made. This means that the time starts to run as soon as a demand for payment is made. The minimum monthly payments on credit cards are inconsistent with the idea that this is a demand loan.

"For credit card debt, the date of the breach should be the date of the missed payment and not the date the bank decides to terminate the cardholder agreement," she writes.

Although the case is not well-known, O'Connor says, "for now it is good law in Ontario and it will continue to be good law until it is distinguished."