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Can the statute of limitations erase your debt?

By Daniel Workman

If you have debt that's been haunting you for a couple of years, you may have a way out - with caveats. Provincial statutes of limitations may prohibit creditors from coming after you in court. But bad debts can still ruin your credit profile.

Lawyer Mark Silverthorn, author of "The Wolf at the Door: What to Do When Collection Agencies Come Calling," writes that the statute of limitations bars creditors from legally suing for unsecured consumer debt after a defined time window. (Student loans and money from other government sources are exempt - you'll have to pay them back.) That window generally starts from the date of the debtor's last payment.

In Ontario, British Columbia, Alberta and Saskatchewan, the limit is two years. In B.C. or Newfoundland and Labrador, unsecured debt is extinguished after the limitation period ends, provided the consumer doesn't make a payment or acknowledge the debt in writing. It then becomes illegal for the creditor or its collection company to demand payment.

For Canadians living in other provinces or territories, creditors can still try to collect the unpaid debt, although Silverthorn notes that sued persons can file a court defence citing the expired limitation period.



Limitation periods by province/territory

| Province/territory | Limitation period |
|---------------------|-------------------|
| Alberta | 2 years |
| British Columbia | 2 years |
| Ontario | 2 years |
| Quebec | 3 years |
| Saskatchewan | 2 years |
| Elsewhere in Canada | 6 years |

Consequences of waiting out the limitation period

Scott Marshall, trustee in bankruptcy for the Maritimes-serving firm Allan Marshall & Associates, says creditors often sell older debts to collection companies who pursue the owed balances as if they were new -- not legal, but a trick aggressive collectors use to get money out of unsuspecting consumers who don't know their rights. Collectors may also try to scare you into admitting to the debt in writing, which would restart the limitation period. Marshall also cautions that if you rely on expired limitation periods to avoid debt repayment, you aren't resolving your underlying financial problems or current debts.

And if you owe money to a bank where you also have a savings or chequing account, your bank can exercise its right of set-off and seize money from the account as a way to settle unpaid debt. A financial institution's set-off right trumps consumer protections under the statute of limitations, according to Blair DeMarco-Wettlaufer, the consumer ombudsman for Kingston Data and Credit, a collection management company based in Cambridge, Ontario.

Another consequence of relying on the statute of limitations is that delinquent debt can harm your credit rating, making it more difficult and expensive to borrow money in the future.

Paul Le Fevre, Equifax director of operations, says credit reporting legislation enables Equifax Canada to list debt on a consumer's credit history for six years from the date an account receives an R9 rating signifying written-off bad debt. Spokesperson John Branham says Canada's other major credit bureau, TransUnion, keeps the delinquent amount on a consumer's credit report for six to seven years after the last payment or default date.

Canadians do have the right under consumer reporting and privacy legislation to dispute errors listed on their credit file. But excluding mistakes, both Le Fevre and Branham say only the creditor or collection company can request that an unpaid account be removed from a credit file; the negative impact on your credit rating will persist until the debt is formally deleted.

Who benefits from the limitation period?

Taking advantage of the statutory time limitations may make sense for so-called "judgment proof" debtors -- people with no income or assets and from whom creditors don't realistically expect to recover their money.

"For instance, one person I recently counseled is about 75 years old, doesn't have any assets to his name, all he's getting is pension income, and this individual is just completely stressed out about some significant debts," says Blair Mantin, bankruptcy trustee and vice-president of Vancouver-based Sands & Associates. "Even if he gave his creditors two-thirds of his pension income for the rest of his life, he wouldn't pay off his outstanding balance."

Get professional assistance

Often, Marshall says, people do not understand their rights with respect to debts and collection. Regulations contain intricate stipulations about different types of debt, collections efforts by creditors, legal fine print and consumer missteps that restart the limitation period.

"We do recommend anyone considering the statute of limitations as their remedy against debt collection to consult a professional, such as a lawyer or trustee, to discuss their best options," says Marshall.

Across Canada, consumers can visit a bankruptcy trustee who offers free initial consultations and can explain the pros and cons of letting an unsecured debt's limitation period expire.


Another alternative is to check with legal aid. In B.C., there is a lawyer referral service where consumers can pay \$25 to meet with a lawyer for a half-hour to discuss potential debt solutions including the limitation period.

The bottom line is that consumers should carefully weigh all factors -- including their age and stage in life -- before deciding whether the limitation period is the right strategy for dealing with debt. It's important to keep in mind whether you will need credit in the future to make a major purchase like buying a home or automobile. If you think you will, it may be cheaper to pay off the debt and save your credit record from further damage.

See related: [Sorting fact from fiction about unpaid U.S. debts](#); [What to do about wrongful debt collection notices](#)


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