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LawTalk Blog



I want to sue my doctor. How long have I got to do this?

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In South Australia a claim for personal injuries must generally be commenced within three years after the injury occurred. As an example, if a person presents for surgery and has the wrong leg amputated, then a claim for compensation for injury arising out of the negligent act of the doctor or hospital must be commenced within three years from the date of the surgery.

Not all errors however are so blatant or obvious. Often it will be the case that it is only with the benefit of hindsight or the passage of time that a patient become suspicious that maybe something did not go quite right.

The *Limitations of Actions Act* 1936 in South Australia provides guidance and sets out the principles that must be followed in relation to bringing a claim for compensation arising out of personal injury. It states that in a claim for personal injury which remains latent for some time after its cause, the period of three years referred to above, only begins when the injury first comes to the attention of the person and is therefore within their knowledge.

This situation commonly arises in cases such as cancer. It may be that due to a failure to diagnose or a late diagnosis of a condition which should have been obvious to doctors at a much earlier period, results in a person suffering injury. In those cases the three years starts to run when the patient first finds out about it. It would not be uncommon however that when the patient first does find out about it, they do not immediately think of suing their doctor! Patients in those circumstances will often be in shock and will be focusing on dealing with their disease as best they can and are faced with a barrage of medical appointments consuming their time.

What then happens if three years pass from the date of injury and legal proceedings have not been commenced?

In those circumstances the person can apply for an extension of time upon learning of a new material fact which influenced their decision to finally take legal action.

What about compensation for medical negligence where children are injured?

There are special provisions that relate to injuries suffered by children. The time for bringing an action for compensation in relation to children is extended by the same legislation to more than six years from the date of the incident. However, notice of the intention to bring an action must be given within six years after the relevant date.

The purpose of this is so that enquiries can be made and valuable information is not lost. For instance, if a young child is injured and in the normal course they do not bring a claim until they reach adulthood, then it may be that due to the passage of time valuable information in relation to the incident is lost. Similarly for persons who are under a legal disability, the time for bringing that action is extended by the period or periods for which the disability exists or continues after the time at which the right to bring the proceedings arose.

What this means is that if a person suffered an injury as a result of the negligence of a doctor but was then unconscious for say four years, the three year time period would not commence until they regained consciousness. The day that they regain consciousness and therefore were no longer under a legal disability, would then be the commencement date for the three year period within which to start proceedings.

A legal disability generally refers to a mental health problem or deficiency, a disease or disorder by reason of which that person is incapable of reason or acting rationally in relation to the legal proceedings that they would otherwise be entitled to bring.

Curiously the legislation states that no period of limitation will be extended by more than 30 years. The law also states that being imprisoned provides no excuse for not bringing your action within the timeframes allowed. In practicable terms however, it would obviously create significant difficulties.

Finally should a person die as a result of the negligence of the doctor, then the claim will survive for the benefit of the estate however, it must be actioned within 12 months of the death of the person except where the negligent act itself caused death. Where the negligent act caused the death of a person, then the spouse or domestic partner, a parent, brother, sister or child of the deceased can bring a claim in the name of the executor or administrator of the deceased for wrongful death and such a claim must be commenced within three years after the death of the deceased.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to South Australian legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.