



# Civil Resolution Tribunal

Date Issued: May 24, 2022

File: SC-2021-007190

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Katovic v. Capital One Bank*, 2022 BCCRT 605

BETWEEN:

KEVIN KATOVIC

**APPLICANT**

AND:

CAPITAL ONE BANK

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This is a final decision dismissing this claim as it is out of time under the *Limitation Act* (LA).

2. The applicant, Kevin Katovic, says the respondent, Capital One Bank (Capital One), illegally charged him interest on a fraudulent credit card charge, and damaged his credit rating. He claims \$5,000 in damages for pain and suffering.
3. Capital One says its investigation concluded no fraud had occurred so Mr. Katovic is responsible for the charge, and any associated interest. In any event, Capital One says Mr. Katovic reported the fraudulent charge in 2017 and so his claim is out of time under the LA.
4. Mr. Katovic represents himself. An employee or director represents Capital One.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
7. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUE**

9. The issue is whether the CRT should dismiss Mr. Katovic's claim as out of time under the LA.

## **EVIDENCE AND ANALYSIS**

10. In making this final decision, I have reviewed the Dispute Notice, the Dispute Response, and the parties' submissions on this limitation issue.
11. Section 13 of the CRTA confirms that the LA applies to CRT claims. Section 6 of the LA says that the basic limitation period to file a claim is 2 years after the claim is "discovered". At the end of the 2-year limitation period, the right to bring a claim disappears.
12. Section 8 of the LA says a claim is "discovered" on the first day the person knew, or reasonably ought to have known, that the loss or damage occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceedings would be an appropriate way to remedy the damage.
13. CRTA section 13.1 says the limitation period stops running after a claim is filed with the CRT and the applicable fee is paid. Mr. Katovic filed his CRT dispute application on September 16, 2021. For Mr. Katovic to have filed his dispute application in time he must have discovered his claim about allegedly illegal interest charges and his allegedly damaged credit rating after September 16, 2019. For the below reasons, I find this is not the case.
14. As noted, Capital One says Mr. Katovic discovered his claim in 2017, when the allegedly fraudulent charge was made.

15. In his dispute application Mr. Katovic says his credit card was fraudulently charged in 2017 and that he became aware of this claim in 2017. In his later arguments on the limitation issue, Mr. Katovic says his credit card was stolen in late 2019. I find that inconsistent with his earlier application for dispute resolution, which contains a replication of his account statement showing the account was closed in June 2019. So, I find it more likely that the allegedly fraudulent charge was made in 2017. However, I do not find that is the date Mr. Katovic should have discovered his claim, as he claims damages for pain and suffering related to his allegedly damaged credit rating.
16. As noted, Mr. Katovic appears to have copied and pasted his August 19, 2021 Capital One account statement into his dispute application that started this CRT proceeding. It shows that the account was opened on May 16, 2017 and closed on June 14, 2019 with an outstanding balance of \$5,047. The statement's notes show the account was cancelled by Capital One with a "derogatory rating" and that the account is considered a "bad debt write off". From this, I find it likely that Capital One reported the bad debt to the credit agency around the time it closed his account on June 14, 2019.
17. I find Mr. Katovic likely did, or could have, discovered any damage to his credit rating around the time Capital One closed his account and reported the bad debt. I find a reasonable person in similar circumstances would inquire into their own credit rating, knowing of Capital One's actions in closing the account and giving Mr. Katovic a derogatory rating. So, I find Mr. Katovic could reasonably have discovered his claim against Capital One before September 16, 2019.
18. To the extent Mr. Katovic asks for an order that Capital One remove the outstanding debt, I find such a claim would also be out of time under the LA. As noted, I find the allegedly fraudulent charge likely occurred in 2017. Capital One says, and Mr. Katovic does not dispute, that it concluded its investigation into his fraud claim in March 2019. So, I find Mr. Katovic would have known that the charge would stay on his account by that time. Further, given that Capital One closed his account by June 14, 2019, I find it likely would not have applied any further interest charges after that date.

Overall, I find Mr. Katovic would have, or could have, discovered the outstanding charge, Capital One's refusal to remove it, and any interest charges applied to the debt, by June 14, 2019 at the latest.

19. On balance, I find Mr. Katovic's claim was out of time when he filed his application for dispute resolution on September 16, 2021, as he reasonably could have discovered it more than 2 years before that date. Given this, I do not need to discuss Mr. Katovic's claimed damages in any detail. I dismiss Mr. Katovic's \$5,000 claim for pain and suffering.
20. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. Katovic was unsuccessful in his claim, he is not entitled to reimbursement of his paid CRT fees. As the successful respondent, Capital One paid no fees and claimed no dispute-related expenses.

## **ORDER**

21. I dismiss Mr. Katovic's claim and this dispute.

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Sherelle Goodwin, Tribunal Member