

# Limitation Periods

## Importance of Time Limits

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## Importance of Time Limits

Time limits are important in legal claims in two ways. First, they set limits on how long someone can wait before they start a lawsuit. When responding to a claim, it is important to turn your mind to whether the claim was started quickly enough. If it was not, then it might be dismissed by the Court on what is called a “limitations defence”, which means the Court will not give the plaintiff what they asked for because they took too long. For more information on limitation periods, see **Limitation Periods**.

Second, time limits apply to court procedures. These are called procedural time limits. Certain steps in the litigation are to be done within certain time limits. If you miss a procedural time limit, it is possible that your ability to defend yourself will be hurt. It is even possible that the Court will grant the plaintiff judgement – that is, order that the plaintiff gets what they are asking for.

It is therefore very important to take procedural time limits seriously.

However, if you miss a procedural time limit it may not be fatal to you defending yourself. Most time limits do not have automatic consequences for missing them. Instead it is up to the other party to take a step to enforce the time limit.

Therefore, if you miss a time limit, do not give up. Rather, try your best to get whatever is at issue done quickly. You should also let the other side know that you are still planning to do the thing which is late, and ask them not to take any steps against you because of the delay.

Keep a calendar with key dates and deadlines for your litigation. This will help avoid missing procedural time limits. You may want to set alarms or other reminders to make sure you do not miss time limits.

## Limitation Periods

A limitation period is the time limit for how long you can wait before you start your case.

For example, you must start an action for damages arising from a motor vehicle accident within two years of the date of the accident.

Limitation periods are extremely important. If you miss a limitation period and do not start an action in time, you may be unable to ever bring your dispute to Court.

### General Rule

With a few exceptions, the limitation period in BC is two years. This is set by the ***Limitation Act***.

There are some notable exceptions. These include:

- A claim that someone is wrongfully in possession of your land. For example, if you have known that someone is “squatting” on your land for more than two years, you can still bring a claim
- A claim relating to sexual assault
- A claim relating to assault of a minor

For a complete listing of the claims that are exempted, see **s. 3** of the *Limitation Act*.



#### Read the Rules

Read the Rules for exceptions on limitation periods - **s. 3** of the *Limitation Act*.

## The Discoverability Rule: When a limitation period begins

The rule is that the limitation period starts to “run” when the claim was discovered. That means that you have two years from the discovery of the claim to start an action.

A claim is considered to have been “discovered” when a person knew *or reasonably ought to have known* **all** of the following:

- That the injury, loss or damage occurred
- That the injury, loss or damage was caused or contributed to by an act or omission (that is, that something *caused* the injury)
- That the act or omission was that of the person against whom the claim is or may be made (that is, that it was the *defendant* who caused the injury) and
- That a Court proceeding would be an appropriate means to seek to remedy the injury, loss or damage

Often, these things all happen at the same time. For example, if there is a car accident, a plaintiff is (or reasonably should to be) aware of the injury, loss or damage, that it was caused by the car accident, that the other driver caused the injury, and that they could sue.

Importantly, the Court will consider not only what the plaintiff actually knew. They will also consider what they reasonably should have known. It is not enough for a plaintiff to say that they had no idea, for example, that they could sue the other driver in a car crash. This is something they reasonably should have known.

However, sometimes it is more difficult to figure out when a claim was discovered. It may be that wrongful exposure to a chemical does not cause any sickness until many years after the exposure. In such a case, the claim would only become “discoverable” when the plaintiff reasonably should have become aware of the disease, its cause, and the person at fault for the cause. In that way, a claim might relate to something that happened quite a while ago.

## Ultimate Limitation Periods

**S.21** of the *Limitation Act* also sets out an “ultimate” limitation period of 15 years. This means that as a general rule, a claim cannot be made for a wrongful act that

occurred more than 15 years before it was started. This is true regardless of when the claim was “discovered”.

So, if you only now realized that you had an injury and a claim relating to something that happened more than 15 years ago, this could be barred by the ultimate limitation period.



### Read the Rules

Read the Rules on the ultimate limitation period **S. 21** of the *Limitation Act*

**However**, the ***Limitation Act*** previously had a 30-year ultimate limitation period. The legislator decided it would not be fair if losses and injuries already suffered were suddenly governed by the new 15 year rule. So the legislator put in a “transition rule”.

The transition rule says that if your claim was **not already extinguished by the old *Limitation Act*** and:

- 1. Your claim was “discovered” before the New *Limitation Act* came into force:** then the old *Limitation Act* applies or
- 2. Your claim was not “discovered” before the New *Limitation Act* came into force:** then the new “ultimate limitation” applied to you is 15 years from June 1, 2013 (the day when the new *Limitation Act* came into force).



### Learn More

A helpful flow chart has been prepared by the British Columbia Ministry of Justice to navigate the transition to the new limitation periods, and it is available **[here](#)**.

## Extension and Suspension

### Extension of Limitation Period by Acknowledging Liability

A limitation period can be extended by the defendant acknowledging liability. This is important to remember. If you are worried you might have missed a limitation period, think if the person you wanted to sue ever admitted they owed you something. If you are worried about being sued, you need to know the potential consequence of admitting you owe something.

The rule is set out in **s. 24** of the *Limitation Act*. The rule is that

**If:**

1. A limitation period has not yet expired or
2. The defendant acknowledges not only that a claim might be made, but that they have some liability (that is, agrees that they are at least somewhat fault and legally obliged to pay something)

**Then** the limitation periods will be treated as if they started to run on the day this acknowledgment was made.

This effectively allows parties who can agree that something must be paid, but disagree on what, to try to settle the claim without having to run to Court to file.



#### Read the Rules

Read the Rules about extending a limitation period in **s. 24** of the *Limitation Act*

### Suspension of Limitation Periods

A limitation period is “suspended” during the time that a person with a claim is under a disability. A person “under a disability” is defined as “an adult person who is incapable of or substantially impeded in managing their affairs”. This is set out in **s. 1** and **part 5** of the *Limitation Act*.

In deciding if a person is “under a disability” the Court will consider whether that person:

- Is aware of the facts giving rise to the cause of action
- Understands the nature and purpose of Court including the role of judge, jury and counsel
- Understands the how the case will affect their interests and
- Is able to understand legal advice being given to them and able to instruct counsel and make critical decisions

These are factors that will be considered. Every factor does not have to be present for a person to be under a disability.