

# **“Time’s Up!”**

## **Limitation Periods for Subrogated Actions in Canada**

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### **What is a Limitation Period?**

All legal proceedings, including subrogated recovery actions, must be commenced within a certain period of time set out by legislation. The time period in which an action can be brought is called a limitation period. It is also sometimes called a prescription period. If an action is not brought within the applicable limitation period, the claim will be forever lost. Even the most meritorious subrogated claim will disappear because of the expiry of a limitation period.

### **What is the Purpose of a Limitation Period?**

The essential purpose of a limitation period is to place a reasonable limit on the amount of time which a party may take to commence an action. This serves a number of important purposes:

- It creates an incentive for plaintiffs to bring their lawsuits in a timely fashion.
- It defines a period of time in which a defendant can know with certainty that it will be free of ancient obligations.
- It prevents plaintiffs from bringing old claims in which evidence has been lost by the passage of time.

### **When does a Limitation Period Start to Run?**

Each province has different rules about when a limitation period begins to run. For example, in some provinces, time will start to run as soon as the facts which give rise to the claim take place. In other cases, the limitation period may not begin to run until the plaintiff discovers that he or she has been wronged. In some cases, a limitation period may temporarily stop running while parties are attempting to reach a settlement agreement. A party’s conduct may also affect the running of a limitation period. Additionally, where a plaintiff is a minor or under a disability, the limitation period may not start to run until after that person reaches the age of majority or is represented by a litigation guardian.

## Which Limitation Period Applies?

The limitation period that applies in a particular case is determined by a number of factors. Just as limitation periods vary from province to province, they may also vary depending on the nature of the subrogated claim or cause of action, or the subject matter of the claim. Furthermore, some actions are dealt with by federal law in which case there may be one single limitation period that applies across Canada. Limitation periods may also vary depending upon the identity of the party being sued. For example, different limitation periods may apply if an action is brought against a municipality or other government body. The applicable limitation period may also be affected by the identity of the plaintiff, for example, where the plaintiff is a minor or under a disability. Finally, in some provinces, but not all of them, parties can agree to a different limitation period than is set out in the legislation.

You will also notice that some provinces have a maximum time period, called an “ultimate limitation period”, after which time the claim will be barred, even if the person did not ever become aware of the circumstances giving rise to the claim. The ultimate limitation may be particularly significant in claims arising out of faulty construction or environmental contamination where a defendant’s wrongful conduct may often not be discovered for long periods of time.

The following chart is intended as an educational overview of some of the general limitation periods that will apply in subrogated property damage claims across Canada.

| PROVINCE                | GENERAL LIMITATION PERIOD  | ULTIMATE LIMITATION PERIOD  |
|-------------------------|--|---|
| <b>ALBERTA</b>          | <b>2 years</b> commencing when the cause of action is discovered.<br><i>Limitations Act, R.S.A. 2000, c. L-12, s. 3(1)(a).</i>   | <b>10 years</b> commencing when the cause of action arises.<br><i>Limitations Act, R.S.A. 2000, c. L-12, ss. 3(1)(b); 11.</i> |
| <b>BRITISH COLUMBIA</b> | <b>2 years</b> commencing when the cause of action is discovered.<br><i>Limitation Act, R.S.B.C. 1996, c. 266, ss. 3(2); 6.</i>  | <b>30 years</b> commencing when the cause of action arises.<br><i>Limitation Act, R.S.B.C. 1996, c.266, s. 8(1).</i>          |
| <b>MANITOBA</b>         | <b>2 years</b> commencing when the cause of action arises.<br><i>Limitation of Actions Act, C.C.S.M. c. L150, s. 2(1)(g).</i>  | <b>30 years</b> commencing when the cause of action arises.<br><i>Limitation of Actions Act, C.C.S.M. c. L150, s. 14(4).</i>  |
|                         | <div style="border: 1px solid black; padding: 5px;"> <p>However, a court can grant leave to continue or begin an action if not more than <b>12 months</b> have elapsed between date the action was “discovered” and date of application for leave, subject to ultimate limitation period.<br/><i>Limitation of Actions Act, C.C.S.M. c. L150, s. 14(1).</i></p> </div> |   |

| PROVINCE                    | GENERAL LIMITATION PERIOD  | ULTIMATE LIMITATION PERIOD   |
|-----------------------------|--|--|
| <b>NEW BRUNSWICK</b>        | <p><b>6 years</b> commencing when the cause of action arises.</p> <p><i>Limitation of Actions Act</i>, R.S. N.B. 1973, c. L-8, s. 9.</p>   |  |
| <b>NFLD. &amp; LABRADOR</b> | <p><b>2 years</b> commencing when the cause of action is discovered.</p> <p><i>Limitations Act</i>, S.N.L. 1995, c. L-16.1, ss. 5(b); 13; 14.</p>  | <p><b>10 years</b> commencing when the cause of action arises.</p> <p><i>Limitations Act</i>, S.N.L. 1995, c. L-16.1, s. 14 (3).</p> |
| <b>N.W.T.</b>               | <p><b>6 years</b> commencing when the cause of action arises.</p> <p><i>Limitation of Actions Act</i>, R.S.N.W.T. 1988, c. L-8, s. 2(e).</p>   |  |
| <b>NOVA SCOTIA</b>          | <p><b>6 years</b> commencing when the cause of action arises.</p> <p><i>Limitation of Actions Act</i>, R.S.N.S. 1989, c. 258, s. 2(1)(e).</p>  |  |
|                             | <p>*However, within <b>4 years</b> of expiry of general limitation period, court may disallow the limitation period, having regard to circumstances of the case - Listed are enumerated factors to consider including date of "discovery" of claim, <i>Limitation of Actions Act</i>, R.S.N.S. 1989, c. 258, s. 3.</p>   |  |
| <b>NUNAVUT</b>              | <p><b>6 years</b> commencing when the cause of action arises.</p> <p><i>Limitation of Actions Act</i>, R.S.N.W.T. 1988, c. L-8, s. 2(e).</p>   |  |
| <b>ONTARIO</b>              | <p><b>2 years</b> commencing when the cause of action is discovered.</p> <p><i>Limitations Act, 2002</i>, S.O. 2004, c. 31, ss. 4, 5.</p>  | <p><b>15 years</b> commencing when the cause of action arises.</p> <p><i>Limitations Act, 2002</i>, S.O. 2004, c. 31, s. 15.</p>     |
|                             | <p>* <b>Transitional Rules:</b> Apply if a cause of action arose before January 1, 2004 and a proceeding has not yet been commenced:</p> <ul style="list-style-type: none"> <li>• Claim not "discovered" until after Jan 1, 2004, then <b>2 years from discovery</b>, s. 24(5)(1)</li> <li>• Claim "discovered" before Jan 1, 2004, then <b>6 years from discovery</b>, s. 24(5)(4)</li> <li>• If former limitation period expired before Jan 1, 2004, then no proceeding shall be commenced, s. 24(3).</li> </ul> |  |

| PROVINCE     | GENERAL LIMITATION PERIOD  | ULTIMATE LIMITATION PERIOD |
|--------------|--|----------------------------|
| P.E.I.       | <b>6 years</b> commencing when the cause of action arises.<br><br><i>Statute of Limitations</i> , R.S.P.E.I. 1988, c. S-7, s. 2(1)(g). |                            |
| QUEBEC       | <b>3 years</b> from time the right of action arises.<br><br><i>Civil Code of Quebec</i> , S.Q. 1991, c. 64, art. 2925.                 |                            |
| SASKATCHEWAN | <b>2 years</b> commencing when the cause of action arises.<br><br><i>Limitation of Actions Act</i> , 2004, c.L-16.1, s.5.              |                            |
| YUKON        | <b>6 years</b> commencing when cause of action arises.<br><br><i>Limitation of Actions Act</i> , R.S.Y. 2002, c. 139, s. 2(1)(e), (f)  |                            |

## CONCLUSION

Although it is important for subrogation professionals to be alert to some of the limitation periods which might commonly apply in property damage claims, the limitation period which finally applies in a given case can be a complex and difficult legal issue to determine and may require resort to both legislation and case law. Oftentimes, the seemingly obvious limitation period is not the correct one and in some cases, the correct limitation period may even be difficult for lawyers to identify or locate. The opinion of an experienced lawyer should *always* be obtained in order to ensure that a subrogated claim is not unintentionally forsaken.

Cozen O'Connor's expertise and experience in handling these matters, and other issues that arise in subrogated claims, is available to be deployed for the benefit of your company. We welcome your questions or comments with respect to these and other insurance-related matters.

For additional information concerning  
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