



## Limitation Periods

The purpose of this fact sheet is to provide information about limitation periods that is not included in the *Small Claims Court* guide. For general information on starting an action in Small Claims Court, please refer to page 7 of the guide.

### What is a limitation period?

A limitation period is the amount of time a person has to “sue” another person. In other words, the amount of time you have to bring a claim or start an action in court for injury, loss or damage caused by someone’s wrongful actions or failure to act.

Limitation periods require that you start a court action in a timely manner. This helps to ensure that when the parties involved see what is being claimed in the action, they can take steps to prove or defend these claims while everyone’s memories are fresh and important evidence still exists and can be brought before the court.

### How quickly must I sue someone in Small Claims Court?

The New Brunswick *Limitation of Actions Act* sets out the limitation periods for claims in New Brunswick. The limitation period for starting an action depends on the type of claim involved. In most cases, claims fall under the “general limitation period.” Exceptions to this period are explained below.

### What is the general limitation period?

Under the general limitation period, you must bring your claim **by the earlier of:**

- (a) 2 years from the date the claim is discovered, or
- (b) 15 years from the date the wrongful act that the claim is based on took place.

Here are some examples of claims that fall under the general limitation period :

- Debts /Unpaid Invoices (“unsecured debt”)
- Landlord/Tenant Disputes
- Personal Injury
- Car Accidents



### What does it mean to "discover" a claim?

The Limitations of Actions Act defines "discovering" a claim as **the date you first become aware that the injury, loss or damage was caused by someone's action or inaction, or, the date you should have become aware of it if you were acting reasonably.** In other words, you cannot ignore obvious signs of a claim to try to lengthen the limitation period for filing an action with the court.

**Example (Aware of possible claim at time of injury):** On **April 3, 2013**, you were hit by a car in a grocery store parking lot. You suffered injuries that caused you to miss two weeks of work and pay out of pocket for pain medication not covered by provincial health insurance. You have 2 years to bring an action against the driver of the car. In other words, you must file your claim with the court no later than April 3, 2015.

**Example (Claim discovered after 12 years):** On **May 15, 2013**, while clearing soil for a flower bed, you discovered damage to the foundation of your home. You think you have grounds for a claim that the damage was caused by your neighbour, when she excavated a large area of her back yard to install a swimming pool on May 1, 2001 (12 years earlier). Because there was no visible damage at the time, your claim was not discovered until the damage was found 12 years later. You have until May 15, 2015 to file your claim ( **two years after your claim was discovered** ).

### Will I always have two years to file an action after I discover a claim?

No, if you discover a claim that occurred more than 15 years ago, generally, you will be able to bring action for that claim. This 15 year period is sometimes referred to as an "ultimate limitation period". Your action will generally be dismissed if waiting two years to file the action from the time of discovery takes you over the 15 year ultimate limitation period.

**Example (Claim discovered after 14 years):** On **May 15, 2013**, while clearing soil for a flower bed, you discovered damage to the foundation of your home. You think you have grounds for a claim that the damage was caused by your neighbour, when she excavated a large area of her back yard to install a swimming pool on May 1<sup>st</sup>, 1999 (14 years earlier). Because there was no visible damage at the time, your claim was not discovered until the damage was found 14 years later. Because of the 15 year ultimate limitation period, you no longer have 2 years from the date you discovered the damage. You must file your claim on or before May 15, 2014. In other words you would have to file before the 15 years is up from the date your neighbor put in her pool.

### Are there exceptions to the general limitation period?

There is **no limitation period** for a claim for damages for trespass to the person, assault or battery where the claim related to an act of a sexual nature. There are also special limitation periods for claims related to money judgments, statutory liens, recovery of land, recovery of personal property, etc.



### Can a limitation period ever be extended?

Yes, sometimes a limitation period can be extended. For example, in cases of:

- **Continuous act or omission.** A continuous wrong is an injury, loss, or damage that is ongoing or happens more than once. The 2 year limitation period starts over every time the wrong re-occurs;
- **Wilful concealment.** The person you want to sue has deliberately hidden the injury or wrong from you. Once you discover the hidden claim, the person cannot use the fact that the limitation period has passed as a defence to your claim. The limitation period begins on the date you discover the basis of the claim;
- **Minors.** If you have a claim but you are under age 19, the limitation period does not start until you reach 19 years of age;
- **Incapacity.** The limitation period is suspended if you are incapacitated (due to a mental, physical or psychological condition) and unable to file a claim. The limitation period begins again when your condition ends;
- **Acknowledgment of claim or part payment.** If during the normal limitation period the person you want to sue admits **in writing** that they are responsible for your claim, the limitation period starts over from the date they admit responsibility. Paying you part of what you are owed during this time also means the limitation period starts over from that date.

**Example (continuous omission) :** You own and operate a small business that supplies uniforms to local restaurants. One of the restaurants you supply has been late on payments three times in the past 12 months, and they missed their last payment entirely. Every time the restaurant misses a further payment, the 2 year period for filing a claim against the restaurant's owners starts again. You may file a claim with the court **2 years from the last missed payment.**

There may be other special circumstances where the court may extend the limitation period.

**If you are not sure if a limitation period has passed, or if you need specific advice about your situation, consult a lawyer.**

### Conflicts with other legislation

If there is a conflict between the *Limitations of Actions Act* and any other **public Act** of New Brunswick (such as the *Insurance Act*), the public Act has authority. However, if there is a conflict between this Act and any **private Act** of New Brunswick (an Act that governs only a specific group of people, association, business or municipality), this Act has authority.

