



Law and Ethics in Engineering Practice

Lecture: Introduction to Limitation Periods

Instructor: Paul Ivanoff

Institution: Toronto Metropolitan University

1. What Are Limitation Periods?

- A **plaintiff** can start a lawsuit against a defendant for issues like **tort** or **breach of contract**.
 - **Limitation periods** are statutory deadlines that require the plaintiff to commence legal action within a set timeframe.
 - These statutes vary by **province** and **type of claim**.
-

2. Purpose and Policy Behind Limitation Periods

- Protects defendants from facing **ancient, stale claims** long after events occurred.
 - Ensures evidence remains fresh and reliable for both sides.
 - Encourages plaintiffs to **act promptly** and not delay asserting their rights.
 - Provides **businesses** with predictability about potential liabilities and risk management.
-

3. Impact on Business

- Limitation periods help businesses:

- Calculate financial risks accurately.
 - Plan insurance coverage and risk mitigation strategies.
 - Determine fees or contractual terms based on known exposure periods.
-

4. Time Limits and “Statute-Barred” Claims

- Each province sets its own time limits, which may differ for tort, contract, or other actions.
 - If a claim is started after the prescribed time, it is usually **statute-barred** and will **fail**.
 - Courts apply limitation periods **strictly**.
-

5. Discoverability: When Does the Clock Start?

- Courts ask: **When does the limitation period begin?**
- Traditional view: limitation starts at the time the wrongful act occurs.
- However, many courts apply the “**discoverability**” **principle**: time starts when the plaintiff **discovers or ought reasonably to discover** the damage or claim.

Key Case: *Sparham-Souter v. Town & Country Developments*

- House purchasers sued municipality over **latent foundation defects** discovered years after purchase.
 - Court ruled time starts when the **damage was discovered or should have been discovered with reasonable diligence**, not at the time of the original negligence.
 - Though an English case later rejected by the House of Lords, Ontario courts **adopted and approved** this approach.
-

6. Latent Defects Defined

- Latent defects are those **not discoverable by reasonable inspection** before purchase.
 - Defects discovered on reasonable inspection are **not latent**.
-

7. Additional Discoverability Case: *City of Kamloops v. Nielsen*

- City required replacement of house footings, which didn't happen.
 - New owner (Nielsen) discovered defects during plumbing repairs years later.
 - Court held the limitation period started when Nielsen **discovered or ought to have discovered** the damage.
 - Nielsen's claim was allowed, emphasizing fairness in latent defect cases.
-

8. Implications for Service Providers and Engineers

- The discoverability rule can extend liability years after services are provided.
 - Engineers must understand this when providing design, construction, or inspection services where defects may appear only much later.
 - Highlights the need for appropriate **insurance coverage** and risk management strategies.
-

9. The *Winnipeg Condo v. Bird Construction* Case

- Building completed in 1974 with defects becoming evident in 1989.

- Subsequent purchaser sued the builder based on latent defect discoverability.
 - Demonstrates real-world implications of limitation and discoverability laws.
-

10. The Limitations Act, 2002 (Ontario)

- Came into force January 1, 2004.
- Introduced major reforms to limitation periods in Ontario.

Key Provisions:

- **Basic limitation period:** Lawsuit must commence within **2 years** from date of **discovery** or when discovery ought to have occurred.
 - Applies to tort and contract claims alike.
-

11. Case Study: *Suncor Energy Products v. Howe-Baker Engineers Ltd.*

- Dispute over withheld payments due to alleged contract breach and delays.
 - Key timeline events show when the claim was “**discovered**” and the limitation clock started.
 - Court ruled claim was **statute-barred** as it was filed after the 2-year period elapsed.
 - Reinforces the strict application of the basic limitation period.
-

12. Ultimate Limitation Period (Long-Stop)

- Must commence a proceeding within **15 years** from the date of the act or omission that gave rise to the claim.
 - This **ultimate limitation period** provides a final cutoff, regardless of discoverability.
 - Protects defendants (like engineers, contractors) from indefinite liability.
-

13. Transition Rules and Exceptions

- The Act includes complex transition provisions for acts or omissions before its 2004 commencement.
- Exceptions apply for minors, family law support claims, certain sexual assault claims, and Crown proceedings.

Case Example: *York Condominium Corp. v. Jay-M Holdings Ltd.*

- Discovery after 2004 of building code breaches that occurred 27 years earlier.
 - Court applied transition rules, starting the ultimate limitation period from 2004, allowing the claim despite the age of the issue.
-

14. 2006 Amendments: Contracting Out of Limitation Periods

- Initially, parties could **not contract out** of statutory limitation periods.
- Business parties wanted certainty by agreeing to different limitation periods in contracts.
- Since October 16, 2006:
 - Business parties can **shorten, extend, or suspend** basic and ultimate limitation periods within contracts (with restrictions).
 - This flexibility does **not apply to consumer agreements**.

15. Practical Advice for Engineers and Contractors

- Negotiate or agree on limitation periods in contracts when permitted.
- Understand that such agreements can **bind parties** to periods differing from statutory limits.
- Ensure clear contract clauses to avoid disputes over limitation periods.

16. Other Limitation Periods in Ontario and Other Provinces

- The Professional Engineers Act's 12-month limitation was repealed and replaced by the Limitations Act.
- Construction Lien Act provisions remain unaffected.
- Other provinces may lack an ultimate limitation period but apply discoverability, potentially allowing claims years later.
- Highlights the importance of **insurance and risk management** for long-tail claims.

17. Contractual Notice Provisions and Their Importance

- Contracts often require parties to **give notice of claims** within specified timeframes.
- Example: **CCDC 2 – 2008**, which requires notice of delay within 10 working days.
- Notice must be **formal, timely, and detailed** to preserve rights and allow remedial action.
- Mere complaints or informal mentions are insufficient.

18. Case Study: *Doyle Construction v. Carling O'Keefe*

- Contractor failed to notice owner-installed equipment delays and did not provide timely formal notice of extra costs.
 - Court held that failure to give **reasonable notice barred the claim**.
 - Timely notice protects defendants by alerting them to problems early, allowing corrective measures.
-

19. Summary of Chapter 5

Topic	Key Points
Limitation Periods	Legal deadlines to start claims; strictly enforced.
Discoverability	Clock starts when damage is (or should be) discovered.
Limitations Act, 2002	Basic limitation: 2 years; ultimate limitation: 15 years; exceptions and transition rules.
2006 Amendments	Contractual agreements may vary limitation periods for business parties.
Notice Provisions	Formal and timely notices required to preserve claims under contract.
Practical Implications	Critical for engineers to manage liability risk via contracts, insurance, and awareness.