

# Negligence claim statute-barred by ultimate 15-year limitation period

Limitations Act | Litigation | Litigation & Dispute Resolution | Real Estate

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Civil claims in Ontario are generally subject to a two-year limitation period, meaning that a plaintiff must start a court action within two years of the event which gives rise to the proceeding. One issue that often arises is when the clock begins to run. In some cases, a plaintiff may not have sufficient knowledge to commence an action or there may be another more appropriate means available to resolve the dispute without litigation. The two-year limitation period may be delayed or extended in certain circumstances.

Section 15 of the Ontario *Limitations Act, 2002*, introduced an “ultimate” 15-year limitation period under which no proceeding shall be commenced in respect of any claim after the 15th anniversary of the day on which the act or omission on which the claim is based took place. On its face, this term was supposed to remove any question as to when the limitation period ultimately expired. Few cases have applied the section to date.

In *Tyszko v St. Catharines (City)*, 2023 ONSC 2892 (CanLII), the Ontario Superior Court of Justice addressed a dispute between a property owner and the City of St. Catharines over the City’s installation of storm sewers. The installation was completed in 2002, when the plaintiff’s parents owned the property.

In 2015–2016, the plaintiff began to see that when it rained, water would come toward the house from the road, and cracks had started to appear around the house and basement.

After the plaintiff acquired the property from his parents in October 2017, several events took place:

- On 30 October 2017, City crews attended and found no issues with the catch basins. The plaintiff says this was not reported to him.
- In 2018, the plaintiff sought the assistance of a lawyer who wrote to the City and advised that the drainage problems had occurred since the City removed the ditches and installed catch basins. Further letters were sent by the plaintiff’s lawyer to the City on 12 March 2018, and 16 April 2018.
- On 10 February 2019, the plaintiff obtained an estimate for repairs for \$85,241.75.
- On 22 May 2019, the plaintiff’s lawyer wrote to the City, advising that he had been retained by the plaintiff to commence proceedings to seek a judicial remedy for the poor drainage at the property. The letter demanded that the City respond within 15 days, failing which he was instructed to commence proceedings.
- On 23 May 2019, the City responded by letter that the firm which administers the City’s public liability insurance and the relevant city department have been advised and a representative of the City’s insurers would be contacting the plaintiff in due course. No follow-up communication was sent or received.
- On 22 January 2021, the plaintiff, through his lawyer, followed up with the City.
- On 19 February 2021, videos and supporting documentation were provided by the plaintiff to an adjuster who had responded on behalf of the City.
- On 12 March 2021, the adjuster formally denied the plaintiff’s claim. In the letter, the adjuster referenced the expiry of the two-year limitation period.
- On 13 July 2021, the plaintiff’s statement of claim against the City was issued, seeking damages related to repairs, loss of enjoyment, and mental distress.

After the plaintiff’s claim was commenced, the City moved to dismiss it on the basis that it was statute barred by either the 15-year ultimate limitation period or the two-year limitation period in the *Limitations Act, 2002*.

While the uncontested evidence was that there were no issues with drainage at the property before the sewer work was done by the City in 2002, the plaintiff argued that a legal proceeding was not an appropriate means to seek a remedy until the City’s adjuster formally denied his claim on 12 March 2021.

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The motion judge noted, however, that section 15 of the *Limitations Act, 2002* imposes a 15-year cap on all limitation periods, regardless of discoverability concerns, citing *Mega International Commercial Bank (Canada) v. Yung*, 2018 ONCA 429 at para. 69, and *Taylor v. David*, 2021 ONSC 3264.

Because the plaintiff's claim was not discovered until after 1 January 2004, the ultimate limitation period of 15 years started to run as if the act or omission had taken place on 1 January 2004, which was the date section 15 of the *Limitations Act, 2002* came into effect, and the plaintiff's claim was barred on 1 January 2019.

The plaintiff relied on section 15(6) of the *Limitations Act, 2002* to contend that the ultimate limitation period did not apply. This section provides that in the case of a continuous act or omission, the day an act or omission on which a claim is based takes place is the day on which the act or omission ceases. The plaintiff argued that his claim was based upon a continuous act or omission since every time it rained more damage was caused to the property, and therefore the clock did not start to run until the day on which the City's act or omission ceased. In other words, the plaintiff characterized his damages as ongoing.

The motion judge disagreed, holding that the issue in the action was a singular act of negligence—the City's installation and completion of the sewer work in 2002. The failure to rectify an alleged act of negligence did not create a continuing or series of acts of negligence and did not change the fundamental nature of the claim, as contended by the plaintiff, to extend the limitation period.

Finally, to avoid the impact of the ultimate limitation period, the plaintiff also raised section 15(4)(c)(ii) of the *Limitations Act, 2002*, which provides that the 15-year limitation period does not run during any time in which the person against whom the claim is made wilfully misleads the person with the claim as to the appropriateness of a proceeding as a means of remedying the injury, loss or damage.

The plaintiff argued that he was wilfully misled by the City's failure to advise him that its crew did not find any issue with the catch basin on 30 October 2017, and the City's 23 May 2019 letter indicating that a representative of the City's insurers would be contacting him.

The motion judge rejected the argument that the City wilfully misled the plaintiff as to the appropriateness of a proceeding as a means of remedying the injury. The City's alleged failure to advise that it found nothing wrong with the catch basin did not amount to misleading him as to the appropriateness of a proceeding and there was no evidence that the City told the plaintiff that he should await the outcome of any investigation that was being conducted.

The plaintiff's claim was therefore dismissed as statute-barred by section 15 of the *Limitations Act, 2002*.

The decision affirms that plaintiffs must be diligent in commencing proceedings and should not rely on waiting for a response from a defendant to their written demands for compensation or other relief.

Of interest, the motion judge held that even if a two-year limitation period were applicable, the claim would have been statute-barred as it was commenced more than two years after 22 May 2019, by which time the plaintiff had retained a lawyer to write a demand letter to the City. The decision did not, however, address whether the six-month suspension of limitation periods in Ontario due to the COVID-19 pandemic would have extended the two-year limitation period: e.g. *Rebello v. Ontario*, 2023 ONSC 601 (CanLII). A PDF version is available to download [here](#).

For more information please contact: **James Cook** at **416.865.6628** or [jcook@grllp.com](mailto:jcook@grllp.com)

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**Bay Adelaide Centre — East Tower**  
22 Adelaide Street West, Suite 3600  
Toronto, ON M5H 4E3

Phone: 416.865.6600  
Fax: 416.865.6636  
[contactGR@grllp.com](mailto:contactGR@grllp.com)

## Author



**James R.G. Cook**

Partner

416.865.6628

[jcook@grllp.com](mailto:jcook@grllp.com)



**Bay Adelaide Centre — East Tower**  
22 Adelaide Street West, Suite 3600  
Toronto, ON M5H 4E3

Phone: 416.865.6600  
Fax: 416.865.6636  
[contactGR@grllp.com](mailto:contactGR@grllp.com)