

# The Clock Starts at Termination: Lessons from Pascuet v. Sky Service F.B.O. Inc.

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The decision of *Pascuet v. Sky Service*, 2025 ONSC 6143 (CanLII) ("**Pascuet**") is a noteworthy ruling from the Ontario Superior Court of Justice, which reaffirmed the well-established principle that the doctrine of discoverability does not entitle a claimant to postpone the commencement of an action beyond what a reasonable assessment of the known facts will support.

The doctrine of discoverability provides that the time limit to commence a legal proceeding (also known as a limitation period) begins to run when an individual discovers, or ought reasonably to have discovered that they have a legal claim.

Pursuant to section 4 of the Ontario *Limitations Act*, 2002, S.O. 2002, c. 24, Sched. B. (the "**Limitations Act**"), a plaintiff must commence their proceeding in respect of a claim before the second anniversary of the day on which the claim was discovered (the two-year limitation period). There are some exceptions, which are not relevant in this matter.

The basic two-year limitation period provides society and the legal system with assurances that legal issues will be solved with finality and certainty. By enforcing a strict timeline, the legal system ensures that disputes are resolved while the evidence is fresh and reliable, leading to judicial fairness. At the same time, it prevents individuals and corporations from facing the psychological and/or financial strain of indefinite legal threats, allowing all parties to finally move on with their lives knowing that litigation is not hanging over their heads.

*Pascuet* is an important reminder that while the doctrine of discoverability ensures fairness, it does not offer a plaintiff an indefinite deferral, nor does a plaintiff's ignorance justify an unreasonable deferral in commencing its claim. This decision underscores the critical distinction between genuine ignorance of a loss and a failure to appreciate its legal significance.

## Background

The plaintiff was employed by the defendant, Sky Service F.B.O. Inc. (the "**defendant**") until January 4, 2022. Like many employers during the COVID-19 pandemic, the defendant implemented policies in response to government vaccination mandates. On January 4, 2022, the plaintiff's employment was terminated for cause due to his failure to comply with the defendant's implemented vaccination policies.

Following his termination, the plaintiff held the belief that his dismissal was connected to federal government directives and that the Government of Canada had dismissed him. Acting on that belief, the plaintiff commenced proceedings in the Federal Court of Canada. In June 2024, the Federal Court dismissed his action, concluding that it was plain and obvious that the Federal Court lacked jurisdiction to entertain the plaintiff's claim.<sup>[1]</sup>

Following the Federal Court's decision, more than two and a half years after his termination, on August 26, 2024, the plaintiff issued a Statement of Claim in the Ontario Superior Court of Justice. Shortly after, the defendant brought a motion for summary judgment to dismiss the action on the basis that it had been commenced outside the applicable limitation period. The sole issue before the Court was whether the plaintiff's newly commenced action was statute-barred. The merits of the wrongful dismissal claim, with respect to whether the defendant had just cause to terminate the plaintiff for non-compliance with the vaccination policy were not addressed.

### The Limitation Period Issue

As highlighted above, the applicable limitation period in Ontario is governed by the *Limitations Act*. Under section 4 of the *Limitations Act*, a plaintiff has two years from the date of discovery to commence a legal proceeding. Pursuant to subsection 5(1) of the *Limitations Act*, a legal claim is said to be “discovered” discovered on the earlier of two dates:

- a. the day on which the person with the claim first knew,
  - i. that the injury, loss or damage had occurred,
  - ii. that the injury, loss or damage was caused by or contributed to by an act or omission,
  - iii. that the act of omission was that of the person against whom the claim is made, and
  - iv. that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and
- b. the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to it in clause (a).

There is a statutory presumption, pursuant to subsection 5(2) of the *Limitations Act*, that a plaintiff knows of the matters referred to in paragraph 5(1)(a) on the day the act or omission on which the claim is based took place, unless the contrary is proved. Accordingly, a plaintiff who seeks to invoke discoverability must rebut this presumption and establish that the two-year period should begin on the date of discovery. A plaintiff's failure to do so is fatal to the claim where a defendant raises a limitation defence.

Importantly, *Pascuet* reiterated the principle that, generally, the failure to appreciate the legal significance of discoverable facts does not stop a limitation period from running.[2]

### Decision of the Ontario Superior Court of Justice

The Court granted the defendant's motion for summary judgment, finding that the plaintiff's action was commenced well outside the two-year limitation period, and that the plaintiff had failed to rebut the presumption under subsection 5(2).

*The first three elements of subparagraphs 5(1)(a) (i-iii) were satisfied on the date of termination – January 4, 2022*

The Court's analysis began with the recognized principle in Ontario that, the limitation period for a wrongful dismissal claim begins to run on the date an employer dismisses an employee without reasonable notice.[3] In the present action, both parties agreed that the plaintiff was notified of his termination and that his employment came to an end on January 4, 2022. On that date, the plaintiff knew he had suffered a loss and that the defendant terminated his employment. This satisfied the first three elements of discovery under subparagraphs 5(1)(a) (i-iii) as of January 4, 2022.

### Remaining Issues to be Determined

The remaining issues to be determined by the Court were: 1) whether the plaintiff knew the act was one of the defendant; 2) whether the plaintiff knew that a proceeding would be an appropriate means to seek a remedy; and 3) when a reasonable person with the abilities and in the circumstances of the plaintiff first ought to have known of these matters.

#### 1. The Plaintiff knew the act was of the Defendant

The Court determined that the plaintiff had subjective knowledge of the material facts underlying his claim of wrongful dismissal. Namely, that the plaintiff was well aware that he had been terminated by the defendant, effective immediately, without notice, on January 4, 2022.

In addition, the Court unequivocally disagreed with the plaintiff's argument that the claim was not discoverable when he was terminated on January 4, 2022 because he did not know who terminated him. The Court determined that there was no evidence that it was reasonable for the plaintiff to think he was terminated by the federal government.

The reasonable person standard under paragraph 5(1)(b) of the *Limitations Act* does not turn on a plaintiff's subjective understanding of which court has proper jurisdiction.

The Court also did not agree with the plaintiff that a reasonable person would be confused as to who their employer was, or who terminated them, or that the plaintiff reasonably thought that the federal government terminated him because of their policies. In the circumstances, the Court concluded that a reasonable



person would know, or ought to have known, that a wrongful termination suit would be against their employer and not against the federal government.

### *2. The Plaintiff knew or ought to have known that a proceeding was appropriate*

The Court stipulated that a “plaintiff need not know all the facts that support the claim for the claim to be discovered; once a plaintiff knows that some damage has occurred, the claim has been discovered. It is not required that the plaintiff know the extent or the exact type of damage”.<sup>[4]</sup>

The plaintiff’s misunderstanding with respect to the legal significance of his employment being terminated did not postpone the commencement of the limitation period. A determination as to whether the plaintiff had the knowledge, or means of acquiring the knowledge, of the existence of the facts would support a claim for relief.<sup>[5]</sup>

Moreover, in the present case, the plaintiff did in fact pursue an action in the Federal Court. In pursuing this action, albeit in the improper jurisdiction, the plaintiff satisfied the final element contained in subparagraph 5(1)(a)(iv) of the *Limitations Act*, as he possessed the requisite knowledge that a proceeding would be an appropriate remedy to recover from the injury, loss, or damage that he alleged had occurred.

In addition, the Court relied on several cases standing for the proposition that the plaintiff’s pursuit of a proceeding in a different venue and/or under a different cause of action does not postpone the limitation period.<sup>[6]</sup>

### *The Plaintiff’s Position*

Although the plaintiff was terminated on January 4, 2022, the plaintiff took the position that he did not discover his claim against the defendant until June of 2024, when the Federal Court released its decision suggesting that the wrongful dismissal proceeding ought to be brought in provincial superior court.

The Court disagreed with the plaintiff, and reiterated that commencing a claim in the wrong forum did not suspend the running of a limitation period. Although June 2024 may have been the time when the plaintiff *decided* to pursue a subsequent action for wrongful dismissal in Ontario’s provincial superior court, that is not when the plaintiff (or a reasonable person in the plaintiff’s circumstances) knew or ought to have known that he may have had a claim.

Knowledge of the appropriate forum or venue is not a material consideration in the Court’s view; and the plaintiff knew (or ought to have known) that a proceeding in superior court would be an appropriate means to seek to remedy the allegation of wrongful dismissal on January 4, 2022. Unfortunately for the plaintiff, the applicable limitation period expired on January 4, 2024, and the plaintiff neglected to issue his new claim until August 26, 2024. Accordingly, the plaintiff’s action was commenced outside of the two-year limitation period and was, therefore, statute-barred.

### *The narrow exception in Clark was inapplicable in the circumstances*

In *Clark v. Ontario (Attorney General)*, 2017 ONSC 43 (CanLII) (“*Clarke*”), the Honourable Justice Stinson, applied an exception to discoverability in circumstances where a plaintiff failed to appreciate the legal significance of discoverable facts. Justice Stinson’s decision was upheld by the Court of Appeal.<sup>[7]</sup>

The plaintiff, argued, in essence, that the fact scenario in *Clarke* was similar to his matter. This is because he did not until weeks before he filed his new claim on August 26, 2024, receive legal advice from both the Federal Court and his newly retained counsel, that a wrongful dismissal action in the Ontario Superior Court was the appropriate forum to commence his proceeding. In addition to the foregoing, the plaintiff contended that his case was novel requiring careful consideration, as it was unprecedented outside of the health care industry for an employee to be mandated by the government to receive a vaccination to keep their employment in the private-sector. The plaintiff also asserted that his legal claim against the defendant was novel in of itself.

The Court rejected the plaintiff’s submissions.

In the Court’s view, the *Clarke* exception was to apply only in the “rarest of circumstances”. In reaching its determination, the Court concluded that wrongful termination is a common example of the type of wrong that would be appropriately addressed through court action. The plaintiff failed to introduce any evidence to illustrate that a new right, cause of action, or any novel circumstances applied to its case. Unsurprisingly, the Court highlighted that employers regularly implement policies for its employees to comply with applicable laws, and that this is not novel or unprecedented.

### *Summary judgment was appropriate*

A court may grant summary judgment where there is no genuine issue requiring a trial with respect to a claim or defence. On the undisputed facts, no such issue existed. The plaintiff’s claim was issued on August 26, 2024, more than two and a half years after his termination on January 4, 2022. The two-year limitation period had expired hence, the action was statute-barred. The action was dismissed in its entirety.



### Importance to Employers

This decision is important to employers because it solidifies the strict enforcement of the two-year limitation period for wrongful dismissal claims. It confirms that employees cannot “pause the clock” by pursuing legal action in the improper forum or jurisdiction, or by failing to understand who is legally responsible for their termination.

This decision offers clarity to employers and may assist in defending against former employees who have been terminated and seek to bring statute-barred claims years after a termination has occurred.

However, notwithstanding this ruling, employees may still attempt to advance claims outside the applicable limitation period by relying on creative arguments that their termination presents novel circumstances. In such cases, it is important for employers to maintain a watchful eye and to seek legal guidance early, ensuring a well-advised and strategic response is carried out. A PDF version is available for download [here](#).

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[1] *Pascuet v. Canada*, 2024 FC 930 (CanLII) at paras. 43 and 58.

[2] *Clarke v. Ontario (Attorney General)*, 2017 ONSC 43 (CanLII), at para 19.

[3] *Jones v. Friedman*, 2006 CanLII 580 (ON CA) at para 4.; *Diarez v. David Murphy et al.*, 2025 ONSC 4486 (CanLII) at para 42.

[4] *Sampson v. Empire (Binbrook Estates)*, 2016 ONSC 5730 (CanLII) at paras 37-38.

[5] *Nicholas v. McCarthy Tétrault*, 2008 CanLII 54974 (ON SC) at para 26.

[6] *Beniuk v. Leamington (Municipality)*, 2019 ONSC 1830 (CanLII) at paras 25-26; *Novak v. St. Demetrius (Ukrainian Catholic Development Corporation)*, 2017 ONSC 3503, at para. 27, aff'd 2017 ONCA 693.

[7] *Clark v. Ontario (Attorney General)*, 2019 ONCA 311 (CanLII)

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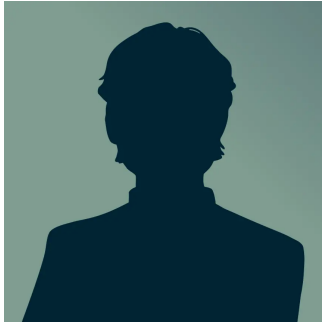
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