

Civil Procedure
Fall Term 2026

Lecture Notes No. 5

IV. LIMITATIONS

Section 5 of the Limitations Act, 2002 provides:

5. (1) A claim is discovered on the earlier of,
- (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 or 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 in clause (a).

Presumption

(2) A person with a claim shall be presumed to have known of the matters referred to in clause (1) (a) on the day the act or omission on which the claim is based took place, unless the contrary is proved.

Brown v. Baum
2016 ONCA 325 (Ont. C.A.)

A surgeon operated to deal with problems experienced in an earlier surgery that he performed. When did the limitation period begin to run in view of subsequent efforts to correct the injury caused?

The Court of Appeal accepted that section 5(a)(iv) of the statute [“that, having regard to the nature of the injury, loss or damage, a proceeding would be an *appropriate* means to seek to remedy it”] supported the view that the cause of action was not discoverable until it was known that the second surgery was unsuccessful in curing the problem.

Feldman J.A.:

[15] On this appeal, the appellant challenges the finding by the motion judge that although by July 2009 Ms. Brown knew that an injury, loss or damage had occurred (undergoing breast reduction surgery without having been informed of the risks) and that the injury, loss or damage had been caused or contributed to by an act of Dr. Baum (his failure to inform her), she did not know that bringing a legal action would be an appropriate remedy. The appellant points to the fact that Ms. Brown was taking photographs of her breasts for months following the initial surgery “just in case [she] ended up in a lawsuit like this one.”

[16] The appellant cites two errors it alleges Justice Mew made in his analysis. First, the appellant says that the motion judge erred in his interpretation of s. 5(1)(a)(iv) in stating, at para 50 of his reasons, that the point of the subsection “is to delay the commencement of the limitation period until such time as initiating a proceeding is an appropriate remedy.” The appellant argues that the motion judge erred by conflating a claim to a legal right with taking legal proceedings to pursue that right.

[17] I do not agree that the motion judge erred in his interpretation of the section. **I agree with the motion judge that the fourth condition of discoverability under the Act is met at the point when the claimant not only knows the factual circumstances of the loss she has suffered, but also knows that “having regard to the nature of the injury, loss or damage”, an action is an appropriate remedy.** Once she knows that, she has two years to initiate that action.

[18] The motion judge’s application of the subsection to the facts on this record was particularly apt: he concluded that because the doctor was continuing to treat his patient to try to fix the problems that arose from the initial surgery, that is, to eliminate her damage, it would not have been appropriate for the patient to sue the doctor then, because he might well have been successful in correcting the complications and improving the outcome of the original surgery. On the evidence of Dr. Brown, the specialist who provided Ms. Brown with a second opinion, by September 2010, Dr. Baum in fact was successful in ameliorating Ms. Brown’s damage.

[19] Second, the appellant submits that the motion judge gave the term “appropriate” an “evaluative gloss” rather than applying the meaning of “legally appropriate”, contrary to this court’s decision in Markel. Again I do not agree. The motion judge was entitled to conclude on the facts of the case that Ms. Brown did not know that bringing an action against her doctor would be an appropriate means to remedy the injuries and damage she

sustained following her breast reduction surgery until June 16 2010, after Dr. Baum performed the last surgery.

[20] Further, **I am satisfied that the test in s. 5(1)(b) is met. A reasonable person in Ms. Brown's circumstances would not consider it legally appropriate to sue her doctor while he was in the process of correcting his error and hopefully correcting or at least reducing her damage. Where the damages are minimized, the need for an action may be obviated.**

...

[24] In my view, the motion judge made no error in his approach to this issue. He considered all of the relevant case law, and applied it to the facts. He was entitled to find that Ms. Brown did not know that it was appropriate to sue Dr. Baum until after the last surgery he performed to try to correct the complications and improve the outcome of the original surgery. As the motion judge observed, it is not simply an ongoing treatment relationship that will prevent the discovery of the claim under s. 5. In this case, it was the fact that the doctor was engaging in good faith efforts to remediate the damage and improve the outcome of the initial surgery. This could have avoided the need to sue.

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Haytham Elzayat v. Rogers Communication
2026 ONCA 111 (Ont. C.A.)

This case dealt with, in part, the tolling of a limitation period due to incapacity to commence proceedings as provided by s.7 of the *Limitations Act, 2002*:

7 (1) The limitation period established by section 4 does not run during any time in which the person with the claim,

(a) is incapable of commencing a proceeding in respect of the claim because of his or her physical, mental or psychological condition;
 and

(b) is not represented by a litigation guardian in relation to the claim.

Presumption

(2) A person shall be presumed to have been capable of commencing a proceeding in respect of a claim at all times unless the contrary is proved.

The Court held:

[3] The appellant interviewed for a job with the respondent in 2015. The appellant alleges that, during this interview, he was asked about his country of origin, religion and family history.

[4] The appellant then commenced an action against the respondent in 2022, seeking damages for discrimination. The respondent brought a motion to dismiss the appellant's claim on the grounds that the claim failed to disclose a viable cause of action, the action was barred because of a release signed by the appellant, and the action was statute-barred under the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B.

...

[9] Second, the appellant renews his submission that his action is not statute-barred because the two-year limitation period was suspended due to his incapacity. We do not accept this submission.

[10] The appellant's claim, commenced in 2022, stated that he felt discriminated against after he left the interview in 2015. The motions judge found that the appellant clearly started his action outside the two-year limitation period under ss. 4 and 5 of the *Limitations Act*. The appellant relied on s.7 of the *Limitations Act*, arguing that the two-year limitation period did not begin to run because he was incapable of commencing a

proceeding in respect of the claim due to his physical, mental or psychological condition.

[11] We note that the *Limitations Act* provides a presumption of capacity unless the contrary is proved: s. 7(2). Here, the motions judge found that the appellant did not adduce sufficient evidence to support his assertion that he was incapable of starting an action within the two years following his job interview in 2015. The motions judge also noted that the appellant brought several lawsuits in the time-period between the job interview and the commencement of these proceedings in 2022, demonstrating that the appellant was capable of commencing a proceeding despite his health condition. Finally, the motions judge noted that the appellant interviewed for another position with the respondent in 2018, further suggesting that he had the capacity to pursue his claim within the two-year limitation period. Again, we see no basis for appellate intervention.

[12] The appellant seeks to adduce fresh evidence in support of his appeal. This evidence consists of medical records, correspondence with the respondent, and documents related to legal representation in prior proceedings. The fresh evidence does not satisfy the test for admission. Some of the evidence could have been adduced before the motions judge, and there is no explanation as to why it was not. Moreover, in our view, the proposed fresh evidence would not have affected the result. Consequently, the motion to admit the fresh evidence is dismissed.

Lloyd v. Baker
2026 ONCA 434 (Ont. C.A.)

The claim in this case was made subsequent to a car accident. In such cases, the *Insurance Act* provides for compensation according to tariff except where the injuries are serious. Thus two dates become relevant: the date upon which the injuries were caused, and, the date upon which the claimant knew of “permanent and serious impairment” that exceed the statutory scheme. Here the claimant admitted that she knew she had been injured in 2015, but said that she did not learn that her injuries were permanent until 2020 based on medical advice. The Court held that she was not diligent in the circumstances and that her action was statute-barred:

The Court held:

[17] **The law is settled that a plaintiff need not know the full extent of the injuries suffered in order for the limitation period to start to run. A cause of action is established for damages arising from a motor vehicle accident when it is “reasonably discoverable that the injury**

meets the threshold”: *Peixeiro v. Haberman*, 1997 CanLII 325 (SCC), [1997] 3 S.C.R. 549.

...

[19] While Ms. Lloyd pleaded that her injuries from the accident of 2015 met the statutory threshold, before the motion judge she asserted that, based on her understanding of what a concussion was and her prior experience with a workplace concussion, she expected to recover from her injuries and it was not until she met with Dr. Day, in July 2020, that she understood that her injuries were permanent. Following that discussion, she contacted a lawyer, and the claim was issued on November 8, 2021, almost six years after the accident.

[20] The motion judge accepted Ms. Lloyd’s testimony. He found that she reasonably expected to recover from what she understood to be concussion injuries and symptoms, just like she had from the workplace concussion, and that “Dr. Day confirms that that was a reasonable expectation.” He also found that there was not a sufficient body of evidence for Ms. Lloyd to have known that there was a reasonable chance of persuading a judge that her injuries met the threshold before the meeting with Dr. Day. The motion judge treated these findings as dispositive of the motion. They were not. **Although Dr. Day confirmed, as the motion judge had noted, that most concussions would be expected to resolve within a matter of months, nowhere did he confirm Ms. Lloyd’s apparent continuing belief that her symptoms would resolve was reasonable. The motion judge was obligated to consider, as set out under s. 5(1)(b) of the *Limitations Act*, whether Ms. Lloyd reasonably ought to have known that her injuries met the threshold.** We agree with Mr. Baker that the motion judge erred in not doing so.

[21] Ms. Lloyd described serious problems immediately following the accident that affected her in many aspects of her life. These problems continued without abatement for years before Ms. Lloyd’s meeting with Dr. Day. Medical records indicate that one of her family doctors noted early on that Ms. Lloyd had suffered a head injury which had aggravated her previous concussion. Significantly, she was informed by one of her family doctors in December 2016 that she might never return to 100% or to her previous baseline.

[22] In assessing the reasonableness of Ms. Lloyd’s understanding of her condition, Ms. Lloyd’s testimony that it wasn’t until Dr. Day told her that her head injury was likely permanent that she knew her injuries likely met the threshold must be viewed in the context of the prior medical notes of Ms. Lloyd’s family doctors, which indicate that Ms. Lloyd had previously been informed that she might never fully

recover from her injuries, and her own evidence about the nature and duration of her symptoms. While Ms. Lloyd asserts that she did not know that her injuries were permanent and serious before her meeting with Dr. Day, this was not a reasonable view of the matter based on the evidence.

[23] Unlike other cases, there was no change in condition, unexpected complication, or new diagnosis that changed the nature of Ms. Lloyd's problems from minor to serious: see e.g., *Peixeiro v. Haberman*, 1997 CanLII 325 (SCC), [1997] 3 S.C.R. 549, at para. 43; *Dubreuil v. Lalande*, 2014 ONSC 7433, at para. 19; *Rockford v. Haque*, 2019 ONSC 474, at para. 24. From the outset, Ms. Lloyd's injuries were debilitating. While Dr. Day may have helped to clarify things for her, his opinion did not change the nature of her problems or her prognosis – indeed, Dr. Day denied ever offering a prognosis. Rather, during his re-examination, he clarified that there “may have been use of terms, such as, ‘[w]e don’t know how far you’ll recover yet. [...] Don’t know if it will be back to a hundred or somewhat less than a hundred; we just don’t know.’” Such terms were not dissimilar to those used by her family doctor in December 2016.

[24] Given the persistence of her significant symptoms and having been counselled in December 2016 that she may never reach “100% or [her] previous baseline”, Ms. Lloyd was obligated to make inquiries about her rights. Although the neurologist equivocated in 2018, one of her treating doctors had opined that same year that it was “unlikely” there would be a treatment that would “suddenly ‘cure’ her post-concussion syndrome.” As noted at para. 14 of *Sanei*, citing *Yasmin v. Alexander*, 2016 ONCA 165, at para. 12, “when there is no evidence of a change in a plaintiff’s condition, delayed discovery of a permanent impairment may instead be because they failed to make reasonable inquiries”. Here, nothing her doctors had previously said would suggest that Ms. Lloyd’s prospects for full recovery were good.

[25] Considering the evidence as a whole, we find that Ms. Lloyd ought to have known that her injuries likely met the threshold before her meeting with Dr. Day in July 2020. The body of evidence sufficient to trigger the limitation period was available to Ms. Lloyd at a much earlier date had she acted with due diligence. Ms. Lloyd’s family doctors and other specialists had offered medical opinions not dissimilar from that of Dr. Day, beginning in 2016. And Ms. Lloyd had her own day-to-day experience with her debilitating injuries, stretching over the course of several years. Her claim was discoverable more than two years before it was commenced. It is not timely and ought to be dismissed.

Paterson v. Royal Bank of Canada
2026 ONCA 480 (Ont. C.A.)

How does the doctrine of fraudulent concealment interact with the “ultimate limitation period” prescribed by statute?

Section 15 of the *Limitations Act, 2002* provides:

15 (1) Even if the limitation period established by any other section of this Act in respect of a claim has not expired, no proceeding shall be commenced in respect of the claim after the expiry of a limitation period established by this section.

General

(2) 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.

Exception, purchasers for value

(3) Despite subsection (2), no proceeding against a purchaser of personal property for value acting in good faith shall be commenced in respect of conversion of the property after the second anniversary of the day on which the property was converted.

Period not to run

(4) The limitation period established by subsection (2) does not run during any time in which,

(a) the person with the claim,

(i) is incapable of commencing a proceeding in respect of the claim because of his or her physical, mental or psychological condition, and

(ii) is not represented by a litigation guardian in relation to the claim;

(b) the person with the claim is a minor and is not represented by a litigation guardian in relation to the claim; or

(c) the person against whom the claim is made,

(i) wilfully conceals from the person with the claim the fact that injury, loss or damage has occurred, that it was caused by or contributed to

by an act or omission or that the act or omission was that of the person against whom the claim is made, or

(ii) wilfully misleads the person with the claim as to the appropriateness of a proceeding as a means of remedying the injury, loss or damage.

Burden

(5) The burden of proving that subsection (4) applies is on the person with the claim.

Day of occurrence

(6) For the purposes of this section, the day an act or omission on which a claim is based takes place is,

(a) in the case of a continuous act or omission, the day on which the act or omission ceases;

(b) in the case of a series of acts or omissions in respect of the same obligation, the day on which the last act or omission in the series occurs;

(c) in the case of an act or omission in respect of a demand obligation, the first day on which there is a failure to perform the obligation, once a demand for the performance is made.

Application, demand obligations

(7) Clause (6) (c) applies in respect of every demand obligation created on or after January 1, 2004.

The core claim here was defamation by acts committed between 1998 and 2002, with the action having been commenced in 2022. Essentially the claimant argued that he was scapegoated and that the defendants defamed him to the OSC and others.

van Rensburg J.A explained further:

[15] The Statement of Claim pleads that the appellant had “long suspected” that the respondents or persons related to them had “initiated and were responsible for [the] attacks, or some of them”, but that he was unable to substantiate that suspicion. The appellant pleads that, in 2004, he was told by business journalist and historian Peter C. Newman, who had devoted most of four pages to the appellant and the sources of his career difficulties in his autobiography, *Here Be Dragons*, that “confidential sources

[...] had told Newman that [RBC] and many of its senior executives hated [the appellant], and that it was they who had encouraged the Canadian business press to attack [him], and caused the OSC to investigate him.”

[16] The appellant pleads that he continued to believe that he had been wronged, “but he did not have sufficient evidence to commence legal action against particular persons” until he received a note from an unknown person (the “Whistleblower Note”), that stated:

Scott,

I thought you might find this interesting. I was cleaning out my desk the other day and found this memo. I am sure this only confirms what you already knew - there was a concerted and focused effort at [RBC DS] to make your life difficult. I recall many discussions led by the most senior executives of the firm on how to stop Paterson. Many other antics went on to make your life difficult that I am sure you wondered where it was coming from.

The Whistleblower Note attached a copy of a memo on RBC DS letterhead dated November 20, 1998 from the respondent Bryce Douglas, as Deputy Chairman of RBC DS (the “Douglas Memorandum”). The Douglas Memorandum referred to an attached article from a recent edition of the Canadian Business magazine and stated, in part:

I have met Paterson on a couple of occasions and found him to be obnoxious. However, I didn’t realize just how obnoxious.

I’m not sure that you want to spend a lot of time reading this article it comes across as portraying Mr. Paterson as being crass, egotistical and unpleasant. They come and they go. Hopefully that is the case in this instance. I don’t think I can ever recall anybody, that was as full of himself as Mr. Paterson, that didn’t eventually blown [sic] himself up. I know you have better things to do than get overly fussed about Mr. Paterson. But if you can give him a push to help him over the edge it might be energy well spent.

Here the Court accepted the argument that the claimant had sufficient facts to sue based on his own pleadings:

[40] The ultimate limitation period of 15 years begins to run on “the day on which the act or omission on which the claim is based took place.” While the ultimate limitation period does not depend on the discoverability of the claim, the factors outlined in s. 15(4)(c) for the operation of wilful concealment mirror the discoverability criteria in s. 5 of the *Limitations Act*.

[41] The rationale for the interruption of the ultimate limitation period during a period of wilful concealment or wilful misleading is to prevent unfairness to a plaintiff that would result if such conduct by a defendant prevented them from knowing they had a claim. There would be no unfairness if, notwithstanding such conduct, the claim was known or discoverable. Accordingly, the ultimate limitation period is tolled under s. 15(4) only for the duration of any period when the actions of the defendants prevented the claimant from meeting the discoverability criteria. If the claimant has sufficient knowledge of the facts in relation to the discoverability criteria listed in s. 5 and reflected in s. 15(4)(c)(i) and (ii), the limitation period is no longer tolled regardless of the defendant's efforts at concealment.

[42] In other words, there is a "causative element" to wilful concealment: "the plaintiff must be ignorant of the cause of action because of the misconduct of the defendant": *Zeppa v. Woodbridge Heating & Air-Conditioning Ltd.*, 2019 ONCA 47, 144 O.R. (3d) 385, at para. 62, leave to appeal refused, [2019] S.C.C.A. No. 91, at para. 62, quoting *Colin v. Tan*, 2016 ONSC 1187, 81 C.P.C. (7th) 130, at paras. 44-47. If, notwithstanding the defendant's best efforts, the plaintiff knows of the cause of action and the appropriateness of bringing a proceeding, the causal link is absent and wilful concealment no longer operates to suspend the ultimate limitation period. As Feldman J.A., dissenting, but not on this point, stated in *Zeppa*, at para. 109, "[a]s outlined in s. 15(4) of the Act, the effect of a defendant's fraudulent concealment of essential facts is to toll the limitation period until the plaintiff learns about the concealed facts (either from the defendant or in some other way)."

[43] Accordingly, the motion judge did not err in examining the Statement of Claim to determine whether, according to the appellant's own pleadings, he had knowledge of the claims, notwithstanding any allegation that the respondents had engaged in wilful concealment.

[44] The motion judge observed that the general thrust of the appellant's action was that the respondents mounted a campaign against him both before and after the Settlement to detrimentally affect his career. He concluded that, regardless of the proposed amendment in para. 107A, the Statement of Claim made clear that the appellant knew or ought to have known about the respondents' conduct in this regard at the time the events occurred, and that, while there may be details of which he was not aware, the appellant was aware of a sufficient number of instances before 2002 of statements by the respondents that were designed and intended to harm his career.

...

[48] I agree with the motion judge that these allegations in the Statement of Claim show that the appellant had formed the view, no later than 2004, that the respondents had caused the OSC to investigate him, and that the respondents had defamed him to the press and to the community. And I disagree with the appellant's assertion that, until he received the Whistleblower Note and the Douglas Memorandum, he did not have the necessary knowledge to make a conspiracy claim, and that the respondents' own actions concealed this knowledge from him, tolling the limitation period.