Employer Liability for the Wrongful Acts of its Employees

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Hands on support.
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Courts have held employers liable for the wrongful acts of their employees in a variety of circumstances. This paper gives a brief overview of some of the ways in which liability may arise and discusses various steps which can be taken to minimize the risk of potential claims.

**Employer Liability: An Overview**

1. An employer is **ALWAYS DIRECTLY LIABLE** for its own negligence in hiring, training, or supervising employees.
2. An employer is **ALWAYS VICARIOUSLY LIABLE** for the wrongful acts of an employee within the scope of his or her employment.
3. An employer **MAY BE VICARIOUSLY LIABLE** for the wrongful acts of an employee outside the scope of his or her employment.
4. A party hiring an independent contractor is generally **NOT VICARIOUSLY LIABLE** for the wrongful acts of the independent contractor.
5. An employer is **ALWAYS VICARIOUSLY LIABLE** for wrongs committed by an agent in the scope of the agent’s actual, apparent, or usual authority.
6. An employer **MAY BE VICARIOUSLY LIABLE** for an employee’s breach of fiduciary duty owed to a previous employer, even if the new employer was unaware of the breach.
7. The most effective way for employers to limit unnecessary liability is to take **PROACTIVE PREVENTATIVE MEASURES**.

**Vicarious Liability**

The term “vicarious liability” describes the instance in which a court will hold one party responsible for the misconduct of another, even though the party held liable for the misconduct has not committed any wrong of its own. The issue of vicarious liability requires the court to allocate liability to one of two innocent parties: the party that hired the wrongdoer, or the victim of the wrongful act.

The concept of vicarious liability arose initially from the notion that an employer ought to be held responsible for the wrongs committed by its employees in the course of their employment. It is in the employment context that vicarious liability most commonly arises, but the categories of relationships in law that may attract vicarious liability are not closed or exhaustively defined. Even though the employer may be involved in pursuits of a general benefit to society and is unaware of the wrongful actions of its employee, the employer may nonetheless incur vicarious liability. When the risks inherent to a party’s enterprise materialize and cause harm, and it is useful and fair to do so, liability will be imposed on that party.

**The General Rule**

An employer is vicariously liable for the wrongful acts of an employee committed in the course of that person’s employment. In many circumstances, liability will also be imposed on the employer even if the employee has acted beyond the scope of employment. However, an employer is usually not liable for a wrongful act committed by an independent contractor.

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1. 67112 Ontario Ltd. v. Sagaz Industries Canada Inc. 2001 SCC 59 (“Sagaz”)
Although employers may be vicariously liable in many circumstances, the courts have recognized that employers are not “involuntary insurers” responsible for every wrong committed by an employee.¹

**Establishing Vicarious Liability**

To make out a successful claim for vicarious liability, a plaintiff must prove that:

- the relationship between the wrongdoer and the employer is sufficiently close to make vicarious liability appropriate; and
- the wrong was sufficiently connected to the wrongdoer’s assigned tasks that the wrong can be seen as a “materialization of the risks created by the enterprise”.⁴

The twin policies underlying vicarious liability are *fair compensation to the victim* and *the deterrence of future harm*. Both of these goals may be served by holding employers liable for the wrongful acts of their employees. Liability in an employment context is fair because it is the employer’s enterprise that created the risk. Holding the employer liable will deter future harm because employers are in a position to reduce accidents and intentional wrongs by proper organization and supervision of employees.

However, in an independent contractor relationship, the necessary degree of closeness will generally not be present. Holding a hirer liable for a wrong committed by an independent contractor is not fair because the wrong is not a “materialization of the organization’s own risks”. Further, the wrongdoer is too independent from the organization for the organization to effectively prevent future wrongs from occurring.⁵

**Closeness of the Parties: Employee or Independent Contractor?**

The determination of whether a wrongdoer is an employee or an independent contractor depends on the relationship of the parties, considered as a whole and in light of the particular circumstances of the case.⁶ There is no single test which can be universally applied to determine whether a worker is an employee or an independent contractor.⁷ Factors which may be relevant include:⁸,⁹

- the intention of the parties
- the degree to which the hirer exercises control over remuneration, termination and the manner in which the work is to be completed
- ownership of tools
- the degree to which the worker is integrated into the hirer’s overall organization
- whether or not the worker hires helpers directly
- the degree of financial risk taken by the worker
- the worker’s opportunity for profit in the performance of the tasks
- other factors which may vary from case to case

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¹ E.B. v. Order of the Oblates of Mary Immaculate in the Province of British Columbia 2003 BCCA 289
² K.L.B., supra at para. 19
³ K.L.B., supra at para. 19-20
⁴ K.L.B., supra at para. 19-20
⁵ Clerk & Lindsell on Torts, 18th ed. (Toronto: Butterworths, 1996) (“Clerk & Lindsell”) at para. 5-03
⁶ Sagaz, supra at para. 46
⁷ Sagaz, supra at paras. 5-04 to 5-15
⁸ Sagaz, supra at paras. 35-58
Merely because a contract states that a party is an “independent contractor” is not determinative for the purposes of vicarious liability. The central question is whether the person engaged to perform the services is performing them as a person in business on his or her own account.\(^\text{10}\)

Although no single characteristic is determinative, the presence of some or all of the following factors indicates that the worker may be an independent contractor:

- the contract specifically indicates that the worker is an “independent contractor”
- services are not provided exclusively to the hirer
- payment is calculated as a percentage of the sales or billings of the worker
- the worker is required to submit an invoice for the services that have been rendered
- the worker charges GST
- the worker owns his or her own tools
- the worker is not paid for services unless they are rendered
- the worker pays for expenses incurred during the performance of the work (rental of office space or equipment, for example)
- the hirer does not dictate hours of work or vacation schedules
- the hirer does not offer vacation pay or benefits
- the worker is not required to perform the services personally and may choose to subcontract to a third party
- the hirer does not supervise the worker’s activities
- the contract is for a limited period of time

**Connection: The “Course of Employment”**

In 1999, two cases from the Supreme Court of Canada explored the meaning of a wrong committed in the employee’s “course of employment”.\(^\text{11}\) Both of these cases involved tragic situations in which children were sexually abused by institution employees. These principles have recently been affirmed by the Supreme Court.\(^\text{12}\)

The law is that an employer will be held vicariously liable for the wrongs of its employees when either:

(a) the employee’s acts were authorized by the employer; or

(b) the employee’s unauthorized acts were closely enough connected to the authorized acts that “they may be regarded as modes (albeit improper modes) of doing an authorized act.”

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\(^{10}\) Sagaz, supra at para. 47


Improper Mode of Doing an Authorized Act

A further two-stage test exists to determine whether an act of an employee constitutes an improper mode of doing an authorized act:

(a) First, the Court will look for similar cases which clearly answer the question of whether the act in question is an unauthorized mode of doing an authorized act. If a clear precedent exists, then the judge must apply it, and the inquiry is complete.

(b) If no clear precedent exists, the Court must consider whether the policy considerations of “fair compensation” and “deterrence of future harm” dictate that vicarious liability should be imposed.

The objective of “fair compensation” is to provide a “just and practical remedy to people who suffer as a consequence of wrongs perpetrated by an employee”. Employers will not be vicariously liable merely because they have the means to pay – it must also be just to place liability on the employer. This requirement will be satisfied if it is the employer’s enterprise which created the risk of harm which ultimately occurred.

The objective of “deterrence of future harm” is to create financial incentive for employers to take necessary steps to ensure that similar wrongful acts are not committed in the future.

When no clear precedent exists:

(a) the Courts must “openly confront” the issue of whether the employer ought to be held vicariously liable, and not obscure the decision under a discussion of “scope of employment” or “mode of conduct”;

(b) the issue of whether the wrongful act of an employee is sufficiently related to the conduct which the employer has authorized should be addressed. Vicarious liability will be justified if there is a “significant connection between the creation or enhancement of a risk” and the resulting wrongful act, even if the wrongful act is “unrelated to the employer’s desires”; and

(c) the following factors should be considered in determining whether there is a sufficient connection between the risk created or enhanced by the employer’s enterprise and the wrong committed by the employee:

(i) the opportunity that the enterprise afforded the employee to abuse his or her power;

(ii) the extent to which the wrongful act may have furthered the employer’s aims;

(iii) the extent to which the wrongful act was related to friction, confrontation or intimacy inherent in the employer’s enterprise;

(iv) the extent of power conferred on the employee in relation to the victim; and

(v) the vulnerability of potential victims to wrongful exercise of the employee’s power.

Vicarious liability is not be applied mechanically, but in consideration of the underlying policies of fair compensation for victims and deterrence of future harm.

Although these principles were developed in cases relating to sexual abuse, this legal framework applies equally to other wrongful conduct on the part of employees.

Even with these principles, it can be difficult to predict when a court will impose liability. Appeals courts often produce dissenting and seemingly inconsistent judgments when applying the facts of a particular case to the legal principles. This being the case, the most prudent form of insurance is prevention.
Minimizing the Risk

The following are some steps which may be taken to minimize the risk of vicarious liability:

- ensure that references are meticulously verified when contemplating hiring any new employee - if a positive reference cannot be obtained, do not hire the prospective employee
- conduct criminal record checks on prospective employees, especially if the employee’s duties will involve the handling of money, or contact with minors or other vulnerable clients
- if an employee is trusted with large sums of money, hire outside accountants to detect and deter any illegal behaviour; ensure that employees are aware that these random checks will be implemented
- create policies which clearly spell out inappropriate behaviour; ensure that a system is in place and that all employees are aware of how complaints are to be made and how they will be dealt with; ensure that all complaints are taken seriously and investigated thoroughly; for serious offences, consider reporting the activity in question to the police
- implement policies which do not allow any single employee to have exclusive control over finances
- be aware of changing spending habits of employees involved in a company’s financial operations
- implement a system which allows and encourages employees to anonymously report improper activity of other employees

Agency

An “agent” is traditionally defined as a party that has been empowered by another party (the “principal”) to affect the principal’s legal rights and obligations in dealings with third parties.

The liability of a principal for the wrongful act of an agent will depend on considerations similar to those involved in determining the vicarious liability of an employer for the wrongful act of an employee. In an agency relationship, the central issue is the scope of the agent’s authority. The expressions “acting within his [or her] authority”, “acting in the course of his [or her] employment”, and “acting within the scope of his [or her] agency” have similar meanings.13

Authority

A principal is jointly and severally liable, along with the agent, for any wrong committed by the agent within the scope of his or her actual, apparent, or usual authority.14

Actual authority exists when the principal expressly confers authority on the agent. This form of authority arises from a consensual agreement between the principal and agent.

Apparent or “ostensible” authority arises when the principal’s conduct leads a prudent person to naturally suppose that the agent has been authorized to act on behalf of the principal. Alternately, apparent authority may arise when the principal, intentionally or carelessly, allows a third party to believe that the agent has been authorized to act on his or her behalf. A principal is liable for the wrongs of the agent committed within the scope of the agent’s apparent authority even though, in reality, no authority has been conferred on the agent.

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14 Fridman, Law of Agency 7th Ed. (Toronto: Butterworths, 1996) at p. 315 (“Fridman”)
A third party dealing with an agent may also rely on “usual” or “customary” authority. Usual authority is the authority that an agent in the same trade, business or profession as the agent in question customarily possesses. In short, customary authority arises if a person with knowledge of the trade expects an agent to have such authority.

If a principal wishes to prevent a third party from relying on usual or customary authority, the principal must expressly state that no such authority has been conferred.15

A principal does not generally incur liability if it is only the agent who claims that authority exists – the principal, by words or conduct, must provide the basis for the agent’s authority. An agent generally cannot “self-authorize”.

Independent Contractor as Agent

As previously mentioned, employers are not normally liable for the wrongful acts of independent contractors. However, it should be noted that if a principal bestows authority upon an independent contractor to deal with the principal’s legal rights, an agency relationship is created. The principal will be liable for the wrongful acts of the agent (even though the agent is an independent contractor) provided that the agent is acting within the scope of his or her actual, apparent, or usual authority.16

Minimizing the Risk

To minimize the risk of liability for the wrongful act of an agent, the following measures may be useful:

- ensure that the agent understands the limits of his or her authority – insist that all agents sign a contract stating that they will not act beyond these limits without prior written permission from the principal
- take steps to ensure that those dealing with the agent are aware of the scope of the agent's authority - be especially aware of situations in which agents “usually” have a certain level of authority
- be alert to situations in which third parties may reasonably assume that an agent acts on your behalf

Discrimination and Harassment

Section 44 of the British Columbia Human Rights Code (the “Code”) makes employers liable for the discriminatory acts of their employees. The relevant provision states:

44(2) An act or thing done or omitted by an employee, officer, director, official or agent of any person within the scope of his or her authority is deemed to be an act or thing done or omitted by that person.

There is no due diligence defence within the Code. Consequently, employers have been held strictly liable for the discriminatory conduct of employees. Further, the words “within the scope of his or her authority” have been broadly interpreted to mean acts of employees related in some way to their employment. The Supreme Court of Canada has held that employer liability is not restricted to instances where the employee was acting in the scope of his or her duties.17 Generally, liability under the Code is wider in scope than vicarious liability of employers for the wrongs committed by their employees.

Remedial steps taken by employers will not prevent liability, but may operate to lessen penalties.

Tribunals have imposed liability on employers for harassment in the workplace where the employer has failed to properly investigate and address a complaint. Liability has also been imposed on employers for the discriminatory acts

15 Fridman, supra at p. 64
16 Clerk & Lindell, supra at para 5-71.
of employees despite the absence of any discriminatory intent on behalf of the employer. Similarly, liability has been imposed on employers where reasonable and appropriate steps were taken only after the discrimination was brought to the employer’s attention.

Minimizing the Risk

As with other aspects of employer liability, a proactive and preventative approach is the best insurance against liability. Specifically, the following steps may assist in limiting liability or damages:

- make mandatory sensitivity training part of the orientation of all new employees
- ensure that a system is in place to deal with complaints
- investigate allegations promptly
- allocate resources to deal with prohibited conduct
- take all complaints seriously
- if a complaint is made, inform the complainant regularly of any actions taken or developments

Environmental Offences

As with other areas relating to employer liability, the acts of the employee are, at law, acts attributable to the employer. Since due diligence defences are usually available to environmental offences, the question arises of what steps an employer must take to constitute “due diligence”.

Due Diligence

Recent authority indicates that the level of due diligence required to make out a successful defence will vary according to the nature of the defendant. For example, the level of diligence required to make out a successful defence will be higher for a large commercial enterprise than for a small farm.

Regardless of the nature of the defendant, due diligence does not require “superhuman effort”. What is required is a high standard of willingness and decisive, prompt, and continuing action.

Ensuring that employees are properly trained and have up-to-date certifications for all relevant purposes can sometimes be sufficient to establish due diligence.

It is clear that merely delegating responsibilities to employees, in the absence of supervision by senior officials, is not enough to establish due diligence. Due diligence requires successful communication of adequate information and inspections from the company, to the man or woman “on the job”. Simply informing employees of their statutory responsibilities is insufficient to constitute due diligence – employers must also provide the effective operation of the system through supervision. Due diligence entails ensuring that a person in charge is doing what is supposed to be done. The employer must ensure that systems are in place which will counteract the inherent human error factor.

Some employers have, in certain circumstances, successfully made out a due diligence defence notwithstanding negligence on behalf of their employees. However, many others have failed in similar bids. Again, the prudent course of conduct is prevention.

18 R. v. Rezansoff 2003 BCPC 106
Minimizing the Risk

The following steps may assist in minimizing the risk of liability:

- require mandatory training (on an annual basis) for all employees who deal with toxic substances
- ensure that systems are in place for the immediate report of spills
- supervise, supervise, supervise

Direct Negligence of the Employer

When vicarious liability is imposed, it is not the act, fault, or blameworthiness of the wrongdoer which is attributed to the employer. Vicarious liability involves only the transfer of liability – the victim’s remedy against the wrongdoer – to the employer. An employer who is vicariously liable incurs liability even though it is innocent of any wrongdoing.

However, in addition to being vicariously liable for the wrong of an employee as discussed above, an employer may be directly liable for its own negligence. In this instance, the employer is held liable for its own wrongful conduct of acting negligently. The law relating to negligence is complex and extensive. Only the most basic propositions are dealt with here.

The Elements of Negligence

Generally speaking, an employer will be directly liable for its own negligence when:

1. the employer is under a duty to take reasonable care in selecting, training or supervising a worker to perform an act;
2. the employer fails to take reasonable care in selecting, training or supervising;
3. an act of the worker causes harm to a third party; and
4. the harm to the third party is foreseeable to the employer.

Whether or not an employer is under a duty to a third party depends on the circumstances of each particular case. A duty to protect third parties from foreseeable harm may arise due to the nature of the employer’s business. A duty may also be imposed by statute.

For example, because it is foreseeable that an investment agent may use a client’s funds negligently or fraudulently, financial investment corporations are under a duty to have procedures in place to prevent, or at least minimize, such occurrences.19

Employee vs. Independent Contractor not Determinative of Liability

It is important to note that the distinction between employee and independent contractor is not determinative of an employer’s direct liability for negligence. When an employer is under a duty to take reasonable care in selecting someone to perform an act, and the employer negligently selects an unsuitable party, the employer will incur liability even if the party selected is an independent contractor.

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19 Doiron v. Devon Capital Corp. 2002 ABQB 664
Negligent Hiring

A recent case provides an illustration of the notion of negligent hiring.\(^{20}\) Here, a life insurance company hired Dennis, who subsequently misappropriated funds from a client. Dennis was an independent contractor. The insurance company was held liable for the client’s loss because the company had been notified, by a previous employer, of Dennis’ prior questionable financial conduct. The fact that the company hired Dennis without investigating the alleged prior improper conduct was a negligent act. The company’s negligence placed Dennis in a position where he could misappropriate funds received from clients, and a client suffered loss.

Therefore, the company was directly liable for its own negligence in hiring Dennis (the company was also vicariously liable since Dennis was an agent acting in the scope of his apparent authority).

Minimizing the Risk

- always check references – if you don’t get a positive reference, don’t hire the individual
- always do a criminal record check if the new employee will be dealing with money or vulnerable individuals
- ensure that new employees receive adequate training at the start of their employment, and at regular periods thereafter
- supervise, supervise, supervise

Fiduciary Obligations

Many recent lawsuits have addressed issues relating to fiduciary obligations. Because a new employer may be vicariously liable for breach of fiduciary duty owed by an employee to his or her previous employer, some understanding of the nature of the fiduciary relationship is essential for employers.

When do Fiduciary Duties Arise?

It is difficult to set out a succinct definition of a “fiduciary”, but the hallmark is “trust”. In general, fiduciary duties arise when a person receives power on the condition that he or she is under a duty to exercise that power in the interests of another party, or where the legal position of one party is at the mercy or the discretion of another.

Traditionally, only directors and very senior employees were considered fiduciaries. However, the current state of the law is that the categories of relationships giving rise to fiduciary duties is not closed.\(^{21}\)

Fiduciary relationships may arise beyond the traditional relationships when the following hallmarks are present:

1. “Party A” has the scope to exercise a power or discretion;
2. “Party A” can unilaterally exercise that power or discretion and thereby affect the legal or practical interests of “Party B”; and
3. “Party B” is particularly vulnerable or at the mercy of “Party A”.\(^{22}\)

Courts have imposed fiduciary duties on accountants, architects, engineers, financial advisors, and insurance agents. Certain employees owe fiduciary duties to their employers. Additionally, non-professional relationships, such as parent and child, can give rise to fiduciary obligations.

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\(^{20}\) Wilson v. Clarica Life Insurance Co. 2001 BCSC 1696, relevant portion affirmed on appeal 2002 BCCA 502
Which Employees are Fiduciaries?

When deciding whether an employee is a fiduciary, the court considers the totality of the employee’s position and responsibilities. Job titles are not determinative of the issue. High-level managers and directors of a corporation will always be fiduciaries. Some officers and senior employees will be fiduciaries, even if they are not directors of the corporation. More junior employees may also be fiduciaries, but it is difficult to lay out general guidelines as to precisely when.

The underlying justification for imposing fiduciary obligations is to prevent parties who have been delegated high levels of trust from abusing that trust for their own personal gain. As such, employees occupying the uppermost rungs of the corporate ladder, with the power to make executive decisions relating to the fundamentals of the organization, will almost always be fiduciaries.

Similarly, those employees who are the “directing hands” of the business, with the power to direct and guide the company, will almost invariably be found to owe fiduciary duties to the corporation. Lower level managers have been held to owe fiduciary obligations where the former employer would be highly vulnerable to competition from that employee. For example, a low-level sales manager was a fiduciary because of his extensive knowledge of the employer’s customer base and his extensive personal contact with the customers.

However, an ordinary employee is generally not a fiduciary unless that employee is a “key employee”, a director, or is, in effect, “the whole show” of the business. The threshold for being a fiduciary has also been stated as being a “senior employee”.

The Nature of the Fiduciary Duty

An employee who is a fiduciary cannot, among many other things:

1. Obtain for his or her own personal benefit any business advantage or opportunity belonging to the company
2. Use his or her position and influence in the company and the opportunities afforded by his or her employment to set up a competing business
3. Solicit the corporation’s employees to join him or her in competition
4. Misappropriate trade secrets of the former employer
5. Use confidential information, such as customer lists, of the former employer

For example, top managers are prohibited from resigning to take advantage of a business opportunity of which they became aware through their employment. This is true even if the previous employer would not have successfully pursued the opportunity.

However, a fiduciary is not prohibited from using his or her skills, general knowledge, or personal goodwill which was acquired during the course of his or her employment in competing with the former employer.

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23 Stacey Reginald Ball, Canadian Employment Law (Aurora: Canada Law Book) at page 13-5
27 Berkey Photo (Canada) Ltd. v. Ohlig (1983), 2 C.C.E.L. 113 (Ont. H.C.) (“Berkley”)
28 Berkley, supra at 128
The Duration of Fiduciary Obligations

A fiduciary is prohibited from competing with a former employer or exercising any advantage from his or her employment for a “reasonable time” after the conclusion of the employment relationship. The facts of the particular case will determine how long this time period lasts. It has been suggested that, as a very rough rule of thumb, the duration of the fiduciary obligations may be approximately equal to the period of notice of termination the employer would be obliged to give the employee.29

Breach of an employee’s fiduciary obligations may give rise to damages for the lost profits resulting from the breach, disgorgement of profits made as a result of the breach, and/or injunctions preventing further breaches of fiduciary duties. This liability can be incurred by the employee personally. Subsequent employers are also at risk.

Liability of Subsequent Employers

The nature of the fiduciary obligation creates a risk for future employers of the fiduciary. If an employee breaches a fiduciary duty owed to a previous employer, the new employer may be sued for the profits lost by the previous employer. The previous employer may also sue for an injunction preventing further breaches of fiduciary obligations. Further, the previous employer can sue for all profits obtained by the employee or new employer resulting from the breach of the fiduciary obligation. The ex-employer is free to choose whether it will sue for profits it has lost or for profits the new employer has gained.

Innocence is Not a Defence

It is particularly important to note that it is not a defence that the new employer did not direct the fiduciary to breach his or her duty, or did not even know that the employee was in breach of a fiduciary obligation. Liability can be imposed even if the new employer was completely innocent in this regard. As a result, when hiring a new employee, employers must be diligent in ensuring that the employee does not breach any fiduciary duties which may be owed to a previous employer.

Minimizing the Risk

The following steps will help to limit unnecessary risk:

- obtain specifics of the previous employment relationship to determine whether any fiduciary obligations are likely owed to a previous employer
- if the employee was a fiduciary, do not allow the new employee to solicit his or her former employer’s customers
- explain to all new employees that they are not to use trade secrets or confidential information belonging to their former employer
- make it a term of the hiring that the employee is not to breach any obligation owed to a former employer

Limitation Defences

A limitation period is the time in which an action must be commenced, and after which it is forever barred. Many relevant limitation periods are contained within the Limitation Act.30 As well, other statutes impose special limitation periods for actions against municipalities, the Crown, public authorities, hospitals, and others. A limitations defence is a “technical defence” that may operate to prevent liability which would otherwise arise.

30 R.S.B.C. 1996, Ch. 266
Relevant Limitation Periods

In British Columbia, a limitation period of two years applies to damages in respect to person or property, but excluding actions based on sexual misconduct against minors. A ten-year limitation period applies to actions against trustees and personal representatives. There is no limitation period imposed on actions based on misconduct of a sexual nature while the plaintiff was a minor, or on sexual assault. For any actions not mentioned in the Limitation Act, the limitation period is six years.\(^{31}\)

When Does the Clock Start to Tick?

Generally speaking, a limitation period begins to run from the point in time when a cause of action arises. A cause of action arises when the necessary facts to commence a lawsuit have been discovered, or ought to have been discovered, by a duly diligent plaintiff.\(^{32}\)

In British Columbia, the commencement of the limitation period may be postponed for claims based on the following:\(^{33}\)

- personal injury
- damage to property
- professional negligence
- claims based on fraud or deceit
- claims in which material facts relating to the cause of action have been wilfully concealed
- others

In these cases, time does not begin to run until:\(^{34}\)

- the plaintiff knows the identity of the defendant
- a reasonable plaintiff knowing the facts the plaintiff knows would realize that an action exists with a reasonable prospect of success
- someone in the plaintiff’s position would conclude that an action could be brought

Time does not begin to run against an infant until the infant reaches the age of majority.

Conclusion

There are many circumstances in which employers may incur liability for the wrongful acts of their employees, agents, or independent contractors. However, by being alert to the potential dangers and taking proactive preventative measures, the risk of liability can be minimized.

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\(^{31}\) Limitation Act, s. 3
\(^{32}\) Consumers Glass Co. v. Foundation Co. of Canada (1985), 30 B.L.R. 98 (Ont. C.A.)
\(^{33}\) Limitation Act, s. 6(3)
\(^{34}\) Limitation Act, s. 6(4)