



Case in Brief: **Grant Thornton LLP v. New Brunswick**

Judgment of July 29, 2021 | On appeal from the Court of Appeal of New Brunswick
Neutral citation: 2021 SCC 31

The Supreme Court rules that New Brunswick missed its deadline to file a \$50 million claim.

In 2009, the Province of New Brunswick agreed to guarantee \$50 million in bank loans for a company called Atcon, which provides construction, energy, industrial and waste management services. The Province had agreed to act as a guarantor on the basis of a report prepared by an auditing company called Grant Thornton. Atcon hired the company to review its financial statements. The report from Grant Thornton concluded that Atcon's financial statements were accurate and were prepared according to proper accounting principles. However, Atcon subsequently defaulted on its bank loans and asked the Province to pay. It paid the entire \$50 million in March 2010.

In June 2010, the Province hired another auditing company to review and report on Atcon's finances. On February 4, 2011, the new auditors submitted a draft report stating that Atcon's finances had not been prepared according to proper accounting principles. The report contained evidence that Atcon had overstated its assets, revenues and profits. It also found Atcon had understated its liabilities, expenses and losses. The final report, which was almost identical to the draft, was completed on November 30, 2012.

On June 23, 2014, the Province filed a \$50 million claim against Grant Thornton, arguing that it had been negligent in preparing its report of Atcon's finances. Grant Thornton responded that it had not been negligent and asked the judge to dismiss the claim, arguing that the Province had run out of time to file it. Grant Thornton invoked the *Limitation of Actions Act*, a law in New Brunswick that says a plaintiff has two years to file a claim after "discovering" it. The judge sided with Grant Thornton, but the Court of Appeal sided with the Province.

The Supreme Court of Canada has agreed with Grant Thornton. The Province filed its claim too late.

When is a claim "discovered"?

In a unanimous judgment, the Supreme Court said a claim is "discovered" when the plaintiff has enough information to know the defendant was probably at fault.

In this case, the Court was satisfied the Province had discovered the claim against Grant Thornton on February 4, 2011, the date it received the draft report. By then, the Province knew or ought to have known a loss occurred that Grant Thornton had been hired to detect. This was sufficient information to know Grant Thornton had been negligent. Although the Province knew this on February 4, 2011, it did not bring its claim until June 23, 2014, more than two years later. As a result, the Court concluded that under New Brunswick's *Limitation of Actions Act*, the Province had filed its claim too late.

Deadline for filing a claim

Anyone filing a claim should consider the deadlines that apply in their province or territory. Otherwise, they risk losing the opportunity to have courts uphold their rights.

Breakdown of the decision: *Unanimous*: Justice Michael J. [Moldaver](#) allowed the appeal (Justices [Karakatsanis](#), [Côté](#), [Brown](#), [Rowe](#), [Martin](#) and [Kasirer](#) agreed)

More information (case # 39182): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: [judgment](#) (Court of Queen's Bench of New Brunswick) | [appeal](#) (Court of Appeal of New Brunswick)
