

## new B.C. *Limitation Act* more favourable to lenders holding demand obligations

On June 1, 2013, British Columbia's new Limitation Act (the "**New Act**")<sup>1</sup> came into force, changing the limitation periods for filing civil lawsuits in British Columbia. Unlike the former Limitation Act (the "**Former Act**")<sup>2</sup> which had different limitation periods for different types of claims, as well as a 30 year ultimate limitation period, the New Act has a single 2 year basic limitation period for most civil claims<sup>3</sup> and creates a 15 year ultimate limitation period for those claims that may not be discovered right away.<sup>4</sup> These reforms bring the law of limitations in British Columbia into harmony with many of the other Canadian provinces, most notably Ontario.

Included in the new 2 year basic limitation period are demand obligations. Pursuant to Section 14 of the New Act, a claim for a demand obligation is discovered on the first day that there is a failure to perform the obligation after a demand for the performance has been made.<sup>5</sup> Thus, the clock to commence a claim for monies owing under a demand obligation, such as those owing under a

---

<sup>1</sup> *Limitation Act*, SBC 2012, c 13.

<sup>2</sup> *Limitation Act*, RSBC 1996, c 266, s. 3(4).

<sup>3</sup> *Supra* note 1 at s. 6.

<sup>4</sup> *Supra* note 1 at s. 21.

<sup>5</sup> *Supra* note 1 at s. 14.

demand promissory note, does not begin to run until the date the borrower fails to repay the obligation once demand has been made. This is a marked shift from the Former Act, which allowed a 6 year basic limitation period for demand obligations, with the clock beginning to run from the date that the demand indebtedness arose.

Although the limitation period has decreased under the New Act, the change in when the clock begins to run will result in fairer and more equitable outcomes. Creditors will no longer encounter situations where they are unable to commence an action to collect monies owed to them under a demand obligation because the monies were advanced over 6 years ago with demand not having been made until now. Under the Former Act, the above situation would have resulted in the creditor no longer being able to enforce its rights under the demand obligation, as the limitation period would have expired.

The New Act also marks a significant departure from the previous common law interpretation of when the limitation period starts to run for demand obligations such as demand promissory notes or guarantees. For demand promissory notes, the common law held that under the Former Act the limitation period started to run from the date the note was issued and funds were advanced, not the date of demand.<sup>6</sup> In contrast, for collateral demand obligations such as demand guarantees, the limitation period was held to run from the date of the demand.<sup>7</sup> The New Act brings greater clarity and uniformity of treatment to these two types of demand obligations by bringing them under a single rule: the limitation period for any demand obligation commences only when the debtor defaults after demand has been made.

The New Act also changes the limitation period in which secured parties can bring a claim to realize or redeem their security. Under the Former Act, there was no limitation on the time in which a

---

<sup>6</sup> See *Berry v Page* (1989), 38 B.C.L.R. (2d) 244 (C.A.).

<sup>7</sup> See *Canadian Imperial Bank of Commerce v Sayani* (1994) 83 B.C.L.R. (2d) 167 (C.A.).

secured party could bring an action to realize on collateral that is in its possession,<sup>8</sup> with a 6 year limitation period for collateral that is not in its possession.<sup>9</sup> The New Act now only allows for 2 years from the first day the right to enforce the security arises.<sup>10</sup> However, since the right to enforce the security does not arise until after demand has been made, this change should not have an adverse effect on secured parties holding demand obligations.

As with the Former Act, under the New Act the time limit in which to bring an action can be extended if the debtor acknowledges liability in respect of the claim. Such an acknowledgment must be made in writing to the person with the claim, such person's agent or an official receiver or trustee acting under the *Bankruptcy and Insolvency Act*, and must be signed by the person making the acknowledgment.<sup>11</sup> A debtor's performance of an obligation under or in respect of a security agreement will also constitute an acknowledgment by the debtor in respect of a claim.<sup>12</sup>

The New Act will not operate retroactively and for claims discovered before June 1, 2013 the Former Act will continue to apply. As such, it remains unclear as to what limitation period will apply to demand obligations that were entered into prior to June 1, 2013 but for which demand is not made until after June 1, 2013. This will likely be a question the courts will be called on to interpret. In the meantime, creditors should act as though the shorter limitation period applies.

---

<sup>8</sup> *Supra* note 2 at s. 3(4).

<sup>9</sup> *Supra* note 2 at s. 3(6).

<sup>10</sup> *Supra* note 1 at s. 15.

<sup>11</sup> *Supra* note 1 at s. 24(6).

<sup>12</sup> *Supra* note 1 at s. 24(8).

For more information on this topic, please contact:

Vancouver      **Navnit Duhra**      604.893.7647      [navnit.duhra@mcmillan.ca](mailto:navnit.duhra@mcmillan.ca)

Vancouver      **John D. Morrison**      604.691.7411      [john.morrison@mcmillan.ca](mailto:john.morrison@mcmillan.ca)

[a cautionary note](#)

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2013