

JUNE 1, 2015 MARKS AN IMPORTANT DATE FOR BRITISH COLUMBIA'S "NEW" LIMITATION ACT

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British Columbia's new *Limitation Act*^[1] came into force two years ago on June 1, 2013. The new Act brought with it a number of changes to the "default" limitation regime in the province, including shorter limitation periods and new "discoverability" requirements.

Like its predecessor,^[2] the new Act sets the governing limitation period unless another law establishes the limitation period.^[3] The new Act creates two distinct limitation periods – a single two-year "basic" limitation period, and a 15-year "ultimate" limitation period.^[4] This is in contrast with the regime under the former Act, where two, six and ten-year basic limitation periods applied, depending on the particular cause of action being pursued by the plaintiff, as well as a 30-year ultimate limitation period.^[5]

The basic two-year limitation period is the one that will apply to most civil claims. This means that, under the new Act, a lawsuit must be commenced no later than two years after the day on which a claim is discovered.^[6] June 1, 2015 therefore marks an important date under the new regime, because it is the first date that a basic limitation period under the new Act could hypothetically toll. Claims brought after the expiry of the limitation period will be statute-barred, meaning that claimants will be prevented from pursuing remedies that would otherwise have been available.

The ultimate limitation period has also been reduced under the new Act. This limitation period applies to situations where the basic limitation period has yet to expire, and is meant to protect against the prosecution of stale claims. Unlike the former Act, the ultimate limitation period under the new Act begins to run from the date that the "act or omission on which the claim is based took place".^[7]

Given that both the basic and ultimate limitation periods have been shortened under the new Act, potential claimants must now be even more aware of when their claim arose in order to ensure that a relevant limitation deadline is not missed.

It is also important to note that the new Act does not apply retroactively in most circumstances, so the former Act will still apply to most claims discovered before June 1, 2013.^[8] However, the former Act, unlike the new Act, did not have a discoverability provision applicable to all claims. So according to the B.C. Ministry of Justice, a

claimant must first look to the new Act to determine whether a claim has been "discovered".^[9]

Generally speaking, under the new Act, a claim is discovered on the first day on which a person knew or reasonably ought to have known the following:^[10]

- a. that injury, loss or damage had occurred;
- b. that the injury, loss or damage was caused by or contributed to by an act or omission;
- c. that the act or omission was that of the person against whom the claim is or may be made; and
- d. that, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.

Understandably, there could be circumstances where it is unclear whether a claim has been discovered before the in-force date of the new Act. In such instances, it would likely be prudent to commence a claim prior to the expiration of the earlier limitation period to avoid the potential for missing the relevant limitation period.

Takeaways

June 1, 2015 marks the first day that the basic two-year limitation period under the new Act could potentially toll. This means that litigants could be out of luck if they try to start an action if more than two years have passed since the claim was "discovered".

In the days following June 1, 2015, companies and individuals will want to take stock of disputes they are involved in – particularly where court proceedings have not yet been commenced – and seek advice on how the new Act could impact those disputes moving forward.

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1 [ps2id id='1' target='']/SBC 2012, c 13.

2 [ps2id id='2' target='']/RSBC 1996, c 266.

3 [ps2id id='3' target='']/British Columbia, Ministry of Justice, "Limitation Act" (Victoria, BC, June 27, 2014).

4 [ps2id id='4' target='']/Supra note 1 at ss 6 and 21.

5 [ps2id id='5' target='']/Supra note 2.

6 [ps2id id='6' target='']/Supra note 1 at s 6.

7 [ps2id id='7' target='']/Ibid at s 21.

8 [ps2id id='8' target='']/Ibid at s 30.

9 [ps2id id='9' target='']Civil Policy and Legislation Office, British Columbia Ministry of Justice, "The New Limitation Act Explained", at p 29.

10 [ps2id id='10' target='']Supra note 1 at s 8.

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.

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