THE NEW LIMITATION ACT  
What you need to know  
Heather L. Jones and Owen de Vries

A. The Purpose of the Limitation Act

Presently, the Limitation Act, [RSBC 1996] c. 266 (the “Old Act”), provides the basic rules governing how long a party has to commence an action against another.

If there was no limitation period a party would be able to bring a claim against another at any time (subject to such equitable doctrines as laches). There are a number of facts in British Columbia that have their own limitation periods, however, the default in British Columbia is the Limitation Act.

The reason why this legislation is so important is that it provides a cut off, an end date, by which a party must have started a claim. If a party does not start its claim within the rules set out in the Act their right to do so ends.

When the new Limitation Act1 (the “New Act”) comes into force the New Act will continue to serve the same purpose. However, the changes that have been made to the New Act are significant. The New Act has shortened a number of limitation periods. For example, it used to be that a party had six years in which to bring a claim for most general commercial breach of contract or negligence claims. The Act has reduced the basic limitation period for such claims to just two years.

This paper will provide some of the highlights of the New Act and identify some of the more significant changes. There are, as in all new statutes, questions as to how certain sections will be interpreted and applied by the courts – but overall, the New Act is more succinct, it is easier to read and it brings British Columbia in line with the limitation acts of other provinces.

Brief History

It has been frequently noted that the Old Act was somewhat difficult to read and apply. While debating the bill which became the Old Act Mr. L.A. Williams, (West Vancouver-Howe Sound) later Attorney-General Williams described the bill as follows:

But, Mr. Speaker, while I welcome any action on the part of the government to clean up this [area of the law], I am afraid what we have here is that we’ve got rid of the wilderness and instead, we have now got moors with quicksand and fog mixed up with swamps, snapping alligators and crocodiles. This bill is a worse mess than the present state of the law.

Debates of The Legislative Assembly 5th Session, 30th Parliament at p.2264.2

The court has voiced agreement with this assessment of the Old Act:

---

1Introduced as BILL 34 — 2012, Limitation Act, 4th Session, 39th Parliament (2011-2012)  
2 Quoted in Vance v. Peglar, 1996 CanLII 1834 (BC CA) [http://canlii.ca/t/1f0c3]
The [postponement] section creates a statutory maze into which only the bold should venture, and even seasoned constructionists may well become lost.

*Karsanjii Estate v. Roque*, 1990 CanLII 327 (BC CA), Taylor J.A.

Partly as a result of this kind of criticism, in 2007, the Ministry of Justice began reviewing the Old Act, with a view to comprehensively reforming and updating B.C.’s limitation act.

After a lengthy public consultation process the Ministry outlined proposals for legislative reform in the 2010 “White Paper” report.³ The White Paper identified the following objective for the new act:

1. to simplify and clarify the Act, which will reduce litigation in a difficult area of the law
2. to ensure consistent application of the Act to all plaintiff and defendant groups, where appropriate
3. [t]o harmonize B.C.’s limitation laws with the reformed limitations laws of other provinces ⁴

Further public consultation and input from an advisory group of legal experts helped shape the final draft of the new Limitation Act. The New Act was introduced as Bill 34 – 2012, the *Limitation Act* in the Legislative Assembly on April 16, 2012. It passed all three readings and received Royal Assent on May 14, 2012. The majority of the provisions of the New Act come into force on June 1, 2013.

**B. Summary of Key Changes⁵**

- The Old Act had a number of basic limitation periods depending on the type of claim and the nature of the damages involved. There were two-year periods for claims involving injury to persons or property; claims for breach of trust were generally governed by a ten-year limitation period; and a six-year limitation period governed all other matters.

  The New Act has one basic limitation period of two years.

- The time limits in the Old Act started to run based upon the accrual of the cause of action. In other words, when all elements of a cause of action had occurred the clock started to tick (subject to postponement provisions discussed further below). The running of time could be postponed in certain circumstances if the claim was not reasonably discoverable. If a party wanted to claim a postponement the onus was on the Plaintiff to show that the claim was not discovered.

⁴ White Paper p9
⁵ See also the table attached as Schedule ‘A’.
In the New Act the trigger that starts the running of time is different. The clock starts to tick once the cause of action is “discovered” by the Plaintiff. If there is an issue as to when a claim was discovered, the onus is now on the Defendant, rather than the Plaintiff, to show that the Plaintiff discovered the claim more than two years before they brought the action.

The New Act now sets out a test to determine if a cause of action is or ought to be reasonable, to have been discovered which will be discussed further below.

- The Old Act had an ultimate limitation period of 30 years for most claims (with some exceptions). There was no postponement available.

The New Act has a single ultimate limitation period of 15 years. The trigger that starts the running of time for the ultimate limitation period is the date of the occurrence of the act or omission upon which the claim is based (with some exceptions). Postponement of the ultimate limitation period is permitted under the New Act in limited circumstances.

- The time limits for claims for contribution and indemnity have changed significantly. Under the Old Act they were 6 years from the date of accrual, that being the date that judgement was rendered against you. Now the time limit is 2 years and it generally starts from the time a party is sued in the original action, not when judgement is rendered (subject to discoverability issues).

- Under both the Old and New Acts there are certain claims that were not subject to any limitation period those claims are exempt in the New Act and the list of claims that are exempt has been expanded under the New Act.

C. 2-Year Basic Limitation Period

Part 2 of the Act sets out the rules regarding the “basic limitation period”. The New Act creates a basic 2 year limitation period for all types of claims unless particularly excluded. This basic limitation period starts to run on the date the claim is “discovered”.

Section 2 and 3 of the New Act provides a list of exempted proceedings and exempted claims to which the New Act does not apply. All actions exempt in the Old Act are carried forward into the New Act, and the list has been expanded to exempt additional claims and legal proceedings.

The new 2-year basic limitation period will be a big adjustment for businesses and professionals who are accustomed to the 6-year limitation period for general commercial claims. Clients will need to ensure that they act quickly to either solve a problem or commence proceedings. The decision as to whether or not to commenc potentially costly litigation will now need to be made much more quickly.

6 Section 6; NOTE: As further discussed below, Section 7 provides for a special limitation period of 10 years when suing on a judgment for the payment of money or the return of personal property.
1. Discovery

Subject to certain special circumstances, section 8 of the New Act provides the test as to when a claim is "discovered". A claim is “discovered” if and when the prospective Plaintiff knew or reasonably ought to have known all of the following:

1. injury, loss or damage had occurred;
2. the injury, loss or damage was caused by or contributed to by an act or omission;
3. the act or omission was the prospective Defendant’s act or omission; and
4. a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.

All 4 conditions must be met for a claim to have been “discovered” for the purposes of the New Act.

The test for discoverability under the New Act is not that different than the test of discoverability used to postpone the running of time under the Old Act. While there are some differences in the language used it is anticipated that they will be applied in much the same manner. The big change is that it used to be the Plaintiff who argued discoverability and had the onus to show a limitation period was subject to the discoverability rule in order the postpone the running of time. Now, the argument about the appropriate date for discoverability will be advanced by the Defendant who will have the onus to show that the test for discoverability was satisfied before the date alleged by the Plaintiff.

Even though the discoverability test has been enumerated in the New Act there will continue to be uncertainty as to when a claim is discovered. For example, in a construction matter damage from negligent work may slowly manifest itself overtime. In such cases, it is unclear when one ought to have reasonably known of the claim. A further example is when there is employee fraud. Small issues may arise over time that together demonstrate a fraud, but it will be difficult to determine when one ought reasonably to have known of the claim.

Key Points:

- All claims are now governed by the same 2 year basic limitation period (other than claims to enforce a judgement, and other than exempt claims and proceedings), which starts to run when the claim is “discovered”.
- The old 6 year limitation period for general commercial claims is no more.
- To be safe, assume your claim was “discovered” on the date the injury, loss or damage occurred and file your claim before the 2 year anniversary of that date.

2. Special Discovery Rules

There are special discovery rules that apply with respect to certain claims and circumstances. The special discovery rules work by modifying the test for discovery. Since discovery determines when the basic limitation period is triggered, this may have the effect of either postponing discovery (where the rules apply to make the test more
stringent\textsuperscript{7}) or advancing the date of discovery (where the rules apply to find “discovery” without necessarily meeting all 4 of the usual conditions)\textsuperscript{8}.

We will provide an overview of just some of the claims that are identified in the New Act which are to receive special consideration.

\textbf{i. Demand Obligations}

Claims based on demand obligations (obligations which do not arise unless or until a demand is made, such as a demand loan) are handled much more sensibly under the New Act than under the Old Act. Previously, demand obligations were not expressly addressed by the statute. The courts found that the limitation period began to run at the time the loan was made\textsuperscript{9}. This created a potentially dangerous situation, particularly in the case of informal loans to friends and family. Even if the lender had neither expected nor demanded repayment in the 6 year period after the loan was made, his or her right to sue to recover the loan would expire.

Under the New Act, the basic limitation period begins to run on the date the claim for repayment is “discovered” – which is the “first day that there is a failure to perform the obligation after a demand for the performance has been made”.\textsuperscript{10} It is not clear whether this phrase means the date the demand is made or the due date specified in the demand. For instance, if a demand is made today, requiring payment of a demand loan within thirty days, the limitation period may start to run immediately or the clock may not start to tick until the thirty days expires. Arguably, as there is no breach of the demand obligation unless and until payment is not made, the clock may not start to tick until the thirty days has expired. It is, however, not clear how the New Act will be applied, and the safest approach would be to start calculating the time from date of demand.

\begin{tabular}{|p{1.5in}|p{4.5in}|}
\hline
\textbf{Key Points:} & \\
\hline
• Claims to recover demand loans are now subject to limitation time periods that commence at the time of a failure to perform an obligation after a demand rather than at the time of the agreement. & \\
• Overall, this change to the New Act provides a more practical approach to demand obligations but will need further interpretation. & \\
\hline
\end{tabular}

\textbf{ii. Claims for Contribution or Indemnity}

The change to the New Act as it pertains to claims for contribution and indemnity are significant. Under the Old Act, claims for contribution or indemnity arose at the time the cause of action accrued, being the date judgment was rendered against a defendant. That meant the general 6-year limitation period starting ticking \textit{after} the conclusion of

\textsuperscript{7} Sections 12 [Discovery rule for claims based on fraud or recovery of trust property], 13 [Discovery rule for claims for future interest in trust property], 16 [Discovery rule for claims for contribution or indemnity], 18 [Discovery rule for minors], 19 [Discovery rule for persons under disability], 25 [Limitation periods suspended if claimant becomes person under disability]

\textsuperscript{8} Sections 14 [Discovery rule for claims for demand obligations], 15 [Discovery rule for claims to realize or redeem security], and 17 [Discovery rules for successors, predecessors, principals and agents].

\textsuperscript{9} See \textit{Berry v. Page}, 1989 CanLII 2780 (BC CA)

\textsuperscript{10} Section 14
the proceedings by the primary Plaintiff against the Defendant seeking indemnification from a third party.

Under the New Act, however, claims for contribution or indemnity are governed by the new general 2-year limitation period\textsuperscript{11}, which begins to run at the later of:

(i) the day on which the defendant seeking contribution or indemnity is served with pleadings by the primary plaintiff; and
(ii) the first day on which the defendant seeking contribution or indemnity knew or reasonably ought to have known that a claim for contribution or indemnity may be made\textsuperscript{12}.

This creates a much shorter window of time for defendants seeking contribution or indemnity to commence claims against third parties. The decision as to whether or not to commence potentially complex and costly claims for contribution or indemnity from third parties may now have to be made before the full scope of damages has been explored.

This change to the law may lead to an increase in litigation as parties can no longer wait for a determination as to liability in the main claim before they determine if they will commence proceedings. This may also lead to an increase in the number of tolling agreements (tolling agreements are explored in more detail below).

<table>
<thead>
<tr>
<th>Key Points:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The time limits for claims for contribution or indemnity have changed significantly and in most cases are now 2 years from the date of service of pleadings in the principal action rather than after a judgment has been rendered.</td>
</tr>
</tbody>
</table>

### iii. Persons under Disability or Minors

There are special discovery rules relating to minors and persons under disability. Generally speaking the discovery of a claim is delayed for persons that are minors\textsuperscript{13} or under disability\textsuperscript{14}. A potential defendant, however, may force the issue by delivering a “Notice to Proceed”. If a proper Notice to Proceed is delivered to both the prospective plaintiff’s caregiver and the Public Guardian and Trustee, then the claim of the minor or the person under a disability is deemed to have been discovered on the delivery date of the notice\textsuperscript{15}.

The rules can become a more complex if a person formerly under a disability recovers, then falls under a disability again. The time limitation begins to run when the disability ceases but is then suspended if and when they become disabled again\textsuperscript{16}. The calculation of the time limitation in these instances can become quite complex.

\textsuperscript{11} Section 6  
\textsuperscript{12} Section 14  
\textsuperscript{13} Section 18  
\textsuperscript{14} Section 19  
\textsuperscript{15} Section 20  
\textsuperscript{16} Section 25
Key Points:
- Special discovery rules are applicable to minors or those under a disability

iv. Other special discovery rules

In addition to those mentioned above, the modified discovery rules provides for more generous discovery rules for such claims as claims for fraud or recovery of trust property and claims for a future interest in trust property.

The modified discovery rules are less generous to the prospective plaintiff (discovery will be found more easily) for claims brought by a successor, claims brought by the principal of an agent and claims to realize or redeem security.

The application of these special rules allows for flexibility in the legislation.

Key Points:
- claims for fraud or recovery of trust property are set out as special claims and they may allow for the discovery rules to be more generously applied

D. Special Limitation Periods – Enforcement of Judgments

The New Act provides special limitation periods with respect to the enforcement of judgments. Proceedings to enforce a local judgment for the payment of money or the return of personal property are subject to a 10-year limitation period. Proceedings to enforce an extraprovincial judgment are also subject to a 10-year limitation period unless a shorter period is provided under the applicable extraprovincial laws, in which case the shorter period governs.

Key Points:
- Claims to enforce a local Judgement are subject to a special limitation period of 10 years.

E. Acknowledgement

The New Act provides that if a person acknowledges liability the acknowledgement, if done in accordance with the Act, will effectively restart the clock on both the basic and ultimate limitation period.

To be effective, an acknowledgement must generally:

1. be in writing;
2. be signed, by hand or by electronic signature;
3. made by the person making the acknowledgment or the person's agent; and
4. made to the person with the claim, or that person's agent.

The New Act deems the discovery date of a claim to be the date of acknowledgement (if such date is later than the actual date of discovery) and that the act or omission is to have taken place on the date of acknowledgement.
If the claim is for payment of a liquidated sum, then part payment of the sum by the debtor is taken to be an effective acknowledgement. Special rules also apply with respect to the performance of obligations by both creditors and debtors in respect of security agreements.

Key Points:
- Acknowledgement of liability will reset the clock on both the basic and ultimate limitation period.

F. 15-Year Ultimate Limitation Period

An ultimate limitation period is designed to set a final date by which a claim must be brought. The Old Act provided for a 30 year ultimate limitation period. This period was not subject to postponement and was fixed. The approach in the New Act is quite different. The New Act creates a much shorter 15 year “ultimate limitation period” but does allow for postponement in certain circumstances.

This provision will affect businesses’ record keeping policies and will likely require the inclusion of also new provisions in long term contracts (to be discussed below). Many businesses keep records for 30 years in accordance with the Old Act’s ultimate limitation period. The New Act does provide for a much shorter ultimate limitation period, however, it can be postponed, suspended or restarted in certain circumstances and these possibilities should be considered when companies are revising their record keeping policies.

The trigger that starts the running of time on an ultimate limitation period under the New Act is unique. It differs from both the trigger for the new basic two-year limitation period (‘discovery’) and from the trigger for the basic and ultimate limitation periods under the Old Act (‘accrual of the cause of action’). The ultimate limitation period under the New Act starts at the time the act or omission upon which the claim is based took place. All elements of a cause of action are not necessary for the time to start, for example, damages may not yet have occurred at the time of the act or omission.

Once the act or omission has occurred the ultimate time limit starts to tick regardless of whether or not the claim has been discovered. Once the claim is ‘discovered’ and the basic limitation period starts to run, the ultimate limitation period will continue to run alongside the basic limitation period. A claim is barred if either the 2-year or the 15-year period expires. Thus, if a claim is discovered in the last two years of a 15-year ultimate limitation period, then the ultimate limitation period will determine the last date on which the claim can be brought. Conversely, if the claim is discovered more than two years before the expiration of the ultimate limitation period, then the basic limitation period will govern.

In most cases the claim will be discovered well before the 15 year period. However, in cases where the damage caused by an act or omission may take many years to manifest, the ultimate limitation period can be highly significant.

---

17 Section 24(7).
18 Section 24(8), (9)
19 Section 21
Given the new, shorter 15 year period, and the way that the commencement of the ultimate limitation period is triggered under the New Act there may be a heightened risk that the ultimate limitation period will expire before some claims are discovered. For causes of action that require actual damages as an essential element, there could be circumstances in which the ultimate limitation period could expire before the cause of action is complete.

**Example**

**Facts:** On June 2, 2013, Plaintiff Co. hires Slapdash Roofers Inc. (“SRI”) to install roof tiles with a 25 year life-span on the roof of its building. SRI negligently installs some of the tiles upside-down. The tiles work when they are upside-down but their lifespan is reduced significantly, to a mere 15 years. In June 2028, some of the upside-down tiles start wearing out. By July 2028, the roof starts to leak noticeably.

**Issue:** Can Plaintiff Co. sue or has the ultimate limitation period on the negligence claim against SRI expired?

**New Act:** The negligent act occurred on June 2, 2013 – i.e. installing the roof tiles upside-down.

The ultimate limitation period starts to run on June 2, 2013 and expired on June 2, 2028.

By July 2028, the plaintiff’s claim is statute-barred even though the plaintiff did not discover the claim until after the ultimate limitation period had already expired. It is arguable that damage had not occurred until the roof started to leak which would mean that there was no cause of action in negligence until the ultimate limitation period had expired.

Situations like the one in the example can arise when dealing with actions which have long term effects. In the construction field, for example, a warranty may be provided that is longer than the ultimate limitation period, however, the warranty would likely not address negligence. The framing of warranties in these circumstances may come under greater scrutiny or be expanded to address these issues. Pro-active testing and auditing may become necessary to manage these risks as projects approach the 15 year mark.

There are circumstances in which the ultimate limitation period will be postponed. They include when there is wilful concealment or wilful misleading as to the appropriateness of court action. Limitation periods can be suspended if a party comes under disability. A limitation period may be restarted if liability is acknowledged.

---

20 Section 21(3)
21 Section 25
22 Section 24
It should be noted that the Old Act had an ultimate limitation period of 6 years that applied to claims against doctors and hospitals. This exception no longer applies and the ultimate limitation period for claims against doctors and hospitals is now 15 years.

**Key Points:**
- All claims under the new Act are now governed by the same 15 year ultimate limitation period (other than exempt claims)
- The ultimate limitation period starts to run when the “act or omission” underlying the claim takes place
- In cases where the act or omission causing the harm and the final realization of that harm may be separated by 15 years or more, there is a risk that limitation periods may expire before such claims are discovered
- Pro-active testing and auditing may become necessary to manage these risks as projects approach the 15 year mark
- When determining record-keeping policies, consider the fact that the ultimate limitation period under the New Act can be postponed\(^{23}\), suspended\(^{24}\), or restarted\(^{25}\) in certain circumstances.

**Special Rules for Determining the Date of the Act or Omission**

The New Act creates special rules that apply to determine the date on which an “act or omission” took place for certain enumerated claims or circumstances. Many of the types of claims that are subject to the special rules associated with the ultimate limitation period are the same as those subject to the special discovery rules.

One of the special rules deems that an “act or omission” is to have occurred on the date a claim is “discovered”. Many of the types of claims that are referred to in this section are the same as those subject to the special discovery rules providing a generous application of when time starts to run for these types of claims. This is so in the following circumstances:

- claims for fraud or recovery of trust property
- claims for a future interest in trust property
- claims based on demand obligations
- claims to realize or redeem security\(^{26}\)
- circumstances in which the defendant has wilfully concealed the existence of a claim\(^{27}\)

These provisions have two interesting implications. First: the practical effect of these rules is to render the ultimate limitation period meaningless for these claims, since the 2-year basic limitation period will also run from the date of discovery. Second: whereas the ultimate 30 year limitation under the Old Act truly was an “ultimate” limitation in the sense that it could not be postponed under any circumstances, the ultimate limitation

---

\(^{23}\) Section 21(2),(3)
\(^{24}\) Section 25
\(^{25}\) Section 24
\(^{26}\) Section 21(2)(b)
\(^{27}\) Section 21(3)
period under the New Act can be postponed indefinitely pursuant to these deeming provisions.

Some further claims, other than those subject to the special discovery rules set out above, are also subject to the generous modified “act or omission” that can deem the act or omission to have occurred on a later date. These include the following:

- claims for contribution or indemnity
- claims by minors
- claims by persons under a disability;\(^{28}\) or
- claims by claimants who have become a person under disability after discovery of the claim\(^{29}\).

The modified “act or omission” rules are less generous to the prospective plaintiff in claims arising out of conversion. For such claims the act or omission occurs on the “day on which the property was first converted by any person”.

G. Transition

The transition provisions under the New Act will govern the treatment of claims based on acts or omissions occurring before June 1, 2013. Fortunately, the Ministry of Justice has produced an excellent flow-chart taking into account a range of complexities that may come into play in the application of the transition provisions. A copy has been attached as Schedule ‘B’ for reference.

There will be three types of claims before the Court that will be subject to the Limitation Act.

The first are those in which the act or omission took place, and a claim has been initiated, prior to June 1, 2013. These claims are subject to the Old Act. The transition rules do not apply.

Second, are claims in which the act or omission took place before June 1, 2013 and no court proceedings have been initiated by June 1, 2013. These claims will be subject to the transition rules.

The third group of claims are those in which the act or omission took place after June 1, 2013 and therefore no action was commenced prior to the New Act coming into force. These will be governed by the New Act. The transition rules do not apply.

Application of the Transition Rules

When approaching a claim that may be governed by the transition provisions, there are three basic questions to ask:

1. Is the claim a “pre-existing claim?”

\(^{28}\) Section 21(2)(c),(d),(e)

\(^{29}\) Section 25
To determine whether the claim is considered “pre-existing” the following must be true:

a) the claim is based on an act or omission that took place before June 1, 2013; and
b) no court proceedings have been commenced before June 1, 2013.

2. Has the time limitation under the Old Act expired?

If it has, the claim cannot be brought.

3. Was the claim “discovered” before or after June 1, 2013?

This test in essence blends the two Acts, the discoverability test is applied to acts or omissions that took place prior to June 1, 2013.

If the claim was discovered before June 1, 2013 the time limits under the Old Act apply. The entirety of the Old Act is imported into the New Act as if the cause of action had accrued on the ‘discovery date’. If the claim was discovered after June 1, 2013 the New Act will apply.

The following table sets out how to apply the Act to a “pre-existing claim” depending upon the answers to questions 1 and 2.

<table>
<thead>
<tr>
<th>Act or Omission</th>
<th>Discovered</th>
<th>Proceeding commenced by June 1, 2013</th>
<th>Basic Limitation</th>
<th>Ultimate Limitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before June 1, 2013</td>
<td>Before June 1, 2013</td>
<td>No</td>
<td>Old Act applies as if the cause of action had accrued on the “discovery date”</td>
<td>Old Act applies as if the cause of action had accrued on the “discovery date”</td>
</tr>
<tr>
<td>Before June 1, 2013</td>
<td>After June 1, 2013</td>
<td>No</td>
<td>The New Act applies</td>
<td>The New Act applies as if the “act or omission” had occurred on the later of (A) June 1, 2013 and (B) the date determined by the special “act or omission” rules</td>
</tr>
</tbody>
</table>

The exemptions referred to in s.3 of the new Act will apply to pre-existing claims that are discovered after June 1, 2013. Additionally, claims relating to sexual misconduct involving a minor, sexual assault, and assault or battery in certain relationships may be brought regardless of “whether or not the claimant’s right to bring the court proceeding was at any time governed by a limitation period” and regardless of when discovered.

30 Section 30(3)
31 Section 30(4)(a)
32 Section 30(5)
We note that there are special rules that apply in relation to pre-existing negligence claims against medical professionals and hospitals.\(^{33}\)

The operation of the transition provisions may lead to some interesting results.

**Example**

**Scenario:**

Cause of action for negligence/breach of contract, resulting in an economic loss only arising on May 31, 2013.

If the claim is discovered on the **same day** it arises, the time limits under the Old Act apply,

*Basic Limitation:* 6 years from accrual (deemed to be the discovery date), expiring May 31, 2019

*Ultimate Limitation:* 30 years from accrual (to be the discovery date), expiring May 31, 2043

If the claim is discovered the next day, **June 1, 2013**, the time limits under the New Act govern:

*Basic Limitation:* 2 years from discovery, expiring May 31, 2015

*Ultimate Limitation:* 15 years from June 1, 2013, expiring June 1, 2028

There are situations in which the ultimate limitation period in the New Act may be added to a postponed limitation period under the Old Act but those situations are beyond the scope of this paper.

**Key Points:**

- Don’t throw away your copies of the Old Act! The Old Act will continue to have relevance with respect to pre-existing claims for many years to come.
- The transitions provisions should not operate to eliminate any claims overnight on June 1, 2013. When considering a given pre-existing claim, the safest course of action is to assume that the limitation period will expire on the earlier of: (i) the expiry of the limitation period under the Old Act; and (ii) June 1, 2015.
- When determining record keeping policies, consider that the new Act may operate to extend the ultimate limitation period in respect of some pre-existing claims beyond 30 years.

**H. Tolling Agreements**

The New Act does not speak to the effectiveness of tolling agreements (agreements to postpone the running of time with respect to a limitation period). Nor does it speak to whether rights conferred by the Act can be extended, shortened, or otherwise modified between parties through a private agreement.

\(^{33}\)Section 30(3),(4)(b)
It is likely that tolling agreements will be effective and enforceable subject to the same limitations and rules of common law and equity as they have been under the Old Act. Tolling agreements may therefore prove a useful tool to circumvent some of the more strict provisions of the New Act. For example, tolling agreements may be used by a defendant seeking contribution or indemnity from third parties to permit putting off the contribution or indemnity claims until the primary action is further advanced.

I. Non-Judicial Remedies

The New Act makes it clear that any out-of-court remedies that parties may have agreed to are also extinguished when the relevant limitation period expires.

The effect of these rules on long term contracts will need to be considered. Many long-term contracts, particularly in the construction industry, provide that certain disputes arising under the contract will be dealt with at the end of the project. Many times the disputes are to be addressed by binding commercial arbitration. If claims arise near the beginning of the contract term, and if the project is not completed until 2+ years after the claim arises, then such claims will be statute-barred, even though a binding contract exists that calls for commercial arbitration. To avoid this situation, it may be wise to (i) enter into tolling agreements, and/or (ii) obtain acknowledgements prior to the expiration of the 2 year basic limitation period. You will recall that a proper acknowledgement restarts the time period. Parties can commence an action to keep the matter alive, but this often is not the most desirable option and may be subject to attack if binding arbitration is the agreed-to means of proceeding. We will likely see new terms built into long term contracts to address these issues.

Key Points:
- Many long-term contracts may effectively bar certain claims. Tolling agreements, acknowledgements or new commercial terms may need to be brought into such contracts.

J. Conclusion

The New Act is easier to read and understand, it is more consistent with similar type legislation in other provinces and it maintains the special status of a number of types of claims that had been identified in the Old Act. The effect of the changes to the Act will be seen in both the solicitors and litigators practices. Solicitors will have to address long term liabilities and obligations that may arise beyond the time frames set out in the Act. Litigators will have to change their approach to claims regarding contribution and indemnity. The emphasis on discoverability will also lead to some interesting litigation, particularly with the onus now being on a Respondent to prove when time ought to have started to run.


35 Section 27
<table>
<thead>
<tr>
<th>Old Act</th>
<th>New Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation periods of 2, 6, or 10 years depending upon the cause of action, or nature of damages; Triggered by accrual</td>
<td>A single “basic limitation period” of 2 years; s.6 Triggered by discovery</td>
</tr>
<tr>
<td>Specific provisions permitting the postponement of the running of time; Postponement for “discoverability” is permitted only in certain situations and for certain types of claims; Onus is on the plaintiff to establish postponement.</td>
<td>The concept of discovery is now built-in to the triggering mechanism for all claims; Onus on the defendant to establish that a given claim has been discovered;</td>
</tr>
<tr>
<td>Ultimate limitation period of 30 years for most types of claims; Special ultimate limitation period of 6 years for negligence claims against medical professionals and hospitals; Triggered by accrual (but not subject to any postponement provisions)</td>
<td>A single “ultimate limitation period” of 15 years; s.21 Triggered by the occurrence of the ‘act or omission’; Subject to postponement in more limited circumstances than the basic limitation period</td>
</tr>
<tr>
<td>Claims for contribution and indemnity subject to the general 6 year limitation period; Triggered at accrual; i.e. at the time the judgment is rendered against the defendant</td>
<td>Claims for contribution and indemnity subject to 2 year basic limitation period; Will generally be triggered at the time the defendant is served with pleadings (unless the existence of the claim for contribution or indemnity against a 3rd party is discovered at a later date);</td>
</tr>
<tr>
<td>Certain claims are not subject to any limitation period;</td>
<td>List of exempted claims and legal proceedings expanded to include, among other things: (i) claims for arrears for child support or spousal support pursuant to a judgment or agreement filed with the court; (ii) an appeal; (iii) proceedings to enforce an injunction or restraining order; (iv) proceedings to prosecute an administrative offence under the Offence Act;</td>
</tr>
</tbody>
</table>
Transition Rules Flowchart for the new Limitation Act

This document was developed by the Civil Policy and Legislation Office, Ministry of Justice. It is posted as educational material to support the transition to the new Limitation Act. It is not intended to constitute legal advice and should not be relied upon for those purposes.

START: Did the act or omission occur before June 1, 2013?

YES

NO

The new Limitation Act applies. The transition rules do not apply.

*NOTE: If the civil claim is based on sexual assault or assault or battery (of a minor or dependant) as described in s.3(1)(i),(j) or (k) of the new Limitation Act, no limitation period applies. It does not matter if discovery occurred before or after June 1, 2013. It does not matter if a former limitation period has expired.

Has a court proceeding been commenced before June 1, 2013?

YES

NO

The former Limitation Act, R.S.B.C. 1996, c. 266 applies. All former limitation periods and exemptions apply.

Has a limitation period under the former Limitation Act expired*?

YES

NO

The claim is statute-barred.

Was the claim “discovered” on or after June 1, 2013?

NO

YES

The former Limitation Act applies. All former limitation periods and exemptions apply.

Is the claim listed in s.3 [exempted claims] of the new Limitation Act?

NO

YES

The new Limitation Act applies. The 15 year ultimate limitation period starts to run on the later of: June 1, 2013 or the day the act or omission takes place under s. 21(2)** of the new Limitation Act. The 2 year basic limitation period and the discovery rules in the new Limitation Act apply, unless otherwise specified. The exemptions in sections 2 and 3 apply.

Would the claim be governed by the 6 year ultimate limitation period under s.8(1)(a) or (b) [medical ULP] of the former Limitation Act?

NO

YES

The 6 year medical ULP in the former Limitation Act continues to apply. The 2 year basic limitation period and the discovery rules in the new Limitation Act apply.

Note: The new Limitation Act is a default statute. If another provincial statute contains a limitation period, the new Limitation Act does not apply, except to the extent provided for in the other provincial statute. The new Limitation Act is not yet in effect. Until June 1, 2013 the former Limitation Act continues to apply.

**Special ULP start dates for claims involving conversion, fraud, fraudulent breach of trust, future interest in trust property, demand obligations, security realization or redemption, contribution or indemnity, a minor, or a person under a disability.