

counting down the days to British Columbia's new Limitation Act – June 1, 2013

On June 1, 2013, British Columbia's new *Limitation Act* will come into force ("new *Limitation Act*").¹ Once in force, the new *Limitation Act* will repeal and replace British Columbia's current *Limitation Act* ("former *Limitation Act*"),² and will establish a new "default regime" for limitations periods in the province.³ The new *Limitation Act* is intended to be easier to understand and is meant to bring the province's limitations laws in harmony with the laws in other provinces.⁴

Important changes resulting from the new *Limitation Act* include:

1. A single 2 year limitation period for all civil claims - this is a marked shift from the various limitation periods prescribed under the former *Limitation Act*.⁵ There will be certain exceptions to the 2 year limitation period, including: civil claims to enforce a monetary judgment, exempted claims enumerated within the

¹ Bill 34, *Limitation Act*, 4th Sess, 39th Parl, British Columbia, 2012.

² *Limitation Act*, RSBC 1996, c 266.

³ British Columbia, Ministry of Justice, *Limitation Act*, (2012).

⁴ *Ibid.*

⁵ Supra note 2.

statute, and claims that have limitation periods prescribed by other statutes.⁶

2. A 15 year ultimate limitation period based on the date the act or omission occurred, which has been reduced from the previous 30 year ultimate limitation period.⁷

As a result of the significantly shortened time periods for commencing a claim in British Columbia, claimants will need to be even more mindful of the date on which a potential claim is discovered. Indeed, many claimants will now need to make the decision to commence a lawsuit much sooner than was typically required before. Claims arising out of breaches of contract or demand loans, for example, which typically had a six year limitation period under the former *Limitation Act*, must now be commenced within two years from the date of discovering the claim.⁸ If a limitation period lapses before a lawsuit is commenced, a claim may be statute barred thereby preventing most remedies that would have otherwise been available to the claimant, including "non-judicial remed[ies]".⁹

The new *Limitation Act* sets out specific conditions for when a claim is "discovered".¹⁰ Due consideration should be given to these sections as well. In general, a claim is discovered "on the first day on which the person knew or reasonably ought to have known all of the following:

- (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;

⁶ Supra note 1 at ss 6-7.

⁷ *Ibid*

⁸ *Ibid* at s 6.

⁹ *Ibid* at s 27.

¹⁰ *Ibid* at s 8.

(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."

All four of the criteria set out above must be met before a claim is deemed to have been "discovered." Additionally, the new *Limitation Act* outlines Special Discovery Rules for certain types of enumerated claims. For example, claims for "demand obligations,"¹¹ and claims to "realize or redeem security,"¹² have specific discoverability rules outlined within the statute.

The former *Limitation Act* will apply to most claims discovered before June 1, 2013.¹³ That is, the new *Limitation Act* will not operate retroactively in most situations. There are, however, certain exceptions to this, which are necessarily fact-dependent. We anticipate that the courts will be called upon to interpret and clarify the finer points of the new *Limitation Act* once it comes into force. In the days that remain before June 1st, companies and individuals may 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 *Limitation Act* may impact such disputes moving forward.

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For more information on this topic, please contact:

¹¹ *Ibid* at s 14.

¹² *Ibid* at s 15.

¹³ *Ibid* at s 30.

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[a cautionary note](#)

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