

When Will British Columbia's Former *Limitation Act* Still Apply to Civil Claims in the Province?

There has been sparse judicial commentary regarding British Columbia's new *Limitation Act*¹ since it came into force less than a year ago on June 1, 2013. In *Hanson v. Sharma*,² however, the British Columbia Supreme Court recently provided us with a glimpse at the Court's interpretation of the transitional provisions in new *Limitation Act*, and helped clarify when the former *Limitation Act*³ ought to still apply to civil proceedings in the province.

In *Hanson*, the plaintiff sought leave to further amend his notice of civil claim. The defendants opposed the amendments, in part, on the basis of their allegation that the relevant limitation period had expired under the new *Limitation Act*. The proceeding arose out of lease and asset purchase agreements that were entered into in 2007. The Court addressed whether the six-year limitation period under the former *Limitation Act* applied to the facts alleged or whether the two-year general limitation period under the new *Limitation Act* applied. The original notice of civil claim had been filed before June 1, 2013 and the original claims were not time barred under the former *Limitation Act*.

¹ SBC 2012, c 13 ["new *Limitation Act*"].

² 2014 BCSC 478 ["*Hanson*"].

³ RSBC 1996, c 266 ["former *Limitation Act*"].

In its decision, the Court allowed the plaintiff to further amend his claim, because there was no evidence that demonstrated that the defendants were or would be prejudiced by the further amendments.⁴ With respect to the transitional provisions of the new *Limitation Act*, the Court held as follows:

[35] In my judgment, the new *Limitation Act* transitional rules are quite straight forward. The questions that should be asked and answered are: Did the act or omission giving rise to the cause of action occur before June 1, 2013, i.e., the date the new *Limitation Act* was enacted? If the answer is "No", the new *Limitation Act* applies and the transitional rules do not apply. If the answer is "Yes", the question becomes: Has an action been commenced before June 1, 2013? If the answer is "Yes", the old *Limitation Act* applies with all former limitation periods and exemptions.⁵

The Court held that since the proceeding had been commenced before the new *Limitation Act* came into force, the former *Limitation Act* governs the claim.⁶ Section 30 of the new *Limitation Act* outlines the transitional provisions in the new *Limitation Act*. The Court's decision in *Hanson* is consistent with a plain reading of section 30 of the new *Limitation Act*, and with the literature prepared by the province in contemplation of the new *Limitation Act* being brought into force.⁷

Generally, the new *Limitation Act* does not appear to be retroactive and most civil claims arising prior to June 1, 2013 will be governed by the former *Limitation Act*. As previously discussed, the new *Limitation Act* has, in some cases, significantly shortened the time

⁴ *Ibid* at para. 41.

⁵ *Ibid* at para. 35.

⁶ *Ibid* at para. 36.

⁷ See e.g. British Columbia, Ministry of Justice, *Transition Rules Flowchart for the new Limitation Act*.

period for bringing a civil claim in the province.⁸ However, for claims commenced prior to June 1, 2013, the longer limitation periods under the former *Limitation Act* should mainly still apply.

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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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⁸ Jamieson Virgin, *counting down the days to British Columbia's new Limitation Act– June 1, 2013*.