

## Part 6 – General

### Section 27 – Non-judicial remedies

- Section 27 prevents a person from exercising a non-judicial remedy once the governing limitation period has expired. A non-judicial remedy is a remedy that a person is entitled to exercise (by law or by contract) with respect to a claim without court proceedings (i.e., an out-of-court remedy).
- An example is repossession: where a vendor sells a person a car on credit, and the purchaser fails to pay off the balance, the vendor cannot go and take the car back, or repossess the car, once the governing limitation period has expired.
- The former Act contained an extinguishment clause which provided that for some causes of action a person's legal right, and in certain cases involving property, a person's title to property, was extinguished upon the expiry of a limitation period.
- The non-judicial remedies provision differs from the extinguishment clause in that once a limitation period expires a person is prohibited from exercising a legal remedy, rather than having a legal right extinguished.
- Section 27 simplifies the law, as it applies to all claims, not only an enumerated list of causes of action. As well, it clarifies that the consequences that flow from the expiry of a limitation period (i.e., prohibiting a person from bringing a civil court proceeding) also apply to a person who wishes to exercise a non-judicial remedy.

### Section 28 – Adverse possession

- Section 28 continues to abolish title by adverse possession.
- Adverse possession is a term that refers to a method of acquiring title to real property by possessing the land for a certain period of time, usually set out in a statute, when that use of land is continuous and exclusive.
- Section 28(1) clarifies that no right or title in or to land may be acquired by adverse possession (unless another Act specifies otherwise).
- Section 28(2) allows any right or title acquired by adverse possession before July 1, 1975 to continue. This date is the date the former Act was first brought into force. Prior to this date it was possible in B.C. to possess land with only a possessory title, called an absolute fee, and for a person to acquire this land based on adverse possession.

The new *Limitation Act* came into effect on June 1, 2013.

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- Since 1905, all new applications to bring land within the registry system were regarded as applications for certificates of indefeasible title (that is, the person named on title is the absolute owner of an indefeasible fee simple against the whole world). However, some of the old absolute fees giving an owner possessory title are still in existence (and the old absolute fees can be acquired by adverse possession).
- Section 28 carries forward sections 12 and 14(5) of the former Act.

### Section 29 – Power to make regulations

- This section provides the Lieutenant Governor in Council with the power to make regulations for the purpose of carrying out the intent of the new Act.
- There were no regulations in place under the former Act.

### Section 30 - Transition

- The transition rules did not apply until the new Act is brought into force on June 1, 2013 and the former Act was repealed. Prior to June 1, 2013, the former Act applied.
- This section defines “former Act” to mean the repealed former Act, so the term “former Act” will be used throughout this explanation to accurately describe the transition rules.
- This section sets out the transition rules for determining how to calculate the limitation periods established by the new Act. The transition rules apply to pre-existing claims where:
  - 1) the former 30-year ultimate limitation period (or 6-year ultimate limitation period) had not expired before June 1, 2013;
  - 2) the act or omission (on which the legal claim is based) occurred before June 1, 2013; and
  - 3) no court proceeding has been started.

Note: this provision does not restrict the right of a person to bring a proceeding at any time in relation to a civil claim of sexual assault or based on assault or battery (minors and dependency relationships) in sections 3(1)(i), (j) and (k) of the new Act.

- Claims that were “discovered” before June 1, 2013 are subject to the limitation periods in the former Act. As the discoverability provision in the former Act (ss. 6(3), (4), (5) & (6)) did not apply to all claims, a

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person must look to the definition of “discover” in the new Act. The definition directs a person to the discovery rules in the new Act [Divisions 2 and 3 of Part 2]. Using the discovery rules a person can then determine whether the test for discovery has been met. If it has, the limitation periods in the former Act apply (i.e., no change).

- Claims that are “discovered” on or after June 1, 2013 are subject to the transition rules. There are rules that apply to two situations:
  - 1) If the claim was previously subject to the special six-year medical ultimate limitation period, (i.e., the claim was against a hospital, hospital employee or medical practitioner) the six year medical ultimate limitation period continues to apply. The ultimate limitation period runs from the date of accrual (i.e., the date of damage). This means there is no change from the former Act. The basic limitation period runs from the date of discovery using the discovery rules in the new Act. The basic limitation period runs for two years, unless specified otherwise in the new Act.
  - 2) If the claim was previously subject to the 30-year ultimate limitation period, the new 15-year ultimate limitation period applies. Time starts to run from the later of:
    - June 1, 2013; or
    - the day the act or omission takes place under section 21(2) [*the special act or omission dates for conversion, fraud or fraudulent breach of trust claims, contribution or indemnity claims, etc*]. The basic limitation period runs from the date of discovery using the discovery rules in the new Act. The basic limitation period runs for two years, unless specified otherwise in the new Act.

### Summary:

- This means that for most claims discovered on or after June 1, 2013, the two-year basic limitation period will start to run from the date of discovery, and the 15-year ultimate limitation period will start to run from June 1, 2013. The ultimate limitation period will expire on June 1, 2028.
- The expiry of the ultimate limitation period on June 1, 2028 allows plaintiffs enough time to fairly discover any pre-existing claims, while creating a definite end-point of liability for defendants.
- The transition rules are aimed at achieving a transition from the former limitations regime to the new limitations regime that is fair for both plaintiffs and defendants.

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- Preserving the former Act's rules for plaintiffs that have already discovered their claims protects those claimants that may have received legal advice or made decisions based on the rules under the former Act from the burden of having to comply with the new Act.

For further information please see:

[Exposure to Liability – Effect of Transition Rules Beginning June 1, 2013](#)

[Transition Rules Flowchart for the new \*Limitation Act\*](#)

[Questions and Answers](#)

[Table of Concordance](#)

### **SECTION 31 - Repeal**

This section repealed the former Act. The new Act has repealed and replaced the former Act.

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