

# New *Limitation Act*

## Questions and Answers

### General

#### Q: Why change the current *Limitation Act*?

- The current *Limitation Act* (“current Act”) has not been comprehensively reviewed since its introduction in 1975. Reform of the current Act responds to the following:
  - Calls for change from a broad range of stakeholders including the building design and construction sectors (architects, engineers, builders, developers, etc.), the Union of British Columbia Municipalities, local governments, and professional groups like dentists and dental surgeons.
  - A number of studies and reviews have identified the need for reform, including those by the former British Columbia Law Reform Commission in 1990, the British Columbia Law Institute in 2002 and the provincial government’s Civil Liability Review in 2002.
  - Alberta, Saskatchewan, Ontario and New Brunswick have all reformed their limitation statutes to reflect a model uniform limitations statute developed by the Uniform Law Conference of Canada.
  - Finally, it made sense, based on the need to remain competitive and the cost of doing business, to bring B.C.’s act into line with legislation in other provinces.
- Identifying which limitation period applies and when it starts to run is very difficult under the current law. Members of the public, business owners and even lawyers find this area of the law to be very complicated. Reforms will simplify and clarify the law, while striving to find the correct balance between the competing sets of rights of plaintiffs (those starting civil actions) and defendants (those defending them)<sup>1</sup>; that is, between a plaintiff’s need to access the civil justice system and a defendant’s need for certainty and finality.

#### Q: Was there consultation on the changes to the *Limitation Act*?

- Since 2007 the Ministry has been reviewing the current Act. The law reform project began with a Green Paper, which was used in public consultations in 2007. We heard from 290 groups and individuals during the public consultations. Proposals for legislative reforms were outlined in a 2010 White Paper, which included a consultation draft *Limitation Act*. 68 people and organizations made submissions to the White Paper. In addition, an advisory group of legal experts provided advice on the consultation draft *Limitation Act*. Feedback from both rounds of consultations and from the advisory group helped shape the new *Limitation Act* (“new Act”).

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<sup>1</sup> The term “plaintiff” refers to the person who starts a civil lawsuit in a court of law in order to seek a legal remedy. The person who defends the civil lawsuit (i.e., the person who is being sued) is the “defendant.”

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### **Q: When will the new Limitation Act come into effect?**

- The new Act will come into effect on June 1, 2013. It will repeal and replace the current Act.
- Until that time, the current Act continues to apply. However, careful attention should be paid to the transition rules to determine if and when the new Act will apply to a specific fact situation. (See the Questions and Answers under “Transition Rules” below for more information.)

### **Q: What does the new Limitation Act apply to?**

- The new Act will govern how long a person has to bring a civil lawsuit if no other statute contains a specific time period.
- Where another more specific law sets a limitation period, that specific limitation period applies rather than the defaults contained in the new Act. (For example, the Civil Forfeiture Act sets a 10-year limitation period to apply to the court for a forfeiture order.)

### **Q: What are the key changes in the new Limitation Act?**

- Moving from multiple basic limitation periods based on the type of legal action, to a single two-year basic limitation period for all civil claims. Exceptions to this are civil claims that enforce a monetary judgment, exempted claims and actions that have limitation periods set by other statutes. A single basic limitation period simplifies the law, eliminates uncertainty over which limitation period applies and ensures that individuals pursue their legal claims within a reasonable time period after discovering the right to bring an action.
- The two-year basic limitation period will start to run once a plaintiff “discovers” his or her legal claim.
- Moving from a general 30-year ultimate limitation period and six-year medical ultimate limitation period to a single 15-year ultimate limitation period that applies to all claims.
- Changing the commencement of the ultimate limitation period from an “accrual” model to a model that starts the clock running based on an “act or omission.”
- The changes to the duration and commencement of the ultimate limitation period provide significantly more certainty to determining when liability begins and ends.
- Transition rules that explain how the new Act applies to plaintiffs who have pre-existing claims.

### **Q. Why is the ultimate limitation period 15 years? (The White Paper put forward 10 or 15 years.)**

- The Uniform Law Conference of Canada recommended 15 years and other provinces – including Saskatchewan, Ontario and New Brunswick – have adopted a 15-year ultimate limitation period.

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- In listening to the feedback on the White Paper, the government decided 15 years reflected a more moderate approach to balancing plaintiffs' and defendants' interests.
- Most claims are resolved in a timely way before 15 years – it would be rare for a legal dispute to go on for 30 years.
- A 15-year ultimate limitation period reflects a balanced approach to reforming limitations law. In addition, reforms start time running in the ultimate limitation period from the act or omission (under the current law time runs from accrual of the cause of action). Reducing the duration of the ultimate limitation period and starting it running from the act or omission will make the rules more consistent with other provinces, reduce stale-dated claims, reduce costs to businesses and simplify and clarify the new Act.

**Q: What is the difference between the basic and ultimate limitation periods?**

- The current Act does not define basic and ultimate limitation periods.
- The new Act contains two types of time periods: basic limitation periods and an ultimate limitation period. These time periods govern how long a person has before he or she must start a civil lawsuit.
- The basic limitation period is the time period that normally applies, absent special circumstances that would justify stopping the clock. The basic limitation period runs from the date a person “discovers” that he or she has a legal claim. A person has two years from the day a claim is discovered to obtain legal advice and start a civil lawsuit (and ten years to enforce a judgment), unless otherwise specified in the new Act.
- The ultimate limitation period describes the maximum outside time limit past which a basic limitation period cannot extend. The ultimate limitation period runs from the date of the occurrence of the act or omission giving rise to the claim.
- The new Act contains a single 15-year ultimate limitation period. This means a person has 15 years from the act or omission date to discover his or her legal claim and, within the basic limitation period, start a civil lawsuit.

**Q: Has the discovery test in the new Act changed from the discovery test in the current Act?**

- The current Act contains a discoverability provision that postpones the running of time for an enumerated list of causes of action. As a result, it does not apply to all claims.
- Beginning with Alberta in 1999, several provinces and the Uniform Law Conference of Canada have attempted to codify the discoverability principles that are to be applied by the courts in determining when time starts to run in the basic limitation period.
- B.C.'s new Act follows a similar test for discovery in section 8. The provision simplifies and modernizes the current discovery provision, which has proven to be one of the most difficult sections in the current Act, and the subject of much litigation.
- The discovery test will apply to all claims to remedy an injury, loss or damage that occurred as a result of an act or omission.

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**Q: How will the reduction in the basic limitation period from six years to two years affect creditors who are trying to recover unpaid debts?**

- Claims for unpaid debts or unfulfilled obligations owing to a creditor will be governed by the two-year basic limitation period, which runs from the date the claim is discovered.
- A two-year basic limitation period is intended to encourage people to act on their legal problems quickly and prevent stale-dated claims. Having a two-year basic limitation period that applies to all claims will simplify the law and reduce uncertainty about which basic limitation period applies to a set of facts.
- The two-year period is designed to provide sufficient time for a plaintiff to discover a claim, seek legal advice, consider the available options and commence court proceedings.
- This change brings B.C.'s law in line with limitations legislation in Alberta, Saskatchewan, Ontario and New Brunswick, which all have a single two-year basic limitation period.

**Q: Are there any new exemptions from limitation periods that I should be aware of?**

- All of the actions that are exempted from limitation periods in section 3(4) of the current Act have been carried forward to the new Act. These include:
  - claims for possession of land,
  - court proceedings to enforce a local judgment for the possession of land,
  - claims by a debtor or a secured party in possession of collateral,
  - claims by a landlord to recover possession of land,
  - court proceedings to enforce an injunction, a restraining order, an easement, restrictive covenant or profit à prendre,
  - court proceedings in which the only relief sought is to obtain a declaration,
  - claims for title to property by a person in possession, and
  - claims relating to misconduct of a sexual nature and relating to sexual assault.
- In addition, the list of exemptions has been broadened to include:
  - an appeal,
  - a judicial review application,
  - a court proceeding under the Offence Act to prosecute an offence,
  - a claim that is subject to a limitation period established by an international convention or treaty that is adopted by an Act,

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- a claim for possession of land by a person who has a right to enter for breach of a condition subsequent, or a right to possession arising under possibility of reverter of a determinable estate,
- a claim relating to assault or battery if the claimant was a minor or living in a personal or dependency relationship,
- a claim for arrears of child support or spousal support payable under a judgment or filed agreement, and
- fines and penalties under the Offence Act.
- The new Act specifically states that it does not apply to a claim or court proceeding for which a limitation period has been established under another enactment.
- The new Act does not apply to court proceedings based on existing aboriginal and treaty rights recognized and affirmed in the Constitution Act, 1982. These proceedings will be treated as though the current Act remains in force. This means that a basic limitation period of two, six or 10 years and an ultimate limitation period of 30 years could continue to apply to these claims.

## Minors and Adults Under a Disability

### Q: How do the rules work to suspend limitation periods for minors and adults under a disability?

- The new Act carries forward the rule that both the basic and ultimate limitation periods do not run while a person is a minor. A minor is a person who is under 19 years of age.
- The new Act carries forward the rule that the basic limitation period does not run while a person is under a disability. A “person under a disability” is defined in the new Act as an adult person who is incapable of or substantially impeded in managing his or her affairs.
- However, a significant change in the new Act is that both the basic and ultimate limitation periods are suspended while a person is under a disability. Under the current Act, only the basic limitation period is suspended during adult disability.

## Agreements

### Q: The new Limitation Act is silent about agreements to extend or shorten limitation periods. Is this intentional?

- The current Limitation Act is silent on the issue of agreements to extend or shorten limitation periods.
- The White Paper asked whether it would be preferable for the new Act to remain silent on the issue of agreements, leaving it up to judges to ensure that agreements affecting the operation of limitation periods do not unfairly target parties with weaker bargaining power.
- Stakeholder feedback on this issue was divided. After a review of stakeholder feedback and a further analysis of the current case law, it was determined that the new Act should

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remain silent on the issue, leaving it up to judges to decide on a case-by-case basis whether an extension or reduction of a limitation period by contract should be allowed.

## Contribution or Indemnity

### Q: What are the rules around contribution or indemnity claims?

- Under the current Act there is potential for lengthy delays between the running of time in the original lawsuit and the date a third party receives notice of a claim against him or her for contribution or indemnity.
- The new Act sets out that a two-year basic limitation period and 15-year ultimate limitation period apply to contribution or indemnity claims.
- The basic limitation period runs from the later of:
  - the day the claimant for contribution is served with the original pleading (i.e., from which the claim for contribution or indemnity would arise), or
  - the day the claimant knew or reasonably ought to have known that a claim for contribution could be made.
- Adding a “later of” two dates avoids the potential unfairness of having time run in the basic limitation period against a claimant who may not be aware of a potential contribution or indemnity claim against a third party at the service date (of the original lawsuit).
- The ultimate limitation period runs from the day the claimant for contribution is served with the original pleading (i.e., from which the claim for contribution or indemnity would arise).

## Government Debt

### Q: Why is government being treated differently for collection of debt?

- There is a category of entities in government called “tax payer supported entities” – these are the organizations that will continue to operate under a six year limitation period for collection of debt.
- This category of organizations does not include commercial crown corporations or organizations that operate self-sufficiently.
- Tax payer supported entities deliver government programs and services that are often based on public policy for the benefit of citizens.
- In many situations, government has no discretion over who it provides certain services to, and continues to provide services to citizens in default of their obligations to government (e.g., ambulance fees, MSP premiums).
- Debts collected represent taxpayers’ money and designing limitation periods so that debts can be collected by government is in the public interest.

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## Physical Assault

### **Q: Why did the government exempt claims based on physical assault where a minor or dependent adult is involved?**

- To be clear, this exemption applies to civil claims for damages that arise out of the occurrence of a physical assault (i.e., an assault or battery) against a minor, or against an adult in a personal or dependent relationship with his or her abuser. Both the current Act and new Act do not govern criminal proceedings.
- When the current Act was amended in the mid 1990s to include an exemption for sexual assault but not physical assault, no other province included an exemption for physical abuse.
- Currently the limitation acts in Saskatchewan, Ontario and Manitoba have provisions that exempt physical assault claims.
- Just as a victim of sexual assault in certain circumstances cannot be expected to recognize the wrongness of what has happened to him or her and have the ability to bring a claim within a limitation period, vulnerable victims of physical abuse are equally at risk. Recent case law and academic literature has recognized that physical abuse of a minor or an adult in a personal or dependent relationship with their abuser has long-term psychological and physiological effects on individuals.
- As a result of feedback on the White Paper and recent developments in other provinces across Canada, an exemption for physical assault claims has been added, for minors and for adults who were living in a personal or dependent relationship with their abuser.
- This reform protects vulnerable people from the operation of the reformed shorter limitation periods.
- It is not anticipated that this exemption will open the floodgates for claims. This has not occurred in other provinces that have included exemptions for physical abuse. It would be unlikely that frivolous claims will be advanced due to the fact that it is difficult and expensive to pursue a civil damage claim.

## Demand Loans

### **Q: Has the law changed for determining how time runs for a claim involving a demand loan?**

- Yes. A demand loan is a loan in which there is no fixed condition for repayment, which is payable upon demand. This type of loan often arises in the context of friends or family lending one another money and may be intended to run over the long term.
- The current Act is silent on how limitation periods apply to claims for demand loans. As a result, the common law applies to these types of claims. Under the common law, the limitation period starts to run from the date the demand loan is entered into.
- Reducing the basic limitation period from six to two years and not addressing how the limitation periods govern demand loans could have the result of unfairly prejudicing

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plaintiffs who enter into demand loans with friends and family, and who do not make a demand until several years later.

- To remedy this unfairness, and to allow people to structure demand loans over the long term, the new Act clarifies that both the two-year basic limitation period and 15-year ultimate limitation period apply to demand loans. Both limitation periods run from the moment of default after the demand for repayment is made.

## Acknowledgments

### Q: Has the new law changed with respect to an acknowledgment of liability?

- Under the current Act if a person acknowledges liability by either making a part payment of a debt or providing a written confirmation of liability, time is reset in the basic limitation period, but only up to the ultimate limitation period (i.e., the 30-year ultimate limitation period acts as a cap on acknowledgments).
- The new Act clarifies that time in both the basic and ultimate limitation periods will be restarted for claims where liability has been acknowledged.
- While many of the principles from the current Act (section 5) have been retained, the new Act clarifies what constitutes an acknowledgment for specific claims.
- For example, an acknowledgment can be a part payment of a sum or interest owing on a claim, or a written document signed by hand or by electronic signature of the claimant.

## Non-Judicial Remedies

### Q: What is the effect of the non-judicial remedies rule?

- A “non-judicial remedy” is defined to be a remedy that a person is entitled, by law or contract, to exercise with respect to a claim without court proceedings.
- In a case where a court proceeding cannot be commenced because of the expiration of a limitation period under the Act, a non-judicial remedy is also barred.
- For example, where a vendor sells a person a car on credit, and the buyer fails to pay off the balance, the vendor cannot go and take the car back, or repossess the car, once the limitation period to sue the buyer has expired. The act of repossessing the car is a non-judicial remedy.

## Personal Injury

### Q. What does the new Act mean for the average person with a personal injury claim?

- The basic limitation period has always been two years for personal injury claims and that will not change.
- The change to the ultimate limitation period means an individual now has up to 15 years from the date of the act or omission (i.e. accident) to discover that he or she has been injured and start a civil lawsuit.

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- However, if a person's injury gives rise to a claim against a doctor, hospital, or hospital employee for malpractice or negligence, the two-year basic limitation period will continue to apply, but a plaintiff will actually have longer to discover his or her legal problem and start a civil lawsuit, as the 15-years ultimate limitation period applies to all claims. Under the current Act, doctors, hospitals and hospital employees have a special six-year ultimate limitation period that applies to them.

## Adverse Possession

### Q. Does the new Act change the rules regarding adverse possession?

- No. The new Act continues to abolish right or title to land by adverse possession (unless another Act specifies otherwise).
  - For example: Person A builds a house on person B's land in 1980 and lives there for 30 years. The land is deep in the forest, and person B does not visit the land. Person B has title to the land. Person A cannot acquire title to the land because of the length of time that they lived on person B's land.
- The new Act allows any right or title acquired by adverse possession before July 1, 1975 to continue. This date is the date the current 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.
  - For example: Person A builds a house on person B's land in 1940 and lives there for 30 years. The land is deep in the forest, and person B does not visit the land. Person B only has possessory title to the land, meaning the land is an absolute fee. Person A acquires title to the land by adverse possession in 1970. The new Act allows this to continue, as adverse possession was acquired before July 1, 1975.

## Transition Rules

### Q: How do the transition rules apply?

- The transition rules are set out in section 30 of the new Act.
- For the purposes of explaining the transition rules, the current Act will be described as the "former Act."
- The transition rules apply when the act or omission that a claim is based on occurred before June 1, 2013 and the discovery of the claim occurred on or after June 1, 2013.
- If the limitation period applicable under the former Act expired before June 1, 2013, a person is unable to use the transition rules to revive their claim.<sup>2</sup>
- Where discovery of the claim occurs before June 1, 2013, the former Act applies.

<sup>2</sup> Unless the claim is based on a sexual assault or an assault or battery of a minor or person living in an intimate, personal or dependency relationship with their abuser (see s.3(1)(i),(j), or (k) [Exempted claims]). The transition rules have the effect of reviving such claims if they were previously extinguished (see s.30(5) of the new Act).

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- Where discovery of the claim occurs on or after June 1, 2013, there are two situations:
  - 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 ultimate limitation period continues to apply, running from the accrual of the cause of action (i.e., the date of damage). The two-year basic limitation period under the new Act will apply, running from the date of discovery, unless the new Act specifies otherwise.
  - If the claim was previously subject to the 30-year ultimate limitation period, the new 15-year ultimate limitation period applies as if the act or omission on which the claim is based occurred on the later of:
    - the effective date of the new Act (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 trust claims, contribution or indemnity claims, minority, adult disability, etc.].

The two-year basic limitation period under the new Act will apply, running from the date of discovery, unless the new Act specifies otherwise.

**For further information see:**

- Exposure to Liability – Effect of Transition Rules Beginning June 1, 2013
- Transition Rules Flowchart for the new Limitation Act
- Table of Concordance

**Q: Do the transition rules apply to exempted claims?**

- The transition rules say that for claims discovered on or after June 1, 2013 that are listed in section 3 of the new Act [exempted claims], no limitation period applies.
- In particular, the transition rules specify that they do not restrict a person’s right to bring a court proceeding for a claim based on a sexual assault or assault or battery against a minor, or a person in a personal, intimate or dependent relationship with their abuser, regardless of the fact that such a claim may have been governed by a limitation period in the past. The transition rules have the effect of reviving such claims if they were previously extinguished (see s.30(5) of the new Act).

**Q: How do the transition rules affect record-keeping policies that are based on limitation periods?**

- Organizations and professions make their own policies regarding record retention based on their claims experience and risk assessment.
- Many professions retain records based on the current 30-year ultimate limitation period. While some professions retain their records for 30 years from the date a record is created, from a liability perspective, liability exposure can span beyond that period since the current Act runs its ultimate limitation period from the date of “accrual” of the cause of action (i.e., when all the elements of the legal claim have accrued). For example, in a

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claim for negligence, time starts to run in the ultimate limitation period from the date of damage. In some cases, damage may occur many years after the act or omission date.

- The transition rules in the new Act govern claims where the act or omission has occurred prior to the effective date of the new Act but discovery has occurred on or after the effective date (June 1, 2013).
- Assuming that the date a record is created is the act or omission date, as a result of the transition rules, for records created before the effective date, the maximum potential exposure to liability will end on June 1, 2028 (due to the fact that the 15-year ultimate limitation period runs from June 1, 2013 to June 1, 2028). Of course, if a postponement rule in the new Act applies, such as minority or adult disability, potential liability may be extended.
- The closer the date a record is created comes to the effective date of the new Act (i.e., June 1, 2013), the shorter the window of potential liability (as the ultimate limitation period expires on June 1, 2028). Again, if a postponement rule in the new Act applies, such as minority or adult disability, potential liability may be extended.
- **NOTE:** For all records created on June 1, 2013 and later, the transition rules do not apply (assuming the record is created on the act or omission date). The 15-year ultimate limitation period will apply, running from the act or omission date.

**For further information see:**

- Exposure to Liability – Effect of Transition Rules Beginning June 1, 2013

**Q: What happens to plaintiffs who have their basic limitation period shortened under the new Act, but who have relied on legal advice and made decisions based on the current Act?**

- Plaintiffs who discover a legal claim before the new Act comes into force will be subject to the current Act. This means that the basic limitation period in the current Act applies. For example, if a plaintiff had a claim for breach of contract, the six-year limitation period would continue to apply.
- It would be impractical to require lawyers to review all of their files to identify and warn clients whose basic limitation period would decrease under the new Act. The rules under the current Act will continue to apply to plaintiffs who have already discovered a legal claim, so that those plaintiffs who have received legal advice or made decisions based on the existing legislation are not prejudiced.
- The transition rules apply in cases where a plaintiff has a legal claim which is based on an act or omission that occurs under the current Act, and the legal claim is discovered on or after the date the new Act comes into force. In such cases the new two-year basic limitation period will run from the date of discovery. The latest possible discovery date will be June 1, 2028 (due to the expiry of the new 15-year ultimate limitation period on June 1, 2028), as the claim will be statute-barred on this date.
- The transition rules provide a reasonable and balanced approach for both plaintiffs and defendants as we transition from the current Act to the new Act.

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