



BC's New Limitation Act Now in Effect

British Columbia's new Limitation Act came into effect June 1. It follows a national trend toward much shorter limitation periods for legal claims, which are intended to encourage people to act on their legal problems quickly and to prevent stale-dated claims. Alberta was the first Canadian province to move to a "modern" statute in 2000; Ontario, Saskatchewan and New Brunswick have since followed suit.

The biggest change is that there is now a single limitation period of two years for most claims. The two-year period begins when a claim is (or should have been) discovered. Under the old regime, most claims for debt or breach of contract were subject to a six-year limitation period; under the new act, such claims must be pursued more quickly. The change is less significant for claims for personal injury or property damage, which were already subject to a two-year limitation.

The new act also shortens the "ultimate" limitation period – the period of time after which a claim is extinguished even if it is not discovered. The new ultimate limitation is 15 years from the date of the act or omission giving rise to a claim, reduced from the former 30 years from the date on which a cause of action is complete (which, in many cases, was the date when damage occurred).

These changes will have some benefits to those in the construction industry. Numerous claims for deficient building construction – of which leaky condo cases are a well-known example – were brought many years after building construction occurred. Defendants in such cases would face difficulties arising from missing witnesses, lost documents and partial or non-existent insurance coverage.

At the same time, the changes will require new attitudes to advancing claims for compensation. No longer can parties engage in protracted pre-litigation negotiations or give long-term extensions of time to pay. Even waiting until the end of a construction project to resolve claims may lead to risks if the project duration approaches the two-year mark. For many in the construction industry, litigation and the costs inherent in it have been a course of last resort. Under the new regime, businesses may have to get used to suing first and asking questions later.

One of the goals of the new act is to improve clarity. It provides, among other things, specific rules as to when a claim is "discovered," which is the time when a limitation period begins to run. Most claims will be discovered on the first day when a person knew or reasonably ought to have known that: injury, loss or damage had occurred; the injury, loss or damage was caused or contributed to by an act or omission; the act or omission was that of the person against whom the claim may be made; and (having regard to the nature of the injury, loss or damage) a court proceeding would be an appropriate means to seek redress.

While this is the general rule, there are several additional rules governing when specific types of claims are discovered.

A limitation period can be extended if a potential defendant acknowledges liability in respect of the claim. The new act sets out a series of rules for when a claim is acknowledged. For the most part, an acknowledgement must be in writing and signed, either by hand or electronically. Acknowledgement may also arise from partial payment. Be cautious if the words “without prejudice” are used – a party cannot, in most cases, rely on a “without prejudice” communication as an acknowledgement.

If the parties know that a claim is outstanding but don't want to start litigation, it may be possible to enter into a “tolling agreement” to allow a limitation period to be suspended so that negotiations can continue. The act does not restrict the ability of parties to extend limitation periods; however, cases over the years have established technical requirements for tolling agreements and they should be prepared with the assistance of legal advice.

The act contains transitional rules that are intended to make it applicable only to new claims. So, if a claim was “discovered” prior to June 1, then (for the most part) the old act and its longer limitation periods will continue to apply.

Limitation rules attempt to balance between the interest of potential plaintiffs in being properly compensated and the interests of potential defendants in being able to move on with their lives. The new Limitation Act alters that balance and will require new approaches and attitudes from those involved in the construction industry and the business world in general.

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