



BILL NO. 64

Government Bill

*2nd Session, 62nd General Assembly
Nova Scotia
63 Elizabeth II, 2014*

An Act Respecting the Limitation of Actions

CHAPTER 35
ACTS OF 2014

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
NOVEMBER 20, 2014**

The Honourable Lena Metlege Diab
Minister of Justice

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

This page is intentionally blank.

An Act Respecting the Limitation of Actions

Be it enacted by the Governor and Assembly as follows:

- 1** This Act may be cited as the *Limitation of Actions Act* or the *Statute of Limitations*.
- 2** **(1)** In this Act,
 - (a) “claim” means a claim to remedy the injury, loss or damage that occurred as a result of an act or omission;
 - (b) “claimant” means a person who has a claim, regardless of whether the claim has been brought;
 - (c) “defendant” means a person against whom a claimant has a claim, regardless of whether the claim has been brought.**(2)** For the purpose of this Act, a claim is brought
 - (a) when a proceeding in respect of the claim is commenced; or
 - (b) where the claim is added to an existing proceeding by a new or an amended pleading that is not an originating process, when that pleading is filed.
- 3** Subject to Section 4, this Act applies to a claim pursued in a court proceeding, other than a claim
 - (a) to which the *Real Property Limitations Act* applies; or
 - (b) in a proceeding for judicial review.
- 4** **(1)** This Act does not apply to a claim based on the existing aboriginal and treaty rights of the aboriginal peoples of Canada that are recognized and affirmed in section 35 of the *Constitution Act, 1982*.
(2) A claim referred to in subsection (1) is governed by the law that would have been in force in respect of limitation of actions if this Act had not been enacted.
- 5** This Act binds Her Majesty in right of the Province.
- 6** Where there is a conflict between this Act and any other enactment, the other enactment prevails.
- 7** For the purpose of applying the rules regarding conflict of laws, the limitations law of the Province and of any other jurisdiction is substantive law.

GENERAL LIMITATION PERIODS

- 8** (1) Unless otherwise provided in this Act, a claim may not be brought after the earlier of
- (a) two years from the day on which the claim is discovered; and
 - (b) fifteen years from the day on which the act or omission on which the claim is based occurred.
- (2) A claim is discovered on the day on which the claimant first knew or ought reasonably to have known
- (a) that the injury, loss or damage had occurred;
 - (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
 - (c) that the act or omission was that of the defendant; and
 - (d) that the injury, loss or damage is sufficiently serious to warrant a proceeding.
- (3) For the purpose of clause (1)(b), the day an act or omission on which a claim is based occurred is
- (a) in the case of a continuous act or omission, the day on which the act or omission ceases; and
 - (b) in the case of a series of acts or omissions concerning the same obligation, the day on which the last act or omission in the series occurs.

9 (1) A claimant has the burden of proving that a claim was brought within the limitation period established by clause 8(1)(a).

(2) A defendant has the burden of proving that a claim was not brought within the limitation period established by clause 8(1)(b).

EXCEPTIONS TO THE
GENERAL LIMITATION PERIODS

- 10** Section 8 does not apply to a proceeding
- (a) to recover money owing to Her Majesty in right of the Province in respect of
 - (i) fines, taxes or penalties, or
 - (ii) interest on fines, taxes or penalties;
 - (b) commenced by Her Majesty in right of the Province or an agent of Her Majesty in right of the Province in respect of a claim relating to the administration of a social, health or economic program; or
 - (c) commenced by Her Majesty in right of the Province or an agent of Her Majesty in right of the Province to recover money owing in respect of student loans, awards or grants.

11 Section 8 does not apply to a proceeding in respect of a claim in relation to trespass to the person, assault or battery if

- (a) the claim is based on misconduct of a sexual nature; or
- (b) at the time of the injury on which the claim is based
 - (i) one of the defendants was living with the claimant in an intimate relationship, or
 - (ii) the claimant was dependent, whether financially, emotionally or physically, on one of the defendants.

12 (1) In this Section, “limitation period” means the limitation period established by

- (a) clause 8(1)(a); or
- (b) any enactment other than this Act.

(2) This Section applies only to claims brought to recover damages in respect of personal injuries.

(3) Where a claim is brought without regard to the limitation period applicable to the claim, and an order has not been made under subsection (4), the court in which the claim is brought, upon application, may disallow a defence based on the limitation period and allow the claim to proceed if it appears to the court to be just having regard to the degree to which

- (a) the limitation period creates a hardship to the claimant or any person whom the claimant represents; and
- (b) any decision of the court under this Section would create a hardship to the defendant or any person whom the defendant represents, or any other person.

(4) Where a limitation period has expired, a person who wishes to invoke the limitation period, upon giving at least 30 days’ notice to any person who may have a claim, may apply to the court for an order terminating the right of the person to whom such notice was given from commencing the claim and the court may issue such order or may authorize the commencement of the claim only if it is commenced on or before a day determined by the court.

(5) In making a determination under subsection (3), the court shall have regard to all the circumstances of the case and, in particular, to

- (a) the length of and the reasons for the delay on the part of the claimant;
- (b) any information or notice given by the defendant to the claimant respecting the limitation period;
- (c) the effect of the passage of time on
 - (i) the ability of the defendant to defend the claim, and
 - (ii) the cogency of any evidence adduced or likely to be adduced by the claimant or defendant;
- (d) the conduct of the defendant after the claim was discovered, including the extent, if any, to which the defendant responded to requests reasonably made by the

claimant for information or inspection for the purpose of ascertaining facts that were or might be relevant to the claim;

(e) the duration of any incapacity of the claimant arising after the date on which the claim was discovered;

(f) the extent to which the claimant acted promptly and reasonably once the claimant knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to a claim;

(g) the steps, if any, taken by the claimant to obtain medical, legal or other expert advice and the nature of any such advice the claimant may have received;

(h) the strength of the claimant's case; and

(i) any alternative remedy or compensation available to the claimant.

(6) A court may not exercise the jurisdiction conferred by this Section if the claim is brought more than two years after the expiry of the limitation period applicable to that claim.

(7) This Section does not apply to a claim for which the limitation period is 10 years or more.

13 Notwithstanding Section 8, where personal property is converted and a defendant, acting in good faith, purchases the property for value, a claim to recover possession of property may not be brought against the defendant after two years from the day on which the property is converted.

OPERATION OF THE GENERAL LIMITATION PERIODS

14 In the case of claim in relation to a default in performing a demand obligation, the first day on which there is a failure to perform the obligation, once a demand for performance has been made, is

(a) for the purpose of clause 8(1)(b), the day on which the act or omission on which the claim is based occurs; and

(b) for the purpose of clause 8(2)(a), the day on which the injury, loss or damage occurs.

15 In the case of a claim by one alleged wrongdoer against another for contribution and indemnity, the day on which the first alleged wrongdoer is served with the claim in respect of which contribution and indemnity is sought, or incurs a liability through the settlement of the claim, is, for the purpose of clause 8(1)(b), the day on which the act or omission on which the claim for contribution and indemnity is based occurs.

16 (1) In the case of a proceeding commenced by a claimant claiming through a predecessor in right, title or interest, the claimant is deemed to have had knowledge of the matters referred to in subsection 8(2) on the earlier of

(a) the day on which the claimant first knew or ought to have known of those matters; and

(b) the day on which the predecessor first knew or ought to have known of those matters.

(2) In the case of a proceeding commenced by a claimant who is the principal of an agent, the claimant is deemed to have had knowledge of the matters referred to in subsection 8(2) on the earlier of

(a) the day on which the claimant first knew or ought to have known of those matters; and

(b) the day on which the agent first knew or ought to have known of those matters,

if the agent had a duty to communicate knowledge of those matters to the claimant.

(3) The day on which a predecessor or agent ought to have known of the matters referred to in subsection 8(2) is the day on which a reasonable person in the predecessor's or agent's circumstances and with the predecessor's or agent's abilities ought first to have known of the matters.

17 The limitation period established by clause 8(1)(b) does not run during any time in which the defendant

(a) wilfully conceals from the claimant the fact that injury, loss or damage has occurred, that it was caused by or contributed to by an act or omission or that the act or omission was of the defendant; or

(b) wilfully misleads the claimant as to whether the injury, loss or damage is sufficiently serious to warrant a proceeding.

18 The limitation periods established by this Act do not run while a claimant is a minor.

19 (1) The limitation periods established by this Act do not run while a claimant is incapable of bringing a claim because of the claimant's physical, mental or psychological condition.

(2) Where the running of a limitation period is suspended under subsection (1) and the limitation period has less than six months to run as of the day on which the suspension ends, the limitation period is extended to include the day that is six months after the day on which the suspension ends.

20 (1) Where, before the expiry of the relevant limitation period established by this Act, a person acknowledges liability in respect of a claim for

(a) payment of a liquidated sum;

(b) the recovery of personal property;

(c) the enforcement of a charge on personal property; or

(d) relief from enforcement of a charge on personal property,

the limitation period begins again at the time of the acknowledgment.

(2) An acknowledgment of liability in respect of a claim for interest is an acknowledgment of liability in respect of a claim for the principal and for interest falling due after the acknowledgment is made.

(3) An acknowledgment of liability in respect of a claim to realize on or redeem collateral under a security agreement or to recover money in respect of the collateral is deemed to be an acknowledgment by any other person who later comes into possession of the collateral.

(4) A debtor's performance of an obligation in respect of a security agreement is an acknowledgment by the debtor of liability in respect of a claim by the creditor for realization on the collateral under agreement.

(5) A creditor's acceptance of a debtor's payment or performance of an obligation in respect of a security agreement is an acknowledgment by the creditor of liability in respect of a claim by the debtor for redemption of the collateral under the agreement.

(6) An acknowledgment by a trustee is an acknowledgment by any other person who is or who later becomes a trustee of the same trust.

(7) An acknowledgment of liability in respect of a claim to recover or enforce an equitable interest in personal property by a person in possession of it is an acknowledgment by any other person who later comes into possession of it.

(8) Subject to subsections (9) and (10), this Section applies to an acknowledgment of liability in respect of a claim for payment of a liquidated sum even if the person making the acknowledgment refuses or does not promise to pay the sum or the balance of the sum owing.

(9) This Section does not apply unless the acknowledgment is made to

(a) the claimant;

(b) the claimant's agent; or

(c) an official receiver of or trustee for the claimant, acting under the *Bankruptcy and Insolvency Act* (Canada),

before the expiry of the limitation period applicable to the claim.

(10) Subsections (1), (2), (3), (6) and (7) do not apply unless the acknowledgment is in writing and signed by the person making it or the person's agent.

(11) In the case of a claim for payment of a liquidated sum, part payment of the sum by the defendant or the defendant's agent has the same effect as an acknowledgment referred to in subsection (10).

21 (1) A limitation period established by this Act may be extended, but not shortened, by agreement.

(2) Subsection (1) does not affect an agreement made before the coming into force of this Act.

CLAIMS BROUGHT AFTER
EXPIRY OF LIMITATION PERIOD

22 Notwithstanding the expiry of the relevant limitation period established by this Act, a claim may be added, through a new or amended pleading, to a proceeding previously commenced if the added claim is related to the conduct, transaction or events described in the original pleadings and if the added claim

(a) is made by a party to the proceeding against another party to the proceeding and does not change the capacity in which either party sues or is sued;

(b) adds or substitutes a defendant or changes the capacity in which a defendant is sued, but the defendant has received, before or within the limitation period applicable to the added claim plus the time provided by law for the service of process, sufficient knowledge of the added claim that the defendant will not be prejudiced in defending against the added claim on the merits; or

(c) adds or substitutes a claimant or changes the capacity in which a claimant sues, but the defendant has received, before or within the limitation period applicable to the added claim plus the time provided by law for the service of process, sufficient knowledge of the added claim that the defendant will not be prejudiced in defending against the added claim on the merits, and the addition of the claim is necessary or desirable to ensure the effective determination or enforcement of the claims asserted or intended to be asserted in the original pleadings.

TRANSITIONAL PROVISIONS, CONSEQUENTIAL
AMENDMENTS AND EFFECTIVE DATE

23 (1) In this Section,

(a) “effective date” means the day on which this Act comes into force;

(b) “former limitation period” means, in respect of a claim, the limitation period that applied to the claim before the effective date.

(2) This Section applies to claims that are based on acts or omissions that took place before the effective date and in respect of which no proceeding has been commenced before the effective date.

(3) Where a claim was discovered before the effective date, the claim may not be brought after the earlier of

(a) two years from the effective date; and

(b) the day on which the former limitation period expired or would have expired.

24 Clause 37(9)(b) of Chapter 6 of the Acts of 2001, the *Land Registration Act*, as enacted by Chapter 19 of the Acts of 2008, is amended by striking out “*Limitation of Actions*” in the fifth line and substituting “*Real Property Limitations*”.

25 The title of Chapter 258 of the Revised Statutes, 1989, the *Limitations of Actions Act*, is amended by adding “in Respect of Real Property” immediately after “Actions” in the second line.

26 Section 1 of Chapter 258 is amended by striking out “*Limitation of Actions Act* or the *Statute of Limitations*” in the first and second lines and substituting “*Real Property Limitations Act*”.

27 The heading immediately before Section 2, Sections 2 and 3, the heading immediately before Section 4, Sections 4 and 5, the heading immediately before Section 6, Sections 6 to 9, the heading immediately before Section 24A, Sections 24A, 27 and 31, the heading immediately before Section 38 and Section 38 of Chapter 258 are repealed.

28 (1) Clause 7(2)(c) of Chapter 9 of the Acts of 1995-96, the *Marketable Titles Act*, is amended by striking out “*Limitation of Actions*” line the last line and substituting “*Real Property Limitations*”.

(2) Subsection 7(4) of Chapter 9 is repealed.

29 Chapter 13 of the Acts of 1995-96, the *Personal Property Security Act*, is amended by adding immediately after Section 65 the following Section:

65A (1) In this Section, “secured party” includes a receiver.

(2) No proceedings to enforce security pursuant to this Part shall be taken by a secured party or a person claiming through the secured party but within twenty years next after the right to take the proceedings first accrued to the secured party, or if the right did not accrue to the secured party, then within twenty years next after the right first accrued to the person claiming through the secured party.

30 Subsection 6(2) of Chapter 33 of the Acts of 2000, the *Sydney Steel Corporation Sale Act*, is repealed.

31 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
