

Limitation of Actions Act

CHAPTER 35 OF THE ACTS OF 2014

as amended by

2015, c. 22



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amended 2015, c. 22

**An Act Respecting
the Limitation of Actions**

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Short title

1 This Act may be cited as the *Limitation of Actions Act* or the *Statute of Limitations*. 2014, c. 35, s. 1.

Interpretation

- 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. 2014, c. 35, s. 2.

Application of Act

- 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. 2014, c. 35, s. 3.

Aboriginal and treaty rights and equitable claims

- 4** (1) This Act does not apply to
- (a) 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*; or
 - (b) an equitable claim by aboriginal peoples against Her Majesty.
- (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. 2014, c. 35, s. 4; 2015, c. 22, s. 1.

Act binds Her Majesty

- 5** This Act binds Her Majesty. 2014, c. 35, s. 5; 2015, c. 22, s. 2.

Conflict with other enactments

6 Where there is a conflict between this Act and any other enactment, the other enactment prevails. 2014, c. 35, s. 6.

Conflict of laws

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. 2014, c. 35, s. 7.

GENERAL LIMITATION PERIODS

General rules

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. 2014, c. 35, s. 8.

Burden of proof

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). 2014, c. 35, s. 9.

EXCEPTIONS TO THE
GENERAL LIMITATION PERIODS**Proceedings by Her Majesty**

10 Section 8 does not apply to a proceeding

- (a) to recover money owing to Her Majesty in respect of
 - (i) fines, taxes or penalties, or

- (ii) interest on fines, taxes or penalties;
- (b) commenced by Her Majesty or an agent of Her Majesty in respect of a claim relating to the administration of a social, health or economic program; or
- (c) commenced by Her Majesty or an agent of Her Majesty to recover money owing in respect of student loans, awards or grants. 2014, c. 35, s. 10; 2015, c. 22, s. 3.

Certain proceedings re trespass to the person, assault or battery

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. 2014, c. 35, s. 11.

Disallowance or invocation of limitation period

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. 2014, c. 35, s. 12.

Recovery of personal property

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. 2014, c. 35, s. 13.

OPERATION OF THE GENERAL LIMITATION PERIODS

Demand obligations

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. 2014, c. 35, s. 14.

Contribution and indemnity

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. 2014, c. 35, s. 15.

Successors, principals and agents

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. 2014, c. 35, s. 16.

Wilful concealment or wilfully misleading claimant

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. 2014, c. 35, s. 17.

Minors

18 The limitation periods established by this Act do not run while a claimant is a minor. 2014, c. 35, s. 18.

Incapacity

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. 2014, c. 35, s. 19.

Acknowledgments

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 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). 2014, c. 35, s. 20.

Agreements

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. 2014, c. 35, s. 21.

CLAIMS BROUGHT AFTER EXPIRY OF LIMITATION PERIOD

Claims added to proceedings

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. 2014, c. 35, s. 22.

TRANSITIONAL PROVISIONS, CONSEQUENTIAL
AMENDMENTS AND EFFECTIVE DATE

Transitional

- 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) Subsection (3) applies to claims that are based on acts or omissions that took place before the effective date, other than claims referred to in Section 11, 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.

(4) A claimant may bring a claim referred to in Section 11 at any time, regardless of whether the former limitation period expired before the effective date. 2014, c. 35, s. 23; 2015, c. 22, s. 4.

Land Registration Act amended

24 *amendment*

Limitation of Actions Act amended

25 to 27 *amendments*

Marketable Titles Act amended

28 *amendment*

Personal Property Security Act amended

29 *amendment*

Sydney Steel Corporation Sale Act amended

30 *amendment*

Effective date

31 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2014, c. 35, s. 31.

Proclaimed - August 4, 2015
In force - September 1, 2015
