

# Bill 34 – The New *Limitation Act*: Significant Changes and Transition Issues Explained

A Presentation for CLE  
Employment Law Conference 2013  
Pan Pacific Hotel  
Vancouver, BC  
May 9, 2013

**Carman J. Overholt, Q.C.**

Overholt Law  
600 – 889 West Pender Street  
Vancouver, BC V6C 3B2

M: 604.568.5464



OVERHOLT LAW  
Trusted Advisors



"...And what's more Pearson, it hasn't gone unnoticed that you're not meeting your deadlines."

# Introduction and Outline

- Goal of the presentation is to highlight key changes to the *Limitation Act*, and to explain the transition rules under the new *Act*:
  1. Current limitation periods
  2. Statutory limitation periods relevant to the employment / human rights context
  3. Other Canadian jurisdictions
  4. Changes to the *Limitation Act*
  5. Transition Issues
  6. Consequences for missing limitation periods
  7. Lawyers Insurance Fund Guidance

# Current Limitation Periods

## The current *Limitation Act*:

- Contains three separate basic limitation periods of two years, six years, and 10 years duration in which to start a civil action
- The length of the basic limitation period is tied to the type of civil lawsuit being pursued

# Current Limitation Periods

The current *Limitation Act* section which applies to breach of contract :

- S.3(6) – Any other action not specifically provided for in this *Act* or any other *Act* may not be brought after the expiration of 6 years after the date on which the right to do so arose

# Current Limitation Periods

The current *Limitation Act* section which applies to claims for damages for injury:

- S.3(2) – After the expiration of 2 years after the date on which the right to do so arose a person may not bring any of the following actions:
  - (a) for damages in respect of injury to person or property, including economic loss arising from the injury, whether based on contract, tort or statutory duty

# Case Study

## ***Kirby v. Amalgamated Income Ltd. Partnership,*** **2006 CarswellBC 1591, 2006 BCSC 974**

- Plaintiff sought damages for wrongful dismissal
- Defendant brought counterclaim for alleged breaches of employment contract
- Defendant brought motion to amend statement of defence and counterclaim, which alleged new causes of action
- Plaintiff alleged 6-year limitation period had expired and the defendant was time-barred

# *Kirby v. Amalgamated...*

- Court held that the Plaintiff had failed to produce the documents that he should have known would be relevant to the defendant's counterclaim
- This failure to disclose requested documentation was characterized as *active concealment*
- As a result the 6-year limitation period with respect to the amendments provided for in the *Limitation Act* did not start to run until the disclosure of the documents revealed details of possible breaches and other potential causes of action
- Therefore, the new causes of action proposed as amendments to the counterclaim were not out of time



# Statutory Limitation Periods

## ***Judicial Review Procedures Act, s. 11***

- An application for JR is not barred by passage of time unless an enactment otherwise provides, and substantial prejudice or hardship will result by reason of delay

## ***Administrative Tribunals Act, s. 24(1)***

- Notice of Appeal must be filed within 30 days of decision unless the Tribunal's enabling Act provides otherwise

# Statutory Limitation Periods

## *Human Rights Code, s. 22(1)*

- A complaint must be filed within 6 months of the alleged contravention
- If a continuous contravention is alleged in the complaint, the complaint must be filed within 6 months of the last alleged instance of the contravention

# Statutory Limitation Periods

## *Human Rights Code, s. 12(5)*

- In an action by an employee for discrimination for wages, the action must be commenced no later than 12 months from the termination of the employee's services

# Statutory Limitation Periods

## *Canada Labour Code, s. 240(2)*

- A complaint to an inspector by a person who has completed:
  - 12 consecutive months of continuous employment, and
  - Who is not a member of a group of employees subject to a collective agreement

must make the complaint within 90 days from the date on which he or she was dismissed

# Statutory Limitation Periods



## ***Employment Standards Act, s. 74***

- A complaint to the director regarding termination must be delivered within 6 months after the last day of employment

# Statutory Limitation Periods



## ***Employment Standards Act, ss. 112(3) and 122***

- The appeal period of a determination of the director to the tribunal is:
  - » 30 days after the date of service of the determination if served by registered mail
  - » 21 days after the date of service of the determination if served personally, or by fax, or email in compliance with s. 122

# Statutory Limitation Periods



## ***Workers Compensation Act, s. 55(2)***

- An application for compensation must be made within one year after the date of injury, death or disablement from occupational disease

# Statutory Limitation Periods

## ***Local Government Act, ss. 285 - 286***

- All actions against a municipality must be commenced within 6 months after the cause of action first arose
- A municipality is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained is delivered to the municipality within 2 months from the date on which the damage was sustained.



# Statutory Limitation Periods

## ***Personal Information Protection Act, ss. 23***

- On the request of an individual, an organization must provide him or her with access to the personal information that is under the control of the organization, what it is using this information for, and the names of the people or organizations to whom the personal information has been disclosed

# Statutory Limitation Periods

## ***Personal Information Protection Act, s.29***

- An organization must respond to an applicant no later than 30 days after receiving the applicant's request, unless the time period has been extended on application to the commissioner

# Statutory Limitation Periods

## ***Personal Information Protection Act, s.47***

- An individual may ask for a review of a decision, act or failure to act of an organization, or make a complaint by delivering a request to the commissioner
- A request must be delivered within 30 days of the date on which the person making the request is notified of the circumstances on which the request is based

# Other Canadian Jurisdictions

## Alberta:

- Has a general two-year limitation period based on the rule of discoverability
- Time begins to run from the date the claimant knew or ought to have known that:
  - i. The injury occurred;
  - ii. The injury was a result of the defendant's conduct
  - iii. The injury warranted bringing an action, or
- 10 years after the claim arose
- Whichever period expires first, the defendant is entitled to immunity from liability

# Other Canadian Jurisdictions

## Ontario:

- Has a general two-year limitation period based on the day on which the claim was discovered
- The ultimate limitation period is 15-years

# Other Canadian Jurisdictions

## Saskatchewan:

- Has a two-year limitation period for civil legal actions, and is based on the rule of discoverability as well
- The ultimate limitation period bars all actions after 15 years after the events that gave rise to the action

# The New *Limitation Act*

- The new *Limitation Act* comes into force June 1, 2013, repealing and replacing the current *Act*
- As with the current *Act*, the new *Act* will govern how long a person has to bring a civil lawsuit if no other applicable statute contains a specific time period

# Significant Changes

- **Basic Limitation Period:**
  - A single two-year basic limitation period for all civil claims
  - Exceptions:
    - Civil claims that enforce a monetary judgment
    - Exempted claims and actions with limitation periods set by other statutes





# Basic Limitation Period

- The basic limitation period runs from the date a person “discovers” that she or he has a legal claim; i.e.) from the date the act or omission on which the claim is based took place
- A person has two years from the day a claim is discovered to obtain legal advice and start a civil lawsuit, unless specified in the new *Act*

# Significant Changes, cont'd...

- **Ultimate Limitation Period:**
  - A single 15-year ultimate limitation period that applies to all claims replaces the general 30-year ultimate limitation period in the current *Act*
  - 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

# Significant Changes, cont'd...

- Claims against a doctor, hospital or hospital employee for malpractice or negligence:
  - The two year basic limitation period continues to apply, but plaintiffs will have longer to discover his/her legal problem and start a civil lawsuit
  - I.e.) The 15-year ultimate limitation period applies to these types of claims under the new *Act*

# Significant Changes, cont'd...

- **Exemptions:**

- All of the actions that are exempted from limitation periods in s. 3(4) of the current *Act* have been carried forward to the new *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

# Exemptions, cont'd...

- Exemptions with potential relevance to the employment law context include:
  - Court proceedings to enforce an injunction, a restraining order, or a restrictive covenant
  - Court proceedings in which the only relief sought is to obtain a declaration
  - An appeal
  - A judicial review application

# Exemptions, cont'd...

- Adults Under a Disability
  - 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 disability” is defined in the new *Act* as an adult person who is incapable of or substantially impeded in managing his or her affairs

# Adults Under a Disability

- A significant change:
  - **Both** the basic and ultimate limitation periods are suspended while a person is under a disability
  - Once the legal disability ceases, the basic and ultimate limitation periods resume
  - (Under the current Act, only the basic limitation period is suspended during adult disability)

# Adults Under a Disability

- The remaining basic limitation period is the **longer** of two periods:
  - The length of time the claimant has remaining in the basic limitation period to bring the claim prior to coming under a disability, or
  - One year from the time the disability ceases



# Adults Under a Disability

- The remaining ultimate limitation period is the **longer** of two periods:
  - The length of time the claimant has remaining in the ultimate limitation period to bring the claim prior to coming under a disability, or
  - One year from the time the disability ceases

# Exemptions, continued...

- **Tax-Payer Supported Entities:**
  - These organizations will continue to operate under a six-year limitation period for collection of debt
  - This category does not include commercial crown corporations or organizations that operate self-sufficiently

# Exemptions, continued...

- **Physical Assault:**
  - 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 exemption applies to civil claims for damages that arise out of the occurrence of a physical assault

# Acknowledgment of Liability

- The new *Act* clarifies that time in **both** the basic and ultimate limitation periods will be restarted for claims where liability has been acknowledged

# Transition Rules

- Where discovery of the claim occurs **before** June 1, 2013, the former *Act* will apply
- If the limitation period applicable under the former *Act* expires before June 1, 2013, a person is unable to use the transition rules to revive their claim

# Transition Rules

The transition rules will apply when the act or omission that a claim is based on occurs before June 1, 2013 and the **discovery** of the claim **occurs on or after** June 1, 2013

# Transition Rules

- Where discovery of the claim occurs on or after June 1, 2013, there are two situations:
  1. If the claim was previously subject to the special 6-year medical ultimate limitation period, the 6-year ultimate limitation period continues to apply, running from the date of damage
    - The 2-year basic limitation period under the new *Act* will apply, running from the date of discovery

# Transition Rules, continued...



2. 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:



# Transition Rules, continued...

- June 1, 2013; or
- The day the act or omission takes place under s.21(2) [re: fraud, conversion, trust claims, contribution or indemnity claims, adult disability, minority etc...]
- Again, the 2-year basic limitation period under the new *Act* will apply, running from the date of discovery, unless the new *Act* states otherwise

# Transition Rules, continued...



- For s. 3 exempted claims discovered on or after June 1, 2013, no limitation period applies

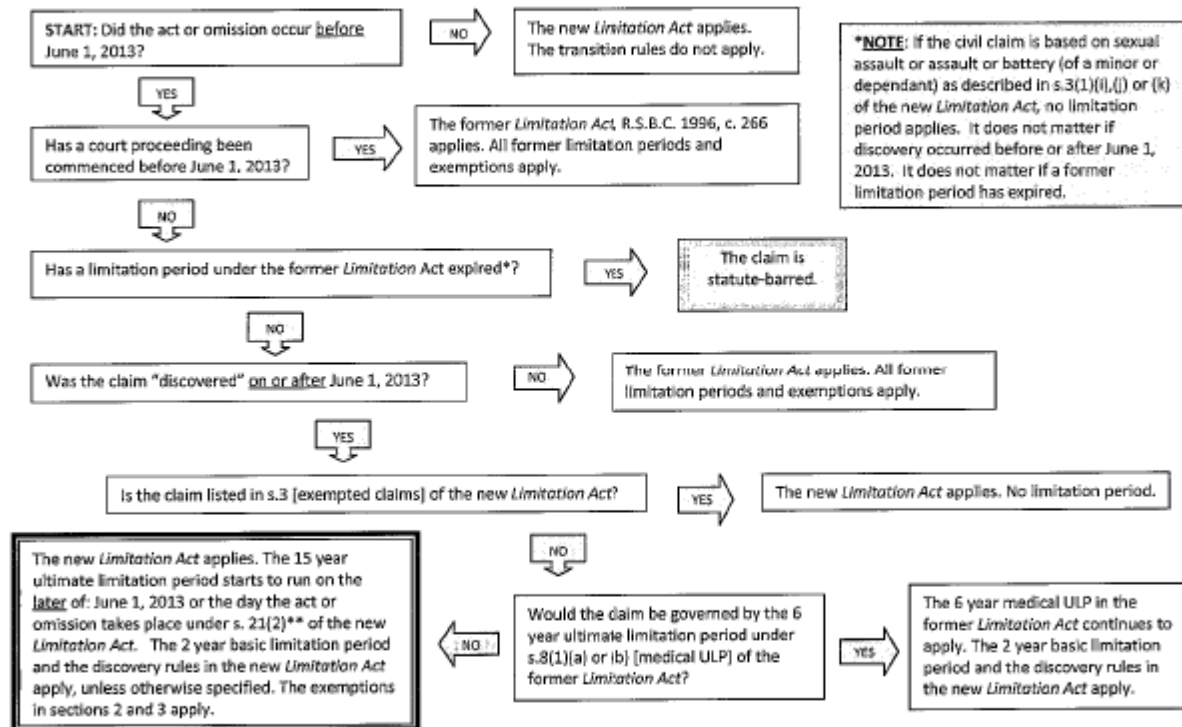
# Transition Rules Flowchart

Ministry of Justice

## Transition Rules Flowchart for the new *Limitation Act*

Updated: Nov. 1, 2012

This document was developed by the Civil Policy and Legislation Office, Ministry of Justice. It is posted as educational material to support the transition to the new *Limitation Act*. It is not intended to constitute legal advice and should not be relied upon for those purposes.



Note: The new *Limitation Act* is a default statute. If another provincial statute contains a limitation period, the new *Limitation Act* does not apply, except to the extent provided for in the other provincial statute. The new *Limitation Act* is not yet in effect. Until June 1, 2013 the former *Limitation Act* continues to apply.

\*\*Special ULP start dates for claims involving conversion, fraud, fraudulent breach of trust, future interest in trust property, demand obligations, security realization or redemption, contribution or indemnity, a minor, or a person under a disability.

# Record Keeping

- The changes may affect record-keeping policies based on limitation periods
- For an act or omission date created before June 1, 2013, the maximum potential exposure to liability will end on June 1, 2028, (due to the 15-year ultimate limitation period)

# Record Keeping

- However, if a postponement rule in the new *Act* applies, such as adult disability or a minority, possible liability may be extended beyond the June 1, 2028 date

# Consequences of Missed Limitation Periods

The Lawyers Insurance Fund (LIF) has identified four main causes of missed deadlines:

1. Oversights – 50%
2. Legal issue failures – 25%
3. Engagement management failures – 17%
4. Communication failures – 8%

# Consequences of Missed Limitation Periods

- If you discover a missed deadline:
  - You must report a claim, as well as any circumstances that could reasonably be expected to result in a claim, *as soon as practicable*, in writing
    - » If you don't report in time, and the LIF loses a chance to repair, you may lose your insurance coverage

# Lawyers Insurance Fund: Guidance

- The insurance policy has a requirement that a lawyer cooperate with LIF in the investigation, defence and repair of a matter relevant to missed deadlines and limitation periods



# Lawyers Insurance Fund: Guidance

- Resist attempting to remedy the problem before you report, as your efforts may result in greater lost
- Example: Do not try to make your own court application to repair the problem, as it is clear law in BC that lawyers in this situation should retain counsel outside of their firm

# Conclusions

- The new *Limitations Act* modernizes B.C.'s law, and brings it more in line with other provinces, such as Alberta, Ontario, Saskatchewan, and New Brunswick
- Changing the commencement model of the ultimate limitation period from an “accrual” model to a model that starts based on an “act or omission” supports law reform bodies’ recommendations for a more harmonized and consistent approach to limitations law across the country



*"Nothing important. Just missing another deadline."*

Carman J. Overholt, Q.C.

**OVERHOLT LAW**



600 – 889 West Pender Street  
Vancouver, BC V6C 3B2

Direct: (604) 676-4196  
[carman@overholtlawyers.com](mailto:carman@overholtlawyers.com)

**THANK YOU FOR ATTENDING  
THE ANNUAL EMPLOYMENT LAW  
CONFERENCE 2013!**