

LIMITATION ACT

[RSBC 1996] CHAPTER 266

Definitions

1 In this Act:

"action" includes any proceeding in a court and any exercise of a self help remedy;

"collateral" means land, goods, documents of title, instruments, securities or other property that is subject to a security interest;

"extraprovincial judgment" means a judgment, order or award other than a local judgment;

"judgment" means an extraprovincial judgment or a local judgment;

"local judgment" means the following:

- (a) a judgment, order or award of
 - (i) the Supreme Court of Canada relating to an appeal from a British Columbia court,
 - (ii) the British Columbia Court of Appeal,
 - (iii) the Supreme Court of British Columbia,
 - (iv) the Provincial Court of British Columbia, and
 - (v) an arbitration under the *Arbitration Act*;
- (b) an arbitral award to which the *Foreign Arbitral Awards Act* or the *International Commercial Arbitration Act* applies;

"secured party" means a person who has a security interest;

"security agreement" means an agreement that creates or provides for a security interest;

"security interest" means an interest in collateral that secures payment or performance of an obligation;

"trust" includes an express, an implied and a constructive trust, whether or not the trustee has a beneficial interest in the trust property, and whether or not the trust arises only because of a transaction impeached, and includes the duties incident to the

office of personal representative, but does not include the duties incident to the estate or interest of a secured party in collateral;

"writ of execution" includes an order for seizure and sale issued under the Small Claims Rules.

Application of Act

2 Nothing in this Act interferes with any of the following:

(a) a rule of equity that refuses relief, on the ground of acquiescence, to a person whose right to bring an action is not barred by this Act;

(b) a rule of equity that refuses relief, on the ground of inexcusable delay, to a person who claims equitable relief in aid of a legal right, whose right to bring the action is not barred by this Act;

(c) any rule or law that establishes a limitation period, or otherwise refuses relief, with respect to proceedings by way of judicial review of the exercise of statutory powers.

Limitation periods

3 (1) In subsections (4) and (6), **"debtor"** means a person who owes payment or other performance of an obligation secured, whether or not the person owns or has rights in the collateral.

(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) subject to subsection (4) (k), 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;

(b) for trespass to property not included in paragraph (a);

(c) for defamation;

(d) for false imprisonment;

(e) for malicious prosecution;

(f) for tort under the *Privacy Act*;

(g) under the *Family Compensation Act*;

(h) for seduction;

(i) under section 27 of the *Engineers and Geoscientists Act*.

(3) After the expiration of 10 years after the date on which the right to do so arose a person may not bring any of the following actions:

(a) against the personal representatives of a deceased person for a share of the estate;

(b) against a trustee in respect of any fraud or fraudulent breach of trust to which the trustee was party or privy;

(c) against a trustee for the conversion of trust property to the trustee's own use;

(d) to recover trust property or property into which trust property can be traced against a trustee or any other person;

(e) to recover money on account of a wrongful distribution of trust property against the person to whom the property is distributed, or a successor;

(f) on a local judgment for the payment of money or the return of personal property.

(4) The following actions are not governed by a limitation period and may be brought at any time:

(a) for possession of land if the person entitled to possession has been dispossessed in circumstances amounting to trespass;

(b) for possession of land by a life tenant or person entitled to the remainder of an estate;

(c) on a local judgment for the possession of land;

(d) by a debtor in possession of collateral to redeem that collateral;

(e) by a secured party in possession of collateral to realize on that collateral;

(f) by a landlord to recover possession of land from a tenant who is in default or over holding;

(g) relating to the enforcement of an injunction or a restraining order;

(h) to enforce an easement, restrictive covenant or profit à prendre;

(i) for a declaration as to personal status;

(j) for the title to property or for a declaration about the title to property by any person in possession of that property;

(k) for a cause of action based on misconduct of a sexual nature, including, without limitation, sexual assault,

(i) where the misconduct occurred while the person was a minor, and

(ii) whether or not the person's right to bring the action was at any time governed by a limitation period;

(l) for a cause of action based on sexual assault, whether or not the person's right to bring the action was at any time governed by a limitation period.

(4.1) A person must not bring an action on an extraprovincial judgment for the payment of money or the return of personal property

(a) after the time for enforcement has expired in the jurisdiction where that judgment was made, or

(b) later than 10 years after the judgment became enforceable in the jurisdiction where the judgment was made.

(5) 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.

(6) Without limiting subsection (5) and despite subsections (2) and (4), after the expiration of 6 years after the date on which right to do so arose an action may not be brought:

(a) by a secured party not in possession of collateral to realize on that collateral;

- (b) by a debtor not in possession of collateral to redeem that collateral;
- (c) for damages for conversion or detention of goods;
- (d) for the recovery of goods wrongfully taken or detained;
- (e) by a tenant against a landlord for the possession of land, whether or not the tenant was dispossessed in circumstances amounting to trespass;
- (f) for the 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.

(7) A beneficiary, against whom there would be a good defence under this section, does not derive any greater or other benefit from a judgment or order obtained by another beneficiary than he or she could have obtained if he or she had brought the action or other proceeding and this section had been pleaded.

Counterclaim or other claim or proceeding

4 (1) If an action to which this or any other Act applies has been commenced, the lapse of time limited for bringing an action is no bar to

- (a) proceedings by counterclaim, including the adding of a new party as a defendant by counterclaim,
- (b) third party proceedings,
- (c) claims by way of set off, or
- (d) adding or substituting a new party as plaintiff or defendant,

under any applicable law, with respect to any claims relating to or connected with the subject matter of the original action.

(2) Subsection (1) does not operate so as to enable one person to make a claim against another person if a claim by that other person

- (a) against the first mentioned person, and
- (b) relating to or connected with the subject matter of the action,

is or will be defeated by pleading a provision of this Act as a defence by the first mentioned person.

(3) Subsection (1) does not operate so as to interfere with any judicial discretion to refuse relief on grounds unrelated to the lapse of time limited for bringing an action.

(4) In any action the court may allow the amendment of a pleading, on terms as to costs or otherwise that the court considers just, even if between the issue of the writ and the application for amendment a fresh cause of action disclosed by the amendment would have become barred by the lapse of time.

Effect of confirming a cause of action

5 (1) If, after time has begun to run with respect to a limitation period set by this Act, but before the expiration of the limitation period, a person against whom an action lies confirms the cause of action, the time during which the limitation period runs before the date of the confirmation does not count in the reckoning of the limitation period for the action by a person having the benefit of the confirmation against a person bound by the confirmation.

(2) For the purposes of this section,

(a) a person confirms a cause of action only if the person

(i) acknowledges a cause of action, right or title of another, or

(ii) makes a payment in respect of a cause of action, right or title of another,

(b) an acknowledgment of a judgment or debt has effect

(i) whether or not a promise to pay can be implied from it, and

(ii) whether or not it is accompanied by a refusal to pay,

(c) a confirmation of a cause of action to recover interest on principal money operates also as a confirmation of a cause of action to recover the principal money, and

(d) a confirmation of a cause of action to recover income falling due at any time operates also as a confirmation of a

cause of action to recover income falling due at a later time on the same account.

(3) If a secured party has a cause of action to realize on collateral, either of the following is a confirmation by the payer or performer of the cause of action:

(a) a payment to the secured party of principal or interest secured by the collateral, or

(b) any other payment to the secured party in respect of that party's right to realize on the collateral, or any other performance by the other person of the obligation secured.

(4) If a secured party is in possession of collateral, either of the following is a confirmation by the secured party to the payer or performer of the payer's or performer's cause of action to redeem the collateral:

(a) acceptance by the secured party of a payment to the secured party of principal or interest secured by the collateral, or

(b) acceptance by the secured party of

(i) payment to the secured party in respect of that party's right to realize on the collateral, or

(ii) any other performance by the other person of the obligation secured.

(5) For the purposes of this section, an acknowledgment must be in writing and signed by the maker.

(6) For the purposes of this section, a person has the benefit of a confirmation only if the confirmation

(a) is made to the person or to a person through whom the person claims, or

(b) is made in the course of proceedings or a transaction purporting to be under the *Bankruptcy Act* (Canada).

(7) For the purposes of this section, a person is bound by a confirmation only if any of the following applies:

(a) the person made the confirmation;

(b) after the confirmation is made, the person becomes, in relation to the cause of action, a successor of the person who made the confirmation;

(c) the person who made the confirmation is, at the time of the confirmation, a trustee, and the first mentioned person is at the date of the confirmation or afterwards becomes a trustee of the trust of which the person who made the confirmation is a trustee;

(d) the person is bound under subsection (8).

(8) If a person who confirms a cause of action to

(a) recover property,

(b) enforce an equitable estate or interest in property,

(c) realize on collateral,

(d) redeem collateral,

(e) recover principal money or interest secured by a security agreement, by way of

(i) the appointment of a receiver of collateral or of the income or profits of collateral,

(ii) sale, lease or other disposition of collateral, or

(iii) another remedy affecting collateral, or

(f) recover trust property or property into which trust property can be traced,

is on the date of the confirmation in possession of the property or collateral, the confirmation binds any person in possession during the ensuing period of limitation, not being, or claiming through, a person other than the maker who is, on the date of the confirmation, in possession of the property or collateral.

(9) For the purposes of this section, a confirmation made by or to an agent has the same effect as if made by or to the principal.

(10) Except as specifically provided, this section does not operate to make any right, title or cause of action capable of being confirmed that was not capable of being confirmed before July 1, 1975.

Running of time postponed

6 (1) The running of time with respect to the limitation period set by this Act for an action

(a) based on fraud or fraudulent breach of trust to which a trustee was a party or privy, or

(b) to recover from a trustee trust property, or the proceeds from it, in the possession of the trustee or previously received by the trustee and converted to the trustee's own use,

is postponed and does not begin to run against a beneficiary until that beneficiary becomes fully aware of the fraud, fraudulent breach of trust, conversion or other act of the trustee on which the action is based.

(2) For the purposes of subsection (1), the burden of proving that time has begun to run so as to bar an action rests on the trustee.

(3) The running of time with respect to the limitation periods set by this Act for any of the following actions is postponed as provided in subsection (4):

(a) for personal injury;

(b) for damage to property;

(c) for professional negligence;

(d) based on fraud or deceit;

(e) in which material facts relating to the cause of action have been wilfully concealed;

(f) for relief from the consequences of a mistake;

(g) brought under the *Family Compensation Act*;

(h) for breach of trust not within subsection (1).

(4) Time does not begin to run against a plaintiff or claimant with respect to an action referred to in subsection (3) until the identity of the defendant or respondent is known to the plaintiff or claimant and those facts within the plaintiff's or claimant's means of knowledge are such that a reasonable person, knowing those facts and having taken the appropriate advice a reasonable person would seek on those facts, would regard those facts as showing that

(a) an action on the cause of action would, apart from the effect of the expiration of a limitation period, have a reasonable prospect of success, and

(b) the person whose means of knowledge is in question ought, in the person's own interests and taking the person's circumstances into account, to be able to bring an action.

(5) For the purpose of subsection (4),

(a) "**appropriate advice**", in relation to facts, means the advice of competent persons, qualified in their respective fields, to advise on the medical, legal and other aspects of the facts, as the case may require,

(b) "**facts**" include

(i) the existence of a duty owed to the plaintiff or claimant by the defendant or respondent, and

(ii) that a breach of a duty caused injury, damage or loss to the plaintiff or claimant,

(c) if a person claims through a predecessor in right, title or interest, the knowledge or means of knowledge of the predecessor before the right, title or interest passed is that of the first mentioned person, and

(d) if a question arises about the knowledge or means of knowledge of a deceased person, the court may have regard to the conduct and statements of the deceased person.

(6) The burden of proving that the running of time has been postponed under subsections (3) and (4) is on the person claiming the benefit of the postponement.

(7) Subsections (3) and (4) do not operate to the detriment of a purchaser in good faith for value.

(8) The limitation period set by this Act with respect to an action relating to a future interest in trust property does not begin to run against a beneficiary until the interest becomes a present interest.

If a person is a minor or incapable

7 (1) For the purposes of this section,

- (a) a person is under a disability while the person
 - (i) is a minor, or
 - (ii) is in fact incapable of or substantially impeded in managing his or her affairs, and

(b) "**guardian**" means a parent or guardian who has actual care and control of a minor or a committee appointed under the *Patients Property Act*.

(2) If, at the time the right to bring an action arises, a person is under a disability, the running of time with respect to a limitation period set by this Act is postponed so long as that person is under a disability.

(3) If the running of time against a person with respect to a cause of action has been postponed by subsection (2) and that person ceases to be under a disability, the limitation period governing that cause of action is the longer of the following:

- (a) the period that the person would have had to bring the action had that person not been under a disability, running from the time the cause of action arose;

- (b) the period running from the time the disability ceased, but in no case does that period extend more than 6 years beyond the cessation of disability.

(4) If, after time has begun to run with respect to a limitation period set by this Act, but before the expiration of the limitation period, a person who has a cause of action comes under a disability, the running of time against that person is suspended so long as that person is under a disability.

(5) If the running of time against a person with respect to a cause of action has been suspended by subsection (4) and that person ceases to be under a disability, the limitation period governing that cause of action is the longer of the following:

- (a) the length of time remaining to bring an action at the time the person came under the disability;

- (b) one year from the time that the disability ceased.

(6) Despite subsections (2) and (4), if a person under a disability has a guardian and anyone against whom that person may have a cause of action has a notice to proceed delivered to the guardian and to the

Public Guardian and Trustee in accordance with this section, time begins to run against that person as if that person had ceased to be under a disability on the date the notice is delivered.

(7) A notice to proceed delivered under this section must meet all of the following requirements:

(a) it must be in writing;

(b) it must be addressed to the guardian and to the Public Guardian and Trustee;

(c) it must specify the name of the person under a disability;

(d) it must specify the circumstances out of which the cause of action may arise or may be claimed to arise with as much particularity as is necessary to enable the guardian to investigate whether the person under a disability has the cause of action;

(e) it must give warning that a cause of action arising out of the circumstances stated in the notice is liable to be barred by this Act;

(f) it must specify the name of the person on whose behalf the notice is delivered;

(g) it must be signed by the person delivering the notice, or the person's solicitor.

(8) Subsection (6) operates to benefit only those persons on whose behalf the notice is delivered and only with respect to a cause of action arising out of the circumstances specified in the notice.

(9) The onus of proving that the running of time has been postponed or suspended under this section is on the person claiming the benefit of the postponement or suspension.

(10) A notice to proceed delivered under this section is not a confirmation for the purposes of this Act and is not an admission for any purpose.

(11) The Attorney General may make regulations prescribing the form, content and mode of delivery of a notice to proceed.

Ultimate limitation

8 (1) Subject to section 3 (4) and subsection (2) of this section but despite a confirmation made under section 5, a postponement or suspension of the running of time under section 6 or 11 (2) or a postponement or suspension of the running of time under section 7 in respect of a person who is not a minor, no action to which this Act applies may be brought

(a) against a hospital, as defined in section 1 of the *Hospital Act*, or against a hospital employee acting in the course of employment as a hospital employee, based on negligence, after the expiration of 6 years from the date on which the right to do so arose,

(b) against a medical practitioner, based on professional negligence or malpractice, after the expiration of 6 years from the date on which the right to do so arose, or

(c) in any other case, after the expiration of 30 years from the date on which the right to do so arose.

(2) Subject to section 7 (6), the running of time with respect to the limitation periods set by subsection (1) for an action referred to in subsection (1) is postponed and time does not begin to run against a plaintiff until the plaintiff reaches the age of majority.

(3) Subject to subsection (1), the effect of sections 6 and 7 and subsection (2) of this section is cumulative.

Cause of action extinguished

9 (1) On the expiration of a limitation period set by this Act for a cause of action to recover any debt, damages or other money, or for an accounting in respect of any matter, the right and title of the person formerly having the cause of action and of a person claiming through the person in respect of that matter is, as against the person against whom the cause of action formerly lay and as against the person's successors, extinguished.

(2) On the expiration of a limitation period set by this Act for a cause of action specified in column 1 of the following table, the title of a person formerly having the cause of action to the property specified

opposite the cause of action in column 2 of the table and of a person claiming through the person in respect of that property is, as against the person against whom the cause of action formerly lay and as against the person's successors, extinguished.

Column 1 <i>Cause of action</i>	Column 2 <i>Property</i>
For conversion or detention of goods.	The goods.
To enforce an equitable estate or interest in land.	The equitable estate or interest.
To redeem collateral, in the possession of the secured party.	The collateral.
To realize on collateral in the possession of the debtor.	The collateral.
To recover trust property or property into which trust property can be traced.	The trust property can be traced, as the case may be.
For the possession of land by a person having a right to enter for a condition subsequent broken or a possibility of reverter of a determinable estate.	The land.

(3) A cause of action, whenever arising, to recover costs on a judgment or to recover arrears of interest on principal money is extinguished by the expiration of the limitation period set by this Act for an action between the same parties on the judgment or to recover the principal money.

Conversion or detention of goods

10 If a cause of action for the conversion or detention of goods accrues to a person and afterwards, possession of the goods not having been recovered by the person or by a person claiming through the person,

(a) a further cause of action for the conversion or detention of the goods,

(b) a new cause of action for damage to the goods, or

(c) a new cause of action to recover the proceeds of a sale of the goods,

accrues to the person or a person claiming through the person, no action may be brought on the further or new cause of action after the

expiration of 6 years from the date on which the first cause of action accrued to the plaintiff or to a person through whom the plaintiff claims.

Completion of enforcement process

11 (1) Despite section 3 or 9, if, on the expiration of the limitation period set by this Act with respect to actions on judgment, there is an enforcement process outstanding, the judgment creditor or the judgment creditor's successors may do any of the following:

(a) continue proceedings on an unexpired writ of execution, but the writ may not be renewed;

(b) commence or continue proceedings against land on a judgment registered under Part 5 of the *Court Order Enforcement Act*, but the registration may not be renewed unless those proceedings have been commenced;

(c) continue proceedings in which a charging order is claimed.

(2) If a court makes an order staying execution on a judgment, the running of time with respect to the limitation period set by this Act for actions on that judgment is postponed or suspended for so long as that order is in force.

Adverse possession

12 Except as specifically provided by this or any other Act, no right or title in or to land may be acquired by adverse possession.

Foreign limitation law

13 (1) If it is determined in an action that the law of a jurisdiction other than British Columbia is applicable and the limitation law of that jurisdiction is, for the purposes of private international law, classified as procedural, the court may apply British Columbia limitation law or may apply the limitation law of the other jurisdiction if a more just result is produced.

(2) If section 3 (4) (k) or (l) applies to an action described in subsection (1) of this section, the court must apply section 3 (4) despite subsection (1) of this section.

Transitional provision

14 (1) Nothing in this Act revives any cause of action that is statute barred on July 1, 1975.

(2) Subject to subsections (1) and (3), this Act applies to actions that arose before July 1, 1975.

(3) If, with respect to a cause of action that arose before this Act comes into force, the limitation period provided by this Act is shorter than that which formerly governed the cause of action, and will expire on or before July 1, 1977, the limitation period governing that cause of action is the shorter of

(a) 2 years from July 1, 1975, or

(b) the limitation period that formerly governed the cause of action.

(4) Subject to subsection (1), a confirmation effective under section 5 is effective, whether given before, on or after July 1, 1975.

(5) Nothing in this Act interferes with any right or title to land acquired by adverse possession before July 1, 1975.

(6) This section does not apply to an action or cause of action to which section 3 (4) (k) or (l) applies.

Repeal of special limitations

15 (1) If an Act that incorporates or constitutes a private or public body contains a provision that would have the effect of limiting the time in which an action

(a) within section 3 (2), (3) and (4), or

(b) to enforce any right or obligation not specifically created by that Act,

may be brought against that body, that provision is repealed to the extent that it is inconsistent with this Act.

(2) Subsection (1) does not apply to a limitation provision that specifically provides that it operates despite this Act.

