

## **STRATA ALERT: NEW LIMITATION ACT** ***Dramatically Changes Collection Practice***

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Effective June 1, 2013, the new *Limitation Act* became law in British Columbia. A limitation period dictates the time available to a claimant to file a suit in court to assert a right, seek damages or collect money. It is the filing of the court proceeding that stops the limitation clock. The failure to file the court proceeding in time means that the limitation clock runs out and the claim is lost forever.

This is bad news for many strata corporations in British Columbia who do nothing and wait to collect with the Form F, Certificate of Payment, upon transfer or who play a lien and wait for payment game. Historical common practice is about to change radically.

The good news is that the new *Limitation Act* simplifies the limitation regime and brings British Columbia's legislation in line with other provinces. The new limits will apply equally to arbitration proceedings and court proceedings.

The basic limitation period for all claims after June 1, 2013 is two years, commencing on the date that the claim is "discovered". There is an ultimate 15 year limitation period after which no claim can be brought, even if that claim has not yet been discovered. A person holding a judgment has 10 years to enforce the judgment before the right to collect is lost.

There are exceptions to the *Limitation Act* expressly set out in other statutes, such as claims against a municipality governed by the *Local Government Act*. Such limitation periods are typically short. For example, the limitation period under sections 285 and 286 of the *Local Government Act* is six months to start an action after the date the claim arose and two months to provide written notice of the claim to the municipality. Strata corporations should seek legal advice early on when addressing such claims. The notice letters are technical and should be drafted by a lawyer to ensure compliance.

Claims discovered prior to June 1, 2013 are grandfathered and governed by the limitation periods under the old regime. Councils are advised to prepare a schedule listing all known old claims for arrears which will be governed by the six year limitation period, as well as a list of new claims governed by the two year limitation period. This will ensure that future collection proceedings are taken in a timely fashion and limitation periods are not missed.

Insurance deductible claims relate to property loss and damage and are governed by the shorter two year limitation period under the old legislation. Little has changed for such claims with the adoption of the new *Limitation Act*.

As noted above, a limitation period starts to run when it is "discovered". Section 8 of the *Limitation Act* outlines the test and provides that a claim is "discovered" on the first day a person knew, or reasonably ought to have known all of the following:

- (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 person against whom the claim is or may be made; and,
- (d) having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.

In most cases, the commencement date of the limitation period will be the date that the event happened. The discovery date for arrears of common expenses commences on the day after the due date. In damages suits such as wet building syndrome cases, it is not necessary to quantify the value of the loss or damages before a claim can be made. It is sufficient that the claimant know that there will be a loss.

It is possible to postpone the discovery date. The Court of Appeal postponed a limitation period to allow a strata corporation time to hold a general meeting to obtain a  $\frac{3}{4}$  vote of owners authorizing the suit as required by section 171 of the *Strata Property Act: Strata Plan LMS 2940 v. Quick as a Wink Courier Service Ltd.*, [2010] B.C.J. No. 246 (B.C.C.A). It is unlikely that this will be an issue in most strata corporation claims.

The administrative procedures of each strata corporation should be tightened up after June 1, 2013. A strata corporation must now start a court action in either the Supreme Court (including lien enforcement proceedings) or in the Small Claims Court within two years from the date that the fees or special levy were first due and payable. Section 6 of the *Limitation Act* requires a "court proceeding" to stop the limitation clock. In other words, the filing of a lien falls short since it does not constitute a "court proceeding".

When does the limitation clock start to run when dealing with fines? Arguably the two year limitation period starts to run from the date that the fine was imposed by the council. This underscores the importance of ensuring that the levy of fines by the council be recorded in the council meeting minutes. The date of this meeting likely constitutes the commencement date. It is not the date that the owner became aware that the fine was imposed.

If the council does not take steps to stop the limitation clock by filing a claim for the fines within two years, then the fines will be lost.

Insurance deductible claims are common place in many strata corporations. Action to collect an insurance deductible should be taken within two years from the date of the incident that gave rise to the costs being incurred. The clock does not run from the date that the strata corporation became aware of the incident – it runs from the date of the loss. It may be difficult to determine this date in some cases. When a strata corporation is in doubt, it should exercise an abundance of caution and file a claim on the earliest date.

It will be difficult to determine when costs to remedy a contravention under section 133 of the Act become owing by an owner. They are not fines. The limitation clock could start to run from any one of a number of different dates including the date of the bylaw breach, the date the costs were incurred or the date costs were imposed. Legal advice should be sought to determine the appropriate commencement date.

When is that last date available to a strata corporation to commence a legal proceeding to compel compliance with the bylaws? For example, if an owner alters the common property or a strata lot without prior written permission contrary to the bylaws, what is the last date that a strata corporation must file the claim before the clock ticks out?

The safest course of action is to assume that the limitation clock starts to run from the date that the alleged breach of the bylaw becomes known to the strata corporation. This is an earlier date than the date that the strata corporation determines that a breach has occurred. These are complex issues that may ultimately require a legal opinion or a court decision to finally resolve.

The same limitation rules apply to owners and tenants who wish to bring a claim against a strata corporation.

At the end of the day, the new *Limitation Act* necessitates a higher level of administrative due diligence. Councils should take steps to change their historical collection practices as soon as possible. Such changes will ensure timely collection procedures, minimize receivables, maximize financial health and virtually eliminate missed limitation dates.