

Headline: New Limitation Act Requires Careful Consideration by Strata Corporations

Publication date: Winter 2012

Publication: CHOA Journal

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Not only are strata corporations governed by the *Strata Property Act*, they are governed by an assortment of other legislation, particularly provincial legislation. Changes to the *Limitation Act* were approved by the provincial legislature in the spring of 2012 and will come into effect on June 1, 2013. These changes were made for general business reasons, but their impact on B.C. strata corporations will be significant. This article is a general discussion of the *New Limitation Act* and how its provisions may affect strata corporations. I will be referring to the *Limitation Act* that is in force up to and including May 31, 2013 as the "*Old Limitation Act*" and the *Limitation Act* that comes into force as of June 1, 2013 as the "*New Limitation Act*".

A limitation period is the period after which a court proceeding must not be brought with respect to a claim. In other words, a legal entity, including an individual, corporation or strata corporation, has a fixed period of time under the law to start a court action or loses the right to do so.

Under the *Old Limitation Act* there are different limitation periods for different civil causes of action. For example there is a two year limitation period for defamation and personal injury. Under the *Old Limitation Act*, if any of its specific provisions or another enactment did not apply, there was a default limitation period of six years after the date on which the right to commence an action arose.

The *New Limitation Act* standardizes and in many cases shortens the limitation period applicable to various civil causes of action. It also limits the time period during which certain non-judicial remedies can be used. The *New Limitation Act* will bring B.C. more in line with limitation periods applicable in other provinces, making B.C. a more competitive place to do business and so it is welcomed by many businesses and professionals.

The basic limitation period under the *New Limitation Act* is two years after the day on which the claim is discovered. There will always be arguments made about when a claim is "discovered".

Each strata council and the owners as a whole will have to make decisions on whether to pursue a variety of different causes of action in court, including collecting strata fees, special levies and fines from owners, pursuing damages in contractual matters and so on. Faced with the possibility of initiating legal proceedings, council members should be obtaining legal advice and assessing at the earliest opportunity whether it is in the best interests of the strata corporation to commence a claim, since the limitation period will now generally be only two years from when the claim is discovered. Keep in mind that owners at a general meeting usually have the right to consider and vote on whether to proceed with legal action as well as whether to fund the legal costs of doing so and the process of scheduling the general meeting takes time.

The *New Limitation Act* sets out exceptions to the basic two year limitation period. The exceptions include but are not limited to certain causes of action having different limitation periods. Also, the *New Limitation Act* does not apply to situations where a limitation period is established under another enactment, except to the extent provided for in the other enactment. It is important to consider that other enactments, such as the Human Rights Code and municipal legislation, may have even shorter limitation periods.

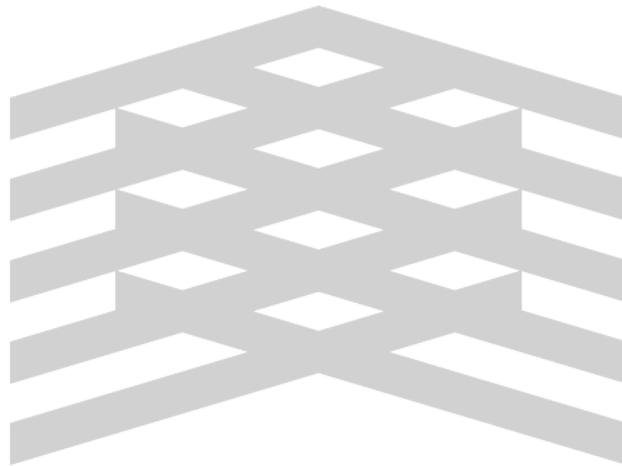
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There is also an ultimate limitation period specified in *New Limitation Act* of 15 years after the day on which the act or omission on which the claim is based took place. That means that even if the claim is not discovered until later, there is an ultimate limitation period of 15 years.

There are transitional provisions between the *Old Limitation Act* and the *New Limitation Act*. If a strata corporation has a claim that exists prior to June 2013, council members should consult a lawyer as soon as possible to see if the strata corporation can rely on a longer limitation period set out in the *Old Limitation Act* than those specified under the *New Limitation Act*.



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