

July 2015

# New Limitation of Actions Act

Q&A p. 1-10

Transition Rules p. 11

Table of Concordance p. 12



# Questions and Answers

*For the Questions and Answers*

*For the New Limitation of Actions Act*

While the Department of Justice sought to ensure accuracy in providing answers to the following questions, they are being posted strictly for information purposes only, **and are not intended to constitute legal advice and should not be relied upon for such purpose.**

## 1. Why change the current *Limitation of Actions Act*?

The Limitations of Actions Act has not been comprehensively reviewed since its introduction in Nova Scotia. This area of law has always been purely legislative and has its origins in England in the 16th century. Canada inherited the English statutes of limitations, with the Provinces adapting them in different ways over the years.

In recent years various Canadian jurisdictions, including British Columbia, Alberta, Ontario, Saskatchewan, Manitoba and New Brunswick, have modernized their limitations legislation. The Uniform Law Conference of Canada (ULCC) has also prepared draft limitations legislation as a model for provinces to adopt. The modern legislation introduced by these Canadian jurisdictions and the ULCC incorporates considerably more clarity and fairness.

Ultimately, reform of the former Limitation of Actions Act achieves the following objectives:

- it brings coherence and simplicity to limitation laws in Nova Scotia;
- it creates greater consistency with other Canadian jurisdictions, given the recent reforms introduced by other Provinces to their limitations statutes;
- it strives to find the correct balance between the competing sets of rights of plaintiffs and defendants; that is, between a plaintiff's need

to access the civil justice system and a defendant's need for certainty and finality;

- it modernizes an area of the law that has a direct impact on the cost of doing business in the Province; and
- it responds to calls for change from a broad range of stakeholders received over the years, including the Nova Scotia Barristers' Society, the building design and construction sectors, and other professional associations.

## 2. Was there consultation on the changes to the *Limitation of Actions Act*?

The first Limitation of Actions Act dates back to 1758. Despite amendments to the Act over the years, the Department of Justice had decided that this statute was in need of a comprehensive review in order to simplify and modernize it.

The formal law reform project began in 2012. Proposals for legislative reforms were outlined in a 2013-2014 Discussion Paper, which included a review of the draft Limitation of Actions Act. Various people and organizations made submissions in response to the Discussion Paper, including members of the Nova Scotia Barristers' Society. Feedback from the public and other advisory groups continued to inform and shape the new Limitation of Actions Act as it made its way through the House of Assembly. The new Limitation of Actions Act, in its current form, is the result of careful and thorough consideration of all the submissions the Department received during the development of this new statute.

### 3. When does the new *Limitation of Actions Act* come into effect?

The new Limitation of Actions Act (Chapter 35 of the Acts of 2014) will come into force on September 1, 2015.

### 4. What does the new *Limitation of Actions Act* apply to?

The new Limitation of Actions Act defines a “claim” to be a claim to remedy an injury, loss or damage that occurred as a result of an act or omission. The new Act governs how long a person has to bring a claim against another person if no other statute applicable to the person’s claim contains a specific time period, and if the person’s claim is not exempted from operation of the Act.

In other words, where another more specific law sets a time period within which a person must bring a claim, that specific limitation period applies rather than the default periods contained in the new Limitation of Actions Act (see section 6 of the new Act). For example, the Builders’ Lien Act sets specific limitation periods for lien claims brought pursuant to that legislation.

Alternatively, a person’s claim may be exempted from the default periods contained in the new Limitation of Actions Act. This may mean that the person’s claim is governed by a limitation period specified elsewhere (for example, the Real Property Limitations Act, see paragraph 3(a) of the new Act), or may not be subject to a limitation period at all (for example, a claim based on misconduct of a sexual nature, see paragraph 11(a) of the new Act).

### 5. What are the key changes in the new *Limitation of Actions Act*?

The new Limitation of Actions Act:

- introduces a single, 2-year basic limitation period for all civil claims;
- introduces a 15-year “ultimate” limitation period;

- applies to a “claim” instead of applying to “causes of action” as described in the former Act. This change captures claims in equity, as claimants and defendants in claims in equity deserve the same modern balanced protection of interests that the new Act provides to claims in common law;
- codifies the principles of discoverability and making “discoverability” applicable to all claims (see subsections 8(1) and 8(2) of the new Act);
- binds the Crown to limitation periods so that the Crown is treated like any other claimant that must exercise due diligence to ensure that a claim is brought within the applicable deadlines (but it should be noted that certain types of claims brought by the Crown are exempted from the Act, see Section 10 of the new Act);
- exempts claims based on misconduct of a sexual nature, claims based on emotional, physical or financial dependency and claims based on an intimate relationship from all limitation periods, even if such a claim occurred before the new Act came into force and a prior limitation period has expired (see Section 11 and subsection 23(4) of the new Act);
- changes the discretionary authority of a court to disallow a defence based upon a limitation period. Under the new Act, this discretion only applies to claims related to personal injury and it can only be exercised within two (2) years from the date the act or omission was discovered (see Section 12).

### 6. What is the difference between the basic and ultimate limitation periods?

Section 8 of the new Limitation of Actions Act introduces two types of time periods within which plaintiffs must bring their claim: (1) a basic limitation period of 2 years (paragraph 8(1)(a)); and (2) an ultimate limitation period of 15 years (paragraph 8(1)(b)). These time periods govern how long a person has before he/she must start a civil lawsuit.

The basic limitation period is the time period that normally applies to a person's claim, absent special circumstances that would justify stopping the clock from running. This limitation period runs from the date the person "discovers" that he or she has a legal claim. A person has 2 years from the day of such discovery to start a civil lawsuit in the court system, unless otherwise specified in the new Act or another enactment.

On the other hand, the ultimate limitation period describes the maximum outside time limit past which a basic limitation period cannot extend. The ultimate limitation period runs from the date of the occurrence of the act or omission giving rise to a person's claim. As such, "discovery" of the claim has no bearing on the ultimate limitation period. This means that 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.

Under the former Limitation of Actions Act, the length of the applicable limitation period depended upon the nature of the cause of action that was being pursued. For example, action for assault under the former Act had to be brought within 1 year after the cause of action arose, whereas an action for a claim involving a motor vehicle had to be brought within 3 years after the cause of action arose. Now, a single period applies to every claim, regardless of type of action (with some exceptions). This gives enhanced simplicity and predictability to the law.

Without an ultimate limitation period, a defendant under the former Limitation of Actions Act could be indefinitely subject to a claim that runs from discovery. The ultimate limitation period gives certainty as to when the exposure to liability ends.

#### **7. Has the discovery test in the new *Limitation of Actions Act* changed from the discovery rules in the former *Limitation of Actions Act*?**

The former Limitation of Actions Act did not deal with "discoverability" in a comprehensive manner, although some provisions postponed the running

of time for enumerated causes of action or in limited circumstances. For example, under paragraph 2(5)(a) of the former Act, a cause of action with respect to sexual abuse did not arise until the victim discovered the causal relationship between their injury and the sexual abuse in question.

Subsection 8(2) of the new Limitation of Actions Act modernizes "discoverability" in Nova Scotia. The discoverability test can be subjective (based on the plaintiff's actual knowledge) or objective (based on what the plaintiff "ought reasonably to have known" and is therefore deemed to have discovered). This test applies to all claims to remedy an injury, loss or damage that occurred as a result of an act or omission, rather than applying to only certain types of claims or circumstances.

#### **8. Are there any exemptions from limitation periods that have been introduced in the new *Limitation of Actions Act*?**

**Yes.** The new Limitation of Actions Act contains the following exemptions from the Act's default limitation periods:

- claims for which a limitation period has been established under another enactment (section 6);
- claims based on existing aboriginal and treaty rights recognized and affirmed in the Constitution Act, 1982 (subsection 4(1)(a)), (such claims will be treated as though the former Limitation of Actions Act remained in force);
- equitable claims brought by aboriginal peoples against the Crown (subsection 4(1)(b)), (such claims will be treated as though the former Limitation of Actions Act remained in force);
- claims to which the Real Property Limitations Act applies (i.e., claims that deal with real estate, such as, for example, claims for possession of land, claims for title to property by a person in possession, etc.) (paragraph 3(a));
- a judicial review application (paragraph 3(b));

- a court proceeding in which the only relief sought is to obtain a declaration (and that is not otherwise remedial in nature) (definition of “claim” under paragraph 2(1)(a));
- an appeal (definition of “claim” under paragraph 2(1)(a));
- a court proceeding in which the Crown seeks to recover money owing to it in respect of fines, penalties, taxes or student loans (paragraphs 10(a) and 10(c));
- a court proceeding in which the Crown brings a claims relating to the administration of a social, health or economic program (paragraph 10(b)); and
- claims relating trespass to the person, assault or battery if the claim is based on misconduct of a sexual nature or if the claimant was in an intimate or dependent relationship with one of the defendants (section 11).

#### **9. How do the rules work to suspend limitation periods for minors and adults under a disability?**

The new Limitation of Actions Act carries forward the rule from the former Act that applicable limitation periods do not run while a person is a minor (section 18). A minor is a person who is under 19 years of age. Similarly, the new Act carries forward the rule from the former Act that applicable limitation periods do not run while a person is under a physical, mental or psychological disability (section 19). In other words, if a claimant is incapable of bringing his or her claim because of a physical, mental or psychological affliction, the limitation periods applicable to his or her claim will not run during his or her period of incapacity. It bears noting that both the basic and ultimate limitation periods are suspended while a person is a minor or impeded from bringing a claim due to disability.

#### **10. Has the law changed for determining how time runs for a claim involving a demand obligation?**

**Yes.** A demand obligation is an obligation or loan in which there is no fixed condition or date for repayment; it is an obligation repayable upon demand of the lender. The former Limitation of Actions Act was silent on how limitation periods applied to this type of obligation.

Section 15 of the new Limitation of Actions Act states that the time for both the discovery period and the ultimate period start to run from the day there was failure to perform the obligation after a demand for performance is made.

#### **11. How do the rules work to suspend limitation periods with respect to victims of sexual misconduct?**

The new Limitation of Actions Act provides that claims in relation to an assault, battery or trespass to the person based on misconduct of a sexual nature are not subject to any limitation periods, either before the Act comes into force or following its proclamation. In many cases, victims of sexual misconduct cannot be expected to recognize the wrong that has happened to them and have the ability to bring a claim within a limitation period due to the long-term psychological and physiological consequences that typically follows such a traumatic event.

Under the former Limitation of Actions Act, victims of sexual abuse were provided with protection by suspending the discovery concept while the victim was incapacitated due to the effects of the abuse. This protection has been expanded under the new Act. Now, sexual misconduct claims are not subject to any limitation period. Ultimately, this reform protects vulnerable people from the operation of the newly introduced, shorter limitation periods. These changes have retroactive effect and will allow a person with a claim that was “barred” under the former Act to bring their claim.

To be clear, this exemption applies to civil claims for damages that arise out of the occurrence

of assault, battery or trespass to the person in relation to sexual misconduct or against someone in an intimate or dependent relationship with the defendant. Neither the former Act nor the new Act have any application to criminal proceedings.

### **12. Has the new *Limitation of Actions Act* introduced changes to the law with respect to an acknowledgment of liability?**

The new Limitation of Actions Act clarifies that time for both the basic and ultimate limitation periods will be restarted for claims in which defendant has acknowledged liability (from the date the acknowledgment is made). While many of the principles from the former Limitation of Actions Act have been retained, the new Act clarifies what constitutes an acknowledgment in the context of specific types of claims and provides the relevant rules on similar matters with greater scope and detail.

### **13. How do the new transition rules apply?**

Section 23 of the new Limitation of Actions Act provides for transition from the old limitations system to the new system.

For a claim discovered by the claimant before proclamation of the new Act, provided that it is based on an act or omission that took place before proclamation and in which no court proceeding has been commenced, the applicable limitation period is the earlier of:

- the expiration of the old limitation period; or
- 2 years from the proclamation.

For a claim discovered after proclamation, regardless of when the claim arose, the new limitation system applies.

It must be remembered that claims under section 11 of the new Act (relating to sexual misconduct or intimate/dependent relationships) are exempted entirely from the operation of any limitation periods (subsection 23(4)). Therefore, no limitation period applies to such claims, regardless of whether

the claim occurred or was discovered before or after the new Act's effective date.

### **14. Has the new *Limitation of Actions Act* introduced changes to the "safeguard" provision (which provides a Nova Scotia Court with residual discretion to disallow a time limitation defence)?**

The former Limitation of Actions Act contained a provision that allowed a Nova Scotia Court to disallow a limitation defence on equitable grounds having regard to prejudice to the claimant and defendant. Under the former Act, the Court could only exercise this jurisdiction within 4 years after the relevant limitation expired. This "safeguard" provision has been carried forward in the new Limitation of Actions Act (section 12), but several changes have been introduced under the new Act:

- it only applies to the 2-year basic limitation period or a limitation period provided in another enactment (i.e., the 15-year ultimate limitation period cannot be extended by the Court pursuant to this provision);
- it only applies to claims brought to recover damages in respect of personal injuries;
- the Courts focus must be on the "hardship" experienced by the respective parties rather than "prejudice";
- the Court must consider the strength of the claimant's case and any alternative remedy or compensation available to the claimant in exercising its discretion under this provision; and
- the Court may only exercise its jurisdiction within two (2) years after the relevant limitation period expires (rather than 4 years).

While the Department of Justice sought to ensure accuracy in providing answers to the following questions, they are being posted strictly for information purposes only, and are not intended to constitute legal advice and should not be relied upon for such purpose.

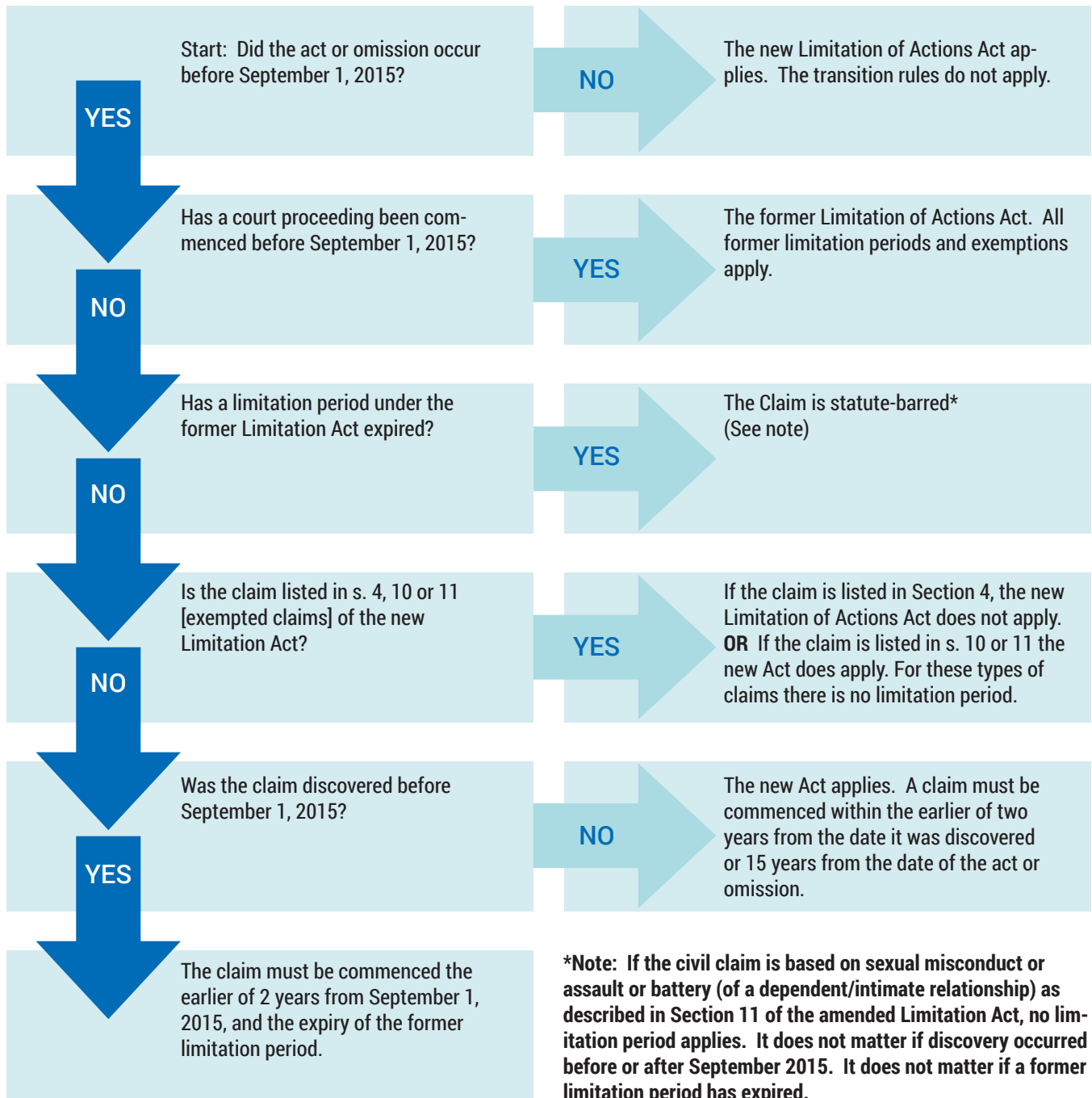


# Transition Rules Flowchart

for the new Limitation of Actions Act

This document is intended to help explain the transition to the new Limitation of Actions Act. It is not intended to constitute legal advice and should not be relied upon for those purposes.

The new Limitation Act is a default statute. If another provincial statute contains a limitation period, the Limitation of Actions Act does not apply, except to the extent provided for in the other provincial statute. Until September 1, 2015, the former Limitation Act continues to apply.



# Table of Concordance

## Limitation of Actions Act ("LOA")

New LOA	Subject Matter of Section	Former LOA
1	Short title	1
2	Definitions	3(1)
3	Proceedings exempted from the Act	new
4	Aboriginal claims exemption	new
5	Crown claims exception (former LOA did not bind Crown)	new
6	Conflict with other enactments	2(3)
7	Conflicts of law	new
<b>General Limitation Periods</b>		
8	Limitation periods and discovery of claim	2(1), 2(2)
9	Burdens of proof	new
<b>Exceptions to the General Limitation Periods</b>		
10	Act binds the Crown	new
11	Sexual assault claims exception	2(5)
12	Disallowance or invocation of limitation period by Court	3
13	Claims to recover possession of personal property	new
<b>Operation of the General Limitation Periods</b>		
14	Discoverability and claims for default of demand obligation	new
15	Discoverability and claims for contribution or indemnity	7, 38
16	Discoverability and predecessors in right or agents	new
17	Discoverability and wilful concealment by defendant	29
18	Suspension of limitation periods for minors	4, 5
19	Suspension of limitation periods for disability	2(5)(b), 4, 5
20	Acknowledgment by defendant	6, 8
21	Extension of limitation periods by agreement	3(1)(c)(iii)
<b>Claims Brought After Expiry of Limitation Period</b>		
22	Adding claims after expiry of limitation period	new
<b>Transitional Periods, Consequential Amendments and Effective Date</b>		
23	Transition rules	new
24	Amendment to the Land Registration Act	new
25	Introduction to the Limitation of Actions in Respect of Real Property Act	new
26	Amendment to same	new
27	Further amendment to same	new
28	Amendment to the Marketable Titles Act	new
29	Amendment to the Personal Property Security Act	new
30	Amendment to the Sydney Steel Corporation Sale Act	new
31	Coming into force	new

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