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Backgrounder

LRC 15—Report on Limitations

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Limitation periods require potential plaintiffs to commence lawsuits within specified times in order to preserve their rights against potential defendants. They serve an important function within the law, ensuring that lawsuits are brought within a specified time. This brings finality to potential lawsuits, assuring potential defendants that they will not be subject to possible liability for an indefinite time. Limitation periods also address the tendency of evidence of claims to go stale over time. Memories of witnesses grow hazy; documents can be mislaid.

Unfortunately, at the time this report was written, British Columbia's limitation rules were in a shambles. The act that governed the field, which was called the *Statute of Limitations*, was a compilation of nine English statutes, enacted at various times between 1623 and 1861. The *Statute of Limitations* contained numerous references to obsolete causes of action and legal remedies and, at the same time, failed to mention causes of action that were prevalent in contemporary litigation, such as negligence, nuisance, or breach of contract. Determining the limitation period for these actions required an extensive knowledge of legal history. Further, the *Statute of Limitations* only established general limitation periods. A vast number of special limitation periods—which in specified circumstances ousted the general limitation periods—were scattered throughout over 100 provincial statutes.

The law had reached this state not by design, but by neglect. After affirming the importance of limitation periods and the need for a clear statutory framework governing them, the commission recommended that the *Statute of Limitations* be repealed. The rationale for this recommendation was found in the statute's archaism and its limited reach.

The remaining seven chapters of the report set out the commission's detailed recommendations for legislation to replace the *Statute of Limitations*. The commission began by tackling the question of the appropriate length of limitation periods. The report set out the existence position of the law in British Columbia, and then compared it to the position in other provinces. The commission concluded that three general limitation periods are appropriate. The recommended periods were (1) two years (for most tort actions), (2) ten years (for serious breach of trust actions and judgments), and (3) six years (for actions not cov-

ered by the first two limitation periods). In addition, the commission recommended no limitation period for a number of actions relating to land. The next two chapters of the report examined in detail how specific actions fit into this general structure, beginning with contract, tort, and trust claims, then moving on to actions relating to land.

The report then turned to consider the legal issues surrounding the running of time under limitation periods. A rigid application of limitations law can produce harsh results, barring claims from people who have not unduly delayed the prosecution of their actions. Limitations legislation has always tended to include provisions mitigating its application. The report examined when it should be appropriate to postpone or suspend a limitation period, or to extend the time under it.

The next chapter of the report examines a series of specific problems. First, the report concluded that the Crown (*i.e.*, the provincial government) should be bound by the *Limitation Act*. The chapter then went on to discuss provisions for the extinguishment of rights under a limitation period, the application of conflict of laws rules, and the establishment of an ultimate limitation period. The chapter concludes by discussion transitional rules.

The report's final substantive chapter considered the issue of special limitation periods. The chapter began by noting that over 100 of these special limitation periods were in existence at the date of publication. They were created by statutes other than the *Statute of Limitations*. The commission's approach was to rationalize these special limitations periods, with the goal of leaving as few as possible in place.

Further Developments

See *Limitations Act*, S.B.C. 1975, c. 37 (now *Limitation Act*, R.S.B.C. 1996, c. 266).