

NEW LIMITATIONS ACT

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A new *Limitations Act* came into force in Saskatchewan on **May 1, 2005**.

The new Act is a complete revision of existing law respecting limitation of actions in Saskatchewan and will be applied by our Courts to EVERY action in Saskatchewan, even those governed by the laws of another jurisdiction.

This is a summary of the changes likely to be of interest to property and casualty insurers. The new Act focuses on discoverability as the start of the “limitation clock” and as a result every case may have different factual nuances that influence the date upon which the limitation period commences. Consequently, please treat this summary as a general comment on the new provisions rather than a researched legal opinion that can be applied to all cases.

When Does the Clock Start?

Under the old *Limitation of Actions Act* the commencement of the limitation period was determined by the date upon which the act or omission that led to damage occurred. Under the new *Limitations Act* the date of the act or omission is but one criterion to be examined to determine the date upon which the limitation period begins to run. Under the new Act limitation dates begin to run from the date when a “claim” is discovered.

A “claim” is “discovered” on the day when the party that is injured knew or should have known that;

1. he or she was injured, AND
2. the injury appears to be caused by the act or omission that is the basis for the claim, AND
3. the act or omission is that of the prospective defendant(s), AND
4. a court proceeding would be an appropriate means through which to seek a remedy.

In most case all four conditions occur simultaneously or at least contemporaneously and the date upon which the clock begins to run is easily ascertainable. It is unlikely that a claimant will have knowledge of an injury but be unaware of who caused it or how. Nevertheless, it is possible for claimant to be injured and not discover who or what caused it for sometime after. The asbestosis cases are the best example of this sort of problem. In such cases the clock begins to run only when all four conditions have been satisfied.

What is the Limitation Period?

Under the old *Limitation of Actions Act* the length of a limitation period varied depending on the type of claim or loss. Under the new Act there is one limitation period that applies to all of the types of tort actions normally seen in casualty and property claims. The limitation period is **two years** from the date upon which the **claim** was discovered, not from the date upon the act or omission occurred. This limitation period applies unless a different limitation period is prescribed by another Act and is expressed to apply notwithstanding the provisions of the *Limitations Act*.

The new Act presumes that the date of discovery is the same as the date of the act that gave rise to the claim unless the claimant proves otherwise.

The new *Act* also imposes an “ultimate limitation period” of 15 years from the date of the act or omission that forms the basis of the claim. Consequently, disputes involving faulty construction commenced more than 15 years after the faulty workmanship was performed may be statute barred even though incapable of being discovered earlier.

Suspended Limitation Periods

The new *Act* continues to suspend the operation of any limitation period during any period in which the claimant is a minor. As before the limitation clock starts to run on the date the minor reaches the age of majority, presumably as that age is defined in Saskatchewan.

The new *Act* also continues to suspend the operation of any limitation period with respect to an action for sexual assault or assault and battery where the claimant lives with the tortfeasor in an intimate relationship or in a relationship of financial, emotional or physical dependency.

Contribution and Indemnity

The new TWO YEAR limitation period also applies to claims between defendants and between defendants and third party litigants. In such cases the tortfeasor that intends to claim for contribution or indemnity against another tortfeasor (whether in tort or otherwise) is deemed to have knowledge of the act or omission that is the basis for its claim on the date it is served with the Statement of Claim. Remember, however that the DATE of the act or omission is but one of the conditions that need to be satisfied before the limitation clock starts to run.

Consequently, the provision in the *Contributory Negligence Act* that absented cross claims and third party claims from any limitation period will be repealed when the new *Act* comes into force.

Amendments after the Limitation Period

The new *Act* incorporates a provision that previously existed in the *Queen’s Bench Act*. The provision continues to grant the Court jurisdiction to permit amendments after the close of pleadings that would add a new claim or new party if the claim arises from the same transaction or occurrence as the original action and no party will suffer actual prejudice from the amendment. Of course, being unable to rely on a limitation period defence will not be “actual prejudice”.

Transition

In the transition from the old to the new *Act* if the new *Act* creates a different limitation period than existed before the new *Act* comes into force and the “old” limitation period has not expired by the date the new *Act* comes into force then;

1. if the claim was not discovered before the new *Act* comes into force the new limitation period applies as if the act or omission that forms the basis for the claim occurred on the date the new *Act* comes into force,
2. if the claim was discovered before the new *Act* comes into force then the “old” limitation period applies.

Amendments to other Acts

Many other Saskatchewan statutes have been amended with the coming into force of this new *Act*. Below are some of the amendments that are likely to have some relevance to property and casualty insurers.

The Cities Act

A City must now be advised within 30 days of injury by a plaintiff that intends to claim compensation for personal injury caused by the presence of ice or snow.

The same 30-day notice period exists with respect to claims for damage caused by the City's failure to maintain roads and infrastructure, such as sewers.

The one-year limitation period continues to apply to actions against cities.

The Saskatchewan Insurance Act

Statutory Condition 14 is repealed with the coming into force of the new Act and not replaced. Given the definition of "claim" under the new Act there is likely to be some litigation on when a claim under a policy becomes "ripe". The new Act focuses upon when a particular claim was or should have been discovered. I expect insureds to argue that the claim is "discovered" when the insurer denies coverage rather than when the loss that led to the claim occurred.

With respect to automobile insurance the limitation period in Statutory Condition 6(3) is also repealed upon the coming into force of the new Act.

Conclusion

There may be other provisions of the new *Limitations Act* that apply in a particular case. The statute can be viewed for free online at the Queen's Printer website <http://www.qp.gov.sk.ca/>.

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