

# Statute Barred Claims

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# Statutes

- *Limitation Act*, SBC 2012, c. 13
- But also:
  - *Securities Act*, RSBC 1996, c. 418, s. 140;
  - *Local Government Act*, RSBC 2015, c. 1, ss. 735 and 736;
  - *Fraudulent Preferences Act*, RSBC 1996, c. 164, s. 4;
  - *Family Law Act*, SBC 2011, c. 25, s. 198;
  - *Builder's Lien Act*, SBC 1997, c. 45, s. 14;
  - *and others*

# *Limitation Act*, SBC 2012, c. 13

- Came into force on June 1, 2013, replacing the old *Limitation Act*, RSBC 1996, c. 266
- Establishes the **Basic Limitation Period** of **2 years** after the day on which the claim is “discovered”.
- Bars not only **court proceedings** but also **non-judicial remedies**

# *Limitation Act (2012): Special Cases*

- Exemptions:
  - Secured party in possession of collateral
  - Claim of landlord to recover possession of land
  - Claims relating to misconduct of a sexual nature
  - Certain claims relating to assault or battery
  - Claims for arrears of child support
- Court judgments: **10 years**
- COVID-19: limitation periods suspended from March 26, 2020 to March 25, 2021

# *Limitation Act (2012): Discoverability*

- A claim is discovered on the date that the claimant knew, or reasonably ought to have known, all of the following:
  - (a) that 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) that, 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.
- Concept of Discoverability is subject to the Ultimate Limitation Period of 15 years from the date on which the act of omission takes place, with some exceptions, of course.

# *Limitation Act (2012): Special Discoverability Principles*

- **Demand Obligations** are discovered on the date of a failure to comply with a demand for performance.
  - Significant change from the old act. So take care with very old demand loans where the old act may apply!
- **Security Interests** are discovered on the first day that the right to enforce the security arises, often this is the day when a borrower fails to make a payment. But not always!
- *Leatherman v. 0969708 BC Ltd.* 2018 BCCA 33 regarding mortgages

# *Limitation Act (2012): Acknowledgment*

- A limitation period can be extended if, *before it expires*, a person acknowledges liability in respect of the claim.
- Two types of acknowledgment:
  - A **Written Acknowledgment** must be (a) in writing, (b) signed by the debtor\* and (c) provided to the claimant. It must, objectively construed, show an intention to admit *liability*.
  - An acknowledgment by **Conduct or Part Payment** applies only to debts and requires the debtor to make a part payment on a debt or perform an obligation under a security agreement.

# *The Bankruptcy Context*

- *Limitation Act, SBC 2012, c. 13 applies in bankruptcy*
  - Limitations apply explicitly to judicial and non-judicial remedies
  - **Statute barred claims are not provable in bankruptcy**
- Recent drama in the Ontario jurisprudence was specific to the interpretation of the Ontario legislation and has not been cited in this province.
- **The running of limitation periods are stayed by the bankruptcy.**



# OSB Response re Statute Barred Debts

- Directive 22R4 (June, 2024, implementation delayed to September 16, 2024)
- OSB added paragraphs 4 and 5 to the proof of claim form
  4. That, to the best of my knowledge, this debt has never been (or this debt has been or part of this debt has been) statute-barred as determined under the relevant legislation.
  5. That payment for this debt by the debtor to the creditor has been **due (or has been in default)** since the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and that the **last payment**, if any, on this debt by the debtor to the creditor was made on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and/or that the **last acknowledgement**, if any, of liability for this debt by the debtor to the creditor was made on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, as follows:
    - *(Give full particulars of the claim, including its history, any acknowledgement or legal action)*
- CRA and Other Government Departments Exempted

# Added three dates and Attestation

- Attestation
- Date of Default
- Last Payment Made
- Last Acknowledgement of Debt
- Guidance to Completing Form 31, Proof of Claim (OSB Website)

# Attestation

- That, to the best of my knowledge, this debt has never been (or this debt has been or part of this debt has been) statute-barred as determined under the relevant legislation.
  - ***Never seen any creditor say their claim is statute barred!***

# Three dates

- Date of Default – What Constitutes Default
  - All creditors (and possibly trustees, lawyers and OSB) have different definitions of default but generally thought of as when payments are missed beyond the due date;
  - May be more complicated in a commercial context. Credit agreements may have a defined definition of what constitutes default;
  - Creditors have mostly been using the date of filing as the date of default or the last missed payment date.

# Three Dates (cont)

- Last Payment Made
  - Most creditors know this;
  - If this section is blank then I start asking questions;
  - Possibly stated on Schedule A.

# Three Dates (cont)

- Last Acknowledgement of Debt
  - Mostly left blank, or
  - Creditors insert the date of bankruptcy, or
  - Could be the same as last payment date, or
  - Some other date.

# Three Dates (cont)

- Do we take this information at face value;
- Bear in mind how claims are prepared and who is preparing them;
- Automated.

# Guidance to Completing Form 31, Proof of Claim

- Paragraph 4
- Confirmation of debt status:
- Select whether all, part or none of the debt is statute-barred. A debt is statute-barred when legislation extinguishes the debtor bars a creditor from taking legal action to recover on it due to the passage of time, known as the limitation period.
- The specific conditions and the time for a debt to become statute-barred vary depending on the circumstances and relevant legislation. For most unsecured liabilities, the general limitation period is between two and six years.
- A statute-barred debt is not a provable claim under the Act. If you have a claim, it is advisable to seek legal advice to confirm the relevant legislation and limitation period that apply to your claim.



# Guidance to Completing Form 31, Proof of Claim

- Paragraph 5
- Claim Details:
  - Provide the date (day, month, and year) when payment was owed and the date (day, month, and year) of the last payment made by the debtor for the debt, if any.
  - Provide the date of the debtor's most recent acknowledgment of the debt, if any.
  - Include all relevant details about the debt or obligation, e.g., the nature and history of the claim, how and when the debt or obligation was contracted, etc.

# Can you Reaffirm a Statute Barred Debt?

- No
- There was some thought that listing the debt of the Statement of Affairs was a reaffirmation.

# Practical considerations

- What to do if you discover a statute barred claim?
  - Ask for more particulars?
  - Disallow it?
  - Allow it relative to amount of dividend?
  - Cost/Benefit/Materiality considerations
  - Bear in mind Rule 113 regarding serving of claim disallowances
    - Personally served
    - Registered mail
    - Courier
  - Costs or service are not recoverable in summary administrations or consumer proposals.

# Examples

- DOB – October 21, 2024
  - That payment for this debt by the debtor to the creditor has been due (or has been in default) since the 3<sup>rd</sup> day of November 2020, and that the last payment, if any, on this debt by the debtor to the creditor was made on the 3<sup>rd</sup> day of November 2020, and/or that the last acknowledgement, if any, of liability for this debt by the debtor to the creditor was made on the 3<sup>rd</sup> day of November 2020, as follows:

# Examples (cont)

- DOB – February 7, 2025
  - That payment for this debt by the debtor to the creditor has been due (or has been in default) since the 10<sup>th</sup> day of November 2022, and that the last payment, if any, on this debt by the debtor to the creditor was made on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and/or that the last acknowledgement, if any, of liability for this debt by the debtor to the creditor was made on the 11<sup>th</sup> day of May 2023, as follows:

# Examples (cont)

- DOF – January 3, 2025
  - That payment for this debt by the debtor to the creditor has been due (or has been in default) since the 23<sup>rd</sup> day of August 2023, and that the last payment, if any, on this debt by the debtor to the creditor was made on the 24<sup>th</sup> day of July 2023, and/or that the last acknowledgement, if any, of liability for this debt by the debtor to the creditor was made on the \_\_\_\_\_, as follows:

# Examples (Cont)

- DOB – January 21 2025

- That payment for this debt by the debtor to the creditor has been due (or has been in default) since the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and that the last payment, if any, on this debt by the debtor to the creditor was made on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and/or that the last acknowledgement, if any, of liability for this debt by the debtor to the creditor was made on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, as follows:

# What happens when debt is sold?

- 3<sup>rd</sup> party Agency has purchased the debt.
- DOB – October 10, 2024 (received April 7, 2025)
  - That payment for this debt by the debtor to the creditor has been due (or has been in default) since the 18<sup>th</sup> day of September 2023, and that the last payment, if any, on this debt by the debtor to the creditor was made on the 26<sup>th</sup> day of September 2018, and/or that the last acknowledgement, if any, of liability for this debt by the debtor to the creditor was made on the 10<sup>th</sup> day of October, 2024, as follows:



# What happens when debt is sold? (cont)

- Schedule A
  - Last Charge Date 2018-04-02
  - First Delinquency 2020-05-02
  - Charge Off Date 2019-05-03
- List Date 2023-09-18

# Is the New POC an Improvement

- Has it achieved desired results?

# Resources

- Limitations Statutes and Bankruptcy – CanLII
  - (J. Ross Macfarlane and Adam Fisher)