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THE NEW LIMITATION ACT – WHAT COMMERCIAL LANDLORDS AND TENANTS NEED TO KNOW

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Richards Buell Sutton Commerical Leasing Newsletter

On June 1, 2013 the new *Limitation Act* for British Columbia will come into force. The current *Limitation Act* has not been substantially amended since 1975. The new *Limitation Act* significantly simplifies the law on limitation periods, primarily by moving towards a single two year basic limitation period for the majority of claims. The new *Limitation Act* also standardizes BC's limitation periods with other provinces such as Alberta, Saskatchewan, Ontario and New Brunswick.

The most significant impact that the new *Limitation Act* will have upon landlords and tenants is the change in the limitation period for claims arising out of a breach of a lease. Under the current *Limitation Act* landlords and tenants can pursue a claim for a breach of a lease or a debt for up to six years after the date on which the right to do so arose. When the new *Limitation Act* comes into effect landlords and tenants will only have two years from the date on which a landlord or a tenant discovered that a Lease was breached or a debt has become due. While the new *Limitation Act* is much simpler to understand, it will shorten the period landlords and tenants have to pursue debts or breaches of a lease.

The new *Limitation Act* will not, however, alter claims relating to personal injury (such as slip and fall accidents) or property damage claims (such as vandalism). Under the current *Limitation Act* claims can be brought for up to two years from the date on which the right to do so arose. Under the new *Limitation Act* such claims fall under the basic two year limitation period.

The new *Limitation Act* also does not change the time landlords or tenants will have to enforce their judgments. Under both the current *Limitation Act* and the new *Limitation Act* parties have 10 years to enforce their judgments.

The new *Limitation Act* also does not affect environmental claims. Those claims are now, and will continue to be, dealt with under section 47 of the *Environmental Management Act*. In order to ensure that this is clear,

on June 1st section 47 of the *Environmental Management Act* will be amended to include a subsection stating that despite the new *Limitation Act* a legal proceeding may be brought at any time for remediation of a contaminated site.

The new *Limitation Act* contains transition rules that decide whether the current *Limitation Act* or the new *Limitation Act* will apply to a claim. These rules can be complex but as a simplified summary, if the act or omission you are suing over (for example a tenant's failure to pay rent) occurs after June 1, 2013 then the new *Limitation Act* will apply. If the act or omission happens before June 1, 2013, and you discovered it before that date, then the old the *Limitation Act* applies. Complications can arise when the act or omission happens before June 1, 2013 but is discovered after that date. Under that scenario the new *Limitation Act* will generally apply. Ultimately, we recommend that you do not sit on claims even if you think the old *Limitation Act* will apply because, on top of the risk that a court will find you are out of time to bring your claim, cases become harder to win as people's memories fade and documents are lost or destroyed.

The information provided in this newsletter is of a very general nature. If you would like to discuss the impact of the new *Limitation Act* on commercial leases or on a particular claim, please contact David Moriarty or one of the other lawyers in our Commercial Leasing Practice Group.