

Don't Miss the Boat – It Now Leaves Earlier than You Might Think!

B.C.'s New Shorter Limitation Period for Breach of Contract

For the first time in nearly 40 years the British Columbia government is shortening the time a person has to claim for breach of a contract, from six years to two years. This change, effective June 1, 2013, is important to mariners because it means they may no longer be able to wait up to 6 years after an event to commence a civil lawsuit to enforce an agreement or obtain compensation for breach of that agreement, but instead will have to sue as soon as two years after the event, or forever lose their right to do so. Fortunately, Canadian maritime law provides for a three-year limitation period in many cases involving vessels, but mariners must be cautious when concluding whether the two or the three-year limitation period applies to their claim; a mistake can be embarrassing and costly.

Why the Change to Provincial Law?

Unlike other provinces in Canada which only allow lawsuits for breaches of contract up to two years after the breach, B.C.'s law provided up to six years. For people who believe they have been wronged, this allowed a generous amount of time to decide what they wanted to do before actually commencing a court action. On the other hand, such a long period meant potential defendants were exposed to a lawsuit for up to six years after a particular event. Many critics thought this period was too long, and B.C. was encouraged to bring its law into line with other provinces.

No Change to Federal Law

The shortening of the limitation period under B.C. law for breaches of contract does not effect the limitation period under federal law. The *Marine Liability Act* (s.140), a federal statute, provides for a catch-all limitation period for claims under Canadian maritime law. It states: “*except as otherwise provided in this Act or in any other Act of Parliament, no proceedings under Canadian maritime law in relation to any matter coming within the class of navigation and shipping may be commenced later than three years after the day on which the cause of action arises*”. Aside from claims for cargo damage and injury to people or their baggage, which are covered under other sections of the *Marine Liability Act*, there are no other provisions under federal law that govern the limitation period for a

breach of contract. This means that many breach of contract claims falling under *Canadian maritime law* are governed by a three-year limitation period.

Which Law Applies? Two-year Provincial or Three-year Federal?

Except in exceptional circumstances, no one should be encouraged to run to court and sue another person as soon as a disagreement occurs. The law encourages dispute resolution outside of court. If you believe you have the right to sue someone, you obviously want as long as possible to negotiate a resolution, and only then to organize and commit to pursuing them in court. You obviously want the longer of the two or three year limitation periods to apply. From the defendant's perspective, much of the inconvenience and expense of being sued can be avoided if the plaintiff has been late in filing their claim, and the likelihood of this occurring is greater if the two-year limitation period applies to the claim. As a result, disputes will arise as to which limitation period applies.

The federal law provides a positive right to sue within three years, which, due to constitutional law, the provincial law cannot conflict with. However, in order for the federal law to apply, the claim must be "*a proceeding under Canadian maritime law in relation to any matter coming within the class of navigation and shipping*". What types of cases this includes is partly defined by common law (cases decided by judges and applied by other judges), and partly by legislation. The *Federal Courts Act* particularizes some of types of claims that fall within the Canadian maritime law as: vessel sales agreements, vessel mortgages, vessel charter and joint venture agreements, seaman's wage claims, cargo shipping agreements, vessel construction, marine insurance, towing and pilotage agreements, salvage, and claims arising out of repair or equipping of a ship, and for goods, materials or services supplied to a ship for its operation or maintenance. To these cases the three-year limitation period would apply.

However, in many cases there will be room to argue that although a vessel is involved, the claim is not, at its core, a maritime claim and that the shorter provincial limitation period applies. Many disputes in the marine industry involve the delivery of goods and services for a marine venture, but they may not relate directly to the vessel. For example, clearly the contract for the deckhand's wages is a marine contract, but is the shore engineer's employment agreement a maritime contract? He provides services directly to a vessel, but all his work occurs ashore or at the dock. What of the office manager whose work also contributes to the operation of the vessel, but never sets foot on the vessel. Is one's claim for breach of employment contract covered by Canadian maritime law and the other's not, because one set foot on the boat on the dock and one did not? These

questions can only be answered as each case arises, but the potential for conflict is obvious if a claim is not filed within the shorter of the two limitation periods.

Disadvantages to the Federal Three-Year Limitation Period

Although the provincial limitation period is shorter than the federal limitation period, a claimant may want to argue the provincial law applies. This is because the provincial limitation law had at least two major advantages that the federal law does not.

The first of these is that the provincial law allows the running of the limitation period to be postponed if material facts relating to the claim have been willfully concealed from them. Essentially, the running of the two-year clock is delayed until the person has sufficient facts to allow a person, acting reasonably with proper advice, to conclude the action would have a reasonable prospect of success. The federal law, on the other hand, does not provide for any similar postponement – the three-year limitation runs whether you know sufficient facts about the claim or not. Also, unlike federal law, provincial limitation law provides a postponement due to legal disability, such as being a minor (under the age of 19) or being mentally disabled. The second significant advantage of the provincial limitation law is that the limitation period can be renewed, or restarted, by the person who is being pursued acknowledging the claim in writing, or making a payment towards the claim.

In sum, because it will often be difficult to conclude whether a dispute involves a two or three-year limitation period. A prudent mariner will commence a court action within two years of the breach of the agreement. This does not mean that the parties cannot continue to negotiate after court papers are filed, but unless the action is commenced the mariner will lose any negotiating power because the other party will know their legal action is time barred.

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