



## **PLEASE NOTE**

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For more information concerning the history of this Act, please see the [Table of Public Acts](#).

If you find any errors or omissions in this consolidation, please contact:

Legislative Counsel Office  
Tel: (902) 368-4291  
Email: [legislation@gov.pe.ca](mailto:legislation@gov.pe.ca)

**CHAPTER S-7**  
**STATUTE OF LIMITATIONS**

- 1. In this Act** Definitions
- (a) “action” means any civil proceeding, including any civil proceeding by or against the Crown; action
- (b) “assurance” means any transfer, deed or instrument, other than a will, by which land may be conveyed or transferred; assurance
- (c) “disability” means disability arising from minority or unsoundness of mind; disability
- (d) “heirs” includes the persons entitled beneficially to the real estate of a deceased intestate; heirs
- (e) “land” includes all corporeal hereditaments, and any share or any freehold or leasehold estate or any interest in any of them; land
- (f) “mortgage” includes charge, “mortgagor” includes chargor, and “mortgagee” includes chargee; mortgage
- (g) “proceedings” includes action, entry, taking of possession, distress and sale proceedings under an order of a court or under a power of sale contained in the mortgage or conferred by statute; proceedings
- (h) “rent” means a rent service or rent reserved upon a demise; rent
- (i) “rent charge” includes all annuities and periodical sums of money charged upon or payable out of land. R.S.P.E.I. 1974, Cap. S-7, s.1. rent charge

PART I  
LIMITATION PERIODS

- 2. (1) The following actions shall be commenced within and not after the times respectively hereinafter mentioned:** Limitation periods
- (a) actions for penalties imposed by any statute brought by any informer suing for himself alone or for the Crown as well as for himself, or by any person authorized to sue for the same, not being the person aggrieved, within one year after the cause of action arose;
- (b) actions for penalties, damages or sums of money in the nature of penalties given by any statute to the Crown or the person aggrieved, or partly to one and partly to the other, within two years after the cause of action arose;
- (c) actions of defamation, whether libel or slander, within two years of the publication of the libel or the speaking of the slanderous

words or where special damage is the gist of the action, within two years after the occurrence of such damage;

(d) actions for trespass to the person, assault, battery, wounding or other injury to the person, whether arising from an unlawful act or from negligence, or for false imprisonment, or for malicious prosecution within two years after the cause of action arose;

(e) actions grounded on fraudulent misrepresentation, accident, mistake, or any equitable ground of relief not hereinbefore specifically dealt with, within six years from the discovery of the cause of action;

(f) actions on a judgment or order for the payment of money, within ten years after the cause of action thereon arose unless in the case of an extraprovincial judgment the time for enforcement has already expired in the province where the judgment or order was made;

(g) any other action not in this Act or any other Act specifically provided for, within six years after the cause of action arose.

Application of section

(2) Nothing in this section extends to any action where the time for bringing the action is by statute specially limited. R.S.P.E.I. 1974, Cap. S-7, s.2; 1994, c.5, s.13 *{eff.}* July 14/94.

Cause of action concealed by fraud

**3.** When the existence of a cause of action has been concealed by the fraud of the person setting up this Part or Part II as a defence, the cause of action shall be deemed to have arisen when the fraud was first known or discovered. R.S.P.E.I. 1974, Cap. S-7, s.3.

Items in an account, limitation period

**4.** No claim in respect of an item in an account which arose more than six years before the commencement of the action shall be enforceable by action by reason only of some other claim in respect of another item in the same account having arisen within six years next before the commencement of the action. R.S.P.E.I. 1974, Cap. S-7, s.4.

Disabilities, person under, limitation period extended

**5.** If a person entitled to bring an action is under disability at the time the cause of action arises, he may bring the action within the time hereinbefore limited with respect to the action or at any time within two years after he first ceased to be under disability. R.S.P.E.I. 1974, Cap. S-7, s.5.

Acknowledgements & part payment of debts

**6.** (1) Whenever any person who is, or would have been but for the effluxion of time, liable to an action for the recovery of money as a debt, or his agent in that behalf

(a) conditionally or unconditionally promises his creditor or the agent of his creditor in writing signed by the debtor or his agent to pay the debt;

(b) gives a written acknowledgement of the debt signed by the debtor or his agent to his creditor or the agent of the creditor; or

(c) makes a part payment on account of the principal debt or interest thereon to his creditor or the agent of the creditor, then an action to recover the debt may be brought within six years from the date of the promise, acknowledgement or part payment as the case may be, notwithstanding that the action would otherwise be barred under this Act.

(2) A written acknowledgement of a debt or a part payment on account of the principal debt or interest thereon shall have full effect whether or not a promise to pay can be implied therefrom and whether or not it is accompanied by a refusal to pay.

Written acknowledgement of debt, enforcement

(3) This section applies to arrears of rent charged upon or payable out of land. R.S.P.E.I. 1974, Cap. S-7, s.6.

Application to arrears of rent

**7.** Where there are two or more joint debtors, joint contractors, joint obligors or joint covenantors, or executors or administrators of any debtor, contractor, obligor or covenantor, no joint debtor, joint contractor, joint obligor or joint covenantor, or executor or administrator shall lose the benefit of this Act so as to be chargeable in respect or by reason only of any written acknowledgement or promise made and signed, or by reason of any payment of any principal or interest made, by any other of them. R.S.P.E.I. 1974, Cap. S-7, s.7.

Joint debtors, contractors etc., affect of payment by one

**8.** In actions commenced against two or more joint debtors, joint contractors, joint obligors or joint covenantors or executors or administrators, if it appears at the trial or otherwise that the plaintiff, though barred by this Act as to one or more of the joint debtors, joint contractors, joint obligors or joint covenantors, or executors or administrators, is nevertheless entitled to recover against any other or others of the defendants by virtue of a new acknowledgement, promise or payment, judgment shall be given for the plaintiff as to the defendant or defendants against whom he is entitled to recover, and for the other defendant or defendants against the plaintiff. R.S.P.E.I. 1974, Cap. S-7, s.8.

Joint debtors, contractors etc. severable *re* liability, where

**9.** No endorsement or memorandum of any payment written or made upon any promissory note, bill of exchange or other writing, by or on behalf of the person to whom the payment has been made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of this Act. R.S.P.E.I. 1974, Cap. S-7, s.9.

Proof of payment, what is sufficient *re* operation of Act

**10.** This Part applies to the case of any claim of the nature hereinbefore mentioned, alleged by way of counterclaim or set-off on the part of any defendant. R.S.P.E.I. 1974, Cap. S-7, s.10.

Application of Part

PART II  
CHARGES ON LAND, LEGACIES, ETC.

Charges on land,  
legacies etc.,  
limitation period *re*  
enforcement

**11.** (1) No proceedings shall be taken to recover any sum of money secured by any mortgage, judgment or lien, or otherwise charged upon or payable out of any land, or to recover any legacy, whether it is or is not charged upon land, or to recover the personal estate or any share of the personal estate of any person dying intestate and possessed by his personal representative, except within twenty years next after the present right to recover it accrued to some person capable of giving a discharge therefor, or a release thereof.

Exception, where a  
payment or  
acknowledgement  
within 20 year  
period

(2) If prior to the expiry of the twenty years referred to in subsection (1) some part of the sum of money, judgment or lien, legacy or estate or share or some interest thereon has been paid by a person bound or entitled to make payment thereof or his agent in that behalf to a person entitled to receive it or his agent, or some acknowledgement in writing of the right to the sum of money, judgment or lien, legacy, estate or share signed by any person so bound or entitled or his agent in that behalf has been given to a person entitled to receive it or his agent, and in that case no proceedings shall be taken except within twenty years after the payment or acknowledgement or the last of the payments or acknowledgements, if more than one was made or given.

Reversionary  
interest in land

(3) In the case of a reversionary interest in land, no right to recover the sum of money charged thereon shall be deemed to accrue until the interest has fallen into possession. R.S.P.E.I. 1974, Cap. S-7, s.11.

Agreement for the  
sale of land,  
limitation period for  
enforcing

**12.** No proceedings shall be taken to recover any sum of money payable under an agreement for the sale of land except within twenty years after a present right to recover it accrued to some person entitled to receive the same, or capable of giving a release thereof, unless prior to the expiry of such twenty years some part of the sum of money or some interest thereon has been paid by a person bound or entitled to make a payment thereof or his agent in that behalf to a person entitled to receive it or his agent, or some acknowledgement in writing of the right to receive the sum of money signed by any person so bound or entitled or his agent in that behalf has been given to a person entitled to receive it or his agent, and in that case no action shall be brought except within twenty years after such payment or acknowledgement, or the last of the payments or acknowledgements, if more than one was made or given. R.S.P.E.I. 1974, Cap. S-7, s.12.

Money payable on  
bonds,  
recognizances etc.

**13.** No proceedings shall be taken to recover any sum of money payable on a bond, recognizance or specialty, other than those mentioned in

sections 11 and 12, except within twenty years after the cause of action arose. R.S.P.E.I. 1974, Cap. S-7, s.13.

**14.** Where any prior mortgagee has been in possession of any land within one year next before an action is brought by any person entitled to a subsequent mortgage on the same land, the person entitled to the subsequent mortgage may recover in the action the arrears of interest which have become due during the whole time the prior mortgagee was in possession or receipt, although that time may have exceeded the term of six years. R.S.P.E.I. 1974, Cap. S-7, s.15.

Prior mortgagee in possession

**15.** (1) No action shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent charge, though secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable or so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust.

Express trust, action to recover sums charged against lands covered by

(2) Subsection (1) does not operate so as to affect any claim of a beneficiary against his trustee for property held on an express trust. R.S.P.E.I. 1974, Cap. S-7, s.16.

Application of section

### PART III LAND

**16.** No person shall take proceedings to recover any land except within twenty years next after the time at which the right to do so first accrued to some person through whom he claims (hereinafter called "predecessor") or if the right did not accrue to a predecessor then within twenty years next after the time at which such right first accrued to the person taking the proceedings (hereinafter called "claimant"). R.S.P.E.I. 1974, Cap. S-7, s.17.

Action to recover land

### SPECIAL CASES

**17.** Where the claimant or a predecessor has in respect of the estate or interest claimed been in possession of the land or in receipt of the profits thereof and has while entitled thereto been dispossessed or has discontinued the possession or receipt, the right to take proceedings to recover the land shall be deemed to have first accrued at the time of the dispossession or discontinuance of possession or at the last time at which any such profits were so received. R.S.P.E.I. 1974, Cap. S-7, s.18.

Dispossession of land, right to recover, commences when

**18.** Where the claimant claims the estate or interest of a deceased predecessor who was in possession of the land or in receipt of the profits

Succession to land after death of predecessor, right to, when accrues

thereof in respect of the same estate or interest at the time of his death and was the last person entitled to the estate or interest who was in such possession or receipt the right to take proceedings to recover the land shall be deemed to have first accrued at the time of the death of the predecessor. R.S.P.E.I. 1974, Cap. S-7, s.19.

Claims *re* estate or interests in possession, right to, when accrues

**19.** Where the claimant claims in respect of an estate or interest in possession, granted, appointed or otherwise assured to him or a predecessor by a person being in respect of the same estate or interest in the possession of the land or in receipt of the profits thereof and no person entitled under the assurance has been in such possession or receipt, the right to take proceedings to recover the land shall be deemed to have first accrued at the time at which the claimant or his predecessor became entitled to the possession or receipt by virtue of the assurance. R.S.P.E.I. 1951, c.87, s.20.

Forfeiture or breach of condition, right to, when accrues

**20.** Where the claimant or the predecessor becomes entitled by reason of forfeiture or breach of condition, then the right to take proceedings to recover the land shall be deemed to have first accrued whenever the forfeiture was incurred or the condition was broken. R.S.P.E.I. 1974, Cap. S-7, s.21.

#### FUTURE ESTATES

Owner of particular estate in possession

**21.** Where the estate or interest claimed has been an estate or interest in reversion or remainder or other future estate or interest including therein an executory devise and no person has obtained the possession of the land or is in receipt of the profits thereof in respect of such estate or interest, the right to take proceedings to recover the land shall be deemed to have first accrued at the time at which the estate or interest became an estate or interest in respect of which the land has been held or the profits thereof have been received notwithstanding the claimant or the predecessor has at any time previously to the creation of the estate or interest which has determined been in the possession of the land or in receipt of the profits thereof. R.S.P.E.I. 1974, Cap. S-7, s.22.

Owner of particular estate out of possession

**22.** If the person last entitled to any particular estate on which any future estate or interest was expectant was not in possession of the land or in receipt of the profits thereof at the time when his interest determined, no proceedings to recover the land shall be taken by any person becoming entitled in possession to a future estate or interest except within twenty years next after the time when the right to take proceedings first accrued to the person whose interest has so determined, or within ten years next after the time when the estate of the person becoming entitled in possession has become vested in possession, whichever of these two periods is the longer. R.S.P.E.I. 1974, Cap. S-7, s.23.

**23.** If the right to take proceedings to recover the land has been barred, no proceedings shall be taken by any person afterwards claiming to be entitled to the same land in respect of any subsequent estate or interest under any will or assurance executed or taking effect after the time when a right to take proceedings accrued to the owner of the particular estate whose interest has so determined. R.S.P.E.I. 1974, Cap. S-7, s.24.

Settlement while statute is running

**24.** When the right of any person to take proceedings to recover any land to which he may have been entitled for an estate or interest in possession entitling him to take proceedings has been barred by the determination of the period which is applicable in such case, and such person has at any time during the said period been entitled to any other estate, interest, right or possibility in reversion, remainder or otherwise in or to the same land no proceedings shall be taken by him or any person claiming through him to recover the land in respect of such other estate, interest, right or possibility, unless in the meantime the land has been recovered by some person entitled to an estate, interest or right which has been limited or taken effect after or in defeasance of the estate or interest in possession. R.S.P.E.I. 1974, Cap. S-7, s.25.

Successive estates in same person

**25.** When the right to take proceedings to recover any land first accrued to a claimant or a predecessor by reason of any forfeiture or breach of condition, in respect of an estate or interest in reversion or remainder and the land has not been recovered by virtue of that right, the right to take proceedings shall be deemed to have first accrued at the time when the estate or interest became an estate or interest in possession. R.S.P.E.I. 1974, Cap. S-7, s.26.

Forfeiture

**26.** When the right of a tenant-in-tail of any land to make an entry, or to bring an action to recover the same, has been barred by reason of the same not having been made or brought within the periods hereinbefore limited, which is applicable in such case, no such entry or action shall be made or brought by any person claiming any estate, interest or right which the tenant-in-tail might lawfully have barred. R.S.P.E.I. 1974, Cap. S-7, s.27.

Tenants-in-tail

**27.** When a tenant-in-tail of any land, entitled to recover the same, has died before the expiration of the period hereinbefore limited, which is applicable in such case for making an entry or bringing an action to recover the land, no person claiming an estate, interest or right which the tenant-in-tail might lawfully have barred, shall make an entry or bring an action to recover the land, but within the period during which, if the tenant-in-tail had so long continued to live, he might have made such entry or brought such action. R.S.P.E.I. 1974, Cap. S-7, s.28.

Death of tenant-in-tail



## LANDLORD AND TENANT

- Wrongful receipt of rent **28.** Where any person is in possession of any land, or in receipt of the profits thereof by virtue of a lease in writing, by which a rent amounting to the yearly sum or value of \$4 or upwards is reserved, and the rent reserved by the lease has been received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, and no payment in respect of the rent reserved by the lease has afterwards been made to the person rightfully entitled thereto, the right of the claimant or his predecessor to take proceedings to recover the land after the determination of the lease, shall be deemed to have first accrued at the time at which the rent reserved by the lease was first so received by the person wrongfully claiming as aforesaid and no such right shall be deemed to have first accrued upon the determination of the lease to the person rightfully entitled. R.S.P.E.I. 1974, Cap. S-7, s.29.
- Tenancy from year to year **29.** Where any person is in possession of any land or in receipt of the profits thereof as tenant from year to year, or other period, without any lease in writing, the right of the claimant or his predecessor to take proceedings to recover the land shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time (prior to his right to take proceedings being barred under any other provisions of this Act) when any rent payable in respect of such tenancy was received by the claimant or his predecessor or the agent of either which ever last happens. R.S.P.E.I. 1974, Cap. S-7, s.30.
- Tenancy at will **30.** (1) Where any person is in possession of any land or in receipt of the profits thereof as tenant at will, the right of the claimant or his predecessor to take proceedings to recover the land, shall be deemed to have first accrued either at the determination of the tenancy, or at the expiration of one year next after its commencement, at which time, if the tenant was then in possession, the tenancy shall be deemed to have been determined.
- Mortgagors and beneficiaries exempted (2) No mortgagor or beneficiary under an express trust shall be deemed to be a tenant at will to his mortgagee or trustee within the meaning of this section. R.S.P.E.I. 1974, Cap. S-7, s.31.
- Concealed fraud **31.** (1) In every case of concealed fraud of the person setting up this part as a defence, or of some other person through whom the first mentioned person claims the right of any person to bring an action for the recovery of any land of which he or any person through whom he claims may have been deprived by the fraud, shall be deemed to have first accrued at and not before the time at which the fraud was, or with reasonable diligence might have been, first known or discovered.

(2) Nothing in subsection (1) enables any owner of land to bring an action for the recovery of land, or for setting aside any conveyance thereof, on account of fraud against any purchaser in good faith for valuable consideration, who has not assisted in the commission of such fraud, and who, at the time that he made the purchase, did not know, and had no reason to believe, that any such fraud had been committed. R.S.P.E.I. 1974, Cap. S-7, s.32.

Exception, action against purchaser in good faith

**32.** When any acknowledgement in writing of the title of a person entitled to any land signed by the person in possession of the land or in receipt of the profits thereof or his agent in that behalf has been given to him or his agent prior to his right to take proceedings to recover the land having been barred under this Act, then the possession or receipt of or by the person by whom the acknowledgement was given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent the acknowledgement was given at the time of giving same, and the right of the last mentioned person, or of any person claiming through him, to take proceedings shall be deemed to have first accrued at and not before the time at which the acknowledgement, or the last of the acknowledgements, if more than one, was given. R.S.P.E.I. 1974, Cap. S-7, s.33.

Acknowledgement of title to land

**33.** When any one or more of several persons entitled to any lands as coparceners, joint tenants, or tenants in common, have been in possession or receipt of the entirety, or more than his or their undivided share or shares of the land, or of the profits thereof, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land, the possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons, or any of them. R.S.P.E.I. 1974, Cap. S-7, s.34.

Coparceners, joint tenants or tenants in common, where one or more in possession of more than his share

#### PART IV MORTGAGES OF REAL AND PERSONAL PROPERTY

**34.** (1) When a mortgagee or a person claiming through a mortgagee has obtained the possession of property real or personal comprised in a mortgage or is in receipt of the profits of any land therein comprised, the mortgagor or any person claiming through him shall not bring action to redeem the mortgage except within twenty years next after the time at which the mortgagee or a person claiming through the mortgagee obtained such possession or first received any such profits, unless prior to the expiry of the twenty years an acknowledgement in writing of the title of the mortgagor or of his right to redeem is given to the mortgagor

Redemption, time for

or some person claiming his estate or interest, or to the agent of such mortgagor or person, signed by the mortgagee or the person claiming through him or the agent in that behalf or either of them, and in that case, the action shall not be brought but within twenty years next after the time at which the acknowledgement or the last of the acknowledgements, if more than one, was given.

Acknowledgement effective against all claimants, mortgagors

(2) Where there is more than one mortgagor or more than one person claiming through the mortgagor or mortgagors, the acknowledgement, if given to any of the mortgagors or persons or his or their agent, shall be as effectual as if the same had been given to all the mortgagors or persons.

Acknowledgment of mortgagees, effective against

(3) Where there is more than one mortgagee or more than one person claiming the estate or interest of the mortgagee or mortgagees, an acknowledgement signed by one or more of the mortgagees or persons or his or their agent in that behalf is effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or property by, through or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and does not operate to give to the mortgagor or mortgagors right to redeem the mortgage as against the person or persons entitled to any undivided or divided part of the money or property.

Entitlement to redemption, amount of share

(4) Where such of the mortgagees or persons aforesaid as have given the acknowledgement are entitled to a divided part of the property comprised in the mortgage or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors are entitled to redeem the same divided part of the property on payment with interest of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of the divided part of the property bears to the value of the whole of the property comprised in the mortgage. R.S.P.E.I. 1974, Cap. S-7, s.35.

Foreclosure or sale

**35.** No mortgagee or person claiming through a mortgagee shall take proceedings for foreclosure or sale under any mortgage of real or personal property or to recover the property mortgaged except within twenty years next after the right to take the proceedings first accrued to the mortgagee, or if the right did not accrue to the mortgagee, then within twenty years after the right first accrued to a person claiming through the mortgagee. R.S.P.E.I. 1974, Cap. S-7, s.36.

Foreclosure where payment on account received

**36.** When any person bound or entitled to make payment of the principal money or interest secured by a mortgage of property real or personal or

his agent in that behalf, at any time prior to the expiry of twenty years from the accrual of the right to take proceedings for foreclosure or sale or to take proceedings to recover the property, pays any part of such money or interest to a person entitled to receive the same, or his agent, the right to take proceedings shall be deemed to have first accrued at, and not before, the time at which the payment or the last of the payments, if more than one, was made, or if any acknowledgement of the nature described in section 32 was given at any time prior to the expiry of twenty years from the accrual of the right to take proceedings, then at the time at which the acknowledgement or the last of the acknowledgements, if more than one, was given. R.S.P.E.I. 1974, Cap. S-7, s.37.

**37.** (1) No purchaser of land or any person claiming through him shall bring any action in respect of the agreement for the sale thereof except within twenty years after the right to bring the action first accrued to the purchaser or if the right did not accrue to the purchaser, then within twenty years after the right first accrued to a person claiming through the purchaser.

Agreements for the sale of land

(2) When any person bound or entitled to make payment of the purchase money or his agent in that behalf, at any time prior to the expiry of twenty years from the accrual of the right to bring the action, pays any part of the money payable under the agreement of sale to a person entitled to receive it or his agent, or if any acknowledgement in writing of the right of the purchaser or person claiming through him to the land, or to make the payment, was given prior to the expiry of the twenty years to the purchaser or person claiming through him or to the agent of the purchaser or persons, signed by the vendor or the person claiming through him or the agent in that behalf of either of them, then the right to take proceedings shall be deemed to have first accrued at, and not before, the time at which the payment, or the last of the payments, if more than one was made, or the time at which the acknowledgement or the last of the acknowledgements, if more than one, was given. R.S.P.E.I. 1974, Cap. S-7, s.38.

Payments on account, time when right to take proceedings accrues

**38.** (1) No vendor of land or person claiming through him shall take any proceedings for cancellation, determination or rescission of the agreement for the sale of the land or for foreclosure or sale thereunder or to recover the land except within twenty years after the right to take the proceedings first accrued to the vendor, or if the right did not accrue to the vendor, then within twenty years after the right first accrued to a person claiming through the vendor.

Cancellation, determination or rescission of an agreement, right to, when

(2) When any person bound or entitled to make payment of the purchase money or his agent in that behalf, at any time prior to the expiry of twenty years from the accrual of the right to take the proceedings

Payment on account, time when right to take proceedings accrues

mentioned in subsection (1), pays any part of the money payable under the agreement of sale to a person entitled to receive it, or his agent, or if at any time prior to the expiry of the twenty years, any acknowledgement in writing of the right of the vendor or person claiming through him to the land or to receive the payment was given to the vendor or person claiming through him or to the agent of such vendor or person, signed by the purchaser, or the person claiming through him or the agent in that behalf of either of them, then the right to take proceedings shall be deemed to have first accrued at, and not before, the time at which the payment or last of the payments, if more than one, was made, or at the time at which the acknowledgement or last of the acknowledgements, if more than one, was given. R.S.P.E.I. 1974, Cap. S-7, s.39.

## PART V CONDITIONAL SALES OF GOODS

### Definitions

#### **39.** In this Part

buyer

(a) “buyer” means the person who buys or hires goods by a conditional sale;

conditional sale

(b) “conditional sale” means

(i) any contract for the sale of goods under which possession is or is to be delivered to the buyer and the property in the goods is to vest in him at a subsequent time upon payment of the whole or part of the price or the performance of any other condition, or

(ii) any contract for the hiring of goods by which it is agreed that the hirer shall become, or have the option of becoming, the owner of the goods upon full compliance with the terms of the contract;

goods

(c) “goods” means all chattels personal other than things in action or money, and includes implements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale, or under the contract of sale;

seller

(d) “seller” means the person who sells or lets to hire goods by a conditional sale, and includes a secured party within the meaning of the *Personal Property Security Act* R.S.P.E.I. 1988, Cap. P-3.1. R.S.P.E.I. 1974, Cap. S-7, s.40; 1997,c.33, Schedule.

Recovery of goods  
under conditional  
sale

**40.** No seller shall take any proceedings for the sale of or to recover any goods the subject of a conditional sale except within ten years after the right to take the proceedings first accrued to the seller, or, if the right did not accrue to the seller, then within ten years after the right first accrued to a person claiming through him. R.S.P.E.I. 1974, Cap. S-7, s.41.

**40.1** No proceedings to enforce security pursuant to Part V of the *Personal Property Security Act* shall be taken by a secured party within the meaning of the *Personal Property Security Act* or a person claiming through the secured party but within twenty years next after the right to take the proceedings first accrued to the secured party, or if the right did not accrue to the secured party, then within twenty years next after the right first accrued to the person claiming through the secured party. 1997,c.33, Schedule.

Enforcement under PPSA

**41.** When any person bound or entitled to make payment of the price, or his agent in that behalf, at any time prior to the expiry of ten years from the accrual of the right to take the proceedings, pays any part of the price or interest to a person entitled to receive the same, or his agent, or if at any time prior to the expiry of such ten years, any acknowledgement in writing of the right of the seller or person claiming through him to the goods, or to receive the payment, was given to the seller or person claiming through him signed by the buyer or the person claiming through him or the agent in that behalf of either of them, then the right to take proceedings shall be deemed to have first accrued at, and not before, the time at which the payment or last of the payments, if more than one, was made, or the time at which the acknowledgement or last of the acknowledgements, if more than one, was given. R.S.P.E.I. 1974, Cap. S-7, s.42.

Payment on account, time when right to take proceedings accrues

## PART VI TRUSTS AND TRUSTEES

**42.** Subject to the other provisions of this Part, no claim of a beneficiary against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by this Act. R.S.P.E.I. 1974, Cap. S-7, s.43.

Application of Act to a beneficiary

**43.** (1) In this section “trustee” includes an executor, administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee, and also includes a joint trustee.

Trustee defined

(2) In any action against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use

Actions against a trustee

(a) all rights and privileges conferred by this Act shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action if the trustee or person claiming through him had not been a trustee or person claiming through a trustee;

(b) if the action is brought to recover money or other property, and is one to which no limitation provision of this Act applies, the trustee or person claiming through him is entitled to the benefit of, and is at liberty to plead the lapse of time as a bar of the action in the like manner and to the same extent as if the claim had been against him in an action for money had and received,

but the limitation provisions of this Act do not begin to run against any beneficiary unless and until the interest of the beneficiary becomes an interest in possession.

Effect of judgment on defence

(3) No beneficiary, as against whom there would be a good defence by virtue of this section, derives any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought the action and this section had been pleaded. R.S.P.E.I. 1974, Cap. S-7, s.44.

Property vested in a trustee upon express trust

**44.** Where any property is vested in a trustee upon any express trust, the right of the beneficiary or any person claiming through him to bring an action against the trustee or any person claiming through him to recover the property, shall be deemed to have first accrued at and not before the time at which it was conveyed to a purchaser for valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him. R.S.P.E.I. 1974, Cap. S-7, s.45.

## PART VII GENERAL PROVISIONS

Possession, entry not

**45.** (1) No person shall be deemed to have been in possession of any land, within the meaning of this Act, merely by reason of having made an entry thereon.

Continual or other claims

(2) No continual or other claim upon or near any land preserves any right of making an entry or distress or bringing an action.

Receipt of rent payable

(3) The receipt of the rent payable by any tenant at will, tenant from year to year or other lessee, shall, as against the lessee or any person claiming under him, but subject to the lease, be deemed to be the receipt of the profits of the land for the purpose of this Act. R.S.P.E.I. 1974, Cap. S-7, s.46.

Effect of expiry of statutory period

**46.** At the determination of the period limited by this Act to any person for taking proceedings to recover any land, rent, charge or money charged on land, the right and title of such person to the land, or rent charge or the recovery of the money out of the land shall be extinguished. R.S.P.E.I. 1974, Cap. S-7, s.47.

**47.** For the purposes of Parts II, III and IV, a personal representative claiming the estate or interest of the deceased person shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters probate or letters of administration. R.S.P.E.I. 1974, Cap. S-7, s.48.

Title of personal representative

**48.** (1) If, at the time at which the right to take any proceedings referred to in Parts II, III or IV first accrued to any person, he was under disability, then that person or a person claiming through him may, notwithstanding anything in this Act, take proceedings at any time within six years next after the person to whom the right first accrued first ceased to be under disability or died, whichever event first happened, but if he died without ceasing to be under disability, no further time to take proceedings shall be allowed, by reason of the disability of any other person.

Disabilities, limitation period where under

(2) Notwithstanding subsection (1), no proceedings shall be taken by a person under disability at the time the right to do so first accrued to him or by any person claiming through him, except within thirty years next after that time. R.S.P.E.I. 1974, Cap. S-7, s.49.

*Idem*

**49.** In respect of a cause of action as to which the time for taking proceedings is limited by this Act, other than those mentioned in clause 2(1)(a) and (b), if a person is out of the province at the time a cause of action against him arises within the province, the person entitled to the action may bring the action within two years after the return of the first mentioned person to the province or within the time otherwise limited by this Act for bringing the action. R.S.P.E.I. 1974, Cap. S-7, s.50.

Defendant out of province

**50.** (1) Where a person has any cause of action against joint debtors, joint contractors, joint obligors or joint covenantors, he is not entitled to any further time within which to commence the action against such of them as were within the province at the time the cause of action accrued by reason only that one or more of them was at such time out of the province.

Joint defendants, extended period, application to resident defendant

(2) A person having a cause of action referred to in subsection (1) shall not be barred from commencing an action against any joint debtor, joint contractor, joint obligor or joint covenantor who was out of the province at the time the cause of action accrued, after his return to the province, by reason only that judgment has been already recovered against such of the joint debtors, joint contractors, joint obligors or joint covenantors as were at such time within the province. R.S.P.E.I. 1974, Cap. S-7, s.51.

Recovery from resident defendants, effect on recovery against non-resident defendant

**51.** Nothing in this Act interferes with any rule of equity in refusing relief on the ground of acquiescence, or otherwise to any person whose

Application of Act to rules of equity



right to bring an action is not barred by virtue of this Act. R.S.P.E.I. 1974, Cap. S-7, s.52.

Farmers' Creditors  
Arrangement Act

**52.** All limitation periods mentioned in this Act shall be reckoned exclusively of the time during which rights of action against any party pleading this Act have been suspended under the *Farmers' Creditors Arrangement Act* R.S.C. 1970, Chap. F-5. R.S.P.E.I. 1974, Cap. S-7, s.53.

Uniform  
construction of Act

**53.** This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it. R.S.P.E.I. 1974, Cap. S-7, s.54.