

Part 5 – Suspension of Limitation Periods

Part 5 applies to suspensions of the basic and ultimate limitation periods in cases where time starts running against a claimant who is a person of full capacity, but then at some point becomes a person under a disability (“person under a disability” means an adult person who is incapable of or substantially impeded in managing his or her affairs). Once a claimant comes under a disability both the basic and ultimate limitation periods are suspended. Sections 25 and 26 set out the rules that govern in such a situation.

Section 25 – Limitation periods suspended if claimant becomes person under disability

- This section suspends both the basic and ultimate limitation periods during the time a claimant is a person under a disability.
- This section carries forward subsections 7(4) and (5) of the former Act, but changes how limitation periods are suspended during adult disability.
- **The new Act suspends both the basic and ultimate limitation periods. Under the former Act, only the basic limitation period was suspended during adult disability.**
- Section 25 ensures that a claimant who becomes a person under a disability is provided with a sufficient period of time to bring a claim after he or she ceases to be a person under a disability.
- It remedies the unfairness to persons under a disability that was found in the former Act. Once the legal disability ceases, the basic and ultimate limitation periods resume running.
- The remaining basic limitation period is the longer of two periods: the length of time the claimant has remaining in the basic limitation period to bring the claim prior to coming under a disability, or one year from the time the disability ceases.
- The remaining ultimate limitation period is the longer of two periods: the length of time the claimant has remaining in the ultimate limitation period to bring the claim prior to coming under a disability, or one year from the time the disability ceases.

The new *Limitation Act* came into effect on June 1, 2013.

This document was developed by the Civil Policy and Legislation Office, Ministry of Justice. It is posted as educational material to support the transition to the new *Limitation Act*. It is not intended to constitute legal advice and should not be relied upon for those purposes.

Section 26 – Notice to proceed if limitation periods suspended under section 25

- This section sets out the rules for a notice to proceed to activate the running of both the basic and ultimate limitation periods of a person under a disability if the basic and ultimate limitation periods are suspended under section 25.
- A “notice to proceed” is a written document that a potential defendant prepares before he or she is actually sued by a potential claimant. It is used by the potential defendant to start time in the limitation periods running against a potential claimant, in cases where the potential claimant is a minor or under a disability. It is a legal mechanism that is available to potential defendants who do not want to be prejudiced by lengthy limitation periods.
- A potential defendant can only use a notice to proceed in cases where the adult under a disability has a caregiver. This provides a safeguard to potential claimants who are not able to deal with their legal affairs from becoming statute-barred.
- A notice to proceed must be delivered to the potential claimant’s caregiver and to the Public Guardian and Trustee. It sets out the details of the claim, and warns that the limitation periods will start running against the potential claimant.
- Section 26 carries forward subsections 7 (6) to (11) of the former Act. One significant change is that in the new Act both the basic and ultimate limitation periods are suspended during adult disability (under the former Act only the basic limitation period was suspended). This means that a notice to proceed starts time running in both the basic and ultimate limitation periods.
- This provision is very similar to section 20 of the new Act [*notice to proceed if basic limitation period postponed under section 18 or 19*]. Section 26 is set out in a separate provision because it applies to a different situation. It only applies where time has begun to run in both the basic and ultimate limitation periods against a person of full capacity, but then at some point this person comes under a disability and the basic and ultimate limitation periods are suspended.
- The notice to proceed provision will provide potential defendants with greater certainty as to when potential liability against them ends.
- This mechanism provides a number of safety precautions to ensure that a claimant’s rights are not negatively affected through the early commencement of his or her lawsuit. Most notably, the Public Guardian and Trustee must be notified of all notices to proceed.

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