

## Part 1 – Interpretation

This Part defines terms and provides some general principles of interpretation for the new *Limitation Act* (“new Act”).

### Division 1 – Definitions

This Division defines terms used in the new Act.

#### Section 1 - Definitions

- Section 1 changes some definitions and adds others that are needed to interpret the new Act. It amends definitions from the former *Limitation Act* (“former Act”) and creates definitions necessary to support interpretation of the other sections in the legislation.

<b>“basic limitation period”</b>
<p><b>New Act definition:</b>  “basic limitation period”, in relation to a claim, means the limitation period applicable to the claim under Part 2 [<i>Basic Limitation Period</i>];</p>
<p><b>Former Act definition:</b> None</p>
<p><b>Rationale for change:</b></p> <ul style="list-style-type: none"> <li>• “basic limitation period” is a new term and is added to provide clarity to the new Act and to avoid confusion over which limitation period is being referenced. A single basic limitation period of two years will apply to all claims unless the new Act specifies otherwise, or unless the claim is subject to a limitation period found in a more specific law (see section 6 [<i>Basic Limitation Period</i>]).</li> <li>• The former Act used the term “limitation period” without a definition. It was used interchangeably to refer to both the basic and ultimate limitation periods, and was confusing for the reader.</li> </ul>

<b>“caregiver”</b>
<p><b>New Act definition:</b>  “caregiver” means,</p>

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- (a) in relation to a minor, a parent, guardian or other person who usually has care and control of the minor, or
- (b) in relation to a person for whom a committee has been appointed under the *Patients Property Act*, the committee;

**Former Act definition:** None

**Rationale for change:**

- The former Act contained a definition of “guardian” that was similar to the “caregiver” definition, but it used the word “guardian” to describe who a “guardian” is within the definition, so it was changed to avoid confusion.

**“claim”**

**New Act definition:**

“claim” means a claim to remedy an injury, loss or damage that occurred as a result of an act or omission;

**Former Act definition:** None

**Rationale for change:**

- The reference to “claim” marks a departure from the former Act, which has used “action” as the basis for determining the applicable limitation period.
- A two-year basic limitation period and 15-year ultimate limitation period will apply to all claims unless the new Act specifies otherwise, or unless the claim is subject to a limitation period found in a more specific law.

**“defendant”**

**New Act definition:**

“defendant” includes a respondent;

**Former Act definition:** None

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**Rationale for change:**

- The term “defendant” includes a respondent in order to provide clarity and consistency with terms used elsewhere in British Columbia statutes.
- Each of these people could potentially defend a civil claim that is governed by the limitation periods in the new Act.

**“discover”****New Act definition:**

“discover”, in relation to a claim, has the meaning set out in Divisions 2 [*Discovery of a Claim*] and 3 [*Special Discovery Rules*] of Part 2 [*Basic Limitation Period*];

**Former Act definition:** None

**Rationale for change:**

- The new Act defines “discover” to clarify the discovery rules in Part 2. This is an important concept, as time only starts to run in the basic limitation period once a claim has been discovered.
- The discovery rules apply to all claims, unless the new Act specifies otherwise.

**“extraprovincial judgment”****New Act definition:**

“extraprovincial judgment” means a judgment, order or award other than a local judgment;

**Former Act definition:**

“extraprovincial judgment” means a judgment, order or award other than a local judgment;

**Rationale for change:**

- No change

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<b>“judgment”</b>
<b>New Act definition:</b> “judgment” means an extraprovincial judgment or a local judgment;
<b>Former Act definition:</b> “judgment” means an extraprovincial judgment or a local judgment;
<b>Rationale for change:</b> <ul style="list-style-type: none"><li>• No change</li></ul>
<b>“limitation period”</b>
<b>New Act definition:</b> “limitation period”, in relation to a claim, means the period after which a court proceeding must not be brought with respect to the claim;
<b>Former Act definition:</b> None
<b>Rationale for change:</b> <ul style="list-style-type: none"><li>• The definition of “limitation period” is included to clarify how long a person has before he or she must start a civil court proceeding for a legal remedy.</li><li>• The new Act departs from the traditional limitations regime found in the former Act, which has historically used “action” as the basis for determining the applicable limitation period. The former Act defined “action” broadly: it includes any proceeding in a court and any exercise of a self help remedy.</li><li>• Section 27 of the new Act [<i>non-judicial remedy</i>] clarifies that the consequences flowing from the expiry of a limitation period also apply to non-judicial (i.e. out-of-court) remedies.</li></ul>

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**“local judgment”****New Act definition:**

“local judgment” means any of the following:

- (a) a judgment, order or award of
  - (i) the Supreme Court of Canada relating to an appeal from a British Columbia court,
  - (ii) the British Columbia Court of Appeal,
  - (iii) the Supreme Court of British Columbia,
  - (iv) the Provincial Court of British Columbia, or
  - (v) an arbitration to which the *Commercial Arbitration Act* applies;
- (b) an arbitral award to which the *Foreign Arbitral Awards Act* or the *International Commercial Arbitration Act* applies;

**Former Act definition:**

“local judgment” means any of the following:

- (a) a judgment, order or award of
  - (i) the Supreme Court of Canada relating to an appeal from a British Columbia court,
  - (ii) the British Columbia Court of Appeal,
  - (iii) the Supreme Court of British Columbia,
  - (iv) the Provincial Court of British Columbia, or
  - (v) an arbitration to which the *Commercial Arbitration Act* applies;
- (b) an arbitral award to which the *Foreign Arbitral Awards Act* or the *International Commercial Arbitration Act* applies;

**Rationale for change:**

- No change

**“person under a disability”****New Act definition:**

“person under a disability” means an adult person who is incapable of or substantially impeded in managing his or her affairs;

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**Former Act definition:**

7(1) For the purposes of this section,

- (a) A person is under a disability while the person
- (i) is a minor, or
  - (ii) is in fact incapable of or substantially impeded in managing his or her affairs

**Rationale for change:**

- The new definition removes minors from the definition of a “person under a disability” in order to simplify the new Act. The new Act sets out separate discovery rules for minors and for persons under a disability so it is clear for the reader.
- Both minority and being under a disability will postpone the running of the basic and ultimate limitation periods.

**“plaintiff”****New Act definition:**

“plaintiff” includes a claimant and a petitioner;

**Former Act definition:** None

**Rationale for change:**

- The definition includes a “claimant” and a “petitioner” in order to provide clarity and consistency with terms used elsewhere in British Columbia statutes.
- Each of these people could potentially start a civil claim that is governed by the limitation periods in the new Act.

**“secured party”****New Act definition:**

“secured party” means a person who has a security interest;

**Former Act definition:**

“secured party” means a person who has a security interest;

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**Rationale for change:**

- No change

**“security agreement”****New Act definition:**

“security agreement” means an agreement that creates or provides for a security interest;

**Former Act definition:**

“security agreement” means an agreement that creates or provides for a security interest;

**Rationale for change:**

- No change

**“security interest”****New Act definition:**

“security interest” means an interest in collateral that secures payment or performance of an obligation;

**Former Act definition:**

“security interest” means an interest in collateral that secures payment or performance of an obligation;

**Rationale for change:**

- No change

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**“ultimate limitation period”****New Act definition:**

“ultimate limitation period”, in relation to a claim, means the limitation period applicable to the claim under Part 3 [*Ultimate Limitation Period*];

**Former Act definition:** None

**Rationale for change:**

- “ultimate limitation period” is a new term and is added to provide clarity to the new Act and avoid confusion over which limitation period is being referenced.
- A single 15-year ultimate limitation period will apply to all claims unless the new Act specifies otherwise, or unless the claim is subject to a limitation period found in a more specific law (see section 21 for discussion of the ultimate limitation period).
- The former Act used the term “limitation period” without a definition. It was used interchangeably to refer to both the basic and ultimate limitation periods, and was confusing for the reader.

**“writ of execution”****New Act definition:**

“writ of execution” includes an order for seizure and sale issued under the Small Claims Rules.

**Former Act definition:**

“writ of execution” includes an order for seizure and sale issued under the Small Claims Rules.

**Rationale for change:**

- No change

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The following table lists the definitions that are not carried forward from the former Act to the new Act, followed by the rationale.

<b>"action"</b>
<b>Former Act definition:</b>  "action" includes any proceeding in a court and any exercise of a self help remedy;
<b><u>Rationale for not carrying forward:</u></b> <ul style="list-style-type: none"><li>• The new Act introduces a structural shift to the law of limitations. The former Act's definition of "action" is very broad and includes "<u>any proceeding in a court or exercise of a self-help remedy</u>" (emphasis added).</li><li>• The former Act set out a variety of basic limitation periods, depending on the type of legal problem or "action."</li><li>• In the new Act, a single two-year basic limitation period and 15-year ultimate limitation period will apply to govern how long people have to bring <u>all</u> claims in civil court, unless otherwise specified.</li></ul>
<b>"collateral"</b>
<b>Former Act definition:</b>  "collateral" means land, goods, documents of title, instruments, securities or other property that is subject to a security interest;
<b><u>Rationale for not carrying forward:</u></b> <ul style="list-style-type: none"><li>• This definition is no longer necessary because "collateral" is defined in the <i>Personal Property Security Act</i>. "Collateral" means personal property that is subject to a security interest.</li></ul>

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**“trust”****Former Act definition:**

“trust” includes an express, an implied and a constructive trust, whether or not the trustee has a beneficial interest in the trust property, and whether or not the trust arises only because of a transaction impeached, and includes the duties incident to the office of personal representative, but does not include the duties incident to the estate or interest of a secured party in collateral;

**Rationale for not carrying forward:**

- This definition is no longer necessary as it is defined in the *Trustee Act* to include:
  - (a) implied and constructive trusts,
  - (b) cases where the trustee has some beneficial estate or interest in the subject of the trust, and
  - (c) the duties incident to the office of personal representative of a deceased personbut does not include the duties incident to an estate conveyed by way of mortgage;

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## [Division 2 – Court Proceedings and Claims to Which This Act Does Not Apply](#)

This Division provides a list of court proceedings and claims to which limitation periods in the new Act do not apply. It is meant to clarify what is and what is not governed by the new law.

### [Section 2 – Exempted court proceedings](#)

- This section exempts a number of identified court proceedings from the new Act's application.
- Reforms include carrying forward many of the exemptions from the former Act and broadening the list in order to clarify what is and what is not governed by the new law.
- The new Act only applies to claims to remedy an injury, loss or damage that occurred as a result of an act or omission.
- Many of the court proceedings in section 2 are outside the application of the new Act, or have limitation periods established by other statutes. As the new Act is a default statute, it only applies where there is no other statute that sets out a specific limitation period.

The following is the rationale for including each exemption in section 2:

#### **(1)(a) an appeal (new)**

- The former Act did not clarify whether this type of court proceeding was exempted from its scope. As an appeal does not fit the definition of "claim", and as there are limitation periods governing the time by which a person must bring an appeal under other provincial statutes and in the rules of court, an appeal is outside the application of the new Act.

#### **(1)(b) a judicial review application (revised)**

- Judicial review applications are cases in which judges examine the decisions made by public bodies to ensure that they were carried out appropriately (e.g., the decision of a bureaucrat to refuse to re-issue a driver's licence).
- Section 2(c) of the former Act exempted "proceedings by way of judicial review of the exercise of statutory powers" from limitation periods. Subsection (1)(b) of the new Act carries this concept forward.

#### **(1)(c) a court proceeding under the *Offence Act* to prosecute an offence (new)**

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- The former Act did not clarify whether this type of court proceeding was exempted from its scope.
- The new Act is a law of general application that prescribes limitation periods for civil claims between private parties. It is not meant to apply to a court proceeding to prosecute an offence that is regulatory or criminal in nature, such as an *Offence Act* prosecution, where the Crown is prosecuting an individual for a breach of a law.

**(1)(d) a court proceeding in which the only relief sought is to obtain a declaration (revised)**

- Section 3 of the former Act exempted “a declaration as to personal status,” and “a declaration about the title to property by any person in possession of that property.”
- The new Act exempts all court proceedings in which the only relief sought is to obtain a declaration. This is where a litigant requests a court to rule on the rights and legal relationships of the parties without ordering enforcement, not because any rights have been violated, but because those rights or relationships are uncertain.

**(1)(e) a court proceeding to enforce a local judgment for the possession of land (revised)**

- This provision has been carried forward from section 3(4)(c) of the former Act, and revised to match the language of the new Act. It is a section that deals with real property, based on the recommendations of the former British Columbia Law Reform Commission’s 1974 *Report on Limitations* that reviewed the law of limitations in B.C.

**(1)(f) a court proceeding to enforce an injunction or a restraining order (revised)**

- This provision has been carried forward from section 3(4)(g) of the former Act, and revised to match the language of the new Act.
- An injunction is a court order commanding or preventing an action. A restraining order is a court order prohibiting or restricting a person from harassing, threatening or contacting another specified person.
- Both are issued before or during trial to prevent an irreparable injury from occurring before the court has a chance to decide the case, and to protect a person from harm. The ability to apply for an injunction or restraining order continues as long as the applicable activity continues.

**(1)(g) a court proceeding to enforce an easement, restrictive covenant or profit à prendre (revised)**

- This provision has been carried forward from section 3(4)(h) of the former Act, and revised to match the language of the new Act. It is a

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section that deals with enforcement of interests against the title of real property, based on the recommendations of the former British Columbia Law Reform Commission's 1974 *Report on Limitations* that reviewed the law of limitations in B.C.

- An easement is an interest in land owned by another person, consisting of the right to use or control the land for a specific limited purpose (e.g. to cross the land for access to a public road).
- A restrictive covenant is a private agreement that restricts the use or occupancy of real property (e.g. by specifying lot size or the uses to which the property may be put).
- A profit à prendre is a right or privilege to go on another's land and take away something of value from its soil or from the products of its soil (as by mining, logging or hunting).
- The owner of an easement, restrictive covenant or profit à prendre has an indefinite period for enforcing his or her rights. This is in accordance with the principle that reliance may be placed on the land registry records.

## **(2) & (3) Court proceedings based on existing aboriginal and treaty rights**

Court proceedings based on existing aboriginal and treaty rights recognized and affirmed in the *Constitution Act, 1982* will be treated as though the former Act remains in force. This means that the limitation periods in the former Act and case law interpreting the former Act will continue to apply to these claims.

## **Section 3 – Exempted claims**

- This section exempts a number of identified claims from the new Act. While section 2 exempts "court proceedings," section 3 exempts "claims."
- The new Act carries forward many of the exemptions from section 3(4) of the former Act and broadens the list in order to clarify what is and what is not governed by the new law.
- New claims include civil claims based on assault or battery of a minor or an adult living in a personal or dependent relationship, and claims for arrears of child support or spousal support payable under a judgment.
- This section also makes it clear that limitation periods in other statutes take precedence over the ones in the new Act.

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The following is the rationale for including each exemption in section 3:

<b>3 (1) This Act does not apply to the following:</b>
<p><b>New Act:</b></p> <p>(a) a claim that is subject to a limitation period established by an international convention or treaty that is adopted by an Act;</p>
<p><b>Former Act:</b> None</p>
<p><b>Rationale for change:</b></p> <ul style="list-style-type: none"> <li>• This provision was added to clarify the application of the new Act. As the new Act does not apply to a claim or court proceeding for which a limitation period has been established under another <u>enactment</u>, this provision was added to clarify that the new Act also does not apply to a claim for which a limitation period has been established under an international convention or treaty that is <u>adopted by an Act</u>.</li> <li>• The former Act did not clarify whether claims that fell within this category were exempted from its scope.</li> </ul>
<p><b>New Act:</b></p> <p>(b) a claim for possession of land if the person entitled to possession has been dispossessed in circumstances amounting to trespass;</p>
<p><b>Former Act:</b> ...for possession of land if the person entitled to possession has been dispossessed in circumstances amounting to trespass;</p>
<p><b>Rationale for change:</b></p> <ul style="list-style-type: none"> <li>• This provision has been carried forward from section 3(4)(a) of the former Act, and revised to match the language of the new Act. It is a section that deals with real property, based on the recommendations of the former British Columbia Law Reform Commission's 1974 <i>Report on Limitations</i> that reviewed the law of limitations in B.C.</li> <li>• There is a historical basis for treating real property differently, as land is never going away (it cannot be destroyed), and rights in land are long-term rights. If a person has a right to be in possession, he or she should always be able to get back into possession.</li> </ul>

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**New Act:**

- (c) a claim for possession of land by a life tenant or person entitled to the remainder of an estate;

**Former Act:**

...for possession of land by a life tenant or person entitled to the remainder of an estate;

**Rationale for change:**

- This provision has been carried forward from section 3(4)(b) of the former Act, and revised to match the language of the new Act. It is a section that deals with real property, based on the recommendations of the former British Columbia Law Reform Commission's 1974 *Report on Limitations* that reviewed the law of limitations in B.C.
- This provision deals with the transfer of land using a life interest. It gives a person the right to possession of the land as long as he or she is living. Once the person dies, the person entitled to the remainder has the right to recover possession.

**New Act:**

- (d) a claim for possession of land by a person who has a right to enter for breach of a condition subsequent, or a right to possession arising under possibility of reverter of a determinable estate;

**Former Act:**

3(6) Without limiting subsection (5) and despite subsections (2) and (4), after the expiration of 6 years after the date on which right to do so arose an action may not be brought:

- (f) for the possession of land by a person who has a right to enter for breach of a condition subsequent, or a right to possession arising under possibility of reverter of a determinable estate.

**Rationale for change:**

- The wording of this provision has been carried forward from section 3(6)(f) of the former Act, and revised to match the language of the new Act. It was previously governed by a six-year basic limitation period.
- This provision deals with two types of future interests: right of entry for a condition broken (breach of condition subsequent) and the end of

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a determinable estate when a condition is broken (reverter of a determinable estate).

- A right to enter for a condition broken arises where land has been granted subject to a condition subsequent (e.g., where a person owns land and builds an improvement on it, which inadvertently trespasses onto Crown land. The Crown can sell that sliver of land to the person. The condition is that the person consolidate it with their existing fee simple property.) If the condition is broken and the right to enter has been exercised, the interest comes to an end.
- The end of a determinable estate arises when land has been granted subject to a specific purpose and the land is not used for that purpose (e.g., where the Crown grants land for a particular community or institutional purpose (for use as a park or school) under the Free Crown Grants program. The condition is that the community or institution use the land for the purpose that it was intended.) As soon as the condition is broken, the grantor is immediately entitled to possession of the land.

**New Act:**

- (e) a claim by a debtor in possession of collateral to redeem that collateral;

**Former Act:**

...by a debtor in possession of collateral to redeem that collateral;

**Rationale for change:**

- This provision has been carried forward from section 3(4)(d) of the former Act, and revised to match the language of the new Act. It is a section that deals with personal property, based on the recommendations of the former British Columbia Law Reform Commission's 1974 *Report on Limitations* that reviewed the law of limitations in B.C.

**New Act:**

- (f) a claim by a secured party in possession of collateral to realize on that collateral;

**Former Act:**

...by a secured party in possession of collateral to realize on that collateral;

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**Rationale for change:**

- This provision has been carried forward from section 3(4)(e) of the former Act, and revised to match the language of the new Act. It is a section that deals with personal property, based on the recommendations of the former British Columbia Law Reform Commission's 1974 *Report on Limitations* that reviewed the law of limitations in B.C.

**New Act:**

- (g) a claim by a landlord to recover possession of land from a tenant who is in default or over holding;

**Former Act:**

...by a landlord to recover possession of land from a tenant who is in default or over holding;

**Rationale for change:**

- This provision has been carried forward from section 3(4)(f) of the former Act, and revised to match the language of the new Act. It is a section that deals with real property, based on the recommendations of the former British Columbia Law Reform Commission's 1974 *Report on Limitations* that reviewed the law of limitations in B.C.

**New Act:**

- (h) a claim for the title to property by any person in possession of that property;

**Former Act:**

...for the title to property or for a declaration about the title to property by any person in possession of that property;

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**Rationale for change:**

- This provision has been carried forward from section 3(4)(j) of the former Act, and revised to match the language of the new Act. (See section 2(1)(d) of the new Act for exempted court proceeding to obtain a declaration.) The revised section deals with real property, based on the recommendations of the former British Columbia Law Reform Commission's 1974 *Report on Limitations* that reviewed the law of limitations in B.C.

**New Act:**

(i) a claim relating to misconduct of a sexual nature, including, without limitation, sexual assault,

- (i) if the misconduct occurred while the claimant was a minor, and
- (ii) whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period;

(j) a claim relating to sexual assault, whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period;

**Former Act:**

3(4)(k) for a cause of action based on misconduct of a sexual nature, including, without limitation, sexual assault,

- (i) where the misconduct occurred while the person was a minor, and
- (ii) whether or not the person's right to bring the action was at any time governed by a limitation period;

(l) for a cause of action based on sexual assault, whether or not the person's right to bring the action was at any time governed by a limitation period.

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**Rationale for change:**

- This provision has been carried forward from section 3(4)(k) and (l) of the former Act, and revised to match the language of the new Act.
- Civil claims based on sexual assault and misconduct of a sexual nature while the claimant was a minor will continue to be exempted from the application of the new Act. There is no change to this provision.
- The underlying policy rationale for the former Act's exemption of claims based on sexual assault and misconduct of a sexual nature while the claimant was a minor is the recognition that in certain circumstances, vulnerable individuals cannot be expected to understand the impact of what has happened to them until later in life, or have the capacity to bring a claim until many years after the abuse occurred.
- This provision relates to civil claims only and does not govern any criminal proceedings.

**New Act:**

(k) a claim relating to assault or battery, whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period, if the assault or battery occurred while the claimant

- (i) was a minor, or
- (ii) was living in an intimate and personal relationship with, or was in a relationship of financial, emotional, physical or other dependency with, a person who performed, contributed to, consented to or acquiesced in the assault or battery;

**Former Act:** None

**Rationale for change:**

- This reform protects vulnerable people from the operation of the reformed shorter limitation periods.
- The underlying policy rationale for the former Act's exemption of civil claims based on sexual assault and misconduct of a sexual nature while the claimant was a minor applies to civil claims based on assault or battery of a minor or of an adult in a personal or dependent relationship with the abuser. The rationale is the recognition that in certain circumstances, vulnerable individuals cannot be expected to understand the impact of what has happened to them until later in life,

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or to have the capacity to bring a claim until many years after the abuse occurred.

- This provision relates to civil claims only and does not govern any criminal proceedings.

**New Act:**

(l) a claim for arrears of child support or spousal support payable under

- (i) a judgment, or
- (ii) an agreement filed with the court under section 148 (2) or 163(3) of the *Family Law Act*;

**Former Act:** None

**Rationale for change:**

- The new Act exempts claims for arrears of child support or spousal support under a judgment or an agreement filed with the court. Sections 148 (2) and 163(3) of the *Family Law Act* provide that if agreements are filed with the court, certain provisions, including provisions for child and spousal support, are enforceable as if they were contained in a court order made under the *Family Law Act*.
- The new Act recognizes the underlying moral obligation of family members to be held accountable to repay arrears of support that have been ordered by the court.
- The former Act was silent with respect to claims for arrears of child support or spousal support. Case law had determined that these claims were governed by the 10-year basic limitation period for enforcement of a money judgment under section 3(4.1).
- The former scheme resulted in unfairness for recipients of support who already had a court order (or filed agreement with the court), but did not enforce the order within 10 years.

**New Act:**

(m) fines or penalties under the *Offence Act*.

**Former Act:** None

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**Rationale for change:**

- Fines imposed under the *Offence Act* are civil sanctions with quasi-criminal aspects. Penalties are imposed by a government (or quasi-government) official to enforce compliance with an administrative scheme. There is a public policy rationale for no limitation periods to apply to these fines or penalties.
- The effect of this exemption will be to improve certainty over what the new Act does and does not apply to.

**New Act:**

(2) This Act does not apply to a claim or court proceeding for which a limitation period has been established under another enactment, except to the extent provided for in the other enactment.

**Former Act:** None**Rationale for change:**

- The new Act is a default statute. Therefore, if another statute sets out a specific limitation period, the new Act does not apply (e.g. a 10-year limitation period under the *Civil Forfeiture Act* to apply to the court for a forfeiture order).
- If there is no statute that contains a limitation period for a specific legal problem, then the new Act applies.
- This principle was not clearly communicated in the former Act, which made it confusing for laypersons and lawyers who were not familiar with its application.

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## **Division 3 – Application**

This Division includes two sections that clarify how the new Act applies in situations involving the inter-relationship between two or more jurisdictions and their respective laws (conflict of laws), and in situations involving equitable principles.

### **Section 4 – Conflict of laws**

- Conflict of laws rules address the inter-relationship between two or more jurisdictions (e.g., provinces or countries) and their respective laws.
- This section has been modernized to reflect that the case law on conflict of laws has evolved since the former Act was enacted in 1975. Back then, there was an ongoing debate regarding whether limitations laws were procedural (i.e., affecting a person's legal remedy, such as the *Supreme Court Civil Rules*, which set out the procedure that must be followed in B.C. Supreme Court) or substantive (i.e., affecting a person's legal right, such as the provisions in the *Motor Vehicle Act* that govern operation of a motor vehicle).
- This section reflects the case law that now considers statutes of limitations to be substantive law, while previously they were classified as procedural. It requires a B.C. court to apply the limitation period which governs the substantive issue according to the laws of the jurisdiction to which the court is directed by its choice of law rules.

### **(2) Application of Exemption for Sexual Assault to Conflict of Laws Provision**

- Subsection (2) of the conflict of laws provision ensures that if the choice of laws rules apply to a civil claim based on sexual misconduct of a minor, sexual assault, physical assault of a minor or physical assault of an adult in a personal or dependency relationship, that a court must not apply a limitation period to the claim, despite subsection (1).
- In other words, the exemption provisions in section 3(1)(i)(j) and (k) always apply, regardless of which jurisdiction's limitation laws apply to govern the claim.
- This means that the conflict of laws provision protects plaintiffs who are seeking damages in a civil claim based on sexual assault or physical assault (of a minor or an adult in a dependency relationship) from having a limitation period apply to their claim in situations where

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the choice of laws rules say the law from the other jurisdiction is to be applied to the lawsuit.

- This could be very important because not all limitations laws exempt civil claims based on sexual and physical assault from their scope.

## **Section 5 – Rules of equity not overridden**

- Historically, equity was a branch of English law separate from the common law (i.e., the law created through the decisions of judges). The courts of equity were developed and administered in England by the High Court of Chancery. Today, the common law and equity are no longer separate, and judges in B.C. apply the rules of equity when deciding cases.
- The limitation periods in the new Act will continue to apply to claims for equitable relief, unless specifically exempted in sections 2 and 3. Where there is no limitation period that applies to a claim for equitable relief, a defendant is able to rely on the equitable defences of acquiescence and inexcusable delay to bar the claim.
- Acquiescence is a person's silence and inaction. By doing nothing, it appears that a person is agreeing to the action.
- Inexcusable delay is a person's postponement of action during a period in which he or she must take some action.
- This section is carried forward from the former Act.

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## **Part 2 – Basic Limitation Period**

This Part sets out the rules that govern the basic limitation period in the new Act.

### **Division 1 – Establishment of Basic Limitation Period**

Division 1 establishes a single two-year basic limitation period that governs all civil claims, and retains a 10-year basic limitation period to enforce or sue on a money judgment.

### **Section 6 – Basic limitation period**

- This section establishes a single two-year basic limitation period to commence a civil court proceeding for all claims.
- The basic limitation period starts to run from the date of discovery (i.e., when a person knows that he or she has a legal claim). The discovery rules are set out in section 8.
- The basic limitation period applies to all claims, unless the new Act specifically exempts a claim from its application (e.g., a person will continue to have 10 years to enforce a money judgment).
- The two-year period is designed to provide sufficient time for a plaintiff, once a claim is discovered, to seek legal advice, consider the available options and commence court proceedings.
- A single two-year basic limitation period will encourage people to act on their legal problems quickly and prevent stale-dated claims. It simplifies the law, promotes the efficiency of the civil justice system and reduces uncertainty about which basic limitation period applies to a set of facts.
- This is a significant change from the former Act, which contains three separate basic limitation periods of two years, six years and 10 years duration in which to start a civil action. The length of the basic limitation period is tied to the type of civil lawsuit (e.g., cause of action) that is being pursued. For example, a civil action for personal injury has a two-year basic limitation period. An action for recovery of debt has a six-year basic limitation period. An action against a trustee for the conversion of trust property has a 10-year basic limitation period.
- The two-year basic limitation period does not apply to a court proceeding under section 7 [*basic limitation period for court proceeding to enforce or sue on judgment*].

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## Section 7 – Basic limitation period for court proceeding to enforce or sue on judgment

- This section provides a 10-year basic limitation period for a person to start a court proceeding to enforce a judgment for the payment of money or the return of personal property.
- If the judgment is a local judgment, time starts to run from the date on which the judgment becomes enforceable.
- If the judgment is an extraprovincial judgment, time starts to run from the earlier of: the expiry of the enforcement period from the issuing jurisdiction, or 10 years after the date the judgment became enforceable.
- This section is carried forward from the former Act. It retains the efficiency of allowing a person to have 10 years to sue on a judgment for the payment of money or for the return of personal property.

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## [Division 2 – Discovery of Claim](#)

This Division sets out the rules that apply to discovery of a claim.

### [Section 8 – General discovery rules](#)

- This section sets out the test for discovering a claim.
- The basic limitation period will only run from the day on which the person first knew or reasonably ought to have known: of the injury, loss or damage; that the injury, loss or damage was caused by an act or omission of the defendant; and that a court proceeding would be an appropriate means to seek to remedy it.
- Once a person discovers that he or she has a legal claim, he or she will have two years from this date to start a court proceeding (unless another provision of the new Act applies).
- This section recognizes that courts will continue to have considerable discretion in interpreting the meaning of the discovery test, in order to come to a just result, and to achieve fairness for plaintiffs.
- The discovery test applies to all legal claims unless the new Act specifies otherwise. Various other discovery rules for special situations are referred to in sections 9 through 11 [*special situations for persons of full capacity, special situations for minors, and special situations for persons under a disability*].
- This section simplifies and modernizes the discoverability provision from the former Act.

### [Section 9 – Special situations for persons of full capacity](#)

- Sections 9, 10 and 11 set out the discovery rules that apply in some special situations in order to clarify when time starts to run in the basic limitation period for cases that do not fit neatly into the discovery test in section 8.
- Section 9 tells the reader where to find the discovery test if the claim is made by an adult person of full capacity and based on either fraud or recovery of trust property (see section 12), a future interest in trust property (see section 13), a demand obligation (see section 14), realizing or redeeming security (see section 15), contribution or indemnity (see section 16), or involving successors, predecessors, principals and agents (see section 17).

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## **Section 10 – Special situations for minors**

- Sections 9, 10 and 11 set out the discovery rules that apply in some special situations in order to clarify when time starts to run in the basic limitation period for cases that do not fit neatly into the discovery test in section 8.
- Section 10 tells the reader where to find the discovery test if the claim is made by a minor (see section 18).
- “Minor” is not defined in the new Act. It is defined in the *Age of Majority Act* as a person who has not reached the age of majority. The age of majority in B.C. is 19 years of age.

## **Section 11 – Special situations for persons under disability**

- Sections 9, 10 and 11 set out the discovery rules that apply in some special situations in order to clarify when time starts to run in the basic limitation period for cases that do not fit neatly into the discovery test in section 8.
- Section 11 tells the reader where to find the discovery test if the claim is made by a person under a disability (see section 19).

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## **Division 3 – Special Discovery Rules**

This Division sets out the special discovery rules that apply to discovery of a claim in situations that do not fit neatly into the discovery test in section 8.

### **Section 12 – Discovery rule for claims based on fraud or recovery of trust property**

- This section sets out the special discovery rules for claims based on fraud, fraudulent breach of trust, recovery of trust property or any other claim arising out of the fiduciary relationship involving wilful concealment where the person with the claim is a beneficiary and the person against whom the claim is made is a trustee.
- There is a higher discoverability threshold than the general discovery test for claims involving a trust. In order for the claim to be discovered and time to start running the beneficiary must be “fully aware” of the fraud, fraudulent breach of trust or recovery of trust property. This means the beneficiary must have actual knowledge of the legal wrong.
- The burden of proving that time has begun to run rests on the trustee (i.e., the defendant).
- This section carries forward the principle from the former Act that vulnerable beneficiaries should be protected, and they should not be required to be reasonably diligent in ensuring that the trustee acts properly. It is worth retaining as it reflects reliance and dependence in a beneficiary-trustee relationship.

### **Section 13 – Discovery rule for claims for future interest in trust property**

- This section sets out the special discovery rules for claims relating to a future interest in trust property.
- A future interest is a property interest in which the legal right to possession or enjoyment of the property is in the future.
- This section provides that a claim relating to a future interest in trust property is discovered on the later of:
  - the day the claim is discovered under the general discovery test in section 8;

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- the day the claim is discovered under the discovery test for claims based on fraud or recovery of trust property in section 12; or
- the day the interest becomes a present interest.
- The idea is to prevent unnecessary litigation; that is, to protect beneficiaries with a future interest in a trust from having to litigate in respect of an injury, loss or damage to an interest which he or she may not live to enjoy.
- This section carries forward s.6(8) of the former Act.

### **Section 14 – Discovery rule for claims for demand obligations**

- This section creates a special discovery rule for claims for demand obligations.
- Demand loans are loans in which there are no fixed conditions for repayment. They often arise in the context of friends and family lending one another money and may be intended to run over the long term.
- The former Act was silent on this issue. The common law (i.e., the law created through the decisions of judges) has applied to demand loans. The common law was that time started to run from the date that the parties entered into a demand loan. This created unfairness for lenders in cases where requests for repayment were made after the limitation period has expired.
- To avoid unfairness and to allow people to structure demand obligations over the long term, the new Act starts the running of time in both the basic and ultimate limitation periods from the first day of default after a demand for repayment has been made.
- This principle is being adopted to balance the reduction in the basic limitation period to two years and the likelihood of these loans being entered into by unsophisticated lenders.
- This provision will allow parties to enter into informal lending agreements and structure them over a longer term.

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## **Section 15 – Discovery rule for claims to realize or redeem security**

- This section sets out the special discovery rules for claims to realize or redeem security. It clarifies that the discovery date is the day the right to enforce the security arises.
- This provision clarifies when the basic limitation period runs in cases involving secured parties.

## **Section 16 – Discovery rule for claims for contribution or indemnity**

- This section sets out the special discovery rules for claims for contribution or indemnity.
- Discovery of a claim for contribution or indemnity is considered to be on the later of:
  - the day on which the claimant for contribution is served with the original pleading (i.e., from which the claim for contribution or indemnity would arise); or
  - the day the claimant knew or reasonably ought to have known that a claim for contribution could be made.
- Under the former Act there was potential for lengthy delays between the running of time in the original lawsuit and the date a third party received notice of a claim against him or her for contribution or indemnity.
- Under the former Act it was open to the court to consider delay and prejudice in determining whether to strike a third party notice for contribution or indemnity.
- The new Act provides that a claim for contribution or indemnity cannot be brought against a third party more than two years from the time when the original claim (i.e. the one from which the claim for contribution or indemnity would arise) was served, or, if it is later, two years from the date the claimant knew or can reasonably have been said to have known about the claim for contribution or indemnity (see section 21(2)(c) for rules that govern the ultimate limitation period).

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## **Section 17 – Discovery rules for successors, predecessors, principals and agents**

- This section sets out the special discovery rules for two types of claims:
  - claims of a person claiming through a predecessor (claims of a successor); and
  - claims of a principal, if the principal's agent had a duty to communicate knowledge of all material facts relating to the claim to the principal.
- Claims of a successor (i.e., a lawsuit started by a person who replaces or comes after another person, who has the rights and duties of the earlier person) are discovered on the earlier of: the day the claim is discovered by the predecessor (the earlier person), or the day the claim is discovered by the successor (the later person who replaces or comes after the predecessor).
- Claims of a principal, if the principal's agent had a duty to communicate knowledge of the claim to the principal, is discovered on the earlier of: the day on which the claim is discovered by the agent, or the day the claim is discovered by the principal.
- The former Act did not include a separate provision that set out when time started to run in the basic limitation period for cases involving lawsuits that were started by a person claiming through a predecessor. It also did not include a separate provision for when time started to run in the basic limitation period for cases involving lawsuits that are started by a principal who has authorized an agent to act on his or her behalf.

## **Section 18 – Discovery rule for minors**

- This section sets out the special discovery rules for minors.
- The former Act combined the postponement rules for persons under a disability and minors into a single, lengthy provision.
- The new Act has separated the relevant issues to simplify the operation of the legislation; however, the actual application of the postponement rules (governing the basic limitation period) for minors remain essentially the same under the new Act as under the former Act.
- Section 18 carries forward the rule in section 7 of the former Act that the basic limitation period does not run while a person is a minor.

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- “Minor” is not defined in the new Act. It is defined in the *Age of Majority Act* as a person who has not reached the age of majority. The age of majority in B.C. is 19 years of age.
- Claims of a minor are discovered on the later of:
  - the day on which the minor attains the age of 19; or
  - the day that the claim is discovered according to the other discovery rules set out in the new Act [*general discovery rules, discovery rules for claims for demand obligations, claims to realize or redeem security, claims for contribution or indemnity, and discovery rules for successors, predecessors, principals and agents*].

Note: One exception is if a notice to proceed is delivered to a minor’s caregiver and to the Public Guardian and Trustee, if the minor has a caregiver. If a notice to proceed is delivered in accordance with the new Act, then the discovery date is the date of delivery of the notice.

- 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.

## **Section 19 – Discovery rule for persons under disability**

- This section sets out the special discovery rules for persons under a disability.
- The former Act combined the postponement rules for persons under a disability and minors into a single, lengthy provision.
- The new Act has separated the relevant issues to simplify the operation of the legislation; however, the actual application of the postponement rules (governing the basic limitation period) for persons under a disability remains essentially the same under the new Act as under the former Act.
- Section 19 carries forward the rule in section 7 of the former Act that the basic limitation period does not run while a person is under a disability.
- “Person under a disability” is defined in the new Act as an adult person who is incapable of or substantially impeded in managing his or her affairs.
- Claims of a person under a disability are discovered on the later of:

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- the day on which the person ceases to be under a disability; or
- the day that the claim is discovered according to the other discovery rules set out in the new Act [*general discovery rules, discovery rules for claims for demand obligations, claims to realize or redeem security, claims for contribution or indemnity, and discovery rules for successors, predecessors, principals and agents*].

Note: One exception is if a notice to proceed is delivered to the caregiver and to the Public Guardian and Trustee, if the person under the disability has a caregiver. If a notice to proceed is delivered in accordance with the new Act, then the discovery date is the date of delivery of the notice.

- 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.

## [Section 20 – Notice to proceed if basic limitation period postponed](#)

- This section sets out the rules for a notice to proceed to activate the running of both the basic and ultimate limitation periods during minority or while a person is under a disability.
- 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 minor or adult under a disability has a caregiver. “Caregiver” is defined as meaning:
  - (a) In relation to a minor, a parent, guardian or other person who usually has care and control of the minor; or
  - (b) In relation to a person for whom a committee has been appointed under the *Patients Property Act*, the committee.
- A notice to proceed must be delivered to the potential claimant’s caregiver and to the Public Guardian and Trustee. It sets out the

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details of the claim, and warns that the limitation periods (both the basic and ultimate limitation periods) will start running against the potential claimant once the notice to proceed is delivered.

- This provision 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.
- Section 20 is very similar to section 26 of the new Act (notice to proceed if limitation periods suspended under section 25). It is set out in a separate provision because it applies to a different situation. Section 20 applies where the potential claimant is a minor or an adult under a disability. Section 26 applies where the potential claimant is an adult of full capacity, who later becomes under a disability.
- The notice to proceed provision will provide a potential defendant with greater certainty as to when potential liability against him or her 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 the lawsuit. Most notably, the Public Guardian and Trustee must be notified of all notices to proceed.

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## Part 3 – Ultimate Limitation Period

This Part sets out the rules that govern the ultimate limitation period in the new Act.

### Section 21 – Ultimate limitation period

#### Purpose of subsection (1):

- Subsection (1) sets out a single ultimate limitation period of 15 years for all claims.
- This is a significant change from the former Act. The former Act contained two ultimate limitation periods: a general ultimate limitation period of 30 years, and a special six-year medical ultimate limitation period for claims against hospitals, hospital employees and medical practitioners.
- **The new Act reduces the general ultimate limitation period from 30 years to 15 years, and removes the special six-year medical ultimate limitation period, so that the 15-year ultimate limitation period also applies to medical claims.**
- The ultimate limitation period starts to run from the date the act or omission on which the claim is based took place (i.e., from the “act or omission” date).
- This is a significant change from the former Act. In the former Act time ran in the ultimate limitation period once all the individual elements of the legal claim were present, or had “accrued.”
- The act or omission commencement model eliminates the need for litigants and courts to determine at what point all elements of the claim have accrued. This creates more certainty as to when time begins to run. It also results in more predictability because it does not matter what kind of claim is brought (e.g., time starts to run at the same point for a negligence claim or a breach of contract claim).
- The 15-year ultimate limitation period, combined with the act or omission commencement model, brings more certainty and simplicity to the new Act, and reduces the likelihood of stale-dated negligence claims.

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## **Commencement of the ULP**

Commencement indicates when time starts to run in the ultimate limitation period. This has changed from the accrual model to the act or omission model.

The act or omission model starts time running in the ultimate limitation period from the date the act or omission on which the claim is based took place.

### **Purpose of Subsection (2):**

- Subsection (2) sets out when the “act or omission” occurs for different claims. This is a new provision that provides greater clarity and certainty over when the ultimate limitation period begins to run for specific claims that may not fit neatly into the reformed commencement model.
- It simplifies the new Act, and will reduce litigation over when time begins to run in the ultimate limitation period for these types of claims.
- Note: see section 30 for a discussion of how section 21(2) applies under the transition rules.

The following is the rationale for commencement of the ultimate limitation period for specific claims listed in (2):

(a) in the case of a claim arising out of a conversion, the day on which the property was first converted by any person;

- A lawsuit for conversion is a claim for damages by a property owner against someone who wrongfully took, used or destroyed the property.
- In a claim for conversion, the ultimate limitation period will run from the date of the conversion.
- Where there are two or more conversions, the principle in section 10 of the former Act is carried forward to the new Act. Section 10 (former Act) provided that where there were two or more conversions, there was a six-year ultimate limitation period that ran from the first conversion.
- This means that in cases involving two or more conversions, the ultimate limitation period will start to run from the day of the first conversion. Without this provision, it would be unclear when the ultimate limitation period starts to run in cases involving more than one conversion.

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(b) in the case of a claim referred to in section 12, 13, 14, or 15, the day on which the claim is discovered in accordance with that section;

- For claims referred to in section 12 [*discovery rule for claims based on fraud or recovery of trust property*], both the basic and ultimate limitation periods start to run from the date of discovery set out in that section. This means that both the basic and ultimate limitation periods run from the date the beneficiary was “fully aware” of the fraud or trust claim.
- For claims referred to in section 13 [*discovery rule for claims for future interest in trust property*], both the basic and ultimate limitation periods start to run from the date of discovery set out in that section. This means that both the basic and ultimate limitation periods run from the later of: the discovery date under section 8 [*general discovery rules*], or 12 [*discovery rule for claims based on fraud or recovery of trust property*], or the date the future interest becomes a present interest.
- For claims referred to in section 14 [*discovery rule for claims for demand obligations*], both the basic and ultimate limitation periods start to run from the date of discovery set out in that section. This means that both the basic and ultimate limitation periods run from the first day that there is a failure to perform the obligation after a demand for the performance has been made.
- For claims referred to in section 15 [*discovery rule for claims to realize or redeem security*], both the basic and ultimate limitation periods start to run from the date of discovery set out in that section. This means that both the basic and ultimate limitation periods run from the first day that the right to enforce the security arises.

(c) in the case of a claim for contribution or indemnity, the day on which the claimant for contribution or indemnity is served with a pleading in respect of a claim on which the claim for contribution or indemnity is based;

- This is a new provision.
- This provision works together with section 16 [*discovery rule for claims for contribution or indemnity*] to avoid situations where very old contribution or indemnity claims are brought toward the end of the litigation process.
- The ultimate limitation period starts to run from the day on which the person claiming contribution or indemnity is served with the paperwork for the original claim (i.e., the one from which the claim for contribution and indemnity would arise).

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- This simplifies the new Act by bringing greater certainty to third parties, who will have a definite end point to potential liability.

(d) in the case of a claim of a minor, on the earlier of the following:

- |      |  |
|------|--|
| (i)  | the day on which the minor attains the age of 19 years;  |
| (ii) | the day on which the claim is discovered under section 18(b) [ <i>notice to proceed delivered</i> ]; |

- Both the basic and ultimate limitation periods do not run during periods of minority. This has not changed.
- This provision postpones the running of the ultimate limitation period during periods of minority. It ensures that the ultimate limitation period does not start to run in claims against a minor until the minor turns 19. One exception is if the minor is served with a notice to proceed, which starts time running in the ultimate limitation period once it is delivered.
- This provision carries forward the principles in section 7 of the former Act.

(e) in the case of a claim of a person who is under a disability at the time at which the act or omission on which the claim is based takes place, on the earlier of the following:

- |      |  |
|------|--|
| (i)  | the day on which the person ceases to be a person under a disability;                                |
| (ii) | the day on which the claim is discovered under section 19(b) [ <i>notice to proceed delivered</i> ]. |

- This is a new provision.
- Under the former Act only the basic limitation period stopped running during adult disability.
- **The new Act postpones the running of both the basic and ultimate limitation periods during adult disability.** This is a change to the law.
- This provision ensures that the ultimate limitation period does not start to run in claims against a person who is under a disability until the person ceases to be under a disability. One exception is if the person under a disability is served with a notice to proceed, which starts time running in the ultimate limitation period once it is delivered.

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**Purpose of Subsection (3):**

- Subsection (3) sets out when the “act or omission” occurs for claims involving wilful concealment or where the defendant wilfully misleads the claimant as to the appropriateness of starting a court proceeding.
- This provision suspends the ultimate limitation period until a claim is discovered (i.e., the ultimate limitation period starts to run from discovery, not from the act or omission date). This means that both the basic and ultimate limitation periods run from discovery of the claim.
- Due to the fact that the ultimate limitation period has been shortened from 30 to 15 years, there is a risk that a dishonest defendant could take advantage of the reduced period and delay proceedings past the ultimate limitation period in order to be free from liability.
- This provision will penalize a dishonest defendant who is “wilfully” concealing from or misleading a claimant.

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## **Part 4 – Factors Affecting Limitation Periods**

The provisions in this Part provide rules that allow certain court and enforcement proceedings to be commenced or continued regardless of whether a limitation period has expired, and provide rules that extend limitation periods if liability is acknowledged.

### **Section 22 – Counterclaim or other claim or proceeding**

- This section carries forward the principles from section 4 of the former Act, but removes the application of this section to claims for contribution or indemnity.
- The former Act did not set a time limit for starting counterclaims, third party claims, claims by way of set-off or substituting parties. This has not changed in the new Act. Judges will continue to have discretion to allow these types of related claims.
- What has changed is that claims for contribution or indemnity will be governed by limitation periods in the new Act (see sections 16 and 21).
- Under the former Act there was potential for lengthy delays between the running of time in the original lawsuit and the date that a third party received notice of a claim against him or her for contribution or indemnity.
- There is no equivalent unfairness to third parties where the related claim is not one for contribution or indemnity, or where the related claim is a counterclaim, a set-off or for substituting parties. As such, the principles from section 4 will continue to apply these types of related claims.

#### **Subsection (1)**

This provision has been carried forward from the former Act. It has been revised to fit within the language of the new Act. Subsection (1) provides that there is no limitation period for a person to commence a related claim (i.e. a counterclaim, a third party proceeding, a claim by way of set off, or the addition or substitution of a new party as plaintiff or defendant), as long as this related claim is related to or connected with the original claim, and the original claim was commenced within the limitation period under the new Act. This means that a judge retains the discretion to allow or not allow a related claim to proceed.

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**Subsection (2)**

Section 22 does not apply to claims for contribution or indemnity. Contribution or indemnity claims are governed by the basic and ultimate limitation periods in the new Act. Section 16 sets out that the basic limitation period runs from the later of: the date a person claiming contribution or indemnity is served with the paperwork starting the original claim (on which the contribution or indemnity claim is based), or the date that a person first knew or reasonably ought to have known that he or she could make a claim for contribution or indemnity against a third party.

Section 21 (2)(c) sets out that the ultimate limitation period starts to run from the date a person claiming contribution or indemnity is served with the paperwork starting the original claim. Once either the basic or ultimate limitation period expires, a person cannot start a claim for contribution or indemnity.

**Subsection (3)**

This provision has been carried forward from the former Act.

**Subsection (4)**

This provision has been carried forward from the former Act.

**Subsection (5)**

This provision has been carried forward from the former Act. It has been revised to fit within the language of the new Act.

**Section 23 – Completion of enforcement process**

This provision protects a claimant's rights by maintaining his or her ability to complete an outstanding enforcement process. Section 23 carries forward section 11 of the former Act. It has been revised to reflect the language of the new Act.

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**Subsection (1):**

- Subsection (1) allows the continuation of enforcement processes on judgments that are already in progress when the 10-year basic limitation period (for enforcement of judgments) expires. This provision only applies if a claimant has already been awarded a money judgment and is in the process of enforcing the judgment when the 10-year basic limitation period expires.
- A number of enforcement processes are listed in this section.
- Examples of enforcement processes are:
  - Proceedings on an unexpired writ of execution: this is where a sheriff or other officer is directed in a court order to seize and sell the debtor's property in order to satisfy the judgment.
  - Proceedings against land on a judgment registered under Part 5 of the *Court Order Enforcement Act*: this is where a judgment creditor can register the judgment against title to the land owned by the debtor (as a lien) and a court proceeding is underway to determine the sale of the debtor's land to satisfy the amount owing in the judgment.
  - Proceedings in which a charging order is claimed: a lawyer who has not been paid, who has acted for a client in a proceeding where property has been recovered, can ask the court to charge that property (i.e. put a lien on the property) for the amount of his or her fees.

**Subsection (2):**

- Subsection (2) stops the running of limitation periods under the new Act for matters that are postponed or suspended by a court order staying execution on a judgment, for so long as the stay order is in effect.
  - A court order staying execution on a judgment suspends the judgment so that it cannot be enforced for a certain period of time.
- This ensures that a stay order does not count in the calculation of the 10-year basic limitation period (for enforcement of judgments) to the detriment of a potential claimant.

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## Section 24 – Limitation periods extended if liability acknowledged

- This section addresses the running of time in both the basic and ultimate limitation periods for claims where liability has been acknowledged. An acknowledgment refers to an acknowledgment of liability. There are two types of acknowledgements: a payment made on a debt, and a written confirmation of liability.
- This section replaces section 5 of the former Act and substitutes the old terminology of a “confirmation of a cause of action” with the language “acknowledgement of liability”. While much of the substance of the previous section has been retained, the new Act has reorganized and clarified what constitutes an acknowledgment for specific claims. This is intended to make the provision easier to understand and more certain in its application.
- **In the new Act an acknowledgment will reset both the basic and ultimate limitation periods.** Under the former Act an acknowledgment reset the basic limitation period, but only up to the governing ultimate limitation period.
- The acknowledgment provision modernizes the law to ensure that electronic communications are an acceptable form of acknowledgments. (i.e., it allows for acknowledgments to be valid with an electronic signature, such as e-mail messages.)
- By resetting both the basic and ultimate limitation periods, this section meets the objective of ensuring that long-term financial arrangements continue.

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## 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.

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## 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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## Part 6 – General

### Section 27 – Non-judicial remedies

- Section 27 prevents a person from exercising a non-judicial remedy once the governing limitation period has expired. A non-judicial remedy is a remedy that a person is entitled to exercise (by law or by contract) with respect to a claim without court proceedings (i.e., an out-of-court remedy).
- An example is repossession: where a vendor sells a person a car on credit, and the purchaser fails to pay off the balance, the vendor cannot go and take the car back, or repossess the car, once the governing limitation period has expired.
- The former Act contained an extinguishment clause which provided that for some causes of action a person's legal right, and in certain cases involving property, a person's title to property, was extinguished upon the expiry of a limitation period.
- The non-judicial remedies provision differs from the extinguishment clause in that once a limitation period expires a person is prohibited from exercising a legal remedy, rather than having a legal right extinguished.
- Section 27 simplifies the law, as it applies to all claims, not only an enumerated list of causes of action. As well, it clarifies that the consequences that flow from the expiry of a limitation period (i.e., prohibiting a person from bringing a civil court proceeding) also apply to a person who wishes to exercise a non-judicial remedy.

### Section 28 – Adverse possession

- Section 28 continues to abolish title by adverse possession.
- Adverse possession is a term that refers to a method of acquiring title to real property by possessing the land for a certain period of time, usually set out in a statute, when that use of land is continuous and exclusive.
- Section 28(1) clarifies that no right or title in or to land may be acquired by adverse possession (unless another Act specifies otherwise).
- Section 28(2) allows any right or title acquired by adverse possession before July 1, 1975 to continue. This date is the date the former Act was first brought into force. Prior to this date it was possible in B.C. to possess land with only a possessory title, called an absolute fee, and for a person to acquire this land based on adverse possession.

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- Since 1905, all new applications to bring land within the registry system were regarded as applications for certificates of indefeasible title (that is, the person named on title is the absolute owner of an indefeasible fee simple against the whole world). However, some of the old absolute fees giving an owner possessory title are still in existence (and the old absolute fees can be acquired by adverse possession).
- Section 28 carries forward sections 12 and 14(5) of the former Act.

### **Section 29 – Power to make regulations**

- This section provides the Lieutenant Governor in Council with the power to make regulations for the purpose of carrying out the intent of the new Act.
- There were no regulations in place under the former Act.

### **Section 30 - Transition**

- The transition rules did not apply until the new Act is brought into force on June 1, 2013 and the former Act was repealed. Prior to June 1, 2013, the former Act applied.
- This section defines “former Act” to mean the repealed former Act, so the term “former Act” will be used throughout this explanation to accurately describe the transition rules.
- This section sets out the transition rules for determining how to calculate the limitation periods established by the new Act. The transition rules apply to pre-existing claims where:
  - 1) the former 30-year ultimate limitation period (or 6-year ultimate limitation period) had not expired before June 1, 2013;
  - 2) the act or omission (on which the legal claim is based) occurred before June 1, 2013; and
  - 3) no court proceeding has been started.

Note: this provision does not restrict the right of a person to bring a proceeding at any time in relation to a civil claim of sexual assault or based on assault or battery (minors and dependency relationships) in sections 3(1)(i), (j) and (k) of the new Act.

- Claims that were “discovered” before June 1, 2013 are subject to the limitation periods in the former Act. As the discoverability provision in the former Act (ss. 6(3), (4), (5) & (6)) did not apply to all claims, a

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person must look to the definition of “discover” in the new Act. The definition directs a person to the discovery rules in the new Act [Divisions 2 and 3 of Part 2]. Using the discovery rules a person can then determine whether the test for discovery has been met. If it has, the limitation periods in the former Act apply (i.e., no change).

- Claims that are “discovered” on or after June 1, 2013 are subject to the transition rules. There are rules that apply to two situations:
  - 1) If the claim was previously subject to the special six-year medical ultimate limitation period, (i.e., the claim was against a hospital, hospital employee or medical practitioner) the six year medical ultimate limitation period continues to apply. The ultimate limitation period runs from the date of accrual (i.e., the date of damage). This means there is no change from the former Act. The basic limitation period runs from the date of discovery using the discovery rules in the new Act. The basic limitation period runs for two years, unless specified otherwise in the new Act.
  - 2) If the claim was previously subject to the 30-year ultimate limitation period, the new 15-year ultimate limitation period applies. Time starts to run from the later of:
    - June 1, 2013; or
    - the day the act or omission takes place under section 21(2) [*the special act or omission dates for conversion, fraud or fraudulent breach of trust claims, contribution or indemnity claims, etc*]. The basic limitation period runs from the date of discovery using the discovery rules in the new Act. The basic limitation period runs for two years, unless specified otherwise in the new Act.

#### Summary:

- This means that for most claims discovered on or after June 1, 2013, the two-year basic limitation period will start to run from the date of discovery, and the 15-year ultimate limitation period will start to run from June 1, 2013. The ultimate limitation period will expire on June 1, 2028.
- The expiry of the ultimate limitation period on June 1, 2028 allows plaintiffs enough time to fairly discover any pre-existing claims, while creating a definite end-point of liability for defendants.
- The transition rules are aimed at achieving a transition from the former limitations regime to the new limitations regime that is fair for both plaintiffs and defendants.

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- Preserving the former Act's rules for plaintiffs that have already discovered their claims protects those claimants that may have received legal advice or made decisions based on the rules under the former Act from the burden of having to comply with the new Act.

For further information please see:

[Exposure to Liability – Effect of Transition Rules Beginning June 1, 2013](#)

[Transition Rules Flowchart for the new \*Limitation Act\*](#)

[Questions and Answers](#)

[Table of Concordance](#)

### **SECTION 31 - Repeal**

This section repealed the former Act. The new Act has repealed and replaced the former Act.

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