

## **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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## **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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