

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.

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

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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:

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| (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:

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|------|--|
| (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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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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