

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.

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

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

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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