
Uniform Law Conference of Canada *Briefing Note -* Uniform Limitations Act

Subject:

Implementation of a new Uniform Limitations Act.

Background:

The Uniform Limitation of Actions Act was adopted by the Uniform Law Conference of Canada in 1931. This Act formed the basis for limitations law in Alberta, Manitoba, New Brunswick, the Northwest Territories, Prince Edward Island, Saskatchewan and the Yukon.

The Conference subsequently adopted the Uniform Limitations Act in 1982, which was meant to update the law on limitations. This statute was not well-received and only Newfoundland and Labrador adopted it.

Very modern limitations legislation that differ significantly from the previous uniform statutes are now in force in Alberta, Ontario and Saskatchewan. These three statutes are evidence of an emerging limitations regime that is gradually gaining acceptance in Canada.

The Uniform Law Conference of Canada decided in 2005 to adopt a new Uniform Limitations Act that would reflect the modern approach to limitations law. Jurisdictions that have yet to revise their limitations statutes may wish to do so by using the new Act as a reference.

Summary of the Uniform Limitations Act:

The new Uniform Limitations Act sets out a clear, cohesive limitations regime that would apply to as many claims as possible with the following key elements:

- The Act sets a short basic limitation period commencing from the discovery of the claim. Discovery of a claim is defined as when the claimant knows or ought to have known of the claim.
- The Act also sets a longer ultimate limitation period commencing from the date of the act or omission that gives rise to the claim.

- The above periods are applicable to all proceedings unless another statutory provision governs.
- Finally, the Act sets out rules for the suspension or extension of the basic and ultimate limitation periods in specified cases.

It should be noted that the development of this Act did not and could not take into account the impact of the limitations rules on all conceivable claims. In particular, limitations rules relating to real property matters were not considered in the development of the Act. Jurisdictions may wish to review the Act carefully to determine its potential impact.

Recommendation:

Provincial and territorial governments are urged to review and enact the new Uniform Limitations Act.

Contact:

John Lee
Counsel
Ministry of the Attorney General (Ontario)
720 Bay Street, 7th Floor
Toronto, ON
M5G 2K1

Phone: (416) 326-2530
Email: john.a.lee@jus.gov.on.ca

Date: August 25th, 2005

APPENDIX "B"

Uniform Limitations Act

CONTENTS

	<u>INTRODUCTORY MATTERS</u>
<u>1.</u>	Definition
<u>2.</u>	Application
<u>3.</u>	Crown
	<u>BASIC LIMITATION PERIOD AND ULTIMATE LIMITATION PERIOD</u>
<u>4.</u>	Basic limitation period
<u>5.</u>	Discovery
<u>6.</u>	Ultimate limitation period
	<u>SUSPENSION OF LIMITATION PERIODS</u>
<u>7.</u>	Minors
<u>8.</u>	Incapable persons
	<u>NO LIMITATION PERIOD</u>
<u>9.</u>	Certain claims re trespass to the person, assault or battery
	<u>GENERAL RULES</u>
<u>10.</u>	Successors, principals and agents
<u>11.</u>	Acknowledgments
<u>12.</u>	Other Acts, etc.
<u>13.</u>	Amending pleadings
<u>14.</u>	Agreements
<u>15.</u>	Conflict of laws
<u>16.</u>	Transition
<u>Schedule</u>	

INTRODUCTORY MATTERS

Definition

1. In this Act,

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

Comment: The reference to “claim” marks a departure from the traditional limitations regime, which has used historically “cause of action” as the basis for determining the applicable limitation period and for the commencement of the period. Under this Act, the running of time for the purposes of the basic limitation period commences from the discovery of the claim. The elements of discovery are referred to in s. 5.

Application

2. This Act applies to claims pursued in court proceedings other than,

(a) proceedings for judicial review;

- (b) appeals; and
- (c) proceedings for declaratory judgments.

[Enacting jurisdictions may want to list other types of proceedings to which this Act should not apply.]

Comment: This section clarifies that the Act is applicable to court proceedings. As a result, the Act will not apply to proceedings that are court-like in nature such as tribunal hearings and arbitration hearings. However, not all court proceedings are subject to the Act.

Crown

3. This Act binds the Crown.

Comment: This section reflects the law of most jurisdictions in the area. There is no reason why the Crown, as a matter of general principle, should not be bound by a jurisdiction's limitation periods. However, there may be certain cases where the Crown should be subject to special limitation periods. These cases are a matter of local policy.

BASIC LIMITATION PERIOD AND ULTIMATE LIMITATION PERIOD

Basic limitation period

4. Unless this Act provides otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered.

Comment: The basic limitation period to commence a proceeding is set at two years from discovery. Discovery is defined in s. 5. The two-year period reflects an arguably arbitrary time period to commence a proceeding. However, it is designed to provide sufficient time for a plaintiff, once a claim is discovered, to seek legal advice, consider the available options and institute proceedings.

Discovery

5. A claim is discovered on the earlier of,

- (a) the day on which the person with the claim first knew,
 - (i) that the injury, loss or damage had occurred,
 - (ii) that the injury, loss or damage was caused by or contributed to by an act or omission,
 - (iii) that the act or omission was that of the person against whom the claim is made, and

- (iv) that the injury, loss or damage is sufficiently serious to warrant a proceeding; and
- (b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

Comment: Section 5 is essentially a codification of the case law on discoverability. The basic limitation period set out in s. 4 will only run from the day on which a plaintiff first knew or ought to have known of the injury, loss or damage that was caused by the defendant and that the injury, loss or damage is sufficiently serious to warrant a proceeding.

Section 5(a)(iv) recognizes that the first sign of damage should not always be the time for the commencement of the basic limitation period. For example, it would be inappropriate to have the limitation period commence from the time on which a minor ache is felt, as this may not develop into a serious matter to require a legal proceeding. Otherwise, the Act may promote unnecessary litigation.

Section 5(b) sets out a subjective/objective test to determine when a person ought to have discovered the claim.

Ultimate limitation period

6. (1) Even if the limitation period established by section 4 in respect of a claim has not expired, no proceeding shall be commenced in respect of the claim after the expiry of the limitation period established by this section.

(2) No proceeding shall be commenced in respect of any claim after the 15th anniversary of the day on which the act or omission on which the claim is based took place.

(3) The limitation period established by subsection (2) does not run during any time in which the person against whom the claim is made,

- (a) wilfully conceals from the person with the claim the fact that injury, loss or damage has occurred, that it was caused by or contributed to by an act or omission or that the act or omission was that of the person against whom the claim is made; or
- (b) wilfully misleads the person with the claim as to whether the injury, loss or damage is sufficiently serious to warrant a proceeding.

(4) For the purposes of this section, the day an act or omission on which a claim is based takes place is,

- (a) in the case of a continuous act or omission, the day on which the act or omission ceases;
- (b) in the case of a series of acts or omissions in respect of the same obligation, the day on which the last act or omission in the series occurs;
- (c) in the case of a default in performing a demand obligation, the day on which the default in performance occurs after a demand for performance is made.

(5) For the purposes of this section, in the case of a claim by one alleged wrongdoer against another for contribution and indemnity, the day on which the first alleged wrongdoer is served with the claim in respect of which contribution and indemnity is sought, or incurs a liability through the settlement of that claim, shall be deemed to be the day the act or omission on which that alleged wrongdoer's claim is based took place.

(6) Subsection (5) applies whether the right to contribution and indemnity arises in respect of a tort or otherwise.

Comment: As a person may be subject to a claim indefinitely if the associated limitation period only runs upon a plaintiff's discovery of the claim, an additional limitation period is necessary to ensure that the interests of defendants for finality and closure are not overlooked. The ultimate limitation period serves to bring certainty as to when exposure to potential liability ends.

As is the case with the basic limitation period, a decision as to the length of this period is arguably arbitrary. The ultimate limitation period is set at 15 years in this Act and was first recommended by the Alberta Law Reform Institute as an appropriate period.

Section 6(3) recognizes that a defendant should not benefit from the running of the limitation period in cases where facts have been wilfully concealed by the defendant or where the defendant acts to mislead the plaintiff.

Section 6(4) clarifies when the ultimate limitation period commences in the cases where there is a continuous act or omission and where there are a series of acts or omissions in respect of the same obligation. It also clarifies when the ultimate limitation period commences for cases dealing with demand obligations.

Section 6(5) provides that the ultimate limitation period for a claim for contribution and indemnity commences when the person claiming contribution was made a defendant under a claim on which the claim for contribution could be based. Where the defendant has incurred a liability through the settlement of a claim, the ultimate limitation period commences from the date of settlement.

SUSPENSION OF LIMITATION PERIODS

Minors

7. The limitation periods established by sections 4 and 6 do not run during any time in which the person with the claim is a minor.

Comment: In many jurisdictions, limitation periods do not run against minors, but are suspended for the duration of their minority. The Act codifies this rule. Unlike some statutes, this Act does not contain a mechanism to allow potential defendants to activate the running of the limitation period relating to a minor's claim. A jurisdiction may wish to implement such a mechanism, but should consider the administrative burdens of such a process, the practicality of the process and ultimately the fairness to the minor before doing so.

Incapable persons

8. (1) The limitation periods established by sections 4 and 6 do not run during any time in which the person with the claim is incapable of commencing a proceeding in respect of the claim because of his or her physical, mental or psychological condition.

(2) A person shall be presumed to have been capable of commencing a proceeding in respect of a claim at all times unless the contrary is proved.

(3) If the running of a limitation period is postponed or suspended under this section and the period has less than six months to run when the postponement or suspension ends, the period is extended to include the day that is six months after the day on which the postponement or suspension ends.

Comment: Like the situation with minors, in many jurisdictions, limitation periods do not run against persons who are incapable of commencing a proceeding because of physical, mental or psychological condition. The limitation period is suspended for the duration of the incapacity. The Act codifies this rule. As is the case with minors, this Act does not contain a mechanism to allow potential defendants to activate the running of the limitation period relating to a claim by a person who is suffering from incapacity. A jurisdiction may wish to implement such a mechanism, but should consider the administrative burdens of such a process, the practicality of the process and ultimately the fairness to the person with the incapacity before doing so.

Unlike the situation for minors who will always have at least two years to commence a proceeding following their entering into adulthood, a person may be rendered incapable of commencing a proceeding when the limitation period has already commenced running for a significant period of time such that the time remaining to commence a proceeding is very short. Section 8(3) ensures that a person who recovers from an incapacity will have at least six months left in their limitation period.

NO LIMITATION PERIOD

Certain claims re trespass to the person, assault or battery

9. (1) There is no limitation period for a proceeding in respect of a claim relating to trespass to the person, assault or battery if,

- (a) the claim is based on misconduct of a sexual nature; or
- (b) at the time of the injury on which the claim is based,
 - (i) one of the parties who caused the injury was living with the claimant in an intimate relationship, or
 - (ii) the claimant was dependent, whether financially, emotionally, physically or otherwise, on one of the parties who caused the injury.

(2) This section prevails over anything in section 6.

Comment: This section provides that there is no limitation period for claims for damages arising from sexual misconduct such as incest. Also, there is no limitation period for claims arising from non-sexual assaults occurring within an intimate relationship or a relationship of dependency. This is particularly relevant to cases of child abuse, spousal abuse, elder abuse and abuse by someone such as a teacher, doctor or member of the clergy where a relationship of dependency exists.

GENERAL RULES

Successors, principals and agents

10. (1) For the purpose of clause 5 (a), in the case of a proceeding commenced by a person claiming through a predecessor in right, title or interest, the person shall be deemed to have knowledge of the matters referred to in that clause on the earlier of the following:

1. The day the predecessor first knew or ought to have known of those matters.
2. The day the person claiming first knew or ought to have known of them.

(2) For the purpose of clause 5 (a), in the case of a proceeding commenced by a principal, if the agent had a duty to communicate knowledge of the matters referred to in that clause to the principal, the principal shall be deemed to have knowledge of the matters referred to in that clause on the earlier of the following:

1. The day the agent first knew or ought to have known of those matters.
2. The day the principal first knew or ought to have known of them.

(3) The day on which a predecessor or agent first ought to have known of the matters referred to in clause 5 (a) is the day on which a reasonable person in the predecessor's or agent's circumstances and with the predecessor's or agent's abilities first ought to have known of them.

Comment: This section sets the time for the commencement of the basic limitation period for claims by successor owners and principals who are bound by the acquisition of knowledge of their claims by predecessors and agents with a duty to communicate their knowledge.

Acknowledgments

11. (1) If a person acknowledges liability in respect of a claim for payment of a liquidated sum, the recovery of personal property, the enforcement of a charge on personal property or relief from enforcement of a charge on personal property, the limitation periods begin anew.

(2) An acknowledgment of liability in respect of a claim for interest is an acknowledgment of liability in respect of a claim for the principal and for interest falling due after the acknowledgment is made.

(3) An acknowledgment of liability in respect of a claim to realize on or redeem collateral under a security agreement or to recover money in respect of the collateral is an acknowledgment by any other person who later comes into possession of it.

(4) A debtor's performance of an obligation under or in respect of a security agreement is an acknowledgment by the debtor of liability in respect of a claim by the creditor for realization on the collateral under the agreement.

(5) A creditor's acceptance of a debtor's payment or performance of an obligation under or in respect of a security agreement is an acknowledgment by the creditor of liability in respect of a claim by the debtor for redemption of the collateral under the agreement.

(6) An acknowledgment by a trustee is an acknowledgment by any other person who is or who later becomes a trustee of the same trust.

(7) An acknowledgment of liability in respect of a claim to recover or enforce an equitable interest in personal property by a person in possession of it is an acknowledgment by any other person who later comes into possession of it.

(8) Subsections (1), (2), (3), (6) and (7) do not apply unless the acknowledgment is in writing and signed by the person making it or the person's agent.

(9) Subject to subsections (8) and (10), this section applies to an acknowledgment of liability in respect of a claim for payment of a liquidated sum even though the person making the acknowledgment refuses or does not promise to pay the sum or the balance of the sum still owing.

(10) This section does not apply unless the acknowledgment is made to the person with the claim, the person's agent or an official receiver or trustee acting under the *Bankruptcy and Insolvency Act* (Canada) before the expiry of the limitation period applicable to the claim.

(11) In the case of a claim for payment of a liquidated sum, part payment of the sum by the person against whom the claim is made or by the person's agent has the same effect as the acknowledgment referred to in subsection (8).

Comment: This section codifies rules related to acknowledgments and part payments, which have the effect of restarting a limitation period.

Other Acts, etc.

12. (1) A limitation period set out in or under another Act that applies to a claim to which this Act applies is of no effect unless,

(a) the provision establishing it is listed in the Schedule to this Act; or

(b) the provision establishing it,

(i) is in existence on the day this Act comes into force, and

(ii) incorporates by reference a provision listed in the Schedule to this Act.

(2) Subsection (1) applies despite any other Act.

(3) If there is a conflict between a limitation period established by a provision referred to in subsection (1) and one established by any other provision of this Act, the limitation period established by the provision referred to in subsection (1) prevails.

(4) Sections 7 and 8 apply, with necessary modifications, to a limitation period established by a provision referred to in subsection (1).

Comment: This section sets out the manner in which limitation periods outside of this Act may be established. For limitation periods outside of this Act to be effective, the relevant provisions must be listed in the schedule to the Act. Section 12(1)(b) grandparents existing limitation provisions that are established through incorporation by reference of a provision listed in the schedule.

Section 12(4) states that the rules regarding suspension found in s. 7 and 8 (regarding claims by minors and claims by incapable persons) apply to the limitation periods referred to in the schedule.

Real property limitation periods are among the provisions that enacting jurisdictions may wish to consider for inclusion in the Schedule. Real property issues were not explored during the development of this Act, and some of its provisions are likely to require adjustment if applied to real property.

Amending pleadings

13. (1) When a proceeding is commenced before the expiry of a limitation period and, after the expiry, a claim is added to the proceeding, either through a new pleading or an amendment to pleadings, the defendant is not entitled to immunity from liability in respect of the added claim if the conditions set out in one of the following paragraphs are satisfied:

1. The added claim is made by a defendant against a claimant, or does not change the capacity in which a claimant sues or a defendant is sued. The added claim is related to the conduct, transaction or events described in the original pleading.
2. The added claim adds or substitutes a claimant or changes the capacity in which a claimant sues. The added claim is related to the conduct, transaction or events described in the original pleading. The defendant has received, within the limitation period applicable to the added claim plus the time provided by law for service, sufficient knowledge of the added claim that the defendant will not be prejudiced in defending against the added claim on the merits. The court is satisfied that the added claim is necessary or desirable to ensure the effective enforcement of the claims asserted or intended to be asserted in the original pleadings.
3. The added claim adds or substitutes a defendant or changes the capacity in which a defendant is sued. The added claim is related to the conduct, transaction or events described in the original pleading. The defendant has received, within the limitation period applicable to the added claim plus the time provided by law for service, sufficient knowledge of the added claim that the defendant will not be prejudiced in defending against the added claim on the merits.

(2) Under this section,

- (a) the burden of proving that the added claim is related to the conduct, transaction or events described in the original pleading is on the person seeking to add the claim;
- (b) the burden of proving that the added claim is necessary or desirable as set out in paragraph 2 of subsection (1) is on the claimant; and
- (c) the burden of proving that the defendant did not receive sufficient knowledge as set out in paragraph 2 or 3 of subsection (1) is on the defendant.

Comment: This section deals with the addition of claims to a proceeding and the effect of a limitation period associated with the added claim. The rules are taken from the *Alberta Limitations Act*, R.S.A. 2000, c. L-12.

Agreements

14. (1) A limitation period under this Act may be extended, but not shortened, by agreement.

(2) Subsection (1) does not affect an agreement made before the day this Act comes into force.

Comment: This section prohibits parties from agreeing to limitation periods shorter than those set out in this Act, but allows parties to agree to extend them. Agreements to shorten a limitation period made before this Act comes into force are grandparented.

The prohibition on shortening a limitation period in no way precludes the ability to define by contract the underlying obligation, the duration of the obligations, the process for initiating a claim, or the range of remedies to which a claimant may be entitled.

Survival of warranties and indemnities, verification agreements, notices of defect or claim, for example, are not caught by the prohibition on shortening the period of time within which a claim must be brought.

Conflict of laws

15. For the purpose of applying the rules regarding conflict of laws, the limitations law of [enacting jurisdiction] or any other jurisdiction is substantive law.

Comment: This section codifies the common law in regard to the characterization of limitations law for the purposes of applying the rules regarding conflict of laws.

Transition

16. (1) In this section,

“effective date” means the day on which this Act comes into force; (“date de l’entrée en vigueur”)

“former limitation period” means the limitation period that applied in respect of the claim before the coming into force of this Act. (“ancien délai de prescription”)

(2) This section applies to claims based on acts or omissions that took place before the effective date and in respect of which no proceeding has been commenced before the effective date.

(3) If the claim was discovered before the effective date, a proceeding shall not be commenced in respect of the claim after the earlier of the following:

1. The second anniversary of the effective date.
2. The day on which the former limitation period expired or would have expired.

(4) Despite subsection (3), there is no limitation period in respect of a claim to which section 9 would apply if the claim were based on an injury that took place on or after the effective date.

Comment: The transition rules in this Act are aimed at achieving a rapid transition from the old limitations rules to the new limitations rules. Once this Act comes into force, limitation periods associated with claims that have been discovered, or ought to have been discovered, will be the shorter of the remainder of the old limitation period or two years from the date this Act came into force.

SCHEDULE

(SECTION 12)

[Contents of schedule to be determined by enacting jurisdiction.]

Comment: The schedule is referred to in s. 12 of the Act. Enacting jurisdictions may wish to set out special limitation period provisions in other statutes that are to be exceptions to the general limitations regime established by this Act. This decision will depend on policy considerations identified by the enacting jurisdiction. The schedule is designed to consolidate limitation periods found in other statutes to allow for greater accessibility and transparency.