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**PARALEGAL LITIGATION  
USERS GROUP  
REPORT ON THE WHITE PAPER  
ON *LIMITATION ACT REFORM***



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## Paralegal Litigation Users Group Consultation Report on the *White Paper on Limitation Act Reform*

### Introduction

The Paralegal Litigation Users Group (“PLUG”) was reconvened when the *White Paper on Limitation Act Reform* (“White Paper”) became available for comment. The objective of PLUG was to review the White Paper and provide our observations with respect to the following categories:

- a) whether the White Paper was clear and understandable from a lay person’s point of view;
- b) if it was ambiguous, propose solutions and suggestions where possible.

### Report

PLUG’s first concern with the White Paper was with the use of the word “discover”. This term has a very distinct meaning within the litigation process and may be misinterpreted within the meaning of when an individual recognizes that they may have a claim. Consider replacing the word “discover” with “realize”. For example the “General discovery rules” would read “General realization rules”:

*...a claim is realized by a person on the day on which the person first knew or reasonably ought to have known all of the following...*

An Addendum containing PLUG’s recommendations is attached at the end of this report which references its suggested wording in red for ease of reference.

The definition provided for a “person under a disability” is perhaps too complex for a lay person to understand and would suggest the following be substituted as defined under the *Patients Property Act*:

- “person under a disability” means an adult person who is
- (a) incapable of managing his or her affairs;
  - (b) incapable of managing himself or herself, or
  - (c) incapable of managing himself or herself or his or her affairs.



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Regarding the basic limitation period, what is the computation of 2 years? Is it defined as set out in *the Interpretation Act*? PLUG recommends one of the following:

- (a) change the wording to say: A claim must be commenced within 2 years after the claim is realized, or
- (b) including an illustration such as: A person realizes they have a claim on January 1, 2010, therefore time starts running as follows:
  - January 1, 2010 to December 31, 2010 – Year 1;
  - January 1, 2011 to December 31, 2011 – Year 2.

With reference to the “General discovery rule” PLUG recommends the following changes so that it is more precise in its meaning:

*...a claim is realized by a person on the day on which the person....*

- (a) that injury, loss or damage had occurred, and*
- (b) that the injury...or omission that is the basis for the claim; and*
- (c) that the act or omission was that of the potential defendants; and*
- (d) that a court proceeding would be an appropriate means to seek remedy.*

PLUG also felt the section dealing with minors and persons under a disability may be too complex for a lay person to understand and would like to propose the following changes:

## MINORS

19 *A claim of a minor is realized:*

- (a) the day on which the minor attains the age of 19 years;*
- (b) the day on which the claim is realized under sections.....;*
- (c) the day on which a notice to proceed.....*

## PERSONS UNDER DISABILITY

20 *A claim of a person under a disability is realized,*

- (a) the day on which the person ceases to ....*
- (b) the day on which the claim is realized under section....*
- (c) the day on which a notice to proceed...*



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This would change the subsections set out in section 21(1), 21(3)(b) and 22(1)(g)(ii) and would read as follows:

*21 (1) If the realization rule under section 19(a) and (b) or 20(a) and (b)..., for the purposes of section 19(c) or 20(c), deliver a notice....*

*(3) If a notice....*

*(b)...under subsection (6), section 19(c) or 20(c) ....*

*22(1)(g)(ii) the day on which the claim is realized under section 19(c).*

Finally to improve clarity, PLUG recommends that the words “the limitation period” be inserted at the beginning of Part 5, Section 28(1)(b).

Respectfully submitted this 15th day of November, 2010.

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**ADDENDUM TO PLUG REPORT**  
**November 15, 2010**

***Appendix A: Consultation Draft Limitation Act***

**PART 1 - INTERPRETATION**

**Division 1 - Definitions**

**Definitions**

1 (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;

**"discover"**, **"realize"** in relation to a claim, has the meaning set out in Divisions 2 and 3 of Part 2

**"environmental claim"** means a claim to recover damages that result from damage to the environment caused by the escape, release or discharge of anything, including, without limitation, a gas, into the environment;

**"extraprovincial judgment"** means a judgment, order or award other than a local judgment;

**"guardian"** means

(a) a parent or guardian who has actual care and control of a minor, or

(b) a committee appointed under the *Patients Property Act*;

**"judgment"** means an extraprovincial judgment or a local judgment;

**"limitation period"**, in relation to a claim, means the period after which a court proceeding must not be brought with respect to the claim;

**"limitation period established by this Act"**, in relation to a claim, means the limitation period that applies to the claim under section 6, 7, 8 or 22;

**"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 under the *Commercial Arbitration Act*;

(b) an arbitral award to which the *Foreign Arbitral Awards Act* or the *International Commercial Arbitration Act* applies;

**"person under a disability"** means **an adult person who is**

(a) **incapable of managing his or her affairs;**

(b) **incapable of managing himself or herself, or**

(c) **incapable of managing himself or herself or his or her affairs**

**"secured party"** means a person who has a security interest;

**"security agreement"** means an agreement that creates or provides for a security interest; **"security interest"** means an interest in collateral that secures payment or performance of an obligation;

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

## **Division 2 – Court Proceedings and Claims to Which This Act Does Not Apply**

### **Exempted court proceedings**

**2** (1) This Act does not apply to the following court proceedings and has no impact on when or if such court proceedings may be brought:

- (a) appeals;
- (b) judicial review applications;
- (c) court proceedings under the *Offence Act* to prosecute an offence;
- (d) court proceedings to obtain a declaration.

(2) This Act does not apply to court proceedings based on existing aboriginal and treaty rights of the aboriginal peoples of Canada that are recognized and affirmed in the *Constitution Act, 1982*.

(3) Court proceedings referred to in subsection (2) are governed by the laws respecting the limitation of actions that would have been in force if this Act had not been passed.

### **Exempted claims**

**3** (1) This Act does not apply to the following:

- (a) a claim that is subject to a limitation period established by an international convention or treaty that is adopted by an Act;
- (b) a claim for possession of land if the person entitled to possession has been dispossessed in circumstances amounting to trespass;
- (c) a claim for possession of land by a life tenant or person entitled to the remainder of an estate;
- (d) a claim for the possession of land by a person who has
  - (i) a right to enter for breach of a condition subsequent, or
  - (ii) a right to possession arising under possibility of reverter of a determinable estate;
- (e) a claim on a local judgment for the possession of land;
- (f) a claim by a debtor in possession of collateral to redeem that collateral;
- (g) a claim by a secured party in possession of collateral to realize on that collateral;
- (h) a claim by a landlord to recover possession of land from a tenant who is in default or over holding;
- (i) a claim relating to the enforcement of an injunction or a restraining order;
- (j) a claim to enforce an easement, restrictive covenant or profit à prendre;
- (k) 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 123
  - (ii) whether or not the claimant’s right to bring the court proceeding was at any time governed by a limitation period;
  - (l) 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;
  - (m) a claim for arrears of child support or spousal support payable under
    - (i) a judgment, or

(ii) an agreement filed with the court under sections 121 or 122 of the *Family Relations Act*;

(n) an environmental claim that has not been realized.

(2) This Act does not apply to a claim for which a limitation period has been established under another enactment if, under section 27 of this Act, the limitation period established by the other enactment applies to the claim.

### **Division 3 – Application**

#### **Conflict of laws**

4 (1) If the substantive law of another jurisdiction is to be applied by the court in deciding a claim, the law of that other jurisdiction respecting limitation periods must be applied in relation to the claim.

(2) If section 3 (1) (k) or (l) applies to a claim, the court must apply section 3 (1) despite subsection (1) of this section.

#### **Rules of equity not overridden**

5 Nothing in this Act interferes with any of the following:

(a) a rule of equity that refuses relief, on the ground of acquiescence, to a person whose right to bring an action is not barred by this Act;

(b) a rule of equity that refuses relief, on the ground of inexcusable delay, to a person who claims equitable relief in aid of a legal right, whose right to bring the action is not barred by this Act.

## **PART 2 –BASIC LIMITATION PERIODS**

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

#### **Basic limitation period**

6 (1) Subject to Parts 3 to 5, a court proceeding must not be commenced in respect of a claim more than 2 years after the day on which the claim is realized

(2) The limitation period established by this section does not apply to a claim referred to in section 7 or 8.

#### **Basic limitation period for debts and obligations owed to government**

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#### **Basic limitation period for claim based on judgment**

8 Subject to Parts 3 to 5, a court proceeding must not be commenced in respect of a claim based on a judgment for the payment of money or the return of personal property,

(a) in the case of a local judgment, more than 10 years after the day on which the judgment becomes enforceable, or

- (b) in the case of an extraprovincial judgment, after the earlier of the following:
- (i) the expiry of the time for enforcement in the jurisdiction where that extraprovincial judgment was made;
  - (ii) the date that is 10 years after the judgment became enforceable in the jurisdiction where the extraprovincial judgment was made.

## **Division 2 – Realization of Claim**

### **General realization rules**

**9** Except for those special situations referred to in sections 10 to 12, a claim is **realized** by a person on the day on which the person first knew or reasonably ought to have known all of the following:

- (a) that injury, loss or damage had occurred; **AND**
- (b) that the injury, loss or damage was caused by or contributed to by an act or omission **that is the basis for the claim; AND**
- (c) that the act or omission was that of the **prospective defendant(s); AND**
- (d) that, a **court proceeding would be an appropriate means to seek remedy.**

### **Special situations for persons of full capacity**

**10** For a claim set out in section 13, 14, 15, 16, 17 or 18 of an adult person of full capacity, the **realization** rules set out in that section apply.

### **Special situations for minors**

**11** For a claim of a minor, the **realization** rules set out in section 19 apply.

### **Special situations for persons under a disability**

**12** For a claim of a person under a disability, the **realization** rules set out in section 20 apply.

## **Division 3 – Special Realization Rules**

### **Realization rule for claims based on fraud or recovery of trust property**

**13** (1) In this section, “**fraud or trust claim**” means

- (a) a claim based on fraud, or fraudulent breach of trust, to which a trustee was a party or privy,
- (b) a claim to recover from a trustee trust property, or the proceeds from it, in the possession of the trustee or previously received by the trustee and converted to the trustee’s own use, or
- (c) any other claim arising out of the fiduciary relationship between a trustee and a beneficiary if the trustee
  - (i) wilfully conceals from the beneficiary the fact that
    - (A) injury, loss or damage has occurred,
    - (B) the injury, loss or damage was caused by or contributed to by an act or omission, or
    - (C) the act or omission was that of the person against whom the claim is or may be made, or
  - (ii) wilfully misleads the beneficiary as to the appropriateness of a court proceeding as a means of remedying the injury, loss or damage.

- (2) A fraud or trust claim is **realized** when the beneficiary becomes fully aware
- (a) that injury, loss or damage had occurred,
  - (b) that the injury, loss or damage was caused by or contributed to by fraud, fraudulent breach of trust, conversion or other act or omission of the trustee on which the claim is based,
  - (c) that the fraud, fraudulent breach of trust, conversion or other act or omission of the trustee on which the claim is based was that of the person against whom the claim is or may be made, and
  - (d) that, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy it.
- (3) For the purposes of subsection (2), the burden of proving that a fraud or trust claim has been **realized** rests on the trustee.

#### **Realization rule for claims for future interest in trust property**

**14** A claim relating to a future interest in trust property is **realized** on the later of the following:

- (a) the day on which the claim is **realized** under section 9 or 13, as the case may be;
- (b) the day on which the interest becomes a present interest.

#### **Realization rule for claims for demand obligations**

**15** A claim for a demand obligation is **realized** on the first day that there is a failure to perform the obligation after a demand for the performance has been made.

#### **Realization rule for claims to ascertain or redeem security**

**16** A claim to **ascertain** or redeem security is **realized** on the first day that the right to enforce the security arises.

#### **Realization rule for claims for contribution**

**17** A claim for contribution is **realized** on the later of the following:

- (a) the day on which the claimant for contribution is served with a pleading in respect of a claim on which the claim for contribution is based;
- (b) the first day on which the claimant knew or reasonably ought to have known that a claim for contribution can be made.

#### **Successors, predecessors, principals and agents**

**18** (1) A claim of a person claiming through a predecessor in right, title or interest is **realized** on the earlier of the following:

- (a) the day on which the claim is **realized** by the predecessor;
- (b) the day on which the claim is **realized** by the person claiming.

(2) A claim of a principal, if the principal's agent had a duty to communicate to the principal knowledge of the matters referred to section 9 (a) to (d), is **realized** on the earlier of the following:

- (a) the day on which the claim is **realized** by the agent;
- (b) the day on which the claim is **realized** by the principal.

## MINORS

### Realization rule for minors

- 19** A claim of a minor is **realized**,
- (a) the day on which the minor attains the age of 19 years;
  - (b) the day on which the claim is **realized** under section 9, 13, 14, 15, 16, 17 or 18, as the case may be, or
  - (c) the day on which a notice to proceed that complies with the requirements of section 21 (2) and any requirements prescribed under section 21 (6) is delivered in accordance with section 21 (1) and with any requirements prescribed under section 21 (6).

## PERSONS UNDER DISABILITY

### Realization rule for persons under disability

- 20** A claim of a person under a disability is **realized**,
- (a) the day on which the person ceases to be a person under a disability;
  - (b) the day on which the claim is **realized** under section 9, 13, 14, 15, 16, 17 or 18, as the case may be, or
  - (c) the day on which a notice to proceed that complies with the requirements of section 21 (2) and any requirements prescribed under section 21 (6) is delivered in accordance with section 21 (1) and with any requirements prescribed under section 21 (6).

### Notice to proceed if basic limitation period postponed under section 19 or 20

- 21** (1) If the **realization** rule under section 19 (a) & (b) or 20 (a) & (b) postpones the running of a limitation period in respect of a minor or a person under a disability and that minor or person under a disability has a guardian, a person against whom the minor or person under a disability may have a claim may, for the purposes of section 19 (c) or 20 (c), deliver a notice to proceed to
- (a) the guardian, and
  - (b) the Public Guardian and Trustee.
- (2) A notice to proceed delivered under this section must meet all of the following requirements:
- (a) it must be in writing;
  - (b) it must be addressed to the guardian and to the Public Guardian and Trustee;
  - (c) it must specify the name of the minor or person under a disability;
  - (d) it must specify the circumstances out of which the claim arises or may be alleged to arise, with as much particularity as is necessary to enable the guardian to investigate whether the minor or person under a disability has the claim;
  - (e) it must give warning that, because of the delivery of the notice, section 6, 7 or 8, as the case may be, applies as if the claim was **realized** on the date of the delivery of the notice;
  - (f) it must give the following warning as applicable:

- (i) if the person who may have the claim is a minor, that, because of the delivery of the notice, section 22 (2) (g) (ii) applies to limit the period within which a court proceeding may be commenced in relation to the claim;
- (ii) if the person who may have the claim is a person under a disability, that section 22 applies to the claim despite the disability;
- (g) it must specify the name of the person on whose behalf the notice is delivered;
- (h) it must be signed by
  - (i) the person on whose behalf the notice is delivered, or
  - (ii) the person's solicitor.
- (3) If a notice to proceed that
  - (a) complies with subsection (2) and any requirements prescribed under subsection (6), and
  - (b) is delivered in relation to a claim under subsection (1) in accordance with any requirements prescribed under subsection (6), section 19 (c) or 20 (c), as the case may be, applies to the limitation period applicable to the claim as if the person with the claim ceased, on the date of the delivery of the notice, to be a minor or a person under a disability, as the case may be.
- (4) Subsection (3) operates to benefit only the person on whose behalf the notice is delivered and only with respect to a claim arising out of the circumstances specified in the notice.
- (5) A notice to proceed delivered under this section is not an acknowledgment for the purposes of section 26 and is not an admission for any purpose.
- (6) The Attorney General may make regulations prescribing the form, content and mode of delivery of a notice to proceed under this section.

### **PART 3 –ULTIMATE LIMITATION PERIOD**

#### **Ultimate limitation period**

- 22** (1) Subject to Parts 4 and 5, even if the limitation period established by any other section of this Act in respect of a claim has not expired, a court proceeding must not be commenced with respect to the claim more than [either] 10 [or 15] years after the day on which the act or omission on which the claim is based took place.
- (2) For the purposes of this section and subject to section 32, the day an act or omission on which any of the following claims is based takes place is,
- (a) in the case of a claim arising out of a continuous act or omission, the day on which the act or omission ceases,
  - (b) in the case of a claim arising out 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 claim arising out of a conversion, the day on which the property was first converted by any person,
  - (d) in the case of an environmental claim, the day on which the claim is realized in accordance with Part 2,

- (e) in the case of a claim referred to in section 13, 14, 15 or 16, the day on which the claim is **realized** in accordance with that section,
  - (f) in the case of a claim for contribution, the day on which the claimant for contribution is served with a pleading in respect of a claim on which the claim for contribution is based, or
  - (g) 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 **realized** under section 19 (c).
- (3) Despite sections 20 and 28, the ultimate limitation period established by subsection (1) in relation to a claim begins and continues to run whether or not the person with the claim is or becomes a person under a disability.

## **PART 4 – FACTORS AFFECTING LIMITATION PERIODS**

### **Agreements to vary limitation periods**

- 23** (1) If an agreement expressly provides for the extension of a limitation period established by this Act, the limitation period is altered in accordance with the agreement.
- (2) A limitation period established by this Act may not be reduced by an agreement.

### **Counterclaim or other claim or proceeding**

- 24** (1) If a court proceeding to which this Act applies has been commenced in relation to a claim (in this section, the “primary claim”) and there is a claim (in this section, the “secondary claim”) that relates to or is connected with the primary claim, the fact that a limitation period established by this Act has expired in relation to the secondary claim does not prevent any of the following from being done in the court proceeding:
- (a) subject to subsection (2), commencing court proceedings in relation to the secondary claim by counterclaim, including the adding of a new party as a defendant by way of counterclaim;
  - (b) subject to subsection (2), commencing third party proceedings in relation to the secondary claim;
  - (c) making claims in relation to the secondary claim by way of set off.
- (2) Nothing in subsection (1) gives a person a right to commence a court proceeding under subsection (1) (a) or (b) in relation to a claim for contribution after the expiry of a limitation period in relation to that claim.
- (3) Subsection (1) does not apply if the court determines that a limitation period has expired in relation to the primary claim.
- (4) Subsection (1) does not interfere with any judicial discretion to refuse relief on grounds unrelated to the expiry of a limitation period.
- (5) In any court proceeding, the court may, on terms as to costs or otherwise that the court considers just, allow the amendment of a pleading to raise a new claim even though, at the time of the amendment, a court proceeding could not, under section 6, 7 or 8 or 22, be commenced with respect to that claim.

### **Completion of enforcement process**

- 25** (1) Despite any other provision of this Act, if, on the expiration of the limitation period established by section 8 with respect to proceedings on a judgment, there is an

enforcement process outstanding, the judgment creditor or the judgment creditor's successors may do any of the following:

(a) continue proceedings on an unexpired writ of execution, but the writ may not be renewed;

(b) commence or continue proceedings against land on a judgment registered under Part 5 of the *Court Order Enforcement Act*, but the registration may not be renewed unless those proceedings have been commenced;

(c) continue proceedings in which a charging order is claimed.

(2) If a court makes an order staying execution on a judgment, the running of time with respect to the limitation periods established by this Act for proceedings on that judgment is postponed or suspended for so long as the order staying execution is in force.

### **Limitation periods extended if liability acknowledged**

**26** (1) If a person acknowledges liability in respect of a claim, the act or omission on which the claim is based is deemed to have taken place on the day on which the acknowledgment was made, if the acknowledgment is made

(a) in a manner referred to in this section, and

(b) before the expiry of the limitation period applicable to the claim.

(2) An acknowledgment of liability in respect of a claim for interest is also an acknowledgment of liability in respect of a claim for

(a) the outstanding principal, if any, and

(b) 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 the collateral.

(4) An acknowledgment of liability in respect of a claim by a trustee is an acknowledgment of liability in respect of the claim by any other person who is or who later becomes a trustee of the same trust.

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

(6) Subsection (1) does not apply to an acknowledgment referred to in subsection (2),

(3), (4) or (5) unless the acknowledgment is

(a) in writing,

(b) signed, by hand or by electronic signature within the meaning of the *Electronic Transactions Act*,

(c) made by the person making it or the person's agent, and

(d) 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)*.

(7) 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 or may be made or by the person's agent is an acknowledgment by the person against whom the claim is or may be made of liability in respect of the claim.

(8) 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 security agreement.

(9) 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 security agreement.

(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.

### **Application of other limitation periods**

**27** (1) If another Act establishes a limitation period that purports to apply to a claim referred to in section 3 (1) of this Act, that limitation period does not apply to the claim.

(2) If another Act establishes a limitation period that purports to apply to a claim other than a claim referred to in section 3 (1) of this Act, that limitation period does not apply to the claim 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 date of the coming into force of this section, and

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

(3) Sections 19, 20, 21, 28 and 29 apply to a limitation period established by a provision referred to in subsection (1).

## **PART 5 – SUSPENSION OF LIMITATION PERIODS**

### **Basic limitation period suspended if claimant becomes a person under a disability**

**28** (1) Subject to section 29, the basic limitation period established by Part 2 in relation to a claim

(a) is suspended if the person with the claim becomes a person under a disability, and

(b) **the limitation period** does not run during any time in which that person continues to be a person under a disability.

(2) If the basic limitation period applicable to a claim has been suspended by subsection (1), the basic limitation period resumes running when the person with the claim ceases to be a person under a disability, and that basic limitation period is the longer of the following:

(a) the length of time that, when the person with the claim became a person under a disability, remained to commence a court proceeding in respect of the claim;

(b) one year from the time that the person with the claim ceased to be a person under a disability.

### **Notice to proceed if basic limitation period suspended under section 28**

**29** (1) If the basic limitation period established by Part 2 in relation to a claim is suspended under section 28 in relation to a person under a disability and that person has a guardian, a person against whom the person under a disability may have a claim may deliver a notice to proceed to

- (a) the guardian, and
  - (b) the Public Guardian and Trustee.
- (2) A notice to proceed delivered under this section must meet all of the following requirements:
- (a) it must be in writing;
  - (b) it must be addressed to the guardian and to the Public Guardian and Trustee;
  - (c) it must specify the name of the person under a disability;
  - (d) it must specify the circumstances out of which the claim arises or may be alleged to arise, with as much particularity as is necessary to enable the guardian to investigate whether the person under a disability has the claim;
  - (e) it must give warning that the following apply to limit the period within which a court proceeding may be commenced in relation to the claim:
    - (i) section 22;
    - (ii) because of the delivery of the notice, section 28 (2);
  - (f) it must specify the name of the person on whose behalf the notice is delivered;
  - (g) it must be signed by
    - (i) the person on whose behalf the notice is delivered, or
    - (ii) the person's solicitor.
- (3) If a notice to proceed that
- (a) complies with subsection (2) and any requirements prescribed under subsection (6), and
  - (b) is delivered in relation to a claim under subsection (1) in accordance with any requirements prescribed under subsection (6),
- section 28 (2) applies to the limitation period applicable to the claim as if the person with the claim ceased, on the date of the delivery of the notice, to be a person under a disability.
- (4) Subsection (3) operates to benefit only the person on whose behalf the notice is delivered and only with respect to a claim arising out of the circumstances specified in the notice.
- (5) A notice to proceed delivered under this section is not an acknowledgment for the purposes of section 26 and is not an admission for any purpose.
- (6) The Attorney General may make regulations prescribing the form, content and mode of delivery of a notice to proceed under this section.

**Basic limitation period suspended if concealment or misleading**

**30** Both the basic limitation period established by Part 2 and the ultimate limitation period established by Part 3 in relation to a claim are suspended until the claim is realized under Part 2 if the person against whom the claim is or may be made does any of the following:

- (a) wilfully conceals from the claimant the fact that
  - (i) injury, loss or damage has occurred,
  - (ii) the injury, loss or damage was caused by or contributed to by an act or omission, or
  - (iii) the act or omission was that of the person against whom the claim is or may be made;
- (b) wilfully misleads the claimant as to the appropriateness of a court proceeding as a means of remedying the injury, loss or damage.

## **PART 6 - GENERAL**

### **Non-judicial remedies**

**31** (1) In this section, “**non-judicial remedy**” means a remedy that a person is entitled, by law or by contract, to exercise in respect of a claim without court proceedings, but does not include a remedy available under an enactment.

(2) If a claimant is prevented from commencing a court proceeding in relation to a claim as a result of the expiry of a limitation period established by this Act or the expiry of any longer limitation period agreed to under section 23 (1), the claimant is not entitled to enforce against the person against whom the claim is or may be made any non-judicial remedy that the claimant would but for this section be entitled to enforce in relation to the claim.

### **Power to make regulations**

**32** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may amend the Schedule, by regulation, to add or remove a provision of another Act that establishes a limitation period.

### **Transition**

**33** (1) In this section:

“**effective date**” means the day on which this section comes into force;

“**former Act**” means the *Limitation Act*, R.S.B.C. 1996, c. 266, as it read immediately before the effective date;

“**former limitation period**” means, with respect to a pre-existing claim, a limitation period that applied to the pre-existing claim before the effective date;

“**pre-existing claim**” means a claim

(a) that is based on an act or omission that took place before the effective date, and

(b) with respect to which no court proceeding has been commenced before the effective date.

(2) A court proceeding must not be commenced with respect to a pre-existing claim if a former limitation period expired before the effective date.

(3) Subject to subsection (2), if a pre-existing claim was **realized** before the effective date, the former Act applies to the pre-existing claim as if the right to bring an action occurred at the time of the **realization** of the pre-existing claim.

(4) Subject to subsection (2), if a pre-existing claim was not **realized** before the effective date, Part 2 of this Act applies to the pre-existing claim, and,

(a) if the pre-existing claim is one referred to in section 8 (1) (a) or (b) of the former Act, section 8 of the former Act applies to the pre-existing claim, or

(b) if the pre-existing claim is one referred to in section 8 (1) (c) of the former Act, Part 3 of this Act applies to the pre-existing claim as if the act or omission on which the pre-existing claim is based occurred on the later of

(i) the effective date, and

(ii) the day the act or omission takes place under section 22 (2).