

TABLE OF CONTENTS

<i>Dedication</i>	iii
<i>Thanks and Acknowledgements</i>	v
<i>Foreword</i>	vii
<i>Preface</i>	ix
<i>Frequently Cited References</i>	xi
<i>About the Authors</i>	xiii
<i>Table of Cases</i>	xxxv
INTRODUCTION	1
The Purpose of Limitation Periods	3
Historical Background	5
British and Colonial Limitations Statutes	5
British Columbia Limitations Statutes 1888–1975	6
The 1974 Law Reform Commission Report	7
The 1975 Act	11
Challenges and Developments: 1975 to 2007	13
The Uniform Law Conference Model Statute	16
The 2007 and 2010 Green and White Papers	16
The 2012 Act	17
Limitation Periods: General Principles	18
No Judicial Discretion	18
Interpretative Principles	19
The Deadline is Filing the Claim	20
An Affirmative Defence	20
Onus of Proof	21
Avoidance of Limitation Periods through Agreement, Waiver, or Estoppel	24
Contracting out of Limitation Periods	24
Waiver of Limitation Periods	29
Estoppel from Relying on Limitation Periods	30

Table of Contents

Constitutional Issues	34
Application to Federal Crown	34
Constitutional Declarations and Claims	34
Aboriginal Claims	35
Jurisdictional Issues: Arbitrations and Forum	36
Arbitration and Mediation	36
Jurisdictional Issues: Correct Forum	39
Jurisdictional Issues: Territorial	40
Specific Procedural Points and Issues	41
Class Proceedings	41
Summary Trial	45
Summary Judgment	47
Application to Strike Proceedings	48
Dismissal for Want of Prosecution	50
Applies to “Claims”, Including Actions, Third Party Claims, Counterclaims, and Petitions	50
Appellate Review	50
Waiving Privilege for the Purpose of Determining Limitation Issues	51
COVID-19: Limitation Periods Suspended March 26, 2020 to March 25, 2021	53
 PART 1 [INTERPRETATION] DIVISION 1 — DEFINITIONS	57
 1. Definitions	57
Summary	59
Commentary	59
Definitions	59
“Basic limitation period”	59
“Caregiver”	59
“Claim”	60
“Defendant”	63
“Discover”	63

Table of Contents

“Extraprovincial judgment” and “judgment”	64
“Limitation period”	64
“Local judgment”	64
“Person under a disability”	64
“Plaintiff”	65
“Secured party”, “security agreement”, and “security interest”	65
“Ultimate limitation period”	65
“Writ of execution”	66
Definitions removed from the <i>Old Act</i>	66
“Action”	66
“Collateral”	67
“Trust”	67
Definitions from other statutes	68
Practice Advice	69
 PART 1 [INTERPRETATION] DIVISION 2 — COURT PROCEEDINGS TO WHICH THIS ACT DOES NOT APPLY	
.....	69
 2. Exempted Court Proceedings	69
Relevant Definitions	69
Summary	70
Commentary	70
Subsection (1): exempted court proceedings	70
(a) an appeal	71
(b) a judicial review application	71
(c) a court proceeding under the <i>Offence Act</i> to prosecute an offence	72
(d) a court proceeding in which the only relief sought is to obtain a declaration	73
(e) a court proceeding to enforce a local judgment for the possession of land	75

Table of Contents

(f) a court proceeding to enforce an injunction or a restraining order	75
(g) a court proceeding to enforce an easement, restrictive covenant or <i>profit à prendre</i>	76
Subsection (2): Aboriginal and treaty rights	77
Subsection (3): limitation period governing aboriginal and treaty rights	78
3. Exempted Claims	80
Relevant Definitions	81
Summary	81
Commentary	82
Subsection (1)	82
(a) a claim that is subject to a limitation period established by an international convention or treaty that is adopted by an Act	83
(b) a claim for possession of land if the person entitled to possession has been dispossessed in circumstances amounting to trespass	83
(c) a claim for possession of land by a life tenant or person entitled to the remainder of an estate	84
(d) a claim for possession of land by a person who has a right to enter for breach of a condition subsequent, or a right to possession arising under possibility of reverter of a determinable estate	84
(e) a claim by a debtor in possession of collateral to redeem that collateral	86
(f) a claim by a secured party in possession of collateral to realize on that collateral	86
(g) a claim by a landlord to recover possession of land from a tenant who is in default or over holding	87
(h) a claim for the title to property by any person in possession of that property	87

Table of Contents

(i) 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 (ii) whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period	88
(j) 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	91
(k) a claim relating to assault or battery, whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period, if the assault or battery occurred while the claimant (i) was a minor, or (ii) was living in an intimate and personal relationship with, or was in a relationship of financial, emotional, physical or other dependency with, a person who performed, contributed to, consented to or acquiesced in the assault or battery	92
(l) a claim for arrears of child support or spousal support payable under (i) a judgment, or (ii) an agreement filed with the court under ss. 148(2) or 163(3) of the <i>Family Law Act</i>	95
(m) fines or penalties under the <i>Offence Act</i>	97
(o) fines or penalties under the <i>Securities Act</i> or a claim for an amount payable pursuant to an order made under ss. 155.1(b), 157(1)(b), 161(1)(g) or 164.09 of that Act	98
Subsection (2)	98
Practice Advice	101
PART 1 [INTERPRETATION] DIVISION 3 — APPLICATION	101
4. Conflict of Laws	101
Relevant Definitions	101
Summary	101

Table of Contents

Commentary	102
General discussion.....	102
Section 4(2): exception for sexual and vulnerable assault	106
Guidance from other provinces	107
Practice Advice.....	108
5. Rules of Equity Not Overridden	108
Summary	109
Commentary	109
General discussion.....	109
Laches	110
Practice Advice.....	113
PART 2 [BASIC LIMITATION PERIOD] DIVISION 1 — ES-	
TABLISHMENT OF A BASIC LIMITATION PERIOD ...	113
6. Basic Limitation Period	113
Relevant Definitions	113
Related Sections	113
Summary	113
Commentary	114
General discussion.....	114
Effect of expiration of limitation period	115
Practice Advice.....	116
7. Basic Limitation Period for Court Proceeding to Enforce or	
Sue on Judgment	116
Relevant Definitions	116
Related Sections	117
Summary	117
Commentary	117

Table of Contents

General discussion.....	117
British Columbia judgments	119
Extraprovincial judgments	120
When does a judgment “become enforceable”?	121
Acknowledgement of judgment will reset limitation clock	123
Postponement provisions.....	124
Effect of stay of execution	124
Common law action on judgment to avoid limitation defence	124
Registration of judgment on land.....	127
Practice Advice.....	128
 PART 2 [BASIC LIMITATION PERIOD] DIVISION 2 — DISCOVERY OF CLAIM	128
 8. General Discovery Rules	128
Relevant Definitions	129
Related Sections	129
Summary	129
Commentary	130
General discussion and comparison with the <i>Old Act</i>	130
Common law and statutory development of discoverability: a historical perspective	136
Introduction	133
British Columbia statutory discoverability	135
Canadian common law discoverability	136
British Columbia challenges with respect to discoverability	142
Provincial reforms to make discoverability central to limitation calculation	148
General discovery principles.....	148
Threshold of knowledge: a plausible inference of liability	148

Table of Contents

Due diligence: the plaintiff must make reasonable efforts to discover and prosecute claim	152
Discovery of facts, not law	154
Discovery of claim, not evidence	154
Objective or subjective?	155
Onus	160
The four preconditions for discovery in s. 8 of the <i>2012 Act</i>	162
(a) that injury, loss or damage had occurred	162
(b) the injury, loss or damage was caused by or contributed to by an act or omission	165
(c) the act or omission was that of the person against whom the claim is or may be made	167
(d) having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage	169
Discoverability and continuing torts	178
Introduction: true continuing torts versus uncorrected wrongs or ongoing damages	178
Nuisance, false imprisonment, and trespass	183
Oppression	187
Remedy: Window of damages	188
Continuing breach of contract	190
Discoverability of other specific proceedings and claims ...	191
Anticipatory breach of contract	191
Debt claims	192
Relief from forfeiture	192
Insurance claims	193
Negligence: solicitors	193
Negligence: medical malpractice	194
Latent construction defects	196
Actions on default judgments that have been set aside	197
Restitution/unjust enrichment	198

Table of Contents

Defamation	201
Claims relating to false arrest	202
Workers Compensation Board claims	202
<i>Environmental Management Act</i> claims	203
Practice Advice	205
9. Special Situations for Persons of Full Capacity	206
Relevant Definitions	206
Related Sections	206
Summary	206
Commentary	207
Practice Advice	207
10. Special Situations for Minors	207
Relevant Definitions	207
Related Sections	208
Summary	208
11. Special Situations for Persons Under Disability	208
Relevant Definitions	208
Related Sections	209
Summary	209
PART 2 [BASIC LIMITATION PERIOD] DIVISION 3 — SPECIAL DISCOVERY RULES	209
12. Discovery Rule for Claims Based on Fraud or Recovery of Trust Property	209
Relevant Definitions	210
Related Sections	210
Summary	210

Table of Contents

Commentary	211
General discussion.....	211
“Fraud or trust” claims	213
Preliminary question: which “trusts” qualify?	213
Paragraph (a): “a claim based on fraud”	215
Paragraph (b): “a claim to recover lost property”	218
Paragraph (c): “any other claim arising out of the fiducia- ry relationship”	219
The “fully aware” standard.....	221
Practice Advice.....	222
 13. Discovery Rule for Claims for Future Interest in Trust Pro- perty	 223
Relevant Definitions	223
Related Sections	223
Summary	223
Commentary	224
Practice Advice.....	225
 14. Discovery Rule for Claims for Demand Obligations	 225
Relevant Definitions	225
Related Sections	225
Summary	225
Commentary	225
General discussion.....	225
Definition of a demand loan.....	228
Discovery of a demand loan.....	230
Different discovery rules may apply to different obligations in a single instrument	230
Demand triggering limitation period must be clear	232
Extension of the limitation periods by acknowledgement	233
Comment on Ontario case law	234

Table of Contents

Transition provisions (s. 30) and demand loans	234
1. Loan is made after June 1, 2013, and demand occurs after June 1, 2013	235
2. Loan is made before June 1, 2013	236
Practice Advice	238
 15. Discovery Rule for Claims to Realize or Redeem Security	238
Relevant Definitions	238
Related Sections	239
Summary	239
Commentary	239
Practice Advice	242
 16. Discovery Rule for Claims for Contribution or Indemnity	242
Relevant Definitions	243
Related Sections	243
Summary	243
Commentary	244
Background	244
Under the <i>2012 Act</i>	246
Sections 16 and 22 apply to both third-party notices seeking contribution as well as second actions	249
When to resolve a possible limitations defence to a third party notice?	252
Tolling agreements and claims for contribution and indemnity	254
Effect of transition rules on contribution and indemnity claims	254
Practice Advice	257

Table of Contents

17. Discovery Rules for Successors, Predecessors, Principals and Agents	257
Relevant Definitions	257
Related Sections	258
Summary	258
Commentary	258
Practice Advice	261
18. Discovery Rule for Minors	261
Relevant Definitions	261
Related Sections	261
Summary	262
Commentary	262
General discussion	262
Section 18(b): Notices to proceed	264
Arrears in payment for family support	264
Section 18 does not relieve a caregiver for additional harm suffered due to delay	264
Practice Advice	265
19. Discovery Rule for Persons Under Disability	265
Relevant Definitions	265
Related Sections	266
Summary	266
Commentary	267
General discussion	267
Section 19(b): notices to proceed	267
Definition of “disability”	268
Practice Advice	269
20. Notice to Proceed if Basic Limitation Period Postponed Under Section 18 or 19	269

Table of Contents

Relevant Definitions	271
Related Sections	271
Summary	272
Commentary	272
General discussion.....	272
Subsection (1): prerequisites and delivery	273
Subsections (2) and (3): form and substance of the notice to proceed.....	274
Practice Advice.....	275
 PART 3 [ULTIMATE LIMITATION PERIOD].....	275
 21. Ultimate Limitation Period	275
Relevant Definitions	277
Related Sections	277
Summary	277
Commentary	278
General discussion.....	278
Ultimate limitation periods under the <i>Old Act</i>	280
Commencing the running of time in the ultimate limitation period	281
Subsection (2): special circumstances	284
(a) in the case of a claim arising out of a conversion, the day on which the property was first converted by any person	284
(b) in the case of a claim referred to in ss. 12, 13, 14, or 15, the day on which the claim is discovered in accor- dance with that section	285
(c) in the case of a claim for contribution or indemnity, the day on which the claimant for contribution or in- demnity is served with a pleading in respect of a claim on which the claim for contribution or indemni- ty is based	286

Table of Contents

(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 s. 18(b) [notice to proceed delivered]	287
(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 s. 19(b) [notice to proceed delivered]	287
Subsection (3): wilful concealment	288
The equitable doctrine of fraudulent concealment	290
Ultimate limitation period for continuing breaches or a series of acts or omissions	292
 PART 4 [FACTORS AFFECTING LIMITATION PERIODS]	293
 22. Counterclaim or Other Claim or Proceeding	293
Relevant Definitions	294
Related Sections	294
Summary	295
Commentary	295
General discussion	295
Historical background	296
Comparison to the <i>Old Act</i> and claims for contribution or indemnity	298
The role of the <i>Supreme Court Civil Rules</i>	299
The ultimate limitation period	300
Applies both to contractual and statutory limitation periods	301
Allowing joinder of new parties or amendments without prejudice to a limitation defence	301

Table of Contents

Threshold consideration: “relating to or connected with”	308
The “just and convenient” test	311
(a) the length of the delay	314
(b) the reasons for the delay	316
(c) any explanation put forward to account for the delay	317
(d) the degree of prejudice caused by the delay	318
(e) the extent of the connection, if any, between the existing claims and the proposed cause of action ...	320
Subsection (1): counterclaims, third party proceedings, set off, and joinder	323
Section 22(1)(a): counterclaims	323
Section 22(1)(b): third party proceedings	324
Section 22(1)(c): set off	327
Section 22(1)(d): adding or substituting new parties out of time	328
Subsection (5): Amending pleadings to add expired claims	330
Other s. 22 subsections	334
Subsection (2): claims for contribution or indemnity exempted	334
Subsection (3): restriction when primary claim expired ...	335
Practice Advice	336
23. Completion of Enforcement Process	336
Relevant Definitions	337
Summary	337
Commentary	338
General discussion	338
Section 23(1)(a): writs of execution	339
Section 23(1)(b): proceedings on judgments registered against land	340

Table of Contents

Section 23(1)(c): charging orders	343
Section 23(2): effect of stay of execution	345
Practice Advice	345
24. Limitation Periods Extended if Liability Acknowledged	345
Relevant Definitions	347
Related Sections	347
Summary	347
Commentary	348
Introduction: acknowledgement generally	348
Legislative goal and key changes from the <i>Old Act</i>	350
Acknowledgement through writing	351
Formal requirements at s. 24(6)(a) and (b): acknowledgement must be in writing and signed	351
Formal requirements at s. 24(6)(c) and (d): acknowledgement must be from the person acknowledging to the person with the claim	355
The test under s. 24(1): must acknowledge liability, not merely existence of claim	357
Admission of “some” liability	360
Special considerations applying to acknowledging claims to enforce or sue on judgments	362
Acknowledgement through conduct: ss. 24(7)–(9)	364
Acknowledgement through partial payment of a debt: s. 24(7)	364
Acknowledgement through performance of an obligation under a debt: s. 24(8)	366
Acknowledgement by creditor towards debtor’s redemption of collateral: s. 24(9)	366
General issues	366
No acknowledgement after limitation period has expired	366
Acknowledgement effective against both basic and ultimate limitation periods	367

Table of Contents

Extent of acknowledgement: ss. 24(2) to (5)	367
Acknowledgement in settlement negotiations	368
Acknowledgement and forbearance agreements	370
Acknowledgement and promissory estoppel	372
Other provincial statutes	373
Practice Advice	373
PART 5 [SUSPENSION OF LIMITATION PERIODS]	374
25. Limitation Periods Suspended if Claimant Becomes Person Under Disability	374
Relevant Definitions	375
Related Sections	375
Summary	375
Commentary	376
General discussion	376
Comparison to the <i>Old Act</i>	377
Practice Advice	377
26. Notice to Proceed if Limitation Periods Suspended Under Section 25	378
Relevant Definitions	379
Related Sections	379
Summary	380
Commentary	380
Identical in purpose to notices to proceed under s. 20 of the <i>Act</i>	380
The <i>Old Act</i>	381
Requirements	382
Effect of a s. 26 notice to proceed	383
Practice Advice	383
PART 6 [GENERAL]	384

Table of Contents

27. Non-judicial Remedies	384
Relevant Definitions	384
Related Sections	384
Summary	384
Commentary	385
General discussion	385
Comparison with extinguishment under the <i>Old Act</i>	385
What is a “non-judicial remedy”?	388
Statutory remedies	391
Ability to contractually preserve remedies	392
Practice Advice	393
28. Adverse Possession	393
Summary	393
Commentary	393
29. Power to Make Regulations	395
Summary	395
Commentary	395
30. Transition	396
Relevant Definitions	397
Related Sections	398
Summary	398
Commentary	399
General discussion	399
Only applies to “pre-existing claims”	401
Paragraph (a): based on an act or omission that took place before the effective date	401

Table of Contents

Paragraph (b): no court proceeding has been commenced before the effective date	402
Subsection (2): claims cannot be revived	403
Exception: s. 30(5) allows for claims under ss. 3(1)(i), (j), and (k) to be revived	404
Subsection (2) only applies to originating proceedings	405
Subsections (3) and (4): “discovery” of pre-existing claims	406
Subsection (3): pre-existing claims governed by the <i>Old Act</i>	407
Subsection (4): pre-existing claims governed by the <i>2012 Act</i>	409
Subsection (5): exception for claims relating to sexual assault, misconduct of a sexual nature against a minor, or assault or battery against a minor or person living in an intimate and personal relationship with defendant	411
Practice Advice	412
31. Repeal	414
Summary	414
32–44. Consequential and Related Amendments	414
Summary	417
Section 32: <i>Adult Guardianship and Planning Statutes Amendment Act, 2007</i>	417
Section 33: <i>Age of Majority Act</i>	417
Section 34: <i>Apology Act</i>	418
Section 35: <i>Business Practices and Consumer Protection Act</i>	419
Section 36: <i>Environmental Management Act</i>	419
Section 37: <i>Family Law Act</i>	420
Section 38: <i>Financial Administration Act</i>	420
Commentary	421

Table of Contents

Section 39: <i>Forest Act</i>	424
Section 40: <i>Infants Act</i>	424
Section 41: <i>Insurance Act</i>	425
Section 42: <i>Insurance Amendment Act, 2009</i>	425
Section 43: <i>Miscellaneous Statutes Amendment Act (No. 2), 2000</i>	426
Section 44: <i>Settlement of International Investment Disputes Act</i>	426
 45–46. Amendments to this Act	426
 Related Sections	427
Section 45: Amendments to definitions in the <i>2012 Act</i>	427
Section 46: Reflecting the repeal of the <i>Family Relations Act</i> and introduction of the <i>Family Law Act</i>	428
 47. Commencement	428
 Related Sections	428
 B.C. Limitation Act [Repealed], R.S.B.C. 1996, c. 266	431
 <i>Limitation Act</i> Table of Concordance	447
 Selected Bibliography	451