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BCLI Report no. 19—Report on The Ultimate Limitation Period: Updating the Limitation Act

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This report examines the ultimate limitation period (the “ULP”), which is contained in section 8 of the *Limitation Act*. The ULP was introduced into the Act as part of the last major revision of the limitations statute in 1975. It has been an integral part of British Columbia’s limitations law. The purpose of limitations legislation is to ensure that civil actions are brought in a timely fashion while affording the plaintiff a reasonable opportunity to seek legal advice, consider a settlement, and, if necessary, bring a claim.

The limitation period applicable in any given case depends on the type of action being brought. The basic limitation periods are 2, 6, and 10 years as set out under section 3 of the *Limitation Act*. In order to protect the rights of plaintiffs the running of time under limitation periods can be postponed or suspended where one of the tolling provisions in the *Limitation Act* is applicable. Postponement is appropriate in certain cases where the plaintiff’s failure to bring a claim within a reasonable period is not due to the plaintiff knowingly failing to exert their rights.

Section 8 provides a ULP in those cases where the basic limitation period is postponed or suspended, running from the date that the facts that give rise to the legal claim, or cause of action, arose. The ULP sets an outside time limit for asserting a claim, even where one or more of the provisions extending the time limit would otherwise apply to extend the running of time. This provision provides defendants with protection from stale claims, and ultimately ensures that defendants are not subject to open-ended liability. The examination of the *Limitation Act* in this report suggests that the ULP is outdated, overly complex, and no longer provides a fair measure of justice for plaintiffs, defendants, or society as a whole.

The report identifies a number of problems associated with section 8 and makes recommendations with particular attention to the appropriate length and commencement date of the ULP, the future of existing special ULPs, and the protection to be afforded to particular groups that fall within the scope of the ULP if that period is reduced. The rules with regard to demand obligations, obligations for which there is no fixed time or specific conditions for performance, are also addressed as they have long caused considerable hardship to lenders.

The principal recommendation in this report is that section 8 should be repealed and replaced by a revised provision that addresses the issues identified as problematic. The first recommendation is that the ULP of general application should be reduced from 30 to 10 years. The second proposal is that under the ULP of general application, time should start running from the date of the act or omission constituting a breach of duty giving rise to the cause of action. It is further proposed that the special short 6 year ULP be deleted from the Act. An exception to the general regime is proposed for claims involving fraud or fraudulent breach of trust, or claims in which material facts relating to the claim have been willfully concealed. Two further amendments are necessitated by the reduction of the ULP to 10 years. The ULP of general application would need to be tailored for claimants who are minors at the time the cause of action arises. Further, the relationship between the ULP and confirmed causes of action would need to be addressed.