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NO. 51011-1

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

RONALD R. BRETT,

Appellant,

v.

CAROLINE MARTIN and

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Respondents.

BRIEF OF RESPONDENT

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I. INTRODUCTION

The Department of Social and Health Services, Division of Child Support (DCS) is enforcing Mr. Ronald Brett's Ontario order, which requires him to pay spousal support to Ms. Caroline Martin. Mr. Brett's order does not specify what happens to his obligation when his former spouse remarries. In Ontario, when an order is silent, support continues until it is changed by the court. In Washington, when an order is silent, support ends when the recipient remarries. The Uniform Interstate Family Support Act's (UIFSA) choice-of-law provision requires Washington to apply Ontario law and enforce Mr. Brett's spousal support obligation until it is modified. Because Mr. Brett does not allege or show that any of his constitutional rights would be violated, enforcement of his spousal support obligation after his ex-wife's marriage is not manifestly incompatible with the public policy of this state.

Ontario eliminated its statute of limitations for enforcing support before any of Mr. Brett's debt became uncollectable under its former 20-year statute of limitations. The arrearage calculation properly includes Mr. Brett's entire obligation since none of it was lost under the prior statute of limitations. This is consistent with Washington law and policy addressing the enforcement period when a statute of limitations is extended.

This Court should affirm the administrative order confirming registration of the Ontario Order.

II. ISSUES

1. DCS is enforcing Mr. Brett's Ontario order requiring him to pay spousal support. Mr. Brett's order did not automatically terminate when his former spouse remarried. Is Mr. Brett's order consistent with Washington public policy, if he can seek review by the Ontario Court based on his or his former spouse's changed circumstances?

2. Under former Ontario law, spousal support obligations were enforceable for 20 years. This provision was repealed before any of Mr. Brett's spousal support obligation was lost to the statute of limitations. Is it consistent with Washington public policy for DCS to enforce Mr. Brett's obligation, based on the extended statute of limitations, when our courts have approved an extended enforcement period in similar circumstances?

III. ROLE OF THE OFFICE OF THE ATTORNEY GENERAL

In child support actions, the Office of the Attorney General "represents the state, the best interests of the child relating to parentage, and the best interests of the children of the state, but does not represent the interests of any other individual." RCW 74.20.220(4). The Office of the Attorney General does not represent either parent. *Id.* Because no public

assistance has been expended, the State has no direct financial interest in the outcome of this case. The State participates in the appeal from the Administrative Law Judge's (ALJ) order to protect its ability to provide child support enforcement services, including the enforcement of out-of-state orders under UIFSA.

IV. SUMMARY OF THE ADMINISTRATIVE RECORD

Ronald Brett and Caroline Martin were married on May 18, 1963, and had two children together. AR at 437¹. Twenty years later, an Indiana court dissolved the marriage without addressing child support or spousal maintenance since it lacked personal jurisdiction over Ms. Martin, or the children, who all lived in Canada. AR at 432-38; RP² at 109:5-15.

A couple months after the Indiana dissolution decree was entered, Mr. Brett's attorney signed a Canadian child support and spousal support order, following a trial. AR at 374-75. The Supreme Court of Ontario, Canada ordered Mr. Brett to pay \$1,300³ for child support and spousal support beginning September 1983. AR at 374-75. He was only required to pay child support for his youngest child, since his oldest had already emancipated. AR at 374-75, 432. The order terminated his child support

¹ AR abbreviates the Administrative Record written record, which consists of 532 pages.

² RP abbreviates the transcript of the evidentiary administrative hearing on June 30, 2016, which consists of 144 pages.

³ All dollar figures in this brief are in Canadian dollars.

obligation in January 1987, when his youngest child would be 19 but required him to continue paying \$800 for spousal support. AR at 374. The court further ordered that “Such payments [maintenance] will continue until the death of the wife or until the Court otherwise orders.” AR at 374. This order has never been modified. RP at 110:8-21, 104:18-20.

Mr. Brett acknowledged that he stopped making payments after the first month and explained that he was fired from his job in October 1983 and earned substantially less in his subsequent employment. AR at 365. In November 1987, Mr. Brett and Ms. Martin agreed that Ms. Martin would receive a \$6,000 payment from \$15,000 in proceeds Mr. Brett expected from a wrongful termination action. AR at 122:23-25, 123:1-2, 349-50.⁴ The payment was conditioned on Ms. Martin’s agreement to withdraw the garnishment notice she had served on Mr. Brett’s former employer and Mr. Brett’s agreement to drop his application to be relieved from paying back child support and spousal maintenance. AR at 349-50, 359-62, 367.

Ms. Martin remarried on November 20, 1987. RP at 125:11-15. She obtained a divorce on September 12, 2001, and has not remarried again. RP at 125:14-15.

⁴ Ms. Martin testified in an earlier discovery deposition that she only received around \$1,400 of this amount and the rest went to her attorney. AR at 122:23-25, 123:1-15.

On October 13, 2011, the Canadian Family Maintenance Enforcement Program requested that the Washington State Department of Social and Health Services, Division of Child Support (DCS) enforce Mr. Brett's ongoing spousal support obligation and his back child and spousal support obligation. AR at 397-99; 416-19; RP at 79:19-21. The record of payments transmitted by the Canadian agency shows that Mr. Brett made no payments after his \$1,300 payment in September 1983. AR at 403-15. Mr. Brett does not assert he made any additional payments, prior to the referral, except for the \$6,000 amount in 1987 discussed above. RP at 97:16-23.

On December 29, 2011, DCS served a notice and demand for payment on Mr. Brett. AR at 498-501; RP 79:25-80:1-4. Mr. Brett challenged the amount due under his Canadian order, so DCS used the conference board process to internally review its arrearage calculation. RP 80:6-9. On April 27, 2012, the Conference Board Chair determined that Mr. Brett's total obligation under the order totaled \$287,900 through October 2011. AR at 83. This total includes credit for the \$1,300 payment that Mr. Brett made in September 1983, shortly after the order was entered. AR at 403-15. It does not include credit for the \$6,000 payment made through Ms. Martin's attorney. RP at 97:16-23; AR at 122:23-25, 123:1-15, 403-15.

On January 25, 2016, Mr. Brett voiced his concern about the viability of his Canadian order, and requested an opportunity to administratively challenge DCS's efforts to enforce the order. AR at 71-78, 228. This prompted DCS to serve him with a "Notice of Support Debt and Registration" on March 7, 2016. AR at 63-70, 520; RP at 81:18-23. Mr. Brett objected to the notice, and an evidentiary hearing occurred on June 30, 2016. RP at 1; AR at 60-62.⁵

The ALJ confirmed registration of the order. AR at 49. The administrative order expressly concluded that DCS should collect current child support and past due spousal and child support. AR at 49.

Mr. Brett appealed the administrative order to Lewis County Superior Court. The superior court affirmed the administrative order.⁶ CP at 199-206. It concluded that Mr. Brett failed to meet his burden of establishing a permissible defense under RCW 26.21A.530 or the Washington Constitution. CP at 199-206.

⁵ Per RCW 26.21A.430(2), a support enforcement agency can administratively enforce an order from another country without registering it unless the validity of administrative enforcement is contested. Mr. Brett was afforded a formal hearing under the Administrative Procedure Act after he challenged the enforceability of his Ontario order.

⁶ Contrary to Mr. Brett's assertion, *see* Br. of Appellant at 7, there was no evidentiary trial in superior court. The superior court correctly reviewed the administrative record under the Administrative Procedure Act and did not consider any new evidence. Mr. Brett's citation is to the transcript of the hearing before the ALJ.

V. ARGUMENT

A. Standard of Review

Mr. Brett seeks review of an administrative order confirming registration of this Ontario order. His appeal is governed by the Administrative Procedure Act, which establishes the exclusive means of judicial review. RCW 34.05.510.

As the party challenging a final agency order, Mr. Brett has the burden of demonstrating it should be overturned. RCW 34.05.570(1)(a); *Verizon Nw., Inc. v. Emp't Sec. Dep't*, 164 Wn.2d 909, 915-16, 194 P.3d 255 (2008). This Court's review is based on the agency record without consideration of the findings and conclusions of the superior court. *Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm'n*, 123 Wn.2d 621, 633, 869 P.2d 1034 (1994). An agency's order may only be overturned if the petitioner demonstrates that one of the standards in RCW 34.05.570(3) is met. Mr. Brett does not specifically articulate the statutory basis on which he seeks relief. Because Mr. Brett does not challenge any of the ALJ's findings of fact, DCS understands his challenge to be that the agency has erroneously interpreted or applied the law. *See* RCW 34.05.570(3)(d).

Legal conclusions are evaluated under the error of law standard, which permits this Court to engage in a de novo review and substitute its view for that of the agency. *Verizon Nw.*, 164 Wn.2d at 915. However, the

court should give substantial weight to an agency's interpretation of the law within its expertise, such as regulations the agency administers. *Id.* Any constitutional defenses to enforcement of the order should be treated as an issue of law, subject to de novo review. *See Islam v. Dep't of Early Learning*, 157 Wn. App. 600, 608, 238 P.3d 74, 78 (2010).

B. The Uniform Interstate Family Support Act (UIFSA) Governs this Case and Authorizes DCS to Enforce the Canadian Order

The UIFSA governs the procedures for establishing and enforcing family support obligations when the parents reside in different jurisdictions. *See In re Schneider*, 173 Wn.2d 353, 369, 268 P.3d 215 (2011). A central purpose of the UIFSA is to ensure that there is only one controlling order at a time. This is accomplished by permitting the first state or foreign country with jurisdiction to retain continuing, exclusive jurisdiction by preventing the enforcing state or foreign country from altering the order. *See RCW 26.21A.150(2)* (“A tribunal of this state may not modify a spousal support order issued by a tribunal of another state or a foreign country . . .”).

The UIFSA, codified at Chapter 26.21A RCW is identical to the 2008 version of the model Act drafted by the Uniform Law Commission. The 2008 version of the UIFSA “expands the principles of interstate recognition and enforcement familiar to domestic child support cases to

international cases.” Eric M. Fish, *The Uniform Interstate Family Support Act (UIFSA) 2008: Enforcing International Obligations Through Cooperative Federalism*, 24 J. Am. Acad. Matrim. Law. 34 (2011). As of April 2016, all 50 states have enacted the 2008 version of the UIFSA, pursuant to a federal child support program requirements. Office of Child Support Enforcement (OCSE), *Information Memorandum 16-02* (June 2, 2016).⁷

The UIFSA authorizes the Division of Child Support to enforce Mr. Brett’s Ontario order administratively. *See* RCW 26.21A.500 (permitting a foreign support order to be registered for enforcement). Per RCW 26.21A.220(2)(a) and RCW 26.21A.010(29), DCS may enforce a support order to the extent not prohibited by other law. Once a foreign support order is registered, it is enforceable in the same manner and is subject to the same procedures as an order issued by a Washington State tribunal. *See* RCW 26.21A.510. Thus, the issue before this Court is not whether it agrees with the Canadian order, but rather whether there is a legal basis that prevents this state registering it for enforcement.

⁷ This Information Memorandum was published on June 2, 2016, and can be viewed at <https://www.acf.hhs.gov/css/resource/2008-revisions-to-the-uniform-interstate-family-support-act>.

C. Mr. Brett's Ontario Order is Enforceable because it is Not Manifestly Incompatible with Washington Public Policy

Mr. Brett's Ontario spousal support order is enforceable even though it did not automatically terminate on Ms. Martin's remarriage, since the spousal support provision is not manifestly incompatible with the public policy of this state. As a preliminary matter, however, Mr. Brett asserts his public policy defense under the wrong statute. Although DSHS does not dispute Mr. Brett's ability to assert his public policy defense, it is important to rely on the correct statute to avoid confusion in future cases and to promote harmony with out-of-state decisions construing identical UIFSA provisions.

Mr. Brett relies on RCW 26.21A.623(4), which is inapplicable to his situation. This statute provides in pertinent part:

In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds: (a) Recognition and enforcement of the agreement is manifestly incompatible with public policy.

RCW 26.21A.623(4).

This statute does not apply for two reasons. First, this statute is inapplicable pursuant to RCW 26.21A.603 because this is not "a support proceeding under the convention." Second, this statute is inapplicable because the Ontario order is not a "foreign support agreement" as that term is defined in RCW 26.21A.601.

The first reason that RCW 26.21A.623 is inapplicable is that this matter is not a “support proceeding” under the convention. Pursuant to RCW 26.21A.603, article 7 of the UIFSA “applies only to a support proceeding under the convention.” RCW 26.21A.623 is an Article 7 statute.⁸ The UIFSA explicitly states that Article 7 statutes “only apply to a support proceeding under the convention.” RCW 26.21A.603. The term “convention” is defined by RCW 26.21A.010(3) to mean the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. Canada has not yet ratified this convention. *See* <https://www.hcch.net/en/instruments/conventions/status-table/print?cid=131> (last visited March 12, 2018).⁹ Because the convention is not yet in force in Canada, Mr. Brett’s order did not result from a support proceeding under the convention.

Additionally, RCW 26.21A.623 is inapplicable because, by its express language, it applies only to “foreign support agreements,” which are different from court orders. *Id.* “Foreign support agreement” is a term of art defined in RCW 26.21A.601. It means: (a) an agreement for support in a record that: (i) Is enforceable as a support order in the country of origin; (ii) has been: (A) Formally drawn up or registered as an authentic

⁸ *See* print version of the Revised Code of Washington at pages 84-87 to view organization by article number.

⁹ A copy of the chart identifying the countries that have ratified the convention has been downloaded from the website and is attached as Appendix 1.

instrument by a foreign tribunal; or (B) Authenticated by or concluded, registered, or filed with a foreign tribunal; and (iii) May be reviewed and modified by a foreign tribunal; (b) and includes a maintenance arrangement or authentic instrument under the convention.

RCW 26.21A.601(6).

This statutory provision corresponds to model Act § 710. The model Act's official comment explains that a "support agreement" would be considered a contract in the United States, rather than a court order, but is enforceable here if it is enforceable in the issuing country *See* model Uniform Interstate Family Support Act (2008) at 114-115, [http://www.uniformlaws.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20\(2008\)](http://www.uniformlaws.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008)). *See also* Eric M. Fish, *The Uniform Interstate Family Support Act (UIFSA) 2008: Enforcing International Obligations Through Cooperative Federalism*, 24 J. Am. Acad. Matrim. Law. 33, 53-54 (2011). Because "support agreements" are not enforceable in the United States without first obtaining court approval, and we do not have an equivalent, the authors of the UIFSA 2008 recognized that it was introducing a term that would be confusing and took

pains to clarify that a support agreement is different from a court order. *See* model Uniform Interstate Family Support Act (2008) at 114-115.¹⁰

Even though RCW 26.21A.623 does not apply, Mr. Brett can nevertheless assert his “manifestly incompatible with public policy” defense under RCW 4.24.820. This statute prohibits state courts and administrative agencies from enforcing “any order issued under foreign law, or by a foreign legal system, that is manifestly incompatible with public policy.” RCW 4.24.820. The statute presumes that an order is manifestly incompatible with public policy when it does not grant parties the same rights as granted by the United States or Washington constitutions. *Id.*

The legislature enacted RCW 4.24.820 in the same piece of legislation as it used to pass the 2008 version of the model Act. *See* Laws of 2015, ch. 214 § 61. The final bill report shows that RCW 4.24.820(1) was prompted by the Legislature’s desire to ensure that the constitutional rights of state residents were protected when foreign support orders were being enforced. Final Bill Report on E.S.S.B. 5498, 64th Leg., Reg. Sess. (Wash. 2015). The bill report states: “Washington presumes any foreign

¹⁰ If Canada were to ratify the convention, it would be RCW 26.21A.617, and not RCW 26.21A.623, that would apply. Unlike RCW 26.21A.623, which is only applicable to “support agreements,” RCW 26.21A.617 addresses recognition and enforcement of convention support orders and similarly permits a parent to block enforcement of an order that is manifestly incompatible with Washington public policy. RCW 26.21A.617(2)(a).

order is manifestly incompatible with public policy when enforcement of the order would result in a violation of any right guaranteed by the state or federal constitutions.” *Id.*

Mr. Brett cannot show that his Ontario order is manifestly incompatible with the public policy of this state under RCW 4.24.820 since he does not allege any of his constitutional rights were violated. Instead, Mr. Brett’s argument boils down to a contention that, because Washington and Ontario law differ in their treatment of spousal support upon the recipient’s remarriage, the Ontario order necessarily violates Washington public policy. This argument conflicts with the UIFSA and should be rejected.

There is no dispute that Washington law and Ontario law differ. In Washington, spousal support terminates upon remarriage unless the order contains language requiring it to continue. *See In re Marriage of Williams*, 115 Wn.2d 202, 796 P.2d 421 (1990). In Ontario, Canada, the opposite occurs. If the spousal support order does not address what happens when the recipient remarries, spousal maintenance continues until the recipient dies or the order is changed by the court. *See* the Community Legal Education Ontario website at: <http://www.cleo.on.ca/en/publications/spousalsupport> (last visited on April 2, 2018) and the Ontario child support agency website at:

https://www.mcass.gov.on.ca/en/mcass/programs/familyResponsibilityGeneral/changing_support_order.aspx#.WsJbCojwa70 (last visited April 2, 2018).¹¹

The UIFSA, as adopted by the Washington State Legislature, specifically contemplates that laws will differ and includes a choice of law provision. *See* RCW 26.21A.515. The choice-of-law provision preserves the authority of the jurisdiction that entered the order by making that jurisdiction’s law govern most aspects of enforcement. RCW 26.21A.515. The choice of law provision expressly provides that the law of the issuing jurisdiction (here, Ontario) governs “[t]he nature, extent, amount, and *duration* of current payments under a registered support order.” RCW 26.21A.515(a) (*emphasis added*). “Duration” encompasses how long Mr. Brett’s spousal obligation continues. *See Schneider*, 173 Wn.2d at 364 (changing the termination date modifies the duration of a support order). Mr. Brett’s argument that his order is “manifestly incompatible” with Washington public policy is inconsistent with the Legislature’s decision to defer to the law of a foreign country when the duration of a support obligation is at issue.

The difference between the law in Washington and Ontario does not implicate any of the constitutional rights that RCW 4.24.820 was enacted to protect. Moreover, Mr. Brett has an available remedy. Even though the

¹¹ Relevant portions of the Community Legal Education Ontario and the Ontario Ministry of Community and Social Services websites are attached as Appendices 2 and 3.

spousal support provision in Mr. Brett's order did not terminate automatically on Ms. Martin's remarriage, Mr. Brett has always been able to ask the Ontario Court to end his obligation and is still able to do so. Mr. Brett's steadfast failure or refusal, and the large accumulation of debt that has resulted, does not transform Mr. Brett's situation into one where enforcement of his order creates serious conflict with the United States or Washington Constitutions or other Washington laws or policies.

This conclusion is supported by analogizing to the comity doctrine. The doctrine of comity requires our courts to give full effect to valid foreign judgments, except in extraordinary circumstances. *Rains v. Dep't of Soc. & Health Servs.*, 98 Wn. App. 127, 134, 989 P.2d 558 (2000). "A judgment is valid if the court had jurisdiction, there was notice, and the court was competent." *Id.* (citing Restatement (Second) of Conflict of Laws § 92 (1971)). Mr. Brett does not allege any of these deficiencies.

Our courts generally decline to apply comity only when "a foreign judgment is so contrary to the laws and policies of a state that enforcing it would seriously interfere with the state's policies or laws or is prejudicial to the state's interests. . . ." *In re Estate of Toland v. Toland*, 180 Wn.2d 836, 847, 329 P.3d 878 (2014) (citing *Hilton v. Guyout*, 159 U.S. 113, 165, 16 S. Ct. 139, 40 L. Ed. 95 (1895)). Washington courts have long held that "the mere fact that the law of the foreign jurisdiction

and our own law are different does not establish a violation of this state's public policy." *Estate of Toland*, 180 Wn.2d at 847-48 (citing *Richardson v. Pac. Power & Light Co.*, 11 Wn.2d 288, 301, 118 P.2d 985 (1941)).

Similarly to this case, the *Rains* court reviewed the enforceability of a foreign order that set a support obligation that continued for an unspecified period of time. *Rains*, 98 Wn. App. at 134. In Italy, child support continues without a termination date until the child is capable of being self-supporting in an appropriate manner, while in Washington, support ends at the age of majority, unless a court order expressly provides that it will continue past emancipation. *Id.* at 134. The court concluded that the Italian order should be enforced under comity because of Washington's strong public policy of enforcing valid support orders. *Id.* at 138-39. It further explained "While a Washington resident is entitled to rely on the presumption that support will terminate at the age of majority, Mr. Rains was not entitled to rely on the same presumption because his support obligation was established under a different scheme." *Id.* at 138. Like *Rains*, Mr. Brett's order would also be enforceable under comity; he is not entitled to rely on Washington law terminating spousal support on the recipient's remarriage, when his order was entered in a different jurisdiction, with different laws.

Likewise, in *Toland*, the Court recognized a Japanese dissolution order based on comity, even though there are differences between Japanese laws and our own. *Id.* at 848. The Japanese dissolution order included an award of damages to the mother because of the father's psychological abuse during the marriage. *Id.* at 841. The Court concluded that merely because damages were awarded on grounds not available in Washington (fault-based divorce), the decree was not so "unfair or so antithetical to our law and policy as to preclude the decree's recognition as a matter of comity." *Id.* at 848. Mr. Brett's spousal support order provides less basis to block enforcement of the Ontario order on public policy grounds than the order reviewed by the *Toland* Court. Unlike the fault-based damage award, available only in Japan, spousal support is also available in Washington. *See* RCW 26.09.090 (authorizes spousal support).

While there are differences in how spousal support awards terminate in Ontario after the recipient's remarriage, and how they terminate in Washington, this difference does not pose a serious risk to our state laws and policies. It might be different if Mr. Brett lacked the opportunity to bring his spousal support obligation back to the court based on his or Ms. Martin's changed financial circumstances, instead of his choosing not to do so. No foreign country's laws and policies are identical to those in Washington. It is questionable whether this Court can grant

relief to Mr. Brett without simultaneously making it almost impossible for any foreign support order to pass muster. This result would be antithetical to the core purpose of the 2008 version of UIFSA, which was enacted for the express purpose of expanding the recognition of interstate orders to foreign ones. *Eric M. Fish, The Uniform Interstate Family Support Act (UIFSA) 2008: Enforcing International Obligations Through Cooperative Federalism*, 24 J. Am. Acad. Matrim. Law at 34.

D. Enforcement of the Ontario Order is Not Manifestly Incompatible with Washington Public Policy on Statutes of Limitation

Mr. Brett contends that it is manifestly incompatible with public policy to enforce the Ontario judgment because more than 20 years passed between its entry in 1983 and Ontario's elimination of the statute of limitations in 2004. This is incorrect. Washington law establishes that the statute of limitations for each monthly support obligation begins at the time that each monthly support obligation is due. As a result, enforcing the support obligations that were incurred from January 1984 forward is entirely compatible with Washington law. Because no portion of the Ontario order had expired as of January 2014, the Final Order correctly calculated Mr. Brett's arrearages.

At the outset, it is worth noting that Mr. Brett does not—and cannot—challenge the general principle that Washington courts apply the

longer of Washington's statute of limitations or the statute of limitations of the issuing jurisdiction. *See* RCW 26.21A.515(2) ("In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state or foreign country, whichever is longer, applies."); *In re Matter of Paternity of M.H.*, 187 Wn.2d 1, 10-11, 383 P.3d 1031 (2016) (applying Indiana's statute of limitations because it is longer than Washington's).

DCS properly enforced Mr. Brett's outstanding obligation, including amounts that accrued more than 20 years ago. Washington law holds that each monthly installment of support becomes a separate judgment that does not trigger the running of the statute of limitations until it becomes due. *Roberts v. Roberts*, 69 Wn.2d 863, 420 P.2d 864 (1966). Mr. Brett had monthly spousal support obligations that came due on and after January 1984. Ontario's 20-year statute of limitations did not begin running on these obligations until they became due. The statute of limitations on Mr. Brett's January 1984 support obligation would have expired in January 2004. But, effective January 1, 2004, Ontario eliminated the statute of limitations. *See* Limitations Act, 2002, S.O. 2002, c. 24, Sched. B at §§ 16, 24, attached as Appendix 4. As a result, the statute of limitations on Mr. Brett's January 1984 support obligation, and every

support obligation thereafter, never expired before the statute of limitations was repealed. These obligations remain enforceable under Ontario law.

This is consistent with Washington case law. This Court has held that when the Legislature extends the time for collecting on a judgment, that extension may apply to judgments that were entered before the extension date, provided that they had not yet expired. *Sessom v. Mentor*, 155 Wn. App. 191, 197, 229 P.3d 843 (2010); *State v. Morgan*, 107 Wn. App. 153, 26 P.3d 965 (2004). Mr. Brett's support obligations from January 1984 forward fall squarely within these holdings. These obligations never expired before the repeal of the statute of limitations was effective. Therefore, enforcement of Mr. Brett's support obligations incurred from January 1984 forward is consistent with Washington public policy.

Mr. Brett's support obligations incurred before January 1984 were also properly referred for enforcement in Washington, but for different reasons. Those obligations included both child support and spousal support. AR at 374-75. Mr. Brett's child support obligation for this earlier period remains enforceable because the statute of limitations did not start running until Mr. Brett's child emancipated at age 18 in December 1985. *See Schmitke v. Schmitke*, [1993] 87 B.C.L.R. 2d 377 (B.C. Ct. App.) (“[T]he limitations period for child support does not start to run until each child

attains the age of majority.”). Thus, the child support portion of his obligation had not expired at the time the statute of limitations for enforcing this obligation was extended indefinitely.

Spousal support amounts that accrued before January 1984, and were still owed at the time of the 2004 statutory change, are uncollectable under Ontario law and are therefore, no longer enforceable. *See* Limitations Act, 2002, S.O. 2002, c. 24, Sched. B at § 24(3) (previously expired claims are not revived). This does not, however, undermine the final administrative order, which did not bar enforcement of these amounts. AR at 49, 64-68. This is because Mr. Brett paid the support he owed for this time period well before the time limit. Mr. Brett paid his obligation for September 1983 on time. AR at 365, 403. He paid another \$6,000 at the end of 1987. AR at 122:23-25, 123:1-2, at 349-50. At the time of the \$6,000 payment, Mr. Brett’s monthly obligation was \$800 since he no longer owed current child support. This leaves a \$5,200 excess over current support that can be applied towards his oldest accrued arrears. Because Mr. Brett’s back child support and spousal support obligation between October 1983 and December 1983 totaled \$3,900, Mr. Brett paid this portion of his obligation in full before the enforcement period expired in 2003.

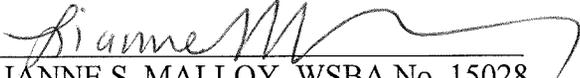
Thus, Ontario's arrearage calculation is consistent with Washington case law addressing the enforcement period when statutes of limitation have been extended. Mr. Brett's argument that it is manifestly contrary to public policy for the 20-year statute of limitations to apply to amounts that accrued before the statute of limitations was extended is unfounded.

VI. CONCLUSION

The administrative order confirming registration of the Ontario order should be affirmed. Mr. Brett has not met his burden of showing the order should not be enforced.

RESPECTFULLY SUBMITTED this 2 day of April 2018

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of April 2018, I served a true and correct copy of the Brief of Respondent, Department of Social and Health Services, on all parties or their counsel of record on the date below as follows:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 2nd day of April 2018, at Tumwater, Washington.


DONA BETH FISCHER
Legal Assistant

APPENDIX 1

PRINT

Contracting Parties (incl. REIOs and States bound by its approval) to this Convention [Protocol] that are also Members of the HCCH (i.e., the Organisation) are in **bold**; Contracting Parties that are not Members of the HCCH are in *italics*.

Contracting Party*	S¹	R/A/Ap/Su²	Type³	EIF⁴	EXT⁵	Auth⁶	Res/D/N/DC⁷
Albania	21-X-2011	13-IX-2012	R	1-I-2013		1	D,Res
Austria			Ap*	1-VIII-2014		1	D
Belarus	15-III-2017	16-II-2018	R	1-VI-2018		1	D,Res
Belgium			Ap*	1-VIII-2014		1	D
Bosnia and Herzegovina	5-VII-2011	25-X-2012	R	1-II-2013		1	
Brazil	17-VII-2017	17-VII-2017	R	1-XI-2017		1	D,Res
Bulgaria			Ap*	1-VIII-2014		1	D
Burkina Faso	7-I-2009						
Canada	23-V-2017						
Croatia			Ap*	1-VIII-2014		1	D
Cyprus			Ap*	1-VIII-2014		1	D
Czech Republic			Ap*	1-VIII-2014		1	D

Contracting Party*	S	R/A/Ap/Su	Type	EIF	EXT	Auth	Res/D/N/DC
Estonia			Ap*	1-VIII-2014		1	D
European Union	6-IV-2011	9-IV-2014	Ap	1-VIII-2014			D,Res
Finland			Ap*	1-VIII-2014		1	D
France			Ap*	1-VIII-2014		1	D
Germany			Ap*	1-VIII-2014		1	D
Greece			Ap*	1-VIII-2014		1	D
<i>Honduras</i>		16-X-2017	A	19-X-2018		1	
Hungary			Ap*	1-VIII-2014		1	D
Ireland			Ap*	1-VIII-2014			D
Italy			Ap*	1-VIII-2014		1	D
Kazakhstan		6-VI-2017	A			1	
Latvia			Ap*	1-VIII-2014		1	D
Lithuania			Ap*	1-VIII-2014		1	D
Luxembourg			Ap*	1-VIII-2014		1	D
Malta			Ap*	1-VIII-2014		1	D
Montenegro		2-XII-2015	A	1-I-2017		1	Res
Netherlands			Ap*	1-VIII-2014		1	D
Norway	8-VI-2010	6-IV-2011	R	1-I-2013		1	D,Res

Contracting Party*	S	R/A/Ap/Su	Type	EIF	EXT	Auth	Res/D/N/DC
Poland			Ap*	1-VIII-2014		1	D
Portugal			Ap*	1-VIII-2014		1	
Romania			Ap*	1-VIII-2014		1	D
Slovakia			Ap*	1-VIII-2014		1	D
Slovenia			Ap*	1-VIII-2014		1	D
Spain			Ap*	1-VIII-2014		1	D
Sweden			Ap*	1-VIII-2014		1	D
Turkey	7-X-2016	7-X-2016	R	1-II-2017		1	D,Res
Ukraine	7-VII-2010	24-VII-2013	R	1-XI-2013			D,Res,DC
United Kingdom of Great Britain and Northern Ireland			Ap*	1-VIII-2014		1	D
United States of America	23-XI-2007	7-IX-2016	R	1-I-2017		1	D,Res

* (incl. REIOs and States bound by its approval)

Type

Res/D/N

Albania Articles Declarations Reservations

The Republic of Albania declares, in accordance with Article 2 (3) the right to stipulate, recognize and enforce maintenance obligations, arising from a spousal relationship to the same extent as obligations relating to child maintenance, according to Chapter II and III of the Convention.

The Republic of Albania declares, in accordance with Article 2 (3) of the Convention, the right to enforce maintenance obligations even for adult children up to age of twenty-five years, provided that they attend the high school or

university, according to Article 197 of the Family Code.

The Republic of Albania declares, in accordance with Article 63 of the Convention that the applications for the recognition and enforcement of a maintenance arrangement are made by the Central Authority.

Austria Articles Declarations

Austria is bound by the Convention as a result of the approval by the European Union (please click here to read the European Union declarations).

Belarus Articles Declarations Reservations

Reservations:

16-02-2018

In accordance with Article 2(2) of the Convention, the Republic of Belarus will apply the Convention to maintenance obligations arising from a parent-child relationship towards a person under the age of 18 years.

In accordance with Article 30(8) of the Convention, the Republic of Belarus reserves the right not to recognise and enforce a maintenance arrangement.

In accordance with Article 44(3) of the Convention, the Republic of Belarus does not use the French language in any other communications between the Central Authorities.

Declaration:

16-02-2018

With regard to applications for recognition and enforcement of decisions the Republic of Belarus will apply the procedure for the recognition and enforcement of decisions, set out in Article 24 of the Convention.

Belgium Articles Declarations

Belgium is bound by the Convention as a result of the approval by the European Union (please click here to read the European Union declarations).

Brazil Articles Declarations Reservations

RESERVATIONS:

03-11-2017

Reservation to Article 20(1)(e): Brazil does not recognize or enforce a decision in which an agreement to the jurisdiction has been reached in writing by the parties when the litigation involves obligations to provide maintenance for children or for individuals considered incapacitated adults and elderly persons, categories defined by the Brazilian legislation and which will be specified in accordance with Article 57.

Reservation to Article 30(8): Brazil does not recognize or enforce a maintenance arrangement containing provisions regarding minors, incapacitated adults and elderly persons, categories defined by the Brazilian legislation and which will be specified in accordance with Article 57 of the Convention.

DECLARATION:

03-11-2017

Declaration regarding Article 2(3): Brazil extends the application of the whole of the Convention, subject to reservations, to obligations to provide maintenance arising from collateral kinship, direct kinship, marriage or affinity, including, in particular, obligations in respect of vulnerable persons.

Bulgaria Articles Declarations

Bulgaria is bound by the Convention as a result of the approval by the European Union (please click here to read the European Union declarations).

APPENDIX 2



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

Separation and Divorce: Spousal Support

How long does spousal support continue?

Some agreements or orders set a date when support payments will end or be reviewed. If no end date is set, support continues unless the agreement or order is changed.

Spousal support does not automatically end if the recipient spouse remarries or starts living with someone.

April 2017

Disclaimer: This site contains general legal information for people in Ontario, Canada. It is not intended to be used as legal advice for a specific legal problem.

APPENDIX 3



MINISTRY OF COMMUNITY AND SOCIAL SERVICES

Changing a support order

It's important to let us know if the terms of your domestic contract or support order change.

We need this information to update our records and collect the correct support amount.

There may come a time when you feel the support terms of your order or domestic contract should be changed. For example,

- your income may change
- your former spouse may remarry, or
- your child may finish his or her education or get a job after reaching age 18.

Only the courts can change your order. The Family Responsibility Office cannot change any of the terms in your support order or domestic contract, but under certain circumstances, FRO may be able to terminate enforcement or reduce the amount of support being enforced.

- [Learn more: Ending support payments.](#)

How to change a domestic contract

The support payor and the support recipient have to negotiate a new domestic contract with new support terms. The new contract will have to be filed with the Ontario Court of Justice or Superior Court of Justice (Family Court) and then sent to us.

How to change a support order

You must ask the court to change a support order by filing a Motion to Change form, which you can find online at www.ontariocourtforms.on.ca. For more information about this see the Ministry of the Attorney General's [Self Help Guide for Motions to Change](#).

Once the support order is changed, you must [mail us a copy](#).

Note: The process for changing a support order is different if either the payor or recipient lives outside Ontario. [Learn More](#)

When a support order has been assigned to a social services delivery agency

If a support order has been assigned to a social services delivery agency, such as Ontario Works or the Ontario Disability Support Program, the agency must be involved in all court proceedings or agreements to change the support order. Please provide your caseworker at the agency with a copy of any motion to change the support order.

To find out if your support order is assigned

Fill out a [Confirmation of Assignment](#) form and send it to the address or fax number indicated on the form.

If your support order is assigned, you will be given instructions on where to send your court documents.

Learn more

To change a support order, you may want to ask a lawyer for advice. [How to find a lawyer](#)

[CONTACT US](#) | [ACCESSIBILITY](#) | [PRIVACY](#) | [TERMS OF USE](#)

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APPENDIX 4

[HOME PAGE](#) / [LAWS](#) / LIMITATIONS ACT, 2002, S.O. 2002, C. 24, SCHED. B



[Français](#)

Limitations Act, 2002

S.O. 2002, CHAPTER 24

SCHEDULE B

Consolidation Period: From December 14, 2017 to the e-Laws currency date.

Last amendment: 2017, c. 34, Sched. 12, s. 11.

Legislative History: [+]

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DEFINITIONS AND APPLICATION

Definitions

1 In this Act,

“adverse effect” has the same meaning as in the *Environmental Protection Act*; (“conséquence préjudiciable”)

“assault” includes a battery; (“voies de fait”)

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

“contaminant” has the same meaning as in the *Environmental Protection Act*; (“contaminant”)

“discharge” has the same meaning as in the *Environmental Protection Act*; (“rejet”, “rejeter”)

“environmental claim” means a claim based on an act or omission that caused, contributed to, or permitted the discharge of a contaminant into the natural environment that has caused or is likely to cause an adverse effect; (“réclamation relative à l’environnement”)

“natural environment” has the same meaning as in the *Environmental Protection Act*. (“environnement naturel”) 2002, c. 24, Sched. B, s. 1.

Application

2 (1) This Act applies to claims pursued in court proceedings other than,

- (a) proceedings to which the *Real Property Limitations Act* applies;
- (b) proceedings in the nature of an appeal, if the time for commencing them is governed by an Act or rule of court;
- (c) proceedings under the *Judicial Review Procedure Act*;
- (d) proceedings to which the *Provincial Offences Act* applies;
- (e) proceedings based on the existing aboriginal and treaty rights of the aboriginal peoples of Canada which are recognized and affirmed in section 35 of the *Constitution Act, 1982*;
- (f) proceedings based on equitable claims by aboriginal peoples against the Crown; and
- (g) proceedings to which the Limitation Convention or the Amended Limitation Convention, as defined in the *International Sales Conventions Act*, applies. 2002, c. 24, Sched. B, s. 2 (1); 2017, c. 2, Sched. 8, s. 5.

Exception, aboriginal rights

(2) Proceedings referred to in clause (1) (e) and (f) are governed by the law that would have been in force with respect to limitation of actions if this Act had not been passed. 2002, c. 24, Sched. B, s. 2 (2).

Section Amendments with date in force (d/m/y) [+]

Crown

3 This Act binds the Crown. 2002, c. 24, Sched. B, s. 3.

BASIC 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. 2002, c. 24, Sched. B, s. 4.

Discovery

5 (1) 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, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; 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). 2002, c. 24, Sched. B, s. 5 (1).

Presumption

(2) A person with a claim shall be presumed to have known of the matters referred to in clause (1) (a) on the day the act or omission on which the claim is based took place, unless the contrary is proved. 2002, c. 24, Sched. B, s. 5 (2).

Demand obligations

(3) For the purposes of subclause (1) (a) (i), the day on which injury, loss or damage occurs in relation to a demand obligation is the first day on which there is a failure to perform the obligation, once a demand for the performance is made. 2008, c. 19, Sched. L, s. 1.

Same

(4) Subsection (3) applies in respect of every demand obligation created on or after January 1, 2004. 2008, c. 19, Sched. L, s. 1.

Section Amendments with date in force (d/m/y) [+]

Minors

6 The limitation period established by section 4 does not run during any time in which the person with the claim,

(a) is a minor; and

(b) is not represented by a litigation guardian in relation to the claim. 2002, c. 24, Sched. B, s. 6.

Incapable persons

7 (1) The limitation period established by section 4 does not run during any time in which the person with the claim,

(a) is incapable of commencing a proceeding in respect of the claim because of his or her physical, mental or psychological condition; and

(b) is not represented by a litigation guardian in relation to the claim. 2002, c. 24, Sched. B, s. 7 (1).

Presumption

(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. 2002, c. 24, Sched. B, s. 7 (2).

Extension

(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. 2002, c. 24, Sched. B, s. 7 (3).

(4) REPEALED: 2016, c. 2, Sched. 2, s. 1.

Section Amendments with date in force (d/m/y) [+]**Litigation guardians**

8 If a person is represented by a litigation guardian in relation to the claim, section 5 applies as if the litigation guardian were the person with the claim. 2002, c. 24, Sched. B, s. 8.

Appointment of litigation guardian on application or motion by potential defendant**Definitions**

9 (1) In this section,

“potential defendant” means a person against whom another person may have a claim but against whom the other person has not commenced a proceeding in respect of the claim; (“défendeur éventuel”)

“potential plaintiff” means a person who may have a claim against another person but has not commenced a proceeding against that person in respect of the claim. (“demandeur éventuel”) 2002, c. 24, Sched. B, s. 9 (1).

Appointment of litigation guardian on application or motion by potential defendant

(2) If the running of a limitation period in relation to a claim is postponed or suspended under section 6 or 7, a potential defendant may make an application or a motion to have a litigation guardian appointed for a potential plaintiff. 2002, c. 24, Sched. B, s. 9 (2).

Effect of appointment

(3) Subject to subsection (4), the appointment of a litigation guardian ends the postponement or suspension of the running of the limitation period if the following conditions are met:

1. The appointment is made by a judge on the application or motion of a potential defendant.
2. The judge is satisfied that the litigation guardian,
 - i. has been served with the motion,
 - ii. has consented to the appointment in writing, or in person before the judge,
 - iii. in connection with the claim, knows of the matters referred to in clause 5 (1) (a),
 - iv. does not have an interest adverse to that of the potential plaintiff, and
 - v. agrees to attend to the potential plaintiff's interests diligently and to take all necessary steps for their protection, including the commencement of a claim if appropriate. 2002, c. 24, Sched. B, s. 9 (3).

Non-expiry

- (4) The limitation period shall be deemed not to expire against the potential plaintiff until the later of,
- (a) the date that is six months after the potential defendant files, with proof of service on the litigation guardian,
 - (i) a notice that complies with subsection (5), and
 - (ii) a declaration that, on the filing date, the potential defendant is not aware of any proceeding by the litigation guardian against the potential defendant in respect of the claim; and
 - (b) the date on which the limitation period would otherwise expire after it resumes running under subsection (3). 2002, c. 24, Sched. B, s. 9 (4).

Notice

- (5) The notice,
- (a) shall not be served before the first anniversary of the appointment;
 - (b) shall identify the potential plaintiff, the potential defendant and the claim; and
 - (c) shall indicate that the claim could be extinguished if a proceeding is not promptly commenced. 2002, c. 24, Sched. B, s. 9 (5).

10 REPEALED: 2016, c. 2, Sched. 2, s. 2.

Section Amendments with date in force (d/m/y) [+]**Attempted resolution**

11 (1) If a person with a claim and a person against whom the claim is made have agreed to have an independent third party resolve the claim or assist them in resolving it, the limitation periods established by sections 4 and 15 do not run from the date the agreement is made until,

- (a) the date the claim is resolved;
- (b) the date the attempted resolution process is terminated; or
- (c) the date a party terminates or withdraws from the agreement. 2002, c. 24, Sched. B, s. 11.

Same

(2) For greater certainty, a person or entity that provides resolution of claims or assistance in resolving claims, on an impartial basis, is an independent third party no matter how it is funded. 2006, c. 21, Sched. D, s. 1.

Section Amendments with date in force (d/m/y) [+]**Successors**

12 (1) For the purpose of clause 5 (1) (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. 2002, c. 24, Sched. B, s. 12 (1).

Principals and agents

(2) For the purpose of clause 5 (1) (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. 2002, c. 24, Sched. B, s. 12 (2).

Same

(3) The day on which a predecessor or agent first ought to have known of the matters referred to in clause 5 (1) (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. 2002, c. 24, Sched. B, s. 12 (3).

Acknowledgments

13 (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 act or omission on which the claim is based shall be deemed to have taken place on the day on which the acknowledgment was made. 2002, c. 24, Sched. B, s. 13 (1).

Interest

(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. 2002, c. 24, Sched. B, s. 13 (2).

Collateral

(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. 2002, c. 24, Sched. B, s. 13 (3).

Realization

(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. 2002, c. 24, Sched. B, s. 13 (4).

Redemption

(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. 2002, c. 24, Sched. B, s. 13 (5).

Trustees

(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. 2002, c. 24, Sched. B, s. 13 (6).

Personal property

(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. 2002, c. 24, Sched. B, s. 13 (7).

Liquidated sum

(8) Subject to subsections (9) 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. 2002, c. 24, Sched. B, s. 13 (8).

Restricted application

(9) 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. 2002, c. 24, Sched. B, s. 13 (9).

Same

(10) 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. 2002, c. 24, Sched. B, s. 13 (10).

Same

(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 (10). 2002, c. 24, Sched. B, s. 13 (11).

Notice of possible claim

14 (1) A person against whom another person may have a claim may serve a notice of possible claim on the other person. 2002, c. 24, Sched. B, s. 14 (1).

Contents

(2) A notice of possible claim shall be in writing and signed by the person issuing it or that person's lawyer, and shall,

- (a) describe the injury, loss or damage that the issuing person suspects may have occurred;
- (b) identify the act or omission giving rise to the injury, loss or damage;
- (c) indicate the extent to which the issuing person suspects that the injury, loss or damage may have been caused by the issuing person;
- (d) state that any claim that the other person has could be extinguished because of the expiry of a limitation period; and
- (e) state the issuing person's name and address for service. 2002, c. 24, Sched. B, s. 14 (2).

Effect

(3) The fact that a notice of possible claim has been served on a person may be considered by a court in determining when the limitation period in respect of the person's claim began to run. 2002, c. 24, Sched. B, s. 14 (3).

Exception

(4) Subsection (3) does not apply to a person who is not represented by a litigation guardian in relation to the claim and who, when served with the notice,

- (a) is a minor; or
- (b) is incapable of commencing a proceeding because of his or her physical, mental or psychological condition. 2002, c. 24, Sched. B, s. 14 (4).

Acknowledgment

(5) A notice of possible claim is not an acknowledgment for the purpose of section 13. 2002, c. 24, Sched. B, s. 14 (5).

Admission

(6) A notice of possible claim is not an admission of the validity of the claim. 2002, c. 24, Sched. B, s. 14 (6).

ULTIMATE LIMITATION PERIODS

Ultimate limitation periods

15 (1) Even if the limitation period established by any other section of this Act in respect of a claim has not expired, no proceeding shall be commenced in respect of the claim after the expiry of a limitation period established by this section. 2002, c. 24, Sched. B, s. 15 (1).

General

(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. 2002, c. 24, Sched. B, s. 15 (2).

Exception, purchasers for value

(3) Despite subsection (2), no proceeding against a purchaser of personal property for value acting in good faith shall be commenced in respect of conversion of the property after the second anniversary of the day on which the property was converted. 2002, c. 24, Sched. B, s. 15 (3).

Period not to run

(4) The limitation period established by subsection (2) does not run during any time in which,

(a) the person with the claim,

(i) is incapable of commencing a proceeding in respect of the claim because of his or her physical, mental or psychological condition, and

(ii) is not represented by a litigation guardian in relation to the claim;

(b) the person with the claim is a minor and is not represented by a litigation guardian in relation to the claim; or

(c) the person against whom the claim is made,

(i) 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

(ii) wilfully misleads the person with the claim as to the appropriateness of a proceeding as a means of remedying the injury, loss or damage. 2002, c. 24, Sched. B, s. 15 (4).

Burden

(5) The burden of proving that subsection (4) applies is on the person with the claim. 2002, c. 24, Sched. B, s. 15 (5); 2016, c. 2, Sched. 2, s. 3.

Day of occurrence

(6) 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 an act or omission in respect of a demand obligation, the first day on which there is a failure to perform the obligation, once a demand for the performance is made. 2002, c. 24, Sched. B, s. 15 (6); 2008, c. 19, Sched. L, s. 2 (1).

Application, demand obligations

(7) Clause (6) (c) applies in respect of every demand obligation created on or after January 1, 2004. 2008, c. 19, Sched. L, s. 2 (2).

Section Amendments with date in force (d/m/y) [+]

NO LIMITATION PERIOD

No limitation period

16 (1) There is no limitation period in respect of,

- (a) a proceeding for a declaration if no consequential relief is sought;
- (b) a proceeding to enforce an order of a court, or any other order that may be enforced in the same way as an order of a court;
- (c) a proceeding to obtain support under the *Family Law Act* or to enforce a provision for support or maintenance contained in a contract or agreement that could be filed under section 35 of that Act;
- (d) REVOKED: 2017, c. 2, Sched. 5, s. 14 (1);
- (e) a proceeding under section 8 or 11.2 of the *Civil Remedies Act, 2001*;
- (f) a proceeding by a debtor in possession of collateral to redeem it;
- (g) a proceeding by a creditor in possession of collateral to realize on it;
- (h) a proceeding based on a sexual assault;
- (h.1) a proceeding based on any other misconduct of a sexual nature if, at the time of the misconduct, the person with the claim was a minor or any of the following applied with respect to the relationship between the person with the claim and the person who committed the misconduct:
 - (i) the other person had charge of the person with the claim,
 - (ii) the other person was in a position of trust or authority in relation to the person with the claim,
 - (iii) the person with the claim was financially, emotionally, physically or otherwise dependent on the other person;
- (h.2) a proceeding based on an assault if, at the time of the assault, the person with the claim was a minor or any of the following applied with respect to the relationship between the person with the claim and the person who committed the assault:
 - (i) they had an intimate relationship,
 - (ii) the person with the claim was financially, emotionally, physically or otherwise dependent on the other person;
- (i) a proceeding to recover money owing to the Crown in respect of,
 - (i) fines, taxes and penalties, or
 - (ii) interest that may be added to a tax or penalty under an Act;
- (j) a proceeding described in subsection (2) that is brought by,
 - (i) the Crown, or
 - (ii) a delivery agent under the *Ontario Disability Support Program Act, 1997* or the *Ontario Works Act, 1997*; or
- (k) a proceeding to recover money owing in respect of student loans, medical resident loans, awards or grants made under the *Ministry of Training, Colleges and Universities Act*, the *Canada Student Financial Assistance Act* or the *Canada Student Loans Act*. 2002, c. 24, Sched. B, s. 16 (1); 2007, c. 13, s. 44 (1); 2010, c. 1, Sched. 14, s. 1; 2016, c. 2, Sched. 2, s. 4 (1); 2017, c. 2, Sched. 5, s. 14 (1).

Same

(1.1) Clauses (1) (h), (h.1) and (h.2) apply to a proceeding whenever the act on which the claim is based occurred and regardless of the expiry of any previously applicable limitation period, subject to subsection (1.2). 2016, c. 2, Sched. 2, s. 4 (2).

Same

(1.2) Subsection (1.1) applies to a proceeding that was commenced before the day subsection 4 (2) of Schedule 2 to the *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)*, 2016 came into force, unless the proceeding,

- (a) was dismissed by a court and no further appeal is available; or
- (b) was settled by the parties and the settlement is legally binding. 2016, c. 2, Sched. 2, s. 4 (2).

Same

(1.3) For greater certainty, clauses (1) (h), (h.1) and (h.2) are not limited in any way with respect to the claims that may be made in the proceeding in relation to the applicable act, which may include claims for negligence, for breach of fiduciary or any other duty or for vicarious liability. 2016, c. 2, Sched. 2, s. 4 (2).

Same

(2) Clause (1) (j) applies to proceedings in respect of claims relating to,

- (a) the administration of social, health or economic programs; or
- (b) the provision of direct or indirect support to members of the public in connection with social, health or economic policy. 2002, c. 24, Sched. B, s. 16 (2).

Same

(3) Without limiting the generality of subsection (2), clause (1) (j) applies to proceedings in respect of claims for,

- (a) the recovery of social assistance payments, student loans, awards, grants, contributions and economic development loans; and
- (b) the reimbursement of money paid in connection with social, health or economic programs or policies as a result of fraud, misrepresentation, error or inadvertence. 2002, c. 24, Sched. B, s. 16 (3).

Conflict with s. 15

(4) This section and section 17 prevail over anything in section 15. 2002, c. 24, Sched. B, s. 16 (4).

Section Amendments with date in force (d/m/y) [+]**Undiscovered environmental claims**

17 There is no limitation period in respect of an environmental claim that has not been discovered. 2002, c. 24, Sched. B, s. 17.

GENERAL RULES

Contribution and indemnity

18 (1) For the purposes of subsection 5 (2) and section 15, in the case of a claim by one alleged wrongdoer against another for contribution and indemnity, the day on which the first alleged wrongdoer was served with the claim in respect of which contribution and indemnity is sought shall be deemed to be the day the act or omission on which that alleged wrongdoer's claim is based took place. 2002, c. 24, Sched. B, s. 18 (1).

Application

(2) Subsection (1) applies whether the right to contribution and indemnity arises in respect of a tort or otherwise. 2002, c. 24, Sched. B, s. 18 (2).

Other Acts, etc.

19 (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 January 1, 2004, and

(ii) incorporates by reference a provision listed in the Schedule to this Act. 2002, c. 24, Sched. B, s. 19 (1); 2008, c. 19, Sched. L, s. 3.

Act prevails

(2) Subsection (1) applies despite any other Act. 2002, c. 24, Sched. B, s. 19 (2).

Interpretation

(3) The fact that a provision is listed in the Schedule shall not be construed as a statement that the limitation period established by the provision would otherwise apply to a claim as defined in this Act. 2002, c. 24, Sched. B, s. 19 (3).

Same

(4) 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. 2002, c. 24, Sched. B, s. 19 (4).

Period not to run

(5) Sections 6, 7 and 11 apply, with necessary modifications, to a limitation period established by a provision referred to in subsection (1). 2002, c. 24, Sched. B, s. 19 (5).

Section Amendments with date in force (d/m/y) [+]

Statutory variation of time limits

20 This Act does not affect the extension, suspension or other variation of a limitation period or other time limit by or under another Act. 2002, c. 24, Sched. B, s. 20.

Adding party

21 (1) If a limitation period in respect of a claim against a person has expired, the claim shall not be pursued by adding the person as a party to any existing proceeding. 2002, c. 24, Sched. B, s. 21 (1).

Misdescription

(2) Subsection (1) does not prevent the correction of a misnaming or misdescription of a party. 2002, c. 24, Sched. B, s. 21 (2).

Limitation periods apply despite agreements

22 (1) A limitation period under this Act applies despite any agreement to vary or exclude it, subject only to the exceptions in subsections (2) to (6). 2006, c. 21, Sched. D, s. 2.

Exception

(2) A limitation period under this Act may be varied or excluded by an agreement made before January 1, 2004. 2006, c. 21, Sched. D, s. 2.

Same

(3) A limitation period under this Act, other than one established by section 15, may be suspended or extended by an agreement made on or after October 19, 2006. 2006, c. 21, Sched. D, s. 2; 2008, c. 19, Sched. L, s. 4 (1).

Same

(4) A limitation period established by section 15 may be suspended or extended by an agreement made on or after October 19,

2006, but only if the relevant claim has been discovered. 2006, c. 21, Sched. D, s. 2; 2008, c. 19, Sched. L, s. 4 (1).

Same

(5) The following exceptions apply only in respect of business agreements:

1. A limitation period under this Act, other than one established by section 15, may be varied or excluded by an agreement made on or after October 19, 2006.
2. A limitation period established by section 15 may be varied by an agreement made on or after October 19, 2006, except that it may be suspended or extended only in accordance with subsection (4). 2006, c. 21, Sched. D, s. 2; 2008, c. 19, Sched. L, s. 4 (1).

Definitions

(6) In this section,

“business agreement” means an agreement made by parties none of whom is a consumer as defined in the *Consumer Protection Act, 2002*; (“accord commercial”)

“vary” includes extend, shorten and suspend. (“modifier”) 2006, c. 21, Sched. D, s. 2; 2008, c. 19, Sched. L, s. 4 (2).

Section Amendments with date in force (d/m/y) [+]

Conflict of laws

23 For the purpose of applying the rules regarding conflict of laws, the limitations law of Ontario or any other jurisdiction is substantive law. 2002, c. 24, Sched. B, s. 23.

Transition

Definition

24 (1) In this section,

“former limitation period” means the limitation period that applied in respect of the claim before January 1, 2004. 2002, c. 24, Sched. B, s. 24 (1); 2008, c. 19, Sched. L, s. 5 (1, 2).

Application

(2) Subject to subsection (2.1), this section applies to claims based on acts or omissions that took place before January 1, 2004 and in respect of which no proceeding has been commenced before that date. 2002, c. 24, Sched. B, s. 24 (2); 2008, c. 19, Sched. L, s. 5 (4); 2016, c. 2, Sched. 2, s. 5 (1).

Exception

(2.1) This section does not apply to a claim in respect of which clause 16 (1) (h), (h.1) or (h.2) applies. 2016, c. 2, Sched. 2, s. 5 (2).

Former limitation period expired

(3) If the former limitation period expired before January 1, 2004, no proceeding shall be commenced in respect of the claim. 2002, c. 24, Sched. B, s. 24 (3); 2008, c. 19, Sched. L, s. 5 (3).

Former limitation period unexpired

(4) If the former limitation period did not expire before January 1, 2004 and if no limitation period under this Act would apply were the claim based on an act or omission that took place on or after that date, there is no limitation period. 2002, c. 24, Sched. B, s. 24 (4); 2008, c. 19, Sched. L, s. 5 (5).

Same

(5) If the former limitation period did not expire before January 1, 2004 and if a limitation period under this Act would apply were

the claim based on an act or omission that took place on or after that date, the following rules apply:

1. If the claim was not discovered before January 1, 2004, this Act applies as if the act or omission had taken place on that date.
2. If the claim was discovered before January 1, 2004, the former limitation period applies. 2002, c. 24, Sched. B, s. 24 (5); 2008, c. 19, Sched. L, s. 5 (3, 6, 7).

No former limitation period

(6) If there was no former limitation period and if a limitation period under this Act would apply were the claim based on an act or omission that took place on or after January 1, 2004, the following rules apply:

1. If the claim was not discovered before January 1, 2004, this Act applies as if the act or omission had taken place on that date.
2. If the claim was discovered before January 1, 2004, there is no limitation period. 2002, c. 24, Sched. B, s. 24 (6); 2008, c. 19, Sched. L, s. 5 (3, 8).

(7) REPEALED: 2016, c. 2, Sched. 2, s. 5 (3).

Claims re payments alleged to be *ultra vires*

(7.1) For the purposes of this section, clause 45 (1) (g) of the *Limitations Act*, as it read immediately before its repeal, applies to a claim respecting amounts paid to the Crown or to another public authority for which it is alleged that no valid legal authority existed at the time of payment. 2008, c. 19, Sched. L, s. 5 (9).

Agreements

(8) This section is subject to any agreement to vary or exclude a limitation period that was made before January 1, 2004. 2002, c. 24, Sched. B, s. 24 (8); 2008, c. 19, Sched. L, s. 5 (10).

Section Amendments with date in force (d/m/y) [+]

25-49 OMITTED (AMENDS OR REPEALS OTHER ACTS). 2002, c. 24, Sched. B, ss. 25-49.

50 OMITTED (AMENDS THE SCHEDULE TO THIS ACT). 2002, c. 24, Sched. B, s. 50.

51 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 2002, c. 24, Sched. B, s. 51.

52 OMITTED (ENACTS SHORT TITLE OF THIS ACT). 2002, c. 24, Sched. B, s. 52.

**SCHEDULE
(SECTION 19)**

Act	Provision
Arbitration Act, 1991	subsection 52 (3)
Assignments and Preferences Act	subsections 26 (2) and 27 (2)
Business Corporations Act	subsections 157 (2), 185 (18) and (19), 188 (9), (13) and (14), and 189 (5)
Business Practices Act	subsection 4 (5)
City of Toronto Act, 2006	subsections 214 (4), 250 (2), 270 (4) and 351 (4)
Civil Remedies Act, 2001	subsections 3 (5) and 13 (7)

Commodity Futures Act	section 60.4
Community Small Business Investment Funds Act, 1992	subsections 40 (8) and (9)
Construction Lien Act	sections 31 and 36
Corporations Act	subsection 37 (2)
Creditors' Relief Act, 2010	subsection 12 (1)
Drainage Act	section 111
Education Act	subsection 218 (2) and subsection 11 (3) of Schedule 1
Election Act	subsection 99 (4)
Environmental Bill of Rights, 1993	section 102
Environmental Protection Act	subsection 108 (1)
Estates Act	subsections 44 (2) and 45 (2) and section 47
Estates Administration Act	subsection 17 (5)
Expropriations Act	section 43
Family Law Act	subsection 7 (3)
Fines and Forfeitures Act	subsection 6 (2)
Forestry Workers Lien for Wages Act	subsections 8 (1) and 26 (1)
Fuel Tax Act	subsection 8 (13)
Gasoline Tax Act	subsection 5 (13)
Income Tax Act	section 38
Insurance Act	section 148, statutory condition 14, section 259.1 and section 281.1
International Commercial Arbitration Act, 2017	section 10
Libel and Slander Act	section 6
Liquor Licence Act	subsection 44.1 (4)
Mortgages Act	subsections 21 (2) and 54 (2)
Municipal Act, 2001	subsections 273 (5), 380 (4) and 415 (2)
Municipal Conflict of Interest Act	subsections 9 (1) and (3)
Municipal Elections Act, 1996	subsections 58 (2), 63 (1), 80 (6) and 83 (2)
Ontario Home Ownership Savings Plan Act	section 18
Personal Property Security Act	subsections 44 (13) and (14)
Prohibiting Profiting from Recounting Crimes Act, 2002	subsections 4 (5) and 6 (6)
Public Lands Act	subsection 34 (3)
Reciprocal Enforcement of Judgments Act	subsection 2 (1)
Reciprocal Enforcement of Judgments (U.K.) Act	paragraph 1 of article iii of the Schedule
Securities Act	section 129.1, subsection 136 (6) and sections 138 and 138.14
Succession Law Reform Act	section 61
Taxation Act, 2007	section 139
Tile Drainage Act	subsection 2 (3)

Tobacco Damages and Health Care Costs Recovery Act, 2009	subsection 6 (1)
Tobacco Tax Act	subsections 6 (10) and 24 (5)
Trustee Act	subsection 38 (3)

2002, c. 24, Sched. B, Sched.; 2002, c. 24, Sched. B, s. 50; 2004, c. 16, Sched. D, Table; 2004, c. 31, Sched. 22, s. 1; 2006, c. 32, Sched. C, s. 29; 2007, c. 13, s. 44 (2); 2008, c. 19, Sched. V, s. 4; 2009, c. 13, s. 12; 2009, c. 33, Sched. 21, s. 5; 2010, c. 16, Sched. 4, s. 27; 2015, c. 20, Sched. 39, s. 5; 2017, c. 2, Sched. 3, s. 6; 2017, c. 2, Sched. 5, s. 14 (2); 2017, c. 34, Sched. 12, s. 11.

Note: On March 1, 2019, the day named by proclamation of the Lieutenant Governor, the Schedule to the Act is amended by striking out “subsections 9 (1) and (3)” under the column heading “Provision” opposite “Municipal Conflict of Interest Act” under the column heading “Act” and substituting “subsections 8 (2) and (6)”. (See: 2017, c. 10, Sched. 4, s. 7)

Note: On July 1, 2018, the day named by proclamation of the Lieutenant Governor, the Schedule to the Act is amended by striking out “*Construction Lien Act*” in the column titled “Act” and substituting “*Construction Act*”. (See: 2017, c. 24, s. 77 (1))

Note: On October 1, 2019, the day named by proclamation of the Lieutenant Governor, the Schedule to the Act is amended by striking out “sections 31 and 36” in the column titled “Provision” and substituting “subsections 13.18 (2) and 13.20 (2) and sections 31 and 36”. (See: 2017, c. 24, s. 77 (2))

Section Amendments with date in force (d/m/y) [+]

Français

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

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