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Alberta's Limitation Laws

October 2016



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This booklet is intended as a basic guide for persons who may be affected by the Alberta *Limitations Act*. This guide should not be regarded as a substitute for specific legal advice. Persons who require legal advice should consult with legal counsel. A copy of the Act is included for your convenience.

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Introduction

The full text of the *Limitations Act* is found in Appendix 1 to this guide, including amendments proclaimed in force up to December 2017. The Act provides a formula for calculating limitation periods that is applicable to most actions. Although the formula appears straightforward, its implications may not be immediately recognized.

A limitation period is the period of time within which a civil action must be commenced. A person with a civil claim (for example, damages for personal injury) will lose the right to bring the claim, and therefore to recover any damages and other relief, if he or she does not initiate legal action within the specified period of time. In Alberta, as in most provinces in Canada, some limitation periods are found in legislation specific to the nature of the claim (e.g., *Insurance Act*), as well as in a uniform Limitations Act that generally covers all claims except those specifically addressed in other legislation.

The 2/10 Formula

The *Limitations Act* provides a simple formula which governs most claims. An action for what is described as a remedial order must be commenced within either (i) two years after the person making the claim knew or ought to have known of the claim, or (ii) ten years after the claim arose, whichever period first expires. Exceptions are provided where they are seen as unjust to apply the formula strictly.

The first part of the formula, the two-year provision, depends on a statutory rule of discoverability. Time starts to run under this provision from the date that the claimant knew or ought to have known that (i) the injury occurred; (ii) the injury was a result of the defendant's conduct; and (iii) the injury warranted bringing an action. This imposes a somewhat objective test, and can start the clock running prior to the date when one actually uncovers the problem.

The second part of the formula, the ten-year ultimate limitation period, can be the most troublesome to determine. The provisions which identify this limitation period refer to a claim arising on the date when the particular conduct or act occurred, not when the injury or damage might have been suffered. As such, negligent acts which give rise to injury or damage that may not occur until years later could well be statute-barred. An example of such shortening could be a claim for negligence in the design or construction of buildings, where a failure of the structure or building may not occur until a decade or more later. Such claims would appear to be statute-barred if not commenced at the latest within ten years of the completion of the negligent design or construction of the structure or building, regardless of the state of an injured person's knowledge.

In certain circumstances, the Act delays commencement of the ten-year period. Where there has been a claim or claims based on a breach of duty resulting from "a continuous course of conduct or a series of related acts or omissions," time does not start to run until the conduct terminates or the last act or omission occurs. The Alberta Court of Appeal held that a failure to pay royalty payments did not fall under this exception as being a continuing course of conduct or a series of related acts or omissions: *Meek Trust v San Juan Resources* (ABCA, 2005). As such, a claim for miscalculations in the periodic payments could go back only ten years.

There is also a set of sub-rules concerning the rights of successors and assignees of claims, the acquisition of knowledge by a principal through an agent, and the position of personal representatives in claims held by deceased persons, which are generally straightforward. Section 6 allows claims to be added to proceedings previously commenced either through a new pleading or an amendment to the pleadings notwithstanding the expiration of the relevant limitation period. Alberta courts apply the general principle that discretion to amend a claim is to be exercised generously, and amendment should be allowed, no matter how careless or late, unless there is prejudice to the other side that cannot be repaired (*Rabbit Hill Recreations Inc v Stetler*, ABQB, 2009). Nonetheless, true strangers to an action cannot be added as claimants after expiry of the limitation period (*Wong v Voong*, ABCA, 2004).



Exceptions

As noted, there are a few exceptions to the formula and standardization of limitation law which is, undoubtedly, a welcome feature. Among those few claims which are treated differently are claims for the possession of real property, actions on judgments and actions by aboriginal peoples. Limitation periods found in other legislation are also preserved.

The *Limitations Act* provides similar treatment to allow the limitation period to be extended where, for example, there has been concealment by fraudulent conduct or where there is an agreement or acknowledgment (by part payment or otherwise) in respect of the claim. Minor plaintiffs are not subject to the same limitation periods as an adult plaintiff. The Act postpones the start of the limitation period for all minors until they reach 18 years of age. Potential defendants are allowed a means of “notice” whereby they can notify the Public Trustee that a minor plaintiff may have a potential claim against the defendant. This, in turn, may then start the running of the two-year limitation period. There is essentially no limitation period against dependent adults, or adults under a disability to the extent they are unable to make reasonable decisions regarding their claim. The Alberta Court of Appeal in *Gayton v Lacasse* (ABCA, 2010) clarified the test for disability pursuant to s 5 of the Act. The Court made clear that the burden on the Plaintiff to argue he or she has a disability at a summary judgment application is not an onerous one.

The most significant exception may prove to be in respect of declaratory relief. The 2/10 formula applies to claims in which a claimant seeks a remedial order, which is defined as excluding declarations. The Alberta Court of Appeal considered the nature of a “remedial order” in two companion cases and found that an action for an *in rem* mortgage remedy was an action for a remedial order, not an action for declaratory relief (*Daniels v Mitchell; Blair v Desharmais*, ABCA, 2005). Therefore, such actions are subject to the limitation periods in the Act.

Personal Injury/Property Damage Claims

The principal impact of the *Limitations Act* on claims for personal injury or property damage is to impose an ultimate limitation period of ten years. This ultimate date is significantly shorter than that imposed in many other jurisdictions which have similar rules. However, the *Limitations Act* does extend discoverability to all personal injury or property damage claims. This change in discoverability has significantly extended the limitation period in some cases. There is a recent trend in Alberta courts to be quite generous to plaintiffs in determining the limitation periods for personal injury cases. The Alberta Court of Appeal in *Gayton v Lacasse* (ABCA, 2010) emphasized the need to focus the inquiry on when the plaintiff discovers the injury, not the discoverability of the cause of action for the injury. This case provides the general rule that if plaintiffs have an expert medical opinion stating that they are unable or incompetent to make decisions as to when to commence litigation in the interim period between when the alleged wrongs occurred and when the action was commenced, the beginning of the limitation period may be postponed.

Contract/Economic Tort Claims

In contrast to personal injury or property damage claims, the *Limitations Act* significantly reduces the limitation period governing much of commercial litigation. The Act effectively imposes a two-year limitation period for most commercial claims. Many, if not most, claims in commercial litigation are readily known or discoverable, and little time elapses between the breach or damage or injury and its discovery. The two-year limitation period running from discoverability applies to such claims. Most claims for breach of contract or an economic tort will, therefore, likely have to be commenced within two years from the breach or injury or damage occurring. The limitation period for such claims will require particular care to ensure that personnel and diary systems are alerted to this restricted limitation period.

The Court emphasized that parties are indeed responsible for monitoring their own contracts in *Luscar Ltd v Pembina Resources* (ABCA, 1994). If a company has a contract and knows of an incident that pertains to the contract, it is the company's responsibility to identify a breach of contract on a timely basis.

In *Yugraneft v Rexx Management* (SCC, 2010) the Supreme Court of Canada held that an application for recognition and enforcement of a foreign arbitral award is an application for a remedial order and consequently, the *Limitations Act* applied. Furthermore, the two-year limitation period in section 3 of the *Limitations Act* applied, instead of the ten-year limitation period in section 11.

Renewal Practices

The intent of the Act is that the limitation period time for demand obligations runs from the time a demand is made, not from the time documents like promissory notes and guarantees are executed. However, for those who may regard the risk of a contrary interpretation as too great to ignore, the prudent practice may be either to obtain renewal agreements or acknowledgments within the two-year period or to take advantage of the provision in the Act which expressly permits parties to extend any applicable limitation period, as discussed below.

Contracting Out

Prior to the *Limitations Act*, it had generally been recognized that a contract to provide a shorter limitation period than would otherwise exist was a valid and enforceable legal obligation. Section 7 of the *Limitations Act* renders such contracts unenforceable. Courts have been uneven in applying section 7 to conventional time-limited rights, such as warranties. Various drafting techniques have been suggested to avoid this prohibition, from simply making a claim dependent upon a notice to a more elaborate indemnity scheme or survival period. It may also be remembered that one can, where appropriate, select a different governing law.

The *Limitations Act* expressly provides in section 7 that a limitation period may be extended by agreement. Given the practical implications of the two-year limitation period for many commercial transactions, consideration should be given to incorporating provisions to extend the two-year or ten-year limitation periods in contracts. It may be in the interest of both parties that neither be forced to act precipitously in commencing legal action.



Multiple Limitation Periods

An action may be governed by more than one limitation period, if the facts giving rise to a claim occurred in another jurisdiction. Section 12 of the Act provides that where an action is brought in Alberta, but the law of another province, state or country applies to the claim, both the foreign limitation law and Alberta's limitation law apply.

Limitation Audit

A limitation audit is advisable to ensure internal limitation systems are consistent with the Act. Incorporation of clauses to extend limitation periods should also be considered when drafting new contracts. Clauses which purport to, or could, shorten a limitation period should be reviewed to assess whether they contravene the Act. Additionally, one will need to be careful that two or more limitation periods may apply in those disputes involving the laws of jurisdictions other than Alberta, and allow sufficient time to obtain appropriate advice.

Record Keeping

Given the ten-year ultimate limitation period, many organizations have decided that all records be kept for at least ten years. If a minor (under 18 years of age) is involved, records should now be kept for a minimum of two years, and perhaps for ten years, following the date the minor reaches adulthood. If a dependent adult or adult who is likely under a mental disability is involved, records should be kept indefinitely.

Questions and Answers

Can you be certain limitation periods for claims against you have expired?

The only certainty is the ten-year period, but even then, there are exceptions, e.g. concealment, disability, etc. You will often not know when a claim arose, e.g., when the breach of duty occurred, so there is even some degree of risk in calculating when the ultimate limitation period of ten years has expired. And a claim may fall within the extensions of this ten-year period, for example, if it involves a continuing course of conduct. The courts may also retain discretion to extend the ten-year period in exceptional circumstances. Even if a limitation period has expired, you may be added as a defendant to an existing claim if certain factors are satisfied (section 6 of the Act).

Does the discoverability rule prevent claims being barred until they can reasonably be known?

Under the two-year discoverability rule, time would not start running until the claim was, or should have been, known. However, the ten-year ultimate limitation period may cause some claims to be statute-barred before the two-year limitation period has expired or even starts to run. An example is a claim for negligence in the construction of buildings, where failure of the structure may not occur until more than a decade later. Such a claim may be statute-barred if not commenced within ten years of the completion of construction of the building, regardless of one's ability to discover the defect.

What is the limitation period for claims based on a sexual assault or other sexual misconduct?

There is no limitation period for a claim based on sexual assault, as stated in s 3.1, added in 2017 to the *Limitations Act*. For claims related to other sexual misconduct, there is also no limitation period where the plaintiff was

- a. a minor,
- b. in an intimate relationship with the person who committed the misconduct,
- c. physically, financially or emotionally dependent on the person who committed the misconduct, or
- d. under a disability.

What is a limitation audit and is it necessary?

A limitation audit involves a review of both existing and potential claims to ensure they are commenced within the appropriate time frame, and a review of the process for identifying and diarizing new claims, to ensure that the practices and procedures match. Some form of a limitations audit is important for every business.



Limitations Act

Chapter L-12

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

- 1 In this Act,
- a. “claim” means a matter giving rise to a civil proceeding in which a claimant seeks a remedial order;
 - b. “claimant” means the person who seeks a remedial order;
 - c. “defendant” means a person against whom a remedial order is sought;
 - d. “duty” means any duty under the law;
 - e. “injury” means
 - i. personal injury,
 - ii. property damage,
 - iii. economic loss,
 - iv. non performance of an obligation, or
 - v. in the absence of any of the above, the breach of a duty;
 - f. “law” means the law in force in the Province, and includes
 - i. statutes,
 - ii. judicial precedents, and
 - iii. regulations;
 - g. “limitation provision” includes a limitation period or notice provision that has the effect of a limitation period;
 - h. “person under disability” means
 - i. a represented adult as defined in the *Adult Guardianship and Trusteeship Act* or a person in respect of whom a certificate of incapacity is in effect under the *Public Trustee Act*, or
 - ii. an adult who is unable to make reasonable judgments in respect of matters relating to a claim;
 - i. “remedial order” means a judgment or an order made by a court in a civil proceeding requiring a defendant to comply with a duty or to pay damages for the violation of a right, but excludes
 - i. a declaration of rights and duties, legal relations or personal status,
 - ii. the enforcement of a remedial order,
 - iii. judicial review of the decision, act or omission of a person, board, commission, tribunal or other body in the exercise of a power conferred by statute or regulation, or
 - iv. a writ of habeas corpus;
 - j. “right” means any right under the law;
 - k. “security interest” means an interest in property that secures the payment or other performance of an obligation.

Application

2.
 1. This Act applies where a claimant seeks a remedial order in a proceeding commenced on or after March 1, 1999, whether the claim arises before, on or after March 1, 1999.
 2. Subject to sections 11 and 13, if, before March 1, 1999, the claimant knew, or in the circumstances ought to have known, of a claim and the claimant has not sought a remedial order before the earlier of
 - a. the time provided by the *Limitation of Actions Act*, RSA 1980 cL 15, that would have been applicable but for this Act, or
 - b. two years after the *Limitations Act*, SA 1996 cL-15.1, came into force,the defendant, on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim.
 - 2.1 With respect to a claim for the recovery of possession of land as defined in the *Limitation of Actions Act*, RSA 1980 cL 15, subsection (2) shall be read without reference to clause (b) of that subsection.
 3. Except as provided in subsection (4), this Act is applicable to any claim, including a claim to which this Act can apply arising under any law that is subject to the legislative jurisdiction of the Parliament of Canada, if
 - a. the remedial order is sought in a proceeding before a court created by the Province, or
 - b. the claim arose within the Province and the remedial order is sought in a proceeding before a court created by the Parliament of Canada.
 4. This Act does not apply where a claimant seeks
 - e. a remedial order based on adverse possession of real property owned by the Crown, or
 - f. a remedial order the granting of which is subject to a limitation provision in any other enactment of the Province.
 5. The Crown is bound by this Act.

RSA 2000 cL 12 s2;2007 c22 s1

Limitation periods

3.
 1. Subject to subsections (1.1) and (1.2) and sections 3.1 and 11, if a claimant does not seek a remedial order within
 - a. 2 years after the date on which the claimant first knew, or in the circumstances ought to have known,
 - i. that the injury for which the claimant seeks a remedial order had occurred,
 - ii. that the injury was attributable to conduct of the defendant, and
 - iii. that the injury, assuming liability on the part of the defendant, warrants bringing a proceeding,or
 - b. 10 years after the claim arose,

whichever period expires first, the defendant, on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim.



1.1 If a claimant who is liable as a tortfeasor in respect of injury does not seek a remedial order to recover contribution under section 3(1)(c) of the *Tortfeasors Act* against a defendant, whether as a joint tort-feasor or otherwise, within

- a. 2 years after
 - i. the later of
 - A. the date on which the claimant was served with a pleading by which a claim for the injury is brought against the claimant, and
 - B. the date on which the claimant first knew, or in the circumstances ought to have known, that the defendant was liable in respect of the injury or would have been liable in respect of the injury if the defendant had been sued within the limitation period provided by subsection (1) by the person who suffered the injury, if the claimant has been served with a pleading described in paragraph (A), or
 - ii. the date on which the claimant first had or in the circumstances ought to have had the knowledge described in subclause (i)(B), if the claimant has not been served with a pleading described in subclause (i)(A),
- or
- b. 10 years after the claim for contribution arose,

whichever period expires first, the defendant, on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim for contribution.

1.2 For greater certainty, no claim for contribution against a defendant in respect of damage referred to in section 3(1)(c) of the *Tortfeasors Act* is barred by the expiry of a limitation period within which the person who suffered that damage could seek a remedial order.

- 2.** The limitation period provided by subsection (1)(a) or (1.1)(a) begins
 - a. against a successor owner of a claim when either a predecessor owner or the successor owner of the claim first acquired or ought to have acquired the knowledge prescribed in subsection (1)(a) or (1.1)(a),
 - b. against a principal when either
 - i. the principal first acquired or ought to have acquired the knowledge prescribed in subsection (1)(a) or (1.1)(a), or
 - ii. an agent with a duty to communicate the knowledge prescribed in subsection (1)(a) or (1.1)(a) to the principal, first actually acquired that knowledge,
 - and
 - c. against a personal representative of a deceased person as a successor owner of a claim, at the earliest of the following times:
 - i. when the deceased owner first acquired or ought to have acquired the knowledge prescribed in subsection (1)(a) or (1.1)(a), if the deceased owner acquired the knowledge more than 2 years before the deceased owner's death;
 - ii. when the representative was appointed, if the representative had the knowledge prescribed in subsection (1)(a) or (1.1)(a) at that time;
 - iii. when the representative first acquired or ought to have acquired the knowledge prescribed in subsection (1)(a) or (1.1)(a), if the representative acquired the knowledge after being appointed.
- 3.** For the purposes of subsections (1)(b) and (1.1)(b),
 - a. a claim or any number of claims based on any number of breaches of duty, resulting from a continuing course of conduct or a series of related acts or omissions, arises when the conduct terminates or the last act or omission occurs;
 - b. a claim based on a breach of a duty arises when the conduct, act or omission occurs;

- c. a claim based on a demand obligation arises when a default in performance occurs after a demand for performance is made;
 - d. a claim in respect of a proceeding under the *Fatal Accidents Act* arises when the conduct that causes the death, on which the claim is based, occurs;
 - e. a claim for contribution arises when the claimant for contribution is made a defendant in respect of, or incurs a liability through the settlement of, a claim seeking to impose a liability on which the claim for contribution can be based, whichever first occurs;
 - f. a claim for a remedial order for the recovery of possession of real property arises when the claimant is dispossessed of the real property.
4. The limitation period provided by subsection (1)(a) does not apply where a claimant seeks a remedial order for possession of real property, including a remedial order under section 69 of the *Law of Property Act*.
 5. Under this section,
 - a. the claimant has the burden of proving that a remedial order was sought within the limitation period provided by subsection (1)(a) or (1.1)(a), and
 - b. the defendant has the burden of proving that a remedial order was not sought within the limitation period provided by subsection (1)(b) or (1.1)(b).
 6. The re-entry of a claimant to real property in order to recover possession of that real property is effective only if it occurs prior to the end of the 10 year limitation period provided by subsection (1)(b).
 7. If a person in possession of real property has given to the person entitled to possession of the real property an acknowledgment in writing of that person's title to the real property prior to the expiry of the 10 year limitation period provided by subsection (1)(b),
 - a. possession of the real property by the person who has given the acknowledgment is deemed, for the purposes of this Act, to have been possession by the person to whom the acknowledgment was given, and
 - b. the right of the person to whom the acknowledgment was given, or of a successor in title to that person, to take proceedings to recover possession of the real property is deemed to have arisen at the time at which the acknowledgment, or the last of the acknowledgments if there was more than one, was given.
 8. If the right to recover possession of real property first accrued to a predecessor in title of the claimant from whom the claimant acquired the title as a donee, proceedings to recover possession of the real property may not be taken by the claimant except within 10 years after the right accrued to that predecessor.

RSA 2000 cL 12 s3;2007 c22 s1;2014 c13 s4;2017 c7 s2

No limitation period

- 3.1 1. There is no limitation period in respect of
 - a. a claim that relates to a sexual assault or battery,
 - b. a claim that relates to any misconduct of a sexual nature, other than a sexual assault or battery, if, at the time of the misconduct,
 - i. the person with the claim was a minor,
 - ii. the person with the claim was in an intimate relationship with the person who committed the misconduct,
 - iii. the person with the claim was dependent, whether financially, emotionally, physically or otherwise, on the person who committed the misconduct, or
 - iv. the person with the claim was a person under disability,
- or



- c. a claim that relates to an assault or battery, other than a sexual assault or battery, if, at the time of the assault or battery,
 - i. the person with the claim was a minor,
 - ii. the person with the claim was in an intimate relationship with the person who committed the assault or battery,
 - iii. the person with the claim was dependent, whether financially, emotionally, physically or otherwise, on the person who committed the assault or battery, or
 - iv. the person with the claim was a person under disability.
- 2. Subsection (1) applies to a claim in respect of an act that occurred before or after the coming into force of this section, regardless of the expiry of any previously applicable limitation period set out in section 3 or a predecessor of this Act.

2017 c7 s3

Concealment

- 4
 - 1. The operation of the limitation period provided by section 3(1)(b) or (1.1)(b) is suspended during any period of time that the defendant fraudulently conceals the fact that the injury for which a remedial order is sought has occurred.
 - 2. Under this section, the claimant has the burden of proving that the operation of the limitation period provided by section 3(1)(b) or (1.1)(b) was suspended.

RSA 2000 cL 12 s4;2014 c13 s4

Persons under disability

- 5
 - 1. The operation of the limitation periods provided by this Act is suspended during any period of time that the claimant is a person under disability.
 - 2. The claimant has the burden of proving that the operation of the limitation periods provided by this Act was suspended under this section.

RSA 2000 cL 12 s5;2002 c17 s4

Minors

- 5.1
 - 1. In this section,
 - a. “guardian” means a parent or guardian having actual custody of a minor;
 - b. “potential defendant” means a person against whom a minor may have a claim.
 - 2. Except as otherwise provided in this section, the operation of limitation periods provided by this Act is suspended during the period of time that the claimant is a minor.
 - 3. A potential defendant may cause the limitation periods provided by this Act to run against a minor by
 - a. delivering a notice to proceed in the prescribed form to
 - i. a guardian of the minor, if the minor has a guardian, and
 - ii. the Public Trustee,
 - and

- b. paying the Public Trustee's prescribed fee.
- 4. Where a potential defendant has complied with subsection (3), the notice to proceed takes effect and the limitation periods provided by this Act begin to run
 - a. on the date the notice to proceed is received by the Public Trustee, which must be shown in the notice delivered by the Public Trustee under subsection (6) (a) or (b), or
 - b. on the date determined by an order of a judge under subsection (7) or (8).
- 5. Where a potential defendant delivers a notice to proceed to the Public Trustee under subsection (3) and pays the Public Trustee's prescribed fee, the Public Trustee must
 - a. if the claimant has a guardian, make such inquiries as the Public Trustee considers necessary and practicable regarding the ability and intention of the claimant's guardian to act in the best interest of the minor regarding the claim, or
 - b. if the claimant does not have a guardian, apply to a judge of the Court of Queen's Bench, on notice to such persons as may be directed or approved by the judge, for directions.
- 6. After making the inquiries referred to in subsection (5) (a), the Public Trustee must do one of the following:
 - a. if satisfied as to the guardian's ability and intention to act in the best interest of the minor regarding the claim, deliver to the potential defendant and the guardian a notice in the prescribed form of the Public Trustee's decision not to intervene in the matter;
 - b. with the consent of the claimant's guardian, deliver to the potential defendant a notice in the prescribed form stating that the Public Trustee intends to act as litigation representative of the minor in relation to the claim;
 - c. if for any reason the Public Trustee thinks it necessary or appropriate to do so, apply to a judge of the Court of Queen's Bench, on notice to such persons as may be directed or approved by the judge, for directions.
- 7. On an application under subsection (5) (b), a judge may make an order
 - a. directing the Public Trustee to take no further steps in the matter and stipulating that the limitation periods provided by this Act continue to be suspended with respect to the minor despite subsection (3), or
 - b. doing all of the following:
 - i. stipulating that the limitation periods provided by this Act begin to run against the minor on a date specified in the order;
 - ii. authorizing and directing the Public Trustee to act as litigation representative of the minor;
 - iii. giving such authority and directions to the Public Trustee and any other person as may be necessary to ensure that the Public Trustee may effectively prosecute the claim on behalf of the minor.
- 8. On an application under subsection (6) (c), a judge may make an order
 - a. directing the Public Trustee to take no further steps in the matter and stipulating that the limitation periods provided by this Act
 - i. begin to run against the minor on a date specified in the order, or
 - ii. continue to be suspended with respect to the minor despite subsection (3),or
 - b. doing all of the following:
 - i. stipulating that the limitation periods provided by this Act begin to run against the minor on a date specified in the order;
 - ii. authorizing and directing the Public Trustee to act as litigation representative of the minor;
 - iii. giving such authority and directions to the Public Trustee, guardian, if any, and any other person as may be necessary to ensure that the Public Trustee may effectively prosecute the claim on behalf of the minor.



9. On an application by the Public Trustee under subsection (5)(b) or (6)(c), a judge may consider
 - a. the apparent seriousness of the minor's injury;
 - b. the apparent legal merits of the claim;
 - c. the views of the Public Trustee and the guardian, if any, as to whether the minor's best interest will be better served by pursuing or by not pursuing the claim;
 - d. the view of the minor regarding the claim, where the judge considers that the minor is able to appreciate the nature of the issue;
 - e. where the guardian or the minor is opposed to pursuing the claim, the apparent likelihood that the Public Trustee would be able to prosecute the claim effectively as litigation representative;
 - f. whether directing the Public Trustee to take no further steps and stipulating that the limitation periods provided by this Act continue to be suspended with respect to the minor is likely to cause serious prejudice to either the minor or the potential defendant, having regard to any matters that the judge considers relevant, including
 - i. the minor's age,
 - ii. whether the minor will be, or is likely to be, a person under disability on becoming an adult,
 - iii. whether it would be practicable to preserve relevant evidence during the period the limitation periods would be suspended, and
 - iv. any harm that may be suffered by the minor as a result of any delay in recovering compensation to which the minor may be entitled;
 - g. any other matters the judge considers relevant.
10. Where the Public Trustee makes an application to the Court of Queen's Bench under this section, no costs may be awarded against any party to the application.
11. Subsection (4) operates only in favour of a potential defendant on whose behalf the notice to proceed is delivered and only with respect to a claim arising out of the circumstances specified in the notice.
12. A notice to proceed delivered under this section is not an acknowledgment for the purposes of this Act and is not an admission for any purpose.
13. Subsections (3) to (12) do not apply where the potential defendant is a guardian of the minor.
14. Under this section, the claimant has the burden of proving that at any relevant point in time the claimant was a minor.
15. The Minister may make regulations prescribing
 - a. the form, contents and mode of a delivery of a notice to proceed or any other notice referred to in this section;
 - b. the fee to be paid by a potential defendant under subsection (3)(b).
16. This section applies where a claimant seeks a remedial order in a proceeding commenced after this section comes into force, regardless of when the claim arises, except that a defendant who would have had immunity from liability for a claim if the proceeding had been commenced immediately before this section came into force continues to have immunity from liability for that claim.

Claims added to a proceeding

6.
 1. Notwithstanding the expiration of the relevant limitation period, when a claim is added to a proceeding previously commenced, either through a new pleading or an amendment to pleadings, the defendant is not entitled to immunity from liability in respect of the added claim if the requirements of subsection (2), (3) or (4) are satisfied.
 2. When the added claim
 - a. is made by a defendant in the proceeding against a claimant in the proceeding, or
 - b. does not add or substitute a claimant or a defendant, or change the capacity in which a claimant sues or a defendant is sued,the added claim must be related to the conduct, transaction or events described in the original pleading in the proceeding.
 3. When the added claim adds or substitutes a claimant, or changes the capacity in which a claimant sues,
 - a. the added claim must be related to the conduct, transaction or events described in the original pleading in the proceeding,
 - b. the defendant must have received, within the limitation period applicable to the added claim plus the time provided by law for the service of process, sufficient knowledge of the added claim that the defendant will not be prejudiced in maintaining a defence to it on the merits, and
 - c. the court must be satisfied that the added claim is necessary or desirable to ensure the effective enforcement of the claims originally asserted or intended to be asserted in the proceeding.
 4. When the added claim adds or substitutes a defendant, or changes the capacity in which a defendant is sued,
 - a. the added claim must be related to the conduct, transaction or events described in the original pleading in the proceeding, and
 - b. the defendant must have received, within the limitation period applicable to the added claim plus the time provided by law for the service of process, sufficient knowledge of the added claim that the defendant will not be prejudiced in maintaining a defence to it on the merits.
 5. Under this section,
 - a. the claimant has the burden of proving
 - i. that the added claim is related to the conduct, transaction or events described in the original pleading in the proceeding, and
 - ii. that the requirement of subsection (3)(c), if in issue, has been satisfied,and
 - b. the defendant has the burden of proving that the requirement of subsection (3)(b) or (4)(b), if in issue, was not satisfied.

1996 cL 15.1 s6

Agreement

7.
 1. Subject to section 9, if an agreement expressly provides for the extension of a limitation period provided by this Act, the limitation period is altered in accordance with the agreement.
 2. An agreement that purports to provide for the reduction of a limitation period provided by this Act is not valid.

RSA 2000 cL 12 s7;2002 c17 s4



Acknowledgment and part payment

- 8
1. In this section, “claim” means a claim for the recovery, through the realization of a security interest or otherwise, of an accrued liquidated pecuniary sum, including, but not limited to a principal debt, rents, income and a share of estate property, and interest on any of them.
 2. Subject to subsections (3) and (4) and section 9, if a person liable in respect of a claim acknowledges the claim, or makes a part payment in respect of the claim, before the expiration of the limitation period applicable to the claim, the operation of the limitation period begins again at the time of the acknowledgment or part payment.
 3. A claim may be acknowledged only by an admission of the person liable in respect of it that the sum claimed is due and unpaid, but an acknowledgment is effective
 - a. whether or not a promise to pay can be implied from it, and
 - b. whether or not it is accompanied with a refusal to pay.
 4. When a claim is for the recovery of both a primary sum and interest on it, an acknowledgment of either obligation, or a part payment in respect of either obligation, is an acknowledgment of, or a part payment in respect of, the other obligation.

1996 cL 15.1 s8

Persons affected by exceptions for agreement, acknowledgment and part payment

- 9
1. An agreement and an acknowledgment must be in writing and signed by the person adversely affected.
 2. An agreement made by or with an agent has the same effect as if made by or with the principal.
 3. An acknowledgment or a part payment made by or to an agent has the same effect as if it were made by or to the principal.
 4. A person has the benefit of an agreement, an acknowledgment or a part payment only if it is made
 - a. with or to the person,
 - b. with or to a person through whom the person derives a claim, or
 - c. in the course of proceedings or a transaction purporting to be pursuant to the *Bankruptcy and Insolvency Act* (Canada).
 5. A person is bound by an agreement, an acknowledgment or a part payment only if
 - a. the person is a maker of it, or
 - b. the person is liable in respect of a claim
 - i. as a successor of a maker, or
 - ii. through the acquisition of an interest in property from or through a maker who was liable in respect of the claim.

1996 cL 15.1 s9

Acquiescence or laches

- 10 Nothing in this Act precludes a court from granting a defendant immunity from liability under the equitable doctrines of acquiescence or laches, notwithstanding that the defendant would not be entitled to immunity pursuant to this Act.

1996 cL 15.1 s10

Judgment for payment of money

- 11 If, within 10 years after the claim arose, a claimant does not seek a remedial order in respect of a claim based on a judgment or order for the payment of money, the defendant, on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim.

1996 cL 15.1 s11

Conflict of laws

- 12
1. The limitations law of Alberta applies to any proceeding commenced or sought to be commenced in Alberta in which a claimant seeks a remedial order.
 2. Notwithstanding subsection (1), where a proceeding referred to in subsection (1) would be determined in accordance with the law of another jurisdiction if it were to proceed, and the limitations law of that jurisdiction provides a shorter limitation period than the limitation period provided by the law of Alberta, the shorter limitation period applies.

RSA 2000 cL 12 s12;2007 c22 s1

Actions by aboriginal people

- 13 An action brought on or after March 1, 1999 by an aboriginal people against the Crown based on a breach of a fiduciary duty alleged to be owed by the Crown to those people is governed by the law on limitation of actions as if the *Limitation of Actions Act*, RSA 1980 cL 15, had not been repealed and this Act were not in force.

1996 cL 15.1 s13



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