

No. 91

3rd Session, 15th Legislature, Alberta
14 Elizabeth II

BILL 91

A Bill to amend the Law respecting Limitation of
Actions in Tort

HON. MR. MANNING

Explanatory Note

1. This Bill will amend chapter 177 of the Revised Statutes and a number of the other statutes for the purposes of

- (a) bringing together in one place a variety of statutory provisions which prescribe a time limit within which law suits based on certain wrongful acts may be started,
- (b) prescribing, as far as reasonably convenient, a standard time limit applicable to all those types of law suits, and
- (c) enacting certain remedial provisions to reduce the possibility of injustices resulting from the strict application of the time limits in all cases.

The changes in law are based on recommendations made by the Law Reform Committee of The Law Society of Alberta.

2. The provisions being struck out here are covered by the proposed new section 51—see clause 3 of this Bill.

3. Section 51 re-enacts the provisions struck out by clause 2 of this Bill and reduces the time limit for the types of actions referred to in clauses (f) and (g) from 3 to 2 years. This section will also apply to certain special types of actions which heretofore were dealt with under other Acts. These special provisions are repealed by clause 4 of this Bill. In some cases this will mean an increase in the time limit, e.g., the time limit for motor vehicle accident cases will increase from 1 to 2 years.

52. In certain cases injuring a person may amount to a breach of contract as well as being a tort, e.g., a public transportation company is under a contractual duty to carry a person in reasonable safety. As the time limit for contract actions is six years as compared to two years for tort, it can be a question of some consequence whether the action is brought in contract or in tort. This section provides a standard answer for the question.

BILL

No. 91 of 1966

An Act to amend the Law respecting Limitation of
Actions in Tort

(Assented to _____, 1966)

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

1. *The Limitation of Actions Act* is hereby amended.
2. Section 5, subsection (1) is amended by striking out clauses (c), (d) and (e).
3. The following Part is added after section 50:

PART IX

TORT AND RELATED ACTIONS

51. (1) Except as otherwise provided in this Part, an action for

- (a) defamation, or
 - (b) trespass to the person, assault, battery, wounding or other injury to the person, whether arising from an unlawful act or from negligence or from breach of a statutory duty, or
 - (c) false imprisonment, or
 - (d) malicious prosecution, or
 - (e) seduction, or
 - (f) trespass or injury to real property or chattels, whether direct or indirect and whether arising from an unlawful act or from negligence or from breach of a statutory duty, or
 - (g) the taking away, conversion or detention of chattels,
- may be commenced within two years after the cause of action arose, and not afterwards.

52. This Part applies to every action in which the damages claimed consist of or include damages in respect of injury to the person, whether the action is or may be founded on tort, breach of contract or breach of statutory duty.

53. The Trustee Act provides that

- (a) certain actions that could have been brought by a person who dies may be brought by his executor within one year of his death, and
- (b) certain actions that could have been brought against a person who dies may be brought against his estate within one year of his death.

This section increases the time to two years.

54. Where a person is killed through the fault of another The Fatal Accidents Act gives his wife and family an action for damages against the other person. The present time limit for bringing the action is one year from the death.

55. This section combines provisions presently found in four different Acts. It increases the time limit for actions against chiropractors from 6 months to 1 year. The time limits in the other cases are not changed. However, the cross-reference to sections 57 to 61 in this section (and the other sections) has the effect of enabling the extension of the time in certain cases. Under the present legislation these time limits are final.

56. This section does not change the time limit but does make the remedial provisions applicable to hospitals.

57. This is a re-enactment in this Part of section 6 of The Limitation of Actions Act with no change.

58. This is a re-enactment in this Part of section 47 of The Limitation of Actions Act with no change.

59. Subsection (1) is a re-enactment in this Part of section 8 of The Limitation of Actions Act. Subsection (2) is new and overrides subsection (1) in cases where there is some responsible person who can protect the interests of the person under disability. Under the present law a 2 year old child who was injured by the wrongful act of another person could wait until he was 23 before suing.

53. Except as provided in sections 57 to 61, an action that may be maintained after the death of a person, as provided in section 32 or 33 of *The Trustee Act*, may be commenced within two years from the date of the death of the person, and not afterwards.

54. Except as provided in sections 57 to 61, an action under *The Fatal Accidents Act* may be commenced within two years after the death of the person whose death gave rise to the cause of action under *The Fatal Accidents Act*, and not afterwards.

55. Except as provided in sections 57 to 61, an action against

- (a) a duly qualified medical practitioner registered under *The Medical Profession Act*, or
- (b) a dentist registered under *The Dental Association Act*, or
- (c) a chiropractor registered under *The Chiropractic Act*, or
- (d) a naturopath registered under *The Naturopathy Act*,

for negligence or malpractice by reason of professional services requested or rendered may be commenced within one year from the date when the professional services terminated in respect of the matter that is the subject of the complaint, and not afterwards.

56. Except as provided in sections 57 to 61, an action against an approved hospital within the meaning of *The Alberta Hospitals Act* in respect of negligence in providing a service in that hospital may be commenced within one year after the cause of action arose, and not afterwards.

57. Where the existence of a cause of action to which this Part applies has been concealed by the fraud of the person setting up this Part as a defence, the cause of action shall for the purposes of this Part be deemed to have arisen when the fraud was first known or discovered.

58. Where a cause of action to which this Part applies arises within the Province against a person who is out of the Province at the time it arises, the person entitled to the action may commence the action within two years after the return of the first mentioned person to the Province.

59. (1) Where a person entitled to bring an action to which this Part applies is under disability at the time the cause of action arises, he may commence the action at any time within two years from the date he ceased to be under disability.

60 This section covers the situation where several people may have claims against each other as a result of the same incident (e.g., a 3-car collision). Person A may feel that his damages don't justify him suing person B. But person B may sue person A just at the end of the time limit. In those circumstances person A would want to bring his claim against person B but he can't because the time limit has then expired. There is also the situation where A sues B and B wants to bring a third person C into the action because he thinks C is partly to blame for A's damages. If the time limit has passed C could not be added as a party. This section will allow these types of proceedings to be taken. The provision is similar to section 131 (2) of The Vehicles and Highway Traffic Act but here it is made applicable to all tort actions, not just motor vehicles cases.

61. This section provides relief in certain instances where the wrong person is sued and the time limit expires before the proper correction can be made. Clause (a) is taken from section 131 (4) of The Vehicles and Highway Traffic Act. Clause (b) covers circumstances of a type which a few years ago caused the Legislature to pass a Private Act granting relief (1964, c. 112). Clause (c) is new.

- (2) Subsection (1) does not apply
 - (a) where the person under disability is an infant in the actual custody of a parent or guardian, or
 - (b) where the person under disability is a mentally incapacitated person whose affairs are in the custody of a committee or of the Public Trustee.

60. (1) Where an action to which this Part applies has been commenced, the lapse of time limited by this Part for bringing an action is no bar to

- (a) proceedings by counterclaim, including the adding of a new party as a defendant by counterclaim, or
- (b) third party proceedings,

with respect to any claims relating to or connected with the subject matter of the action.

(2) Subsection (1) does not operate so as to enable one person to make a claim against another person when a claim by that other person

- (a) against the first mentioned person, and
- (b) relating to or connected with the subject matter of the action,

is or will be defeated by the pleading of any provision of this Part as a defence by the first mentioned person.

61. (1) Where an action to which this Part applies has been commenced within the time allowed by or under this Part, the court, upon application, may authorize an amendment to any pleading or proceeding therein that will result in a change of parties to the action:

- (a) where the action is one against the registered owner of a motor vehicle alleged to have occasioned the damages sustained and thereafter the plaintiff learns that the registered owner was not the actual owner of the vehicle at the time the damages were sustained, if the court is satisfied that there was sufficient and reasonable excuse for the failure of the plaintiff to learn of the existence of the actual owner and if the change is only the substitution of the actual owner;
- (b) where the action is one on behalf of a person under disability or the estate of a deceased person and the action was brought by or in the name of a person not entitled under law to bring an action on behalf of the person under disability or the estate of the deceased person, if the court is satisfied that no affected person has been misled as to the true nature of the action and if the change is only the substitution of the proper persons to bring the action;
- (c) where the action is one brought against a person who was in fact deceased at the time the action

4. This section repeals the special limitation provisions in a number of other Acts which will now be provided for under the new Part IX of The Limitation of Actions Act being enacted by clause 3 of this Bill.

was commenced against him, if the court is satisfied that the action is one which under *The Trustee Act* could, at the time, have been maintained against the estate of the deceased person and if the change is only the substitution of the estate of the deceased person;

notwithstanding that the time limited by this Part for commencing that class of action had lapsed between the time the action was commenced and the time of the application for the amendment.

(2) An amendment authorized under subsection (1) may only be made within three months after the authorization is granted.

4. (1) *The Public Officers Protection Act* is repealed.

(2) *The Vehicles and Highway Traffic Act* is amended by striking out section 131.

(3) *The Motor Vehicle Accident Claims Act* is amended as to section 11

(a) by striking out subsection (2) and by substituting the following:

(2) An action under subsection (1) against the Administrator may be commenced only within the time limited by *The Limitation of Actions Act* for bringing an action against the owner or operator of the vehicle.

(b) by striking out of subsection (6) the words "section 131 of *The Vehicles and Highway Traffic Act*," and by substituting the words "*The Limitation of Actions Act*,".

(4) *The Fatal Accidents Act* is amended

(a) as to section 4, subsection (2) by striking out the words "six calendar months" and by substituting the words "one year",

(b) as to section 5 by striking out the words "and no such action shall be commenced except within twelve months after the death of the injured person".

(5) *The Trustee Act* is amended

(a) as to section 32 by striking out subsection (3),

(b) as to section 33 by striking out subsection (2).

(6) *The Alberta Architects Act* is amended by striking out section 29.

(7) *The Defamation Act* is amended by striking out section 15.

(8) *The Medical Profession Act* is amended by striking out section 62.

(9) *The Dental Association Act* is amended by striking out section 46.

(10) *The Naturopathy Act* is amended by striking out section 13.

(11) *The Chiropractic Profession Act* is amended by striking out section 17.

(12) *The City Act* is amended

(a) by striking out section 453,

(b) as to section 694 by striking out subsection (3),

(c) as to section 695

(i) by striking out of subsection (1) the words “, and any action for damages brought in respect thereof shall be commenced within one year after such right of action has arisen, otherwise the right of action is barred and extinguished”,

(ii) by striking out of subsection (3) the words “or action brought against”,

(d) by striking out section 698 and by substituting the following:

698. No action shall be commenced against a city, its officials, employees or agents for the recovery of damages occasioned by default in the city's duty of repair referred to in section 293, whether the want of repair was the result of non-feasance or misfeasance, unless notice in writing of the claim and of the injury complained of has been served upon or sent by registered post to the city clerk within sixty days after the happening of the injury.

(13) *The Town and Village Act* is amended as to section 271, subsection (3) by striking out the words “except within one year after the date on which the cause of action arose, and”.

(14) *The Municipal District Act* is amended as to section 242, subsection (1) by striking out the words “except within six months from the date on which the cause of action arose and”.

(15) *The School Act* is amended by striking out section 449.

(16) *The Alberta Hospitals Act* is amended by striking out section 40.

(17) *The Calgary Hospitals Board Act* is amended by striking out section 4.

(18) *The Railway Act* is amended by striking out section 204 and by substituting the following:

204. In an action for indemnity for any damages or injury sustained by reason of the construction or operation of a railway, the defendant may plead the general issue and give this Act and the special Act and the special matter in evidence at the trial and may prove that the damage was done pursuant to and by the authority of this Act or of the special Act.

5. The amendments made by this Act will not operate so as to revive any right to sue that was barred under the previous law, nor do they apply to presently existing rights so as to reduce the time available.

6. Commencement of Act.

5. (1) Nothing in this Act enables any action to be brought which was barred before the commencement of this Act by any Act or part of an Act repealed by section 2 or 4 of this Act.

(2) The time for bringing proceedings in respect of a cause of action which arose before the commencement of this Act shall, if it is not then already expired, expire

(a) at the time when it would have expired apart from the provisions of this Act, or

(b) at the time when it would have expired if all the provisions of this Act had at all material times been in force,

whichever is the later.

6. This Act comes into force on the first day of July, 1966.

No. 91

THIRD SESSION
FIFTEENTH LEGISLATURE
14 ELIZABETH II
1966

BILL

An Act to amend the Law respecting
Limitation of Actions in Tort

Received and read the

First time

Second time

Third time

HON. MR. MANNING
