

1978 BILL 8

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Fourth Session, 18th Legislature, Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 8

THE SURVIVAL OF ACTIONS ACT

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DR. WEBBER

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

*Bill 8*  
*Dr. Webber*

## **BILL 8**

1978

### **THE SURVIVAL OF ACTIONS ACT**

*(Assented to , 1978)*

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

**1** In this Act, “cause of action” means

- (a) the right to bring a civil proceeding, or
- (b) a civil proceeding commenced before death,

but does not include a prosecution for the contravention of an Act, regulation or by-law.

**2** A cause of action vested in a person who dies after the coming into force of this Act survives for the benefit of his estate.

**3** A cause of action existing against a person who dies after the coming into force of this Act survives against his estate.

**4** If a cause of action for damages suffered by reason of an act or omission would have existed against a person had that person not died at or before the time the damage was suffered, the cause of action is deemed to have existed against the person before his death.

**5** If a cause of action survives under section 2, only those damages that resulted in actual financial loss to the deceased or his estate are recoverable and, without restricting the generality of the foregoing, punitive or exemplary damages or damages for loss of expectation of life, pain and suffering, physical disfigurement or loss of amenities are not recoverable.

**6** If the death of a person was caused by an act or omission that gives rise to a cause of action, the damages shall be calculated without reference to a loss or gain to his estate as a result of his death, but reasonable expenses of the funeral and the disposal of the body of the deceased may be included in the damages awarded, if the expenses were, or liability for them was, incurred by the estate.

## **Explanatory Notes**

**GENERAL** This Bill is based on a report on Survival of Actions and Fatal Accidents Act Amendment by the Institute of Law Research and Reform dated April, 1977. The draft Survival of Actions Act in that report is a model Act recommended by the Conference of Commissioners on Uniformity of Legislation in Canada.

**1** Definition.

**2** Causes of action survive for the benefit of a deceased's estate.

**3** Causes of action survive against a deceased's estate.

**4** Cause of action deemed to have existed before death.

**5** Only damages for actual financial loss are recoverable.

**6** Damages calculated without reference to loss or gain of the estate as a result of the death.

**7** A cause of action that survives under this Act and a judgment or order on it or relating to the costs of it is an asset or liability, as the case may be, of the estate to which the cause of action relates.

**8(1)** If a cause of action survives under this Act and there is no personal representative of the deceased person against whom the action may be brought or continued in Alberta, the Supreme Court of Alberta or the Surrogate Court of Alberta

(a) on the application of a person entitled to bring or continue the action, and

(b) on such notice as the court considers proper,

may appoint an administrator *ad litem* of the estate of the deceased person and the action may be brought or continued against him and defended by him.

(2) An administrator *ad litem* appointed under subsection (1) may take any steps that a defendant may take in an action, including third party proceedings and the bringing, by way of counterclaim, of any action that survives for the benefit of the estate of the deceased person.

(3) A judgment obtained by or against the administrator *ad litem* has the same effect as a judgment in favour of or against the deceased person or his personal representative, as the case may be, but it has no effect for or against the administrator *ad litem* in his personal capacity.

**9** The Crown is bound by this Act.

**10** *The Administration of Estates Act is amended by repealing sections 51 to 55.*

**11** *The Fatal Accidents Act is amended*

(a) *in section 6(2) by repealing clause (a) and substituting the following:*

(a) the administrator *ad litem* is an administrator against whom an action may be brought or continued under subsection (1) and by whom it may be defended,

(a.1) the administrator *ad litem* may take any steps that a defendant may take in an action, including third party proceedings and the bringing, by way of counter-claim, of any action that survives for the benefit of the estate of the deceased person, and

(b) *in section 8 by striking out “(not exceeding \$500 in all)”, and*

**7** Cause of action is an asset or liability of the estate.

**8** Administrator *ad litem* may be appointed.

**9** Act binds the Crown.

**10** Amends chapter 1 of the Revised Statutes of Alberta 1970. This is a consequential amendment to repeal the existing sections dealing with survival of actions.

**11** Amends chapter 138 of the Revised Statutes of Alberta 1970. The first and second amendments are to make The Fatal Accidents Act consistent with The Survival of Actions Act. The third amendment creates damages for bereavement.

(c) by adding the following after section 8:

**9(1)** In this section,

(a) “child” means a son or daughter, whether legitimate or illegitimate;

(b) “parent” means a mother or father.

(2) If an action is brought under this Act, the court shall, without reference to any other damages that may be awarded and without evidence of damage, give damages for bereavement of

(a) \$3000 to the spouse of the deceased person,

(b) \$3000 to the parent or parents of the deceased child, to be divided equally if the action is brought for the benefit of both, and

(c) \$3000 to the minor child or children of the deceased parent, to be divided equally among the minor children for whose benefit the action is brought.

(3) A cause of action conferred on a person by subsection (2) does not, on the death of that person, survive for the benefit of his estate.

(4) Subsection (2) applies only where the deceased person, deceased child or deceased parent, as the case may be, died after the coming into force of this section.

**12** *The Limitation of Actions Act is amended in section 53 by striking out “section 51 or 53 of The Administration of Estates Act” and substituting “The Survival of Actions Act”.*

**13** This Act comes into force on January 1, 1979.

**12** Amends chapter 209 of the Revised Statutes of Alberta 1970.  
Consequential amendment.