

1996 BILL 205

Fourth Session, 23rd Legislature, 45 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 205

LIMITATIONS ACT

MR. HERARD

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 205
Mr. Herard

BILL 205

1996

LIMITATIONS ACT

(Assented to , 1996)

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) "enforcement order" means an order or writ made by a court for the enforcement of a remedial order;
- (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 minor, or
 - (ii) an adult who is unable to make reasonable judgments in respect of matters relating to the 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
 - (iv) habeas corpus;
- (j) "right" means any right under the law and "duty" has a correlative meaning;
- (k) "security interest" means an interest in property that secures the payment or other performance of an obligation.

Application

2(1) Except as provided in subsection (2), 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.

(2) This Act does not apply where a claimant seeks

- (a) a remedial order based on adverse possession of real property owned by the Crown, or
- (b) a remedial order the granting of which is subject to a limitation provision in any other enactment of the Province.

(3) The Crown is bound by this Act.

Limitation periods

3(1) Subject to section 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 his circumstances ought to have known,
 - (i) that the injury for which he seeks a remedial order had occurred,
 - (ii) that the injury was to some degree attributable to conduct of the defendant, and
 - (iii) that the injury, assuming liability on the part of the defendant, was sufficiently serious to have warranted bringing a proceeding,

or

- (b) 10 years after the claim arose,

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

claim.

- (2) The limitation period provided by subsection (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);
 - (b) against a principal when either
 - (i) the principal first acquired or ought to have acquired the knowledge prescribed in subsection (1)(a), or
 - (ii) an agent with a duty to communicate the knowledge prescribed in subsection (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), if he acquired the knowledge more than 2 years before his death,
 - (ii) when the representative was appointed, if he had the knowledge prescribed in subsection (1)(a) at that time, or
 - (iii) when the representative first acquired or ought to have acquired the knowledge prescribed in subsection (1)(a), if he acquired the knowledge after his appointment.
- (3) For the purposes of subsection (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 terminated or the last act or omission occurred;

- (b) a claim based on a breach of a duty arises when the conduct, act or omission occurred;
- (c) a claim based on a demand obligation arises when a default in performance occurred after a demand for performance was made;
- (d) a claim in respect of a proceeding under the *Fatal Accidents Act* arises when the conduct which caused the death, upon which the claim is based, occurred;
- (e) a claim for contribution arises when the claimant for contribution was made a defendant in respect of, or incurred a liability through the settlement of, a claim seeking to impose a liability upon which the claim for contribution could be based, whichever first occurs.

(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 60 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), 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).

Acquiescence
or laches

4 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.

Concealment

5(1) The operation of the limitation period provided by section 3(1)(b) is suspended during any period of time that the defendant fraudulently concealed the fact that the injury for which a remedial order is sought had 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) was suspended.

Persons under disability

6(1) The operation of the limitation periods provided by this Act is suspended during any period of time that the claimant was a person under disability.

(2) Under this section, the claimant has the burden of proving that the operation of the limitation periods provided by this Act was suspended.

Claims added to a proceeding

7(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 either 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 he 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 he 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.

Agreement

8 Subject to section 10, if an agreement provides for the reduction or extension of a limitation period provided by this Act, the limitation period is altered in accordance with the agreement.

Acknowledgment and part payment

9(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 the foregoing.

(2) Subject to subsections (3) and (4) and section 10, 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 anew 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 by a refusal to pay.

(4) When a claim is for the recovery of both a primary sum and interest thereon, 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.

Persons
affected by
exceptions for
agreement,
acknowledg-
ment and part
payment

10(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 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 him,

(b) with or to a person through whom he 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) he is a maker of it, or
- (b) he 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.

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, upon pleading this Act as a defence, is entitled to immunity from liability in respect of the claim.

Conflict of laws

12 The limitations law of the Province shall be applied whenever a remedial order is sought in this Province, notwithstanding that, in accordance with conflict of law rules, the claim will be adjudicated under the substantive law of another jurisdiction.

Transitional

13(1) Subject to subsection (2), this Act applies where a claimant seeks a remedial order in a proceeding commenced after the date this Act comes into force.

(2) A defendant is not entitled to immunity from liability in respect of a claim of which the claimant knew, or in his circumstances ought to have known, before this Act came into force and in respect of which a remedial order is sought

(a) in time to satisfy the provisions of law governing the commencement of actions which would have been applicable but for this Act, and

(b) within 2 years after the date this Act comes into force.

Consequential

14 Section 60 of the Law of Property Act is amended by adding the following after subsection (2):

(3) No right to the access and use of light or any other easement, right in gross or profit a prendre shall be acquired by a person by prescription, and it shall be deemed that no such right has ever been so acquired.

Repeal **15** The *Limitation of Actions Act* is repealed.

Coming into
force **16** This Act comes into force on Proclamation.