

# **When is a Limitation Period Really a Limitation Period?**

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## INTRODUCTION

The following is a discussion of when, if ever, a limitation period prescribed by the **Limitations Act**<sup>1</sup> may not be applicable in the context of claims by and against a deceased's estate.

## LIMITATIONS ACT

The law of limitations delineates the timeframes within which legal proceedings must be brought.<sup>2</sup> In particular, a limitation period is generally a legislated timeframe, after the expiry of which parties are unable to pursue legal remedies.<sup>3</sup> Alberta fundamentally amended its limitation legislation with the proclamation of its **Limitations Act**<sup>4</sup> in 1999. Under Alberta's statute, the general limitation period for claimants seeking remedial orders<sup>5</sup> in a proceeding, including claims by and against estates, is two years subject to discoverability, with the ultimate limitation period being 10 years.<sup>6</sup> Specifically, subsection 3(1) of the **Limitations Act** states:

- 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 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**

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<sup>1</sup> RSA 2000, c L-12, as amended, which received Royal Assent on May 1, 1996 and was proclaimed in force March 1, 1999.

<sup>2</sup> Graeme Mew, *The Law of Limitations*, 2nd ed (Markham: Butterworths, 2004) at 3.

<sup>3</sup> *Ibid* at 3.

<sup>4</sup> *Limitations Act*, *supra* note 1.

<sup>5</sup> *Ibid*, s 1(i) defines a remedial order as the following:

- 1(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.

<sup>6</sup> *Ibid* at ss 3(1)(a) and (b).

(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.

[emphasis added]

The discovery, or general rule, of limitation under the **Limitations Act** has three components, which together, delay the commencement of the limitation period until the claimant knew or ought to have known of specific knowledge about his claim. Subsection 3(1)(a)(i) therefore provides that the limitation period does not commence until the time of discovery of the injury as opposed to the time of the event. Nor will the limitation period begin to run until the claimant first knew that her injury was in some way attributable to the conduct of the defendant under subsection 3(1)(a)(ii). Lastly, under subsection 3(1)(a)(iii) of the Act, the limitation period does not commence until the claimant also knew that the nature of his or her injury was such that it warranted bringing a proceeding.

If a claim never becomes discoverable, then the ultimate, or 10 year, limitation period under the **Limitations Act** applies. It will operate usually from the time a claim accrued. The Act, however, specifies when the ultimate limitation period begins to run for claims resulting from a continuing course of conduct or a series of related acts or omissions,<sup>7</sup> a claim based on a breach of duty,<sup>8</sup> a claim based on a demand obligation,<sup>9</sup> a claim under the **Fatal Accidents Act**,<sup>10</sup> and a claim for contribution.<sup>11</sup> General principles regarding the application of section 3(1) of the **Limitations Act** were outlined in **Ward v Taubner**<sup>12</sup> where the Alberta Court of Queen's Bench followed the Supreme Court of Canada's decision in **Central Trust Company v Rafuse**, [1986] 2 S.C.R. 147 which held:

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<sup>7</sup> *Ibid* at s 3(3)(a).

<sup>8</sup> *Ibid* at s 3(3)(b).

<sup>9</sup> *Ibid* at s 3(3)(c).

<sup>10</sup> *Ibid* at s 3(3)(d).

<sup>11</sup> *Ibid* at s 3(3)(e).

<sup>12</sup> 2004 ABQB 565.