

Limitation Dates for Wills and Estates Claims and Actions

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LIMITATION DATES FOR WILLS AND ESTATES CLAIMS AND ACTIONS

The purpose of this paper is to provide a general overview of the limitation periods which affect Wills and Estates claims and actions. It is intended to be kept and used as a practical starting point reference guide for practitioners not as a treatise on limitations periods. There is also a short section listing the most common pieces of legislation in this area of practice with time periods for applications and claims noted.

I. General Limitations

For the most part, other than specific statutory limitations, the general limitation periods for civil actions apply to Wills and Estates claims and actions and should be the starting point for a review of applicable limitations periods in any particular case.

Limitations Act¹

The limitation periods specified in the *Limitations Act* apply to all claims in Alberta unless the claim is brought pursuant to another enactment of the Province which is subject to its own limitation provisions.

The applicable scheme is set out in Section 3 as follows:

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
 - (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.

(2) The limitation period provided by subsection (1)(a) begins

[...]

- c. against a personal representative of a deceased person as a successor owner of a claim, at

¹*Limitations Act*, RSA 2000, c. L-12

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 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) at that time;
- (iii) when the representative first acquired or ought to have acquired the knowledge prescribed in subsection (1)(a), if the representative acquired the knowledge after being appointed.

(3) For the purpose of subsections (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;

Section 3 provides that the general limitation period for claimants seeking remedial orders in a proceeding is the earlier of:

- i. the general rule of 2 years from when the claimant knew, or ought to have known of its claim; and
- ii. the ultimate limitation period of 10 years from the date of the incident. If the claimant has not commenced proceedings within 10 years the defendant on pleading the *Limitations Act* is entitled to immunity from liability in respect of the claim.

Pursuant to the general rule, the limitation period does not begin until discovery, being when the claimant knew or ought to have known of specific knowledge of the claim, being the earliest of:

- i. the time the injury was discovered, as opposed to the time of the event; or
- ii. the time when the claimant first knew that the injury was attributable to the defendant's conduct; or
- iii. the time when the claimant first knew that the nature of the injury warranted bringing proceedings

It is useful to note that **Section 4(1)** of the *Limitations Act* suspends the limitation period during any period of time that the defendant fraudulently conceals the fact that any injury has occurred. In the appropriate circumstances therefore the time period to file a claim can be extended well beyond the set 2 years or 10 years.