

**Bill #64
Limitation of Actions Act**

CHANGES RECOMMENDED TO THE LAW AMENDMENTS COMMITTEE
BY THE MINISTER OF JUSTICE

PAGE 3 - add after Clause 11 the following Clause:

12 (1) In this Section, "limitation period" means the limitation period established by

- (a) clause 8(1)(a); or
- (b) any enactment other than this Act.

(2) This Section applies only to claims brought to recover damages in respect of personal injuries.

(3) Where a claim is brought without regard to the limitation period applicable to the claim, and an order has not been made under subsection (4), the court in which the claim is brought, upon application, may disallow a defence based on the limitation period and allow the claim to proceed if it appears to the court to be just having regard to the degree to which

- (a) the limitation period creates a hardship to the claimant or any person whom the claimant represents; and

- (b) any decision of the court under this Section would create a hardship to the defendant or any person whom the defendant represents, or any other person.

(4) Where a limitation period has expired, a person who wishes to invoke the limitation period, upon giving at least 30 days' notice to any person who may have a claim, may apply to the court for an order terminating the right of the person to whom such notice was given from commencing the claim and the court may issue such order or may authorize the commencement of the claim only if it is commenced on or before a day determined by the court.

(5) In making a determination under subsection (3), the court shall have regard to all the circumstances of the case and, in particular, to

- (a) the length of and the reasons for the delay on the part of the claimant;

- (b) any information or notice given by the defendant to the claimant respecting the limitation period;

- (c) the effect of the passage of time on

- (i) the ability of the defendant to defend the claim, and

- (ii) the cogency of any evidence adduced or likely to be adduced by the claimant or defendant;

- (d) the conduct of the defendant after the claim was discovered, including the extent, if any, to which the defendant responded to requests

reasonably made by the claimant for information or inspection for the purpose of ascertaining facts that were or might be relevant to the claim;

(e) the duration of any incapacity of the claimant arising after the date on which the claim was discovered;

(f) the extent to which the claimant acted promptly and reasonably once the claimant knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to a claim;

(g) the steps, if any, taken by the claimant to obtain medical, legal or other expert advice and the nature of any such advice the claimant may have received;

(h) the strength of the claimant's case; and

(i) any alternative remedy or compensation available to the claimant.

(6) A court may not exercise the jurisdiction conferred by this Section if the claim is brought more than two years after the expiry of the limitation period applicable to that claim.

(7) This Section does not apply to a claim for which the limitation period is 10 years or more.

PAGES 3 to 7, Clauses 12 to 30 - renumber as 13 to 31.
