

# When Time Runs Out – A Refresher on Statute Barred Claims and Discussion of the Amended Proof of Claim Form

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# Disclaimer

This presentation is of a general nature only and is not legal advice.

Many of the legal issues discussed in this presentation involve some uncertainty, and different practitioners may reasonably differ about the proper interpretation of the applicable law, or best practices given the state of the law.

You should obtain legal advice if you require specific advice as to what to do in any particular situation.

# *Limitations Act, RSA 2000, c L-12*

- The general limitation period for a debt is two years. (3(1)(a))
  - The clock starts running upon breach of contract or, for a demand obligation, when performance is demanded. (3(3)(b-c))
- Acknowledgment in writing or partial payment before the expiry of the limitation period restarts the limitation period. (8(2))
- The ultimate limitation period is 10 years. (3(1)(b))

# *The Limitations Act, SS 2004, c L-16.1*

- The general limitation period for a debt is two years. (5)
  - The clock starts running upon breach of contract or, for a demand obligation, when performance is demanded. (6(1) and 10)
- Acknowledgment in writing or partial payment before the expiry of the limitation period restarts the limitation period. (11(1-3))
- The ultimate limitation period is 10 years. (7(1))

## *Temple, Re*, 2012 ONSC 376 (Newbould J.)

- Justice Newbould stated that a time-barred claim could be a claim provable in bankruptcy
- Led to a change in practice in Ontario of time-barred claims being admitted

# John Trevor Eyton

- Toronto Star article published December 11, 2019: *“He was a titan of Bay Street and a senator. But J. Trevor Eyton died owing millions in taxes and on the verge of bankruptcy”*
  - <[https://www.thestar.com/news/investigations/he-was-a-titan-of-bay-street-and-a-senator-but-j-trevor-eyton-died/article\\_95a4317c-3c6e-5b73-8ba6-3e5c6baadaa4.html](https://www.thestar.com/news/investigations/he-was-a-titan-of-bay-street-and-a-senator-but-j-trevor-eyton-died/article_95a4317c-3c6e-5b73-8ba6-3e5c6baadaa4.html)>

# *John Trevor Eyton (Re), 2021 ONSC 3646* (Dunphy J.)

- Re-affirmed the law in Ontario that a time-barred claim cannot be a claim provable in bankruptcy:

*20 While a statute-barred claim continues to exist in the sense that it has not actually been extinguished, it is not a claim upon which any proceeding to enforce payment may be brought. The bankrupt cannot be said to be “subject” to a claim that cannot be enforced.*

# Proof of Claim Form – Section 3

- I, *(name of creditor or representative of the creditor)*, of *(city and province)*, do hereby certify:
- 3. That **the debtor was, at the date of bankruptcy** *(or the date of the receivership or, in the case of a proposal, the date of the notice of intention or of the proposal, if no notice of intention was filed)*, namely the \_\_\_\_\_ day of \_\_\_\_\_, **and still is, indebted to the creditor** in the sum of \$\_\_\_\_\_, as specified in the statement of account *(or affidavit)* attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled. Any debt payable in a currency other than Canadian currency was converted to Canadian currency as of the date of bankruptcy *(or the date of the receivership or, in the case of a proposal, the date of the notice of intention or of the proposal, if no notice of intention was filed)*.
- *(The attached statement of account or affidavit must specify the supporting documents or other evidence in support of the claim)*



# Proof of Claim Form – New Sections 4 and 5

- I, *(name of creditor or representative of the creditor)*, of *(city and province)*, do hereby certify:
- 4. That, to the best of my knowledge, **this debt has never been** *(or this debt has been or part of this debt has been)* **statute-barred** as determined under the relevant legislation.
- 5. That **payment for this debt by the debtor to the creditor has been due** *(or has been in default)* **since** the \_\_\_\_ day of \_\_\_\_\_, and that **the last payment**, if any, on this debt by the debtor to the creditor was made on the \_\_\_\_ day of \_\_\_\_\_, *and/or* that the **last acknowledgement**, if any, of liability for this debt by the debtor to the creditor was made on the \_\_\_\_ day of \_\_\_\_\_, as follows:
- *(Give full particulars of the claim, including its history, any acknowledgement or legal action)*

# *Consumer and Debt Payment Practices Regulation, AR 194/1999*

## **Prohibited Practices**

### **Prohibited practices for collection agencies**

#### **12(1) No collection agency or collector may**

- (a) collect or attempt to collect money for a creditor except on the belief in good faith that the money is due and owing by the person to the creditor;

# *Consumer and Debt Payment Practices Regulation, AR 194/1999*

**12(1)** No collection agency or collector may...

(k) continue to collect or attempt to collect money from, or  
continue to communicate with,

(ii) the debtor, where the debtor has informed the  
collection agency or the collector by any verifiable  
means, including, but not limited to, personal service,  
certified mail, courier, facsimile, or e-mail, or by any other  
method, that the debt is in dispute and that the debtor  
wishes the creditor to take the matter to court;

# *Consumer and Debt Payment Practices Regulation, AR 194/1999*

**12(1)** No collection agency or collector may...

(x) pursue a non-judgment debt where the last payment or written acknowledgement by the debtor is more than 6 years previous;

# *Consumer and Debt Payment Practices Regulation, AR 194/1999*

- If a collection agent is in breach of the regulations, a complaint can be made to Service Alberta.

# *The Collection Agents Act, RSS 1978, c C-15*

## **Unlawful practices**

**29(1)** No collection agent or collector shall:

(a) collect or attempt to collect for a person for whom he acts any moneys in addition to the amount owing by the debtor...

## *The Collection Agents Act, RSS 1978, c C-15*

- If a collection agent is in breach of the legislation, a complaint can be made to the Financial and Consumer Affairs Authority (FCAA).

## Saskatchewan *Limitations Act*

### **Suspension of certain limitation periods**

**26** The limitation periods established by this Act are suspended for the time during which a stay of proceedings is in effect pursuant to the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or the *Farm Debt Mediation Act* (Canada).

## Alberta *Limitations Act*





# *Bankruptcy and Insolvency Act, RSC 1985, c B-3*

## **Claims provable**

**121 (1)** All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

J. Ross Macfarlane and Adam Fisher, “**Limitations Statutes and Bankruptcy: Rejecting the Once-Provable Claim**” in ARIL Society, ed, Annual Review of Insolvency Law, (Toronto: Thomson Reuters, 2021)

- Contains both legal analysis and practical advice for both lawyers and trustees regarding the change (really, re-affirmation) that statute barred claims are not claims provable in bankruptcy following the 2021 *Eyton* decision

# Questions?