

When Time Runs Out

A Refresher on Statute-Barred Claims and the Amended Proof of Claim Form

Overview of Statute-Barred Claims

- Federal Limitation Periods (ITA, *ETA*, *etc.*)
- Various Provincial Limitation of Actions Acts
 - Limitation of Actions Act (NB, NS)
 - Statute of Limitations (PE)
 - Limitations Act (NL)
- Other Claim-Specific Legislation
 - i.e., Insurance statutes
- Extension of Limitation Periods
 - Partial payments
 - Acknowledgments
 - Discoverability

John Trevor Eytton (Re), 2021 ONSC 3646 (Dunphy J.)

- *The argument advanced by the appellant, if followed, would lead to an absurd result. The underlying policy of the [BIA](#) is to provide for the equitable distribution of the assets of the bankrupt among all creditors of the same rank. A statute-barred claim is not of the same rank as an enforceable claim because the creditor cannot enforce payment of it. The appellant's argument would require me to find that a claim that was statute-barred and quite unenforceable one day becomes enforceable the next by virtue of a bankruptcy intervening...*

Scott v. Golden Oaks Enterprises Inc., **2024 SCC 32**

- *In my view, the Court of Appeal properly declined to attribute Mr. Lacasse's knowledge of the illegal interest and commission payments to Golden Oaks. Under the discoverability rules in s. 5(1) of the Limitations Act, 2002, the limitation period did not commence until the trustee acquired knowledge of Golden Oaks' claims, which at the earliest was only when the trustee was appointed. The trustee's actions to recover payments from the appellants were thus started before the limitation period expired.*

Do you feel comfortable assessing whether a claim is statute-barred?

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)

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)

Do you think the change to Form 31 is a positive change?

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)