

Uniform Survival of Actions Act

(1963 Proceedings, pages 28, 136)

1. In this Act "cause of action" means the right to institute a civil proceeding, and includes a civil proceeding instituted before death, but does not include a prosecution for contravening a statute, regulation or by-law. Interpretation

2. (1) All causes of action vested in a person who dies after the commencement of this Act, other than causes of action in respect of, What causes of action survive

- (a) adultery;
- (b) seduction; or
- (c) inducing one spouse to leave or remain apart from the other,

survive for the benefit of his estate.

(2) The rights conferred by subsection (1) are in addition to and not in derogation of any rights conferred by the *Fatal Accidents Act*.

3. All causes of action subsisting against a person who dies after the commencement of this Act survive against his estate. Idem

4. Where damage has been suffered by reason of an act or omission as a result of which a cause of action would have subsisted against a person if that person had not died before or at the same time as the damage was suffered, there is deemed to have been subsisting against him before his death whatever cause of action as a result of the act or omission would have subsisted if he had not died before or at the same time as the damage was suffered. Idem

5. Where a cause of action survives for the benefit of the estate of a deceased person, only damages that have resulted in actual pecuniary loss to the deceased person or the estate are recoverable and, without restricting the generality of the foregoing, the damages recoverable shall not include punitive or exemplary damages or damages for loss of expectation of life, pain and suffering or physical disfigurement. What damages are recoverable by estate of deceased person

6. Where the death of a person was caused by the act or omission that gave rise to the cause of action, the damages shall be calculated without reference to any loss or gain to Calculation of damages

his estate consequent on his death, except that there may be included in the damages awarded an amount sufficient to cover the reasonable expenses of the funeral and the disposal of the body of the deceased [not exceeding dollars in all,] if those expenses were, or liability therefor was, incurred by the estate.

(NOTE: The words in brackets are optional.)

Nature of cause
of action

7. Every cause of action that survives under this Act and every judgment or order thereon or relating to the costs thereof is an asset or liability, as the case may be, of the estate for the benefit of which or against which the action was taken or the judgment or order made.

Administration
ad litem

8. (1) Where a cause of action survives against the estate of a deceased person and there is no personal representative of the deceased person against whom such an action may be brought or continued in this Province, a court of competent jurisdiction, or any judge thereof, may,

- (a) on the application of a person entitled to bring or continue such an action; and
- (b) on such notice as the court or judge may consider proper,

appoint an administrator *ad litem* of the estate of the deceased person.

Idem

(2) The administrator *ad litem* is an administrator against whom such an action may be brought or continued and by whom such an action may be defended.

Administrator
ad litem as defendant

(3) The administrator *ad litem* as defendant in any such action may take any steps that a defendant may ordinarily take in an action, including third party proceedings and the bringing, by way of counterclaim, of any action that survives for the benefit of the estate of the deceased person.

Judgment by or
against admin-
istrator *ad litem*

(4) Any judgment obtained by or against the administrator *ad litem* has the same effect as a judgment in favour of or against the deceased person, or his personal representative, as the case may be, but it has no effect for or against the administrator *ad litem* in his personal capacity.

Special limita-
tion periods

9. (1) Notwithstanding the *Limitation of Actions Act* or any other Act limiting the time within which an action may be brought, a cause of action that survives under this Act is not barred until the expiry of the period provided by this section.

(2) Proceedings on a cause of action that survives under ^{Idem} section 2 or 3 may be brought

- (a) within the time otherwise limited for the bringing of the action; or
- (b) within one year from the date of death,

whichever is the longer period.

(3) Proceedings on a cause of action that survives under ^{Idem} section 4 may be brought

- (a) within the time otherwise limited for the bringing of the action, which shall be calculated from the date the damage was suffered; or
- (b) within one year from the date the damage was suffered,

whichever is the longer period.

(4) [Subject to subsection (5)], this Act does not operate ^{Barred causes of action not revived} to revive any cause of action in or against a person that was barred at the date of his death.

[(5) Any enactment that permits action to be instituted ^{Counterclaims and third party proceedings} by way of counterclaim or third party proceedings after the expiry of the time otherwise limited for the bringing of the action applies with respect to proceedings under this Act.]

NOTE: The words in brackets may be adopted in jurisdictions that have provisions similar to section 131(2) of the Vehicles and Highway Traffic Act (Alberta) which permits counterclaims and third party proceedings after the expiry of the one year limitation period for motor vehicle negligence cases.

10. The Crown is bound by this Act.

11. Sections of [the *Trustee Act*] and section of [the *Limitation of Actions Act*] are repealed.

NOTE: To be varied to meet the requirements of each jurisdiction.



