

## **Statute of Limitations: Claims in respect of Latent Personal Injuries**

In August 1987, the Commission published its Report on the [\*Statute of Limitations: Claims in respect of Latent Personal Injuries \(LRC 21–1987\)\*](#) following a March 1987 request from the then Attorney General.

As part of its Report, the Commission makes the following 14 recommendations, that:

1. Legislation should prescribe a “discoverability” test in regard to the limitation of actions relating to personal injuries.
2. For the time to begin to run, it should be necessary to show that the plaintiff is, or ought reasonably to be, aware:
  - a. that he has sustained a personal injury of significant proportions;
  - b. that the injury is attributable, in at least some degree, to the conduct of another
  - c. of the identity of the defendant
3. Where the effect of the accident is to slow the injured person down so that he is less diligent in finding out about how it was caused than an ordinary healthy person would be, the question of the reasonableness of the discoverability of his injuries should embrace the fact of his debilitated condition
4. In determining when the limitation period begins a person’s knowledge should include knowledge which he might reasonably have been expected to acquire from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek, but he should not be fixed with knowledge of a fact ascertainable only with the help of such advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice. Knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty should be irrelevant.
5. The discoverability rule should automatically postpone accrual
6. The onus of proof that the accrual of a cause of action has been postponed by reason of the discoverability rule should be on the person claiming the benefit of the postponement.
7. The legislation should not include a “long stop” provision
8. Where a person injured dies before the expiration of the limitation period in both “discoverability” and “non-discoverability” cases, the period applicable as respects the cause of action surviving for the benefit of his estate by virtue of s.7 of the *Civil Liability Act 1961* should be three years from the date of death or the date of discoverability by the personal representative, whichever is the later
9. Where a personal representative was already aware of the injury and its cause before he was appointed as personal representative, time should start to turn only from the moment of appointment
10. In actions under Section 48(1) of the *Civil Liability Act 1961* the period of limitation should be three years from the date of death or the date of knowledge of the person for whose benefit the action is brought, whichever is the later
11. In the case where a person has discovered his injury during his minority, he should nonetheless have a full three years after reaching majority within which he may take his action

12. The proposed legislation should make it clear that the suspension of the limitation period during a person's minority is applicable whether or not he is in the custody of a parent at the time when the right of action accrues to him. Accordingly 49(2)(a)(ii) of the *Statute of Limitations 1957* should be deleted.
13. Where a mentally disabled person first discovers his injury during a period of disability, time should not begin to run until the period of disability ends
14. The proposed legislation should apply to causes of actions accruing before its commencement. It should also apply to proceedings pending at its commencement.

### **Draft Legislation in Report**

A draft *Statute of Limitations (Amendment) Bill* is included in the Report.

### **Information on Implementation**

Recommendations of the Commission were implemented by the *Statute of Limitations (Amendment) Act 1991*.