

**CASE COMMENTARY:
COURT OF APPEAL DECISION DETERMINING MEANING OF LIMITATION PERIOD UNDER
S. 8(7) OF THE HEALTH CARE COSTS RECOVERY ACT**

by Jennifer Woznesensky

This decision deals with an appeal by the Province from the chambers judge's decision to summarily dismiss its action against Beacon Community Services Society to recover its health care costs under s. 8 of the Health Care Costs Recovery Act, S.B.C. 2008, c. 27. Section 8 of the Act permits the Province to initiate its own legal proceeding against a wrongdoer for the recovery of past and future health care services.

Section 8(5) indicates that the Ministry's limitation for bringing an independent action is the later of two dates:

(a) the date that is 6 months after the expiration of the limitation period that applies to the beneficiary's right to commence a legal proceeding against a wrongdoer, or

(b) the earliest of five potentially other applicable dates.

Section 8(7) states:

Subsection (5) (b) does not apply if the limitation period referred to in subsection (5) (a) has expired before the date that subsection comes into force.

The plaintiff was injured on November 4, 2006. He brought an action in June 2007 and was granted judgment in April 2009. The Act came into force on April 1, 2009. In May 2009, the Ministry became aware of the decision. It filed its own action against the original defendants in October 2009 to recover health care costs. The defendants took the position that the Ministry's claim was statute barred because it was not brought by May 4, 2009 i.e. within two years and six months of the tortious act. A chambers judge agreed and dismissed the claim. The Ministry appealed, arguing that dates under 8(5) (b) should have applied because the limitation period referred to in 8(5)(a) was 30 months and not 24 months.

The Court of Appeal focused on the meaning of s. 8(7) and determined that the "limitation period" referred to in s. 8(5) (a) was the 2-year limitation period under the Limitation Act. Thus, the two year limitation to bring the claim expired in November 2008, and a six month extension only gave the Ministry until May 4, 2009 to bring its claim.

This decision highlights the Court's position that, when creating the Act, the Legislature did not intend to capture all health care costs relating to injuries suffered by beneficiaries as a result of wrongdoings; it retained limitation periods which would inure to the benefit of those wrongdoers whose actions fell outside the limitation period (see para. 22 of the decision).



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