*January 23rd, 10:00 a.m. session

The Honourable Justice Bielby	Court of Queen's Bench of Alberta
E. MacInnis, Ms. and P. Kirman, Esq.	For the Plaintiffs
C. Broder, Mr.	For the Defendant
S. Smithies	Court Clerk

THE COURT: Good morning, please be seated.

MS. MACINNIS: Good morning.

THE COURT: Ms. MacInnis.

*Argument by Ms. MacInnis

MS. MACINNIS: My Lady, we have prepared a -- just a brief outline and it's not fancy or anything, but just of our position which I thought might be helpful, as well as a summary sheet of the evidence that I want to review, and a summary of the pleadings. And we did locate some more cases, mainly on the doctrine of relation back, and I've just done up a new index. The binder you had from us before I think went up to ten and we started at 11 with the addition authority -- additional authorities and they are here.

THE COURT: Thank you.

MS. MACINNIS: I have provided all this to Mr. Broder.

THE COURT: All right, thank you. Thank you.

MS. MACINNIS: This litigation was first mainly defended on the basis that there had been an inter vivos gift based on the statement made by the deceased to Mr. Don Broder, while he was in the hospital. I understand that that is no longer being pursued as the defence and it would not, in our opinion, have been successful as the statement was not corroborated as required under Section 11 of the Evidence Act and there would be issues, I think, regarding delivery, etcetera.

The next issue that I want to address is the issue

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right as sole beneficiaries of the estate, they also sue as administrators de bonis non. The cause of action being in the estate, which alone can give a clearance to the defendant. The administrators alone had title to bring it.

And skipping down,

The plaintiffs are administrators de bonis non have therefore the answer that time under the statute did not begin to run against them until their appointment on July 12th, of 1933.

So, these cases, I think, establish that there is no cause of action until there is a party who is capable of suing, and so the limitation, we would submit, runs from the time of the grant of administration, which, in this case, was in 2001.

We have a situation here My Lady, where all the parties have been before the Courts from the beginning from when the statement of claim was first issued in 1997. The defendant knew what the claim was against him. It's our submission that there was no problems with the way the statement of claim as it originally began, but upon having noticed that the defendant was taking issue with it, this -- the parties acted promptly to have a personal representative appointed and have them added to the statement of claim. The Court in --

THE COURT: When is the first time the defendants raised the issue of the lack of a personal representative?

MS. MACINNIS: The application was heard in April of 2001, and I think we were first told about it in around January or February of that year. I could check the correspondence to confirm that for sure. I know it was raised when the defendants made application before Chief Justice Wachowich for a jury trial in February of 2001, and he set a deadline in which time they had to make the application.

THE COURT: Okay. So the first time, even in correspondence to you as counsel for the plaintiffs that this issue was raised, was in early 2001?

MS. MACINNIS: That's correct, My Lady. I can say that.

THE COURT: Thank you.

MS. MACINNIS: One of the reasons why I would submit that the Courts -- that it would -- it's appropriate to have them added is it avoids a multiplicity of proceedings. The evidence would have been virtually identical to what you've heard in the present action. The personal representatives, I think, are necessary and proper parties to this once they were appointed, and I would refer you to the provisions in Section 8 of the Judicature Act, and all the parties, as I say, have been named in this action. They knew what this was about and it would really an absurd result not to -- you know, for this issue not to resolved through the -- the pleadings as they exist.

And I just want to talk briefly about the evidence on the counterclaim. The defendant, I guess, plaintiff by counterclaim, has had custody of the trophy since 1973. I think the evidence was that maintenance that it requires is really fairly minimal in terms of dusting and some shampooing of the cape. He did purchase a new cape for the trophy in 1983, and although he doesn't have a receipt, the cost is somewhere between $400.00 and $600.00. He has produced one receipt for insurance for one year in the sum of $45.00.

The other things that were mentioned in terms of the production of replicas, the making of the full body mount, the landscape photo -- the landscape for displaying the full mount, the photo, etcetera, all of those things were done My Lady, after 1997. And I would say firstly, they're not related to the trophy itself, and -- but more to the issue of promotion, and that they would not be recoverable in this action. So, I would submit that the amount that has been proven as far as the counterclaim is concerned, would be $400.00 for the new cape, and about $45.00 for the insurance.

And just to summarize our position My Lady, it's -- first of all, it's our position the plaintiffs, the original plaintiffs had standing. An estate asset was taken away, and they were seeking to preserve that asset for the estate. Alternatively, they're enforcing an agreement between all the siblings. They're seeking to have the estate asset distributed in the same manner as if the estate were administered between the -- all the beneficiaries, including Don Broder. They subsequently got a grant of administration and it would relate back under the exceptions that were