Extending limitation periods for environmental damages: Paramount Resources Ltd v Grey Owl Engineering Ltd.

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There is a hard ten-year limitation period in Alberta.[1] Section 218 of the *Environmental Protection and Enhancement Act* (EPEA) provides an exception and allows the Court to extend a limitation period where the claim relates to the release of a substance into the environment.

The Alberta Court of Appeal recently declined to extend the limitation period pursuant to section 218 of the *EPEA* in *Paramount Resources Ltd v Grey Owl Engineering Ltd*, 2024 ABCA 60 (*Paramount*).[2] *Paramount* sends a cautionary note for operators that may be seeking to claim against a service provider related to the release of a substance into the environment.

Background

Paramount Resources Ltd. (Paramount) is the owner and operator of a pipeline that was constructed on Crown land in northern Alberta in 2001. In 2004, Paramount hired the Defendants to supply and install a fibreglass liner inside the steel pipe. The work was completed by the Defendants in 2004. In 2018, Paramount discovered a significant leak in the pipeline, which triggered an obligation to remediate under the EPEA.

Paramount filed a claim against the Defendants alleging that the leak was caused by the Defendants' failure to ensure the pipeline was installed below the frost line. The Defendants applied for summary dismissal of the claim on the basis that it was filed after the 10-year ultimate limitation period under the *Limitations Act*.[3] Paramount cross-applied for an extension to the limitation period under section 218 of the EPEA.[4] In 2022, the Alberta Court King's Bench dismissed that Paramount's claim and its request for a section 218 extension.[5]

Extension of the limitation period under section 218 of the EPEA

On appeal, the Court of Appeal upheld the Court of King's Bench's decision. The Court of Appeal held that the EPEA does not "abolish limitation periods for environmental claims"; rather, it provides judicial discretion to extend them. That discretion requires a

balancing of the policy objectives of both the EPEA and the *Limitations Act,* as applied to the fact scenario before the Court.[6]

The two key objectives of the EPEA are that: (a) the "polluter pays" and should not escape responsibility due to the passage of time; and that, (b) environmental contamination may be difficult to detect such that the strict application of "discoverability" may be unreasonable or unfair. The key objective of the *Limitations Act* is to provide repose and finality.[7] In *Paramount,* the Court found that the policy objectives of the *Limitations Act* outweighed those of the EPEA.

The Court noted that "factors to be considered" in coming to that result included:

- That Paramount, not the Defendants, was the "person responsible" for remediating the contamination under the EPEA;[8]
- That Paramount had already remediated the environmental harm;[9]
- That Paramount bore at least some responsibility for the contamination. The Court of Appeal commented that Paramount had owned the pipeline for decades before the leak, and had been "positioned to manage the environmental risks arising from the depth of a pipeline that it had constructed, it had modified and that it had owned throughout";[10] and,
- That the Defendants had a limited and historical role regarding the pipeline. One Defendant was apparently paid $1,600 to file a regulatory application.[11]

The Court of Appeal ultimately upheld the chambers judge's decision, finding they had properly weighed the applicable factors in declining to extend the limitation period pursuant to s 218 of the EPEA.[12] This stood in contrast to other cases in which an extension had been granted notwithstanding a greater passage of time; however, those cases also involved a greater role of the defendants in causing the pollution.

Takeaways

The decision in *Paramount* demonstrates that courts will consider a broad range of factors when considering whether to extend a limitations period under section 218 of the EPEA. However, the decision may be read as giving primacy to the "polluter pays" principle and the EPEA's goal of achieving remediation. That said, the Court refused to create "categories of permitted and unpermitted claims for which an extension can (or cannot) be granted,"[13] and any extension application will be fact-specific and subject to the Court's discretion.

BLG is well-versed in the EPEA and the boundaries of limitation periods. For more information, please reach out to any of the key contacts below.

Footnotes

[1] Or two years following when an injury was or should have been discovered, whichever period is less.

[2] *Paramount Resources Ltd v Grey Owl Engineering Ltd*, 2024 ABCA 60 [*Paramount* (ABCA)].

[3] *Limitations Act*, RSA 2000, c L–12, s 3(1)(b).

[4] *Paramount Resources Ltd v Grey Owl Engineering Ltd*, 2022 ABQB 333 at paras 2-5 [*Paramount* (ABQB)]; *EPEA*, s 218.

[5] *Paramount Resources Ltd v Grey Owl Engineering Ltd*, 2022 ABQB 333.

[6] *Paramount* (ABCA) at para 47, citing *Brookfield Residential (Alberta) LP (Carma Developers LP) v Imperial Oil Limited*, 2019 ABCA 35 at paras 11-13.

[7] *Ibid*.

[8] *Paramount* (ABCA) at para 59.

[9] *Paramount* (ABCA) at para 58.

[10] *Paramount* (ABCA) at para 60.

[11] *Paramount* (ABCA) at para 61.

[12] *Paramount* (ABCA) at para 62-63.

[13] *Paramount* (ABCA) at para 55.

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