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Limitation periods apply to corporate disclosure requests: The Lagana case

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When a corporation fails to provide audited financial statements for years, without a shareholder resolution exempting the company from the requirement, at what point is a shareholder’s demand barred by Ontario's *Limitations Act, 2002*? This question was answered by the Ontario Court of Appeal in the recent decision of *Lagana v. 2324965 Ontario Inc*., 2025 ONCA 607, confirming that limitation periods apply to such requests under the *Business Corporations Act (Ontario)* (OBCA). This appellate decision highlights the importance of timely action for shareholders seeking corporate transparency. Ongoing statutory obligations do not create perpetual claims.

The dispute overview

- The case arose from a real estate development corporation, 2324965 Ontario Inc. (the Company), incorporated in 2012 by the respondent, David Power, and Lagana's father.
- Following the death of Lagana's father later that year, Lagana acquired his father's shares.
- The respondents included the Company and its majority shareholder, David Power, who became the sole director and controlled the board.
- Pursuant to s. 154 of the OBCA, non-offering corporations must furnish shareholders with financial statements (including audited financial statements where required) not less than 10 days before each annual meeting (or before written resolutions in lieu) However, the Company never appointed an auditor and never provided audited statements.
- Lagana claimed he repeatedly requested them informally but received only unaudited statements, or none at all.
- In 2021, Lagana brought an application under ss. 149(8) and 253(1) of the OBCA to appoint an auditor and compel production of audited statements for fiscal years from 2013 onward.
- The respondents argued that the claim was partially time-barred under the *Limitations Act*, 2002 (the Act) namely to limit relief to statements within the two-year period preceding the application.
- The application judge granted the relief sought, finding that the Act did not apply because the request was not a "claim" under the statute.

- The respondents appealed to the Divisional Court, which allowed the appeal and held that the limitation period applied such that Lagana was entitled to audited statements only for the two most recent fiscal years prior to the application date.
- Lagana appealed, arguing that the OBCA statutory duties do not give rise to "claims" under the Act, rendering the limitation period inapplicable

The Court of Appeal decision

The Court dismissed the appeal of Lagana, upholding the Divisional Court's finding that requests for audited financial statements more than two years old were statute-barred. The decision clarifies the interplay between shareholder rights under the OBCA and the basic limitation period under s. 4 of the Act. In particular, the Court held unanimously that a shareholder's application under s. 253(1) to compel audited financial statements asserts a "claim" for a remedial order and is therefore subject to the two-year basic limitation period. The obligation to provide audited financial statements correlates to a shareholder's right. As the duty owed by a corporation corresponds to a private right, a claim arises, and the Act applies. However, the Court cautioned that the applicability of limitation periods to compliance orders depends on statutory interpretation in the specific scheme at issue. Where obligations correspond to private rights (as under the OBCA), limitation periods apply; where obligations serve public purposes only, the analysis may differ.

Key takeaways

This decision is of particular relevance to minority shareholders in closely held corporations. Private companies often do not obtain audited financial statements due to their cost. However, all companies have a statutory obligation to provide them, unless the shareholders pass a resolution to exempt the company of this requirement. In short, shareholder rights to financial transparency are not indefinite: failure to pursue enforcement in a timely manner can forfeit access to historical records. Shareholders should document requests and consider timely applications if informal efforts fail.

At the same time, the decision bolsters the use of limitation defences in governance litigation, particularly where historical compliance lapses are alleged. However, it does not absolve a corporation from its ongoing duties. Corporations must still adhere to OBCA requirements or risk exposure to fresh claims each year.

Lagana highlights the balance struck by the courts between transparency and procedural fairness. Parties navigating corporate disputes should review their governance documents and act in a timely manner to preserve OBCA remedies.

By

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