Claims from minors and the 15-year ultimate limitation period in Ontario

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Nineteen years after the *Limitations Act, 2002* (the Act) took effect, Ontario's highest court has confirmed that the "ultimate" limitation period does have some teeth to have claims based on historical events dismissed. On April 20, 2023, the Court of Appeal for Ontario released its decision in *Wong v Lui*, 2023 ONCA 272, clarifying the application of exceptions to the ultimate 15-year limitation period established under section 15(2) of the Act. At issue was the application of the ultimate limitation period where an individual was a minor during the time of the events. The Court ruled that section 15(4)(b) of the Act only postpones the running of the ultimate limitation period for plaintiffs who have claims that arose when they were minors. It does not postpone the running of the ultimate limitation period simply because someone was a minor before they had a claim.

The *Limitations Act*

The Act came into force on January 1, 2004. While the basic 2-year limitation period is subject to the doctrine of discoverability, the Act introduced an ultimate limitation period of 15 years which is not subject to the doctrine of discoverability. Section 15 of the Act states that "no proceeding shall be commenced in respect of any claim after the 15th anniversary of the day on which the act or omission on which the claim is based took place."

While the Act has been in force for almost 20 years, due to the transition provisions under the Act, only in recent years could any claims be dismissed due to the ultimate limitation period. The Court of Appeal had previously held in *York Condominium Corporation No. 382 v Jay-M Holdings Limited* that it was not until 15 years after the Act was introduced (on January 1, 2019) that the ultimate limitation period would begin to have any effect.

It is with this background that the interplay between the claims of minors and the ultimate limitation period was recently considered by the Court of Appeal.

Wong v Lui

In *Wong*, the plaintiffs purchased a property in August of 2019 and subsequently discovered significant defects alleged to have arisen in part from building permits opened in 1987. By the time that the plaintiffs purchased the property, the 15-year limitation period had already expired with respect to the 1987 permits.

In the course of the litigation, the defendant municipality argued that the 15-year limitation period barred claims relating to the 1987 building permits. The plaintiffs argued that because Ms. Wong (born in 1988) had been a minor during the period that the 15-year limitation period had been running, section 15(4)(b) of the *Limitations Act* had paused the running of the limitation period such that the claims relating to the 1987 building permits could continue. At first instance, the motions judge determined that for section 15(4)(b) to apply, a plaintiff only needed to be a minor at some point within the 15-year limitation period for the time to stop running.

In allowing the appeal, the Court of Appeal noted that the lower court had erred by failing to apply well-established principles of statutory interpretation and failing to consider the legislative scheme and intent of the Act. Of significance, the Court of Appeal emphasized the intention of legislative limitation periods to balance a plaintiff's right to sue with a defendant's right to certainty and finality. The Court reiterated its previous comments that the purpose of the Act is to "balance the concern for plaintiffs with undiscovered causes of action with the need to prevent the indefinite postponement of a limitation period and the associated costs relating to record-keeping and insurance resulting from continuous exposure to liability."

Ultimately, the Court of Appeal concluded that the exception to the 15-year limitation period established by section 15(4)(b) of the Act only applies where a plaintiff is a minor at the time that they have a claim as against a defendant. The fact that a potential cause of action may exist, undiscovered, at the time that a plaintiff is a minor is irrelevant.

For more information on the ultimate limitation period in Ontario, please reach out to any of the authors or key contacts listed below.

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