ONCA rules on the ultimate limitation period in the context of municipal building permit claims

February 27, 2025

The recent decision of the Court of Appeal for Ontario in *Huether v Sharpe*, 2025 ONCA 140, clarifies what constitutes a "continuous act or omission" that is sufficient to toll the running of the 15-year ultimate limitation period in s.15(2) of the *Limitations Act* (Act).

Background

The Township of McMurrich Monteith (Township) issued a building permit (Permit) for the construction of a dwelling in 1986. Inspections conducted by the Township during construction found various deficiencies which were noted on an Order to Comply. The Order contained a handwritten note which stated "all complied with". In 1988, the Township issued a treasurer's certificate to the property's new owners which indicated that there were no outstanding work orders against the property. In October 2021, the property was purchased by the plaintiffs who discovered construction defects in the property and issued an action as against the Township in February 2022.

The Township brought a summary judgment motion arguing that the claim was barred by the ultimate limitation period in section 15(2) of the Act. In particular, the Township pointed to the fact that the Permit was issued in 1986 and any negligence on its part occurred more than three decades prior. By contrast, the Plaintiffs argued that the Township never closed the Permit and therefore its negligence was ongoing and continuous. Accordingly, the ultimate limitation period had not yet expired by virtue of s. 15(6)(a) of the Act.

Motion Judge's decision

In dismissing the Township's motion for summary judgment, the motion judge focused on whether the Permit had been properly closed. According to the motion judge, the Township never closed the Permit and thus it remained open. The motion judge further held that the Township had a duty to monitor open construction files and based on the finding that the Permit remained open, the duty to monitor remained in effect. As such, the Township's negligence had never ceased, and the ultimate limitation period had not

expired. The motion judge rejected any prejudice to the Township due to the passage of time because the Permit was preserved and the documents “spoke for themselves”.

Court of Appeal’s decision

The Court of Appeal set aside the motion judge’s order and dismissed the plaintiff’s action in its entirety as it was statute barred pursuant to the Act. In arriving at this finding, the Court held that a continuing act or omission requires a repetition of actionable conduct on a continuous basis by a defendant. In the present case, there was no evidence of any such actionable conduct. Specifically, the Court pointed to the fact that, from at least February 1988 onward, the Township treated the Permit as if it were closed. The file became dormant and eventually was moved into storage. Even if the Township had a duty to monitor open building permits, the Court held that the existence of such a duty alone could not amount to a continuous act or omission for the purposes of s. 15(6)(a).

The Court further noted that section 15(2) was enacted in part to avoid litigation over latent defects and the difficulties associated with such litigation. In this case, all of the individuals who were directly involved in the construction of the property were deceased and it would be impossible for the Township to satisfy the obligation imposed by the motion judge to “follow up” regarding the status of construction that was completed decades prior. The Court further rejected the motion judge’s conclusion that the documents in the Permit file “speak for themselves”.

Finally, the Court held that, since the alleged negligence was not a continuous act or omission, the ultimate limitation period would have commenced running on January 1, 2004, and expired 15 years later on January 1, 2019. This was due to the transitional provision in s. 24(5)1 of the Act, which provides that if the claim was not discovered before January 1, 2004, “the Act applies as if the act or omission had taken place on that date.”

Although the absence of a continuing act or omission was sufficient to dismiss the action, the Court held that the appeal would also be granted as the motion judge erred in finding that the Township owed a duty of care to monitor open building permit files without conducting the necessary duty of care analysis for a novel duty.

Takeaways

This case re-affirms the principle that the purpose of the ultimate limitation period is to balance the plaintiff’s right to sue with the defendant’s need for certainty and finality. For municipalities in particular, the decision offers certainty with respect to expiry of limitation periods in permit claims.

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