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Claim against Township for failing to monitor building permit dismissed under ultimate limitation period (*Huether v. Sharpe*)

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The Ontario [Limitations Act, 2002](#) (the "Act"), provides for an "ultimate" limitation period of 15 years to commence most types of civil claims. Specifically, [section 15\(2\)](#) of the Act provides 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 date of an act or omission may often be evident, where the claim concerns an ongoing issue, it may not be clear when the "act or omission" took place or ended.

In *Huether v. Sharpe*, [2025 ONCA 140](#), the Court of Appeal for Ontario addressed the ultimate limitation period for a claim against a municipality for failing to monitor an open building permit.

The claim involved a dwelling that was built on a residential property between 1986 and 1987. In May 1986, a township building inspector issued the permit to the former owner/builder who proposed to construct the dwelling. The township's Chief Building Official conducted a number of inspections of the dwelling during its construction and

noted various deficiencies. An order to comply was issued on August 8, 1986, regarding several violations. A handwritten note on the order to comply stated "all complied with". It was unknown who wrote the note or when they did so.

At the time of the dwelling's construction in the 1980s, the township's procedures did not involve issuing any documents or formal declarations that a building permit was closed. Instead, a building permit would be closed when a final inspection confirmed that the construction complied with applicable laws and regulations and an inspector noted the final inspection on the building permit, which meant the building permit was closed. Alternately, if construction was not in compliance, the inspector would issue a work order. When the inspector confirmed satisfaction of the work order, the inspector would note compliance on the work order, which meant the building permit was closed.

Owners of the property in 1988 requested a treasurer's certificate from the municipality, which was an official

representation of taxes owing, outstanding building permits and work orders, and applicable zoning. A certificate was issued at the time which stated in part that occupancy permits were used or issued by the municipality and that there were no outstanding work orders.

The property was sold to various third parties on a number of occasions between 1988 and October 2021, when it was purchased by the plaintiffs. None of the interim owners had applied for fresh building permits to undertake or complete any construction on or in the dwelling.

Shortly after the plaintiff's purchase, they discovered significant defects in the dwelling's foundation. In February 2022, they commenced an action against the township, arguing that these defects had resulted from the township's negligence in supervising the dwelling's construction and failing to conduct further inspections, among other things.

By the time of the litigation, the original building department inspector and homeowner were deceased. There was no evidence available as to whether a final inspection of the dwelling was conducted nor what was meant by the notation "all complied with" in the building department file.

The township brought a motion to dismiss the action on the basis that it was statute-barred by the ultimate limitation period. The motion judge dismissed the township's motion based in part on the Court of Appeal's decision in *Breen v. Lake of Bays (Township)*, [2022 ONCA 626](#), which concluded that when a municipality makes a policy decision to inspect construction projects, it owes a duty of care to persons who might be injured by the negligent exercise of its inspection powers.

The motion judge concluded that a municipality has a duty to continuously monitor an open permit file until it determined that a building was substantially complete and that it satisfied

the conditions for occupancy. Because the building inspector had not taken these steps in relation to the dwelling, and the permit was never closed, the motion judge reasoned that the township's duty to monitor remained in effect.

With regard to the ultimate 15-year limitation period, the motion judge noted that [section 15\(6\)\(a\)](#) of the Act provides that in the case of "a continuous act or omission", the limitation period does not commence until "the day on which the act or omission ceases." The motion judge reasoned that the township continued to be under a duty to monitor the permit file, so its negligence had never ceased, and the ultimate limitation period had therefore not expired.

The township successfully appealed the decision to the Court of Appeal for Ontario.

In the Court of Appeal's view, a "continuing act or omission" requires a succession or repetition of actionable conduct on the part of a defendant, rather than a prolonged period of inactivity.

No successive or repetitive conduct was pleaded or otherwise identified by the plaintiffs. Rather, the evidentiary record was that from at least February 1988 onward, the township treated the permit as if it was closed and ceased to have any role or involvement with the construction of the dwelling. Accordingly, any alleged negligence on the part of the township had already occurred and was complete by that date. Nothing happened thereafter.

The Court of Appeal determined that nothing turned on the issue of whether or not the permit was actually closed or was merely (mistakenly) regarded as being closed. The key point is that there was no difference in the subsequent behaviour of the Township, which regarded the file as dormant and later placed it into storage.

Further the alleged "duty to monitor" open permit files did not constitute a "continuing

act or omission” within the meaning of [section 15\(6\)\(a\)](#) of the [Act](#). The mere allegation that the defendant has some generalized ongoing duty to the plaintiff is, in and of itself, insufficient to toll the running of the ultimate limitation period, absent some successive or repeated actionable conduct on the part of the defendant: *Sunset Inns Inc. v. Sioux Lookout (Municipality)*, [2012 ONSC 437](#), aff’d [2012 ONCA 416](#).

The plaintiffs argued that if the action was statute-barred, homeowners would not be able to recover damages from a municipality for failure to conduct inspections or otherwise regulate building construction. However, the Court of Appeal reasoned that the practical effect of the motion judge’s decision meant that there would be no limitation period applicable to proceedings in respect of latent defects in the dwelling, so that if the defects had not been discovered for another 50 years or more, the then-owners could still commence a proceeding against the township.

The Court of Appeal therefore concluded that the proceeding was barred by [section 15\(2\)](#) of the [Act](#). The appeal was allowed, the motion judge’s decision was set aside, and the plaintiffs’ claim against the township was dismissed.

While the result may be unfortunate for the current homeowners, the case offers what the Court of Appeal described as “a classic illustration of the difficulties associated with belated litigation.” In that regard, one of the central concerns that led to the enactment of the ultimate limitation period in the [Act](#) was to avoid litigation over latent defects in buildings that had been constructed decades in the past. The statutory ultimate limitation period was intended to strike the difficult balance between allowing sufficient time for plaintiffs to commence a claim and the needs of defendants for certainty and finality.

Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact [James Cook](#), at 416.865.6628 or jcook@grllp.com.

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