
TO: CITY MANAGER **DATE:** 2007 April 24

FROM: CITY SOLICITOR **FILE:**

SUBJECT: THE B.C. ATTORNEY GENERAL'S GREEN PAPER – "REFORMING BRITISH COLUMBIA'S LIMITATION ACT"

PURPOSE: To recommend that Council support an amendment to the B.C. Limitation Act reducing the ultimate limitation period from 30 years to 10 years

RECOMMENDATIONS:

1. **THAT** Council support the amendment of the B.C. Limitation Act to reduce the ultimate limitation period from 30 years to 10 years;
2. **THAT** the City submit a response to the Attorney General's Green Paper – "Reforming British Columbia's Limitation Act" indicating its support for a reduced ultimate limitation period of 10 years.

REPORT

Included with the correspondence package presented to Council at its regular meeting of April 16, 2007 was a letter from the UBCM to all of its members advising of the B.C. Attorney General's Green Paper on Reforming B.C.'s Limitation Act. The letter reminds members that in 2006 the UBCM endorsed a resolution that the Provincial Government be requested to reduce the ultimate limitation period from 30 years to 10 years. The UBCM letter urges its members to support this request by responding to the Green Paper.

Council requested staff to report on the matter.

In February 2007 the Ministry of the Attorney General issued a Green Paper entitled "Reforming British Columbia's Limitation Act". The Green Paper contains a comprehensive and critical review of B.C.'s current Limitation Act. It compares B.C.'s statute with limitation legislation recently enacted in other Canadian Provinces, and raises a series of questions on which it invites responses.

One of the more important questions raised in the Green Paper is "Should the Limitation Act create a single ultimate limitation period of 10 years?"

Limitation periods are legislated deadlines for commencing actions in the Courts. There are two kinds of limitation periods: basic and ultimate. Basic Limitation periods apply in the absence of special circumstances that postpone the running of time. The ultimate limitation is the maximum time limit, beyond which an action may not be brought, no matter what the circumstances.

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Under the B.C. Limitation Act there are currently 3 basic limitation periods, depending on the nature of the cause of action – two years, six years, and ten years. The running of time can be postponed for two major reasons:

1. disability – where the person entitled to bring the action is not competent at law to do so. The most common example is that a minor who has a cause of action. The basic limitation period does not run until that person attains the age of 19 years. Adult mental incapacity also postpones the running of time;
2. discoverability – where the person entitled to bring the action does not know and could not reasonably be expected to have known that damage has occurred or is occurring or that he or she has a cause of action against a party. The Green Paper uses the example of the sale of a residential property with an abandoned leaky oil tank of which the vendor was aware but did not advise the purchaser. The purchaser's right to bring action against the vendors is postponed until the purchaser discovers (or reasonably should have discovered) the existence of the leaky oil tank.

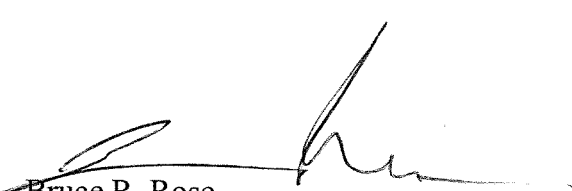
For local governments, the 30 year ultimate limitation period ("ULP") can create hardship and unfairness, particularly in building construction cases. Take for example a building that suffers structural damage because of negligent design or construction. It may take many years before the negligent act manifests itself and the damage to the building may itself occur over a long period of time. To compound the problem, the basic limitation period begins to run all over again each time the building is sold to a buyer who is unaware of the problem. When moneys are ultimately expended to remediate the problem it may be several owners and many years after the initial defective construction or design. While the owner may claim the cost from the original builder, developer, architect and/or engineer, a claim may also be made against the local government. As the local government may be one of the only parties left with assets, a finding of even a minor degree of fault on the part of the local government may still equate into payment of all or a substantial part of any judgment. The fact is that the local government will still be there in 30 years (and will still have assets) when many or most of the other parties will not.

Moreover, as time passes memories fade and people change jobs, move away, and eventually pass on. Marshalling reliable evidence of events up to 30 years after the fact is difficult.

The Green Paper points out that Alberta's ULP is now 10 years, Ontario's is 15 years, and Saskatchewan has a general ULP of 15 years with special ULPs of 2 and 10 years. The Green Paper notes that both the B.C. Law Reform Commission, in a 1990 report, and the B.C. Law Institute, in a 2002 report, recommended the adoption of a single ten year ULP.

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Staff recommend that Council support the reduction of the ULP in B.C. Limitation period legislation to ten years in accordance with the UBCM's position.



Bruce R. Rose
City Solicitor

BR:cvh
Copied to: Director Planning & Building
Chief Building Inspector