LIMITATION PERIODS: IS AN ARCHITECT EVER SAFE FROM LITIGATION?

By the very nature of the profession, when an architect is sued, it has to do with a dispute centred on a building. Since most buildings are designed to last decades or longer, does this mean an architect should remain fearful of litigation about each project indefinitely, or could they ever rest easy knowing the risk has passed?

The answer is one I must often give as a lawyer: *It Depends*.

Architects may have some familiarity with Ontario's basic two-year limitation period, meaning that a lawsuit must be brought within two years of whatever caused it, but this is subject to a significant "discoverability" exception. Less known is that there also is an umbrella 15 year Ultimate Limitation Period.

WHY THE BASIC LIMITATION PERIOD IS NOT ENOUGH TO SLEEP SOUNDLY

Going back in time, Ontario used to have several different limitation periods applying to different sorts of litigation. This changed after 2002, with the enactment of the *Limitations Act, 2002*,[1] section 4 of which set out a "Basic Limitation Period" that for every civil claim in Ontario:

"a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered."

This means that a lawsuit can be dismissed if it is begun more than two years after the claim on which it is based was discovered. *When* a lawsuit is discovered is a complex legal issue, guided by section 5 of the *Limitations Act* and the many decisions that interpret it.

What is important for architects to know, is that there are many situations where a problem to a building might not be discovered until many years after it is complete.

This means that, in the architectural context, there are two types of disputes:

1. those where the Basic Limitation Period would apply, meaning that a lawsuit could not commence more than two years after a project is complete, and
2. those where the principle of discoverability means an architect cannot rely on the two-year Basic Limitation.

Here are some examples of each scenario:

- The Basic Limitation Period would cut off claims that could be known within two years of project completion, such as disputes relating to:
    - municipal approvals
    - troublesome site conditions encountered during construction
    - construction delay

- Claims that might only be discovered when a subsequent event takes place might not be known within two years of project completion, such as:
    - personal injury events due to alleged dangerous conditions
    - property damage events such as rainfall floods, burst pipe floods, or fires
    - problems with design or construction discovered during subsequent renovation or construction projects.

Based only upon the Basic Limitation Period, it could be possible to bring a lawsuit 20, 30 or 40 years after a project is complete, for example if a person is only injured at that time but alleges the original design was flawed in a way that contributed to their injury. Fortunately, that is where the Ultimate Limitation Period comes into play.

WHAT IS THE ULTIMATE LIMITATION PERIOD?

The *Limitations Act* provides some security where the Basic Limitation Period is open-ended through section 15, which provides for an Ultimate Limitation Period, and which states, regardless of whether or not the Basic Limitation has expired:

"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".

For architects, this means that a lawsuit should never be brought against them more than fifteen years after they provided their final services on a project.

EXCEPTIONS TO THE ULTIMATE LIMITATION PERIOD

Unfortunately, even the Ultimate Limitation Period has a few exceptions. For example, it does not run (i.e., is “on pause”) for:

- the period that a claimant is a minor under the age of 18
- the period a claimant is incapable of bringing a claim due to their “physical, mental or psychological condition”
- undiscovered environmental claims, such as for groundwater contamination

THREE TAKEAWAYS FOR YOUR PRACTICE

Architects and other design professionals are more susceptible to lawsuits where the Basic Limitation Period will not protect them due to the fact that buildings are designed to stand for decades. Are they ever *ultimately* safe from litigation? For the reasons noted above, while there are exceptions, most cases cannot be brought after 15 years. In every case, you can rest easier if you follow the following three guidelines

1. Keep records on each project for at least 15 years, and even longer if practicable.
2. Even where a claim relates to a long-completed project and may seem farfetched, take it seriously and report it promptly to Pro-Demnity; we are the ones best suited to determine what limitation period might apply and how to use it to defend you in the context of litigation.
3. Remember that Pro-Demnity’s policy is tailor-made to protect architects from risks unique to their practice. In the context of claims for long-completed projects, Remember that Pro-Demnity has your back through our Retirement from Practice coverage, which protects the architect for the length of their retirement, plus their estate (and beneficiaries) for up to 6 years after the architect is deceased.

Learn more about Pro-Demnity’s Retirement from Practice Program or contact our Underwriting Team at 416-386-1770 ext. 1 if you are ready to retire from practice. If you have any questions about potential claims, speak with our Risk Services team at 416-386-1770 ext. 2, or contact claims@prodemnity.com.

[1] Full citation: *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B

Our Contributor

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