# The 'longstop' provision in the Building Act 2004

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One of the things that makes the law interesting is that different legal brains can come to different decisions on similar facts.

This has played out recently in two conflicting decisions of the High Court on how the longstop limitation provision in the Building Act 2004 interacts with the limitation period for claims for contribution in the Limitation Act. Which limitation period trumps the other?

This area of the law has had divergent lines of authority at High Court level for many years. Since 2006, cases before the High Court have favoured the view that claims for contribution made by defendants against third parties, in the context of a building defects claim, are subject to the long stop provision in the Building Act.

This has meant a defendant could not bring a third-party claim for contribution outside the 10 year longstop period.

This interpretation has had a particularly detrimental effect on councils because they are often the last party in the chain to do something i.e. carry out the final inspection and issue the code compliance certificate. If a plaintiff waited until just before 10 years from the final inspection to sue only the council, then on the more recently held judicial view, none of the other building parties would have done anything within time and the council could not join them.

In the case of *BNZ v Wellington City Council* [2021] NZHC 1058 Clark J decided that the Limitation Act 2010 did not bar third party claims for contribution by the council against others involved in the construction work.

In her view, the long stop only applies to claims by a plaintiff. She found that third party claims for contribution by defendants are "ancillary" claims and the time limit for making such claims are found exclusively in the Limitation Acts 1950 and 2010. Clark J found that the Limitation Act 2010 consolidated the right to contribution by putting time limits for contribution claims outside the rules for money claims and provided a specific limitation period of two years.

In a nutshell her view is that a claim for contribution is an ancillary claim, for which there is a two year limitation period running from when the council's liability in that case is quantified.

Not long afterwards the case of *Body Corporate 328392 v Auckland Council* [2021] NZHC 2412 was decided. The Associate Judge in that case respectfully disagreed with Clark J and said that the purpose of setting a long stop is to provide certainty to building parties that they cannot be held liable more than 10 years after they completed building work and the Building Act makes it clear that it overrides the Limitation Act.

He went on to say that the Building Act makes no distinction between original and ancillary claims.

So, we are all left scratching our heads and, in the meantime, the best thing to do for councils is to join third parties who did work more than 10 years ago.

This is the reason why we have appellant courts – because sometimes the arguments are finally balanced, there are divergent lines of authority, and the law becomes unclear.

In many ways it is remarkable that there has not been an appeal on this point in the past 15 years. We understand that the Court of Appeal has been asked to provide certainty on this point and we will be able to update you on what those three clever judges tell us in due course. **LG**