



PARLIAMENTARY LIBRARY

Te Pātaka Rangahau a Te Whare Pāremata

BILLS DIGEST

Digest No. 1695

Limitation Bill 2009

Date of Introduction:	02 June 2009
Portfolio:	Attorney-General
Select Committee:	As at 21 July, 1st Reading not held.
Published: 21 July 2009 Prepared by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 471-9626 (Ext. 9626) F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The aim of the Bill is to replace the Limitation Act 1950 (the 1950 Act) with the objectives of making the law relating to limitations " ... clearer and more comprehensive" , of " ... encouraging claimants to make claims without undue delay", and of " ... protect[ing] defendants from the unjust pursuit of stale claims"¹.

Background

The present law

"The 1950 Act contains the general rules for determining the limitation periods for civil claims. The most common period is 6 years, and applies to claims founded on contract or tort, claims for an account, and claims in respect of a breach of trust. The current periods are subject to extension in a range of circumstances, for example, if the claimant is under 20 years of age, is "of unsound mind", or is because of fraud or mistake unable with reasonable diligence to discover that a claim exists.

"There are difficulties in the substance and drafting of the 1950 Act. It is largely based on the 1936 fifth report of the English Law Revision Committee, Statutes of Limitation (Cmnd 5334). That report reviewed an English statute of 1623 and made recommendations reflected in the Limitation Act 1939

¹ Limitation Bill, 2009 No 33-1, Explanatory note, General policy statement, p. 1.

(UK) (the 1939 Act). The 1950 Act, which followed closely the terms of the 1939 Act, is incomplete, misleading, and inaccessible. Judges have suggested it is not fit for purpose and requires a complete legislative overhaul. The courts have made piecemeal attempts to cure the difficulties. The overall result has been a lack of harmony"².

Law Commission reports in 1988, 2000, and 2007

"The 1950 Act has been the subject of 3 Law Commission reports. Two have recommended that it be replaced with a new Act.

"The 1988 report Limitation Defences in Civil Proceedings (NZLC R6, 1988) recommended that the 1950 Act be replaced with a new Limitation Defences Act of wide application.

"The 2000 report Tidying the Limitation Act (NZLC R61, 2000) noted that general reform had not proceeded, and that the problems of the existing law had worsened since 1988. It therefore confined its recommendations to urgently needed changes expressed as proposed amendments to the 1950 Act.

"The 2007 report Limitation Defences in Civil Claims: Update Report for the Law Commission (NZLC MP16, 2007) recommended that the 1950 Act be replaced with a new Act that would apply to specified claims and help to make limitation law more accessible"³.

Recent cases

P F Sugrue v Attorney-General [2004] 1 NZLR 207 (CA)

The Court of Appeal held in *P F Sugrue Ltd v Attorney-General* that claims for monetary relief for breach of the New Zealand Bill of Rights Act 1990 are not subject to the 1950 Act.

Thom v Davys Burton [2008] NZFLR 1032 (SC)

This case has highlighted difficulties with using the "date of accrual of the relevant cause of action" as the beginning of the six year period and in identifying that date.

Trustees Executors Ltd v Murray [2007] 3 NZLR 721 (SC)

This case is an example of the fact that time runs for most money claims and certain other claims even if they are not reasonably discoverable.

Key reforms proposed by the Bill

According to the Explanatory note to the Bill, the Bill implements the following key Law Commission recommendations:

- repealing and replacing the 1950 Act;
- having a general civil limitation defence to money claims not covered by the 1950 Act and with specific exclusions, for example, claims for contribution from another tortfeasor (i.e. a person who has inflicted a tort on a plaintiff; a tort is a civil wrong not necessarily subject to the criminal law) or obligor (i.e. a person bound by an obligation to another person (an obligee) who is entitled to the benefit of the bond or obligation);
- provide general civil limitation defences to certain other claims, including claims in respect of land or goods;

² Ibid., pp. 1 and 2.

³ Ibid., p. 2.

- make the start date of the primary limitation period for most claims the date of the act or omission on which the claim is based, rather than the date of accrual of the relevant cause of action, but also provide special start dates for certain claims;
- retain, for almost all claims, the current primary limitation period of 6 years;
- provide exceptions or modifications to limitation periods and start dates for cases involving minority, incapacity, acknowledgement or part-payment, and fraud (including, for cases of incapacity, giving the court or tribunal a discretion to extend relevant periods);
- introduce, for money claims and certain other claims a 3-year late knowledge period that—
 - applies if the claim is made after its primary limitation period and the claimant has late knowledge of the claim (because, at the close of the start date of the claim's primary limitation period, the claimant neither knew, nor ought reasonably to have known, specified key facts that the claimant must know in order to make the claim); and
 - starts on the date when the claimant gained, or ought reasonably to have gained, knowledge of those specified key facts (the claim's late knowledge date);
- prevent liability for an indeterminate time by introducing a defence to a claim made within its late knowledge period but after a longstop period (of 15 years after the date of the act or omission on which the claim is based);
- give the court or tribunal a discretion, like that in section 33 of the Limitation Act 1980 (UK), to order that monetary relief may be granted in respect of a claim of sexual abuse of a minor even though a general limitation defence has been or could be established against the claim;
- give the court or tribunal a discretion to order that relief may be granted in respect of a claim on a judgment or to enforce an arbitral award even though a general limitation defence has been or could be established against the claim;
- give the court or tribunal a discretion to order that relief may be granted in respect of an ancillary claim when relief may be granted for the original claim but a general limitation defence has been or could be established against the ancillary claim;
- clarify, simplify, and re-enact the current rules about claims for land⁴.

"Other specific limitation periods, other limitation defences, or other arrangements are prescribed in approximately 30 other Acts, and these other arrangements will continue to prevail in the event of any conflict"⁵.

Main Provisions

Purpose

The purpose of the Bill is to encourage claimants to make claims for monetary or other relief without undue delay by providing defendants with defences to stale claims (*Part 1, Clause 3, the "purpose" clause*).

⁴ Limitation Bill, 2009 No 33-1, Explanatory note, General policy statement, Summary of key measures, pp. 4 and 5.

⁵ *Ibid.*, p. 5.

Money claims

Defence to money claim filed after applicable period

The Bill prescribes a defence to a "**money claim**" if the defendant proves that the date on which the claim is filed is at least six years after the "**date of the act or omission on which the claim is based**" (the "**claim's primary period**"). However, this does not apply if the claimant has late knowledge of the claim, and so the claim has a "**late knowledge date**" (see below); and the claim is made after its primary period. In those cases it is a defence to a claim if the defendant proves that the date on which the claim is filed is at least three years after the late knowledge date (the claim's "**late knowledge period**"); or 15 years after the date of the act or omission on which the claim is based (the claim's "**longstop period**") (*Part 2, Clause 10*).

Defining "Money claim" and "Date of the act or omission on which the claim is based"

The Bill defines these terms as follows:

"Money claim"

The Bill lists the claims which fall into this category. They are claims:

- for money secured by a mortgage;
- for, or of arrears, or for damages in respect of arrears of, interest in respect of a judgement debt (i.e. where a Court orders a person to pay a sum of money);
- for monetary relief for a breach of the New Zealand Bill of Rights Act 1990;
- to have imposed, or recover, a civil penalty (i.e. generally a monetary forfeiture or penalty recoverable under an enactment which is not a fine or an amount of compensation, reparation, or restitution);
- to enforce a surety's (e.g. a person who gives a guarantee) or other person's obligations under, or to obtain through forfeiture, a bond of recognisance (for example, a bail bond).

Certain claims are not money claims: claims for damages in respect of any trespass or injury to Maori customary land; claims for contributions from another tortfeasor or joint obligor (i.e. a person bound with at least one other person by an obligation to another person); a claim on a judgement, or to enforce an arbitral award; claims under the Criminal Proceeds Recovery Act 2009 or Sections 142A to 142Q of the Sentencing Act 2002; or claims under the Terrorism Suppression Act 2002 (*Part 2, Clause 11; Part 1, Clause 4, definition of "civil penalty"*).

"Date of the act or omission on which the claim is based"

The Bill provides that this means in respect of:

- a claim based on an obligation not enforceable until a demand is made - the date on which the defendant defaulted;
- a claim in respect of an infringement after publication of the complete specification and before sealing of a patent sealed under the Patents Act 1953 - the date on which the patent was sealed; and
- a claim in respect of an infringement (of certain registered designs or trade marks under the Designs Act 1953 and the Trade Marks Act 2002) - the date on which the infringement was committed or occurred (*Part 1, Clause 5*).

Determining the "late knowledge date"

The Bill provides that a claim's late knowledge date is the date (after the close of the start date of the claim's primary period) on which the claimant gained knowledge (or, if earlier, the date on which the

claimant ought reasonably to have gained knowledge) of all of certain specified key facts that the claimant must know in order to make the claim:

- the fact that the act or omission on which the claim is based had occurred; and
- the fact that the act or omission on which the claim is based was attributable (wholly or in part) to, or involved, the defendant; and
- if the defendant's liability or alleged liability is dependant on the claimant suffering damage or loss, the fact that the claimant had suffered damage or loss; and
- if the defendant's liability or alleged liability is dependant on the act or omission on which the claim is based having been induced by fraud or, as the case may be, by a mistaken belief, the fact that the act or omission on which the claim is based is one that was induced by fraud, or as the case may be, by mistaken belief.

The Bill also provides that a claimant does not have late knowledge of a claim unless the claimant proves that, at the close of the start date of the claim's primary period, the claimant neither knew, nor ought reasonably to have known, all of those specified key facts and also makes it clear that the claimant's absence of actual or constructive knowledge may be attributable to a mistake of fact or to a mistake of law (other than a mistake of law as to this Bill's effect) (*Part 2, Clause 13*).

Definition and special start dates for various money claims

The Bill ensures that the primary period for a claim for defamation is two years and not six years (as at present) but the Bill does not re-enact, the current discretion to permit relief on a defamation claim made within six years from the date on which the cause of action accrued (Section 4(6B) of the 1950 Act). The late knowledge provisions in this Bill do, however, apply to a money claim that is a claim for defamation. The Bill specifies special start dates for various money claims. The special start date for a claim under Section 301 of the Companies Act 1993 (which, in a liquidation, empowers the court to require persons to repay money or return property), for example, is the date on which the liquidator of the company or overseas company was appointed (*Part 2, Clauses 14 and 15*).

Money claims in respect of sexual abuse of a minor

The Bill gives the court or tribunal a discretion to order that monetary relief may be granted in respect of a claim of sexual abuse of a minor even though a general limitation defence has been or could be established against the claim (*Part 2, Clause 16*).

Land, wills, contributions and other claims

The Bill makes no fundamental changes in relation to land claims, but redrafts some provisions and removes redundant ones (*Part 3, Clauses 17-26*). The Bill re-enacts and clarifies current rules on claims to recover goods (other than goods held on trust), the extinguishment of the title of the owner of converted or wrongfully detained goods in cases of successive conversions or wrongful detentions of goods, claims made by or on behalf of a beneficiary to recover personal property held on trust, and on claims for an account (e.g. an action in equity for the computation and payment to an applicant of profits made from a wrong done to the applicant) (with the addition of a late knowledge period and a longstop period for these last two matters) (*Part 3, Clauses 17-30*). The Bill re-enacts, with adjustment, current rules in relation to the limitation defence for a claim seeking to have a will declared or adjudicated to be invalid on the ground of the will-maker's lack of testamentary capacity, or on the ground of undue influence. The adjustment is that the limitation period for these claims is halved from twelve years to six years after the date of the grant of probate or letters of administration (*Part 3, Clause 31*). The Bill creates a limitation period for two narrowly defined classes of contribution claims of two years after the date on which the contributor's liability is quantified by an agreement, award, or judgment (*Part 3, Clause 32*).

Comment

Claims for contribution or indemnity that are claims to which Clause 32 does not apply are simply money claims under Clauses 10 and 11 of the Bill (described above).

Judgement debts

The Bill prescribes a defence to claims on a judgment. The provisions of the 1950 Act are largely continued but (with some definition of the types of judgement debt involved) the Bill halves the limitation period from twelve to six years after the date on which the judgment became enforceable in the country in which it was obtained and the court or tribunal is given a discretion to order that relief may be granted in respect of the claim as if no limitation defence applies to it. However, the order must be applied for before the court or tribunal has decided whether the defence is established against the claim (*Part 3, Clause 33*).

Arbitral awards

In relation to claims to enforce an arbitral award that is enforceable by action in New Zealand, the Bill re-enacts, with clarifications and adjustments, Section 4(1)(c) of the 1950 Act. The limitation period is, as under the current law, six years, but it runs not from the date on which the cause of action accrued, but instead from the date on which the award first became enforceable by action in New Zealand. Clause 34 does not apply to entry of an arbitral award as a judgment. Nor does it apply to enforcement of a judgment that is an arbitral award entered as a judgment. Another adjustment is that the court or tribunal is given a discretion to order that relief may be granted in respect of the claim as if no limitation defence applies to it. However, the order must be applied for before the court or tribunal has decided whether the defence is established against the claim (*Part 3, Clause 34*).

Claims under contracts statutes

The Bill prescribes a defence to a claim for relief (other than any form of monetary relief or declaratory relief) under specified contracts statutes. An example is a claim for an order under the Contracts (Privity) Act 1982 varying or discharging a contract for the benefit of a third party. The limitation period is six years after the date of the act or omission on which the claim is based. The Bill also provides for claims of this kind to have a late knowledge period and a longstop period (*Part 3, Clause 35*).

Special start dates

The Bill specifies special start dates for various claims that are not money claims. The special start date for a claim in respect of a beneficiary's future interest in a trust, for example, is the date on which the beneficiary's interest in the trust becomes an absolute and immediate interest. The proviso to section 21(2) of the 1950 Act is to similar effect (*Part 2, Clause 36*).

General provisions

The Bill continues provisions relating to how limitation enactments apply to arbitrations (*Part 4, Clause 37*). It also deals with how this Bill may be displaced, modified, or supplemented by special limitation defences, or by other provisions with a similar purpose, in other enactments (*Part 4, Clause 38*). Other provisions relates to defences under the Bill (which may be contracted out of) (*Part 4, Clauses 39 and 41*). The Bill provides for exceptions and modifications to various periods and start dates (for example, in respect of minority status and incapacity, in respect of acknowledgement or part payment, in respect of fraud, and in respect of situations where trust property is possessed or converted by a trustee (*Part 4, Clauses 42-47*). Other provision is made in respect of ancillary claims (an ancillary claim means a claim that relates to, or is connected with, the act or omission on which another claim is based), with regard to interest in respect of judgement debts and with regard to purchasers, deceased estates and trust beneficiaries (*Part 4, Clauses 48-52*). Detailed provision is made in respect to the application of the limitation law of foreign countries (*Part 4, Clauses 53 and 54*).

Copyright: © NZ Parliamentary Library, 2009

Except for educational purposes permitted under the Copyright Act 1994, no part of this document may be reproduced or transmitted in any form or by any means, including information storage and retrieval systems, other than by Members of Parliament in the course of their official duties, without the consent of the Parliamentary Librarian, Parliament Buildings, Wellington, New Zealand.

This document may also be available through commercial online services and may be viewed and reproduced in accordance with the conditions applicable to those services.