



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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5 OCTOBER 2023

## **MEDIA RELEASE**

**BECA CARTER HOLLINGS & FERNER LIMITED v WELLINGTON CITY COUNCIL**

(SC 11/2023)

**Hearing in the Supreme Court Wednesday 18 October**

### **CASE HISTORY SYNOPSIS**

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal. A direct link to the judgment is included at the end of this synopsis.

#### **Background**

In August of 2019, BNZ filed proceedings against Wellington City Council (WCC) seeking damages in relation to an earthquake-damaged building WCC had issued building consents and code compliance certificates for. WCC joined Beca as a third party and claims contribution from Beca as a joint tortfeasor regarding the defective design and construction monitoring.

Beca applied for strike out (an application for a claim to be dismissed without a substantive hearing) of the contribution claim.

The strike out claim was advanced on the basis that the long-stop limitation under s 393 of the Building Act 2004 applied (the long-stop issue). The long-stop limitation sets a maximum time limit of 10 years within which a plaintiff can bring a claim.

#### **High Court**

The High Court dismissed the strike out application. It held that Parliament would not have intended the Building Act to cut across the existing right of defendants to seek contribution from joint tortfeasors without including express wording to that effect.

#### **Court of Appeal**

The applicant appealed against the High Court's decision. The Court of Appeal dismissed the appeal.



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The underlying basis of the Court of Appeal’s decision on the long-stop issue was the view that there is a distinct legal and conceptual basis for a claim for contribution between two tortfeasors as opposed to a claim in negligence for damages by a plaintiff from a tortfeasor.

The Court of Appeal held that s 393 only applies to direct claims in negligence and s 34(4) of the Limitation Act 2010 applies to claims for contribution. This section sets a time limit for claims of contribution of two years from the date the liability of the person claiming contribution is quantified.

In the Court of Appeal’s view, the legislative history supports this conclusion. Parliament had not intended the Building Act regime to alter the specific “bespoke” provisions governing contribution claims in the Limitation Acts 1950 and 2010. The Court of Appeal considered also that this interpretative approach “produces an outcome which appropriately balances the competing policy considerations.”

### **This Appeal**

Beca applied for leave to appeal on the long-stop issue. The Supreme Court granted the leave application. The question on this appeal is whether the Court of Appeal was right to conclude that the Building Act long-stop provisions do not apply to a contribution claim.

### **Viewing of hearing**

The courtroom is open to the public.

This hearing of the appeal will be live-streamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

### **The panel**

The Hon Justice Williams	The Hon Justice O’Regan	The Hon Justice Glazebrook	The Hon Justice Ellen France	The Hon Justice Kós
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Judges as seen from the public gallery

### **Counsel**

- Beca Carter Hollings & Ferner Limited (Appellant): *M G Ring KC, J A McKay and T F Cleary*
- Wellington City Council (Respondent): *L J Taylor KC, B J Sanders and B A Mathers*



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### **Sitting hours**

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

### **Enquiries**

Any enquiries about the hearing should be directed via email to [supremecourt@justice.govt.nz](mailto:supremecourt@justice.govt.nz). While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2022\] NZCA 624](#) (14 December 2022)

Supreme Court leave decision: [\[2023\] NZSC 38](#) (21 April 2023)