

between: **Beca Carter Hollings & Ferner Limited**

Appellant

and: **Wellington City Council**

Respondent

Roadmap of oral submissions on behalf of Beca

Dated: 18 October 2023

Counsel certifies that these submissions are suitable for publication.

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Subs Ref:	Beca SC Subs Summary								
A	Issue								
	<p>1. BA 2004, s.393(1) & (2) – as at 2008: 1/4</p> <p>2. Competing interpretations: longstop applies to:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Beca</th> <th style="width: 50%;">WCC</th> </tr> </thead> <tbody> <tr> <td>All "civil proceedings relating to building work", which includes contribution claims.</td> <td>Only some "<i>civil proceedings relating to building work</i>", because not contribution claims.</td> </tr> </tbody> </table> <p>3. Beca's main reasons:</p> <p>(1) Ordinary meaning of text: "<i>civil proceedings relating to building work</i>" & "<i>date of the act or omission on which the proceedings are based.</i>"</p> <p>(2) Other compelling contextual references to "<i>civil proceedings</i>" in statute.</p> <p>(3) Parliament's relevant purposes in 1991: create certainty & finality to exposure of all construction participants, in line with understood availability of insurance → driven by prescribed cover for building certifiers = against "...any insurable civil liability...that might arise..." from issuing CCC: cf., CA 05.0028 – [91]-[92]</p>	Beca	WCC	All " civil proceedings relating to building work ", which includes contribution claims .	Only some " <i>civil proceedings relating to building work</i> ", because not contribution claims.				
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B	Introduction								
85 86 – 87	1. Nature of time limitation: CHH v MoE (SC), 9/111 – [121]; Dustin, 12/181 – [22]; BC 169791, 7/42 – [42]-[43]								
20 – 21 61 – 63 65	2. Nature of (ultimate) longstop.								
	3. Legal position assessed as at 1991 & 2004, not 2010.								
	4. Nature of contribution claim.								
C	Text								
27 – 29 30 – 31	1. Parallel specific regime to general LA regime: 05.0037 – [122]								
	2. " Civil proceedings " (relating to building work):								
30	(1) No " <i>civil proceedings</i> " allowed after deadline (unqualified): MoE v JH, 15/233 – [58](c) (Dustin); 15/234 – [61] (BC 169791) & [62] (Perpetual Trust)								
30 – 31	(2) Includes contribution claims: 05.0042 – [138]; Dustin, 12/182 – [24]								
	3. " Date of act or omission on which the proceedings are based ":								
32	(1) CA: 05.0037 – [122] & 05.0042 – [138]								
42 – 45	(2) Contrary to CA, date of impugned conduct trigger is both " <i>appropriate</i> " and " <i>apt</i> "								
33(1) 34 – 36	(3) NZLC R6 did not say to contrary & actually proposed this for longstop: 18/410 – [169], [171]; 18/464-465 – s.2(2)(d); 18/466 – s.4(a); 18/472 – s.20(3); 18/472 – s.20(4); 18/470 – s.14(1) & (2)(b)								
38	(4) NZLC M16 (June 2007): said " <i>not appropriate</i> " in context of general limitation period for contribution; 17/320-321 – [63], [64]; but recommended for longstop; 17/362-363 – Appendix 2								
37	(5) Parliament didn't act on NZLC's limitation recommendations until 2010 → excluded phrase as applying at all to contribution claims, including for purpose of longstop: 6/20 – ss.11(1) & (3)(b) & 6/21 – ss.12(1) & (3)(c)								
D	Other Contextual References								
49	1. Presumption that Parliament intended same meaning throughout statute.								
	2. Other provisions also referring to " <i>civil proceedings</i> ":								
47 – 48	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">BA 2004</th> <th style="width: 50%;">BA 1991</th> </tr> </thead> <tbody> <tr> <td>"Civil proceedings and defences" heading 1/2</td> <td>(same heading)</td> </tr> <tr> <td>Sections 390 1/2; 392(1) 1/2; 392(3) & (4) 1/3</td> <td>Sections 89; 50(3); 36(4)</td> </tr> <tr> <td>Section 420 1/5 (transition provision)</td> <td></td> </tr> </tbody> </table>	BA 2004	BA 1991	" Civil proceedings and defences " heading 1/2	(same heading)	Sections 390 1/2; 392(1) 1/2; 392(3) & (4) 1/3	Sections 89; 50(3); 36(4)	Section 420 1/5 (transition provision)	
BA 2004	BA 1991								
" Civil proceedings and defences " heading 1/2	(same heading)								
Sections 390 1/2; 392(1) 1/2; 392(3) & (4) 1/3	Sections 89; 50(3); 36(4)								
Section 420 1/5 (transition provision)									
	3. If " <i>civil proceedings</i> " exclude contribution claims, no statutory immunity plus no longstop.								
E	Parliament's Purpose 1991 & 2004								
	1. CA: 05.0042 – [138]-[140]:								
	(1) Conclusion erroneously based on absence of express words of inclusion + LC's purported supportive position.								

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	<p>(2) No mention of interrelated repeatedly stated objectives, in specific context of building work longstop, of bringing certainty & finality to exposure of all construction participants in line with availability of insurance (especially building certifiers).</p>
52 - 55	<p>2. Mischief:</p> <p>(1) Discoverability of damage trigger for accrual of negligence cause of action relating to defective buildings exposed defendant to enforceable claim for indefinite period: e.g., <i>Klinac</i>, 14/206 - [21]-[23]; <i>Gedye</i>, 13/196-197 - [30]-[35]; <i>CHH v MoE (CA)</i>, 10/154 - [164]; <i>CHH v MoE (SC)</i>, 9/113 - [130]; <i>MoE v JH</i>, 15/229-230 - [47]-[50]</p>
79 - 80	<p>(2) <i>Hamlin</i> provides practical contemporary example.</p>
56 40, 62 58 - 59	<p>3. 1991 solution:</p> <p>(1) Longstop in respect of all claims relating to building work → responsibility rests "entirely" with owner, so construction participants "could rest easy after 10 years" from date of last actionable conduct <i>Klinac</i>, 14/211 - [54] → legislative history, incl. Hansard <i>Klinac</i>, 14/205-206 - [13]-[22]</p> <p>(2) Certainty & finality to defendant's exposure on readily identifiable date after impugnable work done, as a matter of policy: 22/576 (col. 1) Report of Internal Affairs and Local Government Committee (Hon John Carter, Chair) → inconsistency here, unlike in <i>CHH v MoE (SC)</i>, 9/109 - [105]-[108]</p> <p>(3) Fix length of longstop to match availability and minimise cost of liability insurance, initially for building certifiers (and councils), later extended to all construction participants (finally set at 10 years): 21/569 (col. 1) 2nd Reading, Hon Graeme Lee, Minister of Internal Affairs → post-longstop exposure to contribution claims would have defeated building certifier scheme.</p>
34 - 36	<p>4. Lead up documents to BA 1991: longstop proposals also focussed on same two elements</p> <p>(1) 1987: PP3 "The Limitation Act 1950": proposed 15-year absolute longstop, including contribution claims, from date of defendant's conduct:</p> <ul style="list-style-type: none"> • General imitation period using building work example: 27/734 - [100] • Recommended conduct based "ultimate" longstop ("all cases" except fraud) 27/741 [135]; 27/742 - [140] • Latent damage: <ul style="list-style-type: none"> ➢ "Present law": table 27/746 - [150]; diagram A1 27/749 -[156(1)]; contribution, diagram A2 (27 years) 27/750 - [156(1)] ➢ Proposal: diagram D 27/751 - [156(4)]; no special provision for general limitation period 27/755-[164] <p>(2) 1988: R6 "Limitation Defences in Civil Proceeding": proposed 15-year absolute longstop, including contribution claims, from date of defendant's conduct (before certifiers contemplated):</p> <ul style="list-style-type: none"> • Recognised relationship between longstop based on date of conduct and insurance availability & cost 18/429-430 - [280]-[285]; 18/430-431 -[286]-[291]; 18/433 -[302] • Proposal: <ul style="list-style-type: none"> ➢ Date of conduct should replace accrual start date for general limitation period for monetary claims, including contribution, but special definition for "certain" contribution claims: 18/410 - [169], [171]; 18/464-465 - s.2(2)(d); 18/465 - s.4(a) & 18/472 - s.20(3) ➢ Special definition wouldn't apply to s.14 "ancillary claims" 18/472 - s.20(4) → meant that ordinary meaning of phrase applied where proposed long stop defence also applied 18/470 - s.14(1) & (2)(b) <p>(3) 1990: report Building Industry Commission/Minister of Internal Affairs - Reform of Building Controls: discussed need for adequate insurance for building certifiers for duration of liability (councils should be treated the same): <i>A-G v BC 200200 (CA)</i> 26/679 - [7]; 26/680 - [8]; 26/695-696 - [74] (s.51(3)(b)); 26/698 - [83] (s.52(6)(c)) & [84]-[85]</p>

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	<p>(4) 1991 report letters Department of Internal Affairs/Minister of Internal Affairs containing Department's recommendations on Building Bill before 31 October 1991 Parliamentary session:</p> <ul style="list-style-type: none"> • 30 August 1991 report: 19/557 identified both limitation and contribution as liability issues & recommended 10-year longstop as maximum period of liability based on date of conduct: <ul style="list-style-type: none"> ➢ Clarifying civil liability is "crucial" 19/558 - [1] → proposals addressed identified liability issues, including contribution (para 4(iii)) 19/559 - [4(i)] - [4(iv)]; 19/558 - [2(a)] - [2(c)] ➢ Recognised relationship between certainty as to liability & insurance 19/559-560 - [6] - [7], [9] - [10] → LC supported proposals (except 10-year longstop): 19/559 - [6]; 19/560 - [11]; 19/561 - [12] • 10 October 1991 report: 20/563 no specific mention of contribution but amended recommendation to 15-year ultimate longstop, again based on date of conduct & in language that inferred no exceptions: <ul style="list-style-type: none"> ➢ "all parties" 20/563 - [1(a)] - [1(c)] ➢ Consistent with R6 & supported by LC 20/563 - [1(d)]; 20/566 - [11] ➢ Longstop to run from "date of their negligent acts" (non-regulators): 20/566 - [10(a)] - [10(d)]
60 70	<p>6. 2004 re-enactment: statements 20/566 - [10(a)] - [10(d)] inconsistent with (still or now) excluding contribution claims from longstop:</p> <p>(1) Commentary to Building Bill 2003 (as reported from Government Administration Committee): purposes to implement same BA 1991 policy: 24/641; & to treat building work as <i>sui generis</i>: 24/642</p> <p>(2) Debate during 2nd Reading consistent with original purpose that longstop runs from last work + available insurance still major factor in length: 23/587 (col. 2) 2nd Reading (Hon Murray Smith)</p>
3 73 7(b), 40, 73	<p>7. Consequences of CA judgment: CA's conclusion on longstop and contribution claims would defeat Parliamentary purposes in 1991 & 2004 of achieving certainty, finality & availability of insurance → previously:</p> <p>(1) Recognised in multiple HC judgments since 2004 e.g., <i>MoE v JH</i>, 15/232-235 - [58](b), [61], [62], [64]</p> <p>(2) Entitled to expect easily understandable limits and not subject to unstated exception.</p> <p>(3) Builders/building industry professionals ordered affairs on this basis.</p> <p>(4) Still actual exposures, not just theoretical.</p>
F	LA 2010
65 68	<p>To extent that Parliament's purpose in enacting LA 2010 is relevant in ascertaining its purpose for longstop, this was to preserve & prioritise BA's specific limitation regime:</p> <p>1. CA inconsistent: recognised that pre-LA 2010 LA 1950 applied 05.0011-05.0012 - [36] → then relied on LA 2010, s.34 05.0016 - [53]; 05.0039 - [125]; 05.0046 - [148]</p> <p>2. Debate when introducing LA 2010 consistent with irrelevance of LA 2010, s.34: 25/657 - 1st Reading (Hon Christopher Finlayson, Attorney-General)</p>
G	Specific v General
64 66 29 66 - 67	<p>CA wrongly held that, as between contribution claims generally and civil proceedings relating to building work, latter was general and former was specific: 05.0045-05.0046 - [148]:</p> <p>1. Principle developed to resolve apparently conflicting purposes, but no conflict and, if conflict, longstop prevails: LA 1950 5/18 - s.33(1) & LA 2010 6/19 - s.40(1) & (2)(a)</p> <p>2. No "bespoke" approach to limitation for contribution claims in 1991 or 2004</p> <p>3. Context: industry-specific statute to introduce/maintain major reform to building industry → civil proceedings relating to building work must be more specific ("bespoke") than contribution claims generally → consistent with 25/657 - 1st Reading (Hon Christopher Finlayson)</p>