In the Supreme Court of New Zealand
I Te Kōti Mana Nui o Aotearoa

SC 11/2023

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

Appellant

and: **Wellington City Council**

Respondent

Submissions on behalf of Beca

Dated: 20 June 2023

Reference: John McKay (john.mckay@chapmantripp.com)
Tom Cleary (tom.cleary@chapmantripp.com)
Michael Ring KC (mring@bar.co.nz)

chapmantripp.com
T +64 9 357 9000
F +64 9 357 9099

PO Box 2206
Auckland 1140
New Zealand

Auckland
Wellington
Christchurch

chapman tripp

SUBMISSIONS ON BEHALF OF BECA

INTRODUCTION

1 The Court of Appeal held that, despite its express terms that refer to "*civil proceedings*" without qualification or exception, the longstop in s 393(2) (the **Longstop**) of the Building Act 2004 (**BA 2004**) does not apply to civil proceedings claiming contribution. The sole issue in this appeal is whether the Court of Appeal was correct.

2 The relevant version of the Longstop provides that "*civil proceedings relating to building work may not be brought against a person after 10 years or more from the date of the act or omission on which the proceedings are based*".[1] Its predecessor, s 91(2) of the Building Act 1991 (**BA 1991**), was to the same effect. So Parliament's intention in enacting the Longstop dates back to 1991 and persisted to (at least) 2004.[2]

3 Before the High Court and Court of Appeal's judgments in this proceeding, a consistent line of authority of at least 15 High Court judgments,[3] supported by the leading textbook authors,[4] had specifically held that the Longstop applied to contribution claims.

4 These authorities include the fully reasoned judgment, in 2018, in *Minister of Education v James Hardie New Zealand*.[5] In that case, the same respondent, Wellington City Council (**WCC**), was one of the council third parties that persuaded the High Court that the Longstop did apply to contribution claims, by relying on substantially the same arguments and authorities Beca relied on in the lower courts in this proceeding.

---

1 Building Act 2004, s 393(2) [***BA 2004***] [**App BoA 1/4**] as originally enacted and in force during the relevant periods and amended on 1 January 2011. See [18]-[21] below.

2 In these submissions, unless the context indicates otherwise, the references to "*the Longstop*" include both s 91(2) of the Building Act 1991 [***BA 1991***] [**App BoA 2/8**] and s 393(2) of the BA 2004 [**App BoA 1/4**].

3 Listed in *Body Corporate 328392 v Auckland Council* [2021] NZHC 2412 [***Arthur Street***] at [34] and fn 23 [**App BoA 8/67**].

4 See for example S Todd, C Hawes, U Cheer and B Atkin (eds) *The Law of Torts in New Zealand* (online ed, Thomson Reuters) at [59.26.5.06(3)] [**App BoA 16/293**].

5 *Minister of Education v James Hardie New Zealand* [2018] NZHC 22 [***MoE v JH***] [**App BoA 15/213**].

5 In overturning this line of authority, the Court of Appeal's essential conclusion is encapsulated in the following passages:[6]

> [47] The view we have reached, based on the words of the relevant legislation and the legislative history, and agreeing with the High Court, is therefore that the 10-year long-stop found in s 393(2) of the BA 2004 does not preclude the Council from commencing its claim for contribution as it has now done. Rather, and in terms of the applicable transitional provisions, it is the terms of s 34 of the LA 2010 that are determinative of that issue.
>
> …
>
> [147] Given the specificity of the long-standing bespoke approach to contribution claims, and again in agreement with the High Court judgment under appeal, we do not consider that either the wording adopted by Parliament in s 91 of the BA 1991 and s 393 of the BA 2004 implied, from the plain words used, or by necessary inference or on any other basis, a change to the longstanding bespoke approach to limitation in the context of contribution claims. Rather, we consider the terms of ss 91(2) and 393(2) were not intended to apply to contribution claims, but instead contribution claims were to be governed by the then applicable LA 1950 or the LA 2010 in the ordinary way.

6 In reaching this conclusion, the Court of Appeal:

6.1 accepted that contribution claims in this context are "*civil proceedings relating to building work*";[7]

6.2 overlooked or ignored Beca's submissions that "*civil proceedings*" should have the same meaning in s 393(2) as elsewhere in Part 5 of the BA 2004, such as ss 390, 391, 392 and 420, which provide a range of protections for a range of agencies and personnel against "*civil proceedings*."

6.3 erroneously attributed to Parliament a (negative) purpose in enacting the Longstop in 1991, carried through to its re-enactment in 2004, of intending to exclude contribution claims relating to building work, even though:

(a) this was never stated (or implied), either in the Parliamentary debates or the legislative materials leading to the enactment of the Longstop. In fact,

---

[6] *Beca Carter Hollings & Ferner Ltd v Wellington City Council* [2022] NZCA 624 [***CA Judgment***] at [47] **[05.0014]**, [147] **[05.0045]**.

[7] CA Judgment at [138] **[05.0042]**.

contribution claims were not mentioned at all in the context of either Longstop;

(b) this would have defeated the actual purpose of the Longstop, which was expressly stated in the Parliamentary debates: to balance the interests of building owners and building industry participants, including local governments, by providing certainty to these building industry participants, including engineers, after 10 years from the date of any negligent conduct, so that they could then "*rest easy*".[8] This express purpose of limiting all liability to a finite period was driven by Parliament's stated belief in 1991 that a longstop of no longer than 10 years was required in order to maximise and incentivise the ready and affordable availability of proper insurance cover;[9] and

(c) this purported intention, which was said to be apparent from the Limitation Act 2010 (**LA 2010**), was expressly contradicted by the then-Attorney-General, the Hon Christopher Finlayson, in the Parliamentary Debates leading to the enactment of the LA 2010, who stated that its "*general*" provisions would be subject to the "*special limitation periods…created by … the Building Act*".[10] This could only be a reference to the Longstop prevailing, and continuing to prevail, over any inconsistent provision in the LA 2010 (and, necessarily, in the Limitation Act 1950 (**LA 1950**)).

7 The practical effect of the Court of Appeal's judgment cannot be overstated:

7.1 the effect of the Court of Appeal's judgment on the Longstop is to attribute to Parliament an intention that a building industry participant would have theoretically indefinite legal liability through successive contribution claims by third, fourth, fifth,

---

8 The expression adopted by Glazebrook J in *Klinac v Lehmann* HC Whangārei AP15-01, 6 December 2001 [***Klinac***] at [54] [**App BoA 14/211]..**

9 (20 November 1991) 520 NZPD 5490 (Building Bill 1991 – Second reading) [**App BoA 21/569**] as referred to in *Klinac* at [21]–[23] [**App BoA 14/206**].

10 (4 August 2009) 656 NZPD 5380 (Limitation Bill 2010 – First reading) [**App BoA 25/657**] Compare CA Judgment at [148] **[05.0045]**.

etc, parties. In 1991, Parliament did not believe that such a participant would be able to obtain liability insurance that would cover this legal exposure; and

7.2 the Court of Appeal considered that, after the enactment of the LA 2010, the effect of its decision was to add only a "*limited period of two years*" in which "*defendants*" may bring a contribution claim.[11] However:

(a) at the time the 1991 and 2004 Longstops were enacted there was no two-year limitation period for contribution claims – only the generally applicable six-year period; and

(b) allowing for the time that it may take for an original defendant to be found liable and/or for contribution claims by successive subsequent parties, contributors who have ordered their affairs, including their retirement and insurance on the basis of the Longstop, are now exposed to contribution claims arising long after the 10 years from their conduct – when both Parliament and the Courts between 2006 and 2021 consistently reassured them that they could "*rest easy*".

BACKGROUND

8 A chronology setting out the factual and procedural background, along with the relevant limitation periods is in **Schedule A**.

Factual background

9 Beca provided structural engineering, design and construction monitoring services for the construction of the substructure and superstructure of what became the BNZ Building on Waterloo Quay in Wellington.

10 In 2006, Beca carried out design work for the substructure and superstructure of the BNZ Building. Beca issued separate PS1s in respect of each design on 4 October 2006 and 19 February 2007 respectively.[12] In reliance on Beca's design, WCC issued separate

[11] CA Judgment at [152] **[05.0046]**.

[12] CA Judgment at [11(b)] **[05.0005]**.

building consents for the substructure (SR1553556) and superstructure (SR155010).[13]

11 Beca then monitored construction of the substructure and superstructure. On 12 March 2008, when the construction of the substructure and superstructure was complete, Beca issued a combined PS4 covering the building work for both.[14] WCC then issued separate code compliance certificates in respect of the building consents for each.

12 Under the same engagement, from August 2009 to June 2010 Beca also provided structural engineering services for the fit-out, including producer statements, the last of which it issued on 18 June 2010. Again, WCC issued separate code compliance certificates for this work. Practical completion of the Building was achieved in August 2011.[15]

13 In July 2013, after BNZ had occupied the building, the Seddon/Cook Strait earthquake sequence caused damage to parts of the fit-out, including parts of some ceilings.[16] BNZ engaged Beca to provide design services for a regulatory upgrade to the seismic bracing of the in-ceiling services on Level 5, Piers 1 and 3.

14 In November 2016, the Kaikōura earthquake caused substantial damage to the building.[17] BNZ blamed the design of the superstructure. It sued WCC in August 2019 (having earlier entered into a standstill).[18] WCC then joined Beca as a third party in September 2019.[19]

Procedural background

15 In its original statement of claim,[20] filed on 26 September 2019, WCC pleaded Beca was negligent in designing the superstructure and

---

13 CA Judgment at [11(b)] **[05.0005]**.

14 CA Judgment at [11(c)] **[05.0005]**.

15 CA Judgment at [11(d)] **[05.0005]**.

16 CA Judgment at [11(e)] **[05.0006]**.

17 CA Judgment at [11(f)] **[05.0006]**.

18 CA Judgment at [11(g] **[05.0006]**.

19 CA Judgment at [11(h)] **[05.0006]**.

20 WCC's statement of claim, 26 September 2019 **[101.0059]**.

issuing its PS1. The only relief sought was contribution. WCC did not make any claims in relation to the construction monitoring or the PS4.

16 In its amended statement of claim, filed on 9 March 2020, WCC greatly expanded its claims:[21]

16.1 WCC repeated its allegation that Beca negligently designed the superstructure. However, in addition to relief by way of contribution, WCC also sought damages for negligence and negligent misstatement in issuing the PS1.

16.2 For the first time, WCC alleged Beca was negligent in issuing its PS4. WCC sought relief by way of contribution, and damages for negligence and negligent misstatement in issuing the PS4.

16.3 Also, for the first time, WCC alleged continuing negligence by Beca in failing to identify, correct or warn of this previous negligence. WCC sought relief by way of contribution and damages (for both negligence and negligent misstatement). These continuing duty claims are not relevant to the issues raised in this appeal.

17 Given that Beca's last possible negligent act or omission in designing and monitoring the construction of the superstructure and substructure occurred on 12 March 2008, when Beca issued its PS4,[22] Beca considered that WCC's contribution and direct claims filed on 26 September 2019 and 9 March 2020 respectively were precluded by the 10-year Longstop. So Beca applied to strike out the claims based on the superstructure's design and construction monitoring.[23]

THE APPLICABLE LIMITATION LEGISLATION

18 The version of the Longstop in force when Beca designed and monitored the construction relevantly provided as follows:

> **393 Limitation defences**
>
> (1) The Limitation Act 1950 applies to civil proceedings against any person if those proceedings arise from—

---

21 WCC's first amended statement of claim, 9 March 2020 **[101.0073]**.

22 Affidavit of Matthew Lander in support of first third party's strike out and summary judgment application, 11 May 2020, at [19] **[201.0006]** at **[201.0008]**.

23 Amended strike out application by first third party **[101.0108]**.

> (a) building work associated with the design, construction, alteration, demolition, or removal of any building; or
>
> (b) …
>
> (2) However, civil proceedings relating to building may not be brought against a person after 10 years or more from the date of the act or omission on which the proceedings are based.

19 From 1 January 2011, the LA 2010 amended the Longstop to replace:

19.1 the reference "*Limitation Act 1950"* in s 393(1) with the "*Limitation Act 2010*"; and

19.2 the introductory phrase in s 393(2), "*Civil proceedings relating to building work may not be brought…*" with the expression, "*No relief may be granted in respect of civil proceedings relating to building work if those proceedings are brought…*". It is generally accepted that both expressions have the same substantive effect.[24]

20 However, for the purposes of this appeal, these legislative changes make no substantive difference. The LA 1950 (as amended by the LA 2010)[25] remained in force for causes of actions based on acts or omissions before 1 January 2011.[26]

21 This is significant. Although the Court of Appeal accepted that the LA 1950 was the operative limitation statute,[27] it nonetheless relied heavily on provisions in the LA 2010,[28] as well as Law Commission reports leading to its enactment but postdating the BA 2004.[29] When enacting the LA 2010, Parliament did not materially amend the Longstop. So, none of the provisions introduced by the LA 2010 can be relevant to the statutory interpretation of the Longstop, when it

---

[24] *Gedye v South* [2010] NZCA 207, [2010] 3 NZLR 271 at 273, fn 1 ("*not materially different*") [***Gedye***] [**App BoA 13/190**]; and *MoE v JH* at [43] ("*same substantive effect*") [**App BoA 15/227**].

[25] Limitation Act 2010, ss 60–62. The amendments that applied included inserting ss 23A–23D providing for a 5 or 15-year longstop for all claims [**App BoA 6/25**].

[26] Limitation Act 2010, s 59 [**App BoA 6/24**].

[27] CA Judgment at [36] **[05.0011]**.

[28] See for example CA Judgment at [53] **[05.0016]**: "*our task is to interpret, and by so doing to resolve any inconsistency that may exist between, s 393 of the BA 2004 and s 34 of the LA 2010*" [**App BoA 1/1**]

[29] See for example CA Judgment at [114]–[121] **[05.0034]**–**[05.0037]**.

was first enacted in 1991, it was re-enacted in 2004 and/or as it stood in 2008 when Beca's relevant conduct occurred.

THE PRINCIPLES OF STATUTORY INTERPRETATION

22 The principles of statutory interpretation are well-established, and the Court of Appeal correctly stated them.[30] Its errors were in their application.

23 The meaning of an enactment must be ascertained from its text and in the light of its purpose and its context.[31] Even if the meaning of text seems obvious in isolation, this meaning should always be cross-checked against purpose. In determining purpose, the Court should consider both the immediate and the general legislative context. The social, commercial or other objective of the enactment may also be relevant.[32]

24 Beca says that the Court of Appeal failed to correctly apply:

24.1 s 10(1) of the Legislation Act 2019 to the unqualified reference to "*civil proceedings*" in the text of the Longstop;

24.2 ss 10(3) and (4) to the internal indications elsewhere in the BA 1991 and the BA 2004 that Parliament did not intend an unstated exception for contribution claims; and

24.3 ss 10(1) and (2) to Parliament's stated intention to limit any civil legal liability on any building industry participant to the period of the Longstop because this was in all the participants' and the councils', and New Zealand's, best interests, including because it matched what Parliament understood was the insurance availability.

---

30 CA Judgment at [51]–[52] **[05.0015]**.

31 Legislation Act 2019, s 10 **[App BoA 4/15]**. The Legislation Act 2019 is applicable to earlier enactments such as the BA 2004: Legislation Act, sch 1, cl 3(1).

32 *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767 at [22] [**App BoA 11/167.**

25 One principle of statutory interpretation, used to resolve a genuine inconsistency between two statutory provisions, is that an earlier specific provision prevails over a later general one.[33]

26 Beca says that the Court of Appeal erroneously applied this principle, to treat the contribution claim statute, the Law Reform Act 1936, s 17(1)(c) (the **LRA**), as "*specific*" and, therefore, prevailing over the allegedly inconsistent Longstop as "*general*"[34] – when:

26.1 the correct context was statutory treatment of limitation periods;

26.2 there was no inconsistency between the LA 1950 (or the LA 2010) and the Longstop because, to the extent that the LA 1950 (or the LA 2010) applied to civil proceedings relating to building work, they created two concurrently, but separately, applicable limitation regimes;[35]

26.3 if there was any inconsistency between the LA 1950 (or the LA 2010) and the Longstop, the Longstop would prevail because it is the specific provision and was expressly regarded as such by Parliament when enacting the LA 2010.[36]

THE TEXT

Concurrent limitation regimes

27 The structure of s 393 makes it plain that there is no inconsistency between the LA 1950 (or the LA 2010) and the Longstop. To the extent that the LA 1950 or LA 2010 applied to civil proceedings relating to building work, the statutes created separate, but concurrently applicable, limitation regimes - with s 393 expressly addressing the interrelationship between them.

---

33 *Generalia specialibus non derogant*.

34 CA Judgment at [56] **[05.0017]**, [147] **[05.0045]**.

35 The Law Reform Act 1936 only dealt with limitation in relation to the valid tort claim by the plaintiff against the alleged contributor, by providing that their limitation period had to be disregarded ("*…if sued in time…*"). It is silent on the limitation period between the claimant for contribution and the alleged contributor [**App BoA 3/10**].

36 (4 August 2009) 656 NZPD 5380 (Limitation Bill 2010 – First reading) [**App BoA 25/657**]. Compare CA Judgment at [148] **[05.0045]**.

28 Subsection (1) declares that the limitation regime in the LA 1950 (which necessarily included s 14 – contribution claims)[37] applies to "*civil proceedings*" arising from building work. As this Court explained in *Carter Holt Harvey*, the most natural interpretation of the words "*civil proceedings relating to building work*" in s 393(2) is that those words are a shorthand reference for civil proceedings of the kind described in s 393(1).[38] In its absence, subsection (2) would have excluded the general limitation statute in its entirety.[39]

29 Subsection (2) addresses the interrelationship between the two regimes by commencing with the word "*However*". This word signifies Parliament's intention that s 393(2) would provide a limitation period for "*civil proceedings relating to building work*" that applied notwithstanding anything in the LA 1950 – creating concurrent regimes to the extent that both applied and/or by prioritising s 393(2) to the extent that there were any conflicting provisions that could not both apply.[40]

30 The Longstop is "*absolute*".[41] It bars **any** "*civil proceeding relating to building work*" brought more than 10 years after the act or omission on which the proceeding is based. So, by its "*plain wording*",[42] it applies to any claims by any building industry participant against any other – including contribution claims,[43] as the Court of Appeal acknowledged.[44]

31 This point is worth emphasising because the Court of Appeal expressly held that in its ordinary meaning, the text of the Longstop explicitly captures contribution claims. According to the Court of

---

37 Limitation Act 1950, s 14 [**App BoA 5/17**].

38 *Carter Holt Harvey Ltd v Minister of Education* [2016] NZSC 95, [2017] 1 NZLR 78 at [94] [107] (p 108/17), [109] (p 110/41-42) [**App BoA 9/77**].

39 Limitation Act 1950, s 33(1)and Limitation Act 2010, s 40(2)(a) provide that the Acts do not apply where another statute prescribes a limitation period [**App BoA 5/18**] and [**App BoA 6/22**]. This Court may have overlooked this in holding that s 393(1) "*seems to serve no obvious purpose*": *Carter Holt Harvey Ltd v Minister of Education* [2016] NZSC 95, [2017] 1 NZLR 78 at [96] (at p 108/34–43) [**App BoA 9/107**].

40 Limitation Act 1950, s 33(1) and Limitation Act 2010, s 40(2)(a) [**App BoA 5/18**] and [**App BoA 6/22**].

41 *Klinac* at [25] [**App BoA 14/207**] .

42 *MoE v JH* at [64] [**App BoA 15/235**].

43 *MoE v JH* at [58], [61]–[62] citing *Dustin v Weathertight Homes Resolution Service* HC Auckland CIV-2006-404-276, 25 May 2006 [**App BoA 12/174**]; *Johnson v Watson* [2003] 1 NZLR 626 (CA) at 629; *Body Corporate 169791 v Auckland City Council* HC Auckland CIV-2004-404-5225, 17 August 2010 [**App BoA 7/28**]; *Perpetual Trust Ltd v Mainzeal Property and Construction Ltd* [2012] NZHC 3404.

44 CA Judgment at [138] **[05.0042]**.

Appeal, Parliament must be taken to have nonetheless implicitly intended to exclude them by the date when it identified that the limitation period would commence. Such an interpretation would require at least some, if not significant, support from the legislative history which, as set out below, does not exist.

"Date of act or omission on which the proceedings are based"

Court of Appeal

32 In relation to the text, the Court of Appeal's primary stated reason for holding that the Longstop excluded contribution claims was that, according to the Law Commission's Report 6 published in October 1988,[45] the phrase, "(date of) *act or omission on which the claim is based*", was "*inapt*" or "*inappropriate*" for contribution claims.[46]

33 Beca says that the Court of Appeal erred in this respect. In particular: (1), the Law Commission did not say this anywhere in its report; (2) the Court of Appeal has failed to appreciate that the context of the Commission's relevant comments was the start date of a general limitation period for contribution claims, and not the start date of an additional general longstop period; (3) Parliament did not act on this recommendation until 2010; and (4) in the meantime, in 2007, Law Commission materials had specifically recommended that the start date for a general longstop applying to all civil claims, expressly including contribution claims, should be based on the "*date of the act or omission…*" formula.

Law Commission

34 In its 1988 Report 6, the Law Commission recommended that Parliament substantially revise the LA 1950, by replacing the accrual-based regime for money claims with a regime based on "*the date of the act or omission on which the claim is based*".

35 In this context it said that, "*(i)n most cases* the *date of the 'act or omission'' will be clear*". In particular, in contract, it will be the date of breach and, in negligence, it will be the date of the conduct that caused the damage.

---

45 Law Commission *Limitation Defences in Civil Proceedings* (NZLC R6, 1988) [*Law Commission* ***Report 6***] [**App BoA 18/366**].

46 CA Judgment at [122] **[05.0037]**, [138] **[05.0042]**.

36 However, the Law Commission recommended special treatment for some claims, such as "*…claims based on… contribution,…*" – so that "*the date of the act or omission on which the claim is based*" had a unique definition "*for the purposes of this Act*". For contribution claims, it recommended that the primary start date should be when the sum of money for which contribution was claimed was quantified, which was the same as the accrual date regime already in s 14 of the LA 1950. It recommended that the same definition would also govern the start date for the proposed general 15-year longstop when applied to contribution claims.[47]

37 Parliament did not act on any of these recommendations until the LA 2010 – with effect only on conduct from 1 January 2011. In doing so, it excluded contribution claims from the definition of a "*money claim*" and, therefore, from the "*date of the act or omission on which the claim is based*" limitation regime, including the more general LA 2010 longstop.[48]

38 In the meantime, in June 2007, the Law Commission had received a "*Miscellaneous Paper*" prepared by Chris Corry, Barrister, titled "*Limitation Defences in Civil Cases: Update Report for the Law Commission*" (NZLC MP16). As the Court of Appeal stated,[49] this report described the expression, "*the date of the act or omission on which the claim is based*", as "*not appropriate*" for the "*start date*" of a general limitation period applying to contribution claims. However, significantly, and not mentioned by the Court of Appeal, it nonetheless recommended that the expression should apply to the start date of a proposed longstop which, expressly, would also apply to contribution claims.[50]

39 By then, Parliament had already enacted the Longstops in 1991 and 2004, as a limitation regime running side-by-side with the LA 1950 accrual regime and triggered by the "*date of the act or omission on*

[410] [465]-[466]

47 Law Commission Report 6 at [169], [171], pp 100 (s 2(1)(d)), 101 (s 5(1)(a)) and 107 (s 20(3)) [472] [**App BoA 18/366**].

48 Limitation Act 2010, ss 11(1), 11(3)(b) and 12(3)(c) [**App BoA6/ 20**].

49 CA Judgment at [116]–[118] **[05.0035]–[05.0036].**

50 Law Commission *Limitation Defences in Civil Cases, Update Report for Law Commission* (NZLC MP16, 2007), at [63], [64] [320], [84] [326], [117] [338] and Appendix 2 (p 68) [363] [**App BoA 17/296**].

which the proceedings relating to building work are based" – with this start date applying to **all** civil proceedings.

40 Contribution claims have always been commonplace in cases relating to building work because of the multi-party involvement in all but the most basic construction projects. Yet, in enacting the Longstops, there was no discussion of contribution claims in the legislative history, or any mention of them as being distinct or otherwise excluded from the ambit of "*civil proceedings*". It is inconceivable that Parliament would have intended such a potentially major source of future liability to escape the Longstop "net" when this would obviously create a major gap in its effectiveness as a means of allowing industry participants, and councils, to organise their affairs and to "*rest easy*".

41 As a result, the most that can reasonably be inferred as to Parliament's relevant attitude when enacting the Longstops is that:

41.1 it was aware of the Law Commission's 1988 unactioned recommendations that, in a revised general limitation statute, primary and longstop start dates for contribution claims should:

(a) receive special treatment, different from contract and tort claims; and

(b) be the same;

41.2 for the purposes of actually enacting a longstop in a specific statute applying to building work, contribution claims would be subject to the same "*date of the act or omission*" start date as every other type of civil proceedings.

The relevant act or omission

42 Moreover, as a matter of interpretation, there is no issue or "inaptness" with contribution claims having a longstop period start date of the "act or omission".

43 The Longstop requires the Court to ignore the form of the claim or the particular cause of action pleaded and focus on the substance of the

claim.[51] The relevant act or omission that triggers the Longstop is the alleged wrongful conduct of the contributor[52] — regardless of whether this completes the cause of action.[53] The Court of Appeal's suggestion that "act or omission" was inapt to capture contribution claims is therefore an analysis based on the cause of action's accrual when the courts have repeatedly held that this is not the focus of the Longstop.

44 Applied to this proceeding, the WCC's contribution claim is "*based*" on Beca's alleged negligence to the BNZ in designing and monitoring the construction of the substructure and superstructure, culminating in issuing PS1s and PS4s. It asserts that, as a result, if it was also negligent to BNZ in granting building consents and code compliance certificates, then Beca should contribute to its liability.

45 There is nothing inappropriate, inapt or even difficult in applying the Longstop to these contribution claims – particularly as in cases involving approval of documents, Parliament specifically provided in s 393(3) that the date of issue of the document would be the start date; and the position must be exactly the same for producer statements (and vendor warranties).[54]

THE TEXTUAL CONTEXT

46 The textual context reinforces the conclusion that, in the Longstop, "*civil proceedings*" includes contribution claims.

47 Despite Beca's submissions, the Court of Appeal did not deal with the fact that the BA 2004, as had the BA 1991,[55] refers to "civil proceedings" in a number of other places, namely, ss 390, 391, 392 and 420 — all of which are also in the same Part as is the Longstop.

---

51 *MoE v JH* at [65] [**App BoA 15/235**]; *Carter Holt Harvey Ltd v Minister of Education* [2016] NZSC 95, [2017] 1 NZLR 78 at [102] (p 109/38-44) [**App BoA 9/108**].

52 *Gedye* at [37] (p 280/24-45) [197], [43] (p 281/40-47) [198] (leave to appeal to the Supreme Court refused at pp 283–284) [**App BoA 13/188**].

53 *Klinac* at [35] [208] and [54] [211] [**App BoA 14/202**].

54 *Gedye* at [41]–[43] (p 280/17–47) [**App BoA 13/198**].

55 Building Act 1991, ss 50(3), 89 and 90. Sections 89 and 90 (together with s 91) [**App BoA 2/6**] are in the same subpart, also headed "*Civil Proceedings and Defences*".

48 These provisions prohibit "civil proceedings" from being brought against a range of persons (chief executive, employees, members of a territorial or regional authority, a building consent authority, or the Building Industry Authority) in relation to any act or omission, sometimes qualified by a requirement of good faith. Moreover, ss 390, 391 and 392 (and s 393) are also all in the subpart titled "Civil proceedings and defences".

49 The only reasonable assumption is that Parliament must have intended "civil proceedings" in the Longstop to have the same meaning as it has elsewhere in the statute.[56] In particular, Parliament would plainly not have intended to have left the personnel at the territorial or regional authorities, or building consent authorities, exposed indefinitely to contribution claims without any longstop protection whatsoever.

PARLIAMENT'S INTENTION

50 Beca submits that Parliament's purpose in introducing and re-enacting the Longstop accords with the broad literal meaning of the Longstop text as applying to all forms of civil proceedings.

The history of the Longstop

Law reform efforts prior to Building Act 1991

51 As stated above, before 1991, the Law Commission had proposed an overhaul of the general limitation regime. In relation to money claims, the Commission proposed: (1) replacing the date of accrual regime in the LA 1950 with a regime where time ran from the "date of the act or omission on which the claim is based"; (2) a longstop with the same start date. In relation to contribution claims, the Commission had proposed a separate regime, based on a unique definition of this expression as the date of on which the sum of money was quantified.[57] But Parliament had not actioned any of these recommendations.

---

[56] There is a presumption that the drafter has used words consistently throughout the Act. See *Burrows and Carter Statute Law in New Zealand* (6th ed, LexisNexis at 337; and *Elders NZ Ltd v PGG Wrightson* [2008] NZSC 104, [2009] 1 NZLR 577 at [30] (p 587/24-29) per McGrath J).

[57] Law Commission Report 6 at p 107 (s 20(3)) [**App BoA 18/472**].

Building Act 1991

52 The impetus for the introduction of the Longstop was problems engendered by the discoverability approach in negligence claims involving defective buildings – which the Law Commission had discussed in its 1988 Report 6.[58]

53 The essential issue was that, under the prevailing LA 1950 regime, the relevant limitation period commenced when the cause of action accrued; and in a negligence cause of action, this was when the plaintiff first suffered loss. In the defective building work context, the plaintiff may not have suffered any relevant loss until the defects were actually discovered or reasonably discoverable. This exposed a defendant to liability for an indefinite period.

54 The Longstop was the statutory solution to this problem – although it was originally suggested by the Court of Appeal in *Askin v Knox*, as being introduced either in the context of specific building control legislation or in a general limitation statute.[59] In that case, the Askins' claim against their home builder and the council failed because, 20 years on from the relevant building work, they could not prove negligence.

55 In promoting the introduction of a longstop, the Court of Appeal recognised the perhaps overlooked benefit to a plaintiff of a bright-line time-bar that, with the passage of time, a claim may not be provable.[60] Self-evidently, similar comments and conclusions would have applied to a contribution claim — and, if between subsequent parties, such a claim could take much longer than 20 years from the original building work before being brought and then tried.

56 The BA 1991 did not originally contain a limitation section. This section was inserted in the Bill's second reading, after it became a "principal issue" at select committee stage.[61] The stated rationale for

---

58 *Klinac* at [17]–[19] [**App BoA 14/206**]; and *Gedye* at [35] (p 280/10) [**App BoA 13/197**].

59 *Askin v Knox* [1989] 1 NZLR 248 (CA) at 255/50–256/20; *Klinac* at [20] [**App BoA 14/206**].

60 *Askin v Knox* [1989] 1 NZLR 248 (CA) at 252/55, 256/18.

61 Graeme Lee "Submission to the Internal Affairs and Local Government Select Committee on the Building Bill 1990" (30 August 1991) at [5] [**App BoA 19/559**].

its inclusion, not included in the Court of Appeal judgment, was as follows:[62]

> The Select Committee introduced what it has called a 15-year long-stop for building liability. In other words, no action can be taken after 15 years against a builder, or a certifier, or anybody involved in the construction of a building. After 15 years the responsibility for the construction rests entirely with the building's owner.
>
> At present, an owner of a building is able to lay claim against local government – and does – even if the building is 100 years old and built on a landslip or some other fault. Local government can be held liable for that. **The committee, once again unanimously, decided that it was in the best interests of the building industry, of local government, and of New Zealand to limit the period of liability**. (emphasis added)

57 It appears that the Law Commission supported the introduction of the Longstop.[63] However, despite its 1988 recommendations for separate treatment of contribution claims to other money claims in a general limitation context, the Longstop made no such distinction in this specialised context; and, to the extent that it has any relevance to Parliament's then intention, there is no indication that the Commission expressed any negative view in this respect which Parliament then disregarded.

58 There was some uncertainty prior to the second reading as to whether the Longstop would be 10 or 15 years.[64] Ultimately, the government resolved that a 10 year period was more appropriate. During the second reading, the Minister of Internal Affairs, Graeme Lee, explained:[65]

---

62 (31 October 1991) 520 NZPD 5296, Speech by Hon John Carter, Chair of the Internal Affairs and Local Government Committee [**App BoA 22/576**].

63 *Klinac* at [15]–[17] [**App BoA 14/205**]. See Graeme Lee "Submission to the Internal Affairs and Local Government Select Committee on the Building Bill 1990" (30 August 1991) [**App BoA 19/557**] and Graeme Lee "Submission to the Internal Affairs and Local Government Select Committee on the Building Bill 1990" (10 October 1991) [**App BoA 20/562**]; and CA Judgment at [95] **[05.0029]**.

64 Compare the approaches in Graeme Lee "Submission to the Internal Affairs and Local Government Select Committee on the Building Bill 1990" (30 August 1991) [**App BoA 19/557**] and Graeme Lee "Submission to the Internal Affairs and Local Government Select Committee on the Building Bill 1990" (10 October 1991) [**App BoA 20/562**].

65 (20 November 1991) 520 NZPD 5488 at 5490 (Graeme Lee); and *Klinac* at [21] [**App BoA 14/206**].

> … clause 73B of the Building Bill provides a 15-year longstop for all building liability. Following representations from the building industry it has been decided to change that to 10 years. That change will be in the supplementary order paper that I will introduce in the Committee stage. It is vitally important for the change to be made. Information from the United Kingdom, where the law allows for the equivalent of building certifiers, is that insurance is unobtainable for 15-year cover. The reality is that without a realistic longstop on liability, insurance cover will not be available, and without insurance cover being available there will not be any building certifiers.

59 He went on to note that this Longstop would benefit not only territorial authorities, but also builders, architects and engineers, by making insurance that was readily and economically obtainable "available for period of up to 10 years". This Longstop would also benefit owners by incentivising these building industry participants to have proper cover.[66]

Building Act 2004

60 The BA 2004 re-enacted the Longstop in materially the same terms. In rejecting submissions to abandon a building-specific longstop, the Select Committee observed: "*the limitation was initiated after suggestions from the court that building work was different enough in nature to require different statutory limitations*".[67]

History summary

61 So, in summary, the Longstop was introduced as a specific response to a problem uniquely affecting the building industry. The purpose of enacting the Longstop was to provide certainty to "*anybody involved in the construction of a building*" that no civil claim could be made against them after 10 years from any alleged wrongful conduct on their part. A primary driver for this Longstop was Parliament's then understanding that it both enabled and maximised the availability of proper insurance cover within this 10-year period but that insurance would be problematic, at best, after this period.

---

66 (20 November 1991) 520 NZPD 5488 at 5490 (Graeme Lee) [**App BoA 21/569**]; and *Klinac* at [21]–[23] [**App BoA 14/206**].

67 Building Bill 2003 (78-2) (commentary) at 50–51 [**App BoA 24/641**].

62 This summary of Parliament's intentions for the Longstop reflects what the High Court held in *Klinac* – which both the Court of Appeal and this Court have since endorsed.[68]

63 Parliament's basic intention and purpose did not change when it re-enacted the Longstop in 2004 – or subsequently and, in particular, as at 2008, which is the relevant date for this proceeding.

General / specific limitation regimes

64 The Court of Appeal considered that the principle of *generalia specialibus non derogant* favoured the "specialist" contribution limitation periods applying unless there was a clear and unambiguous indication to the contrary from Parliament. The Court considered that "*Parliament confirmed that bespoke approach in the LA 2010*".[69]

65 However, as set out above, the legislative history demonstrates that this is not the case; and, in any event, what Parliament did to revise the general limitation regime in 2010, while making no material change to the specific building work Longstop, cannot logically infer its pre-2008 intentions.

66 The Longstop is the specific regime. It was, until 2010, the only Longstop, and was designed to target problems uniquely affecting the building industry. Conversely, the LA 1950 and LA 2010 are general statutes, which set rules for limitation periods generally. The Longstops in the BA 1991 and BA 2004 sit side-by-side with those rules. There is no conflict between them. Both can and apply to (all) civil proceedings relating to building work. But, if there was any conflict, as the specific provisions the Longstops would prevail.

67 Obviously, the LRA 1936 is not a limitation statute at all. But, as between it and the Longstops, it is also the general statute, applying to all contribution claims, including those relating to building work. However, again, there is no conflict because nothing in the LRA 1936 deals with any limitation period applicable between the claimant for

---

[68] *Klinac* at [21]–[23] [**App BoA 14/206**]; *Gedye* at [30]–[35] (pp 279/1–280/13) [**App BoA 13/196**]; *Carter Holt Harvey v Minister of Education* [2015] NZCA 321, (2015) 14 TCLR 106 [**App BoA 10/115**]; and *Carter Holt Harvey v Minister of Education* [2016] NZSC 95, [2017] 1 NZLR 78 at [130] (p 114/30) [**App BoA 9/113**].

[69] CA Judgment at [148] **[05.0045]**.

contribution and the alleged contributor for making a contribution claim.

68 Nor is it correct that Parliament, in enacting the LA 2010, evinced an intention that the contribution provisions ought to govern contribution claims to the exclusion of the Longstop. Quite apart from the text to the contrary, the then Attorney-General, Chris Finlayson, confirmed in the Parliamentary debates that:[70]

> Other special limitation periods are created by other legislation, such as employment and securities legislation, the Fair Trading Act, the Commerce Act, and the **Building Act**. In the event of **any conflict between the general rules in this bill and specific rules in other legislation, the specific rules will continue to prevail over the provisions in this bill**. (emphasis added)

Start date for Longstop

69 Although contribution claims were not expressly mentioned when the Longstops were enacted, the legislative materials demonstrate a clear focus on time running from building work – including whether the "*work*" is issuing approvals for actual construction work that is to be done or has been done.[71]

70 In 1991 the Minister referred to most building faults becoming apparent "within the first 10 years of the life of a building".[72] During the second reading of the Building Bill 2003, the Parliamentary debates reference run-off cover which "will run for the balance of the 10 years from the last building".[73] No distinction was made as to who was to make such claims, or in which form; whether it was claims by owners against building professionals, or cross-claims as between building professionals.[74]

71 The Longstop period was reduced from the initially proposed 15 years to 10 years because of concerns about insurance availability. The only available inference from this change is that it was Parliament's

---

70 (4 August 2009) 656 NZPD 5380 (Limitation Act 2010 – First reading)[**App BoA 25/657**]. Compare CA Judgment at [148]. **[05.0045]**

71 *Gedye* at [41]–[43] (p 280/17–47) [**App BoA 13/198**], BA 1991, s 91(3) [**App BoA 2/8**] and BA 2004, s 393(3) [**App BoA 1/4**].

72 (20 November 1991) 520 NZPD 5488 at 5490 (Graeme Lee) [**App BoA 21/569**].

73 (3 August 2004) 619 NZPD 14532 at 14543 [**App BoA 23/587**].

74 *Perpetual Trust Ltd v Mainzeal Property and Construction Ltd* [2012] NZHC 3404 at [45].

intention that a building industry participant would not face a claim more than 10 years after it had completed the impugned building work. Excluding contribution claims would defeat that purpose.

Easily understandable

72 Parliament made the words and scope of the Longstop as plain "*as it is possible to be*" – without the need to specifically say that it applied to contribution claims as well.[75]

73 This provision is industry specific. Participants within the industry generally are entitled to expect it to fairly and fully state, and limit, their potential liability. Until the High Court judgment in this proceeding was delivered, applying the plain words of the statute, persons who engage in building work could determine from the specific legislation which governed them: "For how long after completing my building work could I be exposed to claims against me?" And they could regulate their affairs accordingly – including what insurance they would require and for how long, especially after they had retired.

74 The focus is a very practical one. It is on the defendant's acts and omissions, and its real world implications can be readily understood by non-legally trained building professionals. Conversely, the Court of Appeal's approach requires such people to be aware of an unexpressed but significant exception for routine claims against them by other building industry participants, including claims that they may not even be aware of until much more than 10 years after when they were last on any building site or doing any building work.

CONSEQUENCES

75 The Court of Appeal justified its conclusion on the basis that that:[76]

> …defendants who are successfully sued by the original plaintiff are provided with a limited period of two years to bring their contribution claim.

---

[75] *Dustin v Weathertight Homes Resolution Service* HC Auckland CIV 2006-404-276, 25 May 2006 at [24] [**App BoA 12/181**].

[76] CA Judgment at [152] **[05.0046]**.

76 However, this statement was based on the LA 2010, which does not apply to this proceeding; and, in any event, it substantially understates the correct position.

Limitation Act 1950

77 Under the LA 1950, the position until the end of December 2010 was that the only limitation period restricting when the claimant for contribution could bring a claim against a contributor was in s 14. It provided that the contribution claim cause of action accrued when the claimant for contribution was held liable for a quantified amount – that is, when there was a quantum judgment, enforceable final arbitral award or binding settlement agreement.

78 This triggered the claimant's 6-year limitation period to start running – not the 2-year period to which the Court of Appeal referred and which replaced the 6-year period from January 2011. So, in the 1991 – 2004 environment in which Parliament formed its relevant intention in respect of the Longstops, there was no other time limit.

79 Using the Court of Appeal's notional parties in the passage above, and the dates and events from a contemporary example, the *Hamlin v Invercargill City Council* litigation,[77] it would have been readily apparent to Parliament that, if the Longstop did not apply to contribution claims, no building industry participant could "*rest easy*" even after 20 years from the date when the relevant work was completed:

Date	Event (Hamlin/Invercargill City Council)
1972	Negligent building work.
1989	Reasonable discovery.
1990	Proceedings issued against defendant.
1992	HC judgment.
1994	CA judgment.
1996	PC judgment.
1998	*s 14 limitation period expired, based on HC judgment.*

80 Beca makes the following observations:

[77] *Hamlin v Bruce Stirling Ltd* [1993] 1 NZLR 374 (HC); *Invercargill City Council v Hamlin* [1994] 3 NZLR 513 (CA); and *Invercargill City Council v Hamlin* [1996] 1 NZLR 513 (PC).

80.1 As this demonstrates, under LA 1950 and in the absence of any Longstop, the defendant could have brought a contribution claim against (for example) an engineer up to 26 years after any negligent work had been completed.

80.2 This assumes that the defendant was held liable at trial (as was the ICC). If the defendant had not been held liable until the final appellate stage, this period is 30 years.

80.3 This only deals with the position between the defendant and the contributor to the defendant. If there is a contributor to this contributor, the legal exposure is at least 36 years and could be much longer — and so on for subsequent contribution claims.

80.4 While one could rate the risk of such a successive claim being made and could try to obtain insurance cover for a more limited period, the existence of the legal exposure is undeniably real; and just one miscalculation could be financially devastating for a retired tradesman.

80.5 Also, it should not be assumed that contributors are always joined immediately. A defendant or joined third party may, for tactical reasons, prefer to fight the plaintiff/defendant without having its defence undermined, complicated and/or made more expensive, by a contributor whose contribution could then be rendered unnecessary.

81 This proceeding is also illustrative of how, based on the Court of Appeal's conclusion, Beca could have ended litigating its alleged negligence in a contribution claim context (much) more than the 20 years after the relevant work was completed referred to in Askin v Knox:

Date	Event (WCC/Beca)
2008	Beca's alleged negligent building work.
2016	Reasonable discovery.
2019	BNZ issues proceedings against WCC.
2022	*HC judgment BNZ/WCC.*
2028	*WCC issues contribution claim against Beca (before s 14 limitation period expired)*

Date	Event (WCC/Beca)
2031	*HC trial WCC/Beca.*

[Dates in italics are theoretical: if relevant liability not established until CA or SC judgment, relevant limitation expiry date(s) would be 2 –3 years later]

82 As the Court of Appeal failed to appreciate, properly or at all, this was the legislative context in which Parliament decided to introduce and retain the Longstops as applicable to "*civil proceedings*". Given what was actually said at the time about the certainly, finality and insurance considerations, and Parliament's conclusion that it was in "*the best interests of the building industry, of local government, and of New Zealand to limit the period of liability*", it is inconceivable that Parliament would have intended that the Longstop would still leave the building industry, local government and New Zealand with a gaping hole of indefinite (and, as far as Parliament was then concerned, uninsurable) liability for contribution claims relating to building work.

Limitation Act 2010

83 As emphasised above, the post-LA 2010 position is not relevant to Parliament's intention when enacting the Longstops. However, a similar open-ended legal liability outcome applies to a notional contribution claim under the LA 2010, as compared with the Court of Appeal's "*two years*" conclusion set out above:[78]

Date	Event (Notional LA 2010 Contribution Claim)
2011	*Negligent building work by contributors C1 and C2.*
2019	*Reasonable discovery.*
2021	*Plaintiff issues proceedings against defendant.*
2023	*HC judgment against defendant.*
2026	*Defendant issues contribution claim against C1 (before s 34 limitation period expired)*
2029	*HC judgment defendant/C1.*
2031	*C1 issues contribution claim against C2 (before s 34 limitation period expired)*
2034	*HC judgment C1/C2 (…and so on).*

[assumes all liability established in HC: need to add 2–3 years to each limitation period expiry date if liability established at appeal stage]

Balance

84 The Court of Appeal correctly identified that the legislative regime "*balances…competing interests*"; and that the "*policy underpinning*

[78] CA Judgment at [152] **[05.0046]**.

limitation provisions, …, is to promote certainty and finality in litigation".[79] However, it wrongly considered that "*Fairness to such (contribution) claimants requires that they be given a reasonable opportunity to commence proceedings before time runs out*."[80]

85 It is inherent in a longstop (or any limitation period) that otherwise meritorious claims cannot be brought, and some claimants will lose out.[81] Parliament has made clear that, in the particular context, other policy concerns justify such an outcome.[82] As this Court said in *Carter Holt Harvey:*[83]

> …we agree there can be seen to be some arbitrariness in the scope of the longstop provision. But that is a consequence of a line being drawn and wherever that line is drawn, those falling outside it will argue there is unfairness. That does not mean the interpretation leading to that outcome is wrong.

86 In this case, Parliament was endeavouring to be fair to all claimants, of which contribution claimants were only one (and, although significant, not the predominant) category. It was also doing so in a specialised area, in response to a major identified problem – not as part of a general limitation regime.

87 The Court of Appeal suggested that its result struck the best "*balance*" between defendants and contributors.[84] However, that was a value judgment for Parliament to make and, which Parliament did make in 1991 and then reaffirmed in 2004, based on Parliament's understanding of the building industry and the constraints on availability of liability insurance for those who participated in it.

88 Moreover, the Court of Appeal's approach, in relation to both the LA 1950 and the LA 2010, permits successive contribution claims indefinitely. This is the very opposite of certainty and finality for

---

79 CA Judgment at [151] **[05.0046]**.

80 CA Judgment at [150] **[05.0046].**

81 *Dustin v Weathertight Homes Resolution Service* HC Auckland CIV 2006-404-276, 25 May 2006 at [22] [**App BoA 12/181**].

82 *Body Corporate 169791 v Auckland City Council* HC Auckland CIV-2004-404-5225, 17 August 2010 at [42] [**App BoA 7/42**].

83 *Carter Holt Harvey v Minister of Education* [2016] NZSC 95, [2017] 1 NZLR 78 at [121] [111]. See also [128] [**App BoA 9/113].**

84 CA Judgment at [149], [152] **[05.0046]**.

building industry participants, and councils — and it simply cannot be reconciled with an express Parliamentary intention in 1991 to ensure that the Longstop period specifically matched the available insurance cover, and its re-enactment of a Longstop to the identical effect in 2004.

89 In overall summary, when it was expressly stated in the Parliamentary debates in 1991 that:[85]

> The committee, once again unanimously, decided that it was in the best interests of the building industry, of local government, and of New Zealand to limit the period of liability.

Parliament did not say or do anything that would reasonably infer an intended exception for building industry or local government contributors so that, potentially, there would be no limit on the period of their liability.

CONCLUSION

90 The Longstop applies to all civil proceedings — including contribution claims. Accordingly, WCC's claims for contribution against Beca, insofar as they relate to Beca's building work prior to 2009, cannot be sustained and, therefore, should be struck out.

91 Beca seeks costs in this Court, and in the High Court and Court of Appeal.

CERTIFICATE

92 Counsel certifies that these submissions are suitable for publication.

Dated: 20 June 2023

M G Ring KC / J A McKay / T F Cleary
Counsel for Beca

[85] (31 October 1991) 520 NZPD 5296, Speech by Hon John Carter, Chair of the Internal Affairs and Local Government Committee [**App BoA 22/576**].

SCHEDULE A: CHRONOLOGY

Date	Event
Beca's First Engagement	
11/06/2006 – 19/02/2007	Beca provided design documents and correspondence in relation to design of superstructure & substructure.
04/10/2006	Beca issued PS1 for design of substructure.
13/11/2006	WCC issued Building Consent SR153556 (substructure).
19/02/2007	Beca issued PS1 for design of superstructure.
	10-year limitation period commenced for design of superstructure, including issuing PS1.
23/02/2007	WCC issued Building Consent SR155010 (superstructure).
16/01/2007 – 12/03/2008	Beca monitored construction of substructure and superstructure.
12/03/2008	Beca issued PS4 for Building Consents SR155010 (superstructure) and SR153556 (substructure) → latest date on which Beca went "off-task" and/or "off-duty" in respect of design and construction monitoring of substructure and superstructure.
	10-year limitation period commenced for monitoring construction of substructure and superstructure, including issuing PS4 – also last possible commencement date for negligent design, including issuing PS1s.
27/03/2009	WCC issued code compliance certificate for Building Consent SR155010 (superstructure).
12/03/2010	WCC issued code compliance certificate for Building Consent SR153556 (substructure).
28/08/2009 – 18/06/2010	Beca provided further design and construction monitoring services (for building fit-out), but not related to substructure or superstructure, construction of which, by then, was completed.
01/01/2011	*Limitation Act 2010 came into effect but it did not apply to past conduct*
Beca's Second Engagement	
07/11/2013 – 27/03/2014	Beca provided design services to upgrade seismic restraint of in-ceiling services and utilities.
Kaikoura earthquake	
14/11/2016	Building suffered serious damage to superstructure in Kaikoura earthquake.
19/02/2017	*10-year limitation period expired for negligently designing superstructure, including issuing PS1.*
12/03/2018	*10-year limitation period expired for negligently monitoring construction of substructure and superstructure, including issuing PS4 – also last possible expiry date for negligent design, including issuing PS1s.*
WCC issues claims against Beca	
26/09/2019	WCC filed initial statement of claim against Beca.
09/03/2020	WCC filed amended statement of claim against Beca.

LIST OF AUTHORITIES REFERRED TO IN SUBMISSIONS:

Legislation

1 Building Act 2004, ss 390-393, 420 (as at 23 December 2010).

2 Building Act 1991, ss 50(3), 89, 90, 91(2).

3 Law Reform Act 1936, s 17.

4 Legislation Act 2019, s 10.

5 Limitation Act 1950.

6 Limitation Act 2010.

Cases

7 *Askin v Knox* [1989] 1 NZLR 248 (CA).

8 *Beca Carter Hollings & Ferner Ltd v Wellington City Council* [2022] NZCA 624.

9 *Body Corporate 169791 v Auckland City Council* HC Auckland CIV-2004-404-5225, 17 August 2010.

10 *Body Corporate 328392 v Auckland Council* [2021] NZHC 2412. [Arthur Street]

11 *Carter Holt Harvey v Minister of Education* [2015] NZCA 321.

12 *Carter Holt Harvey Ltd v Minister of Education* [2016] NZSC 95, [2017] 1 NZLR 78.

13 *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767.

14 *Dustin v Weathertight Homes Resolution Service* HC Auckland CIV-2006-404-276, 25 May 2006.

15 *Elders NZ Ltd v PGG Wrightson* [2008] NZSC 104, [2009] 1 NZLR 577.

16 *Geyde v South* [2010] NZCA 207, [2010] 3 NZLR 271.

17 *Hamlin v Bruce Stirling Ltd* [1993] 1 NZLR 374 (HC).

18 *Invercargill City Council v Hamlin* [1994] 3 NZLR 513 (CA).

19 *Invercargill City Council v Hamlin* [1996] 1 NZLR 513 (PC).

20 *Johnson v Watson* [2003] 1 NZLR 626 (CA).

21 *Klinac v Lehmann* HC Whangarei AP15-01, 6 December 2001.

22 *Minister of Education v James Hardie New Zealand* [2018] NZHC 22.

23 *Perpetual Trust Ltd v Mainzeal Property and Construction Ltd* [2012] NZHC 3404.

Texts

24 Ross Carter Burrows and Carter Statute Law in New Zealand (6th ed, LexisNexis) at 337.

25 S Todd, C Hawes, U Cheer and B Atkin (eds) *The Law of Torts in New Zealand* (online ed, Thomas Reuters) at [59.26.5.06](3).

Parliamentary materials

26 Graeme Lee "Submission to the Internal Affairs and Local Government Select Committee on the Building Bill 1990" (30 August 1991).

27 Graeme Lee "Submission to the Internal Affairs and Local Government Select Committee on the Building Bill 1990" (10 October 1991).

28 (20 November 1991) 520 NZPD 5488 (Building Act 1991 - second reading).

29 (31 October 1991) 520 NZPD 5296 (Building Act 1991 - Report of Internal Affairs and Local Government Committee).

30 (3 August 2004) 619 NZPD 14532 (Building Act 2004 - second reading).

31 Building Bill 2003 (78-2) (commentary).

32 (4 August 2009) 656 NZPD 5379 (Limitation Act 2010 – first reading)

Law Commission materials

33 Law Commission *Limitation Defences in Civil Proceedings* (NZLC R6, 1988).

34 Law Commission *Limitation Defences in Civil Cases, Update Report for Law Commission* (NZLC MP16, 2007).