

AB Court Sets 2-Part Test for Extending the Limitation Period for Environmental Claims



The laws set time limits for how long you have to bring various kinds of claims, including claims related to spills or contamination. But because contamination can go undiscovered for years, some environmental laws permit the extension of that limitation period for claims relating to harm resulting from the release of a substance into the environment. Alberta's Environmental Protection and Enhancement Act has such a provision (Sec. 218), but it's unclear when a court should grant such an extension under this section. A recent decision spells out a two-part test for such determinations. Here's a look at that test.

THE CASE

What Happened: When a company bought lands consisting of commercial buildings, two parking lots and a surrounding landscaped area, it knew that a gas station used to be operated on the site. But an environmental assessment found no significant contamination. However, a number of years later, after the company got an offer to buy the lands, another environmental assessment found contamination at a level that required remediation. The company spent about \$400,000 on remediation and then sued the prior gas station operator to recoup the costs. The gas company asked the court to dismiss the lawsuit, arguing that the 10-year limitation period had expired.

What the Court Decided: The Alberta Court of Queen's Bench granted an extension of the limitation period, subject to final resolution of the issue at trial.

The Court's Reasoning: The court explained that Sec. 218 authorizes a judge to extend a limitation period for the commencement of a civil lawsuit when the basis for that lawsuit is 'an alleged adverse effect,' such as damage to the environment, resulting from 'the alleged release of a substance into the environment.' Sec. 218 spells out the factors a court must consider when such an extension is requested:

- When the alleged adverse effect occurred;
- Whether the alleged adverse effect should've been discovered by the claimant had the claimant exercised due diligence in ascertaining the presence of the alleged adverse effect and whether the claimant exercised such due diligence;

- Whether extending the limitation period would prejudice the defendant's ability to defend itself on the merits; and
- Any other criteria the court considers to be relevant.

But the Act doesn't specify the procedure to be used for applications for extensions under Sec. 218. So the court developed this two-step analysis:

Step #1: Is there sufficient evidence on the Sec. 218 factors to grant an extension of the limitation period' In this case, the court found that the time frame involved was not so long ago that it would be unfair to allow the action to proceed. It also concluded that the company/property owner had exercised diligence in ascertaining the presence of the contamination allegedly caused by the prior gas station on the site by getting an environmental assessment done before buying the land. And there was no evidence that an extension of the limitation period would prejudice the gas company's ability to later defend itself on the merits.

Step #2: If there isn't enough evidence or if there is sufficient evidence but an issue for trial could be determined prematurely, has the claimant shown a 'good arguable case' for an extension' Here, the court found that the company/property owner had made a good arguable case for an extension. But because there were some merit-based implications as to its ruling on the company's due diligence, the court granted an extension of the limitation period subject to a final determination of the issue at trial [*Lakeview Village Professional Centre Corp. v. Suncor Energy Inc.*, [2016] ABQB 288 (CanLII), May 19, 2016].

ANALYSIS

The court explained that its two-part test balances a party's legitimate interest in knowing whether to spend further resources on its claim with the need to weed out cases that are trying to 'abuse the system.' Although it's good to be aware of mechanisms such as Sec. 218 that allow for the extension of the limitation period for certain environmental claims, it's important to remember that such mechanisms don't eliminate the need for you to exercise due diligence to uncover contamination as soon as possible. For example, if you buy land previously used for industrial purposes without conducting an environmental assessment and then discover contaminated soil 15 years later by sheer luck, a court is unlikely to grant you an extension of the limitation period. (Note that although the *Lakeview Village* decision applies only to lawsuits brought in Alberta, the laws in other jurisdictions, such as ON and SK, also have provisions that extend limitation periods for environmental claims. So courts in those jurisdictions might look to this case for guidance.)