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## Discovering the Limits of the Limitations Act

The new *Limitations Act, 2002* (in force, January 1, 2004) has completely overhauled limitation periods in Ontario. This note briefly summarizes the legislation and comments on file retention policies.

Gone are the myriad of bewildering limitation periods. The first is a 2 year limitation period known as the "basic" limitation period. The basic limitation period expires on the second anniversary after the claim is discovered. "Discovered" is a defined term but essentially means that a plaintiff has been able to find out all of the essential information that is required to commence a claim. Generally, unless the contrary is shown, a claim is assumed to have been discovered when the act or omission occurred. Previously, the discovery concept could extend limitation periods indefinitely. The second or "ultimate" limitation period now caps the discovery period at 15 years from the date of the act or omission.

The legislation contains a number of exceptions to both limitation periods (for example, the limitation periods for persons under disability do not run during their disability). Additionally, certain sexual assault and undiscovered environmental claims have no effective limitation period.

In January of 2007, the Court of Appeal decided that the "ultimate" limitation period runs from January 1, 2004, for claims that were not discovered prior to that date. Accordingly, any claim, regardless of its age, that was not discovered before the new Act came into force may not be statute barred until January 1, 2019.

Any document retention policy which provides for document destruction puts an organization at risk of destroying documents it may need to defend a lawsuit. A document retention policy seeks to find a reasonable balance between the cost of retaining documents and the cost of destroying documents it needs to defend old claims. We would recommend keeping your files for a minimum of 16 years (15 years plus one year for service of the claim). Many sexual assault and environmental claims are not really subject to any limitation period. Therefore, all social services and child welfare files or files dealing with environmental matters should really be kept much longer than 15 years. Even if these recommendations are followed, you may still end up destroying files you need to defend claims.

Every organization should have a written retention policy which it should follow. If files are lost or destroyed that should have been retained, you may find yourself in considerable difficulty if your organization is sued.

Finally, you should keep copies of all insurance policies and endorsements that have been issued to your organization indefinitely. This includes not only the policies that your organization has itself arranged for, but also policies, Certificates of Insurance and endorsements that were issued pursuant to contracts that your organization is a party to.

*Prepared by Stephen Moore of Blaney McMurtry LLP (smoore@blaney.com)*

# Building Valuations - What You Need to Know

What is the value of your building? It depends on whether you are financing or selling the building, estimating its current replacement cost or actual cash value for insurance purposes, or valuing its historical cost for financial reporting purposes. The same building can have multiple values.

Appraisals are a commonly used method of determining building values. When it comes to third party appraisals, the purpose of the valuation determines the type of appraisal that is conducted. If the building is being sold or financed, a market value appraisal is conducted to determine its fair market price. If the valuation is for insurance purposes, then an insurance replacement cost appraisal is conducted.

But it is important to note that with insurance replacement cost appraisals, the valuation criteria should follow the coverage offered by the policy. Knowing the details of your policy means appraisers can correctly value your property so you are properly protected. It will ensure there are no discrepancies down the road.

## *Inclusions and Exclusions*

We always evaluate an independent appraisal against our property policy. Our policy includes coverage for below grade foundations, basement excavation, underground plumbing, piping and conduits, architectural fees and building code, by-law and ordinance compliance costs. Yet many of the appraisals we receive exclude these elements from the appraised value.

In order for us to accept the third party appraiser's valuation, we require that the total square footage include the below grade finished or unfinished area as well as building code compliance costs. Since we understand that third party appraisals can be costly, we encourage you to have your appraiser contact us before beginning the work.

Valuations are an essential tool, but they must be done properly if they are to have any meaning to you and your business. It is not only necessary to understand the different types of valuations that exist and the requirements of your policy, but to also understand what is happening in the construction industry.

## *Current Trends in the Cost of Construction*

There are many pressures facing the construction industry which has caused the costs per square foot to soar in recent years.

Labour costs are rising exponentially due to a shortage of skilled trades across Canada. Material costs have also far exceeded inflation rates over the last two years. China's growing economy created pressure on steel prices in late 2004 and 2005, which affected everything from plumbing and electrical, to structural steel and nails. As well, rising oil costs have increased manufacturing and transportation costs, and short-term shortages of materials due to natural disasters have all led to increased costs for materials.

Regional situations can also affect the overall country. The spike in construction in Alberta due to the booming oil industry, as well as the heavy demand for products created by the 2010 Olympics in British Columbia, have caused labour and material shortages in other parts of the country.

Water treatment and wastewater treatment plant construction costs have soared as provincial standards have changed over the last two or three years, and as construction costs have escalated. It will be even more costly to meet upcoming tougher provincial standards for treating water and sewage.

In the late 80's and early 90's, the Ontario Building Code made major changes in Code requirements for agricultural buildings, from what was before a largely unregulated sector. This was the beginning of major cost increases in the construction of agricultural-type buildings, which are also widely used for municipal Parks and Public Works departments.

Even something as simple as demolition and debris removal costs have increased exponentially as tipping fees have gone up in an attempt to divert materials from landfill, and environmental testing is required to dump even inert materials on non-landfill sites.

All of the factors that have caused the cost of construction to rise have also had a heavy impact on valuations, forcing them to go up dramatically.

# For Your Eyes Only - Proactive Steps to Avoid Privacy Issues

With technology making large amounts of personal information readily available and easily accessible companies and organizations are under increasing pressures to ensure that any personal information they have in their custody is kept confidential and well secured. At the same time, people and consumers are more aware and concerned about safeguarding their privacy and ensuring that personal information is protected. Incidents of identity theft and fraud are becoming common. Organizations must proactively safeguard information they have and protect not only their users' information, but also information regarding their company and employees.

The easiest and most inexpensive way to safeguard personal information and protect your organization from liability is to develop and implement a strong privacy policy and train your staff regarding the importance of safeguarding personal information. It is common for staff to disclose personal information without even being aware that they have done so. As an example, in a case decided by the Privacy Commissioner of Canada, a chartered bank had a complaint filed against it because a representative of the bank at a reception desk had left the desk unattended, with a computer on. A customer had looked at the computer screen and accessed personal information while the desk was unattended. With training this could have been avoided.

It is critical for organizations to develop thorough policies containing the 10 principles of Personal Information Protection and Electronic Documents Act ("PIPEDA") and applicable provincial legislation (for example in Ontario, the Personal Health Information Protection Act) which embody the ten principles. The ten principles are: accountability for the collection of information; identifying the purposes for the collection of information; getting consent to the collection; limiting the collection to only information that is necessary; limiting the use; disclosure and retention of information; ensuring the accuracy of information that is kept; ensuring that there are good safeguards for the information; openness around the collection of information; individual access for people to verify their information is accurate; and allowing individuals the right to challenge compliance.

For organizations, it is important to understand that privacy is not the same as security. Privacy deals with concerns related to an individual's control over their own information. Security relates to the organizational control over information that it has in its possession.

Security obviously entails making sure that there are adequate technological measures in place, but it also deals with staff training and being aware of the importance of maintaining security and confidentiality. It is important to have a policy, but it is just as important to periodically audit the enforcement and use of that policy by staff members. Also, organizations must continually train, refresh and remind staff as to the importance of privacy threats.

For a chief privacy officer of an organization, after the first step of developing the privacy policy to meet the privacy expectations of your public, the chief privacy officer must ensure that collection and use of information is appropriate. Further, chief privacy officers must periodically do risk assessments. Introducing rules and controls for privacy risk management helps reduce an organization's liability and reduces threats of litigation or privacy audits by the Privacy Commissioner.

Organizations must continue to audit, train, and reinforce the importance of privacy through a model of continuous improvement. If there are new technological threats or methods of privacy attacks on an organization, the chief privacy officer must be aware of these risks and adapt the privacy policy and training appropriately. Privacy diagnostic tools are critical weapons in ensuring that an organization is up to date.

By taking proactive steps with policy compliance and periodic audits, an organization can greatly reduce their liability risks as well as manage complaints in the new environment of consumer sensitivity to privacy issues.

*Graham Porter*  
Partner, Lerner LLP, London, ON  
[gporter@lerner.ca](mailto:gporter@lerner.ca)

# ABC's of Playground Equipment Maintenance

**A** daily, monthly, and seasonal maintenance schedule should be created and strictly followed to promote a safe play environment for children.

**B**ushes, shrubs, trees, and other foliage should be trimmed or removed from the playground area to eliminate hiding spots for predators, muggers, vandals, etc.

**CAN/CSA - Z614-03** Children's Playspace and Equipment Standard has been accepted by the Courts as the minimum requirement for playgrounds. (To be reviewed in 2007)

**D**ocument all inspections and maintenance.

**E**xit height of all slides should comply with CSA standards to provide a safe transition from the slide bed to the protective surface.

**F**encing should be inspected for any visible damage, protruding points, and hardware.

**G**rease all moving parts as required. Wipe off excess oil or grease.

**H**orizontal distance between adjacent to-fro swing seats at rest shall be no less than 600 mm (24").

**I**ncidents that occur on the equipment can lead to liability claims. Record all incidents, not just accidents.

**J**oining points at all angles or openings shall be less than 3" or more than 10" to reduce the chance of head entrapment.

**K**ids are "carefree" not "careless" in the eyes of the law.

**L**et manufacturers and installers provide their resources and expertise when making significant repairs or alterations.

**M**ajority of serious playground injuries result from falls onto surfaces that are not resilient enough. Concrete, asphalt, grass, turf and hard-packed dirt are not acceptable.

**N**eck and head entrapment, toggle and string entanglement, and falls to hard surfaces are typical hazards that can be prevented.

**O**ur society is becoming increasingly more litigious and injury awards are escalating.

**P**layground injuries resulting from falls can be prevented by ensuring all equipment has a surface around it in accordance with CSA Standards.

**Q**uickly respond to public complaints.

**R**ecords should be kept on each piece of playground equipment to track maintenance schedules, repairs, costs and injury incidents.

**S**-hooks should be fully closed at all times and should never be re-used. Such a device is considered closed when there is no gap or space greater than 1 mm.

**T**rain your employees in appropriate playground inspection, maintenance, CSA Standards, and incident management.

**U**pgrading existing playground surfaces and equipment can prevent injury to children.

**V**ertical distances between the underside of a swing seat and the protective surfacing shall not be less than 300 mm (12").

**W**ooden, hard plastic, or metal swing seats should not be used. Approved cloth or rubber sling style seating is safer and more forgiving if the seat strikes a child.

**X**'plain your incident reporting system to all employees.

**Y**ou should remove all homemade playground & equipment that is old, worn out, or irreparable according to CSA Standards.

**Z**ero-tolerance policy should be adopted for equipment that doesn't meet standards.

**Frank Cowan Company**

4 Cowan Street East  
Princeton, ON N0J 1V0  
Toll free: 1-800-265-4000  
Phone: 519-458-4331  
Fax: 519-458-4366  
[www.frankcowan.com](http://www.frankcowan.com)