

# BRIEFING NOTE

## **BCCA confirms limitation period for Province's right to claim HCCRA costs**

The BC Court of Appeal decision in *British Columbia (Attorney General) v. Beacon Community Services Society*, 2013 BCCA 317 has shut the door on a host of potential retroactive claims by the Province of British Columbia to recover the cost of past and future health care services. The effect of the decision in *Beacon* is to foreclose actions by the Province to recover health care costs where the limitation period for the beneficiary's claim expired before the Act came into force on April 1, 2009.

It is well known that the *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27 permits the Province to recover health care costs from a wrongdoer who has injured a beneficiary of the publicly funded health care system. Ordinarily, a claim is brought on behalf of the Province by the beneficiary (the injured party) as part of his claim, and the Province's claim for health care costs is addressed as part of that proceeding.

In *Gosselin v. Shepherd*, 2010 BCSC 755 (see our briefing note [here](#)), the court held that s.2 of the Act (the beneficiary's right to recover health care costs) did not apply if the beneficiary's action was started prior to the Act coming into force. This meant that actions commenced prior to April 1, 2009 could not be amended to add the Province's claim for health care costs.

However, s.8 of the Act provides the Province with its own independent right to start an action against the wrongdoer to recover health care costs. The Province may rely on this section of the Act to 'reach back' to actions commenced prior to April 1, 2009, but it must do so within the limitation period provided for in s.8(5) of the Act. Section 8(5)(b) contains various postponement provisions that the Province may rely upon, such as a provision that sets the limitation date at six months after it *receives notice* of the claim. In *Beacon*, the Court of Appeal considered whether such postponement provisions applied.

On October 27, 2009 the Province commenced an action against Beacon Community Services Society to recover health care costs with respect to a beneficiary (Mr. Monych) who had successfully sued Beacon for injuries he suffered on November 4, 2006. Mr. Monych started his action on June 5, 2007, and on April 28, 2009 (shortly after the Act came into effect), he was granted judgment. Mr. Monych's judgment did not include an amount for health care costs.

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Beacon brought an application to strike the Province's claim, arguing that the limitation period with respect to the Province's claim had expired. Section 8(5) of the Act provides for a limitation date for the Province's claim that is six months after the expiration of the limitation period that applies to the beneficiary's right to commence a legal proceeding. In this case, the beneficiary's right to commence an action crystallized on November 4, 2006, the two year limitation period expired on November 4, 2008, and a further six months established an HCCRA limitation date of May 4, 2009. The Province's claim against Beacon was filed on October 27, 2009.

The Province argued that it should not be held to the May 4, 2009 limitation date because at that time it had no knowledge of Mr. Monych's claim. It argued that the notice provisions in s.8(5)(b) applied such that the applicable limitation period was 6 months after it received notice of the claim. The Province relied on *Novak v. Bond*, [1999] 1 S.C.R. 808 for the proposition that the running of time is postponed until the facts necessary to maintain the action are discovered.

The chambers judge rejected the Province's postponement argument and dismissed the Province's action on the basis that it was not brought within the limitation period provided for in s.8(5) of the Act.

The argument in the Court of Appeal focused on the effect of s.8(7) of the Act, which states that s.8(5)(b) (which contains the notice provisions relied upon by the Province) does not apply if the limitation period referred to in subsection 8(5)(a) (the limitation period with respect to the beneficiary's right to commence legal proceedings) expired before the Act came into effect. Ultimately, the Court of Appeal held that the Province's action was time barred as the limitation period that was applicable to the beneficiary's claim had expired prior to the coming into effect of the Act.

A summary of the critical dates to keep in mind is as follows:

- If the action was filed before April 1, 2009, a beneficiary cannot amend his action to include an HCCRA claim, but the Province may have an independent right to bring an action
- Generally speaking (in the absence of disability or other special circumstances), if the injury that gave rise to the claim occurred prior to October 1, 2006, the Province's HCCRA claim has expired.



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