

BRIEFING NOTE

Municipal Liability: Section 736 of the *Local Government Act* is a Statutory Limitation Period

[*Anonson v ICBC, 2016 BCSC 441*](#)

Section 736 of the *Local Government Act*, RSBC 2015, c. 1 provides that a municipality is not liable for damages unless given notice in writing within 2 months of the damage being sustained. The Supreme Court concluded in *Anonson* that section 736 of the *LGA* is a statutory limitation period and the defence is extinguished if a municipality is added to an existing action.

In 2012, Tammy Anonson was struck by a motor vehicle while cycling in the City of North Vancouver. The driver fled the scene and Ms. Anonson was left to bring her claim for damages for personal injury against ICBC. The claim was commenced in June 2015 and in October 2015 Ms. Anonson's sought to add the City as a defendant (it was already a third party).

In chambers before a master, Ms. Anonson's application to add the City was granted without prejudice to the City's right to raise the issue of late notice. The City did not oppose the application and conceded that it was just and convenient that it be added provided that it could raise a defence under section 736 of the *LGA* at trial. The plaintiff appealed the master's order.

On appeal, the City again argued that it should be added as a defendant without prejudice to its defence under the *LGA*. It argued s. 736 of the *LGA* is merely a "notice provision" and not a statutory limitation period. The distinction is critical because statutory limitation defences are extinguished once a party is added to an existing action by operation of section 4(1) of the former *Limitation Act* and section 22 of the *Limitation Act*, SBC 2012, c 13.

The court held that "[t]he mechanism provided by s. 736(3) is no different from any other case where, in an action, there is an issue about whether a limitation period has expired or not". Section 736 of the *LGA* operates to provide a defence against liability if the required notice has not been given within the time period specified. However, like any other statutory limitation defence, it is extinguished if it would be just and convenient to add the municipality to existing litigation.

The key circumstance of this case was the City's concession before the Master that it was just and convenient that it be added. Given that position, the court was not required to determine if the facts of the case warranted the joinder by considering: the extent of the delay in applying to add the City; the reason for the delay; the explanation accounting for the delay; the prejudice caused by the delay; and any connection between the existing action and the proposed claim against the City.

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When responding to a joinder application, municipalities should be mindful of the result in *Anonson*. If the municipality is added, either by consent or court order, its limitation defences are extinguished, including the defence afforded under section 736 of the *LGA*.

However, the City has commenced an appeal of the Supreme Court's decision to the Court of Appeal. At the time of publication that appeal is in the early stages.



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