Introduction
Schindlers is often instructed to handle disputes with the City of Johannesburg (‘the City’) in relation to charges billed for water and electricity several years after the consumption actually occurred. The aim of this article is to educate the public as to what its rights are with regard to such charges.

The Law of Prescription
In terms of the Prescription Act 68 of 1969, certain charges ‘prescribe’ or become ‘unclaimable’ after a certain period of time, if no legal ‘process’ (namely summons or a court application) is served to claim such amounts. This only applies if the debtor has not acknowledged its indebtedness for such amounts. This only applies if the debtor has not acknowledged its indebtedness for such amounts.

- Rates charges
  These only prescribe after 30 years.

- Electricity, water and gas charges
  These prescribe after 3 years.

- Sewer and refuse charges
  The leading case on this issues indicates that these charges constitute ‘rates and taxes’ and thus only prescribe after 30 years. However, this judgment has been criticized and may be overturned, to bring the prescription period for these services into line with that for water, electricity and gas.

When does prescription start running?
It starts running when the debt becomes ‘due and payable’. This happens when the creditor became aware of all of the facts giving rise to its claim for payment. Alternatively, this can happen when the creditor should have become aware of these facts.

Billing in arrears for service charges
The City is obliged to take actual readings at least every six months. Although it is not settled law, it is submitted that this means that the City should bill the consumer for consumption within six months of actual use. Legally speaking, this means that the debt for the consumption, becomes ‘due and payable’ at the latest 6 months after the consumption actually took place.

You would then count three years from the date when the charges became due, to determine when they prescribe.

If the City sends you a bill for charges that were incurred more than three and a half years after the consumption was actually incurred, then the charges have prescribed, and the City cannot lawfully claim those charges from you in court.

When prescription does not run
As mentioned above, there are times when prescription will not run, or will stop running, or the running will be ‘interrupted’. For example, if the debtor admits that it owes the debt, then prescription begins running from the beginning again, which means that the creditor has another three years to claim payment from the debtor from the date that the debt is admitted. There are other times that it will not run, not listed here. Consult your attorney for more information.

BEWARE: Payment of account can be construed as admission of debt
If payment is made of any part of the debt, this is taken as an admission of indebtedness, and so it is crucial, if you dispute any charges on your account, to ensure that before payment is made, the City is notified in writing of which portion of the account you dispute, and that payments you make must not be allocated to the disputed portion. If this is not done payments may be allocated to the oldest debt first, which may settle the whole or part of the amounts in dispute. This will extinguish your dispute and claim against the City in relation to these disputed amounts.

Billing period indicated
Most accounts indicate the billing period. Check this carefully to see whether you are being billed back beyond the legal time frame. If you suspect that you are being charged for amounts that have prescribed, contact your attorney for assistance.

• Email: gladwin@schindlers.co.za • Tel: (011) 448 9678 • www.schindlers.co.za •