

The Limitations Act and Potential Impacts on the Construction Industry - A Preview

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Major changes to the legislation governing limitation periods are coming to Manitoba later this year. These changes are being welcomed by those in the legal profession and the construction industry alike, as they provide clarity to limitation periods and bring the law in Manitoba in line with a majority of Canadian provinces.



Bill 51, *The Limitations Act* (the “New Act”), received Royal Assent on May 20, 2021 and has since been proclaimed into law. The New Act will come into force and effect on September 30, 2022, replacing the existing legislation – *The Limitation of Actions Act* (the “Current Act”).

Current Act

The Current Act sets out a number of different limitation periods based on the cause of action, as well as an “ultimate limitation period” of 30 years. In the construction industry, the two most common causes of action – breach of contract and negligence – have a limitation period of six years from the date the cause of action arose. In instances where the cause of action is discovered more than six years from when it arose, Part II of the Current Act allows for a party to make an application to the Court to extend the limitation period so long as a) they do so within one year of when they knew or ought to have known of the facts upon which to base their action, and b) it is not outside the 30-year ultimate limitation period.

New Act

The New Act, meanwhile, imposes a basic limitation period for all causes of action of two years from the day the claim is discovered, and shortens the ultimate limitation period to 15 years.

The New Act outlines that a claim is discovered on the date the claimant first knew or ought to have known *all* of the following:

- that injury, loss or damage has occurred;
- that the injury, loss or damage was caused by or contributed to by an act or omission;
- that the act or omission was that of a person against whom the claim is or may be made; and
- that, given the nature and circumstances of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it.

The New Act also allows parties to agree to extend, but not shorten, a limitation period.

Given the nature and duration of construction projects, the move to a two-year basic limitation period and a 15-year ultimate limitation period will likely have significant impacts on the construction industry as a whole.

While not in force until September, members of the industry should begin to inform themselves of these changes to be prepared when they come into effect.

In the upcoming June issue of the TDS Construction Law Newsletter "Foundations", we will be providing a comprehensive review of the New Act, its potential impacts on the construction industry, and various other considerations for owners, contractors, design professionals, and others in the industry. If you have any specific questions you would like addressed in the Newsletter, please contact our office in the coming months and we will do our best to address them.

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