

Clerk of Committees
Room 251 – 450 Broadway
Winnipeg MB R3C 0V8

Comments to Bill 51 – *The Limitations Act*

Winnipeg Construction Association

The Winnipeg Construction Association, established in 1904, represents the commercial construction industry in Manitoba. Our member firms include general contractor, sub-contractors, manufacturers, suppliers, financial institutions, lawyers, insurance and bonding companies and brokers. These members deliver \$2 billion worth of high-quality, cutting-edge industrial, commercial and institutional buildings for Manitoba annually.

WCA has been proudly serving the ICI construction industry in Manitoba for over 115 years with an independent and reasoned approach to policy and government affairs. Our diverse membership base is our strength, delivering policy and advocacy priorities which are member driven and vetted, always with the focus to serve and promote the construction industry in Manitoba.

All policy advocacy positions are developed in consultation with our diverse membership directly and through our Government Relations Committee. Policy positions are then approved and endorsed through our Board of Directors to ensure WCA positions have an ‘all of industry’ perspective.

Bill 51 – Fulfilling the need to update.

WCA would like to congratulate the provincial government for undertaking a much-needed update to the *The Limitations Act (formerly the Limitations of Actions Act)*.

A survey of similar legislation from other Canadian provinces (below) makes it clear that Manitoba’s limitation laws are out of step with the rest of the country, an observation also made in the the Manitoba Law Reform Commission report of 2011.

Current Basic and Ultimate Limitation Periods in Manitoba and Neighboring Provinces

Province	Year of Reform	Basic Limitation Periods (years)	Ultimate Limitation Periods (years)
British Columbia	2013	2	15
Alberta	1999	2	10
Ontario	2002	2	15
Saskatchewan	2005	2	15
Manitoba	1931	2/6/10	30
New Brunswick	2012	2	15
Nova Scotia	2014	2	15

The new *Limitations Act* will create clarity on the basic limitation period, where the old legislation did not have clarity. A basic limitation period of two years, which begins to run from the day the claim is discovered, is appropriate.

Changing the ultimate limitation period from 30 to 15 years is also appropriate. From the construction perspective, the existing 30-year ultimate limitation period puts the construction and design community at a disadvantage among their peers in other provinces and creates a barrier to investment. The 15-year ultimate limitation period will bring Manitoba in line with neighbouring provinces.

Seeking Clarity on Clause 24

Clause 24 does warrant closer scrutiny. This clause makes it clear that it is possible to contractually extend a limitation period but not shorten one.

Agreement to extend limitation

24 A limitation period may be extended — but not shortened — in writing, after this Act comes into force.

At the same time, the bill defines the ultimate limitation period as follows:

Ultimate limitation period — 15 years

10(1) Even if the basic limitation period for a claim has not expired, a proceeding must not be commenced more than 15 years after the day the act or omission on which the claim is based took place.

It is unclear in the bill if Clause 24 allows for the extension of the ultimate limitation period. While Clause 10(1) appears definitive in the maximum amount of time after the act or omission took place in the deadline for proceedings to begin, Clause 24 does not preclude the extension of an ultimate limitation period.

The risk with this current wording from the construction industry perspective is that parties may add limitation period clauses in construction contracts as a matter of standard procedure. In this case, the reduction of the ultimate limitation period through Bill 51 would not be effective.

Our neighbouring provinces have addressed this issue in slightly different ways. Saskatchewan's *Limitations Act* prohibits the extension on the ultimate limitation period¹, where the Ontario act allows for the extension of the ultimate limitation period but only with cause².

¹ The Limitations Act (Sask.), Section 21

² Limitations Act (Ont.), Section 22(4)

WCA Recommendation

We recommend the bill be amended to either:

- a) Prohibit the extension of the ultimate limitation period; or
- b) Allow for the contractual extension of the limitation period, but only with cause.

Overall, The Winnipeg Construction Association supports this legislation and commend the Provincial Government for making this a priority.