

ACEC-Manitoba's Position on the Provincial Limitations or Actions Act.

In Manitoba Professional Engineers and Architects are liable under the provincial Limitations of Actions Act for a period of 30 years. This is one of the longest liability periods in North America and in ACEC-Manitoba's opinion a significant detriment to the business of engineering in Manitoba. ACEC-Manitoba doesn't object to a reasonable period of liability, it's the length of the period that we feel is unfair. The longest period of liability in the United States is 15 years. In Canada, there are only three provinces with a period longer than 15 years; these are Manitoba, Quebec, Newfoundland and Labrador who all have Limitation of Liability periods of 30 years.

This issue is fairly complex in that the Limitation of Actions Act covers a very wide range of issues, the vast majority of which have no impact on the consulting or construction industries.

The Province of Manitoba has a Law Reform Commission Act. This act created the Manitoba Law Reform Commission. The Manitoba Law Reform Commission is composed of five to seven members appointed by the Lieutenant Governor in Council.

The duties of the commission are to inquire into and consider any matter relating to law in Manitoba with a view to making recommendations for the improvement, modernization and reform of law, including the removal of provisions of the law that are outdated or inconsistent.

On October 26, 2010 the Law Reform commission released a report on the Limitations of Actions Act (Report #123). This report recommended that the period for the 'recovery of money' in the Limitations Act be reduced from six years after the cause of action arose to two years and that the Ultimate Liability Period be reduced from 30 to 15 years.

ACEC Manitoba supports the recommendations of this report. ACEC-Manitoba's concern with the 30 year Ultimate Liability Period is that it will be fundamentally impossible to reasonably defend a design after such a long time has elapsed. Memories deteriorate, witnesses may no longer be available, conditions on the site may have changed significantly, maintenance may have been better some years than others, there are a myriad of factors that impact a project that the consultant may not have knowledge of or access to after thirty years. Another concern is that engineers can only

obtain error and omission insurance for three years after retirement so in the case where a problem is not apparent immediately, the individual may no longer have insurance and could be personally liable.

It is becoming apparent through numerous meetings with authorities that logic and the principles of fairness are not going to be enough to affect change of the Limitations of Actions Act. We as an organization need to drastically increase the number of groups and individuals supporting change to the act.

As this issue affects all aspects of construction, ACEC-Manitoba needs to approach all affected construction associations and obtain letters of support to take to the province to add some increased leverage to our campaign. ACEC Manitoba also needs to make a stronger effort to raise awareness among our own members, as well as all of our allies. When there is enough public interest, change will happen.