

## **Effective September 1, 2015 - Changes to Nova Scotia's *Limitation of Actions Act***

Nova Scotia's new *Limitation of Actions Act* (the "*Act*") came into force on September 1, 2015. The *Act* significantly limits the time period for which parties in the construction industry are exposed to potential claims. The changes to the *Act* provide a level of certainty for the industry, as there is now a defined period of time in which a claim must be started.

Under the old legislation, engineers, architects and other design professionals could be sued for most civil claims, including negligence and breach of contract, up to ten years from the date the plaintiff knew or ought to have known of the facts giving rise to the claim. However, as a result of what is known as the "Discoverability Rule", the ten year maximum was extended until such time as the aggrieved party could have reasonably become aware of the circumstances giving rise to a claim. Exposure was, essentially, indefinite.

A similar situation was faced for suppliers, manufacturers and contractors who, under the old legislation, were potentially liable for a claim against them years after the completion of a project, with no clear end date for their liability.

The new *Act* establishes a maximum limitation period for most civil claims. New claims will be barred unless they are filed by the earlier of:

1. Two years from the date the claim was, or ought to have been, discovered; or,
2. Fifteen years from the date the professional completed the work related to the claim.

At most, parties in the construction industry will be exposed to liability for fifteen years from the date they complete a project, regardless of when the facts giving rise to the claim are discovered. However, the fifteen year limit does not apply if a design professional or a contractor intentionally conceals or misleads a plaintiff about their claim.

It is important to note that it remains possible for a party to be added to an existing claim already before the courts, even if the limitation period has expired. If this occurs, the court must be satisfied that the party being added had sufficient knowledge of the particulars of the claim before the limitation period expired. Of course, the original claim must have been filed within the proper limitation period, in accordance with the restrictions identified above.

The *Act* provides a transition period for claims that are discovered before September 1, 2015 for which no action has been commenced. For these claims, an action must be commenced before September 1, 2017, or the day on which the former limitation period would have expired, whichever comes earliest. Under the old legislation, this period was six years.

The *Act* brings Nova Scotia in line with other jurisdictions that have ultimate limitation periods. For design professionals, there are still circumstances where they can be sued after they have stopped practicing and are no longer paying for professional liability insurance. Such individuals should bear this in mind when planning retirement or otherwise ceasing practice.