

What you should know about the new *Limitation of Actions Act*

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On May 1, 2010, a new *Limitation of Actions Act* S.N.B. 2009, c. L-8.5 came into force in New Brunswick. The new *Limitation of Actions Act* significantly changed the timing of when someone can sue, or be sued, in the Province of New Brunswick.

What is the new limitation period?

A limitation period is the time in which a person can be sued after the event that gave rise to the cause of a lawsuit. In New Brunswick, limitation periods were found in many private acts, such as the *Engineering and Geoscience Professions Act*, S.N.B. 1999, and in various public statutes. The new *Limitation of Actions Act* creates, with some exceptions, a new general limitation period.

Prior to May 1, 2010, Section 28(1) of the *Engineering and Geoscience Professions Act* provided a limitation period when an engineer or geoscientist could be sued that was two years from the date on which the service was, or ought to have been, performed or two years from the date the cause of the damage became known or ought to have become known. Therefore, engineers and geoscientists were liable for two years after any error was discovered.

The new limitation period is the earlier of: two years after the discovery of the damage or 15 years from the date of the act or omission. For claims which are discovered after May 1, 2010, the changes limit an engineer's liability to 15 years for their past work.

What if there's a claim in progress?

The *Limitation of Actions Act* also creates a number of transition provision and special limitation periods. If you are contemplating a claim, or concerned about a potential claim, you should discuss with a lawyer the effect of the new *Limitation of Actions Act* on that claim.

The transition provisions in the new Act provide that, during the first two years after May 1, 2010, a claim may be brought after the limitation period has expired, if the former limitation period has not expired. Therefore, if you discover a claim during the period between May 1, 2010, and April 30, 2012, a claim may be brought after the new limitation period has expired if the former limitation period has not expired.

After April 30, 2012, only the new limitation periods will apply.

Be careful...you may inadvertently waive the limitation period

There are a number of provisions in the new Act that engineers and geoscientists should be aware of when they deal with matters that have a potential to involve litigation.

For example, Sections 19 and 20 of the new *Limitation of Actions Act* allow a defendant to acknowledge liability or to make a part payment and, thereby, waive the limitation period. Where engineers and geoscientists should be concerned is when they are acting on behalf of a client or on their own behalf, and they make a statement in writing that acknowledges some liability, this creates a new limitation period that starts running from the date of the acknowledgement.

The acknowledgement of liability will apply unless the admission is made on a “Without Prejudice” basis or specifically reserves a party’s right to rely on the expiry of a limitation period as a defence to the claim. For example, if an engineer or geoscientist were to send a casual email admitting some fault or obligation, on their own behalf or on behalf of a client, without properly preserving the right to rely upon the limitation period, that email will extend the limitation period against the engineer or his client.

Engineers and geoscientists must be cautious in any written correspondence, including e-mail that might accidentally waive a limitation period.

Consult with a lawyer

Given the significant changes in the limitation periods in New Brunswick, engineers and geoscientists may want to review with their lawyer standard form agreements, communications, and insurance policies to ensure they are consistent with the new *Limitation of Actions Act*.