

Third Session – Forty-Second Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Justice

Chairperson
Mr. Alan Lagimodiere
Constituency of Selkirk

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MANITOBA LEGISLATIVE ASSEMBLY
Forty-Second Legislature

Member	Constituency	Political Affiliation
ADAMS, Danielle	Thompson	NDP
ALTOMARE, Nello	Transcona	NDP
ASAGWARA, Uzoma	Union Station	NDP
BRAR, Diljeet	Burrows	NDP
BUSHIE, Ian	Keewatinook	NDP
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**LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON JUSTICE**

Tuesday, April 6, 2021

TIME – 6 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Alan Lagimodiere (Selkirk)

VICE-CHAIRPERSON – Mr. Andrew Micklefield (Rossmere)

ATTENDANCE – 6 QUORUM – 4

Members of the Committee present:

Hon. Mr. Friesen, Hon. Ms. Gordon

*MLA Asagwara, Ms. Fontaine,
Messrs. Lagimodiere, Micklefield*

APPEARING:

Hon. Jon Gerrard, MLA for River Heights

PUBLIC PRESENTERS:

Bill 51–The Limitations Act

Ms. Shawna Finnegan, private citizen

WRITTEN SUBMISSIONS:

Bill 51–The Limitations Act

Christian Korell, Association of Manitoba Land Surveyors

Darryl Harrison, Winnipeg Construction Association

Karri Hiebert, Association of Consulting Engineering Companies Manitoba

MATTERS UNDER CONSIDERATION:

Bill 27–The Administrative Tribunal Jurisdiction Act

Bill 46–The Court Practice and Administration Act (Various Acts Amended)

Bill 51–The Limitations Act

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Mr. Chairperson: Good evening. Will the Standing Committee on Justice please come to order.

Our first item of business is the election of a Vice-Chairperson. Are there any nominations? *[interjection]*

Mr. Chairperson: Ms. Gordon.

Hon. Audrey Gordon (Minister of Mental Health, Wellness and Recovery): Yes?

Mr. Chairperson: Go ahead.

Ms. Gordon: I would like to nominate the member for Rossmere, Mr. Andrew Micklefield.

Mr. Chairperson: Mr. Micklefield has been nominated.

Are there any other nominations?

Hearing no other nominations, Mr. Micklefield is elected Vice-Chair.

This meeting has been called to consider the following bills: Bill 27, The Administrative Tribunal Jurisdiction Act; Bill 46, The Court Practice and Administration Act (Various Acts Amended); and Bill 51, The Limitations Act.

I would like to inform all in attendance of the provisions of our rules regarding the hour of adjournment. A standing committee meeting is considered—to consider a bill must not sit past midnight to hear public presentations or to consider clause by clause of a bill, except by unanimous consent of the committee.

Written submissions from the following persons have been received and distributed to committee members: Crystal *[phonetic]* Korell, private citizen, on Bill 51; Darryl Harrison, Winnipeg Construction Association, on Bill 51; and Karri Hiebert, Association of Consulting Engineering Companies, on Bill 51.

Does the committee agree to have these documents appear in Hansard's transcript of this meeting? *[Agreed]*

Prior to proceeding with public presentations, I would like to advise members of the public regarding the process for speaking in committee. In accordance with our rules, a time limit of 10 minutes has been allotted for presentations with another five minutes allowed for questions from committee members.

If a presenter is not in attendance when their name is called, they will be dropped to the bottom of the list.

If the presenter is not in attendance when their name is called a second time, they will be removed from the presenters' list.

The proceedings of our meetings are recorded in order to provide a verbatim transcript. Each time someone wishes to speak, whether it be an MLA or a presenter, I first have to say the person's name. This is the signal for the Hansard recorder to turn the mics on and off.

Also, if any presenter has any written materials for distribution to the committee, please send the file by email to the moderator who will distribute it to all committee members.

Thank you for your patience. We will now proceed with public presentations.

Bill 51—The Limitations Act

Mr. Chairperson: I will now call on Shawna Finnegan and ask the moderator to invite them into the meeting. Please unmute yourself and turn your video on.

Floor Comment: Hello, can you hear me? Hi there.

Mr. Chairperson: We can hear you, Shawna Finnegan.

Ms. Shawna Finnegan (Private Citizen): Thank you very much.

Mr. Chairperson: Shawna Finnegan, please proceed with your presentation.

Ms. Finnegan: Thank you very much. Thank you, Chairperson, Vice-Chairperson and standing committee members.

I'm speaking to you as a private citizen of Manitoba. My name is Shawna Finnegan. I'm 36 years old and I currently live in West Broadway, in the riding of Union Station. I have lived in Manitoba for most of my life, and this is the first time that I've made a public presentation before the committee of the Legislative Assembly of Manitoba.

I want to begin my presentation by noting that the text of Bill 51 was released to the public on March 8th, four weeks, or less than 30 calendar days ago. This Bill 51 is one of 19 bills that was introduced in late 2020 with no text and without evidence that the text had indeed been developed before the bills were tabled. By releasing the text of 19 bills over a short time period with so little time for public review and consideration, the Manitoba government is effectively

obstructing meaningful participation by the public in the legislative process.

My presentation today represents only a fraction of the research that I believe is absolutely necessary before this bill could be passed into law, and I am certain that with adequate time to prepare and to request information, I would present a far more detailed and nuanced analysis of Bill 51.

So I want to start by considering some of the limitations that this bill sets out and how it compares to other provinces. When the text of the bill was finally released, Justice Minister Cameron Friesen stated in an official announcement that Bill 51 will bring Manitoba in line with other provinces that have already simplified and modernized other limitations law. In my review of limitations laws in other provinces in Canada, I have found significant differences in the scope and the details of limitations, including in the exempted court proceedings and claims.

Section 2, subsection 2 of the Limitations Act of British Columbia, for example, states that this act does not apply to court proceedings based on existing Aboriginal and treaty rights of the Aboriginal peoples of Canada that are recognized and affirmed in the Constitution Act of 1982.

If the provincial government is, indeed, bringing Manitoba in line with other provinces, then I would expect to find text very similar to this in the proposed Bill 51. Instead, it seems that the provincial government has done exactly the opposite. If passed, Bill 51 will demand that any claims made—placed on Aboriginal and treaty rights, affirmed by the constitution, must be commenced in court within 30 years of the act or a mission taking place.

The Assembly of Manitoba Chiefs has stated that no First Nations groups were consulted before the bill was tabled, and they have called on the provincial government to remove limitations that restrict Indigenous peoples from addressing historical injustices. My understanding is that there is no jurisdiction in Canada that places limitations on claims based on existing Aboriginal and treaty rights of the Aboriginal peoples of Canada that are recognized and affirmed in the Constitution Act, 1982.

I can thus only assume that the intention of the current government is not to bring Manitoba in line with other provinces, and that Bill 51 is rather

intended to obstruct and undermine the rights that are recognized and affirmed in the Constitution Act.

I want to make a few further reflections on the reduction of the time to make claims. So, as I was reviewing Bill 51, I noticed that in section 7, subsection 5, of the current Limitation of Actions Act, there is an outline of an ultimate time limit of 30 years. Bill 51 proposes to cut this time in half to 15 years. At the same time, I noticed that the proposed changes to The Freedom of Information and Protection of Privacy Act would extend the time for responding to a request for access to information from 30 days to 45 days. This appears to me to be an admission by the government that 30 days is not currently sufficient time to respond to requests for access to information.

* (18:10)

I am not a lawyer by training or profession. However, I suspect that requests for access to information may be vitally important to the progression of any claim that would be covered by The Limitations Act.

So, while the government is extending the amount of time that it has available to respond to requests, it is simultaneously reducing the amount of time available to pursue claims.

So my question is: Why is the provincial government extending time limits for requesting access to information by 50 per cent at the same time as cutting the 'ultimal' time limits for claims by 50 per cent?

I want to conclude by saying that in the research that I've been able to conduct in this short period of time, I've noticed further 'discrepancies' in comparison to limitation laws in other provinces, for example, in relation to adverse possession.

For example, in British Columbia, there are exceptions specifically provided where no right or title in land may be acquired by adverse possession. This is not the case in Bill 51.

I will stop there, as that is the amount of research I was able to do in this amount of time.

Thank you so much for the opportunity to speak to you all.

Mr. Chairperson: Thank you for your presentation.

Do members of the committee have questions for the presenter?

Hon. Cameron Friesen (Minister of Justice and Attorney General): Thank you, Ms. Finnegan, and thank you for appearing at committee this evening. I'm happy to provide a response to you when it comes to section 10(2) of the bill and the exemption—the exception for Aboriginal claims.

I want to make it clear that the bill actually contemplates no change to the existing rules, rules that have been in place in this province for a long time in respect of those rights. So there is a no change in this bill contemplated when it comes to ultimate limitation period for equitable claims by an Aboriginal people against a Crown. No change on that.

And then I just want to make the comment to you. You had indicated you had—you weren't sure the extent to which we actually were aligning our rules in these—in this act with other jurisdictions. And I would just call to your attention a statement in the materials provided this evening by the Association of Manitoba Land Surveyors that say that they commend the provincial government for bringing this—these changes in line with other provinces.

And then I also cite for you the engineers, who also made a written submission to this committee and indicate in their submission a survey of similar legislation from across Canada makes it clear that Manitoba's existing limitations of action law were out of step or are out of step with other provinces. And that's why these changes are being brought.

So I hope that answers some of the questions that you have asked, and I thank you again for appearing at the committee this evening.

Ms. Finnegan: Thank you very much for that response, Minister Friesen.

My understanding is that the previous Limitation of Actions Act actually had no specific text with regards to limitations on Aboriginal and treaty rights. So this new text would be—as you said, it's not that it's—hasn't been presented before, but it's explicitly making that statement and it seems to be that it's not in line with other provinces.

So I would ask, if possible, for you to share if there are any other provinces in Canada in which a similar text is provided in a limitations act.

Ms. Nahanni Fontaine (St. Johns): Miigwech, Shawna, to—I'm not sure where I'm looking here, where I'm supposed to—sorry. I'm trying to look at you, but I'm not sure which camera I'm supposed to be looking at. So I apologize.

So, I do want to just say miigwech, Shawna, for your presentation tonight.

Oh, there we go. Miigwech.

I do think it's important—I appreciate you coming tonight to spend a little bit of time and actually, you know, begin your presentation by pointing out that you as a citizen, you as a Manitoba citizen, did not have the adequate time that you feel that you need in order to review the legislation that is currently before this standing committee tonight.

I think it's important. I think it's important for the Minister of Justice and each and every one of his colleagues to continue to hear how wrong it was for the government to withhold legislation and keep it secret from Manitoba voters. And so I appreciate you starting off with that, and I appreciate you bringing up the Aboriginal title, the concerns in respect of Aboriginal title. We have, obviously, similar concerns as well.

So I do want to just thank you for taking some time to present a very thoughtful presentation to the standing committee. Hopefully, the Minister of Justice heard some of your concerns and heard—and I suspect, will continue to hear similar concerns in respect of keeping legislation secret because I think that there's going to be folks that are going to be presenting on several bills about their legislative agenda—keeping it secret.

So I do really appreciate that, and miigwech for that.

Ms. Finnegan: Thank you so much. I very much appreciate that.

Hon. Jon Gerrard (River Heights): Shawna, thanks so much for presenting and for taking the time to look carefully at this bill and some level of comparison with British Columbia.

I think it's really important that you bring out the fact that this bill should have been presented back in November when it was at first reading, and that would have made a big difference and—

Mr. Chairperson: I'm sorry, the time for questions has expired.

Mr. Gerrard: Can I complete my question?

Mr. Chairperson: Will the committee give him leave to complete his question? And allow Shawna to give an answer? *[Agreed]*

Mr. Gerrard: Thank you. I just wondered whether you had a chance to look at other provinces, in addition to British Columbia, and make any comparisons there?

Ms. Finnegan: Thank you very much for this question. Unfortunately, my research was quite limited by the time that I had available. I have read reviews by other researchers that have suggested that, in their reviews of legislation in other provinces, there is a lot different, but I personally have only been able to do the comparison with British Columbia at this stage. As was noted by other speakers, it's been a real challenge to do this research with the time limits.

Mr. Gerrard: Thank you.

Mr. Chairperson: That concludes our list of presenters I have before me.

* * *

Mr. Chairperson: In what order does the committee wish to proceed with clause-by-clause consideration of these bills? In numerical order?

An Honourable Member: Yes, that's perfect.

Mr. Chairperson: Who is in favour? *[Agreed]*

Bill 27—The Administrative Tribunal Jurisdiction Act

Mr. Chairperson: We will now proceed with clause by clause of Bill 27. Does the minister responsible for Bill 27 have an opening statement?

Hon. Cameron Friesen (Minister of Justice and Attorney General): I do. Thank you, Mr. Chair. I'll make just a few brief comments in respect of the bill, The Limitations Act, and indicate again to the committee that the bill proposes to repeal and replace the current limitations legislation with a modern and simplified approach that better aligns with other jurisdictions. And, in so doing, the new act sets out a specific limitation period: a two-year basic period and then a 15-year ultimate period. Right now in Manitoba there are various limitations for different things. That can be confusing. It's inefficient and, clearly, in other provinces, and speaking to the concerns raised by tonight's presenter, there has been a coherent move towards provinces establishing similar limits in respect of the—both the ultimate and the basic limitation period.

So it brings us into step with other jurisdictions. As a matter of fact, to answer another question of the presenter tonight, only two jurisdictions haven't modernized their limitations regimes: Prince Edward

Island and Newfoundland and Labrador. Everyone else has gone this way.

* (16:20)

In respect of the question raised by the presenter tonight about the preservation of the 30-year ultimate limitation period when it comes to claims based on Aboriginal rights, I want to be very clear that the bill acknowledges the special issues raised with respect to claims based on Aboriginal rights and the modernization of limitations legislation.

So we are preserving in this legislation the 30-year ultimate limitation period from the current act, and in so doing, Manitoba is indeed keeping with the approach of other jurisdictions.

The Limitations Act will apply to all proceedings, 'blased' on—based on claims discovered after it comes into force. Transition provisions have been crafted both to ensure the current proceedings are not impacted and to simplify for Manitobans when the new act will apply.

We're proud of the proposed bill and—

Mr. Chairperson: Mr. Minister, are you referring to Bill 27 or Bill 51?

We're currently on Bill 27.

Mr. Friesen: I'm sorry to the committee.

So now you have reverted to 27 from the 51 presenter. We've heard the presenter on 51, Mr. Chair, and now we're reverting to 27 to go through the bills sequentially? *[interjection]*

Thank you.

Do you want to try again?

Mr. Chairperson: We can try again.

Mr. Minister—Mr. Friesen.

Mr. Friesen: Thank you, a minute.

Alright, Bill 27.

Pleased to put some brief comments on the record for Bill 27, and maybe I can put even briefer comments on the record later on for Bill 51, knowing that I already had a chance to put some there.

With respect to The Administrative Tribunal Jurisdiction Act, pleased to just summarize this legislation for the committee and those who are joining us this evening at this committee.

Bill 27 proposes to simplify, in one piece of legislation, the question of whether or not a tribunal has jurisdiction to consider questions of constitutional law. So a constitutional question can be raised when an applicant challenges the validity or application of a particular law or provision on the basis that it is inconsistent with the constitution. Currently, courts have determined that tribunals can decide questions of law—sorry, that tribunals that can decide questions of law can also consider questions of constitutional law.

However, while many tribunals are experts in their own subject matter, the complexities involved in constitutional law questions may not be appropriately addressed by all of these bodies. So determining which statutory tribunals should hear questions of constitutional law has therefore become a legislative function and a matter of policy.

Administrative tribunals vary widely in virtually every aspect: experience, structure, expertise, function, resources, mandate. They range in scope from the Manitoba Labour Board, which is responsible for adjudicating labour in employment disputes, to the Animal Care Appeal Board, which hears appeals about animal seizures and licensing decisions.

So whether a tribunal should possess this jurisdiction, from a policy perspective, involves the consideration of practical, functional and structural issues, which will be analyzed and determined through consultation as necessary in a broad understanding of how to serve the needs of Manitobans.

So Bill 27 is not intended to substantially change the current practice of administrative tribunals; rather, it would facilitate the important work that they do by clarifying the scope of the jurisdiction and avoid unnecessary litigation that often ensues when questions of jurisdiction are unclear.

Thank you, Mr. Chair.

Mr. Chairperson: We thank the minister.

Does the critic from the official opposition have an opening statement for Bill 27?

Ms. Nahanni Fontaine (St. Johns): Bill 27 gives the Pallister government more control over administrative tribunals.

If Bill 27 is passed, tribunals will have to be designated by regulation or, i.e., by government to consider questions of constitutional law. It is deeply concerning that issues of constitutional law can now

be considered by a tribunal if the government says it can and only in the way and manner the Pallister government dictates.

The Pallister government started removing tribunal powers with the Social Services Appeal Board in 2018. And Bill 27 is the next level of control, removing these authorities for every appeal board except for those authorized by the Premier (Mr. Pallister) and his Cabinet.

The net effect of these changes means the next step could be a push for the consideration of constitutional matters solely in the courts. This increases the cost of justice and disproportionately impacts those with the less-least means to participate in court proceedings, financially and otherwise.

We have tribunals so more issues can be resolved outside the court system, but the Pallister government and Bill 27 are taking us backwards. We will stand up for affordable and accessible justice for all Manitobans.

Miigwech.

Mr. Chairperson: We thank the member.

During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order.

Also, if there is agreement from the committee, the Chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose.

Is that agreed? *[Agreed]*

Clause 1-pass; clauses 2 and 3-pass; clauses 4 and 5-pass; clauses 6 through 9-pass; clauses 10 through 12-pass; enacting clause-pass; title-pass. Bill be reported.

**Bill 46—The Court Practice
and Administration Act
(Various Acts Amended)**

Mr. Chairperson: Does the minister responsible for Bill 46 have an opening statement?

Hon. Cameron Friesen (Minister of Justice and Attorney General): I do, Mr. Chair. Thank you.

I am very pleased to present Bill 46 to committee this evening. Bill 46 proposes to amend seven court statutes with the goal of advancing modernization of the justice system, improving access to justice, and recognizing the value of court-related services.

There are a number of things that this bill does, but simply to summarize because we've had this discussion already at second reading, it means that when it comes to Court of Appeal and Court of Queen's Bench judges, there are certain professional conferences that they can attend and then bill to the federal government. We need to pass provisions here that will allow us, similar to other jurisdictions, to allow judges to do this.

When it comes to—there's also streamlining and simplification of appeal processes which are complex and can be difficult to navigate that Bill 46 attends to. New provisions will clarify where appeals in certain types of cases should be heard, whether Court of Appeal or Court of Queen's Bench.

Applications for the appeal of small claims decisions will need to be accompanied by transcripts of small claims hearings. That way the judge will now be able to decide at the first appearance whether they can allow the appeal to proceed, and appeals to default judgments will now be provided for in the small claims legislation.

Provincial Court of Manitoba deals with the majority of criminal cases in the province. The senior judge program allows the chief judge to schedule retired judges on occasions, such as when there are judicial vacancies, but there's a limit on how often this can happen. And with virtual courtrooms now set up and courts cautiously reopening to address backlog, Bill 46 removes that limit and it simply enables the chief judge to address the criminal court backlog in a simpler manner.

Another change to the provincial court act will clarify the eligibility of lawyers who wish to apply for judicial justice of the peace appointments. Court fees under The Court Services Fees Act, formerly known as The Law Fees and Probate Charge Act have been—have undergone an intensive review, and Bill 46 will enable updates to the fee amounts and a restructuring of court services that incur fees to allow faster, better digital service delivery. It allows for modern and relevant pay options, such as electronic transfer of funds, which has probably been a long time coming. So giving people more opportunities and more latitude to provide payment is a good thing.

* (18:30)

It also removes references to services like official examiners, which have been solely offered by private service providers since the 1990s, so no change in terms of who's providing those services, but rather it

clarifies that fees charged by third parties have to be paid to those service providers rather than court officials.

And then when it comes to jury service, which I think is the feature of these amendments that most people will latch onto, it's—jury services is one of the most important and admirable ways that Manitobans can participate in their justice system.

The bill enables improvements in jury—juror compensation, which has not been adjusted in over two decades. Juror fees now will be paid on the first day of a trial rather than the 11th day of a trial, which was formerly the case, and jury-service disqualification and exemption provisions will be updated to simplify the process for—process for being excused from jury duty when necessary.

Just as an example, it used to be quite onerous for someone to indicate when they might be medically unable to serve on a jury. These amendments simplify the process and require of the individual only very high level information about the reason that might underlie needing to be exempted from service.

And then to simply wrap up, the bill also speaks to court interpreters and expert witnesses who are paid fees for their services but the costs often exceed the prescribed amounts. Those amounts have not been reviewed or updated for many years. We need people like expert witnesses for our trials and for our court proceedings, and so Bill 46 allows justice officials to use government procurement practices to get and obtain expert services required in order to move court proceedings forward in a fair and timely way.

I'm pleased to present these amendments to the committee as they improve court services and judicial processes and enhance access to justice.

Thank you, Mr. Chair.

Mr. Chairperson: We thank the minister.

Does the critic from the official opposition have an opening statement on Bill 46?

Ms. Nahanni Fontaine (St. Johns): This bill, or Bill 46, makes several changes to Manitoba courts and the administration of justice, and while we're not opposed to several provisions of Bill 46, there are a couple of areas of concern.

Firstly, we're concerned by the changes to The Court Services Fees Act. The changes explicitly

reference third parties, so we're concerned this opens the opportunity for privatization and contracting out the jobs of many public-service-sector workers.

The Pallister government has already created a monopoly for private—for a private corporation from Saskatchewan to handle Manitoba's legal transcripts. This used to be done by government in-house service through the Manitoba civil service. The quality of service has worsened under the privatized system and has become more expensive, which presents a barrier for low-income Manitobans. We are also concerned that Bill 46 allows this to be further contracted out.

Secondly, we see Bill 46 as a missed opportunity. Indigenous representation on juries is very important and we see that as a road to and a means of enhancing reconciliation. And so while there are some changes here, the bill does not specifically address Indigenous representation and equity on jurors, and this certainly is a missed opportunity and could've been addressed in Bill 46.

Miigwech.

Mr. Chairperson: We thank the member.

During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order.

Also, if there is agreement from the committee, the Chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose.

Is that agreed? *[Agreed]*

Clauses 1 and 2—pass; clause 3—pass; clause 4—pass; clauses 5 through 9—pass; clauses 10 through 12—pass; clauses 13 through 15—pass; clauses 16 through 19—pass; clause 20—pass; clauses 21 and 22—pass; clauses 23 and 24—pass; clauses 25 through 28—pass; clauses 29 through 33—pass; clause 34—pass; enacting clause—pass; title—pass; Bill be reported.

Before we proceed, we just need to correct the record here. We had had a submission from Christian Korell that we had originally thought was from a private individual. Christian Korell is actually representing the Association of Manitoba Land Surveyors. So just to correct the record on that.

Bill 51—The Limitations Act

(Continued)

Mr. Chairperson: So, does the minister responsible for Bill 51 have an opening statement?

Hon. Cameron Friesen (Minister of Justice and Attorney General): I do. Thank you, Mr. Chair, and I will, for posterity, repeat a few things. I'll endeavour to be brief, but I think it makes it easier later on if someone is actually following these proceedings and trying to retrieve information from the Hansard record of these proceedings.

So, at the risk of being slightly redundant, I am pleased to present Bill 51. Of course, Bill 51 proposes the repeal and replacement of the current limitations regime with a modern, simplified approach that aligns with other jurisdictions. It replaces a variety of limitation periods with a single, two-year basic limitation period and a 15-year ultimate limitation period.

It means that a person has two years from the day a claim was discovered to file a civil claim in court. If the claim is not discovered within 15 years from the event that gave rise to the claim, the claim would be statute barred. Once again, I would reinforce that this move in Manitoba would align with the direction that has been taken in all jurisdictions except for Prince Edward Island and Newfoundland.

The bill also eliminates certain needless steps from the current act: reducing expenses for litigants, freeing up court time, facilitating access to justice, which is all good.

I did want to speak briefly about the issue of Indigenous rights and limitations, which was referenced by our presenter this evening. Bill 51 acknowledges the special issues raised with respect to claims based on Aboriginal rights and the modernization of limitations legislation. This act preserves the 30-year ultimate limitation period from the current act. In so doing, Manitoba is keeping with the approach of other jurisdictions.

On that, I would want to also indicate that Bill 51 is silent about whether section 10(2) applies to claims based on Aboriginal title. An Aboriginal right is an activity with an element of a practice, custom or tradition integral to the distinctive culture of the Aboriginal group claiming the right. It's not exactly—not necessarily based on the assertion of Aboriginal title; Aboriginal title is a specific type of Aboriginal right.

So, in essence, what I would want to reinforce is that our legislation makes no change to what was in existence previously, and it keeps up with the approach of other modernized jurisdictions.

* (18:40)

Mr. Chair, I'll wrap up by saying The Limitations Act will apply to all proceedings based on claims discovered after it comes into force and transitional provisions have been crafted both to ensure the current proceedings are not impacted, so, no change to proceedings that are currently under way or at some stage before the courts. This question did come up in second reading in the questions to the minister.

And also to simplify for Manitobans when the new act will apply, we are proud of this proposed bill which would replace the outdated current act with a updated and simplified limitations law. It brings Manitoba into step with other modernized jurisdictions.

Thank you, Mr. Chair.

Mr. Chairperson: We thank the minister.

Does the critic for the official opposition have an opening statement?

Ms. Nahanni Fontaine (St. Johns): The main purpose of Bill 51 is to shorten and standardize limitation periods which are the maximum length of time a claim can be brought against someone or something. Currently, Manitoba has several limitation periods ranging from two to 10 years, depending on the type of legal action.

Bill 51 would instate a limitation period of two years for all types of legal action, which begin from the day the person with the claim knew or ought to have known the material facts.

This bill also shortens the ultimate limitation period from 30 to 15 years. As was noted in second reading debate in the House, it is simply unreasonable to imagine that folks that would bring forward any type of legal action would potentially know everything that they ought to know within a two-year time frame.

I don't think that that's reasonable, and certainly, I think it works against individuals who do have a legitimate claim to any type of—or type—a legitimate claim of legal action. And the Pallister government is certainly putting obstacles and contributing to those claims not moving forward.

As well, Bill 51 also unfortunately maintains the ultimate limitation period for Aboriginal claims at 30 years. It's disappointing that upon opening this act and making amendments, the Pallister government did not look at this as an opportunity to increase that time.

We've been told that limitations on Aboriginal title claims remain unlimited but I'm hoping that during this committee, the government might lay that out a little clearer for us as we don't see that directly within the text of the bill.

I also think that it's important to put on the record tonight again—and I believe our presenter had made reference to it—that the Assembly of Manitoba Chiefs has noted that no consultation was done worth—with the First Nation communities or representative PTOs in the province.

And so we have yet another bill before the Manitoba Legislative Assembly that moves us nowhere even close to even attempting to look at reconciliation. And so that falls under the minister's administration right now.

There are concerns when it comes to limitations on legal action. There are some claims, for example, environmental contamination which may not be discovered for more than 15 years after the event took place. At a press conference on March 9th, 2021, the Minister of Justice (Mr. Friesen) said this bill will not affect claims involving the environment, meaning that there would be no time limit. However, nowhere in Bill 51 is the word environment even mentioned, which is extremely concerning. So, hopefully, the minister can clarify that today.

And again, I just want to thank Shawna Finnegan for her presentation and taking the time out of her evening to present to us.

Miigwech.

Mr. Chairperson: We thank the member.

During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order.

Also, if there is agreement from the committee, the Chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose.

Is that agreed? *[Agreed]*

Clause 1—pass; clauses 2 and 3—pass; clauses 4 through 7—pass; clause 8—pass; clauses 9 through 11—pass; clause 12—pass; clauses 13 through 15—pass; clauses 16 and 17—pass; clause 18—pass; clause 19—pass; clause 20—pass; clause 21—pass; clauses 22 through 24—pass; clauses 25 through 30—pass; clause 31—pass; clauses 32 through 37—pass; clauses 38 through 43—pass; clauses 44 through 51—pass; clauses 52 through 55—pass; the enacting clause—pass; title—pass; Bill be reported.

That concludes the business before the committee.

The hour being 6:47, what is the will of the committee?

Some Honourable Members: Committee rise.

Mr. Chairperson: Committee rise.

COMMITTEE ROSE AT: 6:47 p.m.

WRITTEN SUBMISSIONS

Re: Bill 51

Established in 1881, the Association of Manitoba Land Surveyors (AMLS) is the oldest land surveying association in Canada. We are a professional, self-governing body operating under The Land Surveyors Act (Manitoba), which regulates the practice of land surveying for the protection of the public and administration of the profession.

We commend the Provincial Government in updating the Limitations of Actions Act. The Limitations Act will bring the limitations periods into line with the other provinces so as to not put our industries at a disadvantage with other jurisdictions in Canada.

The AMLS does however have one concern about the wording within clause 24 of the Limitations Act.

Agreement to extend limitation

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

Clause 10(1) of 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.

The above wording is not clear if clause 24 refers to both the Basic limitation period and the Ultimate

limitation period. If it includes the Ultimate limitation period, then it contradicts clause 10(1).

Our profession provides many services to the construction industry in Manitoba. Our concern would be that through standardized construction contracts, the Ultimate limitation period may be extended beyond 15 years. We would recommend that the Bill be amended to clarify that the Ultimate limitation period is limited to 15 years.

Our Association supports this legislation and thanks the Provincial Government for making these changes a priority.

Yours truly,

Christian P. Korell, M.L.S.
President
Association of Manitoba Land Surveyors

Re: Bill 51

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

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 period, where the Ontario act allows for the extension of the ultimate limitation period but only with cause.

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.

Best regards,

Ronald Hambley
President
Winnipeg Construction Association

Submitted by Darryl Harrison

Re: Bill 51

Association of Consulting Engineering Companies (ACEC-MB)

The Association of Consulting Engineering Companies–Manitoba (ACEC-MB), represents the business interest of Consulting Engineering Companies in Manitoba. Our association represents 29 member firms and is the voice of our 1600 plus members.

ACEC-MB is an authoritative and trusted voice on how consulting engineering firms contribute to a strong economic, social, and environmental quality of life in Manitoba. Our member firms make valuable contributions to projects at all stages of development, from determining and defining the scope and setting preliminary budgets, through detailed design and construction to commissioning of the completed works. Consulting Engineers are often engaged to supplement in-house staff resources when the work at hand exceeds their capacity or range of expertise.

Bill 51–Fulfilling the need to update.

ACEC-MB would like to congratulate the Provincial Government for undertaking a much-needed update to the Limitations of Action Act and renaming it The Limitations Act.

A survey of similar legislation from across Canada makes it clear that Manitoba's existing Limitations of Action laws are out of step with other Provinces. This was also noted in the 2011 Manitoba Law Reform Commission report.

Current Basic and Ultimate Limitation Periods in Manitoba and Neighboring Provinces

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.

Also, changing the ultimate limitation period from 30 years to 15 years is appropriate. From the consulting engineering perspective, the existing 30-year ultimate limitation period put the local consulting industry at a disadvantage compared to their peers in other Provinces and created a barrier to investment. The 15-year ultimate limitation period addresses this by bringing Manitoba in line with neighbouring Provinces.

Seeking Clarity on Clause 24

Clause 24 of the Bill warrants closer scrutiny. This clause makes it clear that it is possible to contractually extend a Limitation Period but not shorten it.

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.

In the Bill it is unclear if Clause 24 allows for an 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 through a contractual agreement.

From the consulting engineering perspective, the risk with the current wording of Bill 51 is that parties may add Limitation Period clauses in 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. In Saskatchewan The Limitations Act prohibits the extension of the Ultimate Limitation Period, where the Ontario Limitations Act allows for the extension of the Ultimate Limitation Period but only with cause.

ACEC-MB Recommendations

The ACEC-MB Board and Government Relations Committee are involved with the Limitations Working Group being led by the Winnipeg Construction Association (WCA). We support the recommendations developed by the WCA to amend Bill 51 to either:

a) Prohibit the extension of the Ultimate Limitation Period; or

b) Allow for the contractual extension of the Ultimate Limitation Period, but only with cause.

Overall, ACEC-MB supports this legislation and commends the Provincial Government for making this a priority.

Yours truly,

Brad Cook,
ACEC-MB President
Association of Consulting Engineering Companies
Manitoba (ACEC-MB)

Submitted by Karri Hiebert

The Legislative Assembly of Manitoba Debates and Proceedings
are also available on the Internet at the following address:

<http://www.manitoba.ca/legislature/hansard/hansard.html>