

Archival and Destruction of Records



Architects are advised to retain all records related to activities in the Northwest Territories for at least ten years, and to consult their insurers before destroying records or developing an office policy or best practice in this regard.

ARCHIVAL AND DESTRUCTION OF RECORDS

There is currently no express legislation on the requirement of an Architect to retain or destroy archived/closed files, records and materials for projects undertaken in the Northwest Territories.

The *Limitations of Actions Act* (NWT) prohibits legal action against someone arising from professional services more than six years after the cause of action arose. This is different for matters of personal injury (two years) or matters of estate or land claims (ten years). In addition, although a claimant or plaintiff has six years to file a claim with the Court, they have one year thereafter to serve it on the defendant.

However, the limitation periods in this *Act* are not absolute, and are subject to the “discoverability principle”, which postpones the limitation period to the point in time in which the plaintiff knows, or should have known, of the existence of an issue. The limitation period therefore begins once the plaintiff is aware of the damage or other issue, and of the existence of at least one possible defendant.

The uncertainty of the limitation period for potential claims is accompanied with a rationale that balances against the need for fairness to a plaintiff who was unaware of the existence of an issue. The Court is thus guided on the application of the discoverability principle using three measures: There must be a point in time when a defendant can feel secure that they will not be held accountable for an ancient obligation (*Certainty*), and when they can reasonably cease their concern of the preservation of evidence for hypothetical claims (*Evidentiary*), and there is an expectation that the plaintiff will act diligently and not neglect to act on their rights (*Diligence*).

Architects must exercise professional judgement when they are involved in a project that is challenged, such as when an Architect is engaged in ongoing discussions with a former client or contractor about concerns relating to their work. Architects must also be aware of challenges particular to the North. Considerations for climate, terrain, permafrost and remoteness may be further reasons to extend the period of retention beyond seven years.

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