

Project 2 – Liability and Risk

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Rationale

The system for achieving building safety operates in a high-risk environment. Building deficiency claims against developers, designers, builders, and local governments rose dramatically following the emergence of problems with leaky condos in the mid-1990s, highlighting flaws in the existing liability and risk framework.

When a claim is made for loss due to building defects, fault is apportioned by the courts. Under joint and several liability, each defendant is liable for the entire amount of the damage award, even if found only proportionally at fault. If some defendants are uninsured, the liability exposure of insured defendants (often local governments and/or designers) can increase significantly.

Purpose and Scope

The project goals are to:

- Adjust the distribution of liability in the system to reduce inequity and support effective risk management
- Enforce accountability by ensuring that participants in building projects can cover their share of liability if a claim is made
- Ensure that a framework is in place within which affordable insurance will be available

What will the project do?

- Define and implement appropriate mandatory liability insurance
- Examine changes to the Limitation Act to specify a shorter limitation period for construction project litigation

What won't the project do?

- Examine risk management tools other than professional liability, e.g., bonding
- Review joint and several liability

Overview of Project Plan

- Research the current liability insurance market
- Work with knowledgeable stakeholders to develop options for mandatory liability insurance
- Consult broadly with stakeholders on the options
- Obtain Provincial government approval and implement the approved option
- Work with the Ministry of Attorney General on options to change the application of the *Limitation Act* to the construction industry

Stakeholder Participation

- Representation from key stakeholder groups to develop options for mandatory liability insurance
- Broad stakeholder consultation on options for mandatory liability insurance
- Consultation by Ministry of Attorney General staff on proposed changes to the *Limitation Act*

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