



## Statements of Limitations in Reports to PWGSC

### Issue

The Pacific Region of Public Works and Government Services Canada (PWGSC), acting on the advice of the Department of Justice (DOJ), has informed its engineering consultants that it will no longer accept reports containing Statements of Limitations. ACEC disagrees with the position of PWGSC and the Department of Justice and believes that they misunderstand the intent and use of such Statements of Limitations.

### ACEC Position

It is the position of ACEC that the common practice of including a Statement of Limitations within an engineering report provides necessary contextual background for the work undertaken by the consultant, and provides guidance as to the circumstances in which it should be read.

The Statement of Limitation is a statement of fact that does not detract from the standard of care required by a consultant. Further, **failure to provide this level of clarity could result in the consultant being negligent**. As such, this practice is customary and necessary by all professionals (lawyers, engineers, architects, doctors, etc.) seeking to meet the standard of care applicable to their services.

### Background:

Recently, the Pacific Region of PWGSC issued the following statement regarding Statements of Limitations used by engineering consultants:

“With respect to including a Statement of Limitations in consulting reports, PWGSC has recently received a legal opinion from the Department of Justice that inclusion of a Statement of Limitations or similar wording that would unilaterally insert liability terms into the Contract is a breach of contract, specifically article 24 Liability of *General Conditions 2035, Higher Complexity - Services*, which are incorporated into the Contract by reference. Both the Technical Authority (Environmental Services) and the Contracting Authority (Acquisitions) concur with this opinion. Thus effective today PWGSC will no longer be in a position to accept any reports that have incorporated in them any Statements of Limitations (or equivalent). The only relevant limitations clauses are those specifically written into the contract.”

PWGSC and DOJ appear to have confused the term “limitation of liability” in article 24 of *General Conditions 2035* that refers to liability for damages with the concept of a “statement of limitations” that is commonly used in reports prepared by consultants in numerous professions to clarify or provide context to the scope of services provided and/or the intent of the report. Such “statements of limitations” are factual in nature and are typically used in the following situations:

- To identify if the report has been prepared for specific purposes, persons or projects; and
- To document a unique set of project-specific or site-specific factors.

Statements of Limitations that have been rejected by PWGSC have included language along the following lines:

*Site conditions described in this report are based on information obtained during the assessment conducted and are based solely on the condition of the property at the time of the Site assessment.*

*This report was prepared, based in part, on information obtained from historic information sources. In evaluating the site, XXXX has relied in good faith on information provided.*

*The findings and conclusions documented in this report have been prepared for the specific application to this project, and have been developed in a manner consistent with that level of care normally exercised by professionals currently practicing under similar conditions in the jurisdiction.*

*Regulatory statutes are subject to interpretation. These interpretations may change over time and should be reviewed.*

*If new information is discovered during future work, the conclusion of this report should be re-evaluated and the report amended, as required, prior to any reliance upon the information presented herein.*

## **Current Situation**

ACEC-British Columbia has met with representatives of PWGSC in the Pacific Region. So far, PWGSC is standing by its position.

Concurrently, ACEC has raised its concerns with senior officials with PWGSC in Ottawa and will continue to seek a resolution to this issue that is fair and reasonable to its engineering consultants. In the meantime, ACEC offers the following recommendations to help consultants mitigate the implications of article 24 Liability of *General Conditions 2035*.

## **Recommendations**

We recommend that firms should pursue or participate in PWGSC projects that are subject to *General Conditions 2035*, only after careful consideration of their professional responsibilities and potential risks and liabilities with their insurers and legal counsel. (ACEC notes that article 24 of *General Conditions 2035* on liability is quite broad and merits careful scrutiny by legal counsel and a robust risk assessment in its own right.)

If a firm does decide to pursue and participate in these projects, it is recommended that where possible, any anticipated Statement of Limitations should be included in the proposal where the proposed scope of services is detailed.

To avoid confusion with the “limitation of liability” referred to in article 24 of *General Conditions 2035*, it is recommended that a Statement of Limitations be referred to as “Clarifications Regarding Services/Findings to be Provided”.

It is recommended that reports submitted to PWGSC (after project award) include “Clarifications Regarding Services/Findings to be Provided” that are consistent with those provided in the proposal accepted by PWGSC.

John Gamble, ACEC President  
(613) 236-0569 ext. 201  
jgamble@acec.ca