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GOVERNMENT

Legal Notes: Never underestimate the Importance of contract notice provisions

John Bleasby July 21, 2022

A bronze statue of Lady Justice, blindfolded and holding scales of justice, set against a dark background.

**Legal
Notes**

Construction project contracts need to be read and understood fully. Nothing written in a contract, no matter how arcane, should be taken lightly or left unconsidered. Everything is written and placed there by one party or the other for a reason.

And so it is with notice provisions. Notice given by one party to another can cover a number of issues related to performance under the contract, including claims for extras costs or schedule delay allowances.

Despite the importance of notice timelines and how notice must be communicated, project parties can have trouble with compliance.

“Too often we see cases where no notice was provided,” writes Joshua Strub of [Margie Strub Construction Law LLP](#), “or we see projects in progress where the client, despite our advice, is reluctant to send a notice.”

Strub observes that sometimes notices as stipulated by the contract are not issued due to a fear of changing the nature of a working relationship from one of collaboration to one more formal and contractual.

“But remember, this is a contractual relationship.”

Strub reiterates hesitation or failure to issue a notice as required under contract can be costly.

“Don’t lose your rights because you are afraid of how the owner might react to receiving a notice which they, by drafting and executing the contract, explicitly asked you to provide.”

Misunderstandings of notice provisions are not restricted to small projects. One example is a dispute over contractual notice provisions required between Crosslinx and Infrastructure Ontario. Crosslinx is a 19-kilometre LRT project in Toronto, under construction for many years.

It’s a complex case involving the COVID-19 health “emergency” declared in March 2020 by the Province of Ontario requiring certain additional health and safety protocols.

At the core is whether proper notice had been given, or was required to be given, by the Crown agencies to the consortium of four large construction companies commissioned to do the construction.

Did an internal email, circulated within the authority but never sent to the consortium, constitute sufficient notice rather than a letter delivered by registered mail or personal service?

If so, it could trigger an application for an extension to the substantial completion date requirements within the contract.

The Court of Appeal has sent the matter back to the superior court for a re-hearing. It is not known if the parties are pursuing the matter further.

The overall lesson to take from the Crosslinx case, as summarized by [Jamieson Virgin](#), [Jason Annibale](#), [Preet Saini](#) of [McMillan LLP](#), is “the importance of complying with notice provisions in construction contracts.”

“It stands as an important reminder to the industry that even complex construction disputes can turn on compliance with basic contractual obligations – including providing proper notice under the construction contract.”

Further to this, [Tristan Neill](#), an associate with [Gowling WLG](#), pointed out during the firm’s 2022 Spring Construction Forum that notice requirements should be communicated clearly and fully understood prior to the contract.

“And even after work has commenced, contractors should give as early notice as possible...rather than waiting until the end of the project to raise claims.”

To make his point, Neill referenced a 2021 case wherein a contractor attempted to recover costs on a project, but failed to issue a notice of dispute within the 15 days required under the contract. The contractor went ahead anyway and initiated a legal action.

However as Neill pointed out, the court ruled, “the terms of the contract regarding the notice were ‘crystal clear.’”

“We know there is a very high chance that contracts include these kinds of details, and therefore it’s very important to know what the contract says, and to do what the contract says you need to do. The courts have been hammering home the message that if you want to bring a claim and want a remedy from the court, the court wants to see that you followed the procedure agreed to in the contract.”

John Bleasby is a Coldwater, Ont.-based freelance writer. Send comments and Legal Notes column ideas to editor@dailycommercialnews.com



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