Canadian College of Construction Lawyers

LEGAL UPDATE

CCCL | CCAC
CANADIAN COLLEGE OF CONSTRUCTION LAWYERS
LE COLLEGE CANADIEN DES AVOCATS EN DROIT DE LA CONSTRUCTION

L.U. #163

March 13, 2023

INSIDE THIS ISSUE:

Quebec: Graaf v. SNC-Lavalin Group Inc. 1

Saskatchewan: Kelly Panteluk Construction Ltd. v Lloyd's Underwriters 4

Alberta: Draft it like it is: "Pay no later than" or "pay when paid" clauses 9

New Brunswick: How to Stop Time: Exceptions in the New Brunswick Limitations Act 11

Nova Scotia: Alva Construction v. Wilsons Cove Estates 15

Ontario: BBL. Con Design Build Solutions Limited v. Varcon Construction Corporation 18

Graaf v. SNC-Lavalin Group Inc., 2022 QCCS 3727

LU #163 [2023]

Primary Topic: I. General
Jurisdiction: Quebec
Authors: Patrice Morin and Véronique Faucher-Lefebvre, Borden Ladner Gervais LLP

CanLii Reference: 2022 QCCS 3727

Disclosure of material problems in major construction projects; an analysis of the Builder's obligation to shareholders under the Quebec *Securities Act*

In *Graaf v. SNC-Lavalin Group Inc.*, 2022 QCCS 3727, the Quebec Superior Court dismissed a motion for authorization to institute a worldwide class action and action for damages pursuant to Section 225.4 of the Quebec *Securities Act* ("***QSA***") against SNC-Lavalin Group inc. ("**SNC**").

This decision is interesting for members of the construction industry that are subject to the *QSA* and are involved in major infrastructure projects, particularly with regard to their duty to disclose the potential of negative financial impacts of delays and important deviations from the initial construction schedule.

Although the decision was rendered at the authorization stage of a class action and should not be understood as settled law, it provides an interesting indication of the reasoning under which the builder's disclosure obligation contained in the *QSA* could be analyzed.

Overview

The plaintiffs, holder of SNC second market common shares, alleged misrepresentations by SNC from February 22, 2018 to July 22, 2019. The plaintiffs purchased their shares during that period. As a reporting issuer, SNC is required to issue and file certain documents ("**the documents**") of a financial nature, notably quarterly interim financial statements prepared in accordance with the International Financial Reporting Standards ("**IFRS**") and the International Accounting Standards ("**IAS**"). The plaintiffs alleged that many representations made by SNC in the documents were misrepresentations.[1]

[1] At para. 11: "The alleged misrepresentations by SNC relate generally to: (1.) SNC's execution of its lump-sum, or fixed price, turnkey contracts whereby it provided engineering services, materials and equipment and further, undertook construction activities ("EPC Fixed-Price Contract"), and its related internal controls over financial reporting ("ICFR") and disclosure controls and procedures ("DC&P") concerning the forecasted costs and revenues for such contracts; and

Graaf v. SNC-Lavalin Group Inc., 2022 QCCS 3727

LU #163 [2023]

Primary Topic:
I. General
Jurisdiction:
Quebec
Authors:
Patrice Morin and
Véronique Faucher-Lefebvre,
Borden Ladner Gervais LLP

CanLii Reference:
2022 QCCS 3727

QUEBEC

Patrice Morin

Véronique Faucher-Lefebvre

Disclosure of material problems in major construction projects; an analysis of the Builder's obligation to shareholders under the Quebec *Securities Act*

An action for damages based on misrepresentations pursuant to s. 225.4 *QSA*

An action to institute a class action for damages based on s. 225.4 *QSA* is different than application for authorization pursuant to the *Code of Civil Procedure*. To succeed at the authorization stage based on "misrepresentations by an issuer in relation to its securities acquired or disposed of in a secondary market or for failure to disclose a material change in a timely manner", the plaintiff must demonstrate that "(1) the action is in good faith and that (2) there is a reasonable possibility that it will be successfully resolved" in its favor.[2]

As the Superior Court thoroughly explains, the essence of such a claim is "that there must be a misrepresentation or failure to make a timely disclosure of a material change and then, either a correction of the misrepresentation or a disclosure of the material change, made by or on behalf of the issuer", SNC.

Context

SNC, through its Mining & Metallurgy Division, entered into several contracts, notably a contract in South America ("**the Codelco Project**"). The project faced significant delays and cost overruns which led SNC to unexpectedly assume extra costs. The Codelco Project was ultimately cancelled due to substantial problems. Ultimately, SNC suffered a $346 millions loss. It was alleged that SNC overstated its revenues in its financial statements, contrary to applicable accounting standards, and that it likewise understated its losses as a result of execution problems and cost overruns during the project period, which led to the share value decline.

The Codelco Project was signed on November 2016. It was a fixed price contract of $232 millions which required completion by July 31, 2018. Very serious problems emerged through the first half of 2018 that had a material impact on SNC's business. Those problems included significant delays in project engineering and significant delays in the supply of equipment and materials, which caused important deviations from the construction sequence. The plaintiffs allege that such problems should usually be disclosed in accordance with reporting standards. Yet, by the end of June 2018 (Q2),

[2] At paras. 30-31. It is a greater burden than when an application for authorization to institute a class action is seeked pursuant to the *Code of Civil Procedure*. Section 575(2) only requires that the facts alleged in the application must "appear to justify" the conclusions being sought.

Graaf v. SNC-Lavalin Group Inc., 2022 QCCS 3727

LU #163 [2023]

Primary Topic: I. General
Jurisdiction: Quebec
Authors: Patrice Morin and Véronique Faucher-Lefebvre, Borden Ladner Gervais LLP

CanLii Reference: 2022 QCCS 3727

QUEBEC

Disclosure of material problems in major construction projects; an analysis of the Builder's obligation to shareholders under the Quebec *Securities Act*

Codelco — knowing that the initial deadline would not be met — had committed to pay for all cost increases and not to enforce penalties against SNC, as long as the project was completed within the next five months. However, in October 2018 (Q4), Codelco then changed its mind and refused to pay all the prior increased costs. This decision, *by the other party*, led SNC to ultimately recognize an impairment loss in the amount of $346 million.

The plaintiffs alleged that SNC failed to disclose the extra costs and material change in the Codelco Project in a timely manner in Q3 of the year 2018. SNC should have recorded a loss provision by Q1 and Q2 2018 as well as an impairment loss in Q2 2018 in order to comply with accounting standards. Those losses were eventually recorded in Q3 and Q4 2018.

It is important to note that the plaintiffs transacted their shares before the issuance of the Q3 2018 financial statements containing the alleged misrepresentation (one of them in May 2018, the other in October 2018). It was therefore essential that the plaintiffs demonstrate a material misrepresentation no later than in Q1 and Q2 as the documents for Q3 and Q4 offer them no comfort to demonstrate a reasonable possibility of success under the *QSA*.

Reasonable forecast of final cost outcome

The core of the claim is based on the argument that SNC knew such a loss would occur and that it therefore should have disclosed it earlier. The plaintiffs argued that misrepresentations in the documents thus resulted in SNC's securities being traded at an artificially inflated price during the above-mentioned period.

When assessing whether or not SNC should have reasonably forecasted the entire magnitude of its eventual loss, the Court came to the conclusion that the evidence before them did not demonstrate as such. The primary issue revolved around the timing of SNC's knowledge of the cost increases. If the evidence showed that SNC should have known in Q2 of 2018, the plaintiffs' claim had a chance of success. However, the evidence did not support attributing knowledge until Q3 or even Q4 of 2018.

SNC was clearly aware of all the issues with the ongoing construction project. However, Codelco's undertaking of June 2018 is significant. It cannot be held against SNC to not have objectively forecasted an ultimate loss as early as Q2 2018. Indeed, the fact that Codelco subsequently refused to honour its financial commitment cannot be used to justify the presence of a misrepresentation in Q2. Clearly, the situation of the project had changed between the end of June and that of October, which led the parties to modify their arrangements. But the fact that the loss subsequently happened does not mean SNC should have known in advance.

Graaf v. SNC-Lavalin Group Inc.,
2022 QCCS 3727

LU #163 [2023]

Primary Topic:
I. General
Jurisdiction:
Quebec
Authors:
Patrice Morin and
Véronique Faucher-Lefebvre,
Borden Ladner Gervais LLP

CanLii Reference:
2022 QCCS 3727

QUEBEC

Disclosure of material problems in major construction projects; an analysis of the Builder's obligation to shareholders under the Quebec *Securities Act*

A contractor in similar circumstances would not have forecasted such a loss because it cannot be held to assume that the other party will withdraw its commitment. This claim is a good example, as the Court states, of backwards reasoning, and such a reasoning must fail. One cannot use the fact that share value subsequently declines to lead to the conclusion that there was precedent material misrepresentation.

Conclusion

The decision is of interest as it indicates that material change in a construction project does not necessarily trigger *per se* an obligation to disclose the potential of negative financial impacts, at least when it can be reasonably expected that mitigation measures, such as an agreement with the client, will allow to avoid such loss. In case such an arrangement fails later on, one cannot simply walk back in time, retroactively, and declare that the builder committed misrepresentations by not disclosing these potential negative impacts earlier.

Kelly Panteluk Construction Ltd. v Lloyd's Underwriters

Kelly Panteluk Construction Ltd. v Lloyd's Underwriters, 2022 SKKB 227

LU #163 [2023]

Primary Topic: XII. Insurance
Jurisdiction: Saskatchewan
Authors: Christopher Rusnak K.C., Adam Way and Leyla Salmi, Harper Grey LLP

SASKATCHEWAN

Chris Rusnak

Adam Way

Leyla Salmi

In the recent decision, *Kelly Panteluk Construction Ltd. v Lloyd's Underwriters*, 2022 SKKB 227, the court in the King's Bench for Saskatchewan was asked to determine whether the insurer's duty to defend under a form of project wrap-up policy was triggered. In doing so, the court had the opportunity to revisit the guiding principles for interpreting insurance policies, key parts of the Supreme Court of Canada's key decision in *Progressive Homes*[1], and some common issues that arise in construction insurance litigation.

Setting the Stage

The plaintiff, Kelly Panteluk Construction Ltd. (the "KPCL"), sought a declaration that its insurer, Lloyd's Underwriters ("Lloyd's"), had a duty to defend an action commenced against it by Canadian Pacific Railway ("CP") (the "Underlying Action"). In the Underlying Action, CP sought $41 million in damages against several defendants, including KPCL, arising from the collapse of an earth embankment during construction of a railway crossing in which KPCL was the contractor.

After the Underlying Action was commenced, KPCL sought coverage under a "Course of Construction Wrap-Up Liability" policy issued by Lloyd's for the project (the "Policy"). Notably, KPCL was required under its agreement with CP to purchase various types of insurance including wrap-up liability insurance but also all-risk course of construction insurance. While KPCL secured the wrap-up policy, it did not obtain course of construction or builder's risk insurance for the project.

Lloyd's accepted that CP's claim against KPCL in the Underlying Action fell within the initial grant of coverage under the property damage portion of the Policy. However, Lloyd's argued that coverage was excluded because of certain exclusions including the "Operations Exclusion". For its part, KPCL argued that Operations Exclusion did not exclude all of CP's claims against it in the action and, therefore, the duty to defend was still triggered. KPCL also argued that in the event coverage was excluded, an exception to the Operations Exclusion ("Endorsement 22") brought the loss back within coverage.

It's the wording that matters, not the form

Lloyd's argued that KPCL made a fundamental mistake by purchasing the wrong type of insurance to respond to the claim now being advanced by CP in the Underlying Action. Specifically, Lloyd's argued that the Policy (a form of wrap-up liability policy) was intended to respond to claims for third party liability arising out of the project. In contrast, a builder's risk course of construction policy was intended to cover damage to work being undertaken

[1] 2010 SCC 33

Kelly Panteluk Construction Ltd. v Lloyd's Underwriters

Kelly Panteluk Construction Ltd. v Lloyd's Underwriters, 2022 SKKB 227

LU #163 [2023]

Primary Topic: XII. Insurance
Jurisdiction: Saskatchewan
Authors: Christopher Rusnak K.C., Adam Way and Leyla Salmi, Harper Grey LLP

CanLii Reference: 2022 SKKB 227

SASKATCHEWAN

during the project, as occurred here. If KPCL had purchased builder's risk insurance, as it was contractually required, CP could have claimed for the loss arising from the collapse under that policy. However, KPCL did not obtain builder's risk insurance and, as a result, Lloyd's argued that KPCL was now trying to "contort and fit" into the Policy the claims being made against it in the Underlying Action, which claims were never intended to be covered by this type of policy.

While the court seemed to accept that the primary purpose of these policies differed, ultimately, the court concluded that it is the substance of the policy wording that must be analyzed, not the title or form. In other words, it is the unique wording and interpretation of the policy itself that will determine whether a duty to defend is owed. As the court plainly stated at the end of its decision: "Substance, not form, of the Policy has led to the conclusions I have reached" (at para. 97).

Revisiting *Progressive Homes* and Division of the Insured's Work into Component Parts

There were two main exclusions that Lloyd's relied on to deny coverage. Both were found within the Operations Exclusion.

Pursuant to the Operations Exclusion, the Policy excluded damage to or destruction including loss of use of "that particular part of any property… (i) upon which operations are being performed by or on behalf of the Insured at the time of the damage thereto or destruction thereof, arising out of such operations… (iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the Insured".

Lloyd's argued that both of these exclusions applied to all of the claims being advanced against KPCL in the Underlying Action.

In response, KPCL heavily relied on the Supreme Court of Canada's decision in *Progressive Homes*, which considered similar exclusions in the context of a leaky condo claim. One of the exclusions at issue in *Progressive Homes* excluded property damage "to that particular part of your work arising out of it and included in the products-completed operations hazard". The court found that the inclusion of the phrase "that particular part" contemplated the division of the insured's "work" into component parts such that coverage may remain for the non-defective components of the insured's own work.

KPCL argued that the same logic applied here given the inclusion of the phrase "that particular part" in the Operations Exclusion. The collapse occurred within a specific lift of fill (i.e. the last lift placed before the embankment failure) and not upon earlier work on the embankment. Accordingly,

Kelly Panteluk Construction Ltd. v Lloyd's Underwriters

Kelly Panteluk Construction Ltd. v Lloyd's Underwriters, 2022 SKKB 227

LU #163 [2023]

Primary Topic: XII. Insurance
Jurisdiction: Saskatchewan
Authors: Christopher Rusnak K.C., Adam Way and Leyla Salmi, Harper Grey LLP

CanLii Reference: 2022 SKKB 227

SASKATCHEWAN

KPCL argued, at most, the exclusions may apply to the uppermost lift of soil where the failure occurred ("that particular part"), but not the damage to the remainder of the embankment (lifts) and soils below. Since some of the claims were covered, a duty to defend was owed.

The court carefully considered *Progressive Homes*. While the court accepted that a more restrictive interpretation was mandated due to the inclusion of the phrase "that particular part" in the exclusions at issue, it held that CP's claim as pleaded did not contemplate a division of KPCL's work in the manner advocated by it. First, CP's claim did not allege that the last lift was the reason for the embankment failure. Rather the pleading referenced ongoing warning signs which repeatedly indicated a predictable embankment failure that was not limited to this one portion of the project. Second, the court concluded that successive and repetitive works of an identical nature – in this case, placement of the layers of fill to build the embankment – could not be reasonably separated into individual components parts. The court stated that "dividing indistinguishable, identical repetitive works into separate components parts" defied a reasonable interpretation of the exclusion clauses in the Policy (para. 80).

The court also rejected KPCL's argument that the fact the CP advanced allegations of fault against other defendants limited the application of the Operations Exclusion. KPCL was the general contractor and alleged to be responsible for the entire project. The Operations Exclusion applied to work done "by or on behalf of the Insured". In other words, the exclusion specifically covered work done by others for KPCL (on its behalf).

Endorsement 22

Endorsement 22 provided an exception to the Operations Exclusion. Endorsement 22 provided that the exclusion "shall not apply to Property Damage to the principal's existing surrounding property, not forming part of the project works".

KPCL argued that damage to the foundation soils – part of CP's claim - was not part of the project and fell within the exception. The court disagreed. The Court concluded that the foundation soils were an integral part of the embankment, as supported by the pleadings and the definition of "Project Insured" under the Policy. Indeed, KPCL was required to monitor the foundation soils as part of its scope of work on the project.

Key Takeaways

The court's decision provides an important reminder that it is the unique policy wording and the specific allegations in the pleading that must be analyzed to determine whether a duty to defend is triggered. At the same time,

Kelly Panteluk Construction Ltd. v Lloyd's Underwriters

Kelly Panteluk Construction Ltd. v Lloyd's Underwriters,
2022 SKKB 227

LU #163 [2023]

Primary Topic:
XII. Insurance
Jurisdiction:
Saskatchewan
Authors:
Christopher Rusnak K.C.,
Adam Way and
Leyla Salmi,
Harper Grey LLP

CanLii Reference:
2022 SKKB 227

SASKATCHEWAN

the case also illustrates the importance of securing the appropriate insurance coverage for the project at issue to avoid these types of coverage disputes.

Finally, the decision suggests that not all insureds will be able to take advantage of the more restricted interpretation of property damage exclusions, even if the language of the exclusion contemplates division of the insured's work into its component parts by including the phrase "that particular part".

Draft it like it is: "Pay no later than" or "pay when paid" clauses

Canadian Pressure Testing Technologies Ltd. v. EllisDon Industrial Inc., 2022 ABKB 649

LU #163 [2023]

Primary Topic:
V. Payment of Contractors and Subcontractors
Jurisdiction:
Alberta
Authors:
Theron Davis and
Bill Woodhead,
Borden Ladner Gervais LLP

CanLii Reference:
2022 ABKB 649

ALBERTA

Theron Davis

Bill Woodhead

A recent decision out of the Alberta Court of King's Bench reminds us of the importance of clear and express contractual language, particularly when seeking to implement a pay when paid clause.

Issue and decision

In *Canadian Pressure Testing Technologies Ltd. v. EllisDon Industrial Inc.*, 2022 ABKB 649, the Applications Judge reviewed a payment clause in a subcontract specifying that "payments shall become due and payable no later than five (5) business days after the [Contractor] receives payment pursuant to the terms and conditions of the Prime contract from the Owner."

This clause was ultimately found to be insufficiently clear to displace the Subcontractor's entitlement to payment even though the Contractor had itself not yet been paid for the Subcontractor's work by the Owner. The Applications Judge also considered the surrounding circumstances and noted that the Contractor's failure to obtain the Owner's prior approval for the work had contributed to the non-payment, which precluded the Contractor from relying on the clause.

Analysis

Fundamentally, the matter to be determined was whether the obligation to pay arose "no later than" a set date, or only after the Contractor "receives payment" from the Owner. The crux of the decision turned on whether the clause in question was a timing device or a true condition precedent to the Subcontractor's legal entitlement to payment.

Referring to previous decisions from, among others, the Nova Scotia Court of Appeal, the Applications Judge reaffirmed that a clause in a contract that intends to diminish or remove a subcontractor's right to be paid must say so directly and unequivocally. The clause must not only be clear, but specific. Where an inference must be drawn to achieve the desired effect, it will not likely be interpreted to set aside the subcontractor's fundamental right to be paid for the work it performs. Effectively, the subcontractor must be put on notice that it will not be paid at all if the owner fails to pay the contractor.

The Applications Judge in this instance determined that the clause in question was, at a minimum, "ambiguous as it can clearly be interpreted as a 'pay no later than' clause." The Applications Judge also held that the Contractor should not be entitled to rely on an interpretation of the clause as a true pay when paid clause, given that it had contributed to the non-payment.

Draft it like it is: "Pay no later than" or "pay when paid" clauses

Canadian Pressure Testing Technologies Ltd. v. EllisDon Industrial Inc., 2022 ABKB 649

LU #163 [2023]

Primary Topic:
V. Payment of Contractors and Subcontractors
Jurisdiction:
Alberta
Authors:
Theron Davis and
Bill Woodhead,
Borden Ladner Gervais LLP

CanLii Reference:
2022 ABKB 649

ALBERTA

Takeaways

- When it comes to pay when paid clauses, it is important to be direct and specific.
- If you intend to rely on a pay when paid clause, avoid contributing to the reason for the non-payment.
- If located in a jurisdiction where prompt payment legislation has been introduced, or soon will be, drafters must also ensure their pay when paid clauses comply with all legislated requirements.

City of Moncton v. Mirrer Hall Investments et al, 2022 NBQB 166

LU #163 [2023]

Primary Topic:
I. General
Jurisdiction:
New Brunswick
Authors:
John Kulik, K.C.,
and Melanie Gillis,
McInnes Cooper

CanLii Reference:
2022 NBQB 166

NEW BRUNSWICK

John Kulik, Q.C.

Melanie Gillis

How to Stop Time:
Exceptions in the New Brunswick Limitations Act

Time waits for no one – unless, of course, you are one of the lucky few who can rely on exemptions under limitations legislation. In certain limited circumstances, time can be said to be made to stand still – or, at least, march a little slower.

In *City of Moncton v. Mirrer Hall Investments et al,* 2022 NBQB 166, the Plaintiff (the "City") was one of the lucky ones: they managed to avoid an argument that their breach of contract claim was statute-barred by relying on two interesting provisions found within the New Brunswick limitations legislation.

Specifically, Justice Ouellette dismissed a limitations argument advanced by the Defendant ("Mirrer Hall") as part of a summary judgment motion. Ouellette J. held that the breach of contract in that case constituted a 'continuing' cause of action under the *Limitation of Action Act*, SNB 2009, c L-8.5 ("Act"), where a new act/omission was found to occur each day that the breach persisted. Ouellette further held that Mirrer Hall had provided assurances to the City that the matter in dispute would be resolved by agreement, and that this operated to stop the relevant limitation period from expiring.

The decision is instructive on how these sections of the Act dealing with continuing causes of action and assurances of agreement, are applied in practice.

Facts

The City entered into an agreement (ultimately) with Mirrer Hall to purchase a commercial property. One of the terms of the agreement was that after closing, Mirrer Hall was to demolish and backfill (at its own expense) the existing buildings on the property as Moncton intended to develop the land.

Mirrer Hall retained Tri-Cor Holdings ("Tri-Cor") to carry out the demolition work. Tri-Cor ceased work on the property in January 2015. The City then retained Bird Construction to re-develop the property. When Bird attended the site, it found that Tri-Cor had failed to remove certain foundation walls. Bird advised the City that the walls had to be removed before Bird could perform its work.

The City asked Tri-Cor to return to the property and remove the remaining foundation walls. Tri-Cor came back to the site in March and April 2016 and performed additional work. However, Tri-Cor still did not remove all of the foundation remnants. Ultimately, Moncton paid Bird extra to complete the demolition work that Mirrer Hall was contractually obliged to perform.

City of Moncton v. Mirrer Hall Investments et al, 2022 NBQB 166

LU #163 [2023]

Primary Topic:
I. General
Jurisdiction:
New Brunswick
Authors:
John Kulik, K.C.,
and Melanie Gillis,
McInnes Cooper

CanLii Reference:
2022 NBQB 166

NEW BRUNSWICK

How to Stop Time: Exceptions in the New Brunswick Limitations Act

Mirrer Hall initially agreed that it had a responsibility under the terms of its contract with the City to remove the foundation remnants. The City understood that Mirrer Hall would arrange for Tri-Cor to cover the City's costs of paying Bird to complete the demolition work.

Mirrer Hall later refused to make these arrangements, which resulted in the City commencing an action against Mirrer Hall on September 11, 2018 (Mirrer Hall in turn commenced an action against Tri-Cor and the two actions were subsequently consolidated).

Mirrer Hall argued the City's claim was statute-barred as the two year limitation period from when the problem had been discovered had expired. The City argued as follows in response:

> The City's response to the issue of the limitation period is that its action is not statute-barred by virtue of **s. 6** of the Act as **its claim is based on a continuous breach of contract** which, for the purpose of calculating the limitation period in s. 5 of the Act, was a **separate breach and omission to comply on each day it continued. Alternatively, s. 22** of the Act would allow this claim to succeed on the basis of the **actions taken or assurances given by Mirrer Hall in relation to the resolution of the claim before the expiry of the limitation** which caused the City to reasonably believe that the claim would be resolved by agreement.

Justice Ouellette had to determine the validity of the City's defence when Mirrer Hall brought a summary judgment motion to dismiss the claim on the basis that it was statute-barred.

Law

Justice Ouellette identified the issue on the motion as follows:

> 24 The sole issue to be determined is whether this claim is statute-barred pursuant to s. 5 of the Limitation of Action Act and/or whether it can be saved by virtue of s. 6 and/or s. 22 of the Act.

Section 6 of the Act states as follows:

> Continuous act or omission
>
> 6 If a claim is based on a continuous act or omission, the act or omission is deemed for the purposes of calculating the lim-

City of Moncton v. Mirrer Hall Investments et al, 2022 NBQB 166

LU #163 [2023]

Primary Topic:
I. General
Jurisdiction:
New Brunswick
Authors:
John Kulik, K.C., and Melanie Gillis, McInnes Cooper

CanLii Reference:
2022 NBQB 166

NEW BRUNSWICK

How to Stop Time: Exceptions in the New Brunswick Limitations Act

itation periods in section 5 to be a separate act or omission on each day it continues.

Section 22 of the Act states as follows:

> Delay caused by defendant
>
> 22 If the relevant limitation period established by this Act has expired, but the actions taken or assurances given by the defendant or the defendant's agent in relation to the resolution of the claim before the expiry of the limitation period caused the claimant to reasonably believe that the claim would be resolved by agreement and therefore to delay bringing the claim, the claimant may bring the claim within 6 months after the day on which the claimant first knows or ought reasonably to know that the belief was unfounded.

Reasoning

The Court dismissed Mirrer Hall's motion for summary judgment. Justice Ouellette's reasoning on the limitations argument is instructive as it examines the application of two interesting and possibly underappreciated sections under the Limitations Act.

A) Section 6: Continuing Cause of Action

Justice Ouellette held unequivocally that Mirrer's breach was ongoing, and therefore a continuous omission:

> 35 There is no doubt that the removal of the material was an ongoing issue that had to be disposed of by Bird; Tri-Cor having failed to do so. This was a breach of the contract between the City and Mirrer Hall and this claim is based on a continuous omission.

In other words, as long as the foundation remnants remained in the ground, the breach continued, and the limitation period did not begin to run. His Lordship further held that by providing notice of the breach to Mirrer Hall, the City did not waive its right to rely on section 6.

City of Moncton v. Mirrer Hall Investments et al, 2022 NBQB 166

LU #163 [2023]

Primary Topic:
I. General
Jurisdiction:
New Brunswick
Authors:
John Kulik, K.C., and Melanie Gillis, McInnes Cooper

CanLii Reference:
2022 NBQB 166

NEW BRUNSWICK

How to Stop Time: Exceptions in the New Brunswick Limitations Act

B) Section 22: Assurance of Agreement

To determine whether section 22 was also applicable on the facts of the case, Justice Oulette found that the test is whether the statements from Mirrer Hall amounted to a "reasonable assurance of another". In order to meet this test, the statements must contain some "measurable degree of guarantee" (citing *Canada (Attorney General) v. Sacrey*, 2003 FCA 377).

His Lordship held that this threshold was met. Specifically, he held that Mirrer Hall had made representations to the City "…that lead the City to believe that it would accept responsibility for the dishonoured agreement…" (paragraph 42) and that "…the claim would be resolved by agreement" (paragraph 41).

Justice Ouellette emphasized that the claim was filed within the six month additional window offered by section 22:

> 43 It was after June 18, 2018, after the issuance of the invoices to Mirrer Hall that the City discovered that their belief was unfounded after the invoices remained unpaid. Under s.22 of the Act, the City would have had a limitation period of six months to file its claim from the time it knew or ought to reasonably have known that its belief was unfounded. This claim was filed within that period on September 11, 2018.

Conclusions

This case offers a view of how the Courts can apply the "continuing cause" and the "reliance upon assurance" provisions of the Limitations Act in a situation where the merits apparently favoured the party seeking to avoid application of the Act. The City did not sit on its hands – it engaged with Mirrer Hall and thought the issue was resolved.

While limitation regimes may vary from province to province, to the extent that these types of provisions appear in other limitation legislation, this case could offer a helpful precedent for those seeking to extend their ability to commence action (and a hindrance for those seeking to avoid same).

Alva Construction v. Wilsons Cove Estates,
[2022 NSSC 279]

LU #163 [2023]

Primary Topic:
V. Payment of Contractors and Subcontractors
Jurisdiction:
Nova Scotia
Authors:
John Kulik, K.C.,
and Michael Richards,
McInnes Cooper
CanLii Reference:
2022 NSSC 279

NOVA SCOTIA

John Kulik, Q.C.

Michael Richards

Case Summary – *Alva Construction* v. *Wilsons Cove Estates*

Justice Chipman's decision in *Alva Construction v. Wilsons Cove Estates* highlights the risk parties take when they proceed with construction work before entering into a formal contract.

This decision also appears to be the first reported instance where a Court has refused to grant a claim for unjust enrichment based solely on public policy considerations.

Background Facts.

Alva Construction ("**Alva**") is road building / heavy civil construction contractor. In May 2019, the province of Nova Scotia awarded Alva the tender for the Liscomb Rive Bridge Replacement (the "**Bridge Project**").

Shortly thereafter, Wilsons Cove Estates Inc. ("**Wilsons**") contacted Alva and suggested that Alva develop a quarry on one of Wilsons' properties to obtain the necessary aggregate for Alva's work on the Bridge Project. The property ultimately selected (the "**Property**") was raw land and would require significant work to be developed into a quarry (the "**Improvements**").

Prior to performing the Improvements, Alva advised Wilsons it was only interested in performing the Improvements necessary to develop the Property into a quarry **if** the parties would enter into a long-term lease agreement.

However, no formal contract or long-term lease was ever entered into by the parties.

Ultimately, Alva performed over $100,000 worth of work developing the Property into a quarry.

The parties attempted to negotiate a lease. A draft lease was prepared, and Alva agreed to all revisions requested by Wilsons. However, the lease was never completed, as Wilsons terminated negotiations on the basis that the prices Alva was proposing to charge Wilsons for aggregate were not low enough. By this time, most of the quarry development work had been completed.

Wilsons advised Alva it would not be permitted to continuing using the Property after it completed its work on the Bridge Project. Once Alva left, Wilsons utilized the Improvements and operated the Property as a quarry.

Alva Construction v. Wilsons Cove Estates, 2022 NSSC 279

LU #163 [2023]

Primary Topic:
V. Payment of Contractors and Subcontractors
Jurisdiction:
Nova Scotia
Authors:
John Kulik, K.C., and Michael Richards, McInnes Cooper
CanLii Reference:
2022 NSSC 279

NOVA SCOTIA

Case Summary – *Alva Construction* v. *Wilsons Cove Estates*

Alva subsequently sued Wilsons, claiming that Wilsons had been unjustly enriched by the Improvements.

Issue

Was Wilsons unjustly enriched by Alva's performance of the Improvements?

Decision

Justice Chipman set out the three-part test for unjust enrichment (which dates back to the Supreme Court of Canada's seminal decision in *Petkus v. Bekker*). To succeed, a plaintiff must demonstrate:

(1) an enrichment of the defendant;
(2) a corresponding deprivation of the plaintiff; and
(3) the absence of a juristic reason for the enrichment.

With respect to the first two elements of the test, Justice Chipman held that Wilsons had been enriched through Alva's performance of the Improvements, and that Alva had suffered a corresponding deprivation through the costs it had incurred.

However, Justice Chipman denied Alva's claim on the basis that Alva had failed to meet the third part of the unjust enrichment test.

In particular, the third part of the test has since developed into a **two-stage inquiry** - see the Supreme Court of Canada's decision in *Pacific National Investments Ltd. v. Victoria (City),* 2004 SCC 75.

The first stage of the inquiry is just the old step 3 of the Petkus v. Bekker test: the plaintiff must show that "there is no juristic reason within the established categories that would deny it recovery. The established categories are the existence of a contract, disposition of law, donative intent, and other valid common law, equitable or statutory obligation."

If there is no juristic reason from an established category, then the plaintiff has made out a *prima facie* case. Justice Chipman held that Alva had indeed successfully made out a *prima facie* case: there was no juristic reason within the established categories that would deny Alva a right of recovery. In other words, had the unjust enrichment test remained the same, Alva should have succeeded.

Alva Construction v. Wilsons Cove Estates, 2022 NSSC 279

LU #163 [2023]

Primary Topic:
V. Payment of Contractors and Subcontractors
Jurisdiction:
Nova Scotia
Authors:
John Kulik, K.C., and Michael Richards, McInnes Cooper
CanLii Reference:
2022 NSSC 279

NOVA SCOTIA

Case Summary – *Alva Construction* v. *Wilsons Cove Estates*

However, over time a second stage of the juristic reason test has developed. At the second stage, the onus shifts to the defendant who must rebut the *prima facie* case by showing that there is some other valid reason to deny recovery. This places a *de facto* burden of proof on the defendant to show the reason why the enrichment should be retained. As detailed by the Supreme Court of Canada in *Garland v. Consumers Gas Co.,* 2004 SCC 25, at this second stage Courts should have regard to two factors: the reasonable expectations of the parties and public policy considerations.

Ultimately, Justice Chipman held that public policy considerations alone required that he deny recovery.

His Lordship held that Wilsons' retention of the enrichment was not unjust and that there was no evidence of any wrongdoing by Wilsons. Instead, Justice Chipman held that Alva decided to perform the Improvements without a long-term lease being it place, and that it therefore performed this work at its own peril. Although Alva performed this work on the assumption that a long-term lease would be entered into, His Lordship held that through the fault of neither party, that assumption turned out to be incorrect. Instead, the negotiations failed once they could not come to an agreement on the price of aggregate.

In particular, Justice Chipman stated that "it is not the role of unjust enrichment to act as insurance against hasty or unfortunate business decisions made by sophisticated parties".

Significance

This decision is presently under appeal. Regardless of the outcome, it serves as a cautionary tale of the risks parties take when they perform construction work while a formal contract is still under negotiation.

In terms of the law of unjust enrichment, Justice Chipman's decision seems to create a much broader role for public policy considerations than apparent in prior case law. Indeed, it may have injected a considerable amount of uncertainty into the evaluation of such claims. Even though Alva satisfied all other elements in the test for unjust enrichment, public policy considerations were the sole basis for denying relief. Overtime, perhaps some guidelines will develop as to what "public policies" apply. Nevertheless, it is difficult to understand how the "unfortunate business decision" of failing to conclude a contract before providing consideration could constitute a public policy factor when that is the very basis of many if not most unjust enrichment claims, especially in the commercial sphere.

BBL. Con Design Build Solutions Limited v. Varcon Construction Corporation, 2022 ONSC 5714

LU #163 [2023]

Primary Topic:
XIV. Arbitration and Mediation
Jurisdiction:
Ontario
Authors:
Brendan Bowles and Markus Rotterdam, Glaholt Bowles LLP

CanLii Reference:
2022 ONSC 5714

ONTARIO

Brendan D. Bowles

Markus Rotterdam

BBL. Con Design Build Solutions Limited v. Varcon Construction Corporation

A recent decision by Justice Perell, refusing leave to appeal an arbitral award by former Master Carol Albert, reiterates just how hard it will be in light of recent Supreme Court decisions to extricate questions of law in matters of contract interpretation in order to appeal an arbitral award.

A Nova Scotia company operating retirement residences in Atlantic Canada, Shannex, decided to expand its operations to Ontario. To that end, it contracted with BBL to construct a 14-storey residence in Ajax.

BBL retained Varcon as a subcontractor to construct the underground and the shell of the project. The contract went through multiple drafts. Varcon's first bid was rejected as too high. Among other changes, BBL amended the scope by reducing the design from four parking levels to two, meant to reduce the cost of excavation by removing a substantial portion of the dewatering requirements. Varcon reduced its pricing in light of this change and the contract was eventually signed.

In the months that followed the signing of the contract, Varcon submitted revised schedules to BBL on several occasions. These schedules provided for extended deadlines to complete the contract milestones. BBL neither signed nor returned the new proposed schedules, but did not reject them either, and Varcon continued to perform the contract work.

About twenty months into the project, BBL delivered a notice of non-conformance to Varcon. The notice of non-conformance listed six items, namely: (1) the risk of putting the shell into a second winter construction as a result of Varcon's lack of control over structural design and related construction; (2) Varcon's failure to pay its forming sub-subcontractor such that it might not be able to complete the project; (3) many of Varcon's demand amounts were excessive; (4) unsafe conditions for inspections; (5) Varcon's failure to request information regarding the roof, delaying the full building permit; and (6) Varcon had caused delay in transmitting the AWD Railing shop drawings to BBL for delivery to the Town of Ajax, thereby delaying the full building permit.

Nine days later, Varcon responded to the notice of non-conformance by letter, and, among other things, submitted that BBL had breached the contract.

Five days after that, BBL terminated the contract by serving a notice of termination that reiterated the items of the notice of non-conformance. BBL also served a Notice of Arbitration.

BBL. Con Design Build Solutions Limited v. Varcon Construction Corporation, 2022 ONSC 5714

LU #163 [2023]

Primary Topic: XIV. Arbitration and Mediation

Jurisdiction: Ontario

Authors: Brendan Bowles and Markus Rotterdam, Glaholt Bowles LLP

CanLii Reference: 2022 ONSC 5714

ONTARIO

BBL. Con Design Build Solutions Limited v. Varcon Construction Corporation

The dispute went to arbitration before Arbitrator Carol Albert. BBL claimed damages of approximately $19.7 million. Varcon counterclaimed for approximately $8.9 million. The Arbitrator dismissed BBL's claim and allowed Varcon's counterclaim in the amount of $1,048,351.93.

The Arbitrator found that while Varcon was required to comply with the schedule for the milestones, the milestone deadlines in the contract were unreasonable, unrealistic, and impossible to meet from the outset. She held that the milestones could not possibly have been achieved given the state of BBL's permit applications, its changes to design, and the unreasonably short timeframes allotted for Varcon to complete the various stages of construction. Interpreting the contract in a manner compelling compliance with unachievable milestones would lead to a commercial absurdity.

The arbitrator held that none of the six grounds of termination recited in the notice of non-conformance were proven; that Varcon did not default in its obligations under the contract; and that BBL breached the contract by terminating Varcon without sufficient cause or by failing to give Varcon proper notice and an opportunity to rectify.

In so finding, the arbitrator made a number of evidentiary rulings in which she generally preferred Varcon’s evidence over that of BBL.

In addition, the Arbitrator held that notwithstanding the wording of the contract, neither party conducted itself as if extensions of deadlines required written approval. Varcon submitted several revised schedules, and the parties carried on without any objection by BBL, which continued to make payments to Varcon. By accepting Varcon's schedules from time to time and allowing Varcon to continue, BBL by its conduct had acquiesced and acknowledged the extended milestones, even though it did not formally accept the schedules in writing.

BBL sought leave to appeal the award pursuant to s. 45(1) of the *Arbitration Act, 1991*:

> **45** (1) If the arbitration agreement does not deal with appeals on questions of law, a party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that,
>
> (a) the importance to the parties of the matters at stake in the arbitration justifies an appeal; and

BBL. Con Design Build Solutions Limited v. Varcon Construction Corporation, 2022 ONSC 5714

LU #163 [2023]

Primary Topic:
XIV. Arbitration and Mediation
Jurisdiction:
Ontario
Authors:
Brendan Bowles
and Markus Rotterdam,
Glaholt Bowles LLP

CanLii Reference:
2022 ONSC 5714

ONTARIO

BBL. Con Design Build Solutions Limited v. Varcon Construction Corporation

(b) determination of the question of law at issue will significantly affect the rights of the parties.

For BBL to be granted leave to appeal, it had to demonstrate that the arbitrator arguably made significant errors in law. BBL submitted that the Arbitrator arguably made no fewer than 524 categorical errors of law.

Justice Perell stated the test to be met by BBL in this case:

> Under s. 45(1), an appeal may only be on a question of law, not a question of mixed fact and law, and if the proposed appeal involves a question of law, then subsections (a) and (b) must also be satisfied before the court can grant leave.
> In deciding whether to grant leave to appeal, there is no requirement that the court doubt the correctness of the arbitrator's award; in considering whether to grant leave, the court decides only whether the matter warrants granting leave, not whether the appeal will succeed. At the leave stage, the court does not make a final determination whether an error of law was made, but the court determines whether the appeal has the potential to succeed and thus to change the result of the case. Thus, for leave to appeal, three criteria must be satisfied.
>
> a) First, the putative appellant must identify one or more arguable errors of law as opposed to questions of fact or questions of mixed fact and law.
> b) Second, the importance to the parties of the matters at stake in the arbitration must justify an appeal.
> c) Third, the identified question of law must significantly affect the rights of the parties. Once a question of law has been identified, the court must be satisfied that the determination of that point of law on appeal may prevent a miscarriage of justice.
>
> Thus, whether an Arbitrator's decision is appealable pursuant to s. 45 of the *Arbitration Act, 1991* depends on identifying significant errors of law that are worthy of appeal and differentiating them from errors of fact and errors of mixed fact and law that are not appealable.

His Honour then listed 18 principles that assist in identifying and differentiating issues of law from issues of fact and issues of mixed fact and law. Most pertinent to the case before him were the following:

- The failure to consider the surrounding circumstances or factual matrix of a contract is an error of law in interpreting a contract.

BBL. Con Design Build Solutions Limited v. Varcon Construction Corporation, 2022 ONSC 5714

LU #163 [2023]

Primary Topic:
XIV. Arbitration and Mediation
Jurisdiction:
Ontario
Authors:
Brendan Bowles and Markus Rotterdam, Glaholt Bowles LLP

CanLii Reference:
2022 ONSC 5714

ONTARIO

BBL. Con Design Build Solutions Limited v. Varcon Construction Corporation

- Interpretation can become a question of law as soon as the true meaning of the words in which an instrument has been expressed and the surrounding circumstances, if any, have been ascertained as facts.
- Matters of mixed fact and law lie along a spectrum; where the legal principle is not readily extricable, then the matter is one of mixed law and fact.
- The question of how the adjudicator applies the proper principles of contract interpretation is a question of mixed fact and law and the interpretation of a contract is a mixed question of fact and law.
- The question whether a contract has been breached or repudiated is a question of mixed fact and law.
- What constitutes the surrounding circumstances, the nexus for contractual interpretation, is a question of fact.

The major thrust of BBL's arguments was that the arbitrator erred by referring to facts that happened after the contract was signed and by referring to extrinsic facts outside the plain wording of the contract without first determining that the contract was ambiguous.

The court disagreed. The main problem with BBL's position was that it failed to differentiate findings of fact for the purpose of interpreting a contract, which would have been a question of mixed fact and law, from findings of fact for the purpose of determining whether a contract has been breached or repudiated, which is a different type of question of mixed fact and law:

> For the present purposes of explaining why I do not find an extractable error of law in the immediate case, it is useful to examine more closely BBL's doctrinal or analytical error that concerns the difference of findings of fact: (a) for the purposes of interpretation, and (b) for the purposes of determining whether a contract has been breached. Thirty-seven of BBL's 45 items of asserted arguable Arbitrator error concern matters of whether the contract has been breached, which is a question that is closely related to but ultimately different from questions of contract interpretation in so far as findings of fact and questions of mixed fact and law are concerned. Three of BBL's 45 items of asserted Arbitrator error concern questions of fact. Only five of BBL's 45 items of asserted arguable Arbitrator error concern matters of the use of extrinsic evidence in pure contract interpretation.

BBL. Con Design Build Solutions Limited v. Varcon Construction Corporation

BBL. Con Design Build Solutions Limited v. Varcon Construction Corporation,
2022 ONSC 5714

LU #163 [2023]

Primary Topic:
XIV. Arbitration and Mediation
Jurisdiction:
Ontario
Authors:
Brendan Bowles and Markus Rotterdam, Glaholt Bowles LLP

CanLii Reference:
2022 ONSC 5714

ONTARIO

BBL argued that the arbitrator's references to extrinsic evidence were extractable arguable issues of pure law for which leave to appeal should be granted. Again, the court disagreed, finding that in referring to the evidence of what happened after the contract was signed, the arbitrator was not engaged in the exercise of just determining the meaning of the words in the contract at the time the contract was signed, but in determining whether Varcon's performance of the contract was a breach of contract.

Justice Perell pointed to the fact that Canadian law is clear that the subsequent conduct of the parties in performing the contract may inform what was intended by the parties at the time of the signing of the contract.

However, the main problem for BBL was, of course, the Supreme Court decision in *Sattva Capital Corp. v. Creston Moly Corp*., in which the court departed from English doctrine and held that matters of interpretation should no longer be considered to be questions of law but should be characterized as questions of mixed fact and law.

In its subsequent decision in *Teal Cedar Products Ltd. v. British Columbia*, the Supreme Court reiterated how difficult it is to extricate a question of law premised on an argument that a judge mishandled the factual matrix in a passage that is applicable to the circumstances of the immediate case:

> Again, contractual interpretation is a fact-specific exercise. It follows that a question of law premised on the failure to apply the principle that the factual matrix must not be interpreted in isolation from the words of the contract will be very difficult to extricate in practice. On closer examination, it will often amount to nothing more than a complaint about how much weight was allocated to the factual matrix — in effect, a disagreement about how the decision-maker interpreted the words of a contract in light of the factual matrix. In short, the supposed question of law will often reveal itself to be a question about whether the decision-maker applied the principle properly — a mixed question — and not about whether the decision-maker applied the proper principle. To extricate a question of law based on the alleged error of having overwhelmed the contract, a reviewing court must be satisfied that the decision — maker interpreted the factual matrix isolated from the words of the contract; an approach which could effectively create a new agreement. There is no arguable merit to the claim that the arbitrator's analysis here adopted such a flawed approach.

BBL. Con Design Build Solutions Limited v. Varcon Construction Corporation,
[2022 ONSC 5714]

LU #163 [2023]

Primary Topic:
XIV. Arbitration and Mediation
Jurisdiction:
Ontario
Authors:
Brendan Bowles
and Markus Rotterdam,
Glaholt Bowles LLP

CanLii Reference:
2022 ONSC 5714

ONTARIO

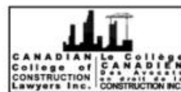
BBL. Con Design Build Solutions Limited v. Varcon Construction Corporation

Sattva and *Teal Cedar* proved to be an insurmountable hurdle for BBL:

> In the immediate case, BBL can be admired for its effort, but it fails in the very much uphill task and uphill legal battle of extracting a question of law from a question of mixed fact and law. In the immediate case, although BBL cluster bombs the Arbitrator's decision with assertions of 45 instances of errors and 224 categorical mistakes in legal principles, the essence of BBL's argument for leave to appeal just comes down to an argument that the Arbitrator erred by looking to extrinsic facts to read the contract differently than what it plainly says. The alleged fundamental error of the Arbitrator is how she dealt with the facts. BBL asserts that the Arbitrator misapplied the factual nexus in the exercise of contract interpretation. That assertion is the nucleus of 13 of the categorial errors asserted by BBL (I, III, IV, V, VI, VII, VIII, IX, X, XIII, XIV, XV, and XVI) against the Arbitrator's decision. Failing to consider a contract clause in the entirety of the agreement is the nucleus of the remaining three categorial errors (II, XI, and XII), which assertion is not far from the assertion that the Arbitrator erred by reading the contract differently than what it plainly says because of her use of extrinsic evidence.

Justice Perell therefore concluded that none of the 524 errors alleged by BBL were errors of law, or extricable errors of law, as opposed to questions of fact or questions of mixed fact and law. BBL therefore did not satisfy the test for granting leave to appeal the arbitrator's award.

Next Legal Update — watch for it!



CCCL Fellows-Only Website   Board of Governors Website   EDIT LINKS

Legal Update Document Database

- Home
- Upcoming Events
- Announcements
- Groups
  - All Fellows - Actions
  - Board of Governors
  - Website Committee
  - More...
- Legal Update Document Database
- Experts Database
- Important Documents
- Annual Conference Docs
- Group E-mail + Links
- Pictures
- Recent

EDIT LINKS

new document or drag files here

All Documents ...

Name		Year	Issue	Details	1st Topic
LegalUpdate123	...	2014	123	Full text of newsletter	I. General
LegalUpdate122	...	2014	122	Full text of newsletter	I. General
LegalUpdate121	...	2014	121	Full text of newsletter	I. General
LegalUpdate120	...	2014	120	Full text of newsletter	I. General
LegalUpdate119	...	2014	119	Full text of newsletter	I. General
LegalUpdate118	...	2013	118	Full text of newsletter	I. General
LegalUpdate117	...	2013	117	Full text of newsletter	I. General
LegalUpdate116	...	2013	116	Full text of newsletter	I. General
LegalUpdate115	...	2013	115	Full text of newsletter	I. General
LegalUpdate114	...	2013	114	Full text of newsletter	I. General
LegalUpdate113	...	2013	113	Full text of newsletter	I. General
LegalUpdate112	...	2013	112	Full text of newsletter	I. General
LegalUpdate111	...	2012	111	Full text of newsletter	I. General
LegalUpdate110	...	2012	110	Full text of newsletter	I. General
LegalUpdate109	...	2012	109	Full text of newsletter	I. General
LegalUpdate108	...	2012	108	Full text of newsletter	I. General
LegalUpdate107	...	2012	107	Full text of newsletter	I. General
LegalUpdate106	...	2012	106	Full text of newsletter	I. General
LegalUpdate105	...	2012	105	Full text of newsletter	I. General
LegalUpdate104	...	2012	104	Full text of newsletter	I. General

Canadian College of Construction Lawyers

Legal Update Committee Chair:

Brendan D. Bowles

Members:

Mike Demers
Michael Skene
(British Columbia)

David I. Marr
Murray Sawatzky, Q.C.
(Saskatchewan & Manitoba)

Donald C.I. Lucky
Phil Scheibel
Andrew Wallace
(Alberta)

Maria Ruberto
Ronald W. Price
Jason Annibale
(Ontario)

Guy Gilain
Patrice Morin
(Quebec)

Greg Moores
John Kulik
(Atlantic Provinces)

cccl.org

Contact the Legal Update Committee:

c/o **Brendan D. Bowles**
Glaholt Bowles LLP
Construction Lawyers
141 Adelaide St W, #800
Toronto, Ontario, M5H 3L5
Phone: (416) 368-8280
Fax: (416) 368-3467
E-mail: brendanbowles@glaholt.com

Legal Update Newsletter Design and Desktop Publishing:
Nicholas J. Dasios