

General contractors must follow construction contracts' claims procedure

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In *Construction Infrabec inc. v Paul Savard, Entrepreneur électricien inc.*, 2012 QCCA 2304, Quebec's Court of Appeal reasserted the importance for a general contractor to comply with the contractual requirements and delays regarding communication of notices and claims to the client.

Context

Following a call for tenders, the ministère des Transports du Québec ("MTQ") awarded to Construction Infrabec Inc. ("Infrabec") a contract for the construction of various road infrastructures. Infrabec has subsequently subcontracted some of the work to Paul Savard Entrepreneur Électricien Inc. ("Paul Savard").

The contract entered into between the MTQ and Infrabec contained the standard clauses from the *Cahier des charges et devis généraux* ("CCDG"), including clause 9.10. This clause provided that in case of a dispute related to the performance of the work, the general contractor must send a "notice of intent to claim" to the MTQ's territorial division within 15 days from the occurrence of the problem. Should the parties fail to resolve the dispute following the issuance of this notice, the general contractor is then required to submit his claim directly to the MTQ within 120 days from the receipt of the final estimate of the work.

During the performance of the contract, subcontractor Paul Savard presented numerous claims to Infrabec, with copies to the MTQ. These claims eventually led to the institution of legal proceedings against Infrabec, who then called the MTQ in warranty.

In defense, the MTQ denied any responsibility notably because Infrabec neglected to send a proper notice of intent to claim and also failed to submit a formal claim prior to instituting legal proceedings.

The Court of Appeal agreed with the MTQ.

Important Legal Principles

First, the Court of Appeal confirmed that the claims procedure set out in the CCDG, including the short delays of 15 and 120 days for the transmission of notices and claims, was valid and did not contravene the public order rule pursuant to which "no prescriptive period other than that provided by law may be agreed upon" (article 2884 of the *Civil Code of Quebec*).

Justice Nicholas Kasirer, writing for the Court of Appeal, held that the delays related to the claims procedure could not be interpreted as a limitation period since they do not extinguish a right of action, but rather define the conditions of its creation.

Indeed, it is only upon the fulfillment of the claims procedure's formalities that a right of action arises. The civil law limitation period then runs from this date forward and the general contractor thus has three years to institute proceedings before the courts.

Second, the Court of Appeal confirmed that the MTQ was made aware of the claim by the subcontractor instead of the general contractor even before the 120-day delay started running. They were unable to conclude that the claims procedures' formalities were observed.