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Claim against the MTQ? Prior notice is imperative

A general contractor must send a notice of claim prior to instituting any proceedings against the MTQ, whether such claim is brought on behalf of itself or on behalf of a subcontractor.

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In December 2012, in the matter of *Construction Infrabec inc.* v. *Paul Savard, Entrepreneur électricien inc.*, 2012 QCCA 2304 (hereinafter "***Infrabec***"), the Quebec Court of Appeal reaffirmed the obligation incumbent upon general contractors to send a notice of claim prior to instituting any proceedings against the *Ministère des Transports du Québec* (hereinafter "**MTQ**") in relation to a contract with the latter, whether such claim is brought on behalf of the general contractor itself or on behalf of a subcontractor. This obligation is provided for in Section 8.8 of the *Cahier des charges et devis généraux 2015* (hereinafter "**CCDG**").

This provision clearly specifies that, as a first step, a notice of claim must be sent to the MTQ's management within 15 days of a problem occurring. Thereafter, MTQ's management provides the contractor with its position, and makes a settlement offer in certain circumstances. Finally, if the parties fail to reach an agreement, the contractor is entitled to make a claim in due form directly to the deputy minister within 120 days following the date of receipt of the final estimate for the work, or within 120 days following the receipt of such estimate received under reserve, where applicable (refer to Article 8.8.2 CCDG for greater detail on the calculation of these delays). The delays must be respected rigorously. Failure by the contractor to follow this procedure within the applicable delays will result in the dismissal of any claim that a contractor could otherwise have brought.

In *Infrabec*, the Quebec Court of Appeal ruled that the objective of this provision "*is not only to inform the ministry of the claims addressed to it, but also to ensure that a single comprehensive claim is made and transmitted directly to the minister to enable the latter to evaluate the claim's merits*[1]".

In this case, following a call for tenders, the MTQ had entered into a contract with Construction Infrabec inc. (general contractor). The latter had then subcontracted work to Paul Savard for the refurbishment and installation of a road lighting system. Due to unforeseen work, this subcontractor presented a series of requests for compensation to the general contractor. Copies of these requests had also been forwarded to MTQ officials, and to the engineering firm representing the MTQ on the construction site. Following the refusal of some of these claims, the subcontractor instituted proceedings against the general contractor seeking payment of extras. In response, the general contractor filed an action in warranty against the MTQ seeking compensation for any amounts that it may be required to pay to the subcontractor. The MTQ sought the dismissal of the action in warranty brought by the contractor, which was granted by the Court due to the fact that the general contractor had not sent a notice of claim in compliance with clause 8.8 of CCDG (Article 9.10 of CCDG, version of 1997). The requests for compensation, copied to the officials of the MTQ by the subcontractor, were considered insufficient to meet the requirements of the clause in question. Indeed, the imperative nature of the procedure under this provision and the formalities provided for therein must be followed by the contractor to the letter.

In summary, this judgment, as well as the subsequent judgments on this matter, first confirms that a contractor cannot bring an action against the MTQ if it has not followed the applicable procedure to the letter and taken the necessary action within the prescribed delays, the whole in conformity with in Article 8.8 CCDG. Second, in

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instances where a contractor has given work to a subcontractor, it is the former's duty to initiate the claim procedure provided for under the CCDG in relation to its agreement with the MTQ, even to the extent that the MTQ has been notified in some manner by the subcontractor in question of such claims[2]. If said procedure is not followed by the general contractor, the MTQ may obtain the dismissal of its claim, leaving such general contractor to face the subcontractor's proceedings alone.

1. *Construction Infrabec inc.* v. *Paul Savard, Entrepreneur électricien inc.*, 2012 QCCA 2304, § 65.
2. *Paul Savard, Entrepreneur électricien inc.* v. *Construction Infrabec inc.*, 2010 QCCS 1680, § 26.

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