

Table of Contents

Collaborative Solutions in Construction: Rising to the Challenges Facing International Construction

Editor's Note	1
1. CHALLENGES IN THE CONSTRUCTION INDUSTRY	2
1.1 Human Resources	2
1.2 Regional Conflicts and Sanctions	6
1.3 Supply Chain Disruptions	7
2. COLLABORATIVE SOLUTIONS	8
2.1 Collaborative Contracting	8
2.2 Collaborative Lawyering	13
3. CONCLUSION	20

Why Hurry Up and Wait: The Benefits and Risks of Employing a Pacing Strategy on a Construction Project

Editor's Note	23
1. INTRODUCTION	23
2. CATEGORIES OF DELAY	24
2.1 Concurrent Delays	25
2.2 Pacing vs. Concurrent Delay	32
3. CONCLUSION	38

Drastic Remedies for Drastic Problems: Frustration, Mistake, Misrepresentation, and Repudiatory Breach

Editor's Note	39
1. INTRODUCTION	39
2. HYPOTHETICAL FACTS	40
2.1 First Example	40
2.2 Second Example	42
2.3 Frustration	42
3. MUTUAL MISTAKE OR COMMON MISTAKE	48
3.1 Misrepresentation	51

3.2	Repudiatory Breach	52
3.3	The Site Investigation Clause	53
3.4	Cardinal Change	55
4.	CONCLUSION	56

Construction Law in the Age of *Vavilov*

Editor's Note	57
1. INTRODUCTION.....	57
2. JUDICIAL REVIEW BEFORE <i>VAVILOV</i>	60
3. <i>VAVILOV</i> AND ITS APPLICATION.....	61
4. JUDICIAL REVIEW IN THE REALM OF CONSTRUCTION LAW	68
4.1 Liens	68
4.2 Permits/Work Orders and Related Issues.....	69
4.3 Tendering	69
4.4 Arbitration Awards.....	70
5. CONCLUSION.....	72

Considering Consideration: The Role of Fresh Consideration in Unilateral Amendments to Construction Contracts

Editor's Note	75
1. INTRODUCTION.....	75
2. GENERAL CONTRACT PRINCIPLES UNDERLYING CONTRACT VARIATIONS	77
2.1 Is Fresh Consideration Required: The State of the Law in Canada	77
3. CONTRACT VARIATIONS IN THE COMMERCIAL CONTEXT	82
3.1 Payment of Interest on Overdue Accounts	83
3.2 Restrictive Covenants in Employment Contracts	87
4. UNIQUE FEATURES OF CONSTRUCTION CONTRACTS.....	89

TABLE OF CONTENTS

5.	TREATMENT OF THE NEED FOR FRESH CONSIDERATION IN CONSTRUCTION CONTRACT VARIATIONS.....	91
6.	CONTRACT VARIATIONS IN THE CONSTRUCTION CONTEXT	94
6.1	Schedule Changes	94
6.2	Reservation of Rights	96
6.3	Cardinal or Fundamental Changes.....	100
7.	SUMMARY OF OVERARCHING PRINCIPLES AND REMAINING QUESTIONS.....	105
8.	CONCLUDING THOUGHTS	107
Privilege, Confidentiality and Related Concepts — A Discussion Paper to Help with Common Challenges		
	Editor's Note	109
1.	INTRODUCTION.....	110
2.	PRIVILEGE IN PRACTICE: KEY FORMS AND CONCEPTS.....	110
2.1	Solicitor-Client Privilege	111
2.2	Litigation Privilege	116
2.3	Settlement Privilege	120
2.4	Common Interest Privilege	124
3.	INVESTIGATIONS AND PROJECT REVIEWS	127
3.1	Investigations and Solicitor-Client Privilege.....	128
3.2	Investigations and Litigation Privilege	133
3.3	Facts are Not Privileged, Except.	138
4.	ACCESS TO INFORMATION LEGISLATION	141
4.1	Privileged Information	142
4.2	Confidential Commercial Information	144
5.	ADDITIONAL TOOLS TO PRESERVE CONFIDENTIALITY.....	146
5.1	The Deemed or Implied Undertaking.....	147
5.2	Court Orders to Protect Confidentiality or Seal Court Processes.....	149

5.3 Private Agreements.....	153
6. CONCLUSION.....	155