



## Standard Canadian Construction Contract Revised – What Does this Mean for Construction Companies and Project Owners? (Part III)

### August 2022 Construction Alert

This is part three of the three-part series reviewing the Canadian Construction Documents Committee (“CCDC”) standard form CCDC 2 (2020) construction contract, which is the latest version of the commonly used CCDC 2. In December 2020, the CCDC released a 2020 version of the CCDC 2 to replace the 2008 version. As of June 30, 2022, the CCDC ceased supporting the 2008 version. As such, for those construction companies and project owners that have continued to use the 2008 version, it is time to switch.

The three-part series provides a review of the CCDC 2 (2020) and what the update means for construction companies and project owners. In this, part three of the series, we will be addressing the following changes to the contract: 1) Adjudication; 2) Delays; 3) Safety; 4) Consequential Damages; and 5) Deletions.

#### **Adjudication**

In 2019, Ontario’s *Construction Act* underwent significant amendments, which included the addition of a prompt payment regime and introduced, among other things, adjudication as a means to real-time dispute resolution between contracting parties. The new general condition, GC 8.2 – “Adjudication” has been added to the CCDC 2 (2020) to clarify that nothing in the contract between the parties, arguably including the dispute resolution provisions of the CCDC 2, affects the parties’ rights to

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resolve disputes through adjudication in accordance with the applicable legislation.

### **Delays**

The 2008 version of the CCDC 2 regarding owner-caused delays and delays outside of the Contractor's control remain unchanged, however, general condition 6.5.2 (which addresses delays in the performance of the work due to a stop work order issued by a court or other public authority that was not issued due to the fault of the Contractor) has been amended in the 2020 version of the CCDC 2. Now, if a stop work order is issued, an extension of time will only be granted where the Contractor cannot achieve the "Ready-for-Takeover" date agreed between the parties and specified in the contract. In that regard, the extension of time will be as recommended by the Consultant in consultation with the Contractor, and the Owner will be obligated to reimburse the Contractor's reasonable costs flowing from the delay.

### **Safety**

Under the 2020 version of the CCDC 2, the Contractor is still responsible for complying with the overall health and safety legislation in connection with the performance of the Work, including establishing, maintaining, and supervising all health and safety precautions and programs. However, the 2020 version of the CCDC 2 no longer states that the Contractor shall be solely responsible for construction safety and compliance with construction health and safety legislation, meaning that the Contractor is not specifically assigned as the "Constructor". Accordingly, both the Owner and the Contractor may wish to specifically assign the role of "Constructor" by way of Supplementary Conditions to the contract, so that it is clear. The new general conditions relating to Construction Safety in the CCDC 2 (2020) now state that the Owner is required to comply with all applicable health and safety legislation, as well as all health and safety precautions and programs established by the Contractor. The new general conditions also require the Owner to cause its own forces, the Consultant and Other Contractors (defined in the CCDC 2 as contractors retained by the Owner for the Project) to comply with all health and safety precautions and

programs established by the Contractor.

### **Consequential Damages**

Indemnification claims by a party for losses suffered by them under the 2020 version of the CCDC 2 are now limited to direct loss and damage. General condition GC 13.1.2.3 expressly excludes a party's ability to claim any indirect, consequential, punitive, or exemplary damages. That said, indemnification respecting claims by third parties is without limitation (GC 13.1.2.4).

### **Deletions**

In addition to other changes, several deletions have been made to the 2020 version of the CCDC 2. Of note, are the following:

- Facsimiles are no longer considered a method of delivery for Notices in Writing.
- The Contractor is no longer required to keep all Contract Documents, submittals, reports, and records of meetings on site. However, completed to date as-built drawings are required on site to attain "Ready-for-Takeover" of the Work (GC 12.1.1.5).
- GC 11.2 (Contract Security), which required the Contractor to provide the contract security (a performance bond and/or a labour and material payment bond) as specified in the Contract Documents, has been deleted. If the Owner requires bonds, the contract should be amended to address this.
- The provisions relating to cleanup (GC 3.13 in the 2008 version) have been deleted. However, final cleaning and waste removal is required at the time of applying for "Ready-for-Takeover" of the Work (GC 12.1.1.3).

### **Contact Us**

Before switching over to the CCDC 2 (2020), we recommend that construction companies and project owners review and consider the implications of the changes to the standard form contract. If you would like more information or guidance in regard to using or amending the standard form construction contract, [please contact](#)

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