

**CONTINUING PROFESSIONAL EDUCATION PROGRAM****ARCHITECT-CLIENT FEE AGREEMENTS  
CONTRACT ADMINISTRATION RESPONSIBILITIES****11 August 2015**Presenter: **Christopher Larcos, Moray & Agnew Lawyers 02 4911 5428****TENDERING**

1. True or false –The best way to move from the tendering process to the contract set is to amalgamate the tender documents with the post-tender correspondence? If false, what is the best way to do so?

False. - The best way to do so is to amend the tender documents to reflect the final agreed position.

**CONTRACT ANNEXURES**

- 1 True or false –If the Contractor will only sign up to a contract if he doesn't have to pay liquidated damages, the architect should just write "\$0" in the schedule? If not, what should the architect do?

False! The architect should strike out the relevant sections of the contract that deal with liquidated damages, and have the parties initial the deletions. For instance, in an ABIC MW 2008 contract, the architect should strike out clauses M12 and M13, the last column at Item 29 in Schedule 1, and Item 30 in Schedule 1 in its entirety.

- 2 What is an alternative to liquidated damages for late completion?

General damages at common law which, though not as neat and tidy as liquidated damages, are better than nothing.

**THE ARCHITECT'S ROLE**

1. What is the rule of thumb as to when an architect exercises independent discretion and when the architect acts as an agent?

The architect should exercise independent discretion when deciding any matter under the contract involving time, money, quality or quantity.

2. What is the rule of thumb as to what needs to be documented?

The standard of work that an architect (and the client) may reasonably expect of a licenced builder is that of an experienced competent contractor who will perform the work with due care and skill. With this standard in mind, it should not be necessary to detail every (or any) standard details – flashings, sills, cornices, material junctions etc. It is to expect that a competent builder should not need any guidance on these, and should certainly not be asking for extras to perform the work to those standards. However, if the architect wants something done in a particular way, which is different to the minimum standard ordinarily to be expected, then that is what the architect should detail; that is, detail those things (and only those things) where the architect wants something different to what the builder might be expected to build if left to his own devices.

**PREVENTION**

1. What are acts of prevention?

Acts of Prevention are delays to the builder caused by the owner or by the owner's agents, including the architect.

2. True or false – If the Principal has delayed the Contractor, and the Contractor does not want to claim an extension of time, there is nothing that the architect needs to do? If false, what does the architect need to do?

If there has been an Act of Prevention, but the builder has not submitted a claim for extra time, the architect should give serious consideration to exercising the unilateral power to extend time. If in doubt as to whether to exercise that power, err on the side of caution and do so. For instance, in an ABIC MW 2008 contract, clause H6 allows the architect to extend time in the absence of a claim by the builder.



3. What are the potential consequences if the Principal delays the Contractor and there is no extension of time commensurate with the delay?

A failure to take such a step may see the builder challenge the validity of the time provisions in the contract, which oblige the builder to bring the works to Practical Completion by the Date for Practical Completion; that challenge will be based on the argument that the owner should not derive a benefit (liquidated damages) where he or his agents have been the ones responsible for the delay in the first place. If a court agrees with the builder – there is mixed case law on this point – the time provisions in the contract (Date for Practical Completion and liquidated damages) will be struck down, and the builder's obligation will be to complete the works within a 'reasonable' time.

#### **ABIC FINAL CERTIFICATES**

1. True or false? – The ABIC final certificate only deals with the release of the retention?  
False. Clause N15 of ABIC MW 2008 says that the Final Certificate "is evidence of the parties' entitlements under this contract and that the contractor has performed its obligations under the contract".