

COURT ENFORCES ARCHITECTS' CONTRACTUAL PROTECTIONS

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A recent decision in the Supreme Court of British Columbia in favour of architects is a welcome development for the profession. The judgment in *College of New Caledonia v. Kraft Construction Company Ltd. et al* gave full effect to the limitation-of-liability provisions in the standard Architectural Institute of British Columbia's client/architect agreement and prevented third-party claims by builders on a major project.

The case arose out of water ingress problems associated with an atrium roof component of a major renovation project at the Prince George campus of the College of New Caledonia. The College claimed damages against the individual architects and the architectural firm in both negligence and contract. In addition, it sued the general contractor, the subcontractor and the roofing supplier. The general contractor and the subcontractor then commenced third-party proceedings against the architects seeking a finding of joint-and-several liability for repairs.

The architects had used the AIBC's standard agreement and defended themselves against the College's claims on the basis of two elements in the agreement:

- Clause 3.9.1, which provided that any recovery against the architects was limited to the amount of professional liability insurance available to them.
- Clause 3.9.6, which provided that the architect's liability for all claims arising out of services shall absolutely cease to exist after a period of six years from the date of substantial performance of the work.

The date of substantial performance of the work was August 15, 1997 and the College did not commence its action against the architects until December 24, 2003. As a consequence, according to the agreement, the architects had no liability to the College.

The Court held that Clause 3.9.6's language sets out a broad description of claims, including negligence claims, and rejected the College's argument that this Clause was invalid because it was in a standard form agreement which the College had had no fair opportunity to negotiate. The

Court held that to allow such a defence would allow the College to escape the terms of the very bargain it made.

Importantly, the Court also gave effect to Clause 3.9.1. The architects had no liability insurance because the claim did not arise until December 2003, when their professional liability insurance contained a water ingress exclusion clause. The Court held that the College's possible recovery from the architects was correspondingly nil.

One of the most important aspects of this decision is that the Court's enforcement of the contractual protections in the AIBC's standard client/architect agreement had the effect of immunizing the architects from the third-party claims by the codefendant general contractor and subcontractors. The Court held that no third-party claim against the architects could be maintained if no liability or claim existed between the plaintiff and the architects as a result of the contractual limitations in the client/architect agreement.

In addition, the Court held that it was inappropriate to advance a claim for contribution and indemnity in third-party proceedings in circumstances where the substance of the third-party claim could be legally relied upon by the builders as a direct defence to the College's claims against them. In nearly all instances, claims against an architect by its client are for negligence in the provision of performance of its contractual design or field services as the agent of the client.