Project owner’s duty of good faith: Court of Appeal upholds $15.7 million award to contractor

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In a unanimous decision, the Court of Appeal of Québec upheld a $15.7 million award against a project owner for breaching its duty of good faith in PG4 c. Énergir. The decision confirms that project owners cannot create legitimate expectations about how claims will be handled and then hide behind contractual formalities. The case is essential reading for contractors, project owners and legal advisors managing loss of productivity and unforeseen site conditions claims in Québec.

In a unanimous decision on September 22, 2026, the Court of Appeal of Québec upheld the judgment of the Honourable Enrico Forlini, J.S.C., in *PG4 c. Énergir*, 2024 QCCS 4179, which awarded the contractor $15,670,101 for additional work that it was forced to perform due to unforeseen soil and rock conditions.

The province’s highest court reiterated that parties’ contractual rights must be exercised in accordance with the requirements of good faith and the duty of coherence. The Court also clarified a number of points regarding the burden of proof for contractors in such circumstances.

Background

The litigation concerned a project to extend Énergir S.E.C.’s (Énergir) gas network over approximately 52 km in the Thetford Mines region (the Project).

Despite difficulties caused by unpredictable site conditions that differed markedly from those anticipated, PG4 delivered the Project on time after implementing significant acceleration measures at Énergir's request.

By the end of the Project, PG4 had suffered a considerable loss. It then sought compensation from Énergir for the additional costs it incurred because of the unforeseen presence of rock and unstable soil along the route, which led to overexcavation problems.

The trial judgment

The trial judge found that PG4's estimates were reasonable and that the soil conditions encountered were unforeseeable. The judge also found that the tender documents were deficient and that Énergir had breached its duty to inform PG4.

He rejected the defence, which was based on non-compliance with the claims procedure. PG4 had implemented costly acceleration measures in reliance on Énergir's assurances that PG4's claim would eventually be reviewed. The trial judge found that Énergir breached its duties of cooperation and coherence by refusing to consider PG4's claim at the end of the Project. He concluded that Énergir's defence had to be dismissed.

Accordingly, the trial judge allowed PG4's claim for loss of productivity. He found that the unforeseen soil and rock conditions had seriously disrupted the planning and performance of the work. The judge allowed the claim for additional hours, noting that using actual costs rather than bid rates is justified when the quantities actually performed differ significantly from those estimated in the call for tenders.

In other words, he awarded PG4 the full amount claimed, except for the costs of preparing the claim for compensation.

On appeal: good faith as a limit on contractual formalism

After a careful analysis of the evidence, the Court of Appeal agreed with the trial judge that Énergir, although fully aware that the contractual process for additional work had not been followed, had signalled that it remained open to discussing PG4's claim for compensation.

The Court of Appeal also noted that contemporaneous Project documents showed that Énergir insisted that the contractor complete the work on time, while promising that monetary issues would be settled later.

The Court of Appeal concluded that Énergir's fault lay not in its refusal to pay PG4's claim but in its failure to honour its promise to consider the monetary claim.

Therefore, the trial judge was right to apply *Hydro-Québec c. Construction Kiewit cie*, 2014 QCCA 947. This decision established the principle that a party that creates legitimate expectations for its co-contractor and leads it to act to its detriment cannot subsequently fall back on the strict wording of the contract without breaching the duties of loyalty and coherence.

Court of Appeal recognizes ripple effect in loss of productivity claims

The Court of Appeal found no reviewable error in the trial judge's conclusions on loss of productivity. The trial judge accepted the analysis of the contractor's expert based on the ripple effect concept.

Accordingly, the unforeseen rock and unstable soil conditions had repercussions across the entire worksite. A disruption affecting one activity can impact every other component of the construction sequence. The Court of Appeal accepted that a loss of productivity can result from the overall disorganization of a worksite rather than from isolated, easily quantifiable events.

This conclusion is particularly significant for claims involving loss of productivity or impact costs.

Court of Appeal reiterates principles on quantifying damages

The Court of Appeal finally concluded that the trial judge was right to award damages calculated on the basis of the costs actually incurred rather than the costs originally estimated in the bid.

In doing so, the trial judge correctly applied the approach adopted by the Court in *Ville de Québec c. Groupe Aecon Ltée*, 2018 QCCA 1019 (see paragraph 15), particularly where, as in this case, there is a significant gap between the quantities estimated when the bid was submitted and those actually used on site.

Key takeaways

- **Once again, good faith is paramount.** A project owner that creates a legitimate expectation for the contractor as to how its claim would be handled cannot go back on its word or its conduct by subsequently, and abusively, invoking the provisions of the contract.
- **The ripple effect and loss of productivity.** When problems affect work across the entire site, contractors need not demonstrate the loss of productivity caused by each disruption "hour by hour" or "rock by rock."
- **The importance of communication throughout the project.** The contractor's prompt reaction and communication with the project owner as soon as differing site conditions are discovered remain decisive to its ability to assert a claim later.

Under what circumstances can a contractor claim loss of productivity based on the ripple effect?

The Court of Appeal recognized that loss of productivity can result from overall disorganization when unforeseen conditions (such as unstable soil or the presence of rock) disrupt the entire worksite. The contractor is not required to prove the loss "hour by hour" or "rock by rock" for each disruption.

Can a project owner enforce the strict terms of the contract to reject a claim?

Not if doing so breaches the requirements of good faith. For example, if a project owner insists that the contractor accelerate the work while promising that monetary issues will be settled later, it creates legitimate expectations. The project owner cannot then abusively invoke the contract's provisions to refuse to consider the claim.

How should damages be quantified when quantities differ from those in the call for tenders?

The Court confirmed that it is appropriate to award damages based on the contractor's actual costs rather than the estimated costs in the bid. This is especially true when there is a significant difference between the quantities estimated when the bid was submitted and those actually performed on site.

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