



BULLETIN

BC Construction Association

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ONE SMALL STEP FOR CONTRACTORS....

Sadly, it is not that often that we get to report about a successful resolution in the struggle against unreasonable conditions being imposed on contractors during the course of public construction projects. The balance of power is too often in the hands of the public owner resulting in a less than adequate ability to negotiate real change.

What a pleasure it is therefore to have an opportunity to report a victory for those contractors from Vancouver Regional Construction Association who stood firm in their resolve to not sign a bad contract put forward by Rapid Transit Project 2000. They collectively said no, convinced the powers that be that they meant no, and as a result the offending contract, which included a "pay when paid" clause is to be amended.

The truth is, by standing together, contractors can be a force to be reckoned with. They are strong contributors to the economy, and essential members of the business community. Their reasonable requests for fair and equitable contracts should be listened to by public owners without the need for group action, but if that is what it takes, it is good to see that at least it gets the job done.

We are hoping that the contractors on Vancouver Island are equally successful in their struggle against unreasonable supplementary conditions being presented by BC Housing Management Corporation.

At issue in Victoria are conditions placing liability on the contractor for such things as

- ❖ unforeseen subsurface site conditions, or any existing contaminated or toxic conditions--despite the fact

that the contractor has no say in choosing the site;

- ❖ obtaining mandatory warranty acceptable to the Homeowner Protection Office, which will include liability for design or consultant errors, omissions, or resulting failures--despite the fact that the contractor does not choose or employ the design consultant or have any control over the long-term maintenance of the building;
- ❖ warranty and indemnification clauses far in excess of those mandated by the standard CCDC-2 contract developed, with consultation from stakeholders across the industry, by the Canadian Construction Documents Committee.

The contractors have so far stood firm in their refusal to accept such conditions. We applaud their continuing efforts in this regard. Whether or not BC Housing will amend these conditions is, as yet, unclear. Certainly the conditions are re-surfacing in other projects involving BC Housing, **without** the necessary amendments.

Perhaps there is a belief that somewhere, somehow, there will be a contractor willing to risk all by agreeing to such conditions and then BC Housing won't have to address the need for amendments. We hope that all contractors from across the province will see the wisdom in refusing to accept such unreasonable conditions. There may be someone, somewhere, in need of work, who will accept the liability, and hope for the best. Sort of a "close your eyes, jump off the cliff and hope there is water down there" maneuver. Sounds like a bad solution to us.

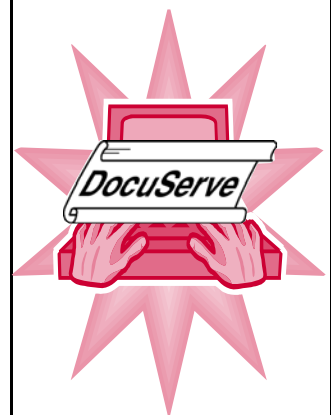
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One Small Step for Contractors....

BC Housing should consider, that by refusing to make amendments, and therefore by-passing the majority of potential bidders, the chance of obtaining competitive prices in an organized

and fair process becomes remote. Also, by promoting an imbalance of liability (i.e. placing it all on the head of the contractor), the ability of third parties (i.e. the occupants of the housing project) to recover damages becomes se-

verely limited in the event that a problem occurs.

Is that the best way to proceed with a project paid for with taxpayers' dollars??

BARRETT VOLUME I – TO PAY OR NOT TO PAY

The second Commission of Inquiry led by Dave Barrett, originally required to report recommendations by October 15/1999, then given an extension to January 15/2000, has produced their first volume of wisdom **ahead** of their current deadline of March 10/2000. It provides recommendations for compensating those consumers struggling with the financial crisis brought on by the building envelope failures in condominiums in coastal B.C..

Given the magnitude of the problem, a solution of equal magnitude is required. The Commission gives us such a solution. A "Superfund" equaling \$900 million dollars, designed to provide non-taxable grants of up to \$35,000 per applicant net of any financial support already received. It is a wonderful notion. Such a fund would go a long way towards helping those individuals who, through no fault of their own, have had to cope with this tragedy.

The contributors to this fund will be threefold: the federal government, the provincial government and the construction industry to the tune of \$300 million a piece. At first glance it has some attractiveness. It is certainly a relief to see the governments being asked to the table. It would be great to have such a fund, and it would be great to wave a magic wand and fix all the condos too. Unfortunately, at this point in time the latter might be more probable.

The federal government has shown no indication of being willing to contribute **anything** towards assisting the beleaguered

condo owners, much less \$300 million. The provincial government has been less than enthusiastic about their ability to scrape up a contribution. So that leaves the construction industry. Interestingly enough this was the only member of the tripartite of contributors for which the Commission actually had a plan of collection. The recommendation is that the levy imposed on multi-unit residential projects built in the designated regions of the province should be raised from \$750 per unit to \$2000 per unit, or 1% of the final selling price of the unit, whichever is greater. So, 150,000 condominiums later the \$300 million would be in place, and the lucky purchasers of those units (assuming of course that any builder could find a reason to build them in the first place), will likely end up being the only real contributor to the 'Superfund'.

One interesting comment made by the Commission -- that contributions to the fund would be reduced by any recoveries made by legal actions. Exactly what is to become of the potential legal actions? Will they continue unabated? Will contributors to the fund be able to take over the claims of the victims and pursue litigation? What would the fall-out be from that?

After months of hearings and extensions, the Commission has presented a plan that looks nice, but is essentially without a hope of success, except to the extent that it is harmful to a residential construction industry already struggling. Was that the intention?

We await with bated breath the production of Volume II.



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The mission of the BCCA is to provide leadership and excellence in the representation of and service to British Columbia's construction industry