



## ACEC British Columbia Position Paper

# Termination of a Client-Consultant Contract

In the normal course a contract is terminated when all parties have performed all obligations under it. A contract between a client and a consultant is typically concluded when the project is completed and the consultant has been paid. Additionally, a contract can be terminated at any time by the mutual assent of all parties. However, there are times when either the client or the consultant will want to terminate the contract but the other party will not agree. If there are no provisions in the Client-Consultant Agreement that identify how and in what circumstance unilateral termination can occur, there is unnecessary uncertainty for both the client and engineer. Further, the party seeking to get out of the contract may be put in a very difficult situation as there can be serious consequences for terminating without proper cause.

Contracts drafted by clients typically give explicit termination rights only to the client. Contracts published by professional engineering associations provide a more balanced approach that allows either client or consultant to terminate for certain designated defaults by the other. For example, Part 10 of the ACEC 31 provides as follows:

**GC 10.3** *If the Engineer is in material default in the performance of any of the Engineer's obligations under this Engineering Agreement, the Client will notify the Engineer that the default must be corrected. If the Engineer does not correct the default within 30 days after receipt of such Notice or if the Engineer does not take reasonable steps to correct the default if the default is not susceptible of immediate correction, the Client may terminate this Engineering Agreement upon further Notice to the Engineer, without prejudice to any other rights or recourses of the Client. Such termination will not release the Client from its obligation to pay all Fees and Reimbursable Expenses incurred by the Engineer up to the date of termination in the manner provided in this Engineering Agreement.*

**GC 10.4** *If the Client is in material default in the performance of any of the Client's obligations set forth in this Engineering Agreement, including but not limited to the non-payment of Fees and Reimbursable Expenses of the Engineer in the manner specified in this Engineering Agreement, the Engineer will notify the Client that the default must be corrected. If the Client does not correct the default within 30 days after receipt of such Notice, the Engineer may terminate this Engineering Agreement upon further Notice to the Client. In such event, the Client will promptly pay the Fees and Reimbursable Expenses of the Engineer that are incurred and unpaid as of the date of such termination, plus the Termination Expenses, without prejudice to any other rights or recourses of the Engineer.*

**GC 10.5** *If the Client is unwilling or unable to proceed with the Project, the Client may suspend or terminate this Engineering Agreement by Notice of 30 days to the Engineer. Upon receipt of such Notice, the Engineer will perform no further Services other than those reasonably necessary to suspend or terminate that portion of the Project for which the Engineer is responsible. In such event, the Client will pay all of the Fees and Reimbursable Expenses incurred by the Engineer up to the date of suspension or termination, plus the Suspension Expenses or Termination Expenses, as the case may be, in the manner provided for in this Engineering Agreement.*

Insofar as the consultant's right to terminate the agreement, Part 10 of the ACEC 31 provides that if, within 30 days of being put on written notice of a default, the client has not corrected, or taken steps towards correcting, the default, the consultant may terminate the agreement. The client is then obliged to pay the consultant for services rendered and disbursements incurred in addition to a termination fee which is set out in the agreement. Part 10 also provides the consultant with the right to terminate the agreement if the consultant's services have been suspended by the client for more than 30 days. The client is obliged to pay the consultant for services rendered and disbursements incurred in addition to a termination fee which is set out in the agreement.

There are also provisions in the MMCD Agreement (Article 10) dealing with termination. These provisions are similar to those in the ACEC 31 and provide similar rights to both clients and consultants with some differences which favour the client. For example, the notice period associated with default is much shorter (5 days as opposed to 30 days); the client is explicitly entitled to deduct from the fees owing to the consultant any costs and expenses incurred as a result of the consultant's default; the consultant is only entitled to terminate the agreement if the client is in default of payment; and in the event of a suspension of services, the consultant is not entitled to terminate the agreement unless its services have been suspended by the client for more than 60 days and the consultant gives the client written notice of its intention to terminate the agreement, in which case the client has 15 days within which to lift the suspension.

A common dilemma that engineering consultants find themselves in is being well into a project when a dispute arises over fees. The engineer contemplates withdrawing its services, but without a contractual provision setting out the process for how this can occur, there is uncertainty (particularly in circumstances where the client is threatening a lawsuit for any delays that may arise due to the withdrawal of services). A provision such as Part 10 in ACEC 31 sets out clear guidance to the engineer and client in these circumstances which can often lead to an orderly resolution of the fee dispute or timely withdrawal from the project.

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