



Sub-Clause 20.1 – the FIDIC Time Bar under Common and Civil Law

The key features of sub-clause 20.1 of the FIDIC form are:

- The Contractor must give notice to the Engineer of time or money claims, as soon as practicable and not later than 28 days after the date on which the Contractor became aware, or should have become aware, of the relevant event or circumstance.
- Any claim to time or money will be lost if there is no notice within the specified time limit.
- Supporting particulars should be served by the Contractor and the Contractor should also maintain such contemporary records as may be needed to substantiate claims.
- The Contractor should submit a fully particularised claim within 42 days after becoming aware of the relevant event or circumstance.¹
- The Engineer is to respond, in principle at least, within 42 days after receiving a fully detailed claim.
- The claim shall be an interim claim. Further interim updated claims are to be submitted monthly.
- A final claim is to be submitted, unless agreed otherwise, within 28 days of the end of the claim event.
- Any extension of time or additional payment shall take account of any failure or other prejudice caused by the Contractor during the investigation of the claim.
- Payment Certificates should reflect any sums acknowledged in respect of substantiated claims.

Sub-clause 20.1 deals with Contractor claims, setting out both a procedure for the notification and substantiation of those claims and the mechanics of the decision-making process to be adopted by the Engineer. Further, sub-cl.20.1 requires that the Contractor², if it considers it has a claim for an extension of time and/or any additional payment, must give notice to the Engineer “as soon as practicable, and not later than 28 days after the event or circumstance giving rise to the claim”.

This makes it clear that the Contractor must submit its claims during the course of the project. The initial notice at first instance does not need to indicate, (for the very good reason that usually it cannot) the total extension or payment sought. The scheme of the FIDIC form is thus that where possible disputes should be resolved during the course of the project rather than waiting until the works are complete.

It is important that it is understood that compliance with the notice provisions is intended to be a condition precedent to recovery of time and/or money³. This therefore potentially provides the Employer with a complete defence to any claim for time or money by the Contractor if it is not started within the required time-frame.² Certainly parties, particularly the Contractor should treat the sub-clause in this way.

The traditional view at common law

Generally, in the UK the courts will take the view that timescales in construction contracts are directory rather than mandatory⁴, unless that is, the contract clause in question clearly states that the party with a claim will lose the right to bring that claim if it fails to comply

1. A sub-clause has been inserted into the FIDIC Gold Book 2008 which says that if the Contractor fails to do this within 42 days, his claim will lapse. Whilst the FIDIC Red Book 1999 does not go that far, the Contractor must still try and adhere to the deadline.

2. The Employer is treated somewhat differently when it comes to bringing claims.

3. See for example the comments by Christopher Seppälä, - Contractor's Claims Under the FIDIC Contracts for Major Works, paper given at the International Construction Contracts and Dispute Resolution Conference in Cairo April 2005. Paper available on FIDIC web-site.

4. Temloc v Errill Properties (1987) 39 BLR 30, CA per Croom LJ.



with the required timescale. In the case of *Bremer Handelgesellschaft mbH v Vanden Avenne Izegem nv*⁵ the House of Lords held that a notice provision should be construed as a condition precedent, and so would be binding if:

- (i) it states the precise time within which the notice is to be served, and
- (ii) it makes plain by express language that unless the notice is served within that time the party making the claim will lose its rights under the clause.

Here, sub-clause 20.1 expressly makes it clear that:

"If the contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the contractor shall not be entitled to additional payment, and the employer shall be discharged from all liability in connection with the claim."

Further the English courts have confirmed their approval for conditions precedent, provided they fulfil the conditions laid out in the Bremer case. For example, in the case of *Multiplex Construction v Honeywell Control Systems*⁶, Mr Justice Jackson (as he then was) held that:

"Contractual terms requiring a contractor to give prompt notice of delay serve a valuable purpose; such notice enables matters to be investigated while they are still current. Furthermore, such notice sometimes gives the employer the opportunity to withdraw instructions when the financial consequences become apparent."

The Civil Law approach

The position of time bars in construction contracts in civil law countries is different. Unlike common law, where non-adherence to a time bar provision may render a contractor's claim invalid, civil codes may, take a more lenient approach.

Primarily, parties are to perform their obligations under the contract. To take the example of the UAE, Article 243 (2) of the UAE Civil Code states:

"With regard to the rights (obligations) arising out of the contract, each of the contracting parties must perform that which the contract obliges him to do."

Further Article 265 (1) of the UAE Civil Code deals with contract interpretation and states:

"If the wording of a contract is clear, it may not be departed from by way of interpretation to ascertain the intention of the parties."

From the above and in the absence of any other circumstances, the contractor may be required to conform with any time bars in the construction contract. However, in circumstances where it appears that the strict interpretation and imposition of the time bars would seriously prejudice the contractor, the contractor may rely on certain provisions of the UAE Civil Code to argue a more lenient approach be adopted. These include:

5. [1978] 2 Lloyd's Rep. 113
6. [2007] EWHC 447 (TCC). The Judge's words were endorsed by HHJ Davies QC in the case of *Steria Ltd v Sigma Wireless Communications Ltd*, [2008] CILL 2544 and also in the Scottish case of *Education 4 Ayrshire Ltd v South Ayrshire Council* [2009] ScotCS CSOH 146 where Lord Glennie was wholly unsympathetic to the suggestion that allowance should be made for the fact that notices given in compliance with conditions precedent might have been drafted by businessmen rather than lawyers, noting that: "It is within judicial knowledge that parties to contracts containing formal notice provisions turn immediately to their lawyers whenever there is a requirement to give notice in accordance with those provisions. But even if that were not the case, there is nothing in clause 17.6.1 [of a Public Private Partnership or PPP Contract] that would not readily be understood by a businessman unversed in the law".



Fenwick Elliott

The construction & energy law specialists

Good faith obligation

Article 246 (1) states, *"The contract must be performed in accordance with its contents, and in a manner consistent with the requirements of good faith."*

So for example, if an employer was made aware of the contractor's intention to claim in such manner, the employer could be seen as acting in bad faith if he later argues that the contractor did not meet the contractual timeframe. Alternatively, a time bar provision may not be relied upon by an employer in circumstances where he is in breach and was fully aware that his breach would cause delay to the project.

Unlawful exercise of rights

Article 106 provides that the exercise of a right shall be unlawful if it is disproportionate to the harm suffered by the other party. In particular, Article 106 (1) states:

"A person shall be held liable for an unlawful exercise of his rights."

Further Article 106 (2) (c) provides:

"The exercise of a right shall be unlawful: (c) if the interests desired are disproportionate to the harm that will be suffered by others."

In view of the above and subject to the circumstances of the particular case, it may be unlawful for the contractor's otherwise meritorious claim to be disallowed on the basis of a purely technical breach. Therefore, the employers reliance on the technical breach may be seen as an unlawful exercise of his rights.

Unjust enrichment

Articles 318 and 319 provide that unjust enrichment is unlawful. Particularly, Article 318 of the UAE Civil Code states:

"No person may take the property of another without lawful cause, and if he takes it he must return it."

Article 319 (1) provides:

"Any person who acquires the property of other person without any disposition vesting ownership must return it if that property still exists, or its like or the value thereof if it no longer exists, unless the law otherwise provides."

Therefore, an employer may be prevented from relying on a time bar provision to avoid payment to the contractor for works performed and for works from which the employer has benefitted particularly if the only reason for withholding payment is the lateness of the contractor's claim.

However, as with the common law, everything depends on the circumstances of the case. That said, courts in the UAE would be reluctant to uphold strict terms of the contract where it can be seen that either the requirement for a notice was complied with in a different form or that strict imposition of the time bar would be an unlawful exercise of the



employer's rights or cause unjust enrichment.

Are there ways round the condition precedent?

Is there the possibility that a DAB or arbitral tribunal might decline to construe the time bar as a condition precedent, having regard to the particular circumstances of the matter before it and the impact of the applicable Law?⁷ On the strict wording of the Contract, the answer is no and Contractors should always try and work on this basis.

It is often suggested that in civil code jurisdictions it can be possible to raise a successful challenge to time bars under the mandatory laws of that country on the basis of the time bar being contrary to the notion of good faith or some other similar legal principle. For example, it has been suggested that a German court might interpret the Contractor's duty to give notice not as a condition precedent to give notice but an obligation ("obliegenheit") of the Contractor. This would mean that the Contractor does not lose the right to make a claim but that the Contractor must prove that his claims are valid and are not affected by his failure to meet his notice obligation in time.⁸

The general point being that it is wrong that a party who has genuinely suffered a loss might be prevented from bringing a claim in respect of that loss for a technical procedural breach. That said, remember that most civil codes contain a provision confirming the importance of what has actually been agreed between the parties.

The Scottish case of *City Inn Ltd v Shepherd Construction Ltd*⁹ suggests that there may well be certain ways round the condition precedent. The core element of the dispute was whether or not the Contractor was entitled to an extension of time of 11 weeks and consequently whether or not the Employer was entitled to deduct LADs. Clause 13.8 (of the JCT form of Contract) contained a time bar clause, requiring the Contractor to provide details of the estimated effect of an instruction within ten days. Lord Drummond Young characterised the clause thus:

"I am of opinion that the pursuers' right to invoke clause 13.8 is properly characterized as an immunity; the defenders have a power to use that clause to claim an extension of time, and the pursuers have an immunity against that power if the defendants do not fulfil the requirements of the clause."

However, the Judge also felt that an immunity can be the subject of waiver. In other words the Architect and Employer had the power, to waive or otherwise dispense with any procedural requirements. This was what happened here. Whilst the Employer (in discussions with the contractor) and the Architect (by issuing delay notices) both made it clear that the Contractor was not entitled to an extension of time, neither gave the failure to operate the condition precedent at clause 13.8 as a reason.

The point made by the Judge is that whilst clause 13.8 provided immunity, that immunity must be invoked or referred to. At a meeting between Contractor and Employer, the EOT claim was discussed at length. Given that the purpose of clause 13.8 was to ensure that any potential delay or cost consequences arising from an instruction was dealt with immediately, the Judge felt that it would be surprising if no mention was made of the clause unless the Employer, or Architect, had decided not to invoke it. Significantly, the Judge held that both Employer and Architect should be aware of all of the terms of the

7. It is my own experience that a DAB is more likely of the two to try and find a way round the condition precedent. Of course, it would be dangerous to rely on this.

8. FIDIC's clause 20.1 – a civil law view, Mauro Rubino-Sammartano, Construction Law International Volume 4 No 1 March 2009

9. [2007] CSOH 190 and, on appeal, [2010] ScotCS CSIH 68. The dispute related to the construction of a hotel under a contract incorporating the JCT Standard Form (Private Edition with Quantities) 1980 as amended.



contract. Employers and certifiers alike should certainly therefore pay close attention to their conduct in administering contracts in order to avoid the potential consequences of this decision.

The Inner House agreed with Lord Osborne saying:

“silence in relation to a point that might be taken may give rise to the inference of waiver of that point. In my view, that equitable principle can and should operate in the circumstances of this case.”

FIDIC – the future

Further, perhaps even FIDIC itself has recognised the potentially harsh consequences of the strict time limits within sub-cl.20.1. In the FIDIC Gold Book 2008, there is a new clause, sub-cl.20.1(a) which gives the Dispute Board an element of discretion noting that:

“However, if the Contractor considers there are circumstances which justify the late submission, he may submit the details to the DAB for a ruling. If the DAB considers the circumstances are such that the late submission was acceptable, the DAB shall have the authority under this sub-clause to override the given 28-day limit and advise both the parties accordingly.”

Sub-clause 20.1(a) of the FIDIC Gold Book 2008 now enables a Contractor to submit to the DAB, the details of any circumstances which may justify the late submission of a claim. The clause provides that if the DAB considers that the circumstances are such that the late submission was “acceptable”, the dispute board may override the condition precedent. No definition of “acceptable” has been given, so a Contractor is still best advised to operate as if the 28-day limit strictly applies. However, there is now some degree of latitude.

There are a number of reasons why late submission might be “acceptable”. The most likely one is that the Contractor will be able to say that the Employer and/or Engineer was aware of the issue which gave rise to the claim. For example, the problem might have been discussed at site meetings or inspections or even been raised in the sub-cl.4.21 Progress Reports and the Contractor’s Programme.

Further, sub-cl.8.4 of the FIDIC Gold Book 2008 also introduces, for the first time in a FIDIC contract a requirement that both Employer and Contractor “endeavour to” advise the other of any circumstances of which they are aware which may adversely affect the project, e.g. which might lead to an increase in the Contract Price or cause delay. This early warning system is used in other contracts¹⁰, and can be a valuable project tool and is a further mechanism whereby both parties will learn of the possible existence of claims at an early stage.

Nevertheless, these innovations introduced under the FIDIC Gold Book 2008, do not, it should be stressed, appear in the FIDIC Red Book 1999. And parties under the FIDIC form, as indeed with any construction contract would be well advised to bear in mind the following:

- Parties should take care when concluding contracts to check any time bar clauses governing claims they might make;

10. It already features in the NEC3.



- Parties should appreciate the risks they then run of not making a claim (even if to maintain goodwill) unless the other party agrees to relax the requirements or clearly waives them. This is perhaps especially the case where time bar clauses, if cautiously operated, may generate a proliferation of claims;
- Remember that the courts see the benefits of time bar provisions and support their operation. A tribunal might bar an entire claim for what seems like a technical reason by which time it will usually be too late to make a new, compliant claim; and
- Indeed even where the contract contains a clause such as sub-clause 20.1(a) of the FIDIC Gold Book 2008, potential claimants should not necessarily rely upon the other party already having the information they are required to provide.

Equally those considering making claims, should consider the following:

- When is notice required?
- Who has to give notices?
- To whom should notice be given?
- In what form must the notice be given?
- What information must be provided with the notice?
- What are the response times?
- Are there any continuing notice obligations?
- Is there an agreement in place not to serve notices?
- What happens if you fail to serve a notice?

A new approach under common law?

In April 2014 Mr Justice Akenhead had to consider a case arising from disputes relating to a project to build a tunnel at Gibraltar airport. The case, *Obrascon Huarte Lain SA v Her Majesty's Attorney General for Gibraltar*¹¹, was unusual because the contract in question was in the FIDIC Form. Usually disputes under the FIDIC Form are heard in private, in arbitration proceedings. Needless to say the case raised a number of interesting issues, not least about the sub-clause 20.1 condition precedent.

Amongst a number of claims, OHL sought an extension of time of 474 days. The Judge decided that the contractor, OHL was entitled to no more than seven days extension of time (rock and weather). However, this was subject to compliance with sub-clause 20. It was accepted by OHL that sub-clause 20.1 imposed a condition precedent on the contractor to give notice of any claim. The Judge held that properly construed and in practice, the "event or circumstance giving rise to the claim" for extension must occur first and there must have been either awareness by the contractor or the means of knowledge or awareness of that event or circumstance before the condition precedent bites. Importantly Mr Justice Akenhead said that he could see:

"...no reason why this clause should be construed strictly against the Contractor and can see reason why it should be construed reasonably broadly, given its serious effect on what could otherwise be good claims for instance for breach of contract by the Employer."

In coming to this conclusion, the Judge, made reference to Sub-Clause 8.4 of the FIDIC conditions, which sets out the circumstances, in which the contractor is entitled to an extension of time. Sub-Clause 8.4 states that:



Fenwick Elliott

The construction & energy law specialists

"The Contractor shall be entitled subject to Sub-Clause 20.1... to an extension of the Time for Completion if and to the extent that the completion for the purposes of Sub-Clause 10.1... is or will be delayed by any of the following causes..."

Sub-clause 20.1 did not call for the notice to be in any particular form and it should be construed as allowing any claim provided that it is made by notice in writing to the engineer, that the notice describes the event or circumstance relied on and that the notice is intended to notify a claim for extension (or for additional payment or both) under the contract or in connection with it. It must be recognisable as a "claim". The onus of proof was on the Employer if he should want to establish that the notice was given too late.

In terms of claims for an extension of time, the Judge by reference to clause 8, considered that the entitlement to an extension arises if and to the extent that the completion "is or will be delayed by" the various events, such as variations or "unforeseeable" conditions.

In particular he noted that the wording in sub-clause 8.4 did not impose any restriction such as "is or will be delayed whichever is the earliest". This therefore suggested that the extension of time could be claimed either when it was clear that there will be delay (a prospective delay) or alternatively when the delay has at least started to be incurred (a retrospective delay).

To demonstrate the position, the Judge provided his own hypothetical example:

"(a) A variation instruction is issued on 1 June to widen a part of the dual carriageway well away from the tunnel area in this case.

(b) At the time of the instruction, that part of the carriageway is not on the critical path.

(c) Although it is foreseeable that the variation will extend the period reasonably programmed for constructing the dual carriageway, it is not foreseeable that it will delay the work.

(d) By the time that the dual carriageway is started in October, it is only then clear that the Works overall will be delayed by the variation. It is only however in November that it can be said that the Works are actually delayed.

(e) Notice does not have to be given for the purposes of Clause 20.1 until there actually is delay (November) although the Contractor can give notice with impunity when it reasonably believes that it will be delayed (say, October).

(f) The "event or circumstance" described in the first paragraph of Clause 20.1 in the appropriate context can mean either the incident (variation, exceptional weather or one of the other specified grounds for extension) or the delay which results or will inevitably result from the incident in question."

Finally, the Judge commented that he doubted that this interpretation should in practice necessarily involve "a difficult mental exercise" on construction projects where, as was the case here, an electronic critical path programme was being used. It should therefore be possible to determine fairly easily when delay was actually being suffered.



This suggested that the extension of time can be claimed either when it is clear that there will be delay (a prospective delay) or when the delay has been at least started to be incurred (a retrospective delay). Thus notice does not have to be given until there actually is a delay. The Judge in particular noted that the wording of the clause is not: "is or will be delayed whichever is the earliest". The Judge further confirmed that the onus is on the employer to establish that a notice is not given in time.

The form a notice must take

There is also often discussion about the form that a notice must take. The Judge recognised that there is no particular form of notice required by the FIDIC form. A typical amendment to the FIDIC form is to make it clear that the notice must "describe itself" as a notice under sub-clause 20.1. This would prevent the contractor from relying upon other records, such as meeting minutes, if they have failed to serve a timely notice.

This of course mirrors sub-clause 20.1 of the Gold Book which states that:

"the Notice shall state that it is given under this clause"

However by virtue of Sub-Clause 1.3, it must be in writing. Further, and this is important, the notice must be recognisable as a "claim". In this case, OHL had tried to rely on a monthly progress report. This is not unusual, especially, where a contractor has recognised that it failed to provide a particular notice under Sub-Clause 20.1. The problem for OHL was that the report relied upon for its adverse weather claim, stated that: "The adverse weather condition (rain) have [sic] affected the works". This made no reference to OHL being delayed and could not be said to amount to notice that a claim for an extension of time was being made. In the Judge's view, this was:

"clearly nowhere near a notice under Sub-Clause 20.1."

The Judge therefore ruled that OHL had failed to give notice of the exceptionally adverse weather within the 28-day period. The wording can be contrasted with the wording of OHL's claim in relation to unforeseeable conditions, where OHL had used the words: "In our opinion the excavation of all rock will entitle us to an extension of time..." This, in the view of the Judge, clearly constituted a claim.

An Australian alternative

In Australia the situation might be slightly different. There was a High Court decision, *Andrews v Australia and New Zealand Banking Group Ltd*¹², which although it related to the enforceability or otherwise of a banking overdraft facility, caused many commentators¹³ to suggest that it might signal a possible end to the use of time bars in construction contracts. At the moment, as far as I understand, it is something that has only been written about, rather than decided in the courts.

The key paragraphs of the decisions were 10 and 12. These stated as follows:

"10 In general terms, a stipulation prima facie imposes a penalty on a party ("the first party") if, as a matter of substance, it is collateral (or accessory) to a primary stipulation in favour of a second party and this collateral stipulation, upon the failure of the primary stipulation, imposes upon the first party additional detriment, the penalty, to the benefit of the second party. In that sense, the collateral or accessory stipulation is described as being

12. [2012] HCA 30

13. See for example Philip Davenport, 'Andrews v ANZ and Penalty Clauses' (2012) 147 ACLN 32, 35



in the nature of a security for and in terrorem of the satisfaction of the primary stipulation. If compensation can be made to the second party for the prejudice suffered by failure of the primary stipulation, the collateral stipulation and the penalty are enforced only to the extent of that compensation. The first party is relieved to that degree from liability to satisfy the collateral stipulation.

12 It should be noted that the primary stipulation may be the occurrence or non-occurrence of an event which need not be the payment of money. Further, the penalty imposed upon the first party upon failure of the primary stipulation need not be a requirement to pay to the second party a sum of money."

The essential reasoning goes that if the time bar can be characterized as a penalty, then it may well not be enforceable. It might be possible to challenge time bars in the same way that delay or (liquidated) damages clauses are challenged. The standard AS 4000-1997 General Conditions of Contract does not at first blush seem to be a condition precedent. Clause 34 notes as follows:

"34.1 Progress

The Contractor shall ensure that WUC reaches practical completion by the date for practical completion.

34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to WUC shall promptly give the Superintendent and the other party written notice of that cause and the estimated delay.

34.3 Claim

The Contractor shall be entitled to such extension of time for carrying out WUC (including reaching practical completion) as the Superintendent assesses ('EOT'), if:

a) the Contractor is or will be delayed in reaching practical completion by a qualifying cause of delay; and

b) the Contractor gives the Superintendent, within 7 days of when the Contractor should reasonably have become aware of that causation occurring, a written claim for an EOT evidencing the facts of causation and of the delay to WUC (including extent).

If further delay results from a qualifying cause of delay evidenced in a claim under paragraph (b) of this subclause, the Contractor shall claim an EOT for such delay by promptly giving the Superintendent a written claim evidencing the facts of that delay."

This is frequently amended to such a degree that unlike the FIDIC form, many construction contracts in Australia contain time bars requiring the contractor to notify the Superintendent within seven days of the date it becomes aware of an event likely to delay the works. It is not uncommon that such clauses come complete with quite detailed requirements about the nature of the information a contractor has to provide and which make it clear that that if no notice is provided then any potential entitlement to extra time is lost.

This requirement is often softened by a clause giving discretion to a Superintendent to award time, even if the contractor has failed to comply with the time bar clause. In the 2002 case of *Peninsula Balmain v Abigroup Contractors*, the NSW Court of Appeal found that under the unamended AS2124 contract where Abigroup had not complied with the time bar clause, the court granted the extension of time and noted that a Superintendent



Fenwick Elliott

The construction & energy law specialists

“is obliged to act honestly and impartially in deciding whether to exercise this power.” That is provided the contract does not provide otherwise. For example, the contract might remove the obligation of fairness, and give the Superintendent the absolute discretion to award an extension of time (or not.)¹⁴

In the ANZ bank case, the court said that a clause can still be a penalty even though there has been no actual breach to bring it into effect. So how does that apply to time bars in construction contracts? Well it has not been to date. However the reasoning goes that, with such a short notification period – seven days – a contractor is very unlikely to be able to put together the necessary information to justify the entitlement or even show that the delay is on the critical path in time. Therefore it would be a penalty to enforce the strict condition precedent and deny the contractor’s right to additional time and potential compensation. It would be unfair, especially in circumstances where the actual loss caused by the alleged late notification would be minor in nature, especially in contrast with the delay damages the contractor might become liable for. In fact they may even be nil if the employer has caused the delay in any event.

And that actually brings us back to the *Obrascon* case and the words of Mr Justice Akenhead who, it will be recalled noted that he could see:

“...no reason why this clause should be construed strictly against the Contractor and can see reason why it should be construed reasonably broadly, given its serious effect on what could otherwise be good claims for instance for breach of contract by the Employer.”

Conclusion

Although Mr Justice Akenhead’s conclusions in *Obrascon* favoured the employer, the judgment makes a number of important observations about the approach to take when considering the overall effect of Sub-Clause 20.1. It is clear that as an overall approach, Mr Justice Akenhead did not consider that Sub-Clause 20.1 should be construed strictly against a contractor, especially given the potentially serious effect it might have on what could otherwise be good claims for breach of contract against the employer. Further, although the *Obrascon* case only considered the approach to extension of time claims, it is likely that the same principle will also apply to claims for additional payment.

It is also likely that the Judge’s comment that for the purposes of the 28-day time limit in Sub-Clause 20.1, the “event or circumstance” can mean either the incident itself or the delay (or cost) which results from the event in question, is one which will be referred to in many future claims, especially where the delay or cost effect of an event is not felt until some time after the actual event itself.

Contractors too will take some further comfort in the Judge’s comments that, in unamended FIDIC forms at least, there was no special form that the claims’ notice should have, save that it must be in writing and should be in the form of a claim. That comfort though must be tempered by considering the Judge’s overall conclusions on the facts and his opinion that OHL had failed to comply with Sub-Clause 20.1.

Jeremy Glover, Partner
Fenwick Elliott

14. Fenwick Elliott Grace –
Construction Law Update 804:
Does the Superintendant have to
be fair.