

Call to Those Who've Been Affect by a Reprisal Clause

From what we've seen so far, there are two categories of contractors/engineers who have been affected by a Reprisal Clause:

1. Those placed on a blacklist because of a court action;
2. Those who declined to start a court action and instead abandoned their claim or settled for an uncharacteristically low amount because they wanted to avoid the Reprisal Clause being applied to them.

Category 1 – Placed on the Blacklist

The evidence from those in this first category would be a 2 to 4 page affidavit.

- Who you are.
- What position you hold with the contracting/engineering firm.
- Years of experience in the industry.
- The municipality or public body the contract was done for.
- One sentence on the nature of the work to be performed under the contract.
- One or two sentences on the problems that arose that led to the dispute with the municipality.
- The steps you took to resolve the dispute.
- The municipality's Reprisal Clause with regard to future work (exact wording).
- Explain how the Reprisal Clause was applied to you because of the steps you took in the dispute resolution.
- Explain the final outcome of all this.

(See template attached.)

Category 2 – Fear of the Reprisal Clause

The evidence from those in this second category would also be a 2 to 4 page affidavit.

- Who you are.
- What position you hold with the contracting/engineering firm.
- Years of experience in the industry.
- The municipality or public body the contract was done for.

- One sentence on the nature of the work to be performed under the contract.
- One or two sentences on the problems that arose that led to the dispute with the municipality.
- The municipality's Reprisal Clause with regard to future work (exact wording).
- Explain how the Reprisal Clause affected your decisions in how you approached the dispute resolution.
- Explain what you would normally have done in the dispute resolution if there had been no Reprisal Clause.
- Explain the final outcome of all this.

(See template attached.)

Templates

With regard to the templates, they are intended as a guide only:

- Please add and change the wording as you see fit to better capture your situation.
- Obviously, the blank " ____[name]_____" and the "and/or" must be refined to tailor to your situation.

Category 1

This is the 1st Affidavit
of _____ in this case
made on March ___, 2017

**NO. VLC-S-S-149919
VANCOUVER REGISTRY**

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

J. COTE & SON EXCAVATING LTD.

PLAINTIFF

AND:

CITY OF BURNABY

DEFENDANT

AFFIDAVIT

I, ____ [full legal name] ____, __ [occupation] __, with an address _____,
____ [city] ____, ____ [province] ____, SWEAR THAT:

1. I am ____ [job title] ____ of ____ [company] ____, and as such have personal knowledge of the facts and matters deposed to herein except where stated to be made on information and belief and where so stated I verily believe them to be true.
2. I have worked in the _____ business for ____ years.
3. ____ [company] ____ is a _____ company that specializes in _____. We have _____ employees.
4. In ____ [month and year] ____, we executed the ____ [name] ____ contract with the ____ [municipality of _____] _____. The work required was _____.

5. A dispute arose over _____. The issue/issues was/were _____.

6. Following the dispute resolution terms of the contract, we commenced dispute resolution by _____. None of this produced a resolution.

7. On ___[date]___, we commenced an action against ___[name of municipality]___ to recover payment which we believed we were contractually entitled to.

8. The ___[name of municipality]___ has in the terms of its invitations to tender a term (the "Reprisal Clause") that states:

_____ *[exact wording]* _____.

9. Attached to this my Affidavit as Exhibit "A" is a true copy of the terms of the invitations to tender that included the Reprisal Clause.

10. Because we had started our court action, the Reprisal Clause meant that _____.

11. Today, the action is ___[on-going/ended in confidential settlement/the judge awarded]____.

12. Today, because of the Reprisal Clause, we ___[lost how much work/opportunities to work]____.

SWORN BEFORE ME at the _____ of _____)

_____, in the Province of _____)

_____, this ___ day of March, 2017)

_____)

_____)

_____)

A commissioner for taking Affidavits in _____)

_____)

[signature] _____
[your name printed]

Category 2

This is the 1st Affidavit
of _____ in this case
made on March ___, 2017

**NO. VLC-S-S-149919
VANCOUVER REGISTRY**

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

J. COTE & SON EXCAVATING LTD.

PLAINTIFF

AND:

CITY OF BURNABY

DEFENDANT

AFFIDAVIT

I, ____ [full legal name] ____, __ [occupation] __, with an address _____,
____ [city] ____, ____ [province] ____, SWEAR THAT:

13. I am ____ [job title] ____ of ____ [company] ____, and as such have personal
knowledge of the facts and matters deposed to herein except where stated to be made on
information and belief and where so stated I verily believe them to be true.

14. I have worked in the _____ business for ___ years.

15. ____ [company] ____ is a _____ company that specializes in _____.
We have _____ employees.

16. In ____ [month and year] ____, we executed the ____ [name] ____ contract with the
____ [municipality of _____] ____ . The work required was _____.

17. A dispute arose over _____. The issue/issues was/were _____.
18. Following the dispute resolution terms of the contract, we commenced dispute resolution by _____.
19. Normally, if we cannot obtain a reasonable settlement in contractual dispute resolution procedures or in negotiation, then we would commence either an arbitration or litigation to resolve the dispute.
20. The ___[name of municipality]_____ has in the terms of its invitations to tender a term (the “Reprisal Clause”) that states:

_____ *[exact wording]* _____.
21. Attached to this my Affidavit as Exhibit “A” is a true copy of the terms of the invitations to tender that included the Reprisal Clause.
22. This means that if we decided to commence an action in court against ___[name of municipality]_____ to resolve our dispute over the contract, then ___[name of the municipality]_____ might/would reject our future bids.
23. Because we needed to get future work with ___[name of municipality]_____, we did not want to risk our future bids being rejected under the Reprisal Clause because we had commenced an action in court.
24. For that reason, we considered our options to be restricted with regard to starting a court action. Instead, we were willing to settle for an amount that we would normally not accept if we knew we could take the dispute to court.

25. In the end, we decided to _____.

SWORN BEFORE ME at the _____ of _____)

_____, in the Province of _____)

_____, this ____ day of March, 2017)

_____)

_____)

_____)

A commissioner for taking Affidavits in)

_____)

[signature]_____

[your name printed]