



National Trade Contractors Council of Canada

NTCCC disappointed by Supreme Court of Canada decision on use of reprisal clauses

The National Trade Contractors Council of Canada (NTCCC) stands with contractors in the province of British Columbia against the recent short-sighted Supreme Court of Canada ruling that dismissed the appeal by contractor J. Cote & Son Excavating.

“The decision effectively upholds 'reprisal clauses' in tender documents to force consultants and contractors who may have a dispute with the city to choose between pursuing their legal options or bidding on city contracts for the coming years,” said Sandra Skivsky, chair of the National Trade Contractors Council of Canada. “These clauses deter contractors from accessing their legal rights through fear of being banned from participation in future projects.”

The clause used against J. Cote & Son Excavating by the City of Burnaby states that the City will not accept tenders from any party that is, or has been within the last two years, involved in legal proceedings initiated against the City arising out of a contract for works or services.

This ruling has serious implications as it allows contractors to be placed on a two-year blacklist that bans them from bidding on city projects. It effectively means that there is no constitutional barrier for municipalities to use reprisal clauses at will, and leaves contractors having to decide between exercising their legal rights or having an equal opportunity to secure major contracts.

The NTCCC will continue to monitor the developments of this far-reaching ruling and the negative implications it will have on the trades industry. The NTCCC welcomes the opportunity to work with its stakeholders to address this issue and work towards developing a more equitable solution.