BUILDING LAW REPORTS

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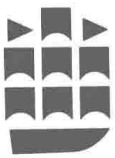
Theme

Canadian Cases



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Preface

We decided to make Canadian cases the theme of this volume since the courts of that country have had to consider problems which had not been the subject of reports elsewhere. Mr I N Duncan Wallace QC, who as editor of *Hudson on Building Contracts* has unrivalled knowledge of building cases in other common law jurisdictions, agreed to help us by suggesting cases for inclusion and to write an Introduction for this volume. He drew our attention to so many cases of potential interest that the choice was a difficult one. The selection made in this volume is therefore our own and admittedly somewhat arbitrary, but with a promise of more to come. There are certainly a number of important cases to which Mr Wallace refers in his Introduction which ought to be more readily available to readers in this country.

Mr Wallace has therefore provided us with a general introduction to Canadian cases reported in recent years which provide an excellent guide to developments in the law of that country. It will no doubt be read carefully by those who wish to keep themselves informed, in advance of the next edition of *Hudson*.

This volume also contains three recent cases decided in this country, the second of which was important enough to disrupt the publishing schedule and to displace another case. In *Junior Books* v *Veitchi Co Ltd* (at p 66 below) the House of Lords held that a nominated sub-contractor owes a duty to the main contractor's employer to take reasonable care to do the sub-contract work properly and, if negligent in so doing, will be liable to compensate the employer in damages for all the losses which may arise (subject to the usual rules as to remoteness) even though they may include what has been termed, inaccurately, "pure economic loss". The decision is one which will need to be examined carefully as it does not resolve all the questions that the case raised.

That observation or one similar to it may also be made in relation to the other and long expected decision of the House of Lords: *Pirelli General Cable Works Ltd* v *Oscar Faber & Partners* (at p 99 below). In this case the House of Lords had to consider one of the points raised in argument in *Anns* v *London Borough of Merton* [1978] AC728; 5 BLR 1, but which was ignored in the speeches, namely how to reconcile *Cartledge* v *Jopling* [1963] AC 758 with the decision in *Anns* itself, certainly as it applies to defendants other than local authorities. In taking a conservative approach and leaving it to Parliament to determine what, if any, change in the law there should be, the House of Lords nevertheless left a number of questions open. For example, in holding that proceedings against professional people must be commenced within 6 years of the damage occurring even

though the defect might be undiscovered and undiscoverable there were suggestions that the period might not start at that date but at some other date such as "cases where perhaps the defect is so gross that the building is doomed from the start". Furthermore the position of contractors and sub-contractors is not expressly made clear: it must remain a possibility that they may be considered differently from professional people so far as limitation is concerned.

Finally, we have included *Abu Dhabi Gas Liquefaction Co Ltd* v *Eastern Bechtel Corporation* (at p 117 below) since it illustrates how to overcome one of the deficiencies in the English Arbitration Acts, namely the lack of any procedure whereby arbitrations which raise common issues of law or fact may be consolidated or heard together in the same way as proceedings in the courts can be under the Rules of the Supreme Court.

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Contents

RECENT CANADIAN CASES — A SURVEY

by

Ian N Duncan Wallace QC

Building contract disputes seem to reach the courts of Canada more frequently than in the United Kingdom — partly, perhaps, because arbitration does not appear to be quite so common, and partly, perhaps, because litigation in the courts in Canada will usually reach first instance judges (and hence the various provincial reports), whereas in the UK the judgments of the Official Referees and their successors in the High Court, who deal with nearly all building litigation, were not (prior to the emergence of the *Building Law Reports*) reported at all.

In Canada the *Dominion Law Reports* are, of course, the principal series which has assumed the no doubt difficult and delicate task of selecting, on a nationwide basis from all the Provinces of Canada, all the cases deemed to be reportable. If I might be permitted a selfish request, it would be that the DLR might publish not merely periodical but also decennial or other cumulative indices of their own reports, in particular by subject-matter. At present, this service is available only in the Canadian Abridgement, which of course deals with all the series of Canadian reports.

Building Law Reports has decided that the theme of the present volume should be Canadian Cases, and the editors have asked me to provide an introduction for that purpose. Naturally, space will only permit a limited number of cases to be reported in one volume, and the editors decided to choose the four cases of the present volume not so much as cases of seminal importance in the development of building contract law as for the interest likely to be provoked in building industry circles by their rather unusual facts, and the solutions to them adopted by the Canadian courts. To me has fallen the task of attempting a rather wider-ranging review of Canadian cases since the last edition of *Hudson* in 1970; a number of the cases reviewed will therefore, of course, have already been noticed by me in the 1979 Supplement to *Hudson*.

One of the most important general developments of the common law for many years has in fact emerged as a result of disputes arising in the field of new construction — I refer of course to the well-known House of Lords decision in England of *Anns* v *London Borough of Merton* [1978] AC 728, 5 BLR 1 confirming the earlier decision of the Court of Appeal in 1972 of *Dutton* v *Bognor Regis UDC* [1972] 1 QB

373, 3 BLR 13. The novelty of those decisions has lain essentially in the discarding of the requirement of actual physical damage as a basis of liability in tort to third persons. As a result, an action in tort, equivalent for practical purposes to a warranty of care in all aspects of design and construction, has become available to future owners of buildings against all the parties concerned with the original construction. The *Anns* decision has very recently been taken considerably further by the House of Lords in the case of *Junior Books Ltd* v *The Veitchi Co Ltd* [1982] 3 WLR 477, p 66 of this volume (where a nominated sub-contractor was held liable in tort for poor workmanship or design resulting in a floor which would be more expensive to maintain, *to the employer in the building contract*). It will be noted that the "health and safety" element which was thought to be a condition of the new liability appears to have been discarded. The case may well prove to cause great difficulties of future application, but on any view there can be no doubt that this particular development of the law has been considerably (and avowedly) influenced by the powerful dissenting judgments in the Supreme Court of Canada of Laskin J (as he then was) and Hall J in *Rivtow Marine Ltd* v *Washington Ironworks* [1973] 6 WWR 692 (not in fact a building case). In general terms, this must rank as one of the most important Canadian cases of recent years.

Another area of development in the law of tort, most important as between the various parties to a construction project, including the professionals and sub-contractors and suppliers, lies in the major extension of liability in the field of negligent misrepresentation, exemplified in England by the well-known House of Lords decision in *Hedley Byrne* v *Heller* [1964] AC 465. An early and important example of its application to building cases in Canada is the decision of the Court of Appeal of British Columbia, affirming the trial judge, in *District of Surrey* v *Carroll-Hatch & Associates* [1979] 6 WWR 289 — structural engineer employed by architect liable in tort to owner — (see for its facts *Hudson*, 1979 Supplement p 133).

Turning more directly to the construction field, in *Perini Pacific Ltd* v *Greater Vancouver Sewerage* (1966) 57 DLR 2nd 307, the British Columbia Court of Appeal confirmed the old English learning to the effect that liquidated damages clauses will be invalidated, in the absence of a sufficiently explicit extension of time clause, in the case of an employer's breaches or acts of prevention — see *Hudson*, Tenth Edition, p 630. This Canadian case was followed in the English Court of Appeal in *Peak* v *McKinney* (1970) 69 LGR 1, 1 BLR 114 (*Hudson* 1979 Supplement p 631). Another most important case relating to liquidated damages in the Supreme Court of Canada relates to the enforceability of liquidated damages provisions which are in reality, as is increasingly the case nowadays, a limitation on damages — see

Elsley v *Collins Insurance Agencies* (1978) 83 DLR 3rd 1, considering the well-known and difficult House of Lords case of *Cellulose Acetate Silk* v *Widnes Foundry* [1933] AC 20.

In the same *Perini* case, but now in the Supreme Court of Canada [1967] SCR 189, that court also upheld the general validity of the "no damage" exclusion clauses for employer-caused delays, so common in North America, though virtually unheard of in the UK. This decision has been followed (and indeed extended) in a most interesting recent Canadian case which is now reported in this volume at p 58, *Woollatt Fuel* v *Matthews Group* (1979) 101 DLR 3rd 537, where such a clause in a sub-contract was applied to prevent damages being recovered even in a case where the main contractor's delay had reached such a point that it amounted to a repudiation and brought about a valid rescission of the sub-contract by the sub-contractor.The case contains an interesting discussion about the circumstances in which a contractual term will be held to survive a repudiation even if it may benefit the guilty party.

In my opinion one of the most outstanding Canadian cases of recent years is a decision of a High Court Judge in Ontario (Houlden J). The case — *Thomas Fuller Construction* v *Continental Insurance* (1973) 36 DLR 3rd 336 — contains an excellent discussion of the authorities in the UK and Canada on the exact circumstances in which overpayment by the principal creditor may invalidate a bond, and also in regard to the notice which a bondsman may be entitled to receive prior to the enforcement of the bond. This case was decided as long ago as 1970, but fortunately was deservedly rescued by the *Dominion Law Reports* from anonymity in 1973, and has since been applied by the Nova Scotia Court of Appeal in the interesting case of *Town of Mulgrave* v *Simcoe* (1977) 73 DLR 3rd 272. There is a real dearth of modern authority on this subject in England, and it may be predicted that the *Fuller* case will be of the greatest assistance to the English courts, faced with the numerous cases arising today where bondsmen are seeking to avoid responsibility for contractor defaults. The case will, I understand, be reported in a future edition of *Building Law Reports*.

One difficult area of building contracts which has troubled the courts in the United Kingdom, the United States and indeed all common law jurisdictions, has been in ascertaining the precise division of responsibilities between the contractor, or sometimes a sub-contractor or supplier, and the architect or engineer in regard to matters of design, and also in regard to questions of temporary works and methods of working and difficulties or failures during construction. The need for clarity becomes all the greater with the new readiness of the courts to create tortious relationships and liabilities between non-contracting parties for purely economic loss — which

can of course in principle even result in contractors suing architects or engineers for financial loss if a duty to the contractor is held to exist. Canada has been no exception, and the cases of the last decade indicate a not inconsiderable confusion. If I may hazard a personal view, judges and lawyers without experience of the industry can very easily be deceived by ill-considered, and usually very generalised, traditional draftsmanship in both building contracts and the consultants' contracts of employment, both of which may suggest an unrealistic degree of control and activity on the part of the supervising professional in relation to temporary works, working methods or difficulties during construction. Canadian professional contracts of employment would appear to have been particularly ill-considered in this respect when listing a number of services offered by the consultant to his client in these areas. (In the United States, the American Institute of Architects has for this reason rapidly altered the wording, so as to restrict the architect's supervisory powers, in both their employment and construction contracts.)

Thus in *City of Prince Albert* v *Steven* (1969) 3 DLR 3rd 385 (illustrated and discussed in a note in *Hudson*, 1979 Supplement under p 153) which reached the Supreme Court of Canada on other grounds, the trial judge considered that the "prime cause" of a collapse during construction which was due to a contractor disregarding altogether the resident engineer's specific instructions with regard to backfilling a dam, lay with the engineer for having "given in" on the matter the following day. Notwithstanding the decision of the Supreme Court of Canada in *Vermont Construction* v *Beatson* (1976) 67 DLR 3rd 95 (rejecting as a matter of law a claim by a contractor against an architect for financial loss resulting from defects in his drawings) the Supreme Court in *Demers* v *Dufresne Engineering* [1979] 1 SCR 146 held an engineer 50% liable to a contractor for an explosion during construction due to a glaring error in the contractor's choice of working methods involving compressed air, which the engineer had failed to detect when the contractor's proposals were submitted to him in writing. In so doing, the Supreme Court relied heavily on a term of the engineer's own employment contract undertaking to give guidance to contractors in difficulties, which under Quebec law was treated as a stipulation for the benefit of and enforceable by the contractor. Both the above cases depended on Quebec law, and it seems unfortunate that the latter was relied on so heavily by Wilson J in the Manitoba High Court (*Trident Construction* v *W L Wardrop* [1979] 6 WWR 481), where a contractor sued an engineer for expense caused by his working platform proving to be too low for the seasonal rise in the water-table. Again, in *Bilodeau* v *Bergeron* [1974] 2 SCR 345 in the Supreme Court of Canada, a contractor (who had been contractually required to engage

an inspector to check concrete deliveries by a Readimix supplier) was held entitled to recover for losses, due to defective concrete, from the inspector as well as from the supplier. (This case may perhaps be explained as depending on contract.) However, the Alberta decision of *Joslyn* v *Olsen Contractors Ltd* [1976] 1 Alta LR 2nd 174 (architect liable to contractor for wrong levels requiring additional excavation) seems correct in principle on a negligent representation (*Hedley Byrne*) basis. On the other hand, in *City of Moncton* v *Aprile* (1977) 17 NBR 2nd 678, affirmed (1980) 29 NBR 631, 66 APR 631, a contractor, in serious difficulties in effecting a tunnel crossing of a river using concrete caissons as shafts, first submitted, as required by the contract, various proposals and programmes for approval for dealing with the difficulty, which were not, however, successful, and ultimately refused to continue without specific instructions from the engineer, which had been refused. The contractor was held to be in breach of contract in so doing, in conformity with the traditional view of the law, as between owner and contractor, as to the restricted extent of the duties owed by the engineer in the area of temporary works. No discussion of the types of duty which might be expected to be owed by a professional to a contractor can in fact be complete without reference to an English judgment in an early volume of the *Building Law Reports* — that of His Honour Judge Stabb QC in *Oldschool* v *Gleesons* (1976) 4 BLR 103 at pp 130 to 132.

The preceding cases have been primarily concerned with temporary works or difficulties during construction. In regard to the design or suitability of the permanent work, there have been a number of cases in Canada. Thus in *Acme Investments Ltd* v *York Structural Steel Ltd* (1974) 9 NBR 2nd 699, the New Brunswick Court of Appeal, entirely correctly on the facts in my opinion, held a specialist steel contractor liable to the owner for a defective roof caused by design deficiencies in the drawings of his own work, which he had been required to submit to the architect for approval (see the case illustrated in *Hudson*, 1979 Supplement under p 288, and see also the not dissimilar earlier Supreme Court case of *Laminated Structures* v *Eastern Woodworkers Ltd* (1962) 32 DLR 2nd 1, where specialist suppliers were held liable for the design of their work to the main contractor, notwithstanding discussion and final determination of the design between the suppliers and the employer's advisers).

These cases concerned specialists liable notwithstanding the presence of an overall design professional. But in the interesting case of *Brunswick Construction* v *Nowlan* (1975) 49 DLR 3rd 93 (reported also in this volume at p 27, and see also the case illustrated in *Hudson*, 1979 Supplement under p 288) specialist work was not involved. In that case an architect was employed to produce plans for a dwelling-house, and a contractor was engaged to build the house in

accordance with the plans. The report does not indicate the circumstances precisely, but it appears that the architect dropped out and was not employed to supervise the construction. The Canadian Supreme Court held that the contractor was under a duty to warn the owner that the architect's plans were seriously defective in making no provision for ventilation of the roof spaces, and was accordingly liable for the remedial work to the roof where condensation and widespread rotting had occurred. As explained in the *Hudson* 1979 Supplement, this is not an easy case. In most civil law systems, considerable emphasis is always laid upon a duty to warn as a principal ground of duty by contractors to owners in service contracts. No doubt in common law systems such a duty to warn can be expressed as included in a general implied term that the work will be done in a workmanlike manner — and indeed it has been exactly so expressed by the Supreme Court of Alaska in *Lewis* v *Anchorage Asphalt Paving* (1975) 535 P 2nd 1188 (where a contractor who had prepared an agreed specification for paving work was held liable to the owner for failing to warn him, on completing the excavations, that the sub-soil would need to be stabilised and an extra course provided). Unfortunately, the majority of the Supreme Court of Canada in the *Nowlan* case cited a passage from *Hudson* dealing with design liabilities arising under the *express* terms of some building contracts, and based their judgment on an express term, commonly found in many construction contracts, that the contractor would provide competent supervision of his employees. This hardly involves an undertaking to re-examine the design of the work. With fuller facts and these reservations as to the reasoning, the decision might well be supported, but in their absence it is difficult to disagree with the dissenting judgment of Dixon J in the *Nowlan* case, who cited the appropriate general proposition from *Hudson* for cases where an architect provides the design.

A further most interesting case on its facts (which is reported in this volume at p 42) is the decision of the Canadian Federal Court of Appeals in the *Queen* v *Cabott Construction* (1977) 69 DLR 3rd 542. In that case, upholding a decision of Mahoney J, the Court held the Government liable in damages, to a contractor for the first-stage structures of a project, for expense caused by putting out a later stage to tender with a starting date which would mean that the later structures would immediately adjoin with and interfere with access to the first structures. As a result, the first contractor, in order to minimise his loss, had tendered for and obtained the later contract.

Interferences with a contractor's possession of the site can take a number of forms, and there have been some interesting cases in this area — see *Marentette Bros* v *City of Sudbury* (1974) 3 OR 2nd 305, where the Ontario Court of Appeal held the owner liable to a con-

tractor on a roadwork contract for delays caused by utilities, with whom the contractor was required to co-ordinate his activities. (The reasoning is not, however, very clear, since again much reliance was placed by the Court upon the engineer's contract of employment and also on his presiding role at co-ordination meetings with the utilities and the decisions taken at those meetings.) Again, in *Penvidic Contracting* v *Inco* [1976] 1 SCR 267 (see *Hudson*, 1979 Supplement, p 601), the Supreme Court had little difficulty in holding the owner liable for possession difficulties in a railway contract which had been caused by other contractors of the employer. Finally, in a most interesting case which I believe to be still unreported, and which fully deserves to be rescued from oblivion, an employer was held liable for delays caused by the planning authority in giving permissions to enable a contractor to start working — see *Ellis-Don Ltd* v *The Parking Authority of Toronto*, an unreported but well-reasoned and researched decision of O'Leary J in the Ontario Supreme Court in 1978, for which I am indebted to a Canadian correspondent. The case is particularly interesting in considering the precise nature of the employer's obligation in regard to the legal quality of the possession required by the contractor as against third persons, and in making clear that in appropriate cases the employer's liability is independent of fault. It is noteworthy that the only authority in England is *Porter* v *Tottenham UDC* [1915] 1 KB 776, illustrated in *Hudson* at p 328, and the researches of counsel in Canada only appeared to have obtained one US authority directly in point (in New York in 1900). (Both in the *Penvidic* and *Marentette* cases, incidentally, the courts, perhaps rather unfortunately, appear to have accepted arguments by the plaintiff contractors that it was not possible to calculate with any precision the expense caused by the interference complained of, dispensing with proof of the specific damage and awarding in one case an addition to the contractor's unit prices and in the other damages assessed by deducting contract prices from overall cost.) The *Ellis-Don* case is also of considerable importance in a quite different field, since it contains a well-reasoned discussion of the principles underlying the overheads and profit element of contractors' damages following owner-caused delays, and formally approves and applies what has become known in England since the 10th Edition of *Hudson* as "the *Hudson* formula", which was first suggested in that edition (compare "the *Eichleay* formula" which has been used on many occasions in the US Court of Claims). So far as I am aware, this is the first reported case in the United Kingdom or Commonwealth to have done so.

One area of building contract law not as yet explored in the United Kingdom arises where extensions of time are refused by the owner's supervising professional. In the United States, in the Court of Claims

jurisdiction (which is not always entirely consensual in its approach) some writers have suggested that a theory exists of "constructive acceleration orders", which may entitle a contractor, on proof of the refusal of an extension being unjustified, to financial compensation for accelerating progress in order to complete on time. In fact, there is no respectable judicial authority for this theory in the United States. In Australia, in the case of *Perini Pacific* v *Commonwealth* 12 BLR 82; [1969] 2 NSWR 530, in a well-reasoned judgment, MacFarlan J, in the Commercial Court of New South Wales, indicated clearly that this type of claim could only be on the basis of some proven breach of contract by the owner (coupled, of course, with proof of damage, in the form of completion to time by expenditure greater than would otherwise have been incurred). In that case, the breach consisted of a refusal or failure by the certifier to give any consideration at all to the contractor's applications. Again, in the important and interesting case in British Columbia of *Morrison-Knudsen* v *BC Hydro & Power* (1978) 85 DLR 3rd 186 at pp 224 *et seq* the owner, unknown to the contractor, had secretly agreed with a government representative that no extensions of time would be granted, in view of the pressing need for electricity by the contract completion date. All requests for an extension of time were refused, and the contractor carried on and finished the project with only slight delay. The Court of Appeal of British Columbia held that, while the contractor could have rescinded on the basis of a fundamental breach of contract, had he known the real reason for the refusals, and in that event would have been entitled, on the basis of established case law, to put his claim alternatively in quantum meruit and so to escape from the original contract prices, the fact that the contractor had not rescinded, but had completed the project, limited his remedy to the usual one of damages, measured in this case in terms of the additional expense incurred in completing to time (ie in accelerating progress).

In another interesting case, an architect had agreed with a tendering contractor that certain increases in taxation would be payable under the contract, and in due course allowed the contractor's claim in his final certificate, which was expressed by the contract to be binding on the employer in certain events. In *James More* v *University of Ottawa* (1975) 49 DLR 3rd 656, Morden J held that the architect had no authority to contract on behalf of the employer in the pre-tender stage on this particular matter, and accordingly that the employer was not himself bound by the certificate. However, he held the owner liable to the contractor on the basis of an ingenious but well-merited finding of unjust enrichment (since the owner, a university, had in fact recouped for that reason the tax increase in question). In another interesting case concerning binding approvals and certificates, one clause of a contract provided that the owner's

approval on completion should be binding, and another provided that disputes (which it was held related to the quality of work only) could be submitted to arbitration. In *Dartmouth Investment Ltd* v *Western Plumbing & Heating* (1975) 12 NSR 2nd 578, the Nova Scotia Court of Appeal held the owner barred from complaining, eight years after completion, that under the wording of the specification in the contract valves should have been provided at a number of points which were clearly visible, in a heating system. In another Ontario case, the Court of Appeal in *Owen Sound Public Library* v *Mial Development* (1980) 102 DLR 3rd 685 invoked the doctrine of promissory estoppel to invalidate a contractor's sudden determination of a contract without warning on the ground of non-payment against a certificate. The owner had asked the contractor to produce sub-contract invoices before he was prepared to pay sums certified by the architect in the relevant certificate, which the contractor had undertaken to do, but subsequently without notice the contractor had given notice of determination. (In civil law systems, and indeed in those common law systems, such as certain states in the US, which adopt them, the same result would no doubt have been acheived under "good faith" doctrines.)

Another case of interest is the decision of the Saskatchewan Court of Appeal in *Fischbach & Moore of Canada* v *Noranda* (1978) 84 DLR 3rd 465. Though nominally a case interpreting an express term as to the correct time for giving instructions and information to the contractor during construction, it will also be found useful in considering the application of any relevant implied term in building contracts, and should perhaps be read together with the interesting South African case of *McAlpine & Son* v *Transvaal Provincial Administrator* [1974] 3 SALR 506 in the Appellate Division of the Supreme Court of South Africa.

The first case to be included in this Volume at p 12, *Cana Construction Co Ltd* v *The Queen* (1973) 37 DLR 3rd 418 is very interesting on its facts, but should probably not be regarded as laying down any general rule for the adjustment of sums due in respect of nominated sub-contractors' accounts. In a contract which appears to have contained all the provisions normally associated with a nominated sub-contract in England (with the very important exception that no actual mention of a proposed sub-contract, as opposed to a direct contract with the owner, appears to have been made, nor any specific reference to the financial adjustment required) the contractor was required to price only for the "overhead supervision and profit" of the supply and installation of mail handling equipment machinery and, as to its value, was informed by the contract documents that "the estimate ... is approximately $1,150,000". In the event, however, the contractor was directed by a "Change Order" to enter into (and in

fact did so) a sub-contract for $2,078,000. The Supreme Court of Canada decided that on these facts the directions to the contractor constituted additional work under the variations clause, and accordingly rateably increased the contractor's quoted price for overheads etc by some $92,000.

If I may be permitted a glimpse into the future, recent developments in the law show that we live in plaintiffs' times, with the courts more than ready to find remedies wherever there is shown to be loss. The building industry in the common law countries is itself partly to blame for this — unjustifiable immunities for contractor and architect alike were deliberately obtained under the certifying provisions of contracts for their benefit, to the great detriment of the consumer and third parties. In addition, inexcusable omissions of draftsmanship in all standard forms have left the areas of responsibility for temporary works, methods of working and resolving difficulties during construction almost completely undefined, and so open to often haphazard interpretation by the courts in the shape of implied terms. Traditionally, too, the language of the professionally inspired standard forms has, as already pointed out, always contained generalised references to the approval, opinions or directions of the professionals at every available point in the contracts, and a considerable element of exaggeration of their status and power, not corresponding to the realities on site, have been found in their formalised contracts of employment (where these are used). The reality always has been, or should have been, that it is for the contractor to decide for himself upon methods of working or temporary works, insofar as these are not expressly specified. The contractor, too, is today as skilled, if not more skilled, than the professional in many areas of technological construction expertise. The supervising services of the professionals are, or should be, in the absence of statutory or civil law constraints, limited to ensuring, *in the owner's interest only*, that the *permanent* works will comply with the contract requirements. Now, however, that the courts (acting, no doubt, upon the accidental vagaries of unevenly reliable expert evidence) are prepared to impose and define duties, not only in favour of third parties, but also as between all the various parties to a construction project, it behoves those parties radically to re-examine their own contracts and to define with far greater precision their respective roles — since it is upon those contracts that the courts, in the absence of personal experience or judicial knowledge of construction projects, will rightly place the greatest reliance when considering the imposition of tortious duties, or rights of contribution between tortfeasors. The recent *Junior Books* case in England (and preceding cases on the interpretation of the English standard forms) show, for example, judicial bewilderment and little understanding of the commercial reasons for employing one