

## Estimate Price Contracts Require Advance Change Notice

Failing Which Original Cost Estimate May Be Imposed or Otherwise Statutorily Limited

### Estimates Require Subsequent Notice of Change or the Original Estimated Pricing May Apply



The world of business and commerce requires pricing flexibility within contractual relationships whereas circumstances are often such that an appropriate final price is impossible to predict during the contractual negotiations. However, this is without saying that, or suggesting that, where a agreement based only on estimated pricing, the final price will be completely arbitrary and at the whim of the supplier. On the contrary, the law imposes certain boundaries; however, it is important to note that the 'boundaries' vary depending upon the nature of the relationship whereas, for consumer-to-business relations, certain restrictions regarding estimated pricing will be applicable per the statutory law. For business-to-business relations, certain restrictions regarding estimated pricing may apply per the common law jurisprudence.

#### The Law, statutory

Generally, it appears that only consumer-to-business relations have pricing estimates protected and governed by statute. In Ontario, the *Consumer Protection Act, 2002, S.O. 2002, Chapter 30, Schedule A* (the "*CPA*"), provides that estimated pricing within a consumer agreement shall be within ten (10%) percent of the final pricing unless amendments were approved by the consumer and the supplier. Specifically, the *CPA* states:

Estimates

10(1) If a consumer agreement includes an estimate, the supplier shall not charge the consumer an amount that exceeds the estimate by more than 10 per cent.



#### Performance of consumer agreement

(2) If a supplier charges an amount that exceeds the estimate by more than 10 per cent, the consumer may require that the supplier provide the goods or services at the estimated price.

#### Subsequent agreement

(3) Nothing in this section prevents a consumer and a supplier from agreeing to amend the estimate or price in a consumer agreement, if the consumer requires additional or different goods or services.

### The Law, jurisprudence

For business-to-business matters, where a statute law addressing the issue of estimates fails to exist, the common law case of *Go Island Hopper Helicopters Ltd. v. Rotech Industries Inc.*, [1996 CanLII 2448](#) at 68 to 69, appears to address the issue whereas it was said:

68 Further, in the event that there was only an estimate, I would apply the law enunciated by Wright J. in *Kozik v. Melnick*, [1991] O.J. No. 1259 (Ont. C.J.) which concerned a quantum meruit claim arising from the refurbishment of an aircraft. The court held at p. 5:

In approaching this matter I proceed on the assumption:

(1) That a man is entitled to fair compensation for effort expended.

(2) That an "estimate" is not a contract.

(3) That while an estimate may not constitute an enforceable agreement, the conduct of the claimant, viz.: (a) his failure to keep the customer advised of the necessity to increase the fees beyond the estimate, and (b) the failure to inform the customer that other charges would be charged separately may dictate that the original estimate be adhered to. See: Thomson, Rogers and Croyden Furniture Systems Inc. (1982), 16 A.C.W.S. (2d) 196.

(4) That where circumstances change the customer is entitled to be warned of the change. Re: Solicitor (May 10th, 1967).



(5) That where an honest misunderstanding arises over the extent of the work to be done for the amount stipulated the Court will lean against the party who might have taken steps to have avoided the misunderstanding.

Re: *Phelan, O'Brien, Shannon, Lawer and Kozaroff* (1981),  
8 A.C.W.S. (2d) 494.

69 If this is an estimate case as opposed to a contract case, in my view the plaintiff was entitled to be warned of any change in the defendant's estimate.

**Summary Comment**

Unless the customer makes changes to the scope of project or object purchase, a supplier to a consumer will quite likely be held to a final price that is within ten (10%) of the estimated price. For a customer in a business-to-business matter, the protection is informal and appears imposed merely by the common law without statutory mandate; however the *Go Island Hopper* case suggests that without an warning of pricing change from the supplier, the supplier may be held to, or close to, the original estimated price. With this said, there may still be room to argue that pricing should be based on a [quantum meruit so to avoid an unjust enrichment](#).