

TREES & THE LAW

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Professional Practice - Part 1. The contract — basic aspects

Many aspects of tree care involve a Client (the customer) and a Contractor (the tree care company), legally known as the 'parties'. When agreeing to undertake work both parties should be clear about the work to be performed. The simplest way to do that is with a written contract.

In some cases, prior to issuing a contract, the Client will have issued a Request for Proposal (RFP) for a project. Typically, that will be a mix of specific and vague items. The specific part might include a project description such as prune all street trees in a certain area, create an inventory or develop a management plan. The vague part will often be designed to solicit ideas about how best to accomplish the task.

Submissions might cover a range of approaches: prune in a certain way or at a certain time of year; create an inventory using accurate surveys with GPS that ties into other data bases, or simply use street addresses; develop a management plan for a twenty year time frame with a detailed plan for the first five years.

The Client selects the approach that best meets their needs for the money available. The Contractor submits a proposal based on what they feel they can offer for a certain price. Once the scope of work to be performed and other conditions are agreed to, a contract is drawn up and signed by both parties.

Avoid verbal contracts! They are seldom enforceable because it is one person's word or interpretation against the other person's word or interpretation. The better form of contract is a written document, which once signed by both parties, becomes legally binding. In it the Client specifies what work is to be done (the Services), by whom (the Contractor), when, where and how along with any detailed provisions required by either party. There are several key parts to a well written contract.

1. The Client's name (legal name for a municipality or business, personal name for a private client such as a homeowner) and address. The Contractor's legal business name and address. This is the entity or person performing the services or delivering the products. Names and addresses must be correct.
2. The services to be undertaken such as risk assessment, inventory, pruning, or removal, and/or the products to be delivered such as trees, soil, mulch. These services or products are the deliverables that the Client agrees to pay for.

The services should be spelled out clearly. They represent the scope of work that the Contractor will undertake and the Client expects. Within this section of the contract specific details would include:

- start date and sometimes finish date.
- location of work and extent (provide geographic boundaries, or street address), which trees to prune/remove, or assess, the type and sizes of plants to be installed — ideally with an agreed upon written plan.
- any other deliverables expected such as a written report (possibly accompanied by the digital files),

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- or presentations to council or other groups.
- the standards to be used (ANSI, which level of risk assessment, or nursery standards).
- 3. The price agreed upon. This may be a fixed sum for the services described, or it may be an upset price that is the highest price payable, but may be lower if less work is involved, or parts of the services are not needed. In some situations, the price might be set at a limit subject to further discussion if more time/money is needed to get the job completed. If the project involves a lot of time and money there may be milestones established. Once each milestone has been reached and the Client accepts the progress to that point, a certain amount of money is then paid out.

The pricing schedule should be well thought out to provide all parties some sense of what to expect as the project proceeds.

4. Specify how any disagreements will be handled. If the contract is not local, state which jurisdiction has legal enforceability (usually the Client's).
5. If the contract might be terminated specify under what circumstances (services not delivered as expected, products not of correct quality).
6. Provide space where each party acknowledges they have read the contract and agree to its terms.
7. Provide space for a signature and date from each party, making sure that the person signing actually has authority to sign contracts.

Throughout the Contract it is important to avoid any ambiguity. That is, be sure all of the wording has only one meaning.

Contract law is a complex area and involves many subtle issues. For small projects a simple contract may suffice, but municipalities, larger companies or corporations may have complex contracts with dozens of clauses. It is not unusual to see a 'save harmless' clause which in effect, says that regardless of the cause or reason for non-fulfillment or non-payment, the Client cannot ever be sued. If in doubt seek legal advice before signing the contract.

The above guidance is general in nature and is not intended as legal advice. If you need specific guidance consult a lawyer. Dunster & Associates has a set of WORD files available for sale that includes a sample contract and typical report limitation clauses for general reports, risk assessment reports, and appraisal reports. Contact Dunster & Associates for more information. jd@dunster.ca



How it can go wrong

Examples of court cases arising from contract disputes

There are many court cases about breach of contract, lack of clear contract, interpretation of contracts, and enforceability in light of ambiguous wording. Some examples include:

- Bal v. British Columbia (Agriculture), 2013 BCSC 1941
Interpretation of insurance coverage defined in a contract.
- Chamberlain v. Meierhans, 2003 CanLII 5515 (ON SC)
Sale of property trees removed before occupation but after contract signed.
- Fegol v. Chimilar, 2000 MBQB 147
Agreement to plant trees — verbal, more planted not paid for but accepted and not requested to be moved.
- Hanna and Lauff v. Muir, 2000 BCSC 1388
3rd party not bound by original contract.
- Kordyban v. Windmill Orchards Ltd., 2000 BCSC 348
Orchard planting and maintenance
- Wallace v. Joughin, 2014 BCPC 73
Boundary tree dispute, verbal contract in dispute.
- West End Tree Service Inc. v. Danuta Stabryla, 2010 ONSC 68
Interpretation of contract, reasonable expectation of promisee.