

September 9, 2014

# Avoiding A Written Contract No Assurance of Maintaining Flexibility

Avoiding a written contract is no assurance that parties can maintain maximum flexibility in their dealings. In *S & J Gareri Trucking v. Onyx Corporation*, 2014 ONSC 476, Onyx was successful in a tender with the City of Mississauga (the City) to provide five years of snow removal services. In so doing, Onyx indicated that it would allocate 19 trucks to providing services under the contract.

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At the time, Onyx did not have 19 trucks available to service the contract with the City. Onyx turned to the plaintiffs (Harlow Contracting and S & J Gareri Trucking) to obtain the services of additional trucks to meet the requirements of the contract with the City.

After the first year of its contract with the City, Onyx advised Harlow and S & J that their services were no longer needed. Onyx indicated that it had let go of its subcontractors because of budget cuts. Its contract with the City, however, remained in place.

The central issue at trial was whether Harlow and S & J had a contract with Onyx, and if so what its term was. The trial judge found that the plaintiffs had a five year contract with Onyx in part because each of the plaintiffs had contributed to the deposit that Onyx had given to the City as part of the tender. Having done so, Onyx through its conduct committed to contracting with Harlow and S& J for five years.

At trial, Onyx indicated that it was more profitable to bring the work with the City in-house and eliminate the subcontractors and that it had taken steps to increase its own complement of trucks. Onyx also conceded at trial that it had avoided entering into written agreements with the plaintiffs because it thought it would be advantageous to do so.

As Justice Mew stated, Onyx "made a deliberate choice not to commit itself in writing. It must live with the consequences of that". The cautionary tale from this case is that avoiding a contract to gain flexibility may ultimately prove a poor strategy. In the absence of a written contract, courts will look to give business efficacy to the commercial relationship between those who do business with each other.