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# Certifying functions of a superintendent in construction or infrastructure projects

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A common description for the role of superintendent on a construction of infrastructure project is that they are typically responsible for the direct supervision of the activities on the construction site on a daily basis. They are not a party to the project but rather are appointed via the contract.

In essence, the superintendent is required to exercise professional independence and judgment when administering the contract. Administering the contract involves:

- certifying functions; and
- acting as an agent for the principal.

Learn more about the role of the superintendent in our earlier blog, "Superintendent vs. project manager in construction or infrastructure projects".

In today's blog, we explore examples of the certifying functions of the superintendent.

## What is the certifying function of the superintendent?

Certifying has many synonyms, such as assessing, verifying, attesting, endorsing…and the list goes on.

It is important to acknowledge that when performing the certifying function, the superintendent may be required to make decisions that are not in the principal's interests. For example, the principal may want the superintendent to be strict when it comes to pricing variations or assessing extension of time claims. On the other hand, a contractor will expect the superintendent to be flexible and consider the realities of what is happening on site.

When negotiating your construction or infrastructure contract, look out for when the principal specifies that the superintendent is appointed only as the principal's agent. This is less desirable for the contractor, who may push for a third-party certifier to be appointed so that the certifying function can be performed independently.

It is critical to seek professional legal advice when negotiating a contract for an infrastructure or construction project.

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# 5 common examples of a superintendent's certifying functions

## 1. Payment certificates

During the course of the project, the contractor is typically required to issue progress claims or milestone payments for work performed, or milestones achieved.

The superintendent responds to the progress claim by evaluating the progress of work on site and issuing payment certificates to the contractor. Part of this assessment involves determining when the contractor has provided satisfactory proof of the amount due and payable to workers and subcontractors.

The payment certificate certifies the amount due to the contractor based on completed work and any approved variations. Issuing accurate and timely payment certificates is critical for any project as it ensures that payments are made fairly and in accordance with the contract terms.

The manner in which the superintendent performs their role can help to build the level of trust between the parties involved in the project. Communication between the contractor and the superintendent is also key to avoiding disputes relating to the progress claims.

## 2. Variations in construction projects

Variations are almost inevitable in a construction or infrastructure project. A variation may be triggered by a myriad of reasons. These reasons will usually be well documented in the contract and will often require careful negotiation to ensure that there is no ambiguity when the superintendent is valuing a variation.

Variations may include:

- the need for additional work;
- changes to the works;
- extra cost due to latent conditions;

- changes to work due to statutory requirements being at variance with a provision of the contract;
- changes in the bill of quantities; among others.

Certifying variations to the contract is, therefore, a critical function of the superintendent. Assessing variations requires ensuring that they are documented, priced, and agreed upon by all relevant parties. This process helps manage expectations and avoids disputes relating to additional costs or delays.

## 3. Extension of time (EOT)

EOTs are also a typical occurrence in a construction or infrastructure project. Delays can occur due to a variety of reasons, such as adverse weather conditions or unforeseen site conditions.

Superintendents play a key role in determining and certifying EOTs. By certifying EOTs, the superintendent helps maintain the integrity of the project's schedule and ensures that the contractor is not unfairly penalised for factors beyond their control.

When assessing and certifying an EOT, the superintendent is typically required to:

- give reasons for not extending time in full or at all;
- determine whether the contractor has taken all reasonable steps to prevent the delay or minimize the effect of the delay;
- estimate liquidated damages (if applicable);
- assess any bonus payable to the contractor (if applicable); or
- value extra costs of delay payable to the contractor.

## 4. Practical completion

Achieving practical completion is a significant milestone in any infrastructure or construction project. The superintendent is responsible for assessing and certifying the project's completion in line with the contract requirements.

To get to this practical completion stage, the certifying role includes:

- conducting quality assurance checks and inspections throughout the project lifecycle to ensure that best practices are followed;
- ensuring that the completed works are finished to the required standard;
- ensuring that defects are rectified before certifying practical completion;

- where possible to do so, accepting minor defects when certifying that practical completion has been achieved; and
- ensuring that the site is clean and safe for handover.

Certifying practical completion marks the transition from the construction phase to the defect liability period. The superintendent will typically issue a certificate of practical completion to the contractor at this stage.

### 5. Certification of final completion

Final completion or simply ‘completion’ of an infrastructure or construction project is achieved at the end of the defect liability period. During the defect liability period, the contractor is responsible for rectifying any defects that arise after practical completion.

Certifying the final completion of the project includes issuing a final certificate of completion and any associated documents. This final certifying function signifies that all works have been completed to the required standard and in accordance with the contract terms.

Issuing the certificate of completion often triggers:

- the release of final payments due to the contractor;
- release of security that the principal is required to return to the contractor; and
- project closeout.

## Get help from a construction law lawyer

Wambeti Legal can help you with your construction project by:

- assisting with the negotiation of your infrastructure or construction contract to ensure that the role of the superintendent is addressed adequately;
- aiding in drafting appropriate letters to assist with the administrative functions of the superintendent;
- reviewing notices and directions drafted by superintendents to give assurance that they are aligned with contractual terms.

### Contacting Wambeti Legal

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