2026 01G 6393

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:	**J.M.J. HOLDINGS LTD.**	**PLAINTIFF**
AND:	**HIS MAJESTY THE KING IN RIGHT OF NEWFOUNDLAND AND LABRADOR, AS REPRESENTED BY THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE**	**DEFENDANT**

STATEMENT OF CLAIM

A. THE PARTIES:

1. The Plaintiff, J.M.J. Holdings Ltd. ("**JMJ**"), is a body corporate incorporated under the laws of Newfoundland and Labrador, with its registered office at Suite 201, 1243 Kenmount Road, Paradise, Newfoundland and Labrador, A1L 0V8. JMJ carries on business as a general contractor and has done so for more than twenty years.

2. The Defendant, His Majesty the King in Right of Newfoundland and Labrador (the "**Province**"), is named in accordance with the *Proceedings Against the Crown Act*, RSNL 1990, c P-26. At all material times the Province acted through the Department of Transportation and Infrastructure ("**TI**") and its Minister, Deputy Minister, Assistant Deputy Minister, officers, employees and agents, for whose acts and omissions the Province is liable.

3. At all material times the Province retained consultants, including Allnorth Consultants Limited ("**Allnorth**"), Gibbons Snow Architects Inc. ("**Gibbons Snow**") as prime consultant and CBCL Limited ("**CBCL**") as engineer, to investigate the site and to design the Project described below, and on or about 15 September 2025 retained Englobe Corp. ("**Englobe**") to investigate the site further. The reports, drawings and specifications of those consultants were issued to bidders and to JMJ by the Province as the Province's own documents, and the Province is responsible for them.

B. OVERVIEW:

4. This action arises from the Province's cancellation, announced on 3 June 2026 and confirmed in writing on 4 June 2026, of a contract under which JMJ was to construct a new kindergarten to grade 12 school at Cartwright, Labrador, for a contract price of $38,373,536.00 plus HST.

5. The Province invited bids on the basis that bedrock lay roughly two metres beneath the building footprint and that the foundations would bear on it. Two business days after bids closed, the Province received a revised report from its own geotechnical consultant withdrawing that information, and five weeks before it accepted JMJ's bid its structural engineer revised the foundation drawings. The Province told JMJ neither. It accepted JMJ's bid at JMJ's tendered price, allowed JMJ to mobilize and to award its subcontracts, and disclosed the revised report only after JMJ had reported from the site that the ground was not as represented. It has never disclosed the revised drawings.

6. The foundation could not be built as tendered. The Province redesigned it over the following nine months, during which the critical path work could not proceed. The Province then cancelled the contract. The contract permits the Province to terminate only for JMJ's insolvency or for an uncorrected default after written notice. The Province alleged no default, gave no notice, identified no contractual right, and announced publicly that it would redesign and re-procure the same Project.

7. JMJ claims damages for the wrongful cancellation and repudiation of the contract, for the delay and disruption the Province caused before it, for the Province's misrepresentation of the site conditions, and for the Province's release of JMJ's confidential commercial information. JMJ also claims payment for work performed, and indemnity for the claims and liens of the subcontractors and suppliers left unpaid when the Province walked away from the project.

C. THE TENDER:

8. Beginning in or about 2022 the Province planned a new school at Main Road, Cartwright, Labrador, to replace the Henry Gordon Academy (the "**Project**").

9. On or about 22 November 2022 TI retained Allnorth to investigate subsurface conditions at the site, including the depth to bedrock. Allnorth excavated test pits on 3 December 2022 and delivered a report bearing an engineer's stamp dated 13 January 2023 (the "**2023 Report**"). The 2023 Report stated that bedrock was encountered at depths of between 1.5 and 2.2 metres and recommended that the building footings be placed on bedrock, with an allowable bearing capacity of 350 kPa.

10. In 2024 Allnorth carried out a further investigation for the Province and delivered a report dated 30 October 2024 (the "**2024 Report**"). The 2024 Report recorded the depth to bedrock in ten further test pits as between 1.7 and 2.1 metres and repeated the recommendation that footings bear on bedrock at 350 kPa.

11. On or about 6 February 2025 the Province published an Invitation to Tender for the Project, numbered 100963001-15730 (the "**Tender**"), with a specification prepared by Gibbons Snow Architects Inc. and CBCL Limited and issued for tender on 24 January 2025 (the "**Specification**"). The Tender closed, as amended, on 3 April 2025.

12. The Specification, drawings and amendments issued with the Tender were prepared by or for the Province. Section 31 00 00.01 of the Specification required bidders to examine the soil report provided as an appendix to the Specification. The structural drawings issued with the Tender provided for foundations bearing on bedrock.

13. By Amendment No. 2 dated 13 March 2025 the Province instructed bidders that all existing material beneath the entire building footprint was to be excavated to bedrock and replaced with 200 mm minus stone, and added the 2024 Report to the Specification as Appendix D. By Amendment No. 5 dated 21 March 2025 the Province added the 2023 Report to the Specification as Appendix E.

14. By the Tender documents, including the 2023 Report, the 2024 Report and Amendment No. 2, the Province represented to bidders, including JMJ, that (together, the "**Geotechnical Representations**"):

    (a) bedrock was present beneath the building footprint at a depth of approximately 1.5 to 2.2 metres;

    (b) the building foundations could and would be founded on that bedrock;

(c) the work of excavating to bedrock beneath the building footprint and replacing the excavated material could be carried out as specified; and

(d) the geotechnical information issued with the Tender was a reliable basis on which to price and plan the foundation, excavation and related work, and the Province knew of nothing that rendered it inaccurate or incomplete.

15. The Province knew and intended that bidders would rely on the Geotechnical Representations in pricing the Work. The site was remote and the tender period fell in winter. JMJ's civil subcontractor attended the site on 15 March 2025, but with the ground frozen and snow-covered a site visit could not reveal the subsurface conditions, and bidders had no reasonable opportunity to carry out their own subsurface investigation before bids closed.

16. JMJ relied on the Geotechnical Representations. On 3 April 2025 JMJ submitted a bid of $38,373,536.00 plus HST (the "**Bid**"), which was the lowest of the bids received.

17. On submission of the Bid a contract arose between JMJ and the Province governing the tender process ("**Contract A**"), on the terms of the Instructions to Bidders and the other Tender documents. It was an express or implied term of Contract A that the Province would:

(a) conduct the tender process fairly and in good faith;

(b) not award the contract on a basis materially different from that on which bids were invited; and

(c) disclose to bidders, and not withhold, information in its possession that materially affected the nature, cost or feasibility of the Work.

18. Under section 10 of the Instructions to Bidders the Bid was irrevocable for sixty days after the closing date, and the Province could request that bidders agree to extend that period.

D. THE REVISED GEOTECHNICAL REPORT:

19. On 7 April 2025, two business days after the Tender closed, the Province received from Allnorth a revised version of the 2023 Report, marked "Revised April 7, 2025" (the "**Revised Report**").

20. Allnorth carried out no new field work for the Revised Report. Unlike the 2023 Report, the Revised Report bore no engineer's stamp, so that no engineer certified that it had been reviewed or accepted professional responsibility for its contents. As compared with the 2023 Report, the Revised Report:

    (a) removed the statement of the depth to bedrock at each test pit;

    (b) replaced the statement that bedrock was encountered with a statement that "bedrock or large boulders" was encountered, and changed the test pit logs in Appendix A from "terminated on possible bedrock" to "terminated", adding "possible large boulders";

    (c) recorded three test pits as simply terminated, without reference to bedrock; and

    (d) replaced the recommendation that footings be placed on bedrock at 350 kPa with recommendations that footings be placed at specified elevations, and on bedrock only if bedrock occurred above those elevations, with reduced bearing capacities of 235 kPa on bedrock and 150 kPa on rock fill placed over clay and silt.

21. The Revised Report was requested by or on behalf of the Province on a date, and for reasons, that are known to the Province and not to JMJ.

22. From 7 April 2025 at the latest the Province knew that the Geotechnical Representations were inaccurate, incomplete or unreliable. The Province has since described the 2023 Report as containing errors and omissions that became evident on receipt of the Revised Report on 7 April 2025.

23. The Province did not disclose the Revised Report, or the fact that its geotechnical information had been revised, to JMJ or to any other bidder. It did not amend or re-issue

the Tender, did not cancel the Tender, and did not give JMJ an opportunity to review or adjust the Bid.

24. On 21 May 2025, before the irrevocable bid period expired on 2 June 2025, the Province asked JMJ to extend the period for which the Bid remained open for acceptance to 30 June 2025, and JMJ agreed. At that time the Province had the Revised Report and JMJ did not.

25. On or about 22 May 2025, five weeks before it accepted the Bid, the Province's engineer CBCL issued a revised structural drawing package titled "Issued for Structural Revisions", superseding the drawings issued for construction and dated 3 April 2025 (the "**Structural Revisions Package**"). The Province did not provide the Structural Revisions Package to JMJ before the award and has not provided it since. JMJ learned of its existence only from the documents issued with PCO 1, described below.

26. By letter dated 27 June 2025 the Deputy Minister of TI accepted the Bid. The letter did not mention the Revised Report or the Structural Revisions Package.

27. Had the Province disclosed the Revised Report and the Structural Revisions Package before the award, JMJ would not have entered into the Contract described below at the price and on the schedule tendered.

E. THE CONTRACT:

28. On the Province's written acceptance of the Bid on 27 June 2025 JMJ became the Contractor, and a contract arose between JMJ and the Province in accordance with section 16(b) of the Instructions to Bidders. The parties' Agreement Between Owner and Contractor is dated 27 June 2025 and was executed by JMJ on 14 July 2025 and again on 3 September 2025, and by the Province, through the Assistant Deputy Minister of TI, on or about 8 September 2025 (the "**Agreement**", and together with the documents incorporated in it, the "**Contract**").

29. Under the Contract:

    (a) JMJ agreed to perform all of the Work required by the Contract Documents (Article 1 of the Agreement);

(b) the Province agreed to pay JMJ $38,373,536.00 plus HST, subject to adjustment in accordance with the General Conditions (Article 3 of the Agreement);

(c) JMJ was to commence the Work by 27 June 2025 and substantially perform it by 27 October 2027 (Article 1(c) of the Agreement); and

(d) the Contract Documents included the Instructions to Bidders, the Bid, the General Conditions of Contract (re-issued June 1, 2023) (the "**General Conditions**" or "**GC**"), the Specification, the drawings and the amendments issued during the Tender.

30. The General Conditions provide, among other things, that:

(a) additional instructions will be issued by the Owner with reasonable promptness (GC 3.4);

(b) if the Contractor is delayed in the performance of the Work by any act or fault of the Owner, the Contract Time shall be extended and the Contractor shall be reimbursed for the costs incurred as a result of the delay (GC 8.1);

(c) the Owner may terminate the Contract only if the Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors or has a receiver appointed (GC 10.1), or if the Owner has given the Contractor written notice that it is in default, instructing it to correct the default within five working days, and the Contractor has failed to correct it (GC 10.2 to 10.4);

(d) where the Contract is brought to an end by the Owner's default, the Contractor is entitled to be paid for all Work performed and for any loss sustained upon products and plant supplied, with reasonable overhead, profit and damages (GC 11.4);

(e) the Owner may make changes by altering, adding to or deducting from the Work, with the Contract Price and the Contract Time being adjusted accordingly (GC 18.1), and no claim for a change in Contract Price or Contract Time is valid unless the change is ordered in writing and valued or agreed to be valued under GC 19 (GC 18.2);

(f) where the price of a change cannot be promptly agreed and the change is required to proceed, the Owner's valuation is subject to final determination under GC 16 (GC 19.6), the Owner must meanwhile certify the value of the work performed (GC 19.7), both parties are to act promptly (GC 19.8), and credits are to be based on the net cost of material and labour (GC 19.9);

(g) interest at 2% per annum is payable on certified amounts unpaid more than sixty days (GC 21.3), the Owner is to retain a holdback of 10% (GC 21.12), and interest under GC 21 applies to amounts due under the Contract or under any award of a court (Article 4(b) of the Agreement);

(h) if either party suffers damage because of any wrongful act or neglect of the other, it shall be reimbursed by the other party for such damages (GC 29.1);

(i) the Contractor shall not be held liable for any damage resulting from errors, inconsistencies or omissions in the Contract Documents (GC 32.4); and

(j) if the subsurface conditions at the site differ materially from those indicated in the Contract Documents or represented by the Owner before bid submission, the Owner shall, after prompt investigation, issue appropriate instructions for changes in the Work as provided in GC 18 (GC 35).

31. The Contract contains no provision permitting the Province to terminate it, or to suspend or abandon the Work, for the Province's convenience. GC 18.1 permits changes to the Work with a corresponding adjustment of the Contract Price and Contract Time; it does not permit the Province to delete the whole of the Work.

32. It was also an express or implied term of the Contract that the Province would provide JMJ with accurate and complete information in its possession concerning the site and with a design that could be built; would not hinder or prevent JMJ's performance; and would perform the Contract honestly and in good faith, exercising any discretion under it reasonably and for the purposes for which it was conferred.

33. In reliance on the Contract JMJ delivered the required performance and labour and material payment bonds and insurance, and mobilized to Cartwright.

34. Also in reliance on the Contract, and as the Contract contemplates (GC 14), JMJ awarded subcontracts and supply agreements for the Work beginning immediately after the award. Between 2 and 17 July 2025 JMJ awarded subcontracts and supply agreements for structural steel, formwork, site work, concrete, reinforcing steel, masonry, electrical work, painting and appliances. Between August 2025 and May 2026 JMJ awarded further subcontracts for mechanical work, roofing, cladding, sprinklers, flooring, gymnasium equipment, operable partitions and roof fall protection. In all, JMJ awarded at least twenty subcontracts and supply agreements, representing the substantial majority of the value of the Work, in addition to a supply agreement for ready-mix concrete at unit rates. The Province knew that JMJ was doing so.

F. PERFORMANCE: THE FOUNDATION REDESIGN AND THE RESULTING DELAY:

35. At the pre-construction meeting on 17 July 2025 the Province informed JMJ that the foundation design would be changed. On 21 July 2025 the Province issued a proposed change ("**PCO 1**") to the building foundation elevations, footings and block partitions. The Province did not disclose the Revised Report or tell JMJ that PCO 1 had been prepared in response to it, and did not provide the Structural Revisions Package on which PCO 1 was based.

36. On 5 and 8 August 2025 JMJ submitted its price for PCO 1, being an addition of $681,493.56 plus HST, and advised the Province that the approach of winter would affect the schedule if the foundations could not be completed before 15 November 2025.

37. In August 2025 JMJ excavated test pits at the site and found subsurface conditions that differed materially from those indicated in the Contract Documents. On 22 August 2025 JMJ reported its findings to TI in writing and asked for direction. That report was notice under GC 35.1.

38. On 25 August 2025 TI gave JMJ the Revised Report for the first time. TI stated that it was aware of issues with the original geotechnical report with respect to rock elevations, that the Revised Report had been received approximately one week after tender closing, and that PCO 1 had been prepared by its consultants to address those issues.

39. By letter dated 29 August 2025 TI stated that PCO 1 was required to address a structural design issue created by errors and omissions in the geotechnical report that became evident on receipt of the Revised Report on 7 April 2025. By the same letter TI rejected JMJ's price and directed, purportedly under GC 19.6, that the change be valued as a net credit to the Province of $307,336.20.

40. By letter dated 30 August 2025, within the five days allowed by GC 7.2, JMJ disputed the Province's valuation and decision. JMJ recorded that the Revised Report could and should have been provided much earlier, that its late disclosure had increased the schedule and coordination impacts of the change, and that the conditions encountered on site raised doubt about the reliability of the Revised Report itself. The valuation of PCO 1 remains subject to final determination under GC 16 and GC 19.6.

41. With knowledge of the Revised Report, of PCO 1 and of JMJ's dispute of its valuation, the Province executed the Agreement on or about 8 September 2025 and thereby affirmed the Contract with JMJ at the Contract Price. JMJ had executed the Agreement on 14 July 2025, and again on 3 September 2025 without waiving the rights reserved by its letter of 30 August 2025.

42. On 15 September 2025 Englobe, retained by the Province, excavated five test pits at the site to depths of between 7.0 and 7.2 metres. No bedrock was encountered. By a report dated 19 September 2025 Englobe advised the Province that the site was underlain by moisture-sensitive silty sand and gravel to the full depth investigated, that groundwater would be at or near the base of the footing excavations, and that a bearing resistance of 100 kPa should be used for design.

43. The difference was not confined to the absence of bedrock. The moisture-sensitive soils and groundwater encountered required a different excavation and foundation approach from that tendered, including engineered rock fill and crushed stone in quantities and proportions that the tendered design did not contemplate. There was no locally operated quarry at Cartwright, so that the additional rock and crushed stone could not be obtained quickly or at the unit costs on which the Bid had been based.

44. As a result:

(a) the subsurface conditions at the site differed materially from those indicated in the Contract Documents and represented to bidders, within the meaning of GC 35;

(b) the instruction in the Tender to excavate beneath the building footprint to bedrock could not be carried out as specified;

(c) the foundation and civil design issued with the Tender, and as changed by PCO 1, could not be built; and

(d) the Geotechnical Representations were untrue.

45. JMJ completed the site preparation phase of the Work in the autumn of 2025. Foundation work could not proceed until the Province had redesigned the foundation and civil works to suit the actual conditions and had approved the resulting change, as the Deputy Minister of TI acknowledged in writing on 29 October 2025.

46. On or about 24 October 2025 the Province issued a further contemplated change ("**PCO 3**") to revise the civil and foundation design to suit the actual site conditions. The Province revised PCO 3 on or about 6 November 2025 and again on or about 10 April 2026. JMJ priced the redesigned work and submitted its change submission to the Province, which was under review by the Province in May 2026 and had not been approved when the Province cancelled the Contract. The Province never issued written authorization for the redesigned foundation work.

47. Because the foundation redesign was not complete and approved before winter, work on site was suspended over the winter of 2025 to 2026 with the knowledge of the Province, and had not resumed when the Province cancelled the Contract in June 2026. JMJ gave the Province written notice of the delay and of its claim for the costs of the delay, and the cause of the delay was a continuing one for which a single notice suffices under GC 8.4.

48. On 9 February 2026 the Province issued Change Order No. 3, in the amount of $339,000.00, for a bonded warehouse at Red Bay, Labrador, to receive and store Project materials during what the Province itself described as the project delay period. The Province described the change as a mitigation measure to reduce delay costs by supporting timely procurement, controlled storage and staged release of materials. JMJ and its subcontractors continued to procure materials for the Project accordingly.

49. In reliance on Change Order No. 3, JMJ leased approximately 8,000 square feet of warehouse space at Red Bay for the storage of Project materials, for a fixed term commencing 1 April 2026 at a rent of $17,825.00 per month plus HST, without any right of early termination. JMJ signed the lease on 24 April 2026.

50. On 11 May 2026 JMJ's principals met in St. John's with the Assistant Deputy Minister of TI and TI's Director of Infrastructure to seek decisions on the outstanding change, delay and progress billing items on the Project. The Assistant Deputy Minister stated that the Department was working through the Cartwright change submission as quickly as possible and that a further update should be available within approximately two weeks, and agreed in principle to provide messaging that JMJ could share with its subcontractors to restore their confidence in the Project. The Director stated that TI was not interested in seeing JMJ placed in financial difficulty as a result of the Project.

51. The delay to the Project was caused by the inaccuracy of the Geotechnical Representations, the Province's failure to disclose the Revised Report, and the time taken by the Province to investigate the site and redesign the foundation. It was caused by the acts and faults of the Province within the meaning of GC 8.1, and not by JMJ or anyone for whom JMJ is responsible.

52. At all material times JMJ was ready, willing and able to perform the Contract. JMJ was not in default of the Contract, and the Province at no time gave JMJ notice of any default under GC 10.2 or otherwise.

53. As of 5 June 2026 the Province had issued change orders totalling $1,381,152.40, including Change Order No. 4 described below, bringing the Contract Price to $39,754,688.40 plus HST.

G. THE CANCELLATION:

54. JMJ and the Province's consultants continued to perform the Contract through May 2026. On 5 May 2026 the Province's prime consultant reviewed and returned JMJ's submittal for the operable partitions, and JMJ awarded a subcontract to Coastline Specialties for that work the same day. On 20 May 2026 JMJ awarded a subcontract to Thaler Metals for the roof fall protection system.

55. On or about 20 May 2026 the Minister of TI approved a decision to cancel the Contract and to reset the Project by re-scoping, redesigning and re-procuring it. The Province did not inform JMJ, and for the following two weeks allowed JMJ and its subcontractors to continue to commit to the Project.

56. On the morning of 3 June 2026, in a meeting of approximately ten minutes, the Assistant Deputy Minister of TI informed JMJ's principals that the Province had been directed to reassess the Project, that the Contract was being cancelled, and that the Province would go back to redesign and re-procurement. JMJ asked which provision of the General Conditions the Province was relying on. The Assistant Deputy Minister did not identify any provision, stated that the Province's legal team would deal with the contract provisions, and described the meeting as a courtesy call before public communication.

57. Later the same day, before giving JMJ any written notice, the Province announced publicly by news release that the construction contract for the new K-12 school in Cartwright had been cancelled following a review that had identified significant risks related to cost escalation, delays, design issues and site conditions, and that the Province intended to re-procure the Project under revised terms. Those statements were understood by the public, the construction industry and JMJ's subcontractors and suppliers to refer to JMJ.

58. By email on 4 June 2026 the Assistant Deputy Minister wrote that the Province had made the decision to cancel the Project with JMJ effective as of that date, and that TI's officials would work with JMJ to complete any remaining Work required before the securing and closure of the site. The email cited no provision of the Contract and alleged no default by JMJ. The Province did not give JMJ any notice of default under GC 10.2, did not allow JMJ any period to correct a default, and did not invoke GC 10 or any other provision of the Contract.

59. On 4 June 2026 JMJ objected in writing, recorded that no contractual mechanism had been identified, and required the Province to identify the contractual provision on which it relied, the scope of any remaining Work, what JMJ was authorized to tell its subcontractors and suppliers, and how the Province proposed to address subcontractor, supplier, material, storage, bonding, demobilization and other commercial impacts. The Province did not answer those questions.

60. By letter from its solicitors dated 23 June 2026 JMJ gave the Province written notice that the cancellation was a breach and a repudiation of the Contract, and again required the Province to identify the provision relied on. By further letters dated 10 July, 17 July, 11 August and 25 August 2026 JMJ's solicitors pressed the Province for its position. The Province has never identified any contractual basis for the cancellation. By letter dated 21 August 2026 and email dated 4 September 2026 the Province, through its solicitor, denied liability, declined to state a position, and asserted that JMJ's damages would have to be demonstrated in court.

61. At the Province's request, after 4 June 2026 JMJ carried out work to make the site safe and secure, including the work described in Change Order No. 4 dated 5 June 2026. JMJ did so in mitigation of its loss and without prejudice to its position that the Contract had been wrongfully brought to an end. JMJ and its subcontractors incurred standby and other costs after 3 June 2026, including when access to the site was obstructed during the week of 9 to 14 June 2026.

62. JMJ accepted the Province's repudiation of the Contract by its solicitors' letter of 23 June 2026 and, to the extent necessary, accepts it by this Statement of Claim. The Contract is at an end by reason of the Province's wrongful conduct.

H. NOTICES AND CONDITIONS PRECEDENT:

63. JMJ gave the Province the notices required by the Contract, including under GC 7.2, GC 8.4, GC 16.1 and GC 35.1, and all conditions precedent to this action have been satisfied, waived or dispensed with. In the alternative, the Province at all material times had actual knowledge of the matters in dispute and of JMJ's claims, and has suffered no prejudice from the form or timing of any notice.

64. GC 16.2 does not bar this action. The Province has brought the Contract to an end and the disputed Work will not be performed or substantially performed. The matters in dispute require immediate consideration while evidence is available, and this action might otherwise become prescribed by reason of delay.

I. CAUSES OF ACTION:

(1) Wrongful termination and repudiation of the Contract:

65. The Province had no right under the Contract or at law to cancel the Contract. The only rights of termination conferred on the Province by the Contract are those in GC 10, which arise only on JMJ's insolvency or on a default that JMJ has failed to correct after written notice. Neither circumstance existed and the Province did not follow GC 10.

66. The Province's cancellation of the Contract was a fundamental breach and a repudiation of it, which JMJ has accepted.

67. In the alternative, if the Province purported to act under GC 18.1 or under any right to amend the scope of the Work, that provision does not permit the deletion of the whole of the Work. Any change under it required the Contract Price and the Contract Time to be adjusted and the change to be valued under GC 19, which the Province has not done.

68. In the further alternative, if the Province had and exercised any right to end or reduce the Work, it did so in breach of its duty to exercise its contractual rights and discretions reasonably, honestly and in good faith, as pleaded below.

69. JMJ relies on GC 11.4 as recording the parties' agreed measure of the Contractor's entitlement where the Contract is brought to an end by reason of the Owner's default, namely payment for all Work performed and for any loss sustained upon products and plant supplied, with reasonable overhead, profit and damages.

(2) Breach of the Contract during performance:

70. In breach of the Contract the Province:

    (a) failed to provide JMJ with accurate and complete information in its possession about the site;

    (b) failed to provide a foundation and civil design that could be built;

    (c) withheld the Revised Report from JMJ until 25 August 2025, and has withheld the Structural Revisions Package altogether;

(d) failed, when the subsurface conditions were found to differ materially from those represented, to investigate promptly and to issue appropriate instructions for changes in the Work with the corresponding adjustment of the Contract Price and Contract Time, contrary to GC 35.2 and GC 18.1;

(e) failed to complete the redesign, and to issue and approve the necessary changes, with reasonable promptness or at all, contrary to GC 3.4 and GC 19.8;

(f) failed to value PCO 1 in accordance with GC 19, purported to direct a credit that was not based on the net cost of material and labour as GC 19.9 requires, and failed to certify the value of the work under GC 19.7;

(g) failed to extend the Contract Time and to reimburse JMJ for the costs of the delay caused by its acts and faults, contrary to GC 8.1; and

(h) hindered and prevented JMJ's performance of the Work.

71. Further, JMJ is entitled under GC 29.1 to be reimbursed for the damage it has suffered because of the Province's wrongful acts and neglect pleaded in this Statement of Claim, and under GC 32.4 JMJ is not liable for any damage resulting from the errors and omissions in the Contract Documents.

(3) Owner-caused delay:

72. The Project was delayed by the acts and faults of the Province within the meaning of GC 8.1. JMJ repeats the matters pleaded under Part F above.

73. Particulars of the delay caused by the Province include that the Province:

(a) withheld the Revised Report from 7 April to 25 August 2025, so that the defect in the foundation design came to light only after the award, at the pre-construction meeting on 17 July 2025, instead of being corrected before the Tender closed or before the Contract was awarded;

(b) issued PCO 1 on 21 July 2025 on the strength of the Revised Report, without investigating the site, so that the foundation design had to be changed again once the actual ground conditions were known;

(c) did not investigate the site itself until 15 September 2025, after JMJ's test pits in August 2025 had shown that the conditions differed materially from those represented;

(d) took from September 2025 until at least April 2026 to redesign the foundation and civil works, issuing PCO 3 on or about 24 October 2025 and revising it on or about 6 November 2025 and 10 April 2026, and never issued a change order or written authorization for the redesigned work;

(e) failed to issue instructions, answer requests for information and review submittals with reasonable promptness and within the times required by the Contract, contrary to GC 3.4 and Sections 01 26 00 and 01 33 00 of the Specification;

(f) as a result, caused the foundation work, which JMJ had planned to complete before 15 November 2025, to be carried into the winter and suspended until the spring of 2026 or later;

(g) failed to extend the Contract Time, or to adjust the Contract Price, for the delay and for the changed conditions, contrary to GC 8.1, GC 18.1, GC 19 and GC 35.2; and

(h) instead of approving the redesign and allowing the Work to resume, cancelled the Contract.

74. The Province acknowledged the delay and its cause. On 29 October 2025 the Deputy Minister of TI acknowledged in writing that foundation work could not proceed until the redesign was complete, and Change Order No. 3 provided for storage of materials during the project delay period as a mitigation measure to reduce delay costs.

75. None of the delay was caused by JMJ or by anyone for whom it is responsible. The foundation work was on the critical path of the Project, so that JMJ's forces could not work efficiently elsewhere on the Project while it was held up, and the costs JMJ incurred could not reasonably have been avoided.

76. JMJ is entitled under GC 8.1 to an extension of the Contract Time for the whole of the period of delay and to be reimbursed for the costs of the delay, including extended site

supervision and general conditions, head office overhead, standby of equipment, the winter shutdown and remobilization, escalation in the cost of labour and materials, storage, the delay claims of its subcontractors and suppliers, and the cost of extending its bonds and insurance. In the alternative, JMJ claims those costs as damages for breach of the Contract, including breach of the Province's implied obligation not to hinder or prevent JMJ's performance.

(4) Breach of the duty of good faith and honest performance:

77. The Province owed JMJ a duty to perform the Contract honestly and in good faith, not to lie to or knowingly mislead JMJ about matters directly linked to the performance of the Contract, and to exercise its contractual rights and discretions reasonably and for the purposes for which they were conferred.

78. In breach of that duty the Province:

(a) entered into the Contract, and required JMJ to perform it at the tendered price, while withholding the Revised Report;

(b) issued PCO 1 without disclosing that it had been prepared to address errors and omissions in the geotechnical information on which JMJ had bid;

(c) sought a credit from JMJ for a change made necessary by the Province's own errors and omissions;

(d) approved Change Order No. 3, encouraged JMJ and its subcontractors to continue to commit to materials for the Project, allowed JMJ to enter into a non-cancellable lease of the Red Bay warehouse and further subcontracts, gave JMJ the assurances pleaded in Part F above on 11 May 2026, and then cancelled the Contract;

(e) approved the decision to cancel the Contract on or about 20 May 2026 and concealed it from JMJ for two weeks while JMJ, to the Province's knowledge, continued to place orders and incur costs for the Project;

(f) cancelled the Contract in order to relieve itself of the consequences of its own design errors and to re-procure the Project on different terms;

(g) announced the cancellation publicly, in terms that reflected on JMJ, before giving JMJ written notice and without giving JMJ an opportunity to prepare its subcontractors, suppliers and site team; and

(h) refused, and continues to refuse, to identify any contractual basis for the cancellation.

(5) Negligent misrepresentation:

79. The Province owed JMJ a duty of care in making the Geotechnical Representations. There was a special relationship between them: the Province invited JMJ to bid, required bidders to examine the soil reports included in the Specification, knew that JMJ would rely on the information it supplied, and intended that JMJ do so. GC 35 confirms that the subsurface conditions indicated in the Contract Documents and represented by the Owner before bid submission were the agreed basis of the Work.

80. The Geotechnical Representations were untrue, inaccurate or misleading.

81. The Province made the Geotechnical Representations negligently. In particular the Province, by itself or its consultants:

(a) relied on shallow test pits, excavated in part in frozen ground and without drilling or coring, to state that bedrock had been encountered;

(b) stated as fact that bedrock was encountered when the test pit logs recorded only possible or inferred bedrock;

(c) instructed bidders to excavate to bedrock without confirming that bedrock existed at a depth at which that was practicable; and

(d) failed to verify the 2023 Report and the 2024 Report before issuing them to bidders.

82. Further, the Geotechnical Representations were continuing representations. From 7 April 2025 the Province knew that they were inaccurate or unreliable, and it came under a duty

to correct them before JMJ acted on them by keeping the Bid open and by entering into the Contract. The Province did not do so.

83. JMJ reasonably relied on the Geotechnical Representations in preparing and submitting the Bid, in keeping the Bid open for acceptance, in entering into the Contract, and in mobilizing and awarding subcontracts, and has suffered loss as a result.

(6) Breach of Contract A:

84. In breach of Contract A the Province:

(a) withheld the Revised Report and the Structural Revisions Package from JMJ before the award;

(b) awarded the Contract on the basis of geotechnical information that it knew to be inaccurate or unreliable; and

(c) failed to conduct the tender process fairly and in good faith.

85. Sections 2(e) and 2(f) of the Instructions to Bidders do not apply to the Province's failure to disclose information it obtained after the Tender closed and withheld when it accepted the Bid, and in any event do not exclude liability for the Province's conduct in the circumstances pleaded.

(7) Unauthorized disclosure of confidential commercial information:

86. In administering the Contract the Province received from JMJ, in confidence and for the purposes of the Contract only, JMJ's commercial and financial information, including its schedule of values, its applications for payment with line-item pricing, and its quotations and supporting documents for changes in the Work, which disclose JMJ's labour rates, its percentage mark-ups for overhead, profit, bonds and insurance, and the prices quoted to JMJ by its subcontractors and suppliers (the "**Commercial Information**").

87. The Commercial Information was not public and was commercially sensitive, as the Province knew. Its disclosure to JMJ's competitors, subcontractors and suppliers could reasonably be expected to harm JMJ's competitive and negotiating position.

88. The Contract does not permit the Province to disclose the Commercial Information to subcontractors or to the public. GC 14.6 permits the Owner, on reasonable request, to tell a subcontractor only the percentage of that subcontractor's own work that has been certified for payment. It was an implied term of the Contract that the Province would use the Commercial Information only for the purposes of the Contract and would not disclose it except as GC 14.6 permits or as the law requires.

89. In breach of the Contract and of its duty of confidence, the Province disclosed the Commercial Information without JMJ's consent. In particular, on or about 15 July 2026, in response to an access to information request under file TI-128-2026, the Province released to an applicant JMJ's quotations and supporting documents for the change orders on the Project, including JMJ's hourly rates, its mark-ups for overhead, profit, bonds and insurance, and the prices of its subcontractors and suppliers, withholding only names and signatures. The Province gave JMJ no notice of the request and no opportunity to object, as section 19 of the *Access to Information and Protection of Privacy Act, 2015* required, and did not apply the exception for third party business information in section 39 of that Act.

90. The disclosures were made in the weeks after the cancellation, when JMJ's subcontractors and suppliers were pressing JMJ for payment, and in circumstances where the released information was liable to be, and was, misread as showing that JMJ had received money owed to them. The Province has denied liability for the disclosures.

91. The Province is liable to JMJ for breach of the Contract, for breach of confidence and for breach of its duty of good faith. The Commercial Information had the necessary quality of confidence, it was given to the Province in circumstances importing an obligation of confidence, and the Province used and disclosed it without authority and to JMJ's detriment.

92. As a result JMJ has suffered loss, including harm to its competitive position in future tenders, damage to its relationships with its subcontractors and suppliers, the cost of answering demands made on the strength of the disclosed information, and harm to its reputation.

(8) Subcontractor claims and lien exposure:

93. The Province knew and intended that JMJ would perform the Work through subcontractors and suppliers, as the Contract contemplates (GC 14). By the time of the cancellation JMJ had entered into the subcontracts and supply agreements pleaded in Part E above, and the Province, by Change Order No. 3, had approved the procurement and storage of materials for the Project. GC 14.7 provides that nothing in the Contract creates a contractual relationship between a subcontractor and the Owner, so that the claims of JMJ's subcontractors and suppliers arising from the Province's conduct fall on JMJ.

94. JMJ's subcontracts provide for payment out of the progress payments JMJ receives from the Province. By cancelling the Contract the Province cut off the funds from which JMJ's subcontractors and suppliers were to be paid, while continuing to hold the holdback and other amounts owing under the Contract.

95. Since the cancellation JMJ's subcontractors and suppliers have made claims against JMJ for work performed, design and detailing, materials ordered, fabricated and stored, cancellation and restocking charges, overhead, loss of profit and demobilization. Further claims are expected, including for structural steel fabricated for the Project. JMJ will provide particulars of those claims before trial.

96. On or about 18 June 2026 Wolseley Canada Inc., a supplier to JMJ's mechanical subcontractor R&R HVAC & Controls Ltd., registered a claim of lien, no. 20998, in the amount of $27,060.87 against the Project lands and the funds payable under the Contract, and has since commenced an action in this Court against R&R HVAC & Controls Ltd., the Province and JMJ to enforce it. Further claims of lien may be registered.

97. These claims and liens are the direct and foreseeable result of the Province's wrongful cancellation of the Contract and of the delays it caused. But for that conduct JMJ's subcontractors and suppliers would have been paid in the ordinary course out of the Contract funds.

98. JMJ claims from the Province:

(a) indemnity for all amounts JMJ is found liable to pay, or reasonably pays in settlement, to its subcontractors and suppliers by reason of the cancellation and the delays, with interest and costs;

(b) the costs of defending, settling and discharging claims of lien and lien actions arising from the cancellation, including the cost of posting security to vacate any lien; and

(c) a declaration that, as between JMJ and the Province, the Province is responsible for those claims and liens, and an order that the holdback and other amounts owing under the Contract be paid to JMJ or into court so that the liens may be discharged.

99. JMJ does not admit that any claim of lien is valid, that the *Mechanics' Lien Act* binds the Province or attaches to the Project lands, or that any subcontractor or supplier is entitled to the amount it claims. JMJ reserves the right to seek contribution and indemnity from the Province in any lien action and to ask that any such action be tried together with this one.

(9) Amounts owing for Work performed:

100. The Province has not paid JMJ in full for the Work performed under the Contract, including certified and uncertified Work to 4 June 2026, holdback retained under GC 21.12, approved change orders, the delay and standby costs claimed, and the Work performed at the Province's request after 4 June 2026. JMJ claims those amounts as a debt due under the Contract, with interest under GC 21.3 and Article 4(b) of the Agreement.

101. In the alternative, JMJ performed that Work at the Province's request and the Province has had the benefit of it. JMJ is entitled to be paid its reasonable value on a quantum meruit basis.

J. DAMAGES:

102. As a result of the matters pleaded above JMJ has suffered loss and damage, including:

(a) the profit and contribution to overhead that JMJ would have earned on the balance of the Contract to its scheduled completion on 27 October 2027;

(b) amounts unpaid for Work performed, including holdback;

(c) the cost of changes and additional work, including PCO 1 and the foundation redesign;

(d) the costs of delay and disruption, including extended site and head office overhead, winter shutdown and remobilization;

(e) mobilization, bonding, insurance and other costs incurred in reliance on the Geotechnical Representations and on the Contract;

(f) the cost of storing materials, including the rent payable for the full term of the Red Bay warehouse lease;

(g) demobilization, site restoration and standby costs incurred after 3 June 2026;

(h) its liability to subcontractors and suppliers arising from the cancellation and the delays, including claims for work performed, materials ordered or fabricated, cancellation charges and loss of profit, and the cost of responding to those claims;

(i) the cost of defending and discharging claims of lien and lien actions;

(j) loss caused by the disclosure of the Commercial Information;

(k) loss of bonding capacity and of business opportunity, the Contract having represented a substantial part of JMJ's bonded capacity throughout its term; and

(l) such further loss as may be proven at trial.

103. JMJ will provide particulars of its damages, including expert evidence as to quantum, before trial.

104. JMJ has taken reasonable steps to mitigate its loss, including by instructing its subcontractors and suppliers on 3 June 2026 to suspend their commitments and to preserve materials and records, and by carrying out the site safety and closure work requested by the Province.

105. The Province's conduct pleaded under Part G and under heading I(4) above, including concealing a decision already taken while JMJ continued to commit to the Project, announcing the cancellation publicly before telling JMJ in writing, and refusing to identify

any contractual basis for it, was high-handed and a marked departure from ordinary standards of decent behaviour, and warrants an award of punitive damages.

106. JMJ pleads and relies on the *Proceedings Against the Crown Act*, RSNL 1990, c P-26; the *Judgment Interest Act*, RSNL 1990, c J-2; the *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c A-1.2; the *Mechanics' Lien Act*, RSNL 1990, c M-3; the *Public Procurement Act*, SNL 2016, c P-41.001; and the *Rules of the Supreme Court, 1986*.

107. JMJ proposes that this action be tried at St. John's, Newfoundland and Labrador.

K. RELIEF CLAIMED:

108. JMJ therefore claims against the Province:

(a) a declaration that the Province wrongfully terminated and repudiated the Contract;

(b) damages for breach of the Contract;

(c) a declaration that JMJ was entitled to an extension of the Contract Time for the delay caused by the Province, and damages for, or reimbursement under GC 8.1 of, the costs of that delay;

(d) damages for breach of the duty of good faith and honest performance;

(e) damages for negligent misrepresentation;

(f) damages for breach of Contract A;

(g) damages for breach of contract and breach of confidence in disclosing the Commercial Information, and a declaration that the Province is not entitled to disclose the Commercial Information except as GC 14.6 or the law permits;

(h) payment of all amounts owing for Work performed, or in the alternative the reasonable value of that Work;

(i) a declaration that the Province is liable to indemnify JMJ for the claims and liens of its subcontractors and suppliers arising from the cancellation and the delays,

and damages in the amount of those claims and of the cost of defending and discharging them;

(j) an order that the holdback and other amounts owing under the Contract be paid to JMJ or into court;

(k) a declaration that the valuation of PCO 1 is to be finally determined in this action, and payment of the amount so determined;

(l) special damages, to be particularized;

(m) punitive damages;

(n) pre-judgment and post-judgment interest under the *Judgment Interest Act* or, in the alternative, interest under GC 21.3 and Article 4(b) of the Agreement;

(o) costs, on a solicitor and client basis or on such other scale as this Honourable Court considers just; and

(p) such further and other relief as this Honourable Court considers just.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 23rd day of October, 2026.

O'KEEFE & SULLIVAN
Darren D. O'Keefe and Madison L. Budgell
Solicitors for the Plaintiff, J.M.J. Holdings Ltd.
whose address for service is:
80 Elizabeth Avenue, Suite 202,
St. John's, NL A1A 1W7
Email: dokeefe@okeefesullivan.com

TO: **His Majesty the King in Right of the Province of Newfoundland and Labrador**
c/o Department of Justice and Public Safety
4th Floor, East Block, Confederation Building
P.O. Box 8700, St. John's, NL A1B 4J6
Attention: David Hearn and Nick Leamon, Civil Division

TO: **Supreme Court of Newfoundland and Labrador**
c/o Registry
309 Duckworth Street,
St. John's, NL

ISSUED at St. John's, in the Province of Newfoundland and Labrador, this 23 day of October, 2026.

Katherine Yates
Court Officer

2026 01G 6393
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:	**J.M.J. HOLDINGS LTD.**	**PLAINTIFF**
AND:	**HIS MAJESTY THE KING IN RIGHT OF NEWFOUNDLAND AND LABRADOR, AS REPRESENTED BY THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE**	**DEFENDANT**

NOTICE TO DEFENDANT

You are hereby notified that the Plaintiff may enter Judgment in accordance with the Statement of Claim or such order as, according to the practice of the Court, the Plaintiff is entitled to, without any further notice to you unless within ten (10) days after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland and Labrador at St. John's a Defence and unless within the same time a copy of your Defence is served upon the Plaintiff or the Plaintiff's solicitors at the Plaintiff's solicitors' stated address for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the Statement of Claim and the sum of $100.00 for costs to the Plaintiff or the Plaintiff's solicitors within ten (10) days from the service of this notice upon you, then this proceeding will be stayed.

TO: **His Majesty the King in Right of the Province of Newfoundland and Labrador**
c/o Department of Justice and Public Safety
4th Floor, East Block, Confederation Building
P.O. Box 8700, St. John's, NL A1B 4J6
Attention: David Hearn and Nick Leamon, Civil Division

Receipt Number: **R202601G21734**

Supreme Court of Newfoundland and Labrador

St. John's General Division

Receipt Date: Oct-28-2026 **Amount Received:** $123.00

Payment Type: Cheque **Cheque Number:** 001363

Received From: O'Keefe and Sullivan

Notes:

On Behalf Of	Classification	Event Type	Case		Amount
JMJ v. HM in Right of NL	Case Related	Statement of Claim Issued and Filed	202601G6393	(1)	$120.00
JMJ v. HM in Right of NL	Law Society			(1)	$3.00
			Total:		**$123.00**

Katherine Yates

SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

This receipt is your only proof of payment, please retain.