Proactive Contracting

Nuottila, Jouko; Kauppila, Osmo; Nysten-Haarala, Soili Päivikki

Published in:
Journal of Strategic Contracting and Negotiation

DOI:
10.1177/2055563616669738

Published: 01.01.2016

Document Version
Peer reviewed version

Citation for pulished version (APA):
Nuottila, J., Kauppila, O., & Nysten-Haarala, S. P. (2016). Proactive Contracting: Emerging changes in attitudes towards project contracts and lawyers' contribution. *Journal of Strategic Contracting and Negotiation*, *2*(1-2), 150-165. https://doi.org/10.1177/2055563616669738

Proactive contracting: Emerging changes in attitudes toward project contracts and lawyers' contribution

Abstract

Proactive contracting is a practice-oriented research stream. Scholars focused on proactive contracting have suggested fundamental changes for corporate contracting. Researchers have proposed companies should improve their contracting capabilities and corporate lawyers should serve business objectives instead of preparing for possible litigation. This research focuses on two key areas of proactive contracting: a) the purpose of the project contracts and b) the role of lawyers contributing to project contracts. The research goal was to find out whether business managers and corporate lawyers recognize a need for evolvement in project contracting as suggested by the proactive contracting literature. The research data were collected with a survey of commercial contracting professionals. The research results indicate that managers and lawyers share the same view that contracts are made for business objectives and benefits. However, managers' and lawyers' perspectives differ on lawyers' role in preventing and resolving disputes.

Keywords

Contract management, proactive contracting, project contracting, contracts, contracting capabilities

Paper type: Research paper

Introduction

For a profitable and sustainable project business, reaching the objectives set for the projects, both monetary and non-monetary, is a priority. However, despite comprehensive research and the development of project management techniques, a significant portion of projects still do not meet the projects' objectives (Barros et al., 2004; Charette, 2005; Cruz and Marques, 2013; Ruuska et al., 2011). Thus, scholars have started to look at solutions beyond project management for these problems many projects struggle with. There are interesting issues in project governance (Ruuska et al., 2011), contractual governance of inter-firm exchange (Lumineau and Oxley, 2012), and a proactive approach to strategic contracting (Berger-Walliser et al., 2011; Boyer and Newcomer, 2015; Cummins, 2015; Haapio, 2006a, 2013). In this paper, we contribute to the discussion on the proactive approach, proactive contracting specifically.

The representatives of the emerging proactive law have suggested that one solution for the challenges projects face could be a more proactive approach to contracts (Barton, 2008; Nystén-Haarala et al., 2010; Siedel and Haapio, 2010). Proactive contracting is a practice-oriented research stream on contracting, contracting processes and the organizational capabilities of contracting. This stream is multidisciplinary, aiming to provide academic research and practical knowledge on how well-prepared, strategic contracting can support "successful trading relationships, their formation and management" (Cummins, 2015). Scholars promoting proactive contracting have suggested fundamental changes to the corporate approach to contracting (Siedel and Haapio, 2010; Tayyeb, 2014). They also suggest companies should improve their contracting capabilities to make better contracts and corporate lawyers should serve business objectives instead of preparing for possible litigation (Haapio, 2013; Nystén-Haarala et al., 2010; Siedel and Haapio, 2011). Scholars of law and strategy

similarly see law not only as a tool to control risk but also to create value (DiMatteo, 2010). For example, Bagley (2005; 2008) links "legal astuteness" to competitive strategy and Bird (2007; 2011) sees law as a legal resource in transforming the operations of the entire organization to create additional value.

Scholars suggest that the proactive contracting approach could be applied in project contracting to increase cooperation, enhance communication and decrease the number of disputes between the project parties (Haapio, 2013; Pohjonen and Visuri, 2008). Scholars argue this approach would also lead to a collaborative climate between the project parties and facilitate greater co-creational value to be produced in the project (Siedel and Haapio, 2010; Tayyeb, 2014). In addition, proactive contracting redefines the role of lawyers in business and suggests that traditionally the role of lawyers has been to make strict contracts and safeguard a company's interests against other contracting parties; thus, there is unused potential in utilizing lawyers' contribution in achieving business objectives (Haapio, 2006b; Nystén-Haarala et al., 2010; Siedel and Haapio, 2010, 2011).

Two claims can be derived from proactive contracting literature. Firstly, it is suggested that currently contracts are more focused on traditional legal objectives of controlling and safeguarding than on fulfilling business objectives (Haapio, 2013; Siedel and Haapio, 2010; Tayyeb, 2014). Secondly, the lawyers' potential contribution towards achieving business objectives has been underutilized (Barton, 2008; Haapio, 2006a; Nystén-Haarala et al., 2010). Thus, this study focuses on: a) the purpose of the project contracts and b) the role of lawyers contributing to project contracts. We were interested in finding out whether business managers and corporate lawyers recognize a need for evolvement in project contracting as suggested by the proactive contracting literature. Currently there is little empirical evidence on whether lawyers, who recognize the need, also manage to support business to succeed.

The study was conducted as a survey among professionals working in commercial contracting. The sample included global coverage, but most of the respondents are located in Europe and North America. The sample also covered a wide range of industries and thus provides insight into the development of project contracting in project business. The research questions for this paper were the following: What is the objective of project contracts as seen by business managers and corporate lawyers? How is the role of lawyers who contribute to project contracts seen by business managers and corporate lawyers? An additional research interest was to find out if there are differences between managers' and lawyers' perspectives on these issues.

This paper is organized as follows: The history of proactive contracting and similar approaches aiming at increasing the value of lawyering are covered briefly. The empirical part of the study is based on a review of current research on proactive contracting, focused on the purpose of contracts and lawyers' roles in project contracting. Next, the methodology, research design and survey setting are discussed in more detail. Then, the research results are presented and discussed, and finally, the findings are presented with ideas for further research.

The emergence of proactive contracting

The term proactive contracting was first introduced by Helena Haapio (1998) in the conference paper "Quality Improvement through Proactive Contracting: Contracts Are Too Important to Be Left to Lawyers" as follows:

> Proactive contracting, as used in the title of this session, refers to recognizing and making use of contracts and contracting processes as planning tools to guide and support the success of your business. It provides the support needed to identify

> opportunities in time to take advantage of them—and potential problems in time to take preventive action. Proactive contracting provides tools and techniques for the early detection of gaps, traps, and problems and the prevention of negative surprises.

In the early 2000s, Finnish and other Nordic researchers and corporate lawyers started to collaborate on proactive approach. Some Nordic scholars call the results of this collaboration the Nordic School of Proactive Law (Haapio, 2006b; Nordic, 2015). Collaboration between business leaders, lawyers and academics was typical for the proactive approach and kept it on a practice-oriented path (Nordic, 2007). The origins of proactive law can be found from preventive law which Louis M. Brown (1909–1996) first introduced in the U.S. in the 1950s (Brown, 1950; Dauer, 2008; Haapio, 2006b). In the United States, there is an active school of preventive law, the National Center for Preventive Law (NCPL), which operates under California Western School of Law in San Diego (NCPL, 2015). Brown's preventive law aimed to help people minimize the risk of legal trouble and sought to increase legal awareness among the public. Since then, preventive law has strongly moved towards elaborating problem solving especially in Thomas D. Barton's and James Cooper's works (Barton and Cooper, 2000; Barton, 2009; Cooper, 1998).

While Scandinavian scholars have focused on proactive contracting and better lawyering, other scholars have taken proactive law further to various directions. Berger-Walliser (2012) discusses the development of the proactive law movement and concludes that there is a need for research identifying the best practices, and concrete methods and tools to turn proactive law into practice. One step to this direction is a recent study on how proactive law could be used to drive and regulate corporations to use principles of sustainable development in the U.S. (Berger-Walliser and Shrivastava, 2015).

Both proactive law and preventive law belong to a new research stream seeing law as an underused means in exploring opportunities in strategic planning and creating value. Proactive law, mainly in the corporate environment, has similar types of objectives as preventive law in the private, individual context. The focus of both approaches is an *ex ante* consideration of contracts and planning of exchange relationships.

Various views in the literature on the purpose of contracts

There are several perspectives on contracts and on the purpose of contracts in the project contracting literature. One of the most common views is based on transaction cost economics (TCE; Williamson, 1979, 1985). Williamson (1975) studied commercial organizations in the market and came up with factors that can be harmful for a company's position in a transaction. These factors included bounded rationality of company's employees managing a transaction in a complex environment with many uncertainties (Williamson, 1975). Another harmful factor is opportunism, which may occur in transactions especially when there are a limited number of choices in the market (Williamson, 1975). Although Williamson's research field was economics and his research was more about a micro-analysis of economic organizations than management, TCE was soon applied in management. In project research, TCE is often a dominant perspective when project contracting and project contracts are studied (e.g., Argyres and Mayer, 2007; Turner, 2004; Turner and Simister, 2001). The dominant TCE perspective on project contracting usually emphasizes the need to control and monitor other project parties and safeguard one's position against risks (uncertainty) and opportunism by other parties (e.g., Turner, 2004).

Another widely discussed perspective on contracts in the project literature is relational contracting. Relational contracting is based on legal research with observations that companies

rarely litigate or enforce contracts in court (e.g., Lumineau and Oxley, 2012; Macaulay, 1963; Macneil, 1978). Instead of taking disputes to mediation or publicly to court, companies rely on their relational capabilities to settle disputes and agree on the way forward. Companies seem to respect the history of the business relationship (shadow of the past) and do not want to ruin any emerging business opportunities by gaining a bad reputation (shadow of the future; e.g., Lumineau and Oxley, 2012; Poppo et al., 2008). The relational contracting perspective on project contracting usually emphasizes the cooperative norms developed over the course of an extended relationship, interorganizational collaboration dynamics and future business opportunities (Gil, 2009; Henisz et al., 2012; Lumineau and Oxley, 2012; Matthews and Howell, 2005).

Some authors of proactive law apply TCE perspective as a background theory for governing contractual relations (Nystén-Haarala, 1998). The drawback of this perspective is that the focus is placed on controlling contracting parties and networks (Haapio, 2013; Nystén-Haarala, 1998). However, relational capabilities are rarely developed as a process and documented as an operational policy (Nystén-Haarala et al., 2010). Relational capabilities center and personalize in managers, and thus, relational contracting appears to be undocumented in contracts and occurs in the personal relationships between the contracting parties (Haapio, 2013; Nystén-Haarala, 1998; Poppo and Zenger, 2002). Although proactive contracting emphasizes contract being more than a document, it also highlights the importance of capturing relational aspects in the contract document itself (Nystén-Haarala et al., 2010). According to proactive contracting scholars, the intent to cooperate and create value together in a project should be presented in the contract document clearly with concrete steps for taking action (Pohjonen and Visuri, 2008; Tayyeb, 2014). Proactive contracting views contract as a practical tool for cooperation between the project parties (Berger-Walliser et al., 2011):

> A proactive contract is crafted for the parties, especially for the people in charge of its implementation in the field, not for a judge who is supposed to decide about the parties' failures. Instead of providing the most advantageous solution for one of the parties, in case of the failure of the other party to comply with its contractual obligations, the proactive contracting process and documents seek to align and express the interests of both sides of the contract in order to create value for both.

Proactive contracting research promotes a new mindset in contracting, emphasizing user-centered contract design and collaboration by managers and lawyers on making functional contracts (Haapio, 2013). Researchers seek to facilitate the contracting process and negotiation habits to anticipate areas of possible conflicts and to discuss and include those issues in the contract in a cooperative spirit and thus avoid conflicts and disputes during the implementation phase of projects (Siedel and Haapio, 2011; Tayyeb, 2014). Proactive contracting mainly reflects concepts from relational contract (instead of control-oriented views by TCE). This means that the relational capabilities of contracting parties are an important asset for managing commercial transactions instead of enforceable clauses of contract to control the other contracting parties (Siedel and Haapio, 2011; Tayyeb, 2014). Facilitation to cooperate and co-create value, clear communication, concrete agreement of responsibilities and efficient management of changes are the primary goals of carefully planned contracts.

Lawyer's role in project contracting

A classical view on contracts is that a contract is a detailed agreement of the responsibilities, including safeguarding clauses to protect a company's position in the event of conflicts and failures (Nystén-Haarala, 1998). This view emphasizes the need for legal knowledge and capabilities to predict court decisions in legal disputes (Haapio, 2013). It sets lawyers in the

central position in drafting and making contracts and does not consider contracting a contextual business phenomenon (Nystén-Haarala, 1998). This traditional view on contracting increases lawyers' tendency to prepare for ex post interpretation of contracts in court, to basically prepare for the worst case scenario of the commercial transaction in question. However, businesses have often been run without lawyers' involvement, in the past and the present (Macaulay, 1963; Nystén-Haarala et al., 2010). Furthermore, lawyers can be seen as a hindrance for running businesses efficiently and making deals between business people and between companies (Macaulay, 1963; Nystén-Haarala et al., 2010).

In their interview study of American corporate lawyers and managers Nelson and Nielsen (2000) found a variety of professional roles of lawyering. They identified three types of professional roles ranging from limiting advice to legal mandates to combining legal and business advice and finally giving priority to business objectives exactly as proactive law recommends. Nelson and Nielsen (2000) suggest that lawyers now limit their traditional gatekeeping functions in order to present themselves as enthusiastically committed to corporate objectives, since the changes in the business and managerial environment so require.

Proactive contracting promotes an agenda of revising business lawyers' behavior: Leave some of the safeguarding and preparing for litigation and start to contribute to business objectives and facilitate the co-creation of value in projects (Pohjonen and Visuri, 2008). This perspective emphasizes the importance of managers and lawyers working together to identify the most important business issues and risk factors, taking care of covering these issues in contracts and collaborating on these areas with the other contracting parties (Haapio, 2013; Siedel and Haapio, 2011; Tayyeb, 2014). Proactive contracting emphasizes that a contract should be seen as a value-creating agreement between the project parties and not only a legal weapon to be used against other parties in court if disputes arise. This approach requires a

change in the role of business lawyers, and their focus must shift from possible court cases to business objectives and opportunities.

The shift in business lawyers' perceptions and behavior, which proactive law is promoting, also relates to the work of Richard Susskind (2008). He criticizes the present costly business model of a traditional law firm, and suggests that legal services are going to change radically in the near future. The development of IT technology has made lawyers' traditional safeguarding functions easier to be cut into smaller parts to be done as remote, on-line work. According to Susskind (2008), legal advice has become too expensive for companies and thus new, leaner business models are going to take over. This suggests that if law remains to be seen as technical safeguarding by managers, proactive legal approaches may seem too costly because of their immediate costs, in spite of their long-term benefits in lowering unanticipated costs and adding value.

Research design and survey methodology

Based on the theoretical setting presented above, a survey was designed in order to gain understanding how contracting professionals perceive the role of contracts and lawyers in project business. The survey was conducted in the first quarter of 2014 among the members of an international association focused on managing commercial contracting. The members of the association are mainly lawyers, executives, managers and a variety of specialists such as engineers, industry analysts, technical consultants and advisors. We wanted to use the members of the association as a study population for three reasons: 1) As the association is dedicated to further developing contracting capabilities in the industrial context, it can be assumed that new directions in contract management are first recognized and adapted among the association members. This assumption is based on the fact that the members of the association are part of

the community seeking to develop contracting practices and they have access to knowledge to do so. 2) Working together with the association, we reached professionals working on contracting globally. This would have been very challenging to achieve otherwise. 3) Working together with the association, we surveyed professionals who work on contracting and contract management. Limitations of the research and possible bias are discussed later in the paper.

The questionnaire was designed by a group of five researchers, and the survey functionality was tested with a closed group of respondents. The questionnaire was presented on a dedicated Internet page where respondents could answer the questions and submit the questionnaire. The invitation to participate in the survey was delivered to the members by the association. There were 355 respondents, which equals a 1.6 % response rate. As the research questions focused on the perceptions of lawyers and managers, the demographic information was used to exclude other disciplines from the research data. After the collected data were processed, research data from 170 respondents were used in the analysis, 31 lawyers and 139 managers. The demographic information of the sample is presented in Figures 1 and 2.

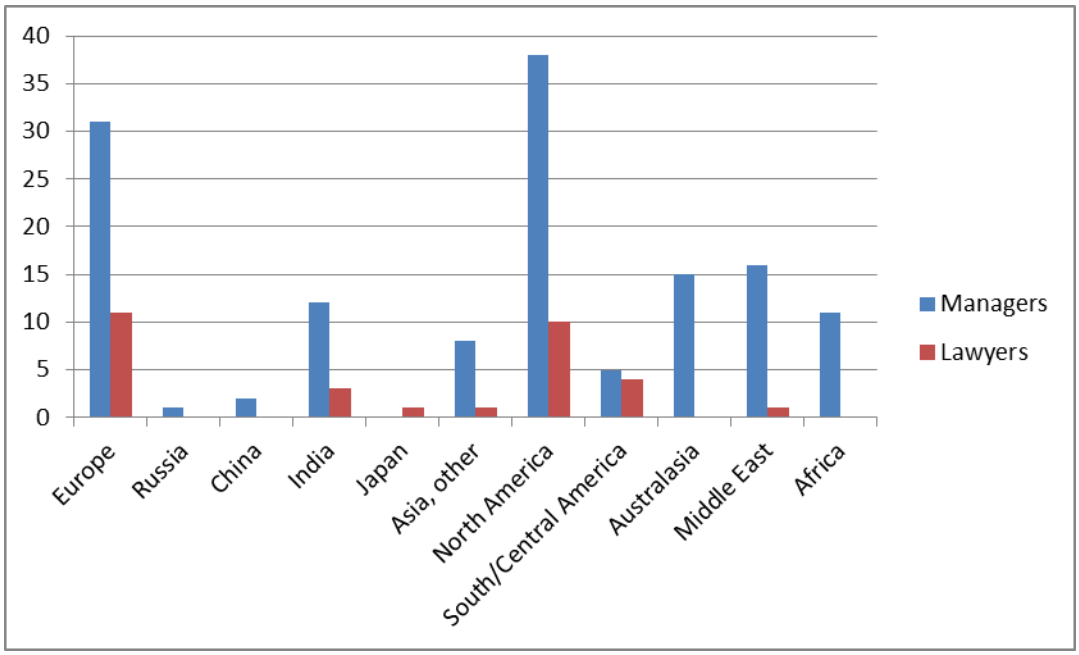

Figure 1. Geographic area of operations (in absolute values).

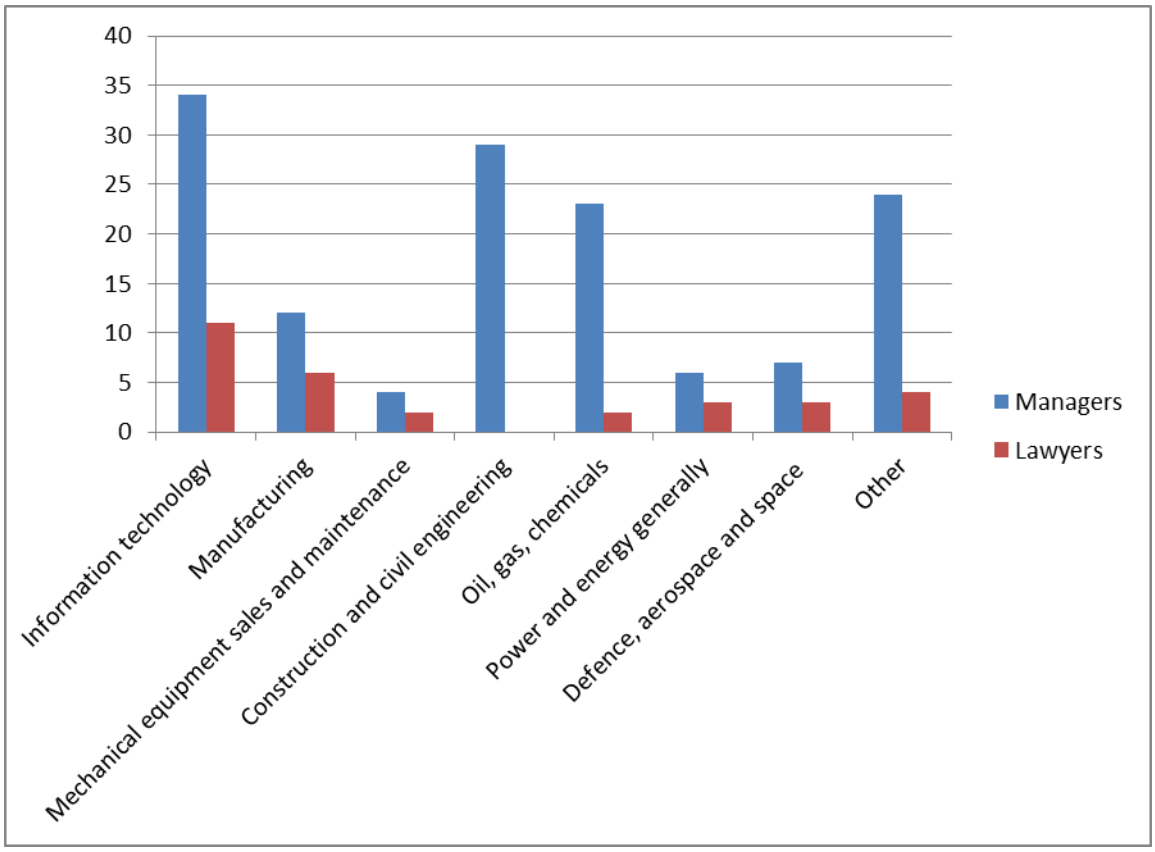

Figure 2. Industries represented in the sample (in absolute values).

Analysis and discussion

In this section, we examine the survey results in detail and analyze the findings. The statements presented to the respondents of the survey and their responses are reported and analyzed. We also discuss the transferability of the results and the limitations of the research.

Purpose of the project contracts. Three questions in the survey identified the respondents' view of the purpose of project contracts. The managers' and lawyers' perspectives are illustrated in Figure 3. The figure presents the proportional summary of each group's responses, including the p-values of the Mann-Whitney U test for each statement.

There were no statistically significant differences between the respondent groups. Managers and lawyers mostly share the same view on the purpose of project contracts: 81 % of managers and 84 % of the lawyers agreed that contracts are made for business objectives and benefits. Regarding the statement "Contracts are made to win in court if disputes arise," 42 % of lawyers agreed and 45 % disagreed with the statement. In comparison, 48 % of the managers agreed and 19 % disagreed with the statement.

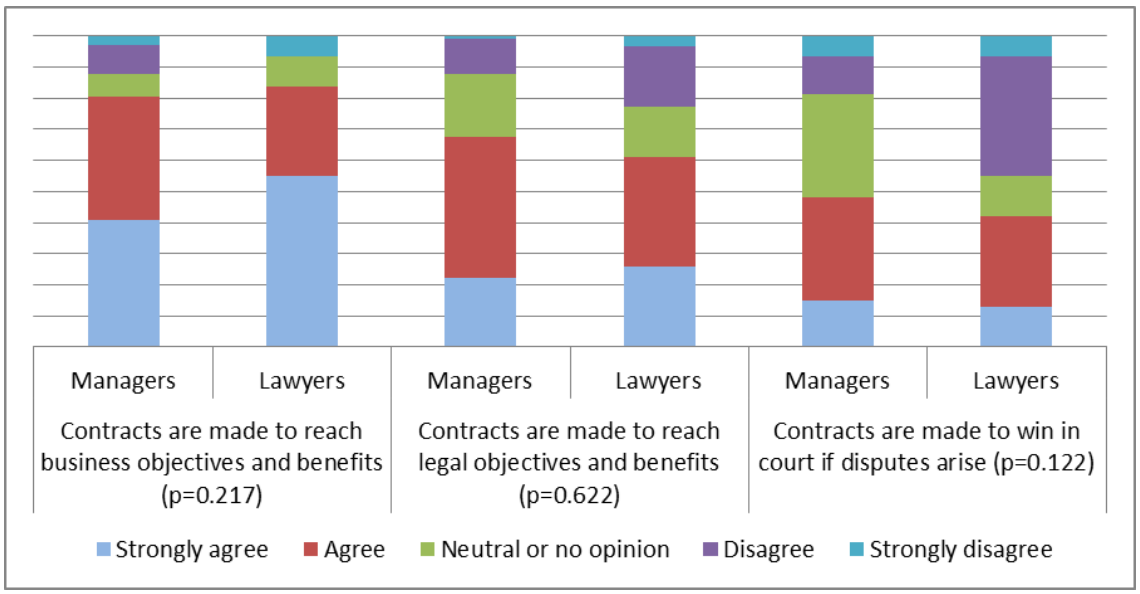

Figure 3. Purpose of project contracts: managers' and lawyers' perceptions.

Based on the results, there seems to be clear consensus between managers and lawyers that contracts are made to support and reach business objectives as the proactive contracting literature suggests (Berger-Walliser et al., 2011; Pohjonen and Visuri, 2008; Tayyeb, 2014). This supports our initial assumptions on managers' perspectives on the purpose of contracts but does not support the claims that lawyers do not recognize the business objectives of contracts. However, the majority (61 %) of the lawyers agreed that contracts are also made to

reach legal objectives, and 42 % agreed that contracts are made to win in court in case of a serious dispute. The results can be interpreted so that lawyers consider safeguarding an important function of contracts but are mainly concerned about the business objectives. This indicates that lawyers are more business-oriented than expected. However, we must be careful with drawing such a conclusion as the respondents are members of an association that seeks to drive change toward efficient contracting. Because of the possible bias, the results may not be transferable to other groups of corporate lawyers and may only indicate only the beginning of change in lawyers' attitudes on contracting. It would be important to have a similar study conducted among the members of a more traditional lawyer association to verify whether the perspectives deviate.

We also analyzed the results geographically and between industries. First, we compared the results between Europe and North America. The respondents from North America tended to be slightly more in favor of safeguarding than the respondents from Europe, but the difference was minor; there were no statistically significant differences between these two groups of respondents. Then we separated the data from the information technology industry and compared the results to the data from other industries. There were no statistically significant differences between the industries.

Roles of lawyers and managers contributing to project contracts. In the survey, nine questions were related to the role of managers and lawyers contributing to project contracts in drafting contracts, proactively preventing disputes in projects and resolving disputes. The distribution of responses between managers and lawyers, and the p-values of the Mann-Whitney U test for each statement are presented in Figures 4 and 5.

The answers reflect the opinions of managers and lawyers regarding the contracting process and the role of various disciplines in the process. Related to the statements about contribution to contracts and collaboration between business people and lawyers in drafting contracts, there were clear differences in managers' and lawyers' perspectives. The responses about the effectiveness of collaboration between business people and lawyers differed significantly ($p=0.001$): 84 % of the lawyers agreed that business people and lawyers collaborate effectively, whereas 56 % of the managers agreed. This indicates that managers and lawyers experience the current situation differently, or they have different expectations of how the collaboration should work. Similar findings were also reported earlier. Nystén-Haarala et al. (2010) found that often lawyers are invited to participate in the contracting process too late, and when they finally participate, the rest of the organization feels that the lawyers delay the process. Another explanation could be that lawyers collaborate but managers expect them to contribute even more than they currently do.

A larger proportion of lawyers than managers agreed with the statement, "In our business, lawyers rather than business personnel design and draft contracts" (52 % and 27 % respectively, $p=0.002$) and with the statement, "Lawyers rather than business personnel should have the primary role in drafting contracts" (52 % and 22 % respectively, $p=0.007$) in the business they are in. There is a clear conflict between the two groups regarding the expectations of the lawyer's role. The lawyers saw their role as more essential in contract drafting than the managers. This might indicate that managers do not think lawyers have business context competence to contribute to contracts that support business objectives. Lawyers, however, might see themselves contributing to achieving business objectives by drafting provisions that facilitate business success. Lawyers' perception might also be related to the changed expectations for corporate lawyers; there has been discussion about the need for changes in the business lawyer's role and contribution in the corporate context (e.g., Cummins, 2008; Haapio,

2006b; Henderson, 2011). In the future, lawyers are expected to have more business context competences and capabilities to drive collaboration instead of solely focusing on safeguarding one's position in the commercial exchange.

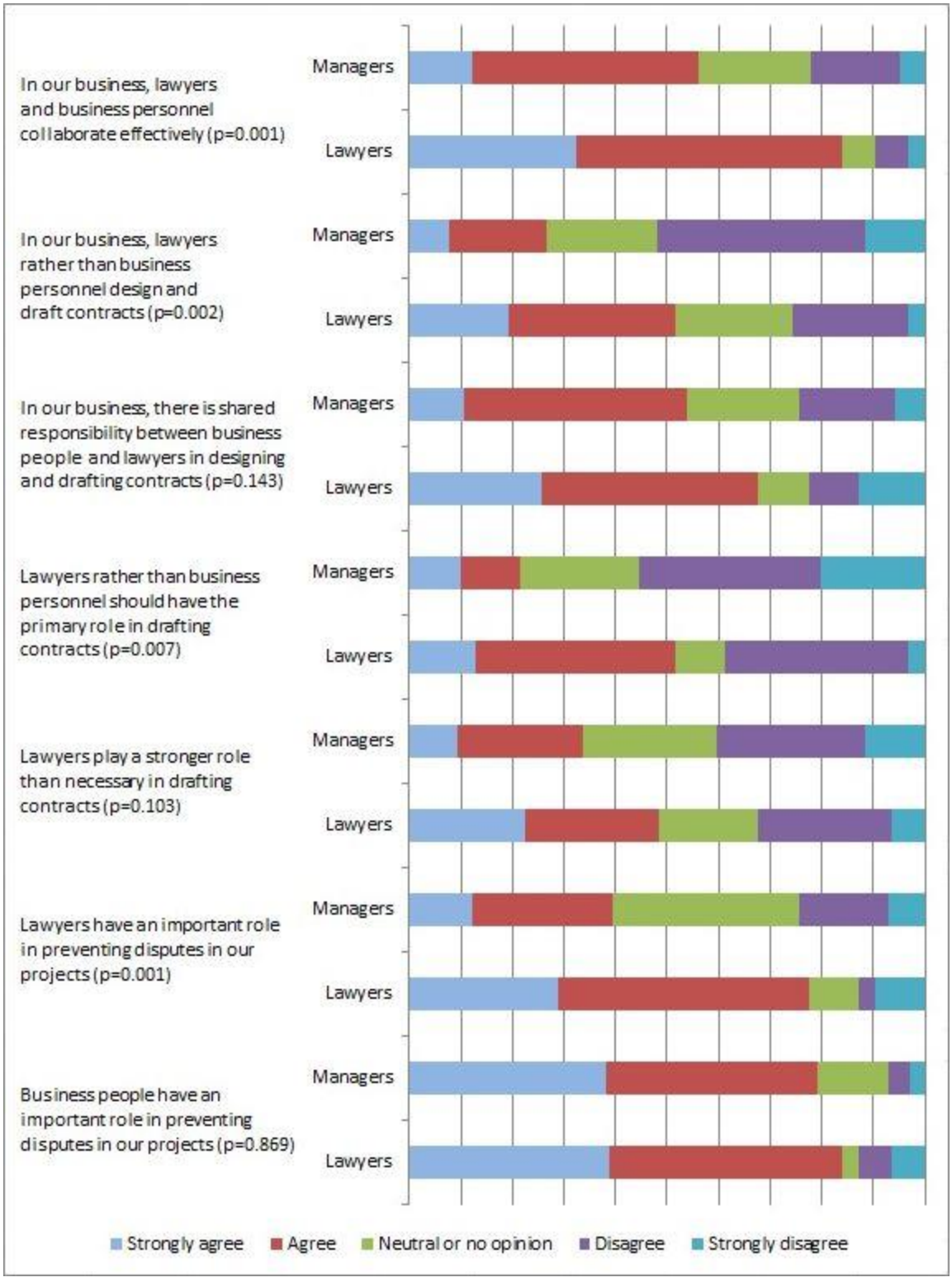

Figure 4. Roles of lawyers and business people who contribute to project contracts: managers' and lawyers' perceptions.

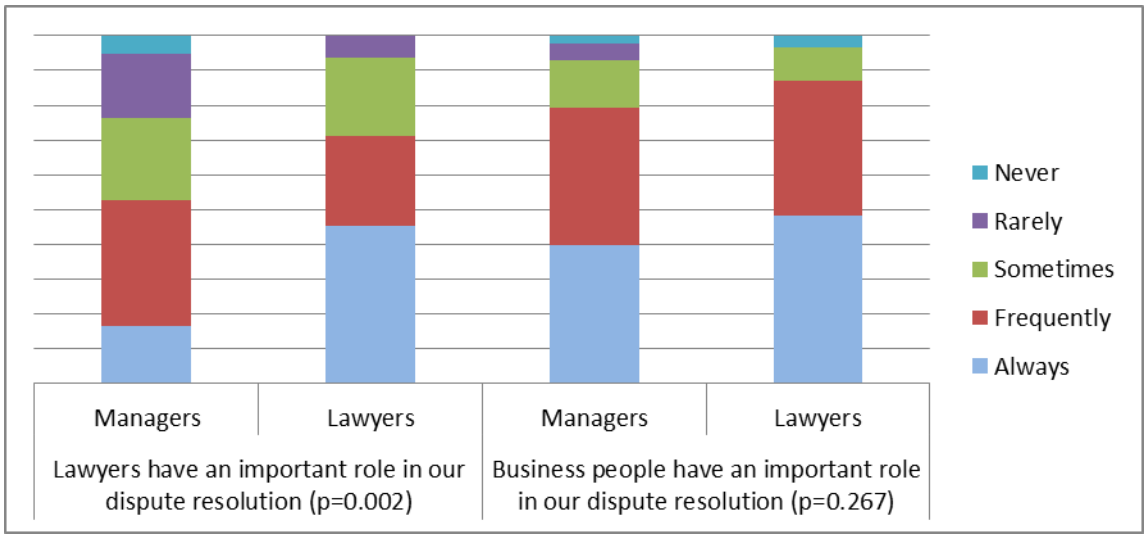

Figure 5. Roles of lawyers and business people in resolving disputes: managers' and lawyers' perceptions.

There seems to be consensus on the role of business people in preventing disputes and contributing to resolving disputes. The majority of respondents (managers and lawyers) agreed with the statements that business people have an important role in avoiding and solving disagreements with project parties. Instead, there were statistically significant differences in responses regarding the role of lawyers in preventing disputes (p=0.001) and resolving disputes (p=0.002). In both cases, a larger portion of lawyers than managers saw their role as essential in preventing and resolving disputes. This might imply that lawyers see dispute-related actions as legal tasks and managers see these actions as relational tasks. This classical difference between the disciplines has been reported since Macaulay (1963), who quoted a businessman saying, "You can settle any dispute if you keep the lawyers and accountants out of it." More recently, Lumineau and Oxley (2012) discussed how companies settle disputes. They found

that in complex disagreements, companies involve lawyers in negotiations but prefer business solutions to litigation.

This study has several limitations. First, instead of being random, the sample was based on the membership of an international association focused on managing commercial contracting. This choice has several drawbacks. As the membership of the association is voluntary and the association drives innovation and development of contracting, the members might share professional characteristics that deviate from those of non-members, and this might affect the transferability of some results in this research. Another possible limitation is the low response rate. To be able to understand whether the low response rate affects the generalizability of the results throughout the population, we compared our sample demographics with the association's member demographics. There were no remarkable differences between the distributions. Therefore, we believe that the low response rate did not create a serious misrepresentation in the research data or results. The last recognized limitation of the study is that we did not examine any contracts objectively, but the respondents evaluated if their contracts focused more on business objectives or legal objectives. This evaluation is subject to respondent's personal perception and thus prone to bias.

Conclusions

Previous research on proactive contracting suggests that companies should improve their contracting capabilities and corporate lawyers should serve business objectives instead of preparing for possible litigation. This article contributes to this discussion by examining how managers and lawyers view the role of lawyers and contracts in project business. The literature review covered proactive contracting and other similar approaches emphasizing contract as a tool in creating value. The possible impact of proactive contracting on project contracting and

contracts was discussed, as well as different views on the lawyer's contribution in fulfilling business objectives. A survey was based on this theoretical setting and conducted among industry professionals in contracting. The responses were analyzed in order to compare the perceptions of managers and lawyers with previous proactive contracting literature.

The results of the study suggest that managers and lawyers shared the same view that contracts are made to reach business objectives and benefits. They also mainly agreed on the purpose of contracts. However, managers and lawyers had different perspectives on the lawyer's role in contributing to the contracting process and contracts. The lawyers saw their role as more essential in contracting than the managers did. The majority of the lawyers also saw that collaboration between business people and lawyers works well in contracting, but managers were more hesitant to agree. Most lawyers also saw they have an important role in dispute resolution, but the managers did not agree.

This study identified core ideas of proactive contracting and confirmed that some of these ideas received support in the empirical setting. There was also an indication that there are differences between managers and lawyers in the expectations of the role of a business lawyer. Managers expect lawyers to have a supportive role in contracting, but lawyers would prefer a leading role. These controversial expectations were suggested by the proactive contracting literature and were confirmed by the empirical results of this study.

Additional research on the adaptation of a proactive approach in managing contracts in project business is needed. It would be beneficial to understand why managers and lawyers have the perspectives they have. It would require qualitative research on the subject, for example, a focus group or case studies. Furthermore, it would be important to conduct a similar study as a random sample among professionals who work on contracting to confirm the results of this study. Additionally, it would be interesting to gain insight on whether and how

companies manage the change towards proactive approaches to contracting and how the related capabilities are built in organizations.

References

Argyres N and Mayer KJ (2007) Contract design as a firm capability: an integration of learning and transaction cost perspectives. *Academy of Management Review*, 32(4): 1060-1077.

Bagley CE (2008) Winning legally: The value of legal astuteness. *Academy of Management Review*, 33(2): 362-377.

Bagley CE (2010) What's law got to do with it: Integrating law and strategy. *American Business Law Journal*, 47(4): 587-639.

Barros MO, Werner CML and Travassos GH (2004) Supporting risks in software project management. *Journal of Systems and Software*, 70(1-2): 21-35.

Barton TD (2008) A paradigm shift in legal thinking. In: H. Haapio, ed. 2008. *A proactive approach to contracting and law.* Turku, Turku University of Applied Sciences (Course material 38), pp. 35-42.

Barton TD (2009) *Preventive law and problem solving: Lawyering for the future*. Lake Mary: Vandeplas Publishing. 364 p.

Barton TD and Cooper JM (2000) *Preventive law and creative problem solving: Multi-dimensional lawyering.* California Western School of Law, National Center for Preventive Law (NCPL). 37 p. Available at: http://www.preventivelawyer.org/content/pdfs/Multi_Dimensional_Lawyer.pdf (accessed 14 February 2016)

Berger-Walliser G (2012) The past and future of proactive law: An overview of the development of the proactive law movement. In: G. Berger-Walliser and K. Østergaard, eds. 2012. *Proactive law in a business environment*. Copenhagen, Djøf Publishing, pp. 13-31.

Berger-Walliser G, Bird RC and Haapio H (2011) Promoting business success through contract visualization. *Journal of Law, Business & Ethics*, 17(Winter 2011): 55-75.

Berger-Walliser G and Shrivastava P (2015) Beyond compliance: Sustainable development, business, and proactive law. *Georgetown Journal of International Law*, 46(2): 417-474.

Bird RC (2007) *Law as a source of competitive advantage*. 30 p. Available at Social Science Research Network: http://ssrn.com/abstract=964329 (accessed 14 February 2016).

Bird RC (2011) Law, strategy, and competitive advantage. *Connecticut Law Review*, 44(1): 61-97.

Boyer EJ and Newcomer KE (2015) Developing government expertise in strategic contracting for public-private partnerships. *Journal of Strategic Contracting and Negotiation*, 1(2): 129-148.

Brown LM (1950) *Manual of preventive law*. Assisted by Rubin, E., New York, Prentice-Hall Inc. 346 p.

Charette RN (2005) Why software fails? *Spectrum, IEEE*, 42(9): 42-49.

Cooper JM (1998) Towards a new architecture: Creative problem solving and the evolution of law. *California Western Law Review*, 34(2): 297-324.

Cruz CO and Marques RC (2013) Flexible contracts to cope with uncertainty in public-private partnerships. *International Journal of Project Management*, 31(3): 473-483.

Cummins T (2008) Taking the law out of contracts – and putting lawyers into the contracting process. In: H. Haapio, ed. 2008. *A proactive approach to contracting and law*. Turku, Turku University of Applied Sciences (Course material 38), pp. 97-104.

Cummins T (2015) Strategic contracting as a source of organizational success. *Journal of Strategic Contracting and Negotiation*, 1(1): 7-14.

Dauer EA (2008) Remembering Louis Brown. In: H. Haapio, ed. 2008. *A proactive approach to contracting and law*. Turku, Turku University of Applied Sciences (Course material 38), pp. 8-10.

DiMatteo LA (2010) Strategic contracting: Contract law as a source of competitive advantage. *American Business Law Journal*, 47(4): 727-794.

Gil N (2009) Developing cooperative project client-supplier relationships: How much to expect from relational contracts? *California Management Review*, 51(2): 144-169.

Haapio H (1998) *Quality improvement through proactive contracting: Contracts are too important to be left to lawyers*. American Society for Quality (ASQ), 52nd Annual Quality Congress Proceedings, Philadelphia, pp. 243–248.

Haapio H (2006a) Business success and problem prevention through proactive contracting. In: P. Wahlgren and C. Magnusson Sjöberg, eds, 2006. *A proactive approach*. Scandinavian Studies in Law, Vol. 49. Stockholm, Stockholm Institute for Scandinavian Law, pp. 149-194.

Haapio H (2006b) Introduction to proactive law: A business lawyer's view. In: P. Wahlgren and C. Magnusson Sjöberg, eds, 2006. *A proactive approach*. Scandinavian Studies in Law, Vol. 49. Stockholm, Stockholm Institute for Scandinavian Law, pp. 21-34.

Haapio H (2013) *Next generation contracts: A paradigm shift*. Doctoral Dissertation. University of Vaasa. Helsinki, Lexpert Ltd. 318 p.

Henderson WD (2011) Three generations of U.S. lawyers: Generalists, specialists, project managers. *Maryland Law Review*, 70(2): 373-389.

Henisz WJ, Levitt RE and Scott WR (2012) Toward a unified theory of project governance: Economic, sociological and psychological supports for relational contracting. *Engineering Project Organization Journal*, 2(1-2): 37-55.

Lumineau F and Oxley JE (2012) Let's work it out (or we'll see you in court): litigation and private dispute resolution in vertical exchange relationships. *Organization Science*, 23(3): 820-834.

Macaulay S (1963) Non-contractual relations in business: a preliminary study. *American Sociological Review*, 28(1): 55-67.

Macneil IR (1978) Contracts: adjustment of long-term economic relations under classical, neoclassical, and relational contract law. *Northwestern University Law Review*, 72(6): 854-905.

Matthews O and Howell GA (2005) Integrated project delivery: An example of relational contracting. *Lean Construction Journal*, 2(1): 46-61.

NCPL 2015, National Center for Preventive Law (2015) Available at: http://www.preventivelawyer.org/main/default.asp (accessed 28 October 2015).

Nelson RL and Nielsen LB (2000) Cops, Counsel, and Entrepreneurs: Constructing the role of inside counsel in large corporations. *Law and Society Review*, 34(2): 457-494.

Nordic 2007, Nordic School of Proactive Law (2007) ProActive ThinkTank Mission Statement (Draft August 4, 2007). Available at: http://www.juridicum.su.se/proactivelaw/main/thinktank/missionstatement.pdf (accessed 28 October 2015).

Nordic 2015, Nordic School of Proactive Law (2015) Available at: http://www.proactivelaw.org (accessed 28 October 2015).

Nystén-Haarala S (1998) *The long-term contract: Contract law and contracting*. Doctoral Dissertation. University of Lapland. Helsinki, Finnish Lawyer's Publishing. 325 p.

Nystén-Haarala S, Lee N and Lehto J (2010) Flexibility in contract terms and contracting processes. *International Journal of Managing Projects in Business*, 3(3): 462-478.

Pohjonen S and Visuri K (2008) Proactive approach in project management and contracting. In: H. Haapio, ed. 2008. *A proactive approach to contracting and law*. Turku, Turku University of Applied Sciences (Course material 38), pp. 75-95.

Poppo L and Zenger T (2002) Do formal contracts and relational governance function as substitutes or complements? *Strategic Management Journal*, 23(8): 707-725.

Poppo L, Zhou KZ and Ryu S (2008) Alternative origins to interorganizational trust: An interdependence perspective on the shadow of the past and the shadow of the future. *Organization Science*, 19(1): 39-55.

Ruuska I, Ahola T, Artto K, Locatelli G and Mancini M (2011) A new governance approach for multi-firm projects: Lessons from Olkiluoto 3 and Flamanville 3 nuclear power plant projects. *International Journal of Project Management*, 29(6): 647-660.

Siedel GJ and Haapio H (2010) Using proactive law for competitive advantage. *American Business Law Journal*, 47(4): 641-686.

Siedel GJ and Haapio H (2011) *Proactive law for managers: A hidden source of competitive advantage*. Farnham, Gower Publishing Ltd. 172 p.

Susskind R (2008) *The end of lawyers? Rethinking the nature of legal services*. New York: Oxford University Press. 303 p.

Tayyeb M (2014) Creating sustained competitive advantages through proactive contracting. *Journal of Contract Management*, 12(Fall 2014): 97-116.

Turner JR (2004) Farsighted project contract management: Incomplete in its entirety, *Construction Management and Economics*, 22(1): 75-83.

Turner JR and Simister SJ (2001) Project contract management and a theory of organization. *International Journal of Project Management*, 19(8): 457-464.

Williamson OE (1975) *Markets and hierarchies: Analysis and antitrust implications; A study in the economics of internal organization*. New York, N.Y., The Free Press. 286 p.

Williamson OE (1979) The governance of contractual relations. *Journal of Law and Economics*, 22(2): 233-261.

Williamson OE (1985) *The economic institutions of capitalism: Firms, markets, relational contracting*. New York, N.Y., The Free Press. 450 p.