

4th Annual Conference

Construction Law

Best Practices • Managing Risk • Emerging Trends

Gain an in-depth understanding of current construction law issues, with a focus on practical and effective approaches to managing risks and avoiding liability.

- Key decisions in the choice of project delivery models
- Tips and traps for successful bidding and tendering
- Drafting tender documents post-*Tercon*
- Identifying, managing and transferring risk in construction contracts
- Using insurance to limit and allocate risk in projects
- Learn the essentials of effective contract drafting
- Use and impact of Building Information Modeling on traditional project delivery models
- The ins and outs of liens and trust claims
- Essential elements of an effective OHS management system
- Responsibilities and contractual obligations of architects and engineers
- Advanced bonding and sureties issues
- Strategies for handling the most common construction disputes
- Understanding the importance of information management and records retention policies in construction litigation
- Emerging trends in resolving construction disputes

Chairs

Geza R. Banfai, Heenan Blaikie LLP

Anna M. Esposito, Pallett Valo LLP



DATES & TIME

February 22 - 23, 2011

8:30 a.m. - 4:45 p.m. EDT/EST

LOCATION

Osgoode Professional
Development Centre
1 Dundas St. W., 26th Floor
Toronto, ON

**Webcast
Available**



4th Annual Conference Construction Law

Best Practices • Managing Risk • Emerging Trends

Get the tools you need to master the complexities and risks that arise in today's construction projects

Today's construction projects are complex and full of risks for all stakeholders. Whether you are an owner, project manager, general contractor, builder or construction lawyer, an up-to-date understanding of the legal risks and obligations is essential.

This intensive *Osgoode Professional Development* conference is designed to provide construction stakeholders with an in-depth understanding of the key issues and exposures. Both perennial and newly emerging risks and approaches will be covered. Taught by a faculty of highly experienced construction lawyers and industry professionals, the conference will provide thoughtful and practical information and tips that will equip you to manage the legal complexities of any project, minimize your clients risk exposure and maximize your profitability. Topics include:

- Project delivery models and when to use them
- Staying current with the latest bidding and tendering techniques: post-*Tercon*
- Identifying, assessing and dealing effectively with risk in construction contracts
- The latest trends and products in construction insurance
- Learn the essential elements of an effective contract
- How the use of Building Information Modeling is revolutionizing the construction industry
- Best practices for dealing with construction and safety risk management
- Practical tips on conducting a lien action
- Types of trust funds and when do they apply?
- Roles and responsibilities of architects and engineers
- Practical strategies on how to make bonds and sureties work for you
- Policies and procedures owners need to put in place to conduct litigation in an electronic age
- The most common construction disputes and how a court would deal with them
- Techniques for managing construction disputes in a timely and cost effective manner

You'll come away with a thorough understanding of the issues impacting construction projects today and the information, strategies and resources you need to minimize your exposure to risk. You'll also get a set of reference materials prepared by the speakers, which will be a valuable resource long after the course is over.

Register now by visiting www.osgoodepd.ca, calling 416.597.9724 or 1.888.923.3394, emailing opd-registration@osgoode.yorku.ca or faxing 416.597.9736.

Chairs

Geza R. Banfai, Heenan Blaikie LLP

Anna M. Esposito, Pallett Valo LLP

Faculty

Glenn W. Ackerley, WeirFoulds LLP

W. Andrew McLauchlin, McLauchlin & Associates

Maurice Audet, AON Reed Stenhouse Inc.

Stanley Naftolin, Counsel to Goldman Sloan Nash & Haber LLP

Denis A. Chamberland, Baker & McKenzie LLP

Marcia J. Oliver, Purser Dooley Cockburn Smith LLP

Kenneth Crofoot, Goodmans LLP

Allan Partridge, Group 2 Architecture Engineering Ltd. (Edmonton)

Duncan Glaholt, Glaholt LLP

Michael Peterson, McMillan LLP

Karen Groulx, Pallett Valo LLP

R. Bruce Reynolds, Borden Ladner Gervais LLP

Joel Heard, McCarthy Tétrault LLP

Rocco Sebastiano, Osler, Hoskin & Harcourt LLP

Norm Keith, Gowling LaFleur Henderson LLP

Mark Knudsen, Travelers Guarantee Company of Canada

Agenda

Day One: Tuesday, February 22, 2011

8:00 Registration and Continental Breakfast

8:30 Welcome and Introduction from the Chairs

Geza R. Banfai, Heenan Blaikie LLP

Anna M. Esposito, Pallett Valo LLP

8:40 Project Delivery Models and When to Use Them

Geza R. Banfai, Heenan Blaikie LLP

- Overview of the principal construction project delivery models
 - design-bid-build
 - design-build
 - construction management-services only
 - construction management-services and construction
- Key decisions in the choice of model
- Ensuring that the model fits the project and the team
- Managing the project delivery model
 - delineating the parties' roles and responsibilities
 - managing compliance
 - problems involving inappropriate risk transfer

9:30 Bidding and Tendering: Strategies for Minimizing and Eliminating Risk Post-Tercon

Denis A. Chamberland, Baker & McKenzie LLP

The tendering process is full of potential pitfalls which can trap even the most seasoned contractor or owner. Minor oversights or mistakes can lead to bids being non-compliant. Experienced counsel will help you stay current with the latest developments in the law of tender and Request for Proposals.

- Legal principles of bidding and tendering
 - duty of fairness
 - good faith
 - case law update
- Determining the appropriate procurement strategy for the project
- Understanding and mastering successful bidding strategies and techniques
- Dealing with escalating costs
- Bid shopping – case law update
- Remedies available to contractors when you make a mistake

- Drafting tender documents post-Tercon
- New legal test for determining enforceability of exclusion clauses in light of Tercon

10:30 Refreshment Break

10:45 Understanding Risk in Construction Contracts

W. Andrew McLaughlin, McLaughlin & Associates

Maurice Audet, Senior Vice President
AON Reed Stenhouse Inc.

Contractual risk transfer involves the allocation or distribution of the risks between or among contracting parties and places risk upon parties according to their ability to control and insure against risk. If done properly, it creates a good working relationship between contracting parties. If done improperly, it can lead to expensive project delays or litigation. Learn how to identify and deal effectively with construction risk.

- Types of risk in a construction project
 - scheduling risk
 - delay risks at the contractual level
 - force majeure
 - liquidated damages
 - unforeseen soil conditions
 - weather
 - default risk
 - work stoppage
- Using insurance to limit and allocate risks for:
 - owners
 - contractors
 - subcontractors
 - design professionals

11:45 Drafting Construction Contracts to Successfully Manage Risks

Rocco Sebastiano, Osler, Hoskin and Harcourt LLP

Joel Heard, McCarthy Tétrault LLP

Understanding the troublesome contract issues and the common mistakes in contract drafting is critical to protect your client's interests. Learn the essentials of effective contract drafting.

- What are the critical elements of a good contract?
- Overview of types of CCDC and CCA standard forms
 - understanding their limitations
 - negotiating amendments
 - pros and cons of using standard form contracts
 - update on new forms

Agenda

- Key contract issues
 - scope
 - payment
 - changes and other unforeseen delays and events
 - warranties
 - schedule/performance guarantees
 - indemnities
 - default, suspension and termination

12:45 Luncheon

1:45 Application of Building Information Modeling (BIM) in Construction Projects

While BIM is still going through its formative stages, it is quickly revolutionizing the construction industry. By providing simultaneous information to all parties involved in the project it promotes collaboration throughout the project lifecycle and enables projects to be delivered faster and more economically thus maximizing profitability.

Allan Partridge, Executive Director of Integrated Practice, Group 2 Architecture Engineering Ltd. (Edmonton)

Marcia J. Oliver, Barrister & Solicitor
Purser Dooley Cockburn Smith LLP

- Use and impact of BIM on traditional project delivery models
- Impact of BIM on standard construction contracts
- Legal risks
- Case studies

2:45 Refreshment Break

3:00 Construction Health and Safety Risk Management: Before and After a Major Incident or Prosecution

Norm Keith, Gowling LaFleur Henderson LLP

- Essential elements of an effective OHS management system
- Pre-qualification of contractors and sub-contractors
- Understanding WSIB CAD-7 Statements
- OHS and Bill C-45 Risk on the project
- What to do first when a major incident occurs
- Reporting to MOL and preserving incident scene
- Managing the MOL and police investigations
- Appealing MOL orders and to the OLRB
- Privileged and confidential internal investigations
- Defending OHS and Bill C-45 criminal prosecutions

4:00 Professional Responsibilities of Architects and Engineers

Glenn W. Ackerley, WeirFoulds LLP

- Roles and responsibilities
- Personal liability issues
- Case law update

4:45 Day One Adjourns

Day Two: Wednesday, February 23, 2011

8:00 Continental Breakfast

8:30 Recap and Introduction from the Chairs

Geza R. Banfai, Heenan Blaikie LLP

Anna M. Esposito, Pallett Valo LLP

8:40 Advanced Bonding and Sureties Issues

R. Bruce Reynolds, Borden Ladner Gervais LLP

Mark Knudsen, General Counsel, Travelers Guarantee Company of Canada

- Surety primer-types of bonds and legal structures
- Contractual risk allocation
- Co-obligees and dual-obligees – keeping clear sight lines
- Surety bonds on public infrastructure and P3 projects
- What is the process to claim under surety bonds?
- Current case law update

9:45 Refreshment Break

CONSTRUCTION DISPUTE ISSUES

10:00 Lien Claims

Anna M. Esposito, Pallett Valo LLP

- General structure of the *Construction Lien Act*
- Preserving and perfecting the lien-critical time lines
- Differences between liens that attach to premises and liens that do not
- Discharging liens
- The holdback strategy
- Damages for improper lien registration
- Cross examination on affidavit of verification
- Effect of bankruptcy on liens
- Priorities between liens and mortgagees
- Section 39 request for information
- Common fatal mistakes

Agenda

11:00 Trust Claims

Stanley Naftolin, Counsel to Goldman Sloan Nash & Haber LLP, Partner in Team Resolution

- What is the statutory construction trust?
- Limitation periods for a trust
- Priorities
- Case law update

12:00 Luncheon

1:00 Handling the Most Common Construction Disputes

Kenneth Crofoot, Goodmans LLP

- The most common disputes and the key principles that a court would use in determining:
 - delay and acceleration
 - impact claims
 - scope disputes; disputed changes
- Issues involving limitations defences

2:00 Refreshment Break

2:15 Preparing for Construction Litigation in an Electronic Age

Karen Groulx, Partner, Pallett Valo LLP

- The duty to preserve relevant information
- Sources of electronic evidence/electronically-stored information (ESI)
- Steps to take to identify and preserve relevant ESI
- Collection strategies and best practices
- The importance of information management and records retention policies
- The role of project management in electronic discovery
- Best practices to contain costs

3:30 Resolving Construction Disputes: Emerging Trends

Duncan Glaholt, Glaholt LLP

- A survey of basic principles and remedies
 - actions, applications and motions
 - ADR in the construction industry and recent innovations
 - Dispute System Design
- A survey of advanced principles and remedies
 - extraordinary remedies under the *Construction Lien Act*
 - trust remedies under the *Construction Lien Act*
 - judicial review of public tendering decisions
 - dispute review and advisory boards
 - adjudication

4:30 Conference Concludes

Who Should Attend

- Construction, municipal and real estate lawyers
- In-house counsel
- Owners and developers
- General contractors
- Architects
- Engineers
- Construction consultants

Registration

Please complete all registrant information.

Learn the latest strategies for avoiding and managing risk

Register me for: *4th Annual Construction Law Conference*

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