

Get a comprehensive grounding on how to manage legal risks in this complex, high stakes area



The *Osgoode* Certificate in Construction Law

An in-depth, practical program covering project delivery models through to dispute resolution

November 21 - 25, 2011 | 5 Days | Toronto, Canada



Professional Development
CLE



Program Details

Dates

Day 1

Project Delivery and the
Construction Contract
November 21, 2011

Day 2

Contracts/Bidding & Tendering/OHSA
November 22, 2011

Day 3

Liens and Trusts
November 23, 2011

Day 4

Claims Issues and Dispute Management
November 24, 2011

Day 5

Ancillary Issues: The Design
Professional/P3s/Surety and Bonding
November 25, 2011

The program will be held at *Osgoode
Professional Development's* Downtown
Toronto Conference Centre.

Why You Should Attend

Today's construction projects are highly complex, and present an array of challenging risks and obligations for all stakeholders. A comprehensive understanding of key issues and the potential exposure to liability in this challenging area is essential.

In this unique intensive five day certificate course, over 20 senior legal and construction professionals will cover the field of construction law from contract formation through to dispute resolution including: the key participants and their roles in various forms of project delivery; the different types of construction contracts in general use; bidding and tendering; the liability of the design professional; liens and trusts; recurrent claims issues including unanticipated site conditions and disputes concerning changes; alternative approaches to quantifying and evaluating delay and impact claims; dispute resolution, including mediation, arbitration and procedural issues in construction claims; bonding and surety issues; delays; and construction health and safety risk management.

Participants will develop a thorough understanding of the core legal issues impacting construction projects today, and will be better equipped to minimize exposure to costly risk.

Key Benefits: What You Will Learn

- In-depth analysis of the various project delivery models and when to use them
- Advanced issues in construction contracts, including limitations of standard forms and the differing alternatives available
- Bidding and tendering - advanced problems, including the treatment of privilege and discretion clauses
- Correction of tender errors
- Construction liens: liens on public works; sheltering; priority issues (mortgages CRA) and correcting errors in liens
- Recurrent issues in construction claims: delay and impact claims; unanticipated site conditions; change disputes and limitation issues
- Construction dispute management
- Mediating and arbitrating the construction dispute
- The role and responsibilities of the design professional, including duty of care to third parties
- The underlying principles of surety bonding and the role of the surety
- The differing types of P3 arrangements used in Canada and the roles of the key participants
- Occupational health and safety issues in construction: key risk management strategies

Who Should Attend

- Construction, municipal and real estate lawyers
- In-house counsel
- Owners and developers
- Builders and construction professionals
- Architects
- Engineers
- Construction industry consultants
- Mediators and arbitrators of construction disputes
- Anyone who is engaged with construction projects, whether as a project sponsor with the client, project manager, construction manager or other consultant



In five consecutive, intensive one-day modules, an expert faculty of over 20 senior legal and construction experts will deliver the key concepts of construction law. There will be an emphasis on practical, real world situations and there will be ample opportunity for questions and class discussion.

THE CURRICULUM

DAY 1

November 21, 2011, 9:00 a.m. – 4:30 p.m.

Project Delivery and the Construction Contract

Project Delivery Models

- An examination of the basic concepts and risk allocations in design-bid-build, design-build and construction management, including alternative pricing models (stipulated price, fixed price/best offer, cost plus, unit price, open book and guaranteed maximum price with incentives).

The Construction Contract: Overview

- An overview of the structure, concepts and terms & conditions of the basic construction contract, using the CCDC 2-2008 stipulated price contract as a model.

The Design-Build Contract

- An examination of the structure, concepts and terms and conditions of the design build contract, using the Document 14 design-build contract as a model.

Construction Management: CM for Services

- An examination of the CM Contract for Services only in which the construction manager acts as limited agent for the owner, using the new CCDC 5A as a model.

Construction Management: CM for Services and Construction

- An examination of the CM Contract for Services and Construction in which the construction manager provides both services and construction work, using the new CCDC 5B as a model.

Special Luncheon Address

“The Canadian Construction Industry”

Michael Atkinson, President, Canadian Construction Association, Ottawa

Faculty

Geza R. Banfai, Heenan Blaikie LLP

John G. Davies, President and CEO, John G. Davies, Architect, Incorporated; Panelist, ADR Chambers

Ian J. Houston, Borden Ladner Gervais LLP

W. Andrew McLaughlin, McLaughlin & Associates

DAY 2

November 22, 2011, 9:00 a.m. – 4:30 p.m.

Contracts/Bidding & Tendering/OHSA

Advanced Issues in Construction Contracts

- An examination of more advanced issues involving construction contracts including limitations of the standard forms and differing alternatives available; issues involving more problematic types of provisions such as indemnities, warranties and force majeure provisions.

Occupational Health and Safety Issues in Construction

- An overview of the key principles and liabilities of the various parties in the construction process under the OHSA, including constructor liability and the appropriate responses to accidents and investigations.

Bidding and Tendering: Basic Principles

- An examination of the basic principles governing the Canadian law of bidding and tendering, including the origins and evolution of the Contract A/Contract B paradigm and the principle of compliance. The session will include a review of the seminal authorities such as Ron Engineering; Martel; MJB.

Bidding and Tendering: Advanced Issues

- An in-depth review of advanced problems in bidding and tendering including: the treatment of privilege and discretion clauses; judicial review as a remedy; and issues surrounding the correction of tender errors.

Special Luncheon Address

Master David H. Sandler, Ontario Superior Court of Justice

Faculty

Rocco Sebastiano, Osler, Hoskin & Harcourt LLP

Glenn W. Ackerley, WeirFoulds LLP

Matthew R. Alter, Borden Ladner Gervais LLP

Cheryl A. Edwards, Heenan Blaikie LLP

Note: In order to receive the *Osgoode* Certificate in Construction Law, students must successfully complete the take-home assignment and attend all five days of the program.

DAY 3

November 23, 2011, 9:00 a.m. – 4:30 p.m.

Liens and Trusts

Construction Liens: Overview

- The basic concepts and terminology underlying lien legislation, with an examination of Ontario's *Construction Lien Act*, including the nature of the lien, preservation and perfection of liens and the holdback system.

Construction Liens: Advanced Issues

- Review of advanced issues involving liens, including: liens on public works; sheltering; priority issues (mortgages, CRA) and correcting errors in liens.

Construction Trusts

- An examination of the trust fund regime prescribed under lien legislation, particularly Ontario's *Construction Lien Act*, including the various trusts prescribed; the interplay between liens and trusts; personal liability issues and the prosecution and defence of claims for breach of trust.

Delay and Impact Claims: Quantifying the Loss

- A detailed examination of the differing analytical approaches to evaluating losses due to delay and disruption, including the limitations of each.

Special Luncheon Address

"Mega-Project Dispute Resolution"

Harvey J. Kirsh, Osler, Hoskin & Harcourt LLP

Faculty

Anna Esposito, Pallett Valo LLP

Janine Kovach, Cassels Brock & Blackwell LLP

Howard Wise, Goodmans LLP

Roger Bridges, President, Knowles Consultancy Services Inc.

DAY 4

November 24, 2011, 9:00 a.m. – 4:30 p.m.

Claims Issues and Dispute Management

Recurrent Issues in Construction Claims

- An examination of the more common types of construction claims, including the basic principles of delay and impact claims; unanticipated site conditions; change disputes and limitation issues.

Construction Dispute Management

- An examination of the need for and key principles of the management of construction disputes including the various alternatives available to the parties, methods of implementation and the role of counsel.

Mediating the Construction Dispute

- A review of the theories and principles of mediation and the role of the mediator and counsel, with particular emphasis upon the preparation and conduct of a mediation of a construction dispute.

Arbitrating the Construction Dispute

- An overview of the arbitration process, including arbitrator selection issues and the arbitration agreement, as well as the issues involving

DAY 4 (Cont'd)

the arbitrated hearing of a construction dispute, evidentiary issues generally and the treatment of expert witnesses in particular, and considerations regarding the appeal of the arbitral award.

Faculty

Duncan W. Glaholt, Glaholt LLP

Stanley Naftolin, Q.C., Goldman Sloan Nash & Haber LLP

Stephen Morrison, Cassels Brock & Blackwell LLP

Kenneth Crofoot, Goodmans LLP

DAY 5

November 25, 2011, 9:00 a.m. – 4:30 p.m.

Ancillary Issues: The Design Professional/P3s/ Surety and Bonding

Procedural Issues in Construction

- A review of the procedural issues and concerns common in construction disputes, including e-discovery.

The Role and Responsibilities of the Design Professional

- An examination of the duties and obligations of the design professional in the construction process, including theories of liability and defence and duty of care to third parties.

Public-Private Partnerships

- A review of the differing types of P3 arrangements used in Canada including the roles of the various key participants (sponsor, lenders, Project co., contractor) and the typical risk allocation issues inherent in this mode of delivery.

The Principles of Surety Bonding

- A review of the underlying principles of surety bonding and the role of the surety, the principle and the obligee; an examination of the types of bonds typically used in construction and the common claim and defence legal issues involving suits under bonds.

Claiming Under Surety Bonds: The Surety's Perspective

- An examination of the practical aspects of claiming under a surety bond, including the surety's proper role and function, strategies for the possible repair of problematic bonded projects and efficiently pursuing the resolution of claims.

Faculty

Karen Groulx, Pallett Valo LLP

P. John Brunner, Brunner & Lundy

R. Bruce Reynolds, Borden Ladner Gervais LLP

Mark J. Knudsen, St. Paul Guarantee Insurance Company

Timothy John Murphy, McMillan LLP



The *Osgoode Certificate in Construction Law* draws on the expertise of an outstanding faculty of senior legal and construction professionals, including:

Glenn W. Ackerley, WeirFoulds LLP

Matthew R. Alter
Borden Ladner Gervais LLP

Michael Atkinson, President, Canadian
Construction Association, Ottawa

Geza R. Banfai, Heenan Blaikie LLP

Roger Bridges, President, Knowles
Consultancy Services Inc.

P. John Brunner, Brunner & Lundy

Kenneth Crofoot, Goodmans LLP

John G. Davies, President and CEO
John G. Davies, Architect, Incorporated
Panelist, ADR Chambers

Cheryl A. Edwards, Heenan Blaikie LLP

Anna Esposito, Pallett Valo LLP

Duncan W. Glaholt, Glaholt LLP

Karen Groulx, Pallett Valo LLP

Ian J. Houston
Borden Ladner Gervais LLP

Harvey J. Kirsh
Osler, Hoskin & Harcourt LLP

Mark J. Knudsen, St. Paul Guarantee
Insurance Company

Janine Kovach,
Cassels Brock & Blackwell LLP

W. Andrew McLaughlin
McLaughlin & Associates

Stephen Morrison
Cassels Brock & Blackwell LLP

Timothy John Murphy
McMillan LLP

Stanley Naftolin, Q.C.
Goldman Sloan Nash & Haber LLP

R. Bruce Reynolds
Borden Ladner Gervais LLP

Master David H. Sandler
Ontario Superior Court of Justice

Rocco Sebastiano
Osler, Hoskin & Harcourt LLP

Howard Wise, Goodmans LLP

Osgoode Hall Law School's Osgoode Professional Development offers both credit and non-credit programming to meet the life-long learning needs of lawyers and other professionals who need legal information. Osgoode Hall Law School is one of the world's pre-eminent law schools. *Osgoode Professional Development* embodies the law school's commitment to meeting the educational needs of the broader community and has offered many continuing legal education programs for health care, law enforcement and other professionals.

PROGRAM DIRECTOR

Geza R. Banfai is a senior partner with the Toronto office of Heenan Blaikie LLP, practicing in their Infrastructure – Construction practice group. He is certified by the Law Society of Upper Canada as a Specialist in Construction Law, is a Fellow of the Canadian College of Construction Lawyers, and is listed in both *Lexpert* and *Best Lawyers in Canada*. In his extensive construction law practice, he has represented participants at every level of the construction pyramid, from negotiating and drafting construction and related contracts (including alliancing and joint venture agreements, and P3 and similar lender-driven arrangements) to claims and disputes of many kinds. He is a director of the Canadian Construction Association, and his past directorships include Consulting Engineers of Ontario and Toronto Construction Association. In addition, he is a member of the Construction Law and ADR Sections of the Ontario Bar Association, the Forum on the Construction Industry of the American Bar Association and the Society of Construction Law. He remains active on the Construction Industry Leaders Forum of the CCA, and sits as the ex-officio legal representative on the Canadian Construction Documents Committee. He writes and lectures extensively on various issues involving the industry.



THE OSGOODE CERTIFICATE IN CONSTRUCTION LAW FALL 2011 REGISTRATION

Payment Plan
available

Name: _____ Title: _____
Firm/Company: _____ Practice Area: _____
Address: _____
City: _____ Province: _____ Postal Code: _____
Email: _____
Telephone: _____ Fax: _____ Priority Service Code:

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Fee Per Delegate

\$3295 plus 13% HST for a total of \$3723.35.

Fees include attendance, program materials, continental breakfast, lunch and refreshments for each of the 5 days of the program. The price does not include accommodations. Please inquire about group discounts and financial assistance. Payment plan details below. Dress is business casual.

Payment Options – Payment must be made prior to the program

- Cheque enclosed (payable to York University – GST# R119306736)
 Bill my credit card: VISA Mastercard
 Payment plan (Available prior to September 15, 2011 only): Bill my credit card in three equal monthly payments of \$1241.12 commencing the date of registration.
 VISA Mastercard

Card# _____

Expiry: _____

Signature: _____

Payment Amount: _____

Cancellations/Rainchecks/Substitutions

If you are unable to attend the program your organization may name a replacement. A full refund will be issued for cancellations received a minimum of 21 days before the program start date. Written cancellations received after October 31, 2011 will include an administration charge of \$700.

Location

Osgoode Professional Development
Downtown Toronto Conference Centre
1 Dundas St. W., 26th Floor
Toronto, ON, M5G 1Z3

Program Changes

We will make every effort to present the certificate program as advertised, but it may be necessary to change the dates, location, speakers or content with little or no notice. In the event of program cancellation, York University and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.



CPD Credits

LSUC (ON) CPD: Approved for 35 substantive hours; also approved with the **Barreau du Québec, BC CPD, Law Society of New Brunswick, Northwest Territories, Nunavut and Manitoba** for 35 credit hours; the **New York CLE Board** for 42 credit hours in the Area of Professional

Practice for transitional and non-transitional lawyers. Eligible for CLE/ Insurance Premium Credits Program offered by the **Law Society of PEI** and for Alberta CPD credit with the **Law Society of Alberta**. Questions? E-mail: cpd@osgoode.yorku.ca or refer to the program website.

For Further Program-Related Information

Please contact: David Thomas, Program Lawyer
at 416.673.4672 or email dthomas@osgoode.yorku.ca

Certificate of Program Completion

You will receive a certificate upon completion of The Osgoode Certificate in Construction Law. Participants must attend all program modules and successfully complete the take-home assignment to receive a certificate.

Public CLE Seminars

Customized CLE Programs

Skills Training & Certification

ITAW

Professional LLM

4 Convenient Ways to Register

1. **MAIL** your registration form to:
Osgoode Professional Development
Downtown Toronto Conference Centre
1 Dundas St. W., 26th Floor
Toronto, ON M5G 1Z3
2. **ONLINE** at www.osgoodepd.ca
3. **FAX** your registration to 416.597.9736
4. **CALL US** at 416.597.9724 or 1.888.923.3394

Professional Development
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