

9th

# Construction Claims

Avoiding and mitigating complex construction claims

December 11 & 12, 2014, Toronto

Workshop Included:  
Practical strategies for Litigation Preparation

## who should attend

Construction Executives, Owners, Developers, General Contractors, Subcontractors, Suppliers, Project Managers, Architects, Designers, Engineers, Financiers, Insurers, Construction Lawyers & Consultants

## course highlights

- Protecting yourself against construction defect claims
- Dealing with construction liens
- Construction arbitration: avoiding potential problems with standard contract clauses
- Capacity, responsibility and claims: the latest on surety bonds and insurance markets
- What not to do when conducting an arbitration
- How to recognize and safeguard against unfair practices and improper claims in delay claims and change orders

“Very practical, numerous examples”

“Clear, concise, informative”

“Very informative, good level of detail”

“Very well presented and informative”

Speakers & Participating Organizations



Course Leader  
Glenn Ackerley,  
**WeirFoulds LLP**



Andrew Gurllesky,  
**McLauchlin & Associates**



Neil S. Abbott,  
**Gowling Lafleur Henderson LLP**



Ernest Chan,  
**Aecon Group Inc.**



Joseph Cosentino,  
**Goodmans LLP**



Karen B. Groulx,  
**Dentons LLP**



Steven Hlinyanszky,  
**HSH Construction Ltd.**



Steven D. Ness,  
**Surety Association of Canada**



Matthew Nicholas,  
**Revay and Associates Limited**



Rajiv Rattan,  
**MMM Group**



Sharon Vogel,  
**Borden Ladner Gervais LLP**

Ariana Dalie,  
**Aecon Group Inc.**

## COURSE LEADERS

### GLENN ACKERLEY

Glenn W. Ackerley is a Partner at **WeirFoulds LLP**. He practises exclusively in the area of construction law. He represents clients from across the construction industry – including public and private owners, developers, contractors, subtrades, suppliers, and consultants – in a variety of construction-related matters.

### ANDREW GURLESKY

Andrew Gurlesky is a Partner at **McLaughlin & Associates**. For most of 31 years, his practice has related to advising and representing clients in the construction industry, including private and public owners, developers, contractors, subcontractors, material suppliers and engineers.

## CO-LECTURERS

### NEIL S. ABBOTT

Neil Abbott is a Partner at **Gowling Lafleur Henderson LLP**. He is the founding chair of the Firm's National Construction Practice Group.

### ERNEST CHAN

Ernie Chan is a Legal Counsel at **Aecon Group Inc.** He advises project teams, management and senior management on various project-related legal and risk issues, including in the areas of contract drafting and negotiations, risk reviews, claims and disputes, and labour and employment matters.

### JOSEPH COSENTINO

Joseph Cosentino is a Partner at **Goodmans LLP**. He practises litigation with an emphasis on construction law, contracts and commercial litigation.

### ARIANA DALIE

Ariana Dalie is Project Risk Manager at **Aecon Group Inc.**

### KAREN B. GROULX

Karen Groulx is a Partner at **Dentons LLP**. Her practice includes negotiation and drafting of various types of construction documents on behalf of owners and general contractors as well as dispute resolution and litigation.

### STEVEN HLINYANSZKY

Steven Hlinyanszky is owner of **HSH Construction Ltd.** A qualified architect and construction technologist Steven has worked on all aspects and types of development and construction in the ICI, Retail, Civil and Airport sector spanning four decades.

### STEVEN D. NESS

Steve Ness is the President of the **Surety Association of Canada** having assumed the post in 1994.

### MATTHEW NICHOLAS

Matthew Nicholas is Senior Consultant at **Revay and Associates Ltd.** He has extensive experience in project planning and control, claims analysis and management, and construction dispute avoidance and resolution.

### RAJIV RATTAN

Rajiv Rattan is Senior Program Manager at **MMM Group**.

### SHARON VOGEL

Sharon Vogel is a Partner at **Borden Ladner Gervais LLP**. She practices construction and surety law.

# COURSE PROGRAM

## LEADING TYPES OF CLAIMS

Parties to a construction dispute must often choose between inconsistent claims, defenses & remedies. This session will increase your familiarity with the leading types of construction claims so that you can spot potential claim situations and select appropriate remedies or defenses.

- The hit list: the most frequently encountered construction claims
- Legal categories of claims
- Categorizing remedies
- Initial claim evaluation: performing a claim analysis and assessment
- Best practices in selecting solutions to resolve claims situations

## LATEST ISSUES IN DEALING WITH CHANGE ORDER, DELAY AND ACCELERATION CLAIMS

More disputes arise because of actual or perceived changes in a construction project than for any other reason. This session will review:

- Common types of changes that result in change order, delay and acceleration claims
- Dealing with these claims from the contractor and owner point of view
- Advancing claims despite failing to give required notice
- Strategies for requesting and proceeding with changes
- Assessing & quantifying the scope and schedule implications of changes

# webcast



While nothing compares to the experience of attending the live event, with its enhanced networking opportunities and direct contact with leading experts, for those unable to attend in person, FP provides a convenient option to still benefit from this unsurpassed learning experience:

FP's live interactive Webcasts allow you to actively participate in events, from downloading all material distributed by lecturers to asking speakers questions.

- This program can be applied towards 9 of the 12 hours of annual Continuing Professional Development (CPD) required by the Law Society of Upper Canada. Please note that these CPD hours are not accredited for the New Member Requirement.
- For Alberta lawyers, consider including this course as a CPD learning activity in your mandatory annual Continuing Professional Development Plan as required by the Law Society of Alberta.
- Attendance at this course can be reported as 10 hours of Continuing Professional Development (CPD) to the Law Society of B.C.
- The Barreau du Québec automatically accredits training activities held outside the Province of Quebec and accredited by another Law Society, which has adopted MCLE for its members

## INSURANCE COVERAGE ISSUES IN CONSTRUCTION CLAIMS

Understanding the current insurance market, coverage options and policy exclusions is essential for your protection, as mistakes here can have disastrous consequences for owners and contractors. This discussion details the current state of the market and how to maintain sufficient coverage.

- Understanding the latest trends and issues in insurance underwriting
- What you need to know to get the coverage you need
- Critical advice for dealing with denial of coverage after the contract is awarded
- Practical strategies for managing your risks

## CONSTRUCTION RISK ALLOCATION IN CONTRACTS

Effectively apportioning responsibility on a complex construction project is a difficult task. If done properly, it paves the way to a good working relationship between contracting parties, however, if not, it can lead to expensive project delays or litigation. This discussion details the process for allocating risks in construction projects.

- Who is in charge of what on the project: identifying areas of responsibility
- Multiple contractors on one site: who is responsible for what?
- Tips for allocation of risk in standard form contracts for different project delivery systems

## DEALING WITH CONSTRUCTION LIENS

Construction liens are one way for contractors and suppliers to deal with lack of payment. For owners, a lien has the potential to bring the project to a standstill or to force payment. This discussion details practical tips on both conducting a lien action and defending or dealing with a lien claim.

- Update on the recent amendments to the *Construction Lien Act*
- Construction liens from the claimant's perspective: how to register and enforce your lien
- Construction liens from the owner's perspective: how to defend or discharge a lien claim
- Important potential pitfalls for both the claimant and the owner

## NEGOTIATING AND MEDIATING DISPUTES

Construction claims can be among the most complex and expensive disputes to pursue in litigation or arbitration. As such, it often makes sense to resolve these disputes before they escalate. This session will examine negotiation and mediation options that can get results and keep you from permanently damaging ongoing working relationships.

- Top alternative dispute resolution options
- Interest-based negotiations in construction disputes
- Using expert opinions to your best advantage
- Latest developments in construction dispute mediation
- How to protect your interests in settlement negotiations

## LOSS OF PRODUCTIVITY CLAIMS

Measuring and proving loss of productivity due to construction project changes is difficult, but this has not slowed the number of claims being filed. This presentation will provide you with a practical view on how to assess and deal with loss of productivity claims.

- Identifying core productivity and performance indicators
- Measuring performance against project baselines
- Methods for measuring loss of productivity
- Measuring and comparing planned vs. actual productivity
- Theory and the reality of practice

## DEALING WITH THIRD-PARTY CLAIMS FROM CONSTRUCTION OPERATIONS

There are a lot of third-party claims involving injuries on construction sites, making your legal obligations to third parties, such as contractors, construction workers or building tenants, difficult to ascertain. This session will examine actions that you can take to minimize third-party liabilities.

- Importance of contractor selection
- Including third-party exclusions in your client contract
- Third-party reliance provisions: avoiding third-party reliance on research reports
- Client & contractor insurance provisions
- Key duties: safety related duties, engineer's inspection duties

## THE LATEST ON SURETY BONDS

An increasing number of large private projects now require surety bonds, which are mandatory for public projects. This session will provide a review of the concepts and principles of construction surety bonds and discuss:

- Surety bond options and why they differ from other forms of security
- The surety industry's response to changing needs
- What surety companies do behind the scenes before writing a bond and before paying a claim
- What's happening in construction claims

## DOCUMENTING A CONSTRUCTION CLAIM

Project records and documentation are the most critical element in a successful claim, as written agreements and documentary evidence will almost always outweigh oral evidence and alleged verbal agreements. This presentation will discuss documentation and record-keeping best practices that will play a huge role in resolving a construction claim.

- Maintaining all bid documentation and pre-contractual agreements, representations & understandings in writing
- Keeping all project correspondence, plans and drawings
- Maintaining logs of requests for information, site instructions and changes
- Establishing the chronology of events from multiple sources
- Documenting the causes and additional costs related to a potential claim

## WORKSHOP

### PRACTICAL STRATEGIES FOR LITIGATION PREPARATION

Litigation is a time-consuming and expensive process. However, the better prepared you are for it, the stronger and better informed your position will be to proceed to trial or to negotiate a settlement. This interactive workshop will walk you through the complex world of construction claims focusing on real life examples.

- How to identify early on issues that may lead to disputes/claims
- How to be ready for the last resort: litigation
- How to resolve claims amicably without incurring huge legal fees and prolonged settlement time
- What needs to be done by owners, consultants, engineers and contractors to avoid claims

# PROCEEDINGS

The "Proceedings" is your Web repository of learning resources for this event. It includes:

- the recording of the lectures at the forthcoming event itself, including documentation, slides and audio-visual;
- 25 or more carefully selected additional lectures (below), which are intended as a recommended enrichment of the course content, with many additional topics covered.

The price of the Proceedings (one user licence) is \$299 if you are attending in person or by Webcast; or \$799 otherwise.

## Latest tactics for dealing with change order, delay and acceleration claims

Kenneth W. Crofoot  
Goodmans LLP

## Insurance Coverage Issues in Construction Claims

Maurice Audet  
Aon Reed Stenhouse Inc.

## Using Risk Management Tools in Construction Finance Negotiations

Eric Wolfe  
KPMG LLP

## Dealing with Third-party Claims from Construction Operations

Joy Jackson  
City of London

## Documenting a Construction Claim

Deborah Tracogna  
City of Brampton

## Dealing with Impact: Loss of Productivity Claims

Matthew Nicholas  
Reyav and Associates Limited

## Risk Prevention/Response in Project Management

Laurent Courion  
ABB Canada

## Managing Risk in the Bidding & Tendering Process

Howard M. Wise  
Goodmans LLP

## Allocating Risk Through Insurance

Nelly Toledo  
HUB International HKMB

## Risk Assessment and Adaptive Measures for Vulnerable Infrastructure

Saidur Rahman  
Town of Oakville

## Minimizing Damages: Risk Management Lessons Learned from Construction Claims

Michael R. Swartz  
WeirFoulds LLP

## Minimizing Green Construction Risk

Brendan D. Bowles  
Glaholt LLP

## Construction Risk: A Project Case Study

Greg Tanzola  
Sorbara Development Group

## Practices During Pre-Construction Planning

David MacKeracher  
The Mitchell Partnership Inc.

## Practical Approach to Integrated Project Delivery: Key Principles

Arthur Winslow  
Winnen Construction Group Inc.

## Project Functional Assessment: Preventative & Proactive Measures

Thomas Krikke  
KPMG LLP

## Best Practices for Construction Contract Administration & Project Execution

Lorna Tardif  
Tardif, Murray and Associates

## Contract Security for Construction Management Projects

Herb Guhl  
Contrax Consulting Inc.

## Litigation Preparedness & the Handling of Claims

Patricia L. Morrison  
Borden Ladner Gervais LLP

## Managing the Legal Aspects of Construction Financing

Iris Tam  
Blake, Cassels & Graydon LLP

## Protecting Your Procurement Against Bid Rigging

Anthony F. Balanza  
Fasken Martineau DuMoulin LLP

## Managing Risk in the Contracting and Tendering Process: Allocating Risks

Deborah Tracogna  
City of Brampton

## Causes of Construction Project Overruns: Protecting your Investment

Stephen Reyav  
Reyav and Associates Ltd.

## Dealing with Construction Liens

Andrew E. Stead  
McMillan LLP

**Registration:** To reserve your place, call Federated Press toll-free at 1-800-363-0722. In Toronto, call (416) 665-6868 or fax to (416) 665-7733. Then mail your payment along with the registration form. Places are limited. Your reservation will be confirmed before the course.

**Location:** Courtyard by Marriott Downtown Toronto, 475 Yonge Street, Toronto, ON, M4Y 1X7

**Conditions:** Registration covers attendance for one person, the supplementary course material as described in this document, lunch on both days, morning coffee on both days and refreshments during all breaks. The proceedings of the course will be captured on audio or video.

**Time:** This course is a two-day event. Registration begins at 8:00 a.m. The morning sessions start promptly at 9:00. The second day ends at 5:00 p.m.

**Cancellation:** Please note that non-attendance at the course does not entitle the registrant to a refund. In the event that a registrant becomes unable to attend following the deadline for cancellation, a substitute attendee may be delegated. Please notify Federated Press of any changes as soon as possible. Federated Press assumes no liability for changes in program content or speakers. A full refund of the attendance fee less 15% administration fee will be provided upon cancellation in writing received prior to November 27, 2014. No refunds will be issued after this date.

**Discounts:** Federated Press has special team discounts. Groups of 3 or more from the same organization receive 15%. For larger groups please call.

Payment must be received prior to December 4, 2014.

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## TO REGISTER FOR 9TH CONSTRUCTION CLAIMS

Name \_\_\_\_\_  
 Title \_\_\_\_\_ Department \_\_\_\_\_  
 Approving Manager Name \_\_\_\_\_  
 Approving Manager Title \_\_\_\_\_  
 Organization \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ Province \_\_\_\_\_ Postal Code \_\_\_\_\_  
 Telephone \_\_\_\_\_ Fax \_\_\_\_\_ e-mail \_\_\_\_\_  
 Please bill my credit card:  AMEX  VISA  Mastercard  
 # \_\_\_\_\_ Expiration date: \_\_\_\_ / \_\_\_\_  
 Signature : \_\_\_\_\_  
 Payment enclosed:  Please invoice. PO Number: \_\_\_\_\_

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NUMBER OF PARTICIPANTS:   
 COURSE: \$1975  
 WEBCAST: \$1575\*  
 \* One user licence  
 COURSE + PROCEEDINGS:  
 \$1975 + \$299 = \$2274  
 WEBCAST + PROCEEDINGS: \$1874  
 PROCEEDINGS: \$799\*  
 \* One user licence  
 NOTE: Please add 13% HST to all prices.  
 Proceedings will be available 60 days after the course takes place  
 Enclose your cheque payable to Federated Press in the amount of:  
  
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