GOODMANS UPDATE

Construction Law • What You Need To Know • Summer 2003

Canadian Transit Co. v. Girdhar.

Ontario Superior Court of Justice
Divisional Court
by Howard M. Wise

This case addresses an interesting issue with respect to the relationship between engineers and their clients. The facts of the case are as follows:

1. The Plaintiff, Canadian Transit Co. ("CTC"), owns, operates and manages the Canadian portion of the Ambassador Bridge (the bridge that connects Detroit and Windsor).

2. The Defendant, Ravi Girdhar, is a consulting engineer employed by Earth Tech (Canada) Inc. ("Earth Tech").

3. Earth Tech was retained by CTC to perform various transportation studies in respect of the Ambassador Bridge.

4. The Peace Bridge Authority owns and operates the Peace Bridge which links Fort Erie and Buffalo.

5. Earth Tech was also retained as a subconsultant to the main transportation consultant for the Peace Bridge to provide a certain type of analysis regarding truck traffic over the Queen Elizabeth Way leading to the Peace Bridge.

6. CTC brought an injunction to restrain the Defendants from any engagement in respect of the Buffalo-Fort Erie Peace Bridge expansion project.

7. The thrust of the claim brought by CTC was that Earth Tech was in a fiduciary relationship with it and as such, and in light of the fact that Earth Tech, in all likelihood, possessed confidential information, Earth Tech should be prohibited from undertaking any work in respect of the Fort Erie Peace Bridge.

At the initial application before the Ontario Superior Court of Justice, the Court affirmed that in order to grant an injunction, there was a three part test that needed to be met:

(a) there is a serious question to be tried;

(b) in the absence of an injunction the moving party will suffer irreparable harm that cannot be adequately compensated in damages; and

(c) the balance of convenience favours granting the injunction.

After hearing argument, the trial judge dismissed the application for the injunction. In ruling in favour of Earth Tech, Justice Day stated:

> …in this case, I would say there was some doubt on the merits of whether Earth Tech owes a fiduciary duty or has breached its confidentiality agreement

The construction industry is one of Canada's largest. It is one of the industries by which our economy is measured. From heavy equipment manufacturers to suppliers from subcontractors and general contractors to owners and developers changes in the industry can have a dramatic effect on day-to-day business.

The Goodmans Construction Law Update was created to keep you abreast of recent legal developments as well as industry trends. We hope you find it informative and will continue to keep you informed of future developments and trends in the construction industry.

In This Issue

with CTC. Thus, clear evidence of irreparable harm must be shown.

On appeal to the Divisional Court, the Divisional Court affirmed the Lower Court decision. Of particular interest, was the Court's consideration of the issue of the fiduciary duty. The Court, in upholding the ruling in favour of Earth Tech, concluded that the relationship between an engineer and its client is not necessarily fiduciary, and that by engaging an engineer, the relationship which is ultimately formed will not necessarily be one of a fiduciary nature.

The Court, while acknowledging all of the duties of confidentiality which arise both in the professional context under the Code of Ethics and the other common law obligations, did not say that the mere existence of the professional relationship gave rise to the engineer putting itself in a position of overriding power and influence over the client. In upholding the decision, the Divisional Court cited with approval, a decision of the Alberta Court of Appeal in *Terra Energy Ltd. v. Kilborn Engineering Alberta Ltd.* (1999), 170 D.L.R. (4th) 405, where it was concluded that even though a relationship between an engineer and an owner may result in the exchange of confidential information, such relationship did not give rise to a breach of fiduciary duty because their relationship was not a fiduciary one. In that case, the Alberta Court of Appeal held:

> The relationship between a professional engineer and a client may in certain factual contexts give rise to a fiduciary relationship. However, the professional engineer client relationship along with all its attendant duties imposed by the APEGGA Code of Ethics, does not, by and of itself, place a fiduciary duty on the professional engineer. The Engineering, Geological and Geophysical Professions Act and the APEGGA Code of Ethics do not place the engineer in a position of overriding power and influence over the client. This does not mean that in certain factual contexts a professional engineer may not come to stand in a position of overriding power and influence as a result of the trust, confidence and discretion placed in or granted to the engineer by the client. However, in that case the fiduciary obligation the professional engineer owes to the client arises based on the factual context of their particular relationship and not merely because there is a statutory relationship.

It is clear that the Court has gone to great lengths to distinguish between an engineer's obligation to keep information that has been given to it private from the legal relationship that may exist or develop between it and the client.

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Howard is a partner at Goodmans specializing in the areas of construction law and commercial litigation. Howard is the author of the *Manual of Construction Law*, published by Carswell. As well, Howard is a contributing author to a textbook entitled "*Construction Disputes: Representing the Contractor*", published by Aspen Publications, New York. Howard is a Fellow of the Canadian College of Construction Lawyers and has been certified by the Law Society of Upper Canada as a Specialist in construction law. He is regularly retained to act in large multi-partied disputes, including acting for owners, general contractors, subcontractors, financiers and design professionals.

Mediation: An Overview

by Joseph Cosentino

Mediation is a process whereby the parties appear before a neutral non-party, the mediator, who attempts to facilitate discussion among the parties with a view to resolving the issues underlying the dispute. The mediator makes no binding decisions and the parties are free to terminate the mediation or reach a settlement at their discretion.

For quite some time now, all civil matters commenced in Toronto, with a few area specific exceptions, require a mandatory mediation session following the exchange of pleadings, before the matter may proceed to examinations for discovery in the 'regular' litigation realm.

There has been a mandatory mediation pilot project in Toronto in selected civil cases since 1994. The results of that project show that 40% of all cases referred to mediation settled within 90 days of the referral. The mandatory mediation program can be seen as a response to growing public and political concern about the cost and delay involved in civil litigation. It

is estimated that there are more than 80,000 new non-family law cases filed in Ontario courts each year. The system would collapse under its own weight if all cases remained in the system for the standard three to four years to reach a trial decision. The reality is that approximately 90% of cases settle out of court. Mandatory mediation is an attempt to encourage out of court settlement to take place much earlier in the process, to save the government money by reducing the use of court resources, and to permit the parties to save litigation expenses and time.

The benefit of mandatory mediation naturally depends on the nature of the case. In a personal injury action, it may be that the full impact of the injuries and evidence of lost income will not be manifest by the time the mandatory mediation takes place. On the other hand, certain types of cases involving the construction industry may benefit from early mandatory mediation. The damages are usually readily calculated, the documents are likely already known and available to all parties, and the parties will likely have other projects to which they would prefer to devote their energies. If an early settlement results from mediation, this increases the likelihood the project involved will be completed at or near the scheduled date, and increases the likelihood of maintaining the relationship between the parties.

The advantage of mediation to the client is that the client makes the ultimate decision and the client is the focus of negotiations. Counsel is really at the mediation as a partner to the client. Since the focus of mediation is on the clients, each party's goal is to convince the client or clients on the other side of the merits of their position, so as to reach a settlement or compromise on each issue.

One of the disadvantages of mediation is that it is of relatively little value for the resolution of future disputes. Each successful mediation is a result of a number of factors: (a) the facts in dispute, (b) the willingness of one or more parties to compromise its position, and (c) the ability of the mediator to induce interaction among the mediator, the parties and the various counsel. In other words, mediation is of little precedent value and will not lead to a set of norms or rules which then can be used or recognized in resolving future disputes.

Mediation and Construction Disputes

Unfortunately, the government mandatory mediation program does not apply to construction lien cases. There are, however, built into the *Construction Lien Act, R.S.O., 1990, c.C-30*, provisions for "negotiation meetings". These are the settlement meeting and the pre-trial conference. The primary difference with mediation and the settlement meeting is that the negotiations and the report that may arise out of the construction lien settlement meeting, are generated without the benefit of a third party. The construction lien pre-trial conference is conducted by a Judge or Master with a view to reaching an agreement on issues such as the timeliness of liens, the amount of holdback or the dates of substantial completion. The Judge or Master is looking to reach a consensus on these matters in order to shorten the length of a trial of the matter. These meetings are a form of alternate dispute resolution built into the legislation, specific to the construction industry. The parties to a construction lien action can always agree to hold a mediation on agreed terms.

In construction disputes not brought under the *Construction Lien Act*, there will be mandatory mediation under the government program. A knowledgeable mediator who can view the dispute from the perspectives of the sub-contractor, contractor and owner, could facilitate settlements of disputes at a very early stage and at a reduced cost in terms of legal fees. Counsel will serve clients well by selecting mediators from the Court roster who have construction or engineering knowledge and experience. The construction area may be one in which parties will seek leave of the Court to retain a mediator who is not on the Court roster to assist with a mediation.

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Joe is an associate with Goodmans practising in the area of commercial litigation. He specializes in construction law, with an emphasis on construction lien litigation, construction contracts litigation and bond claims. He is a member of the Canadian Bar Association of Ontario – Civil Litigation and Construction Law sections, a member of the Toronto Construction Association and a member of the Advocates' Society.

Labour & Employment Lawyer Joins Goodmans

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The addition of Joe Morrison to our team will provide clients with strategic and legal advice on matters of labour and employment in the construction industry.

Howard Wise, Construction Group Chair

Joe recently joined Goodmans, having previously practiced law with a leading management side labour and employment law firm in Toronto. He has significant experience in labour and employment matters that arise in the construction industry. This includes labour relations, occupational health and safety, and workplace safety and insurance matters.

Labour Relations

Joe appears before the Ontario Labour Relations Board on behalf of employers regarding status disputes, related employer/sale of business applications, unfair labour practice complaints, and jurisdictional disputes.

He also provides strategic advice to non-union clients in responding to union organizing campaigns and certification applications.

Occupational Health and Safety

Joe provides representation for employers in defending charges under the *Occupational Health and Safety Act* involving critical injuries and fatalities. He also provides advice to employers who are responding to workplace accidents, work refusals, and reprisal complaints. Joe conducts "due diligence" training seminars for clients to assist them in complying with the Act.

Workplace Safety and Insurance (Workers' Compensation)

Joe has extensive experience in dealing with workplace safety and insurance matters. He regularly appears before the Workplace Safety and Insurance Appeals Tribunal on behalf of employers on both benefits and revenue appeals.

He assists employers in responding to workwell audits and investigations and prosecutions by the Board's Special Investigations Branch. He is a frequent speaker at conferences regarding Workplace Safety and Insurance.

Falling Down On The Job…

by Joseph K. Morrison

There are approximately 100 lost time fall from height accidents everyday in Canada. That's about 26,000 per year and over 100 of these accidents are fatal. The construction industry alone is responsible for approximately 20% of these accidents. Despite current regulations that require all construction employers to ensure that workers are provided with fall arrest equipment and proper training, fall from height accidents continue to occur.

Given the frequency and potentially fatal consequences of such accidents, the Ontario Government amended Ontario Regulation 213/91 (the "Regulation"), which sets out the safety requirements for construction projects, to mandate specific fall arrest systems where workers are exposed to falls more than three metres. These amendments were introduced in June of 2000 and set out various requirements for the types of safety systems that must be used when a construction employee is working on an elevated surface or work area. The Regulation was further amended on June 12, 2002 to require employers to provide workers with formal training on the use of fall protection systems used at the worksite.

Given the frequency of fall from height accidents, and the new Regulations, the Ministry of Labour routinely prosecutes the worker's employer for breach of the *Occupational Health and Safety Act* (the "Act") whenever a fall from height accident occurs and a worker is critically injured or killed. If an employer is found guilty, the Courts have been increasingly inclined to impose higher and higher fines. A fine in the $100,000.00 range is not uncommon should a fatality occur.

Avoiding this kind of liability is difficult but not impossible. Employers need to take "every precaution reasonable" before an accident

occurs, in order to establish a "due diligence" defence after the accident. What does "every precaution reasonable" really mean? It will depend on the particular facts of each case. It appears that maintaining compliance with the minimum standards may not be sufficient. Employers need to consider any potential hazards in each and every job to ensure that the most safety conscious approach is taken. A recent case involving a construction employer and a fall from height accident illustrates this point.

In *Ontario (Ministry of Labour) v. MacMobile Welding & Contracting Inc., [2002] O. J. No. 3699* two workers were injured when roof joints of a steel structure being erected fell and the workers fell at the same time. One worker had been wearing a six-point fall arrest harness and a lanyard. However, he was not attached to any part of the structure. The other worker wore a five-point harness and a lanyard but was not attached to anything when he worked at the top of the building.

The defendant company and its owner, who also served as the supervisor at the worksite, were charged with the following:

1. failure to ensure that the measures and procedures prescribed by the regulations were carried out in the workplace;

2. failure to take "every precaution reasonable in the circumstances" (ie. precautions to protect the workers from falling); and

3. the supervisor was charged with having failed to ensure the workers wore proper fall arrest equipment.

On the first count, the employer was found to have ensured that the workers complied with the regulations requiring them to wear fall arrest systems. As the court stated:

> At the time the joists collapsed, the two workers were stationary and not in the action of traversing more than one or two steps. The workers had been equipped with the harness and lanyard components of a fall arrest system, and could have tied off or secured themselves to the structure, but decided not to because of the limited space or the inability to reach the bundles being hoisted. They were experienced ironworkers that had made this conscious choice not to be safely secured. Although the defendants may have been a little remiss in their duties, I find that for the circumstances, the defendants took every reasonable precaution to make the workers wear their fall arrest system. Constant or immediate supervision of experienced ironworkers 40 feet above the ground would have been impracticable. As well, there was no evidence that the workers routinely failed to use their security devices…Nor is there evidence that what occurred… was not simply an isolated incident.

On the second count the court found the employer liable. The court reasoned:

> The offence under section 25(2)(h) [To take every precaution reasonable in the circumstances for the protection of a worker] is broader and describes providing protection against falling in a general sense…In sum, for the first period of the workers movements on top of the structure, based on the individual circumstances of this case, the type of offence involved and the potential for harm to ironworkers, the standard of care provided by the corporate defendant has fallen short. The system of using only one lanyard to traverse long distances that require constant attachment is inadequate to prevent falling. I conclude therefore, that MacMobile Contracting and Welding Inc. has failed to establish a proper system for protecting workers or that it took every reasonable precaution for the circumstances in preventing workers from falling generally, while traversing at the height of forty feet during the first period.

Approximately 100 lost time fall from height accidents occur everyday in Canada — about 26,000 per year and over 100 of the accidents are fatal.

The construction industry is responsible for approximately 20% of these accidents.

Although the Regulation does not require the use of a double lanyard, and although the industry standard was to use only one lanyard, the court found that this was not adequate to prevent a fall in the circumstances of this case. Further, the court noted that the company provided no health and safety meetings, nor did it have any discussions with the workers about taking safety precautions.

This case suggests that employers must ensure that the safety equipment provided to workers is adequate to protect their safety in performing the specific tasks that are assigned. Simply abiding by the minimum or standard requirements may not be sufficient. Employers need to review all aspects of the assigned task and ensure that all reasonable precautions are taken.

Abiding by minimum or standard requirements may not be enough.

Employers must ensure that all reasonable precautions are taken to protect workers in the performance of their jobs.

Recommendations

To avoid fall from height accidents, and the potential prosecution and fines that may result from them, construction employers must be aware of their statutory obligations, particularly, the general obligations set out in the Act and the specific requirements provided in the Regulation for construction projects. Notwithstanding the specific duties set out in legislation, there are many general steps employers and constructors can take to better ensure employees are protected from falls from height:

- Ensure that the proper equipment is available at the worksite;
- Ensure it is appropriate to the task assigned, meets the legislative standards, and is in good working order;
- Instruct workers of their obligations under the Act, on the importance of using the appropriate fall protection equipment, and on the safe use of such equipment;
- Document all training;
- Have regular health and safety meetings to remind workers of their obligations, to advise workers of any legislative training, and provide follow-up training;
- At the work site, ensure that employees are supervised to the extent appropriate to the employees experience and expertise;
- Monitor employees use of fall protection equipment; and
- Discipline employees when they have failed to wear to the appropriate fall protection equipment or to take other necessary safety precautions.

Finally, given the significant fines that may be expected should an accident occur, it is always advisable to contact legal counsel as soon as an accident occurs and to seek their advice and counsel throughout the process of dealing with Ministry of Labour inspectors.

Do You Know What To Do When An Accident Happens?

Below is a checklist of key steps to take when an accident occurs.

Immediately Following an Accident

- ❑ Arrange for medical assistance for the injured worker.
- ❑ Lock out the machinery/equipment.
- ❑ Secure the accident site.
- ❑ Notify:
  - ❍ The Ministry of Labour;
  - ❍ The injured worker's family;
  - ❍ The workplace joint health and safety committee or the workplace health and safety representative;
  - ❍ A union representative, if any; and
  - ❍ Legal counsel.

The Inspector's Investigation

- ❑ Select one management representative as the Ministry of Labour contact and liaison person.
- ❑ Any person being questioned by a Ministry of Labour inspector has the right to have counsel present and the right to remain silent.
- ❑ Have company legal counsel present when witness interviews take place.
- ❑ No person can obstruct, interfere with or mislead an inspector.
- ❑ The management representative should accompany the inspector during the investigation and record his/her observations, comments, tests, measurements, sketches, photographs and any errors made by the inspector.
- ❑ Obtain copies of all witness statements, documents given to the inspector, and police reports.

The Notice of Accident

- ❑ The employer must provide a Notice of Accident report to the Ministry of Labour within 48 hours of a "critical injury" in the workplace.
- ❑ A "critical injury" means an injury that:
  - ❍ Places life in jeopardy;
  - ❍ Produces unconsciousness;
  - ❍ Results in substantial loss of blood;
  - ❍ Involves a fracture of a leg or arm, but not a finger or toe;
  - ❍ Involves the amputation of a leg, arm, hand or foot, but not a finger or toe;
  - ❍ Consists of burns to a major portion of the body; and
  - ❍ Causes the loss of sight in an eye.
- ❑ The Notice of Accident to be delivered to the Ministry of Labour must include:
  - ❍ The names and addresses of the employer and injured worker;
  - ❍ The nature and circumstances of the occurrence and the bodily injury sustained;
  - ❍ A description of the machinery or equipment involved in the accident;
  - ❍ The time and location of the accident;
  - ❍ The names and addresses of all witnesses; and
  - ❍ The name and address of the treating physician(s).

Contact legal counsel as soon as an accident occurs and obtain their advice and counsel when dealing with Ministry of Labour inspectors.

Privity of Contract and Breach of Trust Claims Under the *Construction Lien Act*

by Jennifer Leitch

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Jennifer is an associate at Goodmans specializing in commercial litigation with an emphasis on construction law. Jennifer's construction law practice involves acting for owners, general contractors, subcontractors, material suppliers and lenders in construction disputes. She is regularly consulted on contract issues, lien matters and claims involving design professionals.

In a recent decision of the Ontario Superior Court of Justice entitled *1150402 Ontario Inc. v. Delfino et al. ("Delfino")*, Mr. Justice Stinson reviewed the scope of trust provisions contained in the *Construction Lien Act*, R.S.O. 1990, c. C. 30, as amended (the "Act") including the availability of a breach of trust claim to those parties not in a direct contractual relationship. Although the *Delfino* case is a significant decision for several reasons, it is Justice Stinson's review of the scope of the trust provisions in section 8 which will be discussed in this article.

Pursuant to section 8 of the Act, a party has an obligation as trustee to ensure that contract monies paid to him are in turn paid to those who supply material, labour or services in respect of the improvement and that the said funds are impressed with a trust until so paid. Specifically, section 8 of the Act states that:

> "All amounts,
>
> (a) owing to a contractor or subcontractor, whether or not due or payable; or
>
> (b) received by a contractor or subcontractor, on account of the contract or subcontract price of an improvement constitute a trust fund for the benefit of the subcontractors and other persons who have supplied services or materials to the improvement who are owed amounts by the contractor or subcontractor."

In *Delfino*, Justice Stinson made several findings of fact, which are important in understanding his reason. Firstly, in 1997, the Plaintiff, 1150402 Ontario Inc. ("1150402") jointly incorporated 97 Masonry Group Inc. ("97 Masonry") with Delfino Masonry Inc. ("Delfino") based on the understanding that both companies would work together on masonry contracts. Upon 97 Masonry being awarded a masonry contract, 1150402 and Delfino would jointly supply labour and materials thereby sharing the costs and ultimately sharing any profits.

It was in respect of a project owned by the Ontario Ministry of Transportation ("MTO") that Justice Stinson examined the issue of the contractual relationship between trustee and claimant. On said project, 1150402 alleged that the general contractor, Namfar Construction Ltd. ("Namfar"), had received funds from MTO and that said funds constituted a trust fund for the benefit of various parties, including 1150402. There was a dispute about who Namfar had contracted with respect to the masonry work. 1150402 argued that Namfar as a trustee could not convert the funds to its own use or a use inconsistent with the trust until all amounts were paid to 1150402. 1150402 further argued that as a beneficiary of the trust, it was entitled to be paid from the trust all amounts owed to it. Moreover, to the extent that Namfar had used the funds in a manner inconsistent with the trust, Namfar was liable to 1150402 for breach of trust.

Namfar argued that it had contracted with Delfino and as such, it did not have trust obligations vis-à-vis 1150402. Based on a review of the facts surrounding the formation of the contract, as well as the parties conduct throughout the course of the Project, Justice Stinson determined the contractual chain in respect of the masonry work on the MTO project was as follows:

> Owner - Ontario Realty Corporation/MTO
>
> General Contractor - Namfar
>
> Masonry Subcontractor - Delfino

Masonry Sub-subcontractor - 97 Masonry

Masonry Sub-sub-subcontractor - 1150402

In light of this factual determination, Justice Stinson believed that the narrow question to be decided prior to establishing whether a breach of trust had occurred, was whether 1150402, as a sub-sub-subcontractor and a party with no direct contractual relationship with Namfar, was a beneficiary of the trust imposed upon the funds received by Namfar from the Owner pursuant to section 8 of the Act.

Justice Stinson then proceeded to perform an analysis of the trust provisions of the Act and ultimately concluded, among other things, that the beneficiaries of a trust under section 8 of the Act are "limited to persons who stand in direct privity with the contractor and who are owed amounts by the contractor".

In reaching his decision, Justice Stinson rejected 1150402's interpretation of section 8 that monies received by a contractor constituted trust funds for the benefit of all persons below the contractor in the construction chain. Based on this interpretation, Justice Stinson reasoned that section 8 would require that the contractor hold all monies received from an owner until all of the parties down the construction chain had received payment from the intermediate parties. Justice Stinson believed that such an approach would seriously disrupt the flow of funds on a construction project and that this potential disruption would be contrary to the legislature's intention in creating the trust provisions in the Act.

Justice Stinson also concluded that in light of the fact that a contractor could discharge its trust obligations by making payments to a party it is liable to pay on the project in respect of services and/or materials supplied to the project, it stood to reason that the contractor's trust obligations only extended as far as those parties to which it owes payment (ie. those parties with which it had a contractual relationship).

Based on this analysis, Justice Stinson adopted a narrower interpretation of a party's trust obligations such that in order to qualify as a beneficiary of a trust under section 8 of the Act, a party must be owed monies directly from the trustee.

The result of this decision is significant because it arguably limits the scope of certain trust provisions in Ontario to those parties in a contractual relationship. For contractors and subcontractors who become involved in trust actions, it will be important to examine the relationship between the party commencing a trust claim under the Act and the party alleged to be a trustee.

Contractors and subcontractors who become involved in trust actions must examine the relationship between the party initiating the trust claim under the Act and the party assumed to be a trustee.

In Focus

Construction Law Group News and Upcoming Events

Don Pierce spoke at the Canada West Foundation Conference held in Calgary on March 7th. Don was part of a panel of speakers that addressed the role of public-private partnerships in transportation projects. He reviewed the basic components of the P3 model(s) in transportation projects and gave an overview of how P3 differs from design/build or traditional government management of transportation projects.

The Canadian Construction Association's Standard Practices Committee held its first best practices conference: "Delivery of Successful Construction Projects" on May 26-27 in Toronto. Howard Wise spoke on best practices in bidding and tendering.

Howard will be a speaker at the Canadian Institute's conference on "Negotiating and Drafting Key Business Agreements" to be held in Toronto on September 28-29, 2003. Howard will focus on the contracting process.

Two of our construction group members will be speaking at upcoming Lorman Education Services seminars. Joe Cosentino will be speaking on tendering claims at the September 12, 2003 seminar entitled "Construction Claims". Joe Morrison will be speaking at a one-day seminar on "Employee Discharge and Documentation in Ontario" to be held in Oshawa on September 23, 2003. Joe will address a number of post-termination issues including severance and release agreements, an update on issue estoppel, post-employment references and handling income tax, employment insurance and other deductions in employment termination.

Joe Morrison has also written two articles published recently in *Canadian Employment Law Today*, a bi-weekly newsletter published by Thomson Carswell.

His first article, "Sleep disorder argument put to bed", in the April 2003 issue (no. 386, pgs 3014-3015) takes an in-depth look at Workers' Compensation. The Nova Scotia Court of Appeal overturned a controversial decision (*Michelin North America (Canada) Inc. v. Ross*) that awarded Workers' Compensation benefits to a tire company worker who claimed shift work caused an injury. Joe's article outlines the case and comments on the lessons to be learned from this landmark decision.

Joe's second article entitled "The realm of the arbitrator" in the May 14, 2003 issue (no. 389, pgs. 3038-3039), takes a look at a recent decision (*Re Teamster Canada, Local 419 and Tenaquip Ltd. (Oct. 23, 2002)*) which expands the arbitrator's jurisdiction to non-bargaining unit employees. Joe reviews this decision and its implications for employers.

Ken Crofoot wrote an article entitled "The Contractor's Rights and Obligations with Respect to Subcontractor Bids in Canada" that was published in the Winter 2003 edition of *Construct!*. *Construct!* is the newsletter of the American Bar Association's Litigation (Construction) Section. Ken is the Canadian Casenote Editor.

Mailing List Update

Goodmans provides information and commentary on legal issues, the impact of changing legislation and recent developments or trends. Please indicate your areas of interest and we would be pleased to add your name to our database. If you currently receive any materials from Goodmans, please help us update our records by taking a few moments to fill out this form. Thank you.

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CONSTRUCTION LAW UPDATE

If you have any comments about Goodmans Construction Law Update or wish to discuss industry-related issues or recent developments and trends, please contact a member of our Construction Law Group.

The group handles all types of construction matters, including contractual disputes, construction liens, disputes between design professionals and contractors, and between subcontractors and general contractors. As well, we regularly advise clients on complex construction contracts including design build agreements and public/private partnerships.

We advise a wide variety of clients including owners, contractors, subcontractors, material suppliers, receivers and lending institutions in construction litigation matters.

To get a downloadable file of this Update, or for more information on Construction Law, other Updates in additional practice areas, or for backgrounds on Goodmans lawyers, offices and practice areas, please visit our website at www.goodmans.ca.

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