

November 24 - 25, 2008 • Marriott Bloor Yorkville Hotel, Toronto

The Canadian Institute's

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18th Annual



CONSTRUCTION

superconference

**Pre-Tender Challenges • Contracts • Liens
Surety Bonds • Insurance • Bidding and Tendering
Delay Claims • Public/Private Partnerships (P3s)**

Co-Chairs

Geza Banfai

Partner
Blaney McMurtry LLP

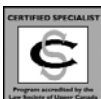
Howard Wise

Partner
Goodmans LLP

An outstanding faculty of construction industry professionals and lawyers will provide you with the most critical and updated information on:

- **OVERCOMING** challenges in bidding and tendering
- **SUCCESSFUL STRATEGIES** for navigating the pre-tender stages of a construction project
- **ANALYZING** the effects of The New Canadian Standard Construction Contract (CCDC2-2008)
- **MASTERING** the complexities of surety bonds and construction insurance
- **BEST PRACTICES** for managing risk in construction contracts
- **TOP TIPS** for identifying and resolving delay claims

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See inside for details

PLUS!

Add value to your attendance by attending this essential post-conference workshop on **November 26, 2008**

Best Practices for Resolving Construction Disputes Quickly and Cost-Effectively



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Co-Chairs

Geza Banfai

Partner, Blaney McMurtry LLP

Howard Wise

Partner, Goodmans LLP

Speakers

Matthew R. Alter

Partner, Borden Ladner Gervais LLP

David V. Bowcott

Senior Vice President Construction,
Services Division
Aon Reed Stenhouse Inc.

Brendan D. Bowles

Partner, Glaholt LLP

Drazen F. Bulat

Partner, Miller Thomson LLP

Jim Ilkay

President & CEO, Econstruction

Mark Knudsen

Vice-President, Claims and General
Counsel, Travelers Guarantee
Company of Canada

Edwin Lim

Vice President
Energy & Sustainability, BLJC

Timothy Murphy

Partner, McMillan LLP

Stanley Naftolin, Q.C., J.D.

Counsel
Goldman, Sloan, Nash & Haber LLP

William M. Pigott

Partner, Miller Thomson LLP

Leonard Ricchetti

Partner, McMillan LLP

Paul Sandori

Senior Consultant
Reyav and Associates Limited

Winnie Shi, CA CFA

Director Public and Infrastructure
Finance, KPMG LLP

Charles Simco

Partner, Shibley Righton LLP

Barry Smith

Senior Vice President, Central Region
Construction Leader
Marsh Canada Ltd.

Tom Vivian

President, Consult – Construction
Consulting Services Ltd.

Joel D. Watson

Partner, Bennett Jones LLP

Over the past year there have been numerous important developments in the construction industry. New case law, such as *Design Services Ltd. v. Canada*, will have an impact on subcontractor rights in the tendering process. Recent changes to The New Canadian Standard Construction Contract (CCDC2-2008) will affect owners, contractors and design consultants. Obtaining financing, structuring and overcoming the challenges of Public/Private Partnerships (P3s) have become more crucial as these types of projects grow in popularity.

At **The Canadian Institute's 18th Annual Construction Superconference**, you will learn practical strategies to overcome challenges from the pre-tender stages to the end of a construction project. An outstanding speaker faculty of construction industry professionals and lawyers will delve into topics of importance to you, including:

- Overcoming challenges at the **pre-tender** stages
- Best practices for protecting your **lien** rights
- Top tips for managing risk in **P3 projects**
- Successful strategies for differentiating between and properly utilizing **tenders and RFPs**
- Mitigating risk in the event of **bankruptcy or insolvency**
- Examining methods of **greening** your construction projects

And much more!

PLUS! Add value to your attendance by participating in our post-conference workshop on **"Best Practices for Resolving Construction Disputes Quickly and Cost-Effectively"**.

Do not miss this opportunity to network with other industry professionals. **Spaces go quickly every year**, so register now by calling **The Canadian Institute** toll-free at **1-877-927-7936**, fax the registration form to **1-877-927-1563** or register online at **www.CanadianInstitute.com**.

We look forward to seeing you at the conference!

Who You Will Meet

- Owners/Developers
- General Contractors, Subcontractors and Suppliers
- Construction and Project Managers/Coordinators
- Construction, Municipal, Environmental and Real Estate Lawyers
- In-house Counsel
- Government Counsel
- Risk Managers and Officers
- Engineers, Architects and Design Consultants
- Federal, Provincial and Municipal Government Representatives
- Contract Managers, Administrators and Officers
- Procurement and Purchasing Managers/Coordinators
- Utilities, Hospital and School Board Representatives
- Insurance/Surety Bond Company Representatives
- Land Use Planners
- Construction Finance Professionals
- Construction Consultants
- ADR Professionals



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While our services are technology based, we place greater emphasis on the way people interact with technology. We help our clients plan, communicate, and realize sustainable change in their organization. www.econstruction.com



Monday, November 24, 2008

8:00 Registration Opens & Coffee Served ☕

8:45 **Opening Remarks from the Co-Chairs**

Geza Banfai
Partner, Blaney McMurtry LLP

Howard Wise
Partner, Goodmans LLP

9:00 **Practical Solutions for Minimizing Risk at the Pre-Tender Stages of a Construction Project**

Jim Ilkay
President & CEO, Econstruction

David V. Bowcott
Senior Vice President Construction Services Division, Aon Reed Stenhouse Inc.

The pre-tender stage of a construction project presents challenges and opportunities that can have a significant impact on the outcome of your project. This session will provide you with the tools to identify these challenges and opportunities and help you develop strategies to mitigate risk while increasing the likelihood of a positive outcome.

- Examining calls for tenders to ensure a fair and competitive process
 - what information should be included in calls for tenders?
 - improving coverage
 - risk transfer strategies
- Establishing a consistent vendor pre-qualification process
 - what are the benefits and drawbacks?
 - how should the pre-qualification process be carried out?
- Overcoming challenges in the procurement process
 - managing design and lifecycle risk
 - establishing a Quality Assurance/Quality Control (QA/QC) program
 - analyzing the impact of green accreditation

10:00 **Best Practices for Navigating the Bidding and Tendering Minefield**

Matthew R. Alter
Partner, Borden Ladner Gervais LLP

Tom Vivian
President
Consult – Construction Consulting Services Ltd.

- Analyzing *Design Services Ltd. v. Canada*
 - reviewing the impact of Supreme Court of Canada decision on subcontractor rights in the tendering process
- Exploring *Tercon Contractors Ltd. v. British Columbia (Ministry of Transportation)*
 - what is the effect of the exclusion of liability clauses on the tender process and an owner's duty of fairness to bidders?
- *Chandos Construction Ltd. v. Alberta (Alberta Infrastructure)* and *Double N. Earthmovers Ltd. v. Edmonton*: when can owners negotiate changes to a bid?
- Examining bid depositories: how do they work?
 - what are the benefits and drawbacks of bid depositories?

- Avoiding pitfalls in the tendering process and best practices for drafting instructions to bidders
 - what should be included?
 - dealing with issues of timing

11:00 **Networking Refreshment Break**

11:15 **Demystifying Tenders and Requests for Proposals (RFPs) to Avoid Future Legal Complications**

Drazen F. Bulat
Partner, Miller Thomson LLP

Howard Wise
Partner, Goodmans LLP

- Understanding the differences between tenders and RFPs
- Examining the RFP process: how does it work?
 - going beyond pricing: understanding the importance of including detailed qualitative explanations in a response to a RFP
- Top tips for completing documents in response to a tender or RFP
- Analyzing hybrid tender-RFPs: what makes them unique?
 - how should bidders respond to them?
- How should a contractor respond to a quotation versus a RFP?
- Should owners complete a Statement of Requirements prior to sending out a RFP?
 - how will this affect the quality of documents that owners receive?

12:15 **Networking Luncheon for Delegates and Speakers** 

“Excellent event all around”

Andrew Mills

Project Coordinator, City of Mississauga

1:30 **Practical Strategies for Overcoming Challenges in Surety Bonding**

Mark Knudsen
Vice-President, Claims and General Counsel
Travelers Guarantee Company of Canada

- Examining various types of surety bonds
- Top tips for working with bonding professionals: building a good relationship
- Comparing the pros and cons of having a lender as a dual-obligee on performance and labour bonds
- Analyzing the proper time to call in a bond
 - at what point during a dispute should the bonding/surety company become involved?
 - what factors should be taken into consideration when deciding whether to call in a bond?
 - how will the actions of contractors affect the decision to call in a bond?
 - what actions can the bonding company take when there is a dispute?
- What are the concerns of owners when they make claims on a bond?
- Exploring issues concerning negligent misrepresentation: what happens when a contractor fails to obtain a bond and an owner does not force the issue?
 - do sub-trades have a claim against the owners in the event that the general contractor becomes bankrupt?



Tuesday, November 25, 2008

2:15 Exploring the Latest Trends in Construction Insurance

Barry Smith
Senior Vice President, Central Region
Construction Leader, Marsh Canada Ltd.

- Analyzing the various types of insurance: choosing the right one for your project
- What factors should be taken into consideration when choosing the type of insurance?
 - understanding the differences between new construction projects, renovations to existing structures and internal renovations
- Exploring exclusions concerning faulty workmanship
 - can the wording regarding builders' risks be broadened? How broad can it be?
 - can the exclusions be amended?

3:00 Networking Refreshment Break

3:15 Managing Risk in Construction Contracts

Geza Banfai
Partner, Blaney McMurtry LLP

Brendan D. Bowles
Partner, Glaholt LLP

- Why use a written contract at all?
 - six purposes for the written construction contract
- Allocations of risks in design-bid-build, design-build and construction management contracts
 - understanding the fundamental risks: design and cost
 - examining other key risks
 - exploring the new and emerging risk: "Green Risks"
- The use of standard versus non-standard agreements: the pros and cons
- Best practices for reviewing particular clauses with special care
 - for Owners
 - for General Contractors
 - for trade contractors
- Best practices for reading a draft construction contract
 - what are the essential terms and why?
 - how to analyze a contract for risk allocation
 - what does a good contract look like?
 - how to differentiate a fair contract from an onerous one

4:15 Addressing the Effects of The New Canadian Standard Construction Contract (CCDC2-2008)

Charles Simco
Partner, Shibley Righton LLP

- What are the changes of the New Canadian Standard Construction Contract (CCDC2-2008)?
- What effect, if any, will the CCDC2-2008 changes have on construction contracts?
- Analyzing the concerns of the CCDC2-2008 changes: how are owners, contractors and design consultants affected?

4:45 Co-Chairs' Closing Remarks Conference Adjourns

8:30 Coffee Served ☕

9:00 Opening Remarks from the Co-Chairs

9:15 Delay Claims: Identifying the Causes, Quantifying the Claim and Finding Strategies for Resolution

Paul Sandori
Senior Consultant, Revay and Associates Limited

William M. Pigott
Partner, Miller Thomson LLP

- Analyzing standard contractual provisions: the devil is in the details
- Understanding supplementary conditions and the Law of Unintended Consequences
- Examining what is wrong with typical delay claims
 - what is in the contract?
 - what is the link between cause and effect?
 - where is the evidence?
 - where is notice of the claim?
- Tips for the better way of presenting delay claims
 - starting with the "big picture"
 - Earned Value Analysis
 - Snapshot Analysis
 - Learning Curve lessons
- Avoiding and resolving delay claims

10:15 Successfully Protecting and Utilizing Your Lien Rights

Leonard Ricchetti
Partner, McMillan LLP

- Examining whether the number of liens are recently increasing: what could be the cause?
- Best practices for protecting your lien rights
- Under what circumstances are lien rights not available?
- What is the impact of construction liens?
- Best practices for getting your lien money out of court: what are complications and how can they be overcome?
- Analyzing *Kennedy Electric Ltd. v. Dana Canada Corporation* and *Rumble Automation Inc.*
 - what impact does this case have on trust obligations and holdbacks?
 - defining an "improvement" under the *Construction Lien Act*: how did the court apply the definition in this case?
- Exploring the proposed changes to the *Construction Lien Act*: what impact could they have?

11:00 Networking Refreshment Break

11:15 Top Tips for Structuring and Managing Public/Private Partnerships (P3s)

Timothy Murphy
Partner, McMillan LLP

Winnie Shi, CA CFA
Director Public and Infrastructure Finance
KPMG LLP

- Successful strategies for structuring P3 projects
- Which construction projects are good candidates for P3 structuring?

- What are the benefits and drawbacks of P3 projects for the government and the private sector?
- Managing risk in P3 projects: protecting yourself from liability
 - best practices for utilizing the benefits of a labour material bond
- How can transparency among bids be achieved?
- Exploring the challenging aspects of P3 projects
- Dealing with and overcoming the challenges of P3 projects: expectations and communication
 - can greater transparency by the private sector assist in overcoming the negative aspects of P3 Projects?

12:30 **Networking Luncheon for Delegates and Speakers** 

1:45 **Bankruptcy and Insolvency: Priorities, Trust Provisions and Mitigating Risk**

Joel D. Watson
Partner, Bennett Jones LLP

- What is the process when contractors become insolvent or declare bankruptcy?
- Examining the order of priorities under the *Bankruptcy Act*
- Understanding the priority of Canada Revenue Agency regarding a contractor's unpaid taxes
- Can banks seize the funds of the contractor and claim priority to these funds over subcontractors?
- Invoking the trust provisions under the *Construction Lien Act*: how do they work?
 - what must be proven to invoke the trust provisions?
- Mitigating risk: successful strategies for protecting yourself from risk prior to insolvency or bankruptcy
 - what due diligence steps must be taken by owners to protect themselves?
- How can directors and executives protect themselves from personal financial responsibility when contracting companies become insolvent or declare bankruptcy?
 - can subcontractors pursue directors and executives personally?
- Exploring the interplay between bankruptcy and trust funds
 - how do trustees in bankruptcy respond to trust claims?

2:45 **Networking Refreshment Break**

3:00 **Strategies for Greening Your Project: Examining the Benefits and Drawbacks**

Edwin Lim
Vice President, Energy & Sustainability, BLJC

- How do Green Building Rating Systems work?
 - what steps must be taken to acquire certification?
- Examining the benefits of Green Buildings to the environment
- Analyzing the costs and benefits of greening and certifying buildings
- What are the challenges in ensuring compliance with Green Building Rating Systems?
 - are there any risks or pitfalls?
- What does the future hold for Green Building Rating Systems?

3:45 **Co-Chairs' Closing Remarks**
Conference Concludes



Post-Conference Workshop
Wednesday, November 26, 2008

9:00 a.m. – 12:00 p.m.

Best Practices for Resolving Construction Disputes Quickly and Cost-Effectively

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

Construction disputes can arise in large and small projects. If these disputes lead to litigation, contractors, owners, developers and others involved can be caught up in a long and costly battle. Alternate Dispute Resolution (ADR), if employed effectively, can assist in resolving disputes in a shorter and more cost-effective manner. It is crucial for all parties involved in a dispute to understand how to utilize the ADR process to everyone's benefit.

This interactive workshop will be designed as a question and answer period based around a set of facts that will be presented at the workshop. The workshop leader will guide you through the fact situation and suggested protocol in an ADR setting, which will provide you with a comprehensive understanding of the ADR process and the tools to overcome disputes.

- Comparing litigation and dispute resolution: which is better for you and your project?
- Examining the different methods of dispute resolution: choosing the best method for your situation
- Best practices for the different types of dispute resolution
- Including dispute resolution in contracts: is this a good idea?
 - what are the pros and cons?
 - should dispute resolution be mandatory or optional?
 - what is the effect of permissive language in contracts?
- Exploring dispute resolution under the new CCDC2-2008 contract

“Good topics, knowledgeable speakers”

David Swift
Lawyer, Harrison Pensa LLP



This program has been accredited by the Law Society of Upper Canada towards the professional development requirement for certification.

Conference: Construction Law 10.5 hours
Post-Conference Workshop: Construction Law 3 hours

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18th Annual

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Top Reasons to Attend

- ✓ **Develop** best practices for bidding and tendering
- ✓ **Learn** successful strategies for managing risk in construction contracts
- ✓ **Receive** top tips for identifying and resolving delay claims
- ✓ **Understand** how the latest trends and policies will affect the success of your project
- ✓ **Network** with construction industry professionals

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<input type="checkbox"/> Conference Only	\$1895 + 5% GST = \$1989.75	\$2095 + 5% GST = \$2199.75
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I am attending, please add the conference materials CD-ROM to my order \$195 + \$15.95 (S & H) (+ applicable taxes)

STEP 2

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STEP 3

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Hotel Reservations

For information on hotel room availability and reservations, please contact Marriott Bloor Yorkville at 1-800-859-7180. When making your reservation, please ask for "The Canadian Institute's Corporate Rate".

Program Materials

Conference participants will receive a comprehensive set of conference materials prepared by the speakers, as an excellent reference source after the conference. If you have paid and are unable to attend, the conference materials will be shipped to you upon request only. Request must be received within 30 days upon conclusion of the conference.

Payment Policy

Payment must be received in full by the conference date. All discounts will be applied to the Conference Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization.

Cancellation and Refund Policy

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