



January 26–27, 2022 (MST) | Virtual Conference

14th Annual Conference on MANAGING RISK IN CONSTRUCTION CONTRACTS & PROJECTS

Western Canada Edition

*Critical legal and project updates for Western Canada's
construction professionals*

Gain insight from leading experts:



Robby Sohi
*Legal Counsel,
Western Canada
EllisDon*



Sean Marchant
*Claims Counsel – Surety
Zurich Canada*



Leanna Olson
*Senior Legal Counsel
Bantrel Co.*



Jen Hancock
*Vice President,
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Adam Lamoureux
*Legal Counsel
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Highlights for 2022:

- ▶ How Alberta's **Prompt Payments and Construction Law Reforms** Will Impact Contracts
- ▶ **Builders' Liens**: Lesser-Known Pitfalls and Where Companies Go Wrong
- ▶ How to **Build Successful Projects with Indigenous Communities**: The Fine Print for Legal and Practical Operations
- ▶ Top 10 Red Flags of **Insolvency and How to Protect Your Project**
- ▶ Approaches to **Dispute Resolution** and Resolving Problems Without Going to Court

2 Interactive Workshops:

Both workshops are included with conference registration.

WORKSHOP A Drafting and Negotiating Precise Construction Contracts

WORKSHOP B SAMPLE CONTRACTS – Contract Breakdown: Building Effective Partnership Agreements from Joint Ventures to Impact Benefit Agreements

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Improve your expertise, reduce the risk of prolonged litigation, and avoid costly disputes.

The Canadian Institute's **14th Annual Managing Risk in Construction Contracts & Projects, Western Canada Edition** has been specifically designed to provide project owners, managers, and builders with practical strategies to reduce risk and effectively manage project contracts amid uncertainties.

With critical challenges arising from pending changes to Alberta's construction law and the legal ramifications of delay claims during the Covid-19 pandemic, it's essential to know how to keep your project moving and avoid costly claims and litigation.

Hear from experienced counsel, construction managers, and contract specialists for discussions on topics including:

- » Alberta's construction law reforms and how this will impact your daily practice
- » The top challenges affecting contractual agreements amid the Covid-19 pandemic
- » Examining the risk, cost, and performance certainty of traditional and collaborative delivery models
- » Exploring the legal consequences of integrating data analytics into project management
- » Best practices for the fair and equitable allocation of risk and the role of subtrades

Join us at the highly anticipated construction law event to share best practices, hear the latest developments and learn strategies for delivering successful projects.

We look forward to seeing you virtually in January!

WHO SHOULD ATTEND

In-House Counsel
Private Legal Practitioners
Project Managers
Risk Managers
Contract Administrators, Managers,
and Specialists
Engineers and Architects
Construction Managers
Procurement Specialists
Construction Consultants
Construction Associations

Legal Accreditation



This 2-day conference program can be applied towards 9 of the 9 substantive hours, as well as 1 of the 3 Professionalism hours, of annual Continuing Professional Development (CPD) as required by the **Law Society of Ontario**. Members will also receive an additional 3 substantive hours at each pre-conference workshop.

The same number of hours may be applied to your continuing legal educational requirements in **British Columbia**.

The **Barreau du Québec** recognizes this training activity, the latter having been accredited by another Law Society subject to the MCLE.

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**.

Members of the **Law Society of Saskatchewan** seeking accreditation for an out of province activity are requested to submit the CPD Activity Application Form and agenda directly to the LSS for approval. The form is available on the LSS Website.

Co-Chairs



Chastine Taerum
Associate General Counsel- Infrastructure
Ledcor Industries Inc., Legal



Bill Woodhead
Partner
Borden Ladner Gervais LLP

Speaker Faculty



Megan Brooks
Leader, Design Technology
DIALOG



Jerry Crawford
Principal Director
KGC Consulting Services Ltd.



Jordan Crone
Partner
Gowling WLG



David de Groot
Partner
Burnet Duckworth & Palmer LLP



Chad Eggerman
Partner
MLT Aikins LLP



Melanie Gaston
Partner
Osler, Hoskin & Harcourt LLP



Terri Gosine
Director, Integrated Infrastructure Services
Edmonton Public Schools



Jen Hancock
Vice President, Collaborative Construction
Chandos Construction



Adam Lamoureux
Legal Counsel
Graham Construction & Engineering



Yvan Larocque
Principal Lawyer
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Sean Marchant
Claims Counsel – Surety
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Dragan Marinkovic
VDC/BIM Manager
CANA Construction Ltd.



Tim Mavko
Partner
Reynolds Mirth Richards & Farmer LLP



Shane Nickolson
Director, Pre-Construction (Industrial)
Graham Group



Leanna Olson
Senior Legal Counsel
Bantrel Co.



Sean Parker
Partner
McLennan Ross LLP



Dennis L. Picco, Q.C.
Partner
Dentons



Brian P. Reid
Partner
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Paul Ryzuk
Partner
Miller Thomson LLP



Joshua Sadovnick
Partner
Norton Rose Fulbright LLP



Preet Saini
Associate
McMillan LLP



Robby Sohi
Legal Counsel, Western Canada
EllisDon



David Tupper
Partner
Blake, Cassels & Graydon LLP



Peter Vetsch
Partner
Rose LLP



Craig Webber
Principal/Architect
Group2Architecture Interior Design Ltd.
President
Integrated Project Delivery Alliance (IPDA)



Bryan G. West
Partner
McCarthy Tetrault LLP



A solid list of relevant topics.

Shawn Modar, Vice President, The Rhodes Group

Pre-Conference Workshops Tuesday, January 25, 2022 (MST)

9:00 am–12:30 pm (Registration opens at 8:30 am) **S**

WORKSHOP A Drafting and Negotiating Precise Construction Contracts


 **Jordan Crone**, *Partner*, **Gowling WLG**

Effective construction contracts combine up-to-date legal strategies with the flexibility to manage a project's on-the-ground challenges and risks. Learn how to draft and negotiate construction contracts with the precision needed to effectively manage your project's risk, protect your timelines, and remedy disputes when they arise.

- Adequately defining project scope to prevent disputes
- Allocating risk across all contractual parties – addressing that risk through robust insurance provisions
- Contractual intent in the fact matrix – going beyond contractual language to interpret intent of the parties

1:30–5:00 pm (Registration opens at 1:00 pm) **S**

WORKSHOP B SAMPLE CONTRACTS – Contract Breakdown: Building Effective Partnership Agreements from Joint Ventures to Impact Benefit Agreements

 **Yvan Larocque**, *Principal Lawyer*, **Miller Titerle + Company**

Take a deep dive into real-life partnership contracts, clauses and focus on how to tailor contracts to your organization.

- Understanding joint ventures, management agreements, partnerships and strategic alliances including agreements with Indigenous communities and businesses
- Drafting consultation and accommodation policies and agreements
- Partnering with resource-sector business including forestry, mining, energy, construction, oil & gas and tourism



There is no additional cost to attend the workshops. Both workshops are included with conference registration.

Conference Day 1

Wednesday, January 26, 2022 (MST)

8:00 | Registration Opens

9:00

Opening Remarks from the Co-Chairs

 **Chastine Taerum**, *Associate General Counsel – Infrastructure*, **Ledcor Industries Inc., Legal**

Bill Woodhead, *Partner*, **Borden Ladner Gervais LLP**

9:15

How Alberta's Prompt Payments and Construction Law Reforms Will Impact Contracts, Lessons from Other Jurisdictions, and What You Need to Know to Avoid Legal Recourse **S**

 **David Tupper**, *Partner*, **Blake, Cassels & Graydon LLP**

Peter Vetsch, *Partner*, **Rose LLP**

Assessing Bill 37 and what the changes to the Prompt Payment Act means for owners and contractors.

- Examining changes to payment timelines and invoicing, the adjudication process, lien registration and anticipated risks; implications of exclusion for government contracts
- Reviewing construction act reforms across the country and lessons learned from Ontario, Saskatchewan, BC; legislative updates and case law
- Learn how the changes affect you and what steps you can take to protect your organization whether you are an owner, a contractor or subcontractor, an architect or engineer

10:15

Avoiding Delays and Claims: Inside the Top Challenges Affecting Contractual Agreements Amid the Covid-19 Pandemic **S**

 **Robby Sohi**, *Legal Counsel*, **Western Canada, EllisDon**

Chastine Taerum, *Associate General Counsel – Infrastructure*, **Ledcor Industries Inc., Legal**

Bill Woodhead, *Partner*, **Borden Ladner Gervais LLP**

After the COVID-19 pandemic delayed construction sites, owners are now faced with delay claims that need to be resolved quickly and they must know how to prepare for better outcomes.

This session will focus on how to effectively manage your project's risk from contract drafting to remedying disputes with a special focus on quantification of damages when dealing with health and safety-related impacts on construction projects.

- Navigating the complexities of contractual agreements to ensure they're successfully negotiated, structured and drafted with every member of the team

- Clearly establishing expectations and responsibilities of all stakeholders from the beginning to the end of the project
- Understanding how COVID-related clauses are being worked into contracts: the role of force majeure provisions, delay claims, productivity claims, disruption claims
- Strategies for addressing issues such as physical distancing, cleaning and sanitation, appropriate screening, etc. within existing contractual frameworks
- Exploring the ripple effects from broken supply chains, reduced workforce, late delivery of materials, and difficulties of procurement from non-domestic sources, etc.

11:15 | **Networking Break**

11:30

DISPUTE RESOLUTION – Analyzing the Pros and Cons of Different Approaches and How to Resolve Problems Without Going to Court S

 **Leanna Olson**, *Senior Legal Counsel*, **Bantrel Co.**

Preet Saini, *Associate*, **McMillan LLP**

Jerry Crawford, *Principal Director*, **KGC Consulting Services Ltd.**

Construction projects are complex and multi-faceted endeavors involving many parties with individual needs and interests, resulting in a greater likelihood that disputes will arise. Identifying common construction claims and working to avoid them must constitute an essential part of each party's risk management plan.

- What are your dispute resolution options under your contract? Should you consider mediation and why?
- How to clearly establish expectations and responsibilities at the outset of a project by striking a balance in priorities
- Adequately defining project scope with the intention of avoiding cost overruns and disputes
- Maximizing your awareness and preparedness for potential setbacks at every stage of the project
- Anticipating potential disputes and strategizing means of deterring and resolving them

12:30 | **Lunch Break**

1:30

Examining the Extent of Liability Associated with Contaminated Sites, Historical and Unforeseen Site Conditions – Who is Responsible and How to Recover Costs

 **Sean Parker**, *Partner*, **McLennan Ross LLP**

- Establishing the cause of the contamination, whether recent or historic
- Determining if the contamination was caused by the current owner, the previous owner, or a neighbouring site
- Discussing how the spread of contamination can change who is at fault, and when
- Seeking compensation from a third party for costs incurred during the prevention or remediation of damage
- Actions for recovering costs when the third-party is insolvent or no longer operating

2:15

How to Build Successful Projects with Indigenous Communities: The Fine Print for Legal and Practical Operations S

 **Chad Eggerman**, *Partner*, **MLT Aikins LLP**

- What are the key differences between on-reserve and off-reserve projects?
- What are the important legal risks to consider from the perspective of a First Nation owner, contractor, subcontractor, and supplier?
- How are Indigenous construction projects typically financed?
- How does the procurement process differ for indigenous construction projects? What needs to be considered in both drafting and responding to a procurement process for an Indigenous project?
- How are First Nation owned construction projects typically structured?
- Are there particular issues to address with builders' liens on indigenous construction projects?
- From the perspective of both a First Nation and a contractor are cultural considerations relevant in an indigenous construction project?

3:00 | **Networking Break**

3:15

Builders' Liens: Lesser-Known Pitfalls and Where Companies Go Wrong S

 **Tim Mavko**, *Partner*, **Reynolds Mirth Richards & Farmer LLP**

Bryan G. West, *Partner*, **McCarthy Tetrault LLP**

This session will offer a deep dive into how builders' liens work, the nature of a lien and other related issues to provide you with a practical understanding of where companies go wrong and practical tips on how to meet the obligations.

- How do liens arise and what are the rights and procedures to create a lien?
- What items are properly included in a lien?
- How do the transition rules affect the timelines for liens?
- What are your obligations and rights in creating a lien?
- Defending and vacating a lien to make sure it doesn't completely derail your project
- Understand and know the process of liens and how a lien can be resolved and disposed of expeditiously
- Understanding the implications of a lien on a project



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4:15

Ethical Hypothetical Scenarios: Inside the Top Dilemma Affecting Joint Venture Representations and Damages Prevention

P

 **Dennis L. Picco, Q.C., Partner, Dentons**

Brian P. Reid, Partner, Bennett Jones

This session will provide a breakdown of key ethical issues to consider and best practices to implement when dealing with joint ventures in construction projects.

- Understanding ethical issues in larger projects: Who are you representing when you're representing one of the joint venture members as well as the joint venture?
- Exploring cases related duty of good faith/duty of honest performance in construction contracts
- Comparing approaches taken by Ontario and Alberta courts and overarching impacts from a legal perspective

5:15

Closing Remarks from the Conference Co-Chairs and Conference Adjourns

Conference Day 2

Thursday, January 27, 2022 (MST)

8:30 | Registration Opens

9:00

Opening Remarks from the Co-Chairs

9:15

Think Tank on Integrated Project Delivery: Calculating the Risk, Cost and Performance Certainty of IPD and Determining the Right Model for Your Project

 **Terri Gosine, Director, Integrated Infrastructure Services, Edmonton Public Schools**

Jen Hancock, Vice President, Collaborative Construction, Chandos Construction

Adam Lamoureux, Legal Counsel, Graham Construction & Engineering

Craig Webber, Principal/Architect, Group2Architecture Interior Design Ltd., President, Integrated Project Delivery Alliance (IPDA)

This session will introduce a variety of construction models, with an in-depth look at IPD and the risks associated with delivering an IPD project in Canada

- Examining the successes and challenges to date of traditional Design-Bid-Build, Design-Build, P3s, using real-world experiences; what are the risks associated with each?
- How is IPD distinct from more traditional Design-Build and Design-Bid-Build models?
- Identifying whether IPD would be a match for your project; when IPD works and when it does not
- Reviewing the challenges in bringing IPD projects to the market; what projects are ideal for this type of collaborative contract?
- Resolving contractual disputes in an IPD model – does one contract really simplify dispute resolution? Can a unified contract help to minimize cost overruns and prolonged disputes?
- Industry insight and real-world examples from IPD projects

10:15 | Networking Break

10:30

Exploring the Legal Consequences of Integrating Data Analytics into Project Management

S

 **Megan Brooks, Leader, Design Technology, DIALOG**

Dragan Marinkovic, VDC/BIM Manager, CANA Construction Ltd.

- Visualizing your project through Building Information Modeling (BIM)
- Managing the flow of information to capture changes using BIM to ensure that every project partner is apprised of progress and changes
- What are the liability implications amongst the parties of using BIM?
- What are the issues for owners, consultants, contractors and sub-contractors with regard to their handling of BIM files?
- Who owns what, and who is responsible for changes in the BIM system?
- Protecting Intellectual property rights

11:15

Oil, Gas and Power Sector Spotlight: Examining the Cost Volatility and Unique Risks Associated with Negotiating Contracts

S

 **Shane Nickolson, Director, Pre-Construction (Industrial), Graham Group**

Construction projects in the energy sector, present unique challenges and considerations when negotiating engineering, procurement, and construction contracts. The market is seeing different pricing arrangements as the tension continues between owners facing cost pressures and contractors are becoming less willing to accept risk.

- Monitor current market trends and strategize your negotiations accordingly
- Recognize the potential limits of standard contract templates for use on projects and examine innovative approaches
- Identify the best avenues for obtaining a reasonable contract risk-allocation with commercial balance
- Address potential third-party financing concerns for your contracting strategy and in your documents
- Navigating project risk associated with political decisions



Business and industry input was a practical and interesting addition to the lawyers input.

Rebecca Hockin, Legal Counsel, Graymont

12:00 | Lunch Break

1:00

Best Practices for the Fair and Equitable Allocation of Risk and the Role of Subtrades S

 David de Groot, *Partner*, Burnet Duckworth & Palmer LLP

Paul Ryzuk, *Partner*, Miller Thomson LLP

Subcontractors, trades, and suppliers play an important role in construction projects. It is important to make sure that risks are appropriately allocated between owners, contractors, sub-contractors, suppliers, and trades. This session will address:

- Issues arising out of standard-form subcontracts
- Flow-down provisions, pay-when-paid clauses, and dispute resolution clauses
- Deficiencies and warranties
- Differences between trade contractor vs subcontractor and subcontractor vs supplier

2:00 | Networking Break

2:15

Effective Strategies for Change Order Management: Administering the Contract After It Has Been Signed S

 Melanie Gaston, *Partner*, Osler, Hoskin & Harcourt LLP

Changes in scope happen, but it is in the best interest of all parties that they do not cause significant delays and conflict. Clear communication and understanding of what is involved in the change and having a fulsome view of the full impact of proposed modifications throughout the contract chain, from supply of materials, to increased work, delays, and labour consideration are critical. Identifying the changes to avoid costly remediation work is also a necessary risk management point.

- Why are change orders necessary?
- How to manage expectations and ensure all parties are treated fairly
- Establishing a change management mechanism to anticipate the need for potential change orders
- Tracking change orders and paying for them
- Issuing notifications of change and delay to ensure proper and timely execution
- Ensuring that timelines established in the contract are followed with respect to delays caused by changes
- The Courts' view of changes and who is liable

3:00

Surety Bonds: Top 10 Red Flags of Insolvency and How to Protect Your Project S

 Joshua Sadovnick, *Partner*, Norton Rose Fulbright LLP

Sean Marchant, *Claims Counsel – Surety*, Zurich Canada

Many construction contractors have dealt with and continue to deal with significant financial constraints coming through the pandemic, and some may face insolvency. This session will focus on surety bonds: why you need them, how they work, the claim process, who needs to be involved, etc.

- How are surety claims or surety bonds impacted by COVID-19?
- Ensuring you're protected from contractor insolvency as companies struggle to recover from effects
- How will the Companies' Creditors Arrangement Act or Bankruptcy and Insolvency Act impact your projects?

4:00

Closing Remarks from the Co-Chairs and Conference Ends



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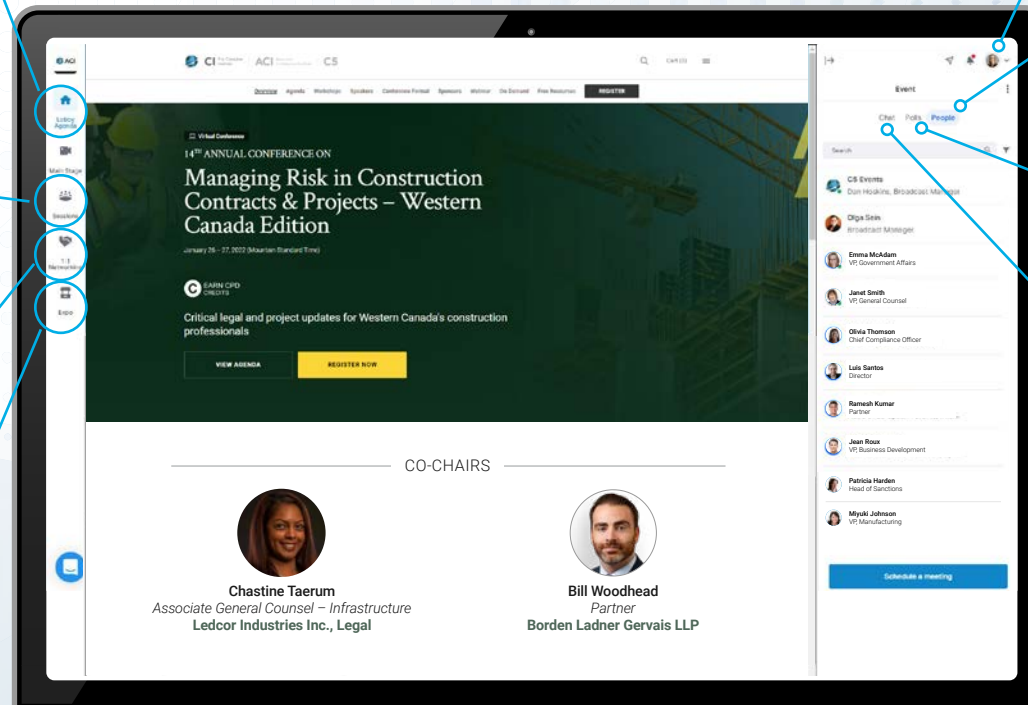
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