

# 17<sup>th</sup> National Conference on NAVIGATING RISK IN CONSTRUCTION CONTRACTS & PROJECTS

February 27 – 28, 2025  
Sandman Signature Toronto Airport Hotel  
Toronto, ON

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# The Premier Event for Industry Updates for Construction Professionals and Their Counsel

Navigating risk is a constant challenge at every stage of construction projects. Managing the complexities of stakeholders, schedules, and extensive documentation requires meticulous attention from inception to completion. Global and local issues, like supply chain volatility and the Canadian labour shortage, add further layers of difficulty that can determine a project's success or failure.

The **17th National Conference on Navigating Risk in Construction Contracts & Projects** will address the industry's most pressing challenges, ensuring attendees leave with valuable insights and strategies tailored to their unique projects.

## Our comprehensive two-day event will provide you with:

- › **Expert Insights** from top industry professionals to help you manage your most critical construction challenges.
- › **Practical Strategies** tailored to your specific projects, helping you navigate unique risks and priorities.
- › **Timely Discussions** on current issues affecting the construction industry and how to address them effectively.
- › **Opportunities to Connect** with peers, share experiences, and expand your professional network.

Join us to equip yourself with the knowledge and tools needed to ensure your projects succeed amidst complexity and change.



## Earn CPD and Gold Seal Credits!



Conference hours can be used towards the Gold Seal Certification application for credits, subject to credit approval upon review. This program qualifies for **4 Gold Seal credits** for the conference and **1 Gold Seal credit** for the workshop. *Note: every 3 hours of learning equals 1 Gold Seal credit.*

This program can be applied towards **9.75 Substantive hours** of annual Continuing Professional Development (CPD) for Law Society of Upper Canada, the Law Society of Saskatchewan, the Law Society of British Columbia, the Law Society of Alberta, and the Barreau du Quebec. Members will also receive **3 additional CPD credit hours** for the attendance of the workshop.

The Canadian Institute will provide certificates of attendance upon request. You must request the certificate from CI and submit the certificate yourself to obtain credits.



## Pre-Conference Workshop February 26, 2025

1:00 pm–4:30 pm (Registration opens at 12:30 pm)

### A Primer on Crafting Legally Sound Project Correspondence: Ensuring Your Correspondence Works for You and Protects Your Interests

Most project participants believe that litigation is always a looming possibility. When litigation does rear its ugly head, the quality and timeliness of project correspondence will suddenly be in focus.

In this educational seminar, the speakers will teach the key fundamentals of writing effective and legally sound everyday correspondence and notices on projects, equipping industry participants with the knowledge necessary to confidently manage their daily communications without constant legal consultation.

This workshop will provide practical and legal insights, to ensure that your correspondence can stand up in court, should the need for litigation arise, saving time and resources in the process.

Topics of discussion will include:

- Understanding and complying with notice provisions of the contract
- Learning the lessons from the key legal cases shaping effective correspondence within notice periods and setting out your position from a legal perspective
- Best strategies for invoking contract provisions through correspondence
- Determining the options for monitoring contract requirements
- Appreciating the (mis)use of “legalese” in project correspondence
- Identifying how to document common problem issues on project



**Graham Brown**  
*Partner*  
**Cassels Brock & Blackwell LLP**



**Kyle Kuczynski**  
*Legal Counsel, Construction*  
**Fitzrovia Real Estate**



**Marcia J. Oliver**  
*General Counsel, V.P. Legal Services & Indigenous Relations*  
**Bennett Construction Group**

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# Main Conference DAY 1

## February 27, 2025

7:45 Registration Opens

8:45 Opening Remarks from the Co-Chairs



**Graham Brown**  
*Partner*  
**Cassels Brock & Blackwell LLP**



**Samantha Ambrozny**  
*Solicitor, Legal Section, Legal Department*  
**Toronto Transit Commission**

### PROJECT DELIVERY MODELS

9:00 **Assessing the Risks, Challenges and Benefits Associated with Project Delivery Models: Are Alliancing and Integrated Project Delivery (IPD) the Future of Contracting?**

This session will present a variety of construction models, and the risks, the rewards and the costs associated with each delivery method.

Topics of discussion include:

- Examining the successes and challenges of traditional Design-Bid-Build, Design-Build, P3s, and Progressive Design-Build using real-world experiences
- Understanding the core features of Integrated Project Delivery (IPD) and Alliance models
- Evaluating the benefits and disadvantages of collaborative delivery models
- Analyzing which projects are best suited for a collaborative delivery model



**Sam Hall**  
*Senior Corporate Counsel*  
**Canadian Turner Construction Company**



**Manik Raina**  
*Vice President, Legal Services*  
**EllisDon Corporation**



**Andrew Bigioni**  
*Director, Contracts, Commercial and Corporate Legal Services*  
**Hatch**

10:00 **Case Study: Appreciating the Benefits of Integrated Project Delivery (IPD) for Complex Projects**

Gain real-world insights into the IPD model, exploring how it differs from less integrated methods and assessing its suitability for complex projects in a collaborative environment.

Topics of discussion include:

- Differentiating IPD from more traditional Design-Bid-Build, Design-Build and Design-Build models
- Determining if IPD is a fit for your project, including when it works and when it doesn't
- Time and schedule benefits, and cost implications
- Identifying ideal project types for this model
- Minimizing disputes and budget challenges with IPD agreements
- Resolving disputes through mutual benefit and teamwork in IPD
- Comparing Canadian IPD trends to other countries and lessons learned



**Marcus Gillam**  
*Chief Executive Officer*  
**Gillam Group**



**Arthur Winslow**  
*National IPD Director*  
**Colliers Project Leaders**

10:45 Networking Refreshment Break



**11:00 Mastering Supplementary Conditions and Change Orders to Avoid the “Franken” Contract, Resolve Disputes and Prevent Legal Action**

Avoiding costly legal battles is a paramount concern for construction professionals. While litigation is always an option, the best approach is to minimize the need for it in the first place. In this session, construction leaders delve into strategies for proactive contract management and dispute resolution on the ground. Learn how to handle changes, delays, and identify critical legal precedents that might cause issues.

Topics of discussion will include:

- Understanding the potential risks and complications of the “Frankenstein” contract, where clauses are borrowed from other contracts, or address non-existent conditions
- Streamlining the change order process to handle scope modifications efficiently, reducing disputes and keeping projects on track
- Issuing notifications of change and delay within contractual requirements for form and notice, and working through the ensuing Change Order
- Discussing how to deal with unexpected site conditions, such as geological surprises or environmental challenges and implementing strategies to rectify issues without resorting to litigation
- Documenting and tracking delays clearly and in conformity with the contract
- Solutions to arrive at an equitable and defensible claim for costs and delays



**Christopher P. Moran**  
General Counsel  
**Maple Reinders**



**Rick Tolkunow**  
President  
**Tolkun Consulting Services Inc.**



**Supriya Panwar**  
Managing Consultant  
**Capital Project Management, Inc.**

**MODERATOR:**

**Joshua Strub**  
Partner  
**Margie Strub Construction Law LLP**

**12:00 The Future of Pass-Through Claims: Walsh Construction v. Toronto Transit Commission**

A question that frequently arises on large projects is whether a general contractor can recover from the owner any damages which its subcontractors are entitled to recover from the general contractor by reason of the owner's breaches, without the subcontractors having a direct claim against the owner. Recent case law has raised a few important issues in this regard.

In this session we will:

- Examine Canadian cases which have held that such claims can be passed through to the owner in some circumstances, and the potential impact of the Walsh decision which indicates the availability of pass-through claims may be limited
- Compare the state of the law to the Severin doctrine in the U.S., which prevents pass-through claims against an owner if the general contractor has no liability to the subcontractor for the damages at issue, and review contractual solutions utilized there
- Explore the reasons behind the court disallowing pass-through claims in Walsh, despite attempts to include similar provisions in the contracts
- Analyze how Walsh integrates with the prompt payment scheme under the Construction Act and its impact on Canadian law; Did Walsh change the law in Canada?



**Keith Bannon**  
Managing Partner  
**Glaholt Bowles LLP**



**Derrick Dodgson**  
Senior Legal Counsel  
**Windsor-Detroit Bridge Authority**

**12:45 Networking Lunch Break**

**1:45 Managing and Reducing the Risk of Disputes on Megaprojects**

While the principles for good contracts remain the same, and building strong operating and cooperative relationships is important, disputes become magnified simply by the scale of the project.

De-risking and contingency planning are critical to ensure that ample alternative routes are considered to reduce risks and disputes.

- Upfront planning and its influence in de-risking the project
- Commercial frameworks that promote collaboration and align interests
- Dispute Resolution Boards and Combined Dispute Boards
- Resolving disputes in a timely manner and preserving your business relationships



**Augusto Patmore**  
*Managing Director*  
**Alvarez & Marsal**



**Vicente Alberola**  
*ONxpress Civil Group Project Director*  
**Aecon Group Inc.**



**Jay Nathwani**  
*Partner*  
**Margie Strub Construction Law**



**Alexandra Aversa**  
*Senior Counsel*  
**Acciona Infrastructure (North America)**

**2:45 Tackling the Low Bidder Challenge: Breakthrough Strategies for Competitive Bidding in Project Procurement**

Effectively addressing the low bidder dilemma is an essential skill in the selection of labour, materials, and sub-contractors. The "low bidder must be taken" approach carries risks to timelines, costs, and quality.

This session explores strategies to navigate these challenges, offering insights on balancing fairness, competitiveness, and flexibility for resilient bidding decisions.

Topics of discussion include:

- Analyzing the low bidder dilemma and if negotiated bidding yields the better results
- What to do when a low bidder is substantially lower than the next bid
- Working with the low bidder to ensure best performance and to avoid retaliatory Change Orders
- Exploring the public owner's duty of fairness and its implications
- Understanding debarment and exclusion clauses and their usage to ensure quality and qualified bidders going forward
- Navigating evolving definitions of the procurement process start, including tender response implications and the balance between flexibility and competitiveness.



**Paul Dipede**  
*Legal Counsel*  
**DPD Law**



**Shaun Hashim**  
*Solicitor, Legal Department*  
**Toronto Transit Commission**



**Jeff Scorgie**  
*Partner*  
**WeirFoulds LLP**

**3:30 Networking Refreshment Break**

## 3:45 **Artificial Intelligence: What Every Construction Professional Needs to Know About the Risks and Rewards of AI's Productivity Promise**

Rapid technological advancements can reduce costs and improve efficiency in construction projects, contract evaluations, and litigation readiness. However, challenges like data breaches and privacy law violations pose significant risks.

This session will cover:

- Using AI for RFPs, contract review, and drafting correspondence and pleadings
- Ensuring your privacy and data protection programs meet the demands of provincial, national, and international privacy laws
- Developing cyber-security protocols to protect your data
- Responding effectively to data breaches or theft
- Discovering the best and newest strategies for data management
- Is AI being used effectively for schematic design, scheduling and budgeting?



**Charles Rathmann**  
*Principal*  
**Rathmann Insights**



**Josh Levy**  
*CEO*  
**Document Crunch**



**Micheal Pink**  
*CEO*  
**SmartPM**

## 4:30 **Addressing the Costs and Risks of The Canadian Labour Shortage: Practical Strategies for Fostering an Approachable Industry**

With an aging construction workplace, what are the real means by which we can increase the productivity of skilled labour? How do factors like Immigration, government incentives for skilled trades training, automation of more tasks in construction and remote pre-fabrication impact the industry?

This panel will bring together industry leaders to explore strategies for attracting and retaining talent, including practical training initiatives and policy reforms. We will discuss how to tackle the labor shortage and create a thriving, resilient, and sustainable construction sector in Canada.



**Maria Williams**  
*Senior Bid Manager*  
**Pomerleau**



**Geeta Ramdas**  
*Director of Insurance, Legal Services*  
**EllisDon Corporation**

## 5:15 **Co-Chairs' Closing Remarks and End of Day One**



# Main Conference DAY 2

## February 28, 2025

8:00 Registration Opens

8:45 Opening Remarks from the Co-Chairs



**Graham Brown**  
*Partner*  
**Cassels Brock & Blackwell LLP**



**Samantha Ambrozy**  
*Solicitor, Legal Section, Legal Department*  
**Toronto Transit Commission**

9:00 **How to Settle Disputes Effectively: Alternative Dispute Measures**

Litigation is costly, time-consuming, emotionally exhausting, and non-productive. Fortunately, alternative dispute resolution methods are available. Discover the benefits and drawbacks of each approach and learn about effective non-litigation measures to resolve disputes quickly and efficiently.

Topics of discussion will include:

- Identifying key steps and processes in settling a dispute
- Recognizing limitations and evidentiary issues
- Lessons learned from real cases to avoid common pitfalls
- Assessing the practical realities of adjudication, evaluating its usage and effectiveness
- Taking proactive steps to prevent disputes before they escalate
- What are the various alternative dispute measures and the benefits of each



**Philip E. Ghosh**  
*Managing Counsel, In-House Litigation*  
**Pro-Demnity Insurance Company**



**John Paul Ventrella**  
*Partner*  
**Glaholt Bowles LLP**

10:00 **The Role of Dispute Boards in Construction: Streamlining Conflict Resolution for Better Project Outcomes**

This session will provide a comprehensive overview of Dispute Boards, their workings, and their effectiveness in resolving construction disputes in Canada.

Topics of discussion include:

- Understanding how Dispute Boards work
- Highlighting the benefits and real-world applications of Dispute Boards
- Showcasing project examples where Dispute Boards effectively resolved disputes
- Addressing challenges and lessons learned, including common problems and successful solutions



**Sahil Shoor**  
*Partner*  
**Gowling WLG (Canada) LLP**



**Robert Poole**  
*Managing Director*  
**Secretariat**

10:45 Networking Refreshment Break



**11:00 Practical Tips on Construction Liens: Lesser-Known Pitfalls and Where Companies Go Wrong**

Discover how liens can be both powerful and problematic, potentially benefiting the wealthiest parties while derailing projects.

- What is a lien, what are lien rights, and where did they come from?
- How to register a lien, and how to perfect a lien
- What is an improvident lien and the risk?
- How a lien can be vacated, and the risk of that
- What are the rules about complying with legislation surrounding liens?



**Megan Sanford**  
*Legal Counsel*  
**CML Construction Services Limited**



**Paul Conrod**  
*Lawyer*  
**Construct Legal**

**12:00 Special Presentation: National Insights on Prompt Payment and Adjudication**

Glenn Ackerley, one of the key contributors to the Ontario Government's review of the Construction Act, will discuss the key changes to the legislation and why those changes were enacted to address pressing issues in the industry.

The overhaul of the Ontario Construction Act introduces mandatory annual release of holdbacks and broadens access to adjudication, aiming to ensure timely payments and efficient dispute resolution in the construction industry.



**Glenn Ackerley**  
*Partner*  
**WeirFoulds LLP**

**MODERATOR:**

**Graham Brown**  
*Partner*  
**Cassels Brock & Blackwell LLP**

**1:00 Networking Lunch Break****2:00 Understanding the Role of Delay Analysis in Navigating Construction Delay Claims**

Delay analysis is a powerful tool for determining, quantifying, and assigning responsibility for project delays, helping contractors and owners manage timelines, ensure fair compensation, and mitigate future risks.

This session will provide insights into best practices and real-world applications of delay analysis, equipping you to confidently handle complex delay claims.

Topics of discussion include:

- Identifying and quantifying construction delays accurately to support claims or defenses
- Applying key delay analysis methodologies to ensure clarity and fairness in assessments
- Exploring legal and contractual considerations critical to managing delay claims
- Leveraging delay analysis to enhance project planning, reduce risks, and promote timely dispute resolution



**Howard Krupat**  
*Partner*  
**DLA Piper**



**Robert Garven**  
*Director, Central Canada*  
**Revay and Associates Ltd.**

**2:45 Networking Refreshment Break**

### 3:00 **How to Build Successful Projects with Indigenous Communities: The Fine Print for Legal and Practical Operations**

Going solo on major capital projects is both undesirable and often financially impractical. Partnering with Indigenous experts fosters innovation and shared risk, leading to improved outcomes. Collaboration with Indigenous communities is increasingly mandated by owners and service providers.

Topics of discussion include:

- Considering important legal risks from the perspectives of First Nation owners, contractors, subcontractors, and suppliers
- Understanding how Indigenous construction projects are typically financed and structured
- Examining differences in the procurement process for Indigenous projects, including key considerations for drafting and responding
- Addressing specific issues related to builders' liens on Indigenous construction projects
- Recognizing the relevance of cultural considerations from both First Nation and contractor perspectives



**Cherie Brant**  
*Partner and National Leader,  
Indigenous Law*  
**Borden Ladner Gervais LLP**



**Joe Wabegijig**  
*Director, Indigenous Projects*  
**Colliers Project Leaders**

### 3:45 **Mortgage Lending in the Face of Construction Liens and Trusts**

- Assessing the substantive differences among provinces and the priorities between mortgage advances and liens (BC vs AB, ON)
  - » A close look at Ontario's exceptions for construction-based lending
  - » Alberta case law on "revolving" credit facility advances
- Accepting repayment in face of potential trust claims
  - » BC case law on "good faith" advances



**Preet Saini**  
*Partner*  
**McMillan LLP**



**Rébecca Longpré**  
*Legal Counsel, Claims*  
**Bird Construction**

### 4:30 **Closing Remarks from the Conference Co-Chairs and Conference Ends**

