

ANNUAL UPDATE: ONTARIO'S *CONSTRUCTION ACT* – The Practical Legal Guide to Navigating Key Risks & Obligations

Are you current on managing your risks and obligations under the Construction Act?

Get the latest updates in law and practice from industry experts.

Designed for the construction industry and its legal advisors, this update will provide you with the latest practical guidance and tools for owners, intermediate payers and ultimate payees.

- How has the *Act* actually helped industry or not? Has cash-flow improved? Liens?
- Best practices for managing your legal obligations and mitigating risks due to COVID-19
- Top strategies for identifying gaps and prioritizing your risks and obligations
- Proven techniques for bridging gaps using language in your contracts and subcontracts
- Proven tactics for effectively handling monies on a project
- Tactics for managing disputes under the *Act* – with distinctions based on type of proceeding (including virtual)

Register today at:

osgoodepd.ca/act5

Program Chairs

Glenn Ackerley
Partner, WeirFoulds LLP

Jason Annibale
Partner, McMillan LLP

Program Advisor

Geza Banfai
Counsel, McMillan LLP

Date and Time

March 31, 2021
9:00 a.m. – 5:00 p.m. EDT

Online Replay: May 7, 2021

Location

ONLINE – Live, Interactive

*Can't make the date?
Registration includes 120-day
access to program archive.*



Annual Update: Ontario's *Construction Act* – The Practical Legal Guide to Navigating Key Risks & Obligations

This **unique and intensive** one-day program will **focus on the practical steps** that owners, general and major trade contractors, subcontractors and suppliers need to take in 2021 to **manage legal risks** and avoid costly missteps.

Designed for online, this *OsgoodePD* program will give you the opportunity to engage with an exceptional faculty comprised of leading legal and industry experts. You will learn critical information and obtain the best practices you need to effectively **preserve rights, reduce risk, satisfy ongoing obligations**, and uphold the integrity of the underlying objectives of timely payment of accounts, dispute avoidance, and cost-effective claims management.

- How is industry managing ongoing impacts, including as a result of COVID-19?
- Which rights and obligations are linked to working on a project? When are they triggered?
- How to grasp which version of the *Act* applies – with distinctions for new vs. continuing projects
- Practical considerations and tools for effectively managing contract administration
- Key updates and distinctions for matters that end up in court or arbitration
- Key updates on adjudication – has anyone adjudicated yet?
- How to commence an action or claim? How to tackle procedural issues – includes considerations for virtual proceedings

Who Should Attend

- Construction and in-house lawyers
- Litigation and real estate lawyers
- Municipal, government and procurement professionals
- Owners and developers
- Builders and construction professionals
- Project managers
- Contract managers
- Architects
- Engineers
- Business and finance professionals
- Insurance professionals
- Consultants

Agenda

9:00 a.m.

Chairs' Welcome & Introductory Remarks

9:15 a.m.

Industry Updates, Impacts & Risks for Owners, General Contractors & Subcontractors/Trades

Tariq Adi

CEO, Adi Development Group

Giovanni Cautillo

President and CEO, Ontario General Contractors Association (OGCA)

Wendy Law

Deputy City Manager, Administrative Services, and City Solicitor, City of Vaughan

Sandra Skivsky

Chair, National Trade Contractors Coalition of Canada (NTCCC), and Director of Marketing & Business Development, Canada Masonry Centre

In this opening session, industry leaders will summarize the key industry trends, impacts, risks and practical implications involving the implementation of the *Act*, as well as the further restrictions and considerations imposed by COVID-19.

- Crucial updates on key industry impacts, risks and opportunities to date
 - What are the key impacts by sector?
 - What risks are they facing/seeing?
 - How has the pandemic changed things? – includes innovations and opportunities
- Overview of how the *Act* has helped or not – what are the practical implications?
 - Has cash-flow improved?
 - Has anyone gone to adjudication yet?
 - Have lien period changes helped?
 - What is the latest on reprisal clauses?
- Distinguishing continuing projects vs. new projects
 - Has the new *Act* helped at all?
 - How are things working?
 - What are some best practices based on lessons learned so far?
- Practical considerations – what are some key steps they're planning/taking to deal with issues that the *Act* is either addressing or not that continue to impact the industry generally?

10:45 a.m.
Health Break

11:00 a.m.

Comprehending the Legal Gaps, Risks & Your Obligations

Robert (Rob) Kennaley

Principal, Kennaley Construction Law

Lena Wang

Partner, Glaholt Bowles LLP

- What are the most pressing problems, conflicts and gaps in the *Act* itself?
- What are they key areas that industry has addressed?
- Distinctions based on each perspective
 - owners, generals/major trades, trades, suppliers and labour
- Overview of the key issues and practical considerations to address them
 - What are the rights and obligations linked to working on a project?
 - When are the rights and obligations actually triggered?
 - Top things you need to keep in mind
 - Lessons learned – what to do to overcome or avoid common pitfalls
- Overview of key issues and practical consideration for working with consultants
 - The unique role of consultants
 - Applicability to consultants
 - Top things you need to keep in mind
 - Lessons learned – what to do to overcome or avoid common pitfalls
- Notices – where do you actually publish them?

12:30 p.m.
Lunch Break

1:15 p.m.

Gaps in the *Act*: How to Fill Them Using Your Contracts & Subcontracts

Ted Betts

Partner, Head, Infrastructure & Construction Group, Gowling WLG

Annik Forristal

Partner, McMillan LLP

- How to bridge gaps in the *Act* through contractual language

- Transition provisions and multiple contracts on a project: which version of the *Act* applies?
- Release of holdback on a phased or on an annual basis
- Preserving the lien against a Municipality
- Public contracts and the contractor’s bonding obligations
- “Giving”, “providing” and “serving” of documents under the *Act*
- What must, and can, be included in the Proper Invoice?
- What is the timing, effect and import of a Notice of Termination of Contract?
- Limitation involving “no adjudication once the contract or subcontract is complete”
- Scope of the “one matter per adjudication” limitation
- Importance of the Notice of Adjudication and the choice of Adjudicator

2:30 p.m.

Techniques for Effectively Managing Contract Administration

Lia Bruschetta

Associate, Osler, Hoskin & Harcourt LLP

Chetan Sehgal

Partner, Forensics & Litigation Support, BDO Canada

Andrew Wong

Partner, Osler, Hoskin & Harcourt LLP

Richard Wong

Partner, Osler, Hoskin & Harcourt LLP

- The “nuts and bolts” of contract administration
- Key legal issues, risks and considerations
- Strategies for developing a sound contract administration mindset
- Holdback administration
- Liens/contract valuation
- Trusts administration
- Best practices for handling monies on a project effectively – including the new requirements for accounting, tracking, and creating a separate trust account
- Top insights and tips based on lessons learned to date

3:30 p.m.
Health Break

3:45 p.m.

Practical Considerations for Navigating Disputes under the *Act* for 2021 (including Virtual Proceedings)

Matt Ainley, PQS, Certified Adjudicator

Ontario Dispute Adjudication for Construction Contracts (ODACC), and Chair, General Contractors Alliance of Canada

Marcia Oliver, CS, QArb

Partner, Scott Petrie LLP

Maria Ruberto

Partner, Pallett Valo LLP

Although the prompt payment and adjudication regimes are no longer new, the recent pandemic has impacted these processes. It is imperative that you know how to adapt and keep up-to-date on the latest strategies and best practices. This final session will provide a succinct update of the adjudication regime and the top practical considerations you need to know to more effectively manage disputes under the *Act* for 2021. Other valuable updates include:

- Distinctions for matters that end up in arbitration and the courts
- Procedural issues and how to solve them – including process changes and virtual proceedings
- How to commence an action or claim? – with distinctions for liens and based on type of proceeding
- Considerations for virtual proceedings, with distinctions based on type of proceeding
- Strategies and “do’s and don’ts” for navigating disputes based on lessons learned

5:00 p.m.
Program Concludes

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Registration Details

Fee per Delegate: \$595 plus HST

Newly Licensed (2018-2021): \$297.50 plus HST

Fees include online attendance, electronic program materials, and 120-day online access to program archive. Group discounts and financial assistance are available. Visit www.osgoodepd.ca/group-discounts for details.

Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.



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416.597.9724

1 Dundas Street West, Suite 2600



@OsgoodePD

Toronto, ON Canada M5G 1Z3



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