



LEGAL GUIDE TO

MANAGING CONTRACTS & RISK IN DESIGN PROJECTS

Choose
to attend
one or both
modules

Design projects require a legal risk management mindset.
Do you know your risks and how to manage them?

The risk profile for design projects is escalating – and missteps can be costly and burdensome. This **solutions-focused program** now offers two modules to equip you with a repertoire of essential skills to better assess and mitigate legal risks on your next design project.

Module One: Foundations in Contracts & Practical Risk Management

- Framework for building an effective legal risk management mindset for design services
- Strategies for navigating key elements and risks in contracts, project delivery models and common “red flag” issues
- Tactics for meeting your essential obligations as a contract administrator

Module Two: Managing the Design Services Contract & Key Risks

- Techniques for negotiating key design services terms – includes an interactive expert demonstration
- Hands-on experience in risk assessment, mitigation and contract drafting – includes debrief and model clauses
- Strategies for navigating complex risks and building professional resilience during adversity – includes legal reforms, claims, insurance and emerging trends

Choose to attend both program modules to gain a full suite of practical legal knowledge and risk management skills OR take one module to elevate your desired skillset.

Take advantage of bundled pricing when you sign-up for both modules.

Program Chairs

Geza Banfai
Counsel, McMillan LLP

Annik Forristal
Partner, McMillan LLP

Jennifer Roberts
Counsel, Gibbs & Associates

Program Details

Module One: December 4, 2020
Module Two: December 11, 2020
9:00 a.m. – 4:00 p.m. EST

Online – Live, Interactive

Online Replay
Module One: January 22, 2021
Module Two: January 29, 2021

Can't make a date?
*You will have online access
to the program for 120 days.*

Register today at:

[osgoodepd.ca/
designprojects](https://osgoodepd.ca/designprojects)

Drawing on the expertise and experience of leading lawyers and practitioners, including:

Program Chairs



Geza Banfai
Counsel, McMillan LLP



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Program Faculty

Sandra Astolfo
Partner, WeirFoulds LLP

Geza Banfai
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Associate, Miller Thomson LLP

Annik Forristal
Partner, McMillan LLP

Mark Frederick
Partner, Miller Thomson LLP

John Gamble, CET, PEng
President & CEO,
Association of Consulting Engineering
Companies | Canada (ACEC)

Allen Humphries
Practice Advisory Services,
Ontario Association of Architects
(OAA)

Kathleen Kurtin
President, Ontario Association of
Architects (OAA)

Kathryn Lack
Senior Corporate Counsel,
CRH Canada Group Inc.

Andrea Lee
Partner, Glaholt Bowles LLP

**Janna Levitt, BA, BArch,
OAA, FRAIC**
Partner & Co-Founder,
LGA Architectural Partners

Jason Lewis
Senior Legal Counsel, Legal Affairs
& Risk Management Team,
WSP Canada Inc.

Catherine MacInnis
Associate General Counsel, IBI Group

Marcia Oliver, CS, QArb
Partner, Scott Petrie LLP

Bruce Palmer
President and CEO, PRODEMUNITY
Insurance Company

**Jason Robbins, MAA, MRAIC,
Intl Assoc AIA, RIBA, Member CITT**
President-Elect, Royal Architectural
Institute of Canada (RAIC),
and Principal Architect,
JC Robbins Architecture

Jennifer Roberts
Counsel, Gibbs & Associates

Allen Tanagho, PEng, PMP
Technical Director,
Mosaic Transit Constructors

Lena Wang
Partner, Glaholt Bowles LLP

David Zurawel
Director, Government & Stakeholder
Relations, Association of Consulting
Engineering Companies Ontario
(ACEC-ON)

LEGAL GUIDE TO Managing Contracts & Risk in Design Projects

Design project risk is complex and escalating. You need to be prepared.

Professionals working in design services face multiple, often substantial, legal risks in any given project including scope creep, vague terms, escalating responsibilities, delays, damages, negligence claims, insurance challenges, and other liabilities which can result in steep costs, onerous efforts, and significant reputational damage.

Learning to **anticipate, assess and manage your legal risk** is essential to protecting your professional reputation, minimizing risk and maximizing your business success.

This **intensive, solutions-focused** program was constructed to equip you with the knowledge and skills you need in order to assess and mitigate your legal risks, and to make more informed decisions that go to the heart of your business and your professional reputation.

Get Important Insights, Including:

Module One: Foundations in Contracts & Practical Risk Management

You will gain a practical overview of contract fundamentals and practical risk management techniques, including tools and strategies to help you effectively assess and mitigate common design project risks. You will learn:

- How to develop a risk management mindset
- How select project delivery models impact design professionals
- How to read a contract and navigate common risks in key design services forms
- Strategies for meeting obligations as a contract administrator, including "red flag" issues

Module Two: Managing the Design Services Contract & Key Risks

Building on what you have learned in Module One, or in your own professional practice, you will focus on elevating your skillset for managing more complex and perplexing issues. You will gain:

- Hands-on experience in contract risk assessment, mitigation and drafting
- Real-world techniques for negotiating a design services contract – includes an interactive, expert demonstration
- Tactics for building resilience arising from uncertainty, legal reforms, and troublesome trends – includes industry insights, innovations and "lessons learned"

Save \$ and take advantage of **bundled pricing** when you sign-up for both modules.

This Intensive Course Is Essential for:

- Architects
- Engineers
- Technologists
- Project managers
- Contract administrators and professionals
- Risk professionals
- Construction lawyers and in-house counsel
- Insurance professionals
- Business/financial executives in design/construction

Agenda

MODULE ONE

December 4, 2020
9:00 a.m. – 4:00 p.m. EST

Foundations in Contracts & Practical Risk Management for Design Professionals

9:00 a.m.

Chairs' Welcome & Opening Remarks

9:15 a.m.

Developing an Effective Legal Risk Management Mindset for Design Services

Geza Banfai, Counsel, McMillan LLP

- Tackling the crucial first step – developing the mindset to evaluate and choose who you do business with... carefully
- The importance of legal risk management amid the shifting roles and obligations of the design professional in the current environment
- The elements of legal risk management
- The "red flags"
- Deciding when to walk away
- Engaging your allies in risk management

10:00 a.m.

Foundations in Project Delivery Models for Design Services

Marcia Oliver, CS, QArb, Partner, Scott Petrie LLP

- How the type of project delivery model impacts the design professional
- The different project delivery models – a succinct overview of traditional, alternative and emerging models
- Key considerations and risks for the design professional by project type
 - The nuances of Design-Bid Build, Design-Build, Contract Management
 - Public Private Partnerships (P3s)
 - Integrated Project Delivery (IPD)

10:45 a.m.
Health Break

11:00 a.m.

Contract Law Fundamentals for Working Professionals

Jason Lewis, Senior Legal Counsel, Legal Affairs & Risk Management Team, WSP Canada Inc.

Catherine MacInnis, Associate General Counsel, IBI Group

- Fundamentals of contract law, and how they are crucial to the provision of design services
- Verbal vs. written contracts
 - Why a written contract is important
 - Be careful – verbal agreements are enforceable
 - Legal implications of unsigned written agreements
- How to read and interpret a contract
 - Language, organization and logistics
 1. How contracts are generally organized and why
 2. Use of capitalization and common terms – watching for consistency
 - Basic rules governing the interpretation of contracts

12:00 p.m.
Lunch Break

12:45 p.m.

Foundations in Design Services Contracts: Forms, Risks & Key Terms

Annik Forristal, Partner, McMillan LLP

Lena Wang, Partner, Glaholt Bowles LLP

- Key risks in design services contracts – what the contract must cover
- Key contractual terms – categorizing them into basic groups
 - What are you promising to do? Reviewing contract terms including scope of work, standard of care, ability to rely on documents, warranties
 - What are you responsible for if something goes wrong? Reviewing

contract terms including indemnity, liability, liquidated damages, insurance

- How is the contract administered? Reviewing contract terms including fees and payment, liens and holdbacks, termination, dispute resolution, key personnel requirements
- How risks are dealt with in the standard form architectural and engineering services contracts
 - Client/Architect contracts:
 1. Standard Form of Contract for Architect's Services – OAA 600 & OAA 601
 2. Canadian Standard Form of Contract for Architectural Services – Document Six (RAIC)
 - Architect/Engineer contracts: Engineering Agreement Between Client and Engineer – ACEC Document 31
- Non-standard contracts – POs, sign backs, letter agreements and other non-vendor contract forms

2:00 p.m.
Health Break

2:15 p.m.

Contract Risks that Disproportionately Result in Risk – “Red Flag” Issues

Jennifer Roberts, Counsel, Gibbs & Associates

This session explores a series of key risks impacting design services including:

- Liability for delay unrelated to standard of care
- Value engineering – the pressure to compromise engineering
- Fast track design – and the challenges to standard of care
- Coordination and integration of issues
- Demand for indemnities, particularly in municipal contracts
- Arbitration clauses and the trouble they cause

3:00 p.m.

Interactive Expert Round-Table: Contract Administration – Industry Insights & Strategies for Managing a Common Source of Claims for the Design Professional

Moderator:

Geza Banfai, Counsel, McMillan LLP

Panel:

Bruce Palmer, President and CEO, PRODEMUNITY Insurance Company

Allen Humphries, Practice Advisory Services, Ontario Association of Architects (OAA)

Janna Levitt, BA, BArch, OAA, FRAIC, Partner & Co-Founder, LGA Architectural Partners

Allen Tanagho, PEng, PMP, Technical Director, Mosaic Transit Constructors

- How contract administration can be a minefield for design professionals
- Meeting your obligations as a contract administrator
 - The essential “need to know” obligations
 - “Red flags”
- Examining the escalating role of consultant – the risk of being a scapegoat when things go sideways
- Ask the experts – get your top questions addressed by the highly experienced panel

4:00 p.m.
Module One Concludes

MODULE TWO

December 11, 2020
9:00 a.m. – 4:00 p.m. EST

Advanced Strategies for Managing the Design Services Contract & Key Risks

Pre-Work Exercise (optional) – a week before Module Two, you will receive an optional “Pre-Work” package containing short design services contracts or clauses, along with clear and explicit instructions to review, identify and mark-up troublesome areas in order to better reflect your desired risk profile. The exercise will be discussed in-class, and includes a debrief along with an “answer key”, containing valuable sample clauses.

9:00 a.m.

Chairs' Welcome & Opening Remarks

9:15 a.m.

Live Demonstration: Negotiating Key Terms in a Design Services Contract

Annik Forristal, Partner, McMillan LLP

Kathryn Lack, Senior Corporate Counsel, CRH Canada Group Inc.

Legal and industry specialists share key design contract negotiation strategies and best practices in this live and interactive demonstration session

- Key contractual issues
- Overview of contractor concerns
- Negotiation demonstration – negotiation of key contractual issues
- Insights and tips for negotiating acceptable terms
- Debrief and Q&A

10:45 a.m.
Health Break

11:00 a.m.

Managing the Contract & Key Risks – Debrief and Dialogue

Geza Banfai, Counsel, McMillan LLP

Annik Forristal, Partner, McMillan LLP

Jennifer Roberts, Counsel, Gibbs & Associates

- Tying things together – review of the pre-work exercise
- Debrief and open dialogue – includes an “answer key”
- Open discussion and Q&A – includes lessons learned, “aha!” moments

12:00 p.m.
Lunch Break

12:45 p.m.

Liens, Prompt Payment, Adjudication & the Design Professional

Sandra Astolfo, Partner, WeirFoulds LLP

Andrea Lee, Partner, Glaholt Bowles LLP

- Fundamentals of liens, holdbacks

- When does the design professional have lien rights – and when not?
- Prompt payment and adjudication
 - Summary of prompt payment and adjudication regimes in Ontario, trending in other provinces
 - Practice implications for design professionals
 - Payment certification
 - Exposures during the adjudication process
 - Preparing for the changes to come
- How to proceed in the face of industry uncertainty

2:00 p.m.
Health Break

2:15 p.m.

Managing Key Risks in Design Services Contracts: Negligence, Errors & Omissions & Insurance

Eric Charleston, Associate, Miller Thomson LLP

Mark Frederick, Partner, Miller Thomson LLP

- Disputes and claims facing today's design professionals – negligence/ breach of contract in design, failure to catch a design error on review, failure to catch a construction error on review
- Risk on infrastructure and design build projects and consideration of whether specific project policies or wrap up policies have been placed
- Consequences – claims for damages for the costs to rectify the problem, costs of delay
- Anticipating and managing risk – underbidding, performance disputes and fee disputes
- The risk of the opportunistic claim – the attempt to recoup loss through consultants' insurance policies
- Claims based on Change Orders and Requests for Information
- Project policies for design professionals – examining the overlap with professional liability policy, deductibles
- Avoiding insurance coverage problems –

- reviewing common coverage disputes
- Risks involving ownership, technology and intellectual property
- Design development claims

3:00 p.m.

Interactive Expert Round-Table: Building Resilience During Uncertain Times

Moderators:

Geza Banfai, Counsel, McMillan LLP

Jennifer Roberts, Counsel, Gibbs & Associates

Panel:

John Gamble, CET, PEng, President and CEO, Association of Consulting Engineers of Canada (ACEC)

Kathleen Kurtin, President, Ontario Association of Architects

Jason Robbins, MAA, MRAIC, Intl Assoc AIA, RIBA, Member CITT, President-Elect, Royal Architectural Institute of Canada (RAIC), and Principal Architect, JC Robbins Architecture

David Zurawel, Director, Government & Stakeholder Relations, Association of Consulting Engineering Companies Ontario (ACEC-ON)

- What is resilience to the design professional and why is it particularly important now?
- Maintaining professional relevance in the face of adversity – commoditization of service, risk transfer, pressure on fees, etc.
- Lessons learned – what I wish I knew when I started
- The future of the design professions
- Ask the experts – get your top questions addressed by the highly experienced panel

4:00 p.m.

Module Two Concludes; Program Ends

Register today at:

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Very good. Solid, knowledgeable group of presenters. Highly relevant topics.

Shane Solomon, President, Republic Architecture Inc.

Very informative and highly respectable speakers. Enjoyed the open floor style comments during all presentations and especially during the panel discussion.

Marc McIntosh, PEng, Highway, Practice Area Lead, McIntosh Perry

Pertinent information presented clearly by professionals with an excellent understanding of their area of expertise.

Jon Soules, Architect & Principal, Jon Soules Architect

Architects & Engineers: This program may be eligible for continuing education learning hours in your jurisdiction. To inquire about eligibility, please contact cpd@osgoode.yorku.ca



Ontario Association of Architects (OAA)
Continuing Education Program.



Alberta Association of Architects (AAA)
Professional Development Program.



Saskatchewan Association of Architects (SAA)
Mandatory Continuing Education Program.



Architectural Institute of British Columbia (AIBC)
Continuing Education Program.



OsgoodePD has been approved as an Accredited Provider of Professionalism Content by the LSO.



Module One – LSO (ON): 6h CPD (6h Substantive).
Module Two – LSO (ON): 6h CPD (6h Substantive).



This program is approved for LAWPRO Risk Management Credit.

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