



THE LEGAL GUIDE TO MANAGING CONSTRUCTION DELAY & IMPACT CLAIMS

**INCLUDES KEY UPDATES
ON CURRENT IMPACTS**

Program Chairs

Jason Annibale
Partner, McMillan LLP

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Program Advisor

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Counsel, McMillan LLP

Date and Time

June 10, 2021
9:00 a.m. – 5:00 p.m. EDT
Online - Live & interactive

Online Replay: July 22, 2021

*Registration includes 120-day
unlimited, online access to the
recorded program*

**Delays happen. You need to be able to
manage and mitigate risks and impacts.**

Delay and impact claims threaten project viability and can cause serious financial and reputational damage to you and your company. Ongoing pandemic impacts continue to escalate their frequency and complexity. Learn the latest legal and practice updates to protect yourself and to help keep your project claim-free.

- What is an effective paper trail and how should it be maintained?
- The critical importance of the schedule and regular updates
- Troublesome contractual delay provisions – what you need to watch out for
- Techniques for managing complex issues including causation, impact, float and concurrent delay
- How the courts and the industry are dealing with ongoing pandemic impacts

Register today at:

osgoodepd.ca/cns-project



The Legal Guide to Managing Construction Delay & Impact Claims

They lurk on every job you do and, *if unmanaged*, they can have disastrous results – both financially and professionally.

As a busy working professional, you need vital skills and information to improve your risk management efforts. In this unique and intensive OsgoodePD program, you will gain the latest legal and practice updates from a multidisciplinary faculty of experts. You will develop a practical understanding of delay and impact claims, and emerge from the program better equipped to deal with risks and to confidently manage the next troublesome claim you encounter.

Topics Include

- Main causes of delays – includes contractor- and owner-caused delay
- Monitoring and adjusting the critical path – are you *really* delayed?
- Notice requirements – how to comply and why it's important
- Damages – which types are recoverable?
- Calculating delay and impact losses – different methods and advantages/disadvantages
- Claims and defences – key issues and tips for owners and contractors/subcontractors
- Techniques for working effectively with experts and to avoid and mitigate claims

NEW! Program includes access to two online modules *The Legal Context* and *Working with Experts*, designed for those who are newer to the area or who may benefit from a succinct refresher.

Who Should Attend

- Architects
- Engineers
- Owners and developers
- Builders and construction professionals
- Project managers
- Contract managers
- Construction and in-house lawyers
- Procurement professionals
- Consultants

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Agenda

9:00 a.m.

Chairs' Welcome and Introduction

9:15 a.m.

Navigating the Legal Context & Framework

Jason Annibale, Partner, McMillan LLP

Andrea Lee, Partner, Glaholt Bowles LLP

Building on concepts covered in *The Legal Context* online module, this session will focus on navigating the legal context surrounding delay and impact claims. You will be provided with the knowledge and tools you need to navigate the legal framework, including:

- Understanding the main causes of delay – includes contractor, owner and *force majeure*
- How to deal with *force majeure* clauses in the context of ongoing pandemic impacts
- Exploring legal entitlement theories and standard contract terms that address delay
- What to do about troublesome contractual delay provisions and why
- Navigating notice requirements – how to comply, why it's important, includes checklist
- Which types of damages are recoverable?
- What are the core elements of a persuasive claim?
- Top tips for managing and resolving contractual disputes and claims early

10:15 a.m.

Health Break

10:30 a.m.

Overview: The Different Methods for Calculating Delay & Impact Losses

Meera Wagman, Managing Director, Secretariat International

- Why are there differing methods of analysis? Why do the differences matter?
- 5 delay analysis - techniques
- Advantages and disadvantages to commonly used alternatives, including:
 - Time Impact Analysis
 - Collapsed As-Built

- As-Built Critical Path
- Impacted As-Built
- As-Planned vs. As-Built – Total Time – where is the line?
- When to retain a specialist to calculate loss
- Industry standards, applicable guidelines – status and where things are going

11:45 a.m.
Lunch Break

12:45 p.m.

Understanding Claims & Defences: Owner, Contractor & Subcontractor Perspectives

Neil Gaudion, President and Founder, Lighthouse Consulting Group, LLC

This session will provide you with essential knowledge, insights and expert tips involving the common types of claims and defences for owners, contractors and subcontractors, including:

- Overview
 - Claims and defences amid a global impacting event
 - Why owners typically defend these claims, not initiate them
 - How contractors and subcontractors are similar and distinct
- Technical
 - What owners need to prove
 - What contractors and subcontractors need to prove
 - Tips on what courts are looking for, weaknesses in methodology, includes checklist
- Expert tips and considerations, includes valuable “lessons learned”

2:00 p.m.
Health Break

2:15 p.m.

Overview: Case Law, The Courts and The Industry

Glenn Ackerley, Partner, WeirFoulds LLP

Building on content covered in both online modules and the day’s sessions, you will get a practical overview of important case law dealing with delay and impact claims and expert evidence, as well as the latest on how the courts and the industry are dealing with ongoing pandemic impacts.

- Top cases that impact delay and impact claims

- How the courts deal with expert evidence, consultant’s testimony and recommendations
- How the court system and the industry are responding to the ongoing pandemic and impacts
- Guided discussion on key issues impacting practice management and professionalism, including scope considerations, duty to recommend, when to engage an expert, and in which circumstances

3:15 p.m.
Health Break

3:30 p.m.

Interactive Expert Round-Table: Best Practices & Methods to Avoid, Mitigate and Manage Project Delay

Moderators:

Jason Annibale, Partner, McMillan LLP

Andrea Lee, Partner, Glaholt Bowles LLP

Panel:

Master Todd Robinson, Ontario Superior Court of Justice

Maged Abdelsayed, PEng, MEng, Partner, Capital Projects, Deloitte Canada

Michael Casey, Vice President & Deputy General Counsel, EllisDon Group of Companies

Reza Nikain, Senior Managing Director, J.S. Held LLC

Lorna Tardif, Partner – Canada, HKA

This interactive round-table discussion will further develop and synthesize the topics covered throughout the day with a focus on providing best practices and methods to mitigate delay claims when they arise on a project or how to advance and/or defend delay claims. Delve into real-world situations to gain a comprehensive and solutions-focused recap to this intensive day of programming, including strategies for navigating the legal and practical implications of the ongoing pandemic upon parties’ rights and obligations. You will have the opportunity to get your most pressing questions answered and benefit from 100+ years of combined construction experience. Key topics for discussion may include:

- The importance of the schedule, including regular schedule updates and proper forecasting
- Keys to early recognition of delay – how to anticipate problems before they occur
- Monitoring and adjusting the critical path – are you *really* delayed?

- The importance of documentation – what is an effective paper trail and how to maintain it?
- Tips for dealing proactively with problems in real-time
- When a delay claim arises, what are the most important elements for a decision-maker to understand?
- How does a decision-maker rule between opposing theories of delay?
- Best practices based on real-world examples and “lessons learned”

5:00 p.m.
Live Program Concludes

Online Modules

Included with the program, these two online modules are designed to clarify core delay claims concepts and principles, and to help you navigate more complex issues. Both are suited to those who are newer to the area or who may benefit from a succinct refresher. *We recommend viewing both Online Modules before the program begins.*

Module One – The Legal Context & Key Principles Surrounding Delay Claims (approx. 45 mins, available on-demand by June 3, 2021)

Jason Annibale, Partner, McMillan LLP

Andrea Lee, Partner, Glaholt Bowles LLP

This online module will provide you with a practical overview of the legal context and key principles that you need to keep top of mind when dealing with delay claims, and you will also receive a glossary of delay-related terms to enhance your working knowledge throughout this program and beyond.

Module Two – Working with Experts in Delay Claims: What You Need to Know (approx. 45 mins, available on-demand by June 3, 2021)

Glenn Ackerley, Partner, WeirFoulds LLP

This online module provides you with a practical understanding of what you need to know about working with – and retaining – experts in delay claims, including the state of the law and the industry, common pitfalls to watch out for, and how to deal with pressing issues and trends.

Program Chairs

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Faculty Includes

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Ontario Superior Court of Justice

Neil Gaudion
President and Founder,
Lighthouse Consulting Group, LLC

Glenn Ackerley
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Reza Nikain
Senior Managing Director, J.S.
Held LLC

Maged Abdelsayed, PEng,
MEng
Partner, Capital Projects,
Deloitte Canada

Lorna Tardif
Partner – Canada, HKA

Michael Casey
Vice President & Deputy
General Counsel, EllisDon Group
of Companies

Meera Wagman
Managing Director, Secretariat
International

Very good. I now have a clear understanding of the different types of delay and impact analysis. Learned the importance of schedule updates.

John Thompson, Project Manager, City of Vaughan

Instructors were very knowledgeable and there was a lot of information.

Rob Andrews, Senior Project Manager Civil Division, Triple Crown Enterprises

Very good material and delivery. Relevant to our business.

Kelvin Jamieson, Owner, FHR Inc.

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 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.



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



Eligible CPD Hours - LSO (ON): Online Modules: 1h 30m CPD (1h 30m Substantive). Program: 7h CPD (6h Substantive, 1h Professionalism).



This program has been accredited by the CCA for 1 credit toward Gold Seal Certificate education requirement.



This program is approved for LAWPRO Risk Management Credit.

OsgoodePD programs may be eligible for CPD/MCLE credits in other Canadian and US jurisdictions. To inquire about credit eligibility, please contact cpd@osgoode.yorku.ca.



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