



# LEGAL RISK MANAGEMENT FOR DESIGN PROFESSIONALS: STRATEGIES FOR DEALING WITH TODAY'S COMPLEX PROJECTS

## Do you know your risks and how to manage them?

Risks are inevitable to any project - learn how to anticipate and manage risks to protect your professional reputation, minimize exposure and maximize business success, including:

- A/E/Design services contracts – build a strong first line of defence
- Out-gunned – how to negotiate contracts with large owners and sophisticated opposing parties
- When things go wrong – best practices to manage disputes, avoid litigation and get paid
- Understand what your insurance covers – and what it doesn't
- Manage common areas of liability exposure – sub-consultant and altered risk profiles in Design-Builds, P3s, IPDs and AFPs

Register today at:

[osgoodepd.ca/design](http://osgoodepd.ca/design)

#### Architects & Engineers:

This program may be eligible for continuing education learning hours in your jurisdiction! See reverse for details.

## Program Chairs

**Geza R. Banfai**, McMillan LLP

**Jennifer Roberts**,  
Gibbs & Associates

## Program Details

**DATE AND TIME:**

**March 2, 2018**

**8:45 a.m. – 5:00 p.m. EST**

**In Person or Webcast**

**Online Replay: April 11, 2018**

**LOCATION**

**Osgoode Professional  
Development**

1 Dundas St. West, 26th Floor  
Toronto, ON

# Legal Risk Management For Design Professionals:

## Strategies For Dealing With Today's Complex Projects

Managing legal risk is more complex – you are under more pressure to deliver a quality design in less time and at lower cost. The risk profile for design professionals has expanded – you are now routinely called upon to assume risks which may not be insurable. This information-packed and practical program is designed to help you assess and mitigate your risk, and to aid you in making more informed decisions that go to the heart of your business and your professional reputation.

## Topics Include

- Best practices to negotiate contract terms, conditions and supplemental conditions
- Coverage and common insurance issues – managing risk and working with insurers
- Insurable vs. non-insurable business risk – where is the line?
- Indemnity clauses – drafting changes that you need to watch out for
- Disputes and claims – best practices to protect yourself and get paid
- Real world challenges for design professionals – best practices and strategies for 2018

## Who Should Attend?

- Architects
- Engineers
- Construction lawyers
- Insurance professionals
- Project managers
- Business/financial executives

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## Agenda

**8:00 a.m.**

**Registration and Continental Breakfast**

**8:45 a.m.**

**Introduction**

**Jennifer Roberts**, Gibbs & Associates

**9:00 a.m.**

**Allocating Risks by Contract:  
The Essentials**

**Geza R. Banfai**, McMillan LLP

- Why a written contract is important
- Key risks in a design services contract – what the contract must cover
- Standard form architectural and engineering services contracts – how risks are dealt with
- Non-standard contracts – POs, sign backs, letter agreements and other non-vendor contract forms
- Strategies for managing contractual risk allocation – negotiating with sophisticated opposing parties, managing the risk of being out-gunned and deciding when to walk away
- Risks of amending the contract by subsequent conduct

**9:45 a.m.**

**Refreshment Break**

**10:00 a.m.**

**Allocating Risks by Contract:  
Troublesome Contract Clauses**

**Annik Forristal**, McMillan LLP

This session will consider the key risk management elements of specific contract clauses and how to address them, including:

- Scope of Work
- Flow-downs
- Limitations of Liability, Indemnities and Warranties
- Liquidated damages
- Holdbacks and liens
- Standard of care
- Payment terms and termination clauses
- Claims and dispute resolution – mediation and arbitration clauses
- Ownership of property
- Hidden perils – contractual standard of care can and will be used against you

**11:00 a.m.**

#### Disputes and Claims: Best Practices to Protect Yourself

**Jennifer Roberts**, Gibbs & Associates

- Avoiding litigation and getting paid!
- Commercial reality – owners/contractors look to consultants' insurance policies to cover loss
- Infrastructure and design-build project risk – are project-specific or wrap-up policies in place?
- Claim types – negligence/breach of contract in design, failure to catch a design error on review, failure to catch a construction error on review
- Consequences – damages claims for rectification costs and, increasingly, the costs of delay
- Anticipating disputes – scope creep, cascading RFIs
- Managing performance disputes in real time and avoiding fee disputes

**12:15 p.m.**

#### Networking Luncheon

**1:00 p.m.**

#### Coverage and Common Insurance Issues

**Steven Stieber**, Founding Partner, Stieber Berlach LLP

- Denial of coverage – which conditions are insurable under a standard E&O policy?
- Working with the insurer – how and when to engage
- Overlapping coverage – managing multiple responding insurance policies and multiple claims
- Understanding where insurance ends – when you need an outside policy to cover gaps
- Non-insurable business risks – how to assess and mitigate the implications
- Duty of care – does it depend on the sophistication of the client?
- What to do when...

**2:00 p.m.**

#### Changing Risk Profile: Recognizing and Managing Emerging Areas of Liability

**Wilma Schreuders**, Vice President, Canadian Regional Leader, Design Professional, XL Catlin

- Design-Build, P3s, AFPs, IPDs: the changed risk profile when your client is the contractor
- Overlapping insurance policies – project policies and Contractor's CGL policies – who is an additional insured under the responding policies?
- Sources of potential liability, including intellectual property issues – the danger of turning these over to contractors
- Insurable vs. uninsurable risks – where is the line?
- Assessing and managing the risk of vicarious liability of prime consultants

**3:15 p.m.**

#### Refreshment Break

**3:30 p.m.**

#### Panel Discussion: Real World Challenges of the Design Professional 2018

**Jennifer Roberts**, Gibbs & Associates

**Janna Levitt**, Partner, LGA Architects

**Catherine Karakatsanis**, Chief Operating Officer, Morrison Hershfield Group Inc.

**Lisa Bate**, Regional Managing Principal, North America, B&H Architects

Leading professionals share best practices and strategies during this interactive discussion helping you to navigate some real world challenges affecting your practice as a design professional, including:

- Modern business reality – claims against consultants
- How does the pressure on pricing professional services affect the practice – and how to manage that challenge
- Are professional design services now a “commodity”? If so, what does that imply?
- Gender and diversity issues in the design profession and why this matters – recruitment and retention challenges
- Is risk allocation getting as unreasonable as it seems? Real world, practical implications to the practitioner

**5:00 p.m.**

#### Program Concludes

## Faculty Includes

Geza R. Banfai  
McMillan LLP

Jennifer Roberts  
Gibbs & Associates

Annik Forristal  
McMillan LLP

Steven Stieber  
Stieber Berlach LLP

Wilma Schreuders  
XL Catlin

Janna Levitt  
LGA Architects

Catherine Karakatsanis  
Morrison Hershfield  
Group Inc.

Lisa Bate  
B&H Architects

## Registration Details

### Fee per Delegate

**\$595 plus HST**

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit [www.osgoodepd.ca/group-discounts](http://www.osgoodepd.ca/group-discounts) for details. Please inquire about financial assistance.

### 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.

**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](mailto:cpd@osgoode.yorku.ca)

Ontario

#### Ontario Association of Architects (OAA)

This program is eligible for **6.75 Structured Learning hours** under the Ontario Association of Architects (OAA) Continuing Education Program.



#### The Alberta Association of Architects (AAA)

This program is eligible for **6.75 Structured Learning hours** under the Alberta Association of Architects (AAA) Professional Development Program.



#### Saskatchewan Association of Architects (SAA)

This program is eligible for **7.0 SAA Core Learning hours** under the Saskatchewan Association of Architects (SAA) Mandatory Continuing Education Program.



#### Architectural Institute of British Columbia (AIBC)

This program is eligible for **6.75 Core Learning Units** under the Architectural Institute of British Columbia (AIBC) Continuing Education Program.



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Osgoode Professional Development



416.597.9724

1 Dundas Street West, Suite 2600



@OsgoodePD

Toronto, ON Canada M5G 1Z3



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for Design Professionals:**  
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