

ADVANCED 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 – learning to proactively anticipate and manage them is key to protecting your reputation, minimizing risk and maximizing your business success. Gain tools and strategies to minimize your exposure including:

- Key construction law reforms, liens and the top legal cases impacting design professionals
- Client contract – how to protect yourself and when to walk away
- When things go wrong – best practices to manage disputes, avoid litigation and get paid
- Managing pressing trends, challenges and emerging issues

Register today at:

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 Banfai, McMillan LLP

Jennifer Roberts,
Gibbs & Associates

Date and Time

March 7, 2019

8:45 a.m. – 5:00 p.m. EST

In Person and Webcast

Online Replay: April 17, 2019

Location

Osgoode Professional
Development

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



Marketing Partner



Advanced Legal Risk Management for Design Professionals: Strategies for Dealing with Today's Complex Projects

Managing legal risk has become much 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, and 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

- Architectural/Design/Engineering services contracts – ensure that your first line of defence is strong
- Out-gunned – strategies to deal with large owners and sophisticated opposing parties during contract negotiations
- Best practices to negotiate contract terms, conditions and supplemental conditions, and manage common areas of liability exposure
- Indemnity clauses – drafting changes that you need to watch out for
- Coverage and common insurance issues – understanding what your insurance covers, what it doesn't, managing risk and working with insurers
- Insurable vs. non-insurable business risk – where is the line?
- Disputes and claims – best practices to protect yourself and get paid

Who Should Attend?

- Architects
- Engineers
- Project managers
- Construction lawyers
- In-house counsel
- Insurance professionals
- Risk professionals
- Business/financial executives

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Agenda

8:15 a.m.

Registration and Refreshments

8:45 a.m.

Program Chairs' Welcome and
Introduction

9:00 a.m.

Allocating Risks by Contract:
The Essentials

Geza Banfai, McMillan LLP

- What do you do about disparity in bargaining power?
- Key risks in a design services contract – what the contract must cover
- Why a written contract is important
 - Be careful – verbal agreements are enforceable
 - Legal implications of unsigned written agreements
- 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:
 1. Engineering Agreement Between Client and Engineer – ACEC Document 31
- 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 and managing the risk of being out-gunned, and deciding when to walk away
- Risks of amending contract by subsequent conduct

10:00 a.m.

Refreshment Break

10:15 a.m.

Allocating Risks by Contract: Troublesome Contract Clauses

Annik Forristal, McMillan LLP

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

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

11:15 a.m.

Disputes and Claims: Best Practices to Protect Yourself

Jennifer Roberts, Gibbs & Associates

- Claims encountered: negligence/breach of contract in design, failure to catch a design error on review, failure to catch a construction error on review
- Commercial reality – owners and contractors will seek to recoup loss through consultants' insurance policies
- 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 and, increasingly, the costs of delay
- Anticipating disputes: scope creep, cascading RFIs
- Managing performance disputes in real time
- Avoiding fee disputes

12:30 p.m.

Networking Luncheon

1:15 p.m.

Special Luncheon Address: Current Trends & Challenges for the Design Professional

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

2:00 p.m.

Construction Law Reform for Design Professionals: Liens, Prompt Payment & Adjudication

Geza Banfai, McMillan LLP

Jennifer Roberts, Gibbs & Associates

- Background and cross-country principles
- Unique considerations for design professionals
- How to determine which obligations apply and practical tips on transitioning
- Liens – challenges to lien rights affecting the design professional
- Prompt payment and adjudication – practice implications for the new regimes
- Preparing for the changes to come in October 2019

3:00 p.m.

Refreshment Break

3:15 p.m.

Insurance Coverage, Common Issues & Sources of Liability

Wilma Schreuders, Vice President, Head of Canada – Design Professional Group, AXA XL, a division of AXA

Mark Frederick, Miller Thomson LLP

- Denial of coverage – what conditions are insurable under a standard E&O policy?
 - When to retain coverage counsel
- Working with the insurer – how and when to engage
- Overlapping coverage – managing multiple responding insurance policies and multiple claims
- Understanding where insurance ends, and when you need an outside policy to make up the ground
- How to assess and mitigate the implications of non-insurable business risks
- What to do when...
 - the client wants you to assume risk that you are not covered for
 - the client wants project specific insurance, and wants you to pay for it
- Duty of care – does it depend on the sophistication of the client?

4:15 p.m.

Top 5 Cases All Design Professionals Must Know About

Geza Banfai, McMillan LLP

- An expert walkthrough of the top legal cases with a crucial impact on architects, engineers and design professionals
- Discussion includes a summary of the key facts, issues and legal principles
- Focus will be on practical tips and takeaways to help you benefit from these costly “lessons learned”

5:00 p.m.

Program Concludes

Faculty Includes

Geza Banfai
McMillan LLP

Annik Forristal
McMillan LLP

Mark Frederick
Miller Thomson LLP

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

Jennifer Roberts
Gibbs & Associates

Wilma Schreuders
Vice President, Head of Canada
– Design Professional Group,
AXA XL, a division of AXA

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

Jon Soules, Architect & Principal, Jon Soules Architect

Registration Details

Fee per Delegate

\$595 plus HST

Fees include attendance, program materials, lunch and break refreshments. Group discounts are available. Visit 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



Ontario Association of Architects

Ontario Association of Architects (OAA)
This program is eligible for **6.75 Continuing Education hours** under the Ontario Association of Architects (OAA), and a certificate will be provided.



Architects and Licensed Interior Designers

The Alberta Association of Architects (AAA)
This program provides **6.75 Structured Learning hours** under The Alberta Association of Architects (AAA) Professional Development Program.



ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

Recognized Educational Provider

Architectural Institute of British Columbia (AIBC)
This program provides **7 core Learning Units** under the Architectural Institute of British Columbia (AIBC) Continuing Education Program. *(Only eligible for live program on March 7, 2019. Not eligible for the Online Replay).*



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LSO (ON): 7h 15m (7h 15m Substantive).

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