



THE OSGOODE CERTIFICATE IN CONSTRUCTION LAW

November 11 – 15, 2019
5 Consecutive Days
In Person Only

Can you confidently manage legal risk on construction projects?

Now in its 9th year! Join 30+ construction specialists to learn the practical skills and knowledge you need in crucial construction law concepts, including:

- Project delivery models and the key participants
- Construction contracts in general use, their key terms and issues
- Navigating bidding and tendering, delay and impact claims, and dispute resolution
- Environmental, insolvency, insurance, bonding/surety, labour and health and safety issues
- What to do about liens, key reforms and trends impacting construction

FEATURING The Right Honourable Beverley McLachlin, *former Chief Justice of Canada*, along with other high-profile decision-makers, expert demonstrations and interactive discussions.

Program Directors

Geza Banfai
McMillan LLP

Howard Krupat
DLA Piper (Canada) LLP

Jason Annibale
McMillan LLP

Location

Osgoode Professional Development
1 Dundas St. W., 26th Floor
Toronto, ON

Register today at:

osgoodepd.ca/constructionlaw



The Osgoode Certificate in **CONSTRUCTION LAW**

Register today at:

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

5 Comprehensive Days of Targeted Learning

- Classroom setting to enhance participation
- Interactive instructional sessions
- Expert demonstrations and panel discussions
- Learn-by-doing skills workshops

Today's construction projects are highly **complex** and all stakeholders face numerous challenging risks and obligations. A comprehensive understanding of key issues and potential exposures in this high-stakes area is essential. Developed for industry and legal professionals, this **practical, in-depth** 5-day Certificate covers what you need to know from contract formation to dispute resolution.

Learn from a truly exceptional faculty of 30+ construction specialists who are fluent in the issues unique to construction in Canada. You will develop a thorough understanding of the **core legal issues impacting construction** projects today and emerge better equipped to manage costly risk.

Practical learning in a supportive learning environment

This program will focus on practical, real-world situations and provide ample opportunity for hands-on learning, questions and class discussion. In addition to interactive instructional sessions, you will benefit from small group, learn-by-doing workshops and gain an opportunity to apply what you've learned in a zero-consequence environment. Your understanding of project delivery models will be reinforced during a "choose your model" workshop, and you will negotiate a construction contract "live" from the perspective of owner or contractor.



Get practical tips, knowledge & strategies in areas including:

- Project delivery models used in Canada and when to use them, includes P3 and IPD arrangements
- Advanced issues in construction contracts, including assessing entitlement, limitations, risks and negotiation strategies
- Bidding and tendering principles, special issues and emerging trends
- Insights to succeed in dispute resolution, including the role of mediation, arbitration, litigation and adjudication
- Recurrent issues in construction claims, including delay and impact claims, unanticipated site conditions, change of scope, extras, productivity, and limitations
- How to navigate key issues in health and safety, labour, insurance, surety and bonding
- What to do about key trends and developments impacting construction

PLUS! You'll receive beneficial materials and **practical tools** that will act as **valuable resources** long after the program concludes.

Who Should Attend

- Owners and developers
- Builders and construction professionals
- Business, operations or capital projects leaders and executives
- Engineers, consulting engineers and technical specialists
- Architects
- Project managers
- Contract managers and specialists
- Procurement professionals
- Supply chain professionals, buyers and vendors
- Construction industry or infrastructure consultants
- Property or commercial services providers
- Mediators, arbitrators and adjudicators of construction disputes
- Construction, municipal, real estate or procurement lawyers or legal professionals
- In-house counsel
- Anyone involved with construction projects, whether as a sponsor, lender/investor, manager, risk officer, analyst, auditor or other consultant

Drawing on the expertise and experience of an outstanding faculty of senior legal and construction specialists, including:

Program Directors



Geza Banfai

McMillan LLP



Howard Krupat

DLA Piper (Canada) LLP



Jason Annibale

McMillan LLP

Program Faculty



**The Right Honourable
Beverley McLachlin,
PC, CC, CSTJ, FCI Arb**

Former Chief Justice of Canada, and Companion of the Order of Canada, Arbitration Place, Ottawa

The Right Honourable Beverley McLachlin served as Chief Justice of Canada from 2000 to mid-December 2017.

Ms. McLachlin works as an arbitrator and mediator in Canada and internationally. She brings to those forms of dispute resolution her broad and deep experience from over 35 years in deciding a wide range of business law and public law disputes, in both common law and civil law; her ability to work in both English and French; and her experience and skill in leading and consensus-building for many years as the head of a diverse nine-member court.

In June 2018 she was appointed to the Order of Canada as a recipient of its highest accolade, Companion of the Order of Canada. She has received over 35 honorary degrees from universities in Canada and abroad, and numerous other honours and awards.

The 2,094 Supreme Court of Canada judgments in which she participated – of which she wrote 442 – and her legal writings and speaking, include a wide range of subjects in corporate, construction, financial services, taxation, contract, tort, other areas of business law, as well as arbitration and mediation. Her legal texts include, as lead co-author, the first and second editions (1987 and 1994) of *The Canadian Law of Architecture and Engineering*. It is generally recognized that the judgments of the Supreme Court of Canada during her tenure have affirmed Canada as a jurisdiction that is very supportive of arbitration.

Ms. McLachlin also sits as a Justice of Singapore's International Commercial Court and the Hong Kong Final Court of Appeal.

Glenn Ackerley

WeirFoulds LLP

Ian Bendell

DLA Piper (Canada) LLP

Keith Burkhardt

Sherrard Kuzz LLP

Linda Capesky

Assistant Vice President,
HUB International HKMB Limited

**Dr. Cyril Chern, BArch, JurisD,
RIBA, AIA, FCI Arb, FDBF**

Barrister, Chartered Architect,
Chartered Arbitrator, Adjudicator
(UK & international), Secretary –
The Dispute Board Federation (Geneva)

Morris Chochla

Forbes Chochla Leon LLP

Josh Colle

Senior Vice President,
Infrastructure Advisory, Ernst & Young
Orenda Corporate Finance Inc.

Stuart Detsky

Vice President, Surety & Warranty Claims,
Trisura Guarantee Insurance Company

Lana Finney

Certified Specialist, Environmental Law,
DLA Piper (Canada) LLP

Annik Forristal

McMillan LLP

Yonni Fushman

Executive Vice President, Chief Legal Officer
and Secretary, Aecon Group Inc.

Helmut Johannsen, PEng, CARb, FCI Arb

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EllisDon Group of Companies

Kathryn Lack

Senior Corporate Counsel, Dufferin
Construction Company, a division of
CRH Canada Group Inc.

Jeffrey Levine

McMillan LLP

Rick Moffat

Managing Director,
Berkeley Research Group, LLC

Marcia Oliver

Certified Specialist, Construction Law,
Advocates LLP

Paul Raboud

Director, Bird Construction, and past Chair,
Ontario General Contractors Association

Lampros Stougiannos

Dentons Canada LLP/SENCRL

Charles Todd

Senior Director, Investments,
Canada Infrastructure Bank

Sharon Vogel, FCI Arb

Singleton Urquhart Reynolds Vogel LLP

Agnes von dem Hagen

Vice President (Transaction Legal),
Infrastructure Ontario

Jeremy Warning

Mathews, Dinsdale & Clark LLP

Master Charles Wiebe

Ontario Superior Court of Justice

Richard Wong

Osler, Hoskin & Harcourt LLP

Agenda

MODULE 1

November 11, 2019
8:30 a.m. – 4:30 p.m.
Project Delivery Models

Conventional Project Delivery Models

A detailed and practical analysis of the project delivery and contracting models in common use in Canada. Discussion will include risk profile considerations and other determinants favouring each method in particular circumstances. Includes: Design-Bid-Build, Design-Build, Construction Management and EPC/EPCM models.

Public-Private Partnerships (P3s)

Essential guidance on P3 arrangements as used in Canada, including explanations of various transaction structures and the different risks and opportunities that distinguish P3s from traditional delivery models.

Integrated Project Delivery (IPD)

A detailed and practical analysis of IPD, the cutting-edge approach to construction project delivery. Considerations of the risk profile and other determinants favouring this method in particular circumstances will be discussed.

Interactive Workshop: Project Delivery Models

The day will conclude with an interactive “choose your model”, small group workshop where you will apply lessons learned to typical scenarios in a zero-consequence environment. You will have the opportunity to demonstrate the considerations that must be evaluated and balanced to choose the right project delivery model for your contract and get feedback from industry leaders.

“Low plus on the ground expertise makes for a great educational opportunity. Oversight by seasoned industry practitioners together with the varied experience of the course attendees from all over Canada made for a terrific program.”

Leanne Rapley
Principal & Lawyer, Rapley & Co.

MODULE 2

November 12, 2019
8:30 a.m. – 4:30 p.m.
+ *Optional Networking Event**
Construction Contracts

Key Terms in Construction Contracts

Examine the most significant risk transfer and legal points in construction contracts, including indemnities, liability caps, schedule delay, warranties and *force majeure* provisions, as well as additional considerations and complications in subcontracts. You will also learn about the application of recent landmark legal decisions to construction contracts.

A Practical Guide to Navigating the Construction Contract

Building on the Key Terms in Construction Contracts session, you will learn “how” to navigate your construction contract as a “rule book”, including key directional points and pivots. Get expert insights, practical advice and risk management tools to avoid unexpected risk transfer, disputes and claims.

Live Demonstration: Negotiating Key Terms in Design Contracts

You will observe legal and industry specialists in a live negotiation demonstration of key design contract terms, highlighting crucial negotiation strategies and best practices. Faculty will break-down the key components and critical factors to consider including contractor concerns, designer concerns, the negotiation plan, how to secure pre-agreements and key issues and pitfalls to watch out for. You will emerge from this session better equipped to negotiate effectively with design professionals on your next project.

Interactive Workshop: Negotiating a Construction Contract

Contracts are not simply a reflection of legal principles – they reflect a business deal and the risk allocation that each party is prepared to accept. During this innovative small-group workshop, you will negotiate the key terms of a construction contract in real-time, working through a variety of issues that commonly emerge, from various types of delays to construction disputes.

SAVE THE DATE!

**Networking Event (optional) right after Module 2 ends. Details to be announced.*

MODULE 3

November 13, 2019
8:30 a.m. – 4:30 p.m.
Bidding and Tendering, Liens and Claims

Bidding and Tendering: *Fundamental Principles*

Learn the basic principles governing the Canadian law of bidding and tendering, including the origins and evolution of the Contract A/Contract B paradigm and the principle of compliance in this ever-evolving area of law. The session will include a review of the formative legal authorities and new developments.

Bidding and Tendering: *Advanced Issues*

You'll get an in-depth review of advanced problems impacting bidding and tendering, including the treatment of privilege and discretion clauses after *Tercon*, judicial review as a remedy, and the issues surrounding the correction of tender errors.

Construction Liens

This session will cover the essential concepts and terminology underlying lien legislation, including a summary of key cross-country principles and provincial distinctions. The session will cover the nature and mechanics of a lien, who is entitled to use them, the holdback system and distinguish liens from other types of remedies and litigation. You'll gain tools to respond to a construction lien and to navigate common pitfalls, including how liens may intersect with the construction adjudication process that is sweeping across the country.

Construction Claims: Extras, Entitlement, Changes of Scope – Legal Issues, Notice and Risks

This session will focus on the legal issues underlying construction claims, including recent developments in the law of notice. Faculty will also offer best practices, tips and legal risk management and mitigation strategies when claims are unavoidable, including the roles, duties and concerns for key participants.

Construction Claims: Productivity, Delay and Impact Claims – Technical Issues, Risks and Quantifying the Loss

This session will focus on the technical issues behind productivity, delay and impact claims, quantifying the loss, critical path analysis, disruption, causes of lost productivity and limitations issues. Gain expert insights, tips and strategies to deal with disruption, methods of delay analysis, claims mitigation, and calculating damages and potential damages.

MODULE 4

November 14, 2019
8:30 a.m. – 4:30 p.m.
**Top 5 Things in Key Areas of
Law Impacting Construction**

Environmental Law

Whether in an urban centre, far from a body of water, or hours from a city, environmental issues impact project planning and execution. Learn about key environmental law topics that impact construction, including: planning and timing for Records of Site Condition, finding contamination, vapour intrusion, excess soil management and avoiding or managing regulatory involvement.

Insolvency and Restructuring

Gain practical sightlines into insolvency, bankruptcy and restructuring issues involving construction projects, with an overview of governing laws and principles, including: the collision between bankruptcy and construction trusts, managing a contract in the face of an insolvent party, getting the project built while containing risks, and practical implications when dealing with an insolvent party to a contract.

Construction Insurance

Learn about specialized insurance issues relevant to the construction process, including: key cross-country principles, a comparison of the differing types of insurance available, risk assessment considerations, gaps and excess policy issues, common pitfalls and litigated exclusions, and the proper choice of insurance in differing project delivery scenarios.

Surety Bonding

Faculty will cover the essential role of the surety in the construction process, including: the underlying principles and cross-country elements, the key parties, the types of bonds typically used, the legal and practical aspects of asserting claims and defences under bonds, and crucial risk management tips in problematic situations.

Construction Labour Law

Nothing affects the day to day execution of construction projects more than labour law. Gain an overview of key topics in construction

labour law across Canada and practical tips and strategies for owners, generals and subcontractors to deal with common workplace issues and pitfalls on the jobsite, including: getting bound, strikes, lockouts and picketing, various employer associations, grievances and arbitration and jurisdictional disputes.

Occupational Health and Safety

Gain a practical overview of key cross-country principles and party liabilities in the construction process under occupational health and safety legislation and risk management strategies, including: constructor liability, appropriate responses to accidents and investigations, vital risk management tips and practical considerations to avoid or mitigate claims.

MODULE 5

November 15, 2019
8:30 a.m. – 4:30 p.m.
**Dispute Resolution, Key Trends,
Developments & the Future**

Featured Speaker:

The Right Honourable Beverley McLachlin
former Chief Justice of Canada, and
Companion of the Order of Canada,
Arbitration Place, Ottawa

How to Succeed in Dispute Resolution

Projects and the disputes related to them are increasingly complex. What does “failure” or “success” look like in dispute resolution? This session will cover the practical essentials of mediation, arbitration and litigation, as well as the mechanics of settling a case. Limitations and evidentiary issues will be discussed, including “lessons learned” and tips to avoid common pitfalls.

The Decision-Makers Speak! View from the Bench

Don't miss the rare opportunity to hear from high-profile decision-makers who preside over various construction disputes, including perspectives from a Master, an Adjudicator, and an Arbitrator and former Chief Justice of Canada. This exceptional panel will discuss practical elements to enhance dispute resolution with distinctions based on the type of proceeding, including things they wish they

knew while they were on the “other side” and their top tips and “pet peeves” to help you remain on the “good side” of the decision-maker.

Fireside Chat with The Right Honourable Beverley McLachlin, former Chief Justice of Canada, and Companion of the Order of Canada

Take advantage of this unparalleled opportunity to hear from The Right Honourable Beverley McLachlin, who will share her truly unique wisdom and expertise gained from deep experience across Canada and globally. Gain invaluable insights, tips and strategies and don't miss this extraordinary occasion to have your top questions addressed!

Special Luncheon Address:

Charles Todd

Senior Director, Investments, Canada
Infrastructure Bank

Law, Technology/IT and Construction

Learn about key developments, trends and technology impacting the engineering and construction industry, why it matters and what you need to watch out for, including: a summary of key technologies, the legal considerations and impacts stemming from the use of these technologies, and practical guidance to address technology use within your project agreements.

Interactive Round-Table:

Good, Bad or Questionable?

New & Emerging Trends Impacting Construction and What to Do About Them

Industry leaders will delve into the waves of legal reform, trends, and cultural changes rolling across Canada, offering their “on the ground” insights, tips and practical strategies for various stakeholders to prepare their organizations to effectively deal with some of the most pressing impacts and considerations.

FINAL TAKE-HOME EXAM:

Will be distributed after Module 5
and exam requires online completion
and a passing grade of 80%
due by December 6, 2019.

Registration Details

Fee per Delegate

\$3,995 plus HST

New Licensee (2016 – 2019): 50% off regular rate

Reminder: this program is eligible for funding under many federal-provincial Job Grant Programs. Visit osgoodepd.ca/constructionlaw or canada.ca for details.

Fees include attendance, program materials, lunch and break refreshments. Group discounts, special rates and financial assistance are available. For details visit www.osgoodepd.ca/group-discounts.

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 21 days prior to the program date. If a cancellation request is made with less than 21 days notice, a \$150 administration fee will apply. No other refund is available.

For Further Program-Related Information please contact:

Alexandra Karacsony, Program Lawyer at 647-999-8796
or email akaracsony@osgoode.yorku.ca

Certificate of Program Completion

You will receive a certificate upon completion of the **Osgoode Certificate In Construction Law**. Participants must attend all program modules and **pass the post-program multiple choice assessment** as required to receive a certificate.

4 Convenient Ways to Register



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OsgoodePD has been approved as an Accredited Provider of Professionalism Content by the LSO. LSO (ON): 35h 30m CPD (31h Substantive; 4h 15m Professionalism; 15m EDI).

AB: this program is eligible for CPD credit with the Law Society of Alberta.

NS: this program is eligible for CPD hours with the Law Society of Nova Scotia.



BC: this program is approved for 25.5 CPD hours (a minimum of 3 hours will involve aspects of professional responsibility and ethics, client care and relations and/or practice management) CPD credit with the Law Society of British Columbia.

CCA: this program has been accredited by the CCA for 5.0 credits toward Gold Seal Certification's education requirement.



LawPRO: 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.

"The program was outstanding and so useful for my practice as an expert witness. The selected faculty, topics and interactive modules were impressive. I have attended numerous conferences, events and courses related to the Construction industry/litigation this year and this program was by far greater than the others combined."

Ben Dae, Ph.D, P.Eng
Senior Forensic Consultant,
Rimkus Consulting Group, Inc.

"The program is intensive, delivered by highly qualified and professional instructors, providing an excellent learning opportunity to professionals in the construction industry. The seating layout arrangement and audio visuals were excellent. The organization and [the] support staff of the venue were exceptional."

Dr. Yazan Al-Naib
Consultant

"Excellent overall. Learning about the different project delivery models and the pros/cons associated with each model was valuable [and] helped to understand the drivers for each stakeholder."

Bill Bailie
Senior Vice President, Almita Piling Inc.