

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

Do you know your risks and how to manage them?

Design professionals are exposed to numerous and significant risks through the life of a project. This practical program, developed for professionals without a legal background, will help you understand and reduce your exposure.

- The design services contract and managing the RFQ/RFP process: how to protect yourself, and when to walk away
- Strategies when you're out-gunned: dealing with large owners, lawyers and numerous contracts/agreements in a tight timeframe
- Understanding what your insurance covers ... and what it doesn't
- Managing common areas of liability exposure, including sub-consultant risk, BIM risks and the altered risk profile in Design-Build, P3s and AFPs
- Opportunistic deficiency and delay claims – identifying and managing the prospect of facing a set up claim

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 R. Banfai, McMillan LLP

Jennifer Roberts-Logan,
Gibbs & Associates

Hear from

- ENCON Group Inc.
- Aird & Berlis LLP
- Forbes Chochla LLP
- Marsh Canada Limited
- McMillan LLP
- XL Catlin

Program Details

DATE AND TIME:

March 31, 2017

8:45 a.m. – 5:00 p.m. EDT

In Person or Webcast

Online Replay: April 24, 2017

LOCATION

**Osgoode Professional
Development**

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



Endorsed by



Legal Risk Management For Design Professionals: Strategies For Dealing With Today's Complex Projects

Managing legal risk in building projects has become much more complex, with increasing pressure to deliver a quality design, in a shorter timeframe, 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 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 professional reputation. An expert faculty of practicing lawyers and insurance professionals will cover key issues, including:

- How to deal with the owner's custom contract changes – common scenarios and examples
- Insurable vs. non-insurable business risk – where is the line?
- Best practices for negotiating contract terms, conditions and supplemental conditions
- Coverage and common insurance issues
- Indemnity clauses – what you need to watch out for

Also, don't miss the presentation on **Insurance Insights: An Inside Look at the New Risk Profile of the Design Professional**. You will benefit by having your most pressing questions answered by leading insurance professionals in this engaging and interactive discussion.

Who Should Attend?

- Architects
- Engineers
- Construction lawyers
- Insurance professionals

Register today at:

osgoodepd.ca/design

Agenda

8:15 a.m.

Registration and Continental Breakfast

8:45 a.m.

Welcome and Introduction

Jennifer Roberts-Logan, Gibbs & Associates

9:00 a.m.

Allocating Risks by Contract:
The Essentials

Geza R. Banfai, McMillan LLP

- 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; deciding when to walk away
- Risks of amending contract by subsequent conduct

9:45 a.m.

Refreshment Break

10:00 a.m.

Allocating Risks by Contract: Troublesome Clauses to Watch Out For

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 and will be used against you

11:00 a.m.

Disputes and Claims: Best Practices to Protect Yourself

Courtney Raphael, Aird & Berlis LLP

- Managing performance disputes, including reliance on information received
- Risks when designing collaboratively in one set of documents - if there is a design error, who is liable?
- Getting paid- preventing and dealing with fee disputes, including scope definition, scope creep
- Opportunistic claims – identifying and managing a set up claim
 - Deficiency claims at the end of a project
 - Delay claims – how to manage potentially vexatious RFI's

1. Building in assessment of critical vs. minor submittal at the contract stage
 2. Embedding clauses that limit the amount of submittals
 3. Requesting a submittal schedule- when and how to do it
- Field review of construction – missing deficient construction

12:15 p.m.

Networking Luncheon

1:00 p.m.

Coverage and Common Insurance Issues

Morris A. Chochla, Forbes Chochla 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?

2:00 p.m.

The Changing Risk Profile: How to Mitigate and Avoid Common Yet Unappreciated Areas of Liability

Stephen Panciuk, SVP - National Engineering Practice Lead, Marsh Canada Limited

- Design-Build, P3s, AFPs: 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?
- BIM – sources of potential liability, including intellectual property issues and 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
 - How do you make sure your sub-consultant is properly insured? What are the implications if they aren't?

3:15 p.m.

Refreshment Break

3:30 p.m.

Insurance Insights: An Inside Look at the New Risk Profile of the Design Professional

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

Karen Corrigan, Vice-President and Manager, Architects and Engineers Claims Department, ENCON Group Inc.

This open-ended, interactive discussion will give you the opportunity to have your most pressing questions answered by leading insurance professionals. Benefit by receiving first hand insight on the following pertinent topics affecting your practice:

- The modern business reality: claims against consultants
- How insurers are responding to the changing risk profile of the design professional
- The state of the insurance market

5:00 p.m.

Program Concludes

Faculty Includes

Geza R. Banfai
McMillan LLP

Morris A. Chochla
Forbes Chochla LLP

Karen Corrigan
Vice-President and
Manager, Architects
and Engineers Claims
Department, ENCON Group
Inc.

Annik Forristal
McMillan LLP

Stephen Panciuk
SVP - National Engineering
Practice Lead, Marsh Canada
Limited

Courtney Raphael
Aird & Berlis LLP

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

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 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

Ontario Association of Architects (OAA)

This program provides 6.75 Structured Learning hours under the Ontario Association of Architects (OAA) Continuing Education Program.



The Alberta Association of Architects (AAA)

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



Saskatchewan Association of Architects (SAA)

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



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