The Canadian Institute's

Educating Hundreds since 1990

19th Annual

CONSTRUCTI^ON superconference

Contracts • Liens • Surety Bonds • Risk Management Project Financing • RFPs and Tenders • Public/Private Partnerships (P3s) and Alternative Financing Programs (AFPs) Infrastructure Projects • ADR

Co-Chairs

NEW for 2009!

Kenneth P. Eccleston Counsel Fasken, Martineau DuMoulin LLP



Kenneth W. Movat Partner Gowling Lafleur Henderson LLP







• OVERCOMING challenges in financing and refinancing of construction projects

- UNCOVERING the latest developments and trends when using liens in the current financial climate
- **EXPLORING** the option of **adjudication** and how to draft adjudication clauses
- DETAILING successful strategies for structuring and carrying-out design/build and P3 projects
- LEARNING how to protect your interests and manage project termination risks



Add value to your attendance by participating in this essential pre-conference workshop on November 23, 2009:

Step-by-Step Guide to Utilizing Liens: Successfully Protecting Your Interests



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GET THE NECESSARY TOOLS TO SUCCESSFULLY MANAGE THE INCREASED FINANCIAL RISKS AND UNCERTAINTIES IN CONSTRUCTION PROJECTS

The construction industry continues to undergo significant challenges due to funding difficulties arising from the financial crisis. In this volatile market, it is essential to work as efficiently as possible, minimize any project risks and avoid losing money or accruing unnecessary expenses.

At **The Canadian Institute's 19th Annual Construction Superconference**, you will learn practical strategies to overcome challenges ranging from procurement processes to Public/Private Partnership projects. Meet with leading industry figures and receive essential information and critical updates on hot topics of importance to you, including:

- Outlining how to effectively manage financial risk transfers along the project chain
- Overcoming pricing challenges and exploiting opportunities in procurement
- Successful strategies for getting the most out of tenders and RFPs
- Maximizing the protection of your interests with surety bonds, insurance and liens
- Top tips and check lists for mediation, arbitration, adjudication provisions

And much more!

PLUS! Add value to your attendance by participating in our pre-conference workshop: "Step-by-Step Guide to Utilizing Liens: Protecting Your Interests".

Do not miss this opportunity to network with other industry professionals. **Spaces fill quickly every year**, so **register now** by calling **The Canadian Institute** toll-free at **1-877-927-7936**, fax the registration form to **1-877-927-1563** or register online at **www.CanadianInstitute.com/construction**.

We look forward to seeing you at the conference!

What 2008 Delegates had to say about the conference

The topics were well covered by knowledgeable speakers

Robert Estey Contracts Coordinator, Defence Construction Canada

Well-organized, speakers were knowledgeable and articulate

Perry Kossatz Construction Manager, Sobeys Inc.

Opportunity to meet others from the construction industry and share ideas, concepts and approaches

Bogdan Pawlak Senior Consultant, Revay & Associates Ltd.

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2009 CONSTRUCTION SUPERCONFERENCE FACULTY

Co-Chairs

Kenneth P. Eccleston Counsel, Fasken, Martineau DuMoulin LLP

Kenneth W. Movat Partner, Gowling Lafleur Henderson LLP

Speakers

Edward G. Betts Partner, Blake, Cassels & Graydon LLP

Kenneth P. Eccleston Counsel, Fasken, Martineau DuMoulin LLP

> Duncan W. Glaholt Partner, Glaholt LLP

Marlene M. Knight B.A., C.P.P., CPPO Manager, Materiel Management City of Mississauga

> Bradley N. McLellan Partner, WeirFoulds LLP

Timothy John Murphy Partner, McMillan LLP

Steven D. Ness President, Surety Association of Canada

Gregory Petrela President, Petrela, Winter & Associates

R. Bruce Reynolds Partner, Borden Ladner Gervais LLP

Rocco Sebastiano Partner, Osler, Hoskin & Harcourt LLP

> Cara L. Shamess Cassels Brock & Blackwell LLP

Charles W. Skipper Partner, Fogler, Rubinoff LLP

Joel D. Watson Partner, Heenan Blaikie LLP

Douglas Webber P.Eng., LEED AP Sustainable Design Manager Halsall Associates Ltd.

> Howard Wise Partner, Goodmans LLP

This program has been accredited by the Law Society of Upper Canada towards the professional development requirement for certification.

Conference:

Construction Law11 hoursPre-Conference Workshop: Construction Law2.5 hours

Register at 1-877-927-7936 or in Toronto 416-927-7936 or www.CanadianInstitute.com/construction



Day 1 – Tuesday, November 24, 2009

8:15 Registration Opens – Coffee Served 💻

9:00 Co-Chairs' Opening Remarks

Kenneth P. Eccleston Counsel, Fasken, Martineau DuMoulin LLP

Kenneth W. Movat

Partner, Gowling Lafleur Henderson LLP

9:15 Analyzing Financial Risks Confronting Owners and Contractors and the Considerations of Lenders

Edward G. Betts

Partner, Blake, Cassels & Graydon LLP

- Indentifying market trends arising from the effects of the economy
- Understanding and meeting the criteria used by banks to provide financing for commencing and continuing construction projects
- · Using joint ventures to obtain financing
- Detailing scenarios where it is useful to create a consortium of financers
- Analyzing financing implications under the Bankruptcy Act and the Companies' Creditors Arrangement Act (CCAA)
- Examining how to manage financial risk transfers along the project chain

10:15 Networking Refreshment Break

10:30 Managing Your Project Risks Through Effective Contract Drafting

Charles W. Skipper

Partner, Fogler, Rubinoff LLP

- Identifying key clauses in your construction contracts: traps to avoid
- Analyzing Exclusion of Liability Clauses
- Dealing with Pay-When-Paid Clauses: are they valid?
- Learning how to clearly define the scope of work for contractors and consultants
 - Creating clarity in the scope of roles and responsibilities
- Understanding the differences between the 1994
 and 2008 CCDC versions
- · Clarifying the use of CCDC's supplementary forms

11:30 Strategies for Managing Your Project Termination Risks

Kenneth P. Eccleston

Counsel, Fasken Martineau DuMoulin LLP

The financial crisis is causing a shift in the focus of construction contracts. From challenges in obtaining financing to commence or continue projects, it is now important to know how to prepare for the possible suspension or termination of projects. Attend this session and learn how to effectively address project termination issues.

- Analyzing how to best protect your rights in the event of a termination of a project
- Detailing how to draft effective financing clauses in your construction contracts
- Top issues to consider when negotiating termination provisions
- Examining what the contractor is entitled to upon termination of a contract of a project
 - How to protect your rights as a contractor?
- Case Study analysis: is an owner required to retain the original contractor when a suspended project is rescheduled?
- 12:30 Networking Luncheon



1:45 Utilizing Litigation and ADR to Successfully Recover Your Investments

Duncan Glaholt

Partner, Glaholt LLP

- Learning how to design a dispute system
- Demystifying mediation and arbitration:
 - Project managing dispute resolution
 - Trends in mediation and arbitration
 - Expert determination
 - Conciliation
- · Exploring when to litigate and when to settle
- Examining the potential effect of the new e-discovery rules on construction matters
 - What protocols do you need to know about?
- Understanding adjudication and how to draft adjudication clauses
- Check lists and drafting tips for mediation, arbitration, and adjudication provisions

2:30 Networking Refreshment Break

2:45 Lessons Learned from the Latest Case Law and Legislative Trends

Joel D. Watson

Partner, Heenan Blaikie LLP

- Examining current issues leading to litigation, including the impact of P3 and other infrastructure projects
- Analyzing the Duty of Care in Torts as it applies to construction: Don Fry Scaffold Service Inc.
 v. Ontario (Speaker of the Legislative Assembly)
- Overview of legislative developments and trends
- Understanding how the changes to the *Tarion Home Owners Regulations* will affect construction managers
- Exploring the potential effects of the Harmonized Sales Tax (HST) on the construction industry
- 3:30 Strategies for Minimizing Risks in your Construction Procurement Process

Marlene M. Knight, B.A., C.P.P., CPPO Manager, Materiel Management City of Mississauga

Rocco Sebastiano Partner, Osler, Hoskin & Harcourt LLP

- Understanding the differences between public and private procurement
- · Considering the consultant
- Analyzing language issues in the Bid Call and the Contract
- Knowing the vendor community and how to structure a Bid Call
- · Examining pricing challenges and opportunities
- Detailing references and pre-qualification issues
- Handling protests and debriefings
- Monitoring performance, payment and warranty documentation
- 4:30 Co-Chairs' Closing Remarks Conference Adjourns

Day 2 – Wednesday, November 25, 2009

- 8:15 Coffee Served 💻
- 9:00 Co-Chairs' Opening Remarks

Kenneth P. Eccleston

Counsel, Fasken, Martineau DuMoulin LLP

Kenneth W. Movat Partner, Gowling Lafleur Henderson LLP

9:15 Liens: Leveraging Your Ability to Get Paid in the Current Economic Climate

R. Bruce Reynolds

Partner, Borden Ladner Gervais LLP

- Updates on the latest developments and trends of using liens in the current financial crisis
- Analyzing information disclosure issues:
 What should contractors keep in mind when asked to provide financial information?
- Learning how to apply construction financing through the use of liens
 - How to retain holdback?
- Exploring strategies to complete suspended projects
- Examining the trust provisions under the *Construction Lien Act*
- 10:15 Networking Refreshment Break

10:30 Obtaining Proper Risk Coverage with Bonding and Sureties

Steven D. Ness

President, Surety Association of Canada

Gregory Petrela

President, Petrela, Winter & Associates

- Surety Bonds myths and misconceptions:
- What are they and how do they work?
- How are they obtained?
- What happens when a contractor defaults?
- Understanding the implications of unlicensed sureties
- Protecting against construction risk:
- Examining other forms of securities

- Analyzing the sub-guard protocol:
- Who can use this?
- What is the difference from surety bonds?
- Delving into the implications of wrap-up liability policy:
 What are the costs associated for owners?
 - Addressing pros and cons
- Learning how to maintain bonding
- Exploring alternatives to bonding
- 11:30 RFPs vs. Tenders: Choosing the Right One for Your Project

Howard Wise

Partner, Goodmans LLP

- Understanding the implications of confusing a tender with an RFP
 - What pitfalls must be avoided?
 - Understanding the specific differences between a tender and an RFP
 - When should a tender be used vs. an RFP: what are the private and public sector differences?
- Gaining insights into the consequences of cancelling a tender or an RFP based on a change of government priorities
- Strategies to address the questioning of awards:
 What is the extent of information a respondent
 - What is the extent of information a respondent can claim?
 - What information should be released?
- Tips on effectively conducting evaluations
- Practical exercise:
 - How to effectively set up the evaluation criteria?
 - Tops tips on what to keep in mind and address when assigning a score



1:45 Effectively Structuring and Managing Design/Build Projects

Timothy John Murphy

Partner, McMillan LLP

- Examining how a design/build tender differs from a stipulated lump sum project tender
- Uncovering the circumstances when a design/build tender should be used
- Top tips on what information to include into a design/build tender proposal:
 - How much information should you provide?
 - What type of information
- Sharing best practices on risk management strategies
- Detailing pitfalls in the Standard Form
- 2:30 Networking Refreshment Break

2:45 **Exploring Funding Opportunities in Public-Private-Partnerships (P3s) and Alternative Financing Programs (AFPs)**

Bradley N. McLellan Partner, WeirFoulds LLP

 Analyzing the circumstances suitable for the different P3/AFP Projects:

Register at 1-877-927-7936 or in Toronto 416-927-7936 or www.CanadianInstitute.com/construction

- What are the differences between build/finance and design/build/ finance/maintain projects?
- When is it recommended to use each type?
- Strategies to clearly set out the roles and responsibilities of the parties in a P3/AFP
- Discovering ways to successfully win the tender and obtain the funding
- Gaining insights into the project management risks:
 - Why is it important to address the entire requirements of the project at the onset of the project?
- Examining the financing challenges associated with P3/AFP projects
- Top tips for avoiding pitfalls when planning and executing P3/AFP projects

3:45 **Deepening Your Understanding of the** Practical Implications of Green Building **Rating Systems**

Douglas Webber P.Eng., LEED AP

Sustainable Design Manager, Halsall Associates Ltd.

The demand to incorporate energy efficient strategies, green procurement and building certification in construction projects is increasingly on the rise. Attend this session and understand why more public and private projects are incorporating these standards, how the process works and how this will impact your budget.

- · Clarifying the targets set in green building with regards to RFPs and RFQs
- Detailing the required prerequisites
- Examining how to obtain certification of a project
- Addressing the provincial and municipal legislative developments
- 4:30 **Co-Chairs' Closing Remarks Conference Concludes**

WHO SHOULD ATTEND

Owners/Developers • General Contractors, Subcontractors and Suppliers • Construction and Project Managers and Coordinators Construction, Municipal, Environmental and Real Estate Lawyers In-house Counsel • Government Counsel • Risk Managers and Officers • Federal, Provincial and Municipal Government Representatives • Contract Managers, Administrators and Officers • Procurement and Purchasing Managers/Coordinators Engineers, Architects and Design Consultants • Insurance/ Surety Bond Company Representatives • Utilities, Hospital and School Board Representatives • Construction Finance Professionals Construction Consultants • ADR Professionals Land Use Planners

Pre-Conference Workshop Monday, November 23, 2009

1:30 p.m. - 4:30 p.m.

Step-by-Step Guide to Utilizing Liens: Successfully Protecting Your Interests

Cara L. Shamess

Cassels Brock & Blackwell LLP

In these economic times, when you must ensure that your financial investment is returned, liens have become a popular mechanism for protecting a party's interests. This pre-conference workshop is designed to provide an overview of the principles of liens and is suitable as an introductory course or refresher session for legal practitioners, consultants and professionals in the industry. This workshop will include a legal overview of the **Construction Lien Act** and hands-on drafting exercises to enhance your understanding of the rationale of property claims and security interests.

Topics will include:

- Analyzing the Construction Lien Act
- When is a lien applicable and when are there more suitable instruments?
- Understanding the different kinds of security interests
- Examining how to handle lien claims:
- What do to if a lien is filed and a payment is not made?
- Learning about statutory holdbacks and set-offs Exploring the discharging, postponing and
- vacating of liens

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- We have reduced paper print and use by more than 25% over the past year
- We provide webcast options for individuals unable to travel to our events
- ✓ We encourage our delegates to recycle their conference badges 11 A LO A A S SHOW AN HAR A HARDER NO. IN MARLING THE

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We also work very closely with all conference venues to reduce, reuse and recycle

November 24 - 25	, 2009 Marriott Bloor Y	orkville Hotel Toronto	Top Reasons to Attend
The Canadian Institute's		Educating Hundreds since 1990	Enhance your knowledge of how
19 th Annual			to make the most out of liens
			Understand how the latest case law and new e-discovery rules can affect your project
	NSTRUCT		Learn how to increase the success of obtaining funding through consortia and joint ventures
sup	ercontere	ence	Explore opportunities for participating in P3/AFP projects
Project Financing • RF	Ps and Tenders • Public/Priv	vate Partnerships (P3s)	 Uncover the tax implications of green building practices for owners, contractors and consultants
		tructure Projects • ADR	
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•		Register & Pay after October 27, 2009	ADDRESS: 90 BLOOR STREET EAST, TORONTO, ON. TEL.: 416-961-8000
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Conference + Workshop	\$2390 + 5% GST = \$2509.50	\$2590 + 5% GST = \$2719.50	For information on hotel room availability and reservations, please contact Marriott Bloor Yorkville at 1-800-859-7180.
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