



Looking to the Future of Construction: 2012 National Construction Law Conference September 28-29, 2012 Sheraton Newfoundland ♦ St. John's, NL

FRIDAY – SEPTEMBER 28

08:00 – 08:45 Registration and Continental Breakfast

08:45 – 09:00 Welcome and Introduction

John O'Dea, *McInnes Cooper* (St. John's)

09:00 – 10:30 Dispute Resolution

The quest for the perfect, efficient, and effective mechanism for the principled resolution of construction disputes continues. Is private arbitration the panacea, and if so, will the evolution of the common law of construction be stifled? This panel will examine the needs of the construction industry and the response of contract drafters, courts and arbitrators to the challenges presented by complex and intractable problems which frequently arise in the high stakes environment of construction.

Moderator: **Kenneth McCulloch, Q.C., *Stewart McKelvey*** (Saint John)

Speakers: **The Honourable Mr. Justice Michael Harrington, *Supreme Court of Newfoundland and Labrador, Court of Appeal*** (St. John's)

Harvey Kirsh, *Glaholt LLP* (Toronto)

Dan Levert, *Kiewit* (St. John's)

10:45 – 12:00 Mega Projects

The Canadian construction industry is seeing an increasing number of mega projects, particularly in the energy and mining sectors. The scale of such projects presents specific challenges, particularly related to labour supply, contractor availability, and schedules. This panel will examine the ways in which the challenges of mega projects are being managed by lawyers and industry through special project legislation and an increasing focus on immigration as it relates to the workforce. The expectations of the owners of mega projects will also be discussed.

Moderator: **Stephanie Hickman, *Cox & Palmer*** (St. John's)

Speakers: **Blair Pritchett, *McInnes Cooper*** (St. John's)

Greg Anthony, *Cox & Palmer* (St. John's)

In-house Counsel, *Emera* (Halifax)

12:00 – 1:00 Future of Legal Services

Do you see the future of legal services as a challenge or an opportunity? Regardless of how you view it, there is no doubt that the legal profession and clients' expectations about legal services are changing. This panel will focus on initiatives being undertaken by lawyers and firms across the country and internationally, such as Legal Project Management and alternative fee arrangements. We will also hear from clients about their preferences and expectations on how legal services are provided, how this impacts their decision on which firm to retain, and areas where they would like to see even more change in the legal services they receive. Don't get left behind - the future of legal services is already here

Moderator: **Trish Morrison**, *Borden Ladner Gervais (Calgary)*

Speakers: **Tony Clark**, *The Graham Group (Calgary)*
Jenny Gray, *McInnes Cooper (Halifax)*

1:00 – 2:00 Lunch

2:15 – 3:30 Alternative Procurement Approaches to Finalizing Contract B

When considering the implications of Mr. Justice Estey's Contract A/Contract B analytical model, most of the attention in the case law and in practice has focused on the formation and express/implied terms of Contract A. However, the point of the procurement process is, through competition, to arrive at a finalized Contract B which contains commercial terms representing optimum value for the procurement authority and a reasonable opportunity for the successful proponent to make a profit. This session will examine alternative procurement approaches currently employed in the industry to finalizing Contract B, from both the procurement authority's and the proponent's perspective.

Moderator: **Ian Houston**, *Borden Ladner Gervais LLP, Toronto, ON.*

Speakers: **Jon R. Johnson**, *Babcock & Wilcox Canada Ltd., Cambridge, ON.*
Peter Hickman, *Nalcor Energy (St. John's)*

3:45 -5:00 Managing Risks on a Construction Project: A Review of Insurance and Bonding

As construction lawyers, our role is to manage risks on construction projects. Two ways to manage risk is through the purchase of insurance and bonding. This panel will first discuss developments in course of construction insurance law. Our in-house counsel representatives will then provide their perspective on the benefits of bonding and insurance products. Financing and lending rates have become particularly important to clients in our current economic reality, and our clients evaluate these products based on their financial impact. The panel will then close with a review of coverage obligations of insurers in the liability context.

Moderator: **David Plunkett**, *Whitelaw Twining (Vancouver)*

Speakers: **Chris White**, *Peter Kiewit Infrastructure Co. (Vancouver)*
Charles Todd, *Aecon Construction (Toronto)*
Thomas Heintzman, *McCarthy Tétrault (Toronto)*

SATURDAY – SEPTEMBER 29, 2012

8:30 – 9:45 Environmental Consideration in Construction – From Green Mould to Green Gold

This discussion will review the attempts of both industry and consulting to advance environmental considerations in construction projects such as addressing potentially impossible clauses, negligent misrepresentations, changing labels (LEED onward), what constitutes an empty promise, legislative reflections of environmental considerations, and more.

Moderator: **Maggie Coffin-Prowse**, *Coffin & Thompson* (Rothesay, NB)

Speakers: **Kerry Gosse**, *Stantec Architecture* (St. John's)
Sharon Vogel, *Borden Ladner Gervais LLP* (Toronto)

10:00 – 11:15 Statutory Liability

Are penal/criminal law issues related to construction procurement and tendering the new frontier for construction lawyers? The provincial governments in Quebec and Ontario have recently enacted legislation governing public procurement of construction projects. These legislative and regulatory frameworks impose new obligations on contractors and, in some cases, restrict their right to tender public projects. The panel will review these new regimes and provide some insights as to their implications from both a practical and ethical standpoint for the Canadian construction lawyer.

Speakers: **Yvan Houle**, *Borden Ladner Gervais* (Montreal)
David Eaton, *McInnes Cooper* (St. John's)

11:30 – 12:30 Cross Canada Check-up

Join our panel of speakers as they provide an update on key developments across Canada. This is a great opportunity for participants to understand important developments in other jurisdictions. Our panel will also provide you with up-to-date information on the standard form documents, CCDC and CCA. The speakers list will be updated as the conference approaches to ensure a timely list of topics.

Speakers: **Geza Banfai**, *Heenan Blaikie, CCDC* (Toronto),
Art Barry, Q.C., *Stewart McKelvey*, (Halifax),
Richard Gosse, *Cox & Palmer* (St. John's),
Additional speakers from across Canada to be confirmed.

12:30 – 12:45 Closing Remarks