

# CONSTRUCTION LAW *primers*

**Wednesday, April 15, 2009**

Crowne Plaza Hotel  
Toronto Don Valley



## **Construction Law Strategies for 2009: Risk Redefined**

**PRESENTED BY:**

Shea Bunston  
Duncan Glaholt, *Glaholt LLP*  
Joel Heard, *McCarthy Tétrault LLP*  
Edwin Lim, *BLJC*  
Bruce Reynolds, *Borden Ladner Gervais LLP*  
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

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**Register on-line at [lawtalk.ca](http://lawtalk.ca) or call 416-512-3807**

# A critical workshop for the construction industry and its advisors

Current economic turbulence has created more uncertainty, and therefore risk, than ever before. Even the smallest delay or dispute can bring work to a grinding halt, affect the viability of the project, and put everyone working on the project in jeopardy. The key to success in this market is an understanding of where your risks lie and how to mitigate these risks, then the effective management of situations that will arise.

Join your colleagues for assessing risk in all aspects of the construction industry, including the ever-expanding green building market. We will address fundamental industry issues and offer the latest updates on recent court cases: learn how these findings will affect the way you do business now and on future projects.

Our panel of nationally-recognized experts will share their knowledge and provide you with the tools to master the legal complexities of any project to avoid pitfalls, accomplish your objectives, and improve your profitability.



**Any Questions?**  
**Call: 416-512-3807**  
**E-mail: [york@mmart.com](mailto:york@mmart.com)**

Construction Law Update is approved for **7.5 Core Learning Hours** under the OAA Continuing Education Program.



## Must attend event for:

- Architects
- General Contractors
- Consultants to the Construction Industry
- Builders/Developers
- Construction Lawyers
- In-house Counsel
- Contract Lawyers
- Owners and Developers
- Engineers
- Subcontractors

### Joel Heard, *McCarthy Tétrault LLP*

Joel Heard is a partner in the Toronto office of McCarthy Tétrault LLP, practicing in the area of construction law. His practice includes advising and assisting clients with respect to such matters as risk identification, allocation and mitigation, project structuring and teaming arrangements (including traditional, design-build, EPC, construction management, public-private partnerships, joint ventures, consortia and subcontracts), procurement, contract negotiation and documentation, and project execution issues. Joel currently serves on the Executive of the Ontario Bar Association Construction Law Section, and is a member of the ABA Forum on the Construction Industry.

### Shea Bunston

Shea Bunston practiced law in downtown Toronto in the area of construction litigation for over ten years, litigating and resolving all aspects of construction claims, insurance and surety bond work at all trial, ADR and appellate levels. She is a Fellow of the Canadian College of Construction Lawyers, a member of the Law Society of Upper Canada and the Canadian Bar Association and a former member of the Executive of the Construction Law Section of the CBAO. She is the editor of the *Construction Law Update News Bulletin*, a Canada-wide monthly online publication targeted to the construction industry published by MMPI Canada in Toronto, Ontario, and the Chair of the Website Committee of the Canadian College of Construction Lawyers.

### Duncan Glaholt, *Glaholt LLP*

Duncan Glaholt practices in the area of construction law, construction claims, insurance and surety bond litigation. In addition to his practice as an advocate, Duncan sits as a private mediator and arbitrator of construction and related disputes. He is a member of the *Chartered Institute of Arbitrators*. Duncan is a co-author of *Annotated Construction Lien Act*, now in its 13th edition (2008, Carswell). He has authored *Construction Trusts* (Carswell, 1998), and *Conduct of a Lien Action*, (2008, Carswell). Duncan is also a co-author of Bristow, Glaholt, Reynolds and Wise edition of *Construction, Builders' and Mechanics' Liens in Canada, 7th edition* (2005). Duncan is a Founding Fellow and Past President of the Canadian College of Construction Lawyers.

# STRATEGIES FOR 2009: RISK REDEFINED

▶ **8:00 A.M.**

**Registration & Coffee**

▶ **8:45 A.M.**

**Welcome & Opening Remarks**

▶ **9:00 A.M. – 10:30 A.M.**

**Construction Contracts:  
Critical Provisions for 2009**

- What are the most effective contract provisions dealing with:
  - Price
  - Schedule
  - Payment
  - Financing
  - Changes
  - Cost Escalation
- What are the legal implications of suspending or terminating contracts?

▶ **10:45 A.M. – 11:00 A.M.**

**Refreshment Break**

▶ **11:00 A.M. – 12 NOON**

**Allocation of Liability  
Through Bonds and  
Insurance Policies**

## 1. Bonds

- Legal Implications for Contractors/Owners
- Bid Bonds/Consents of Surety
- Performance/Labour & Material Payment Bonds
- Acts which discharge the Surety

## 2. Insurance

- Insurance requirements of a contract
- Key issues in enforcing insurance rights and requirements
- Risk Protection Insurance
- Insurance Overview: What does it do and how does it work?
- Using subcontractor default insurance (Subguard)
- Construction Insurance: What's covered, what isn't?

▶ **12 NOON – 1:00 P.M.**

**Networking Luncheon**

▶ **1:00 P.M. – 2:00 P.M.**

**Green Buildings: An  
Overview of Rating Systems  
and Net Zero Buildings, and  
the Risk and Potential Legal  
Issues Surrounding Them**

There are a number of rating systems that attempt to standardize elements of design, construction, and operation of buildings that fall within the "green" category by awarding points for achievement of environmental and efficiency standards. This session will give an overview of rating systems, from BOMA BEST through LEED and even Net Zero, and offer an assessment of the risks involved with any project subjected to certification by a third party: Can certification be interpreted as a performance specification? A warranty or guarantee? Would a financial penalty be covered by insurance?

▶ **2:00 P.M. – 3:00 P.M.**

**The One-Hour Lien Expert**

How does the lien act work? Where doesn't it work? When should you file a lien? What are the consequences for improperly filing? Understand the key definitions and key concepts, including:

- Lien Rights
- Trust Rights
- Holdbacks
- Substantial Performance

▶ **3:00 P.M. – 3:15 P.M.**

**Refreshment Break**

▶ **3:15 P.M. – 4:15 P.M.**

**The Inevitable Construction  
Dispute: Now More  
Common Than Ever!**

What are the most efficient ways to handle disputes that arise before, during and after the completion of a project? What are the most common actions to avoid litigation? Learn how to effectively use Arbitration, Mediation, and Neutrals, and what to consider when organizing, preparing, and documenting a claim.

▶ **4:15 P.M.**

**Conference Adjourns**

**Edwin Lim,**  
*Energy & Sustainability, BLJC*

Edwin joined BLJC in 2006 as Vice-President of Facility Management Services before taking on his current assignment in the evolving green building marketplace. As Vice-President of Energy & Sustainability, Edwin's focus is to reduce the environmental footprint and energy & operating costs of clients' corporate real estate portfolios. A Professional Engineer, Edwin graduated from Queens University and holds an MBA from the Richard Ivey School of Business at the University of Western Ontario.

Edwin is currently Chair of the LEED™ Operations Committee for the Canadian Green Building Council currently adapting LEED™ for Existing Buildings for Canada.

**Bruce Reynolds,**  
*Borden Ladner Gervais LLP*

R. Bruce Reynolds is the National Leader of the Construction Law Practice Group of Borden Ladner Gervais, LLP, and one of LEXPERT's Leading 500 Lawyers in Canada. He is a Founding Fellow and Past President of the Canadian College of Construction Lawyers. His practice focuses on the contentious and non-contentious aspects of construction law and surety bond law, and he is certified by the Law Society of Upper Canada as a Specialist in Construction Law. He is a co-author of the legal textbook *Scott and Reynolds on Surety Bonds*, (Carswell) and a co-author of the Bristow, Glaholt, Reynolds and Wise edition of *Construction and Mechanics Liens in Canada*, 7th edition (2005 Thomson Carswell).

**Rocco Sebastiano,**  
*Osler, Hoskin & Harcourt LLP*

Rocco is Co-Chair of Osler's Energy Group and a member of the firm's Construction and Infrastructure Group. Rocco's practice concentrates in energy, construction, engineering, procurement and infrastructure project matters. He has extensive experience on a wide range of major projects and has acted for various project participants, including owners, developers, contractors, operators, lenders, architects and engineers. His project experience, both nationally and internationally, includes public-private partnerships, major buildings, civil and public works design, construction, operation and maintenance, with extensive involvement in energy and infrastructure projects.

# REGISTRATION FORM

**CONSTRUCTION  
LAW** *primers*

**PLEASE TYPE OR PRINT LEGIBLY.**

For additional registrations from the same organization, please photocopy this form. To receive written confirmation, you must register by April 8, 2009.

Given name \_\_\_\_\_

Surname \_\_\_\_\_

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Company name \_\_\_\_\_

Full mailing address \_\_\_\_\_

City/Town \_\_\_\_\_ Province \_\_\_\_\_ Postal Code \_\_\_\_\_

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## REGISTRATION INFORMATION

### Advance Sales Only

There will be no sales at the door.

### Deadline to Register:

April 8, 2009

### How to Register:

#### 1) REGISTER ON-LINE:

lawtalk.ca

#### 2) FAX:

Send the completed registration form with payment to: 416-512-1077

#### 3) MAIL:

Send the completed registration form with payment to:

#### Construction Law Primer – Toronto

c/o MMPI Canada  
10 Alcorn Ave., Suite 100  
Toronto, ON M4V 3A9

### Registration Fee:

#### Up to March 25<sup>th</sup>, 2009:

▶ \$475 + 5% GST (23.75) = \$498.75

#### After March 25<sup>th</sup>, 2009:

▶ \$525 + 5% GST (26.25) = \$551.25

### Registration Includes:

*Coffee, morning refreshments, lunch, afternoon refreshments, & handouts.*

### Refunds & Substitutions:

Refunds will be provided for cancellations prior to April 8<sup>th</sup>, 2009. A fee of \$75.00 will be applied for the processing fee of each refund. We regret that refunds cannot be offered after that date. However, delegate substitutions are permitted up to and including the day of the event.

### Any Questions?

Call: 416-512-3807

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### Educational Credits

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If this brochure has been inadvertently sent to the wrong person, please pass it along to an interested associate.

Please check the most appropriate description of your responsibilities or organization:

- 00 Accountant
- 02 Developer / Owner
- 11 Financial Services
- 13 Construction Lawyer
- 15 Architect
- 16 Engineer
- 17 Contractor
- 17 Estimator
- 17 Project Manager
- 17 Trade Contractor
- 20 Government Official
- SU Supplier
- 21 Other (please specify) \_\_\_\_\_

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### Payment Information:

#### Construction Law Primer: Toronto

Wednesday, April 15, 2009  
Crowne Plaza Hotel Toronto Don Valley

	UP TO MARCH 25 <sup>th</sup>	AFTER MARCH 25 <sup>th</sup>
Full Day:	\$475.00	\$525.00
plus G.S.T. (#125925289RT0001)	23.75	26.25
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