



## Jason J. Annibale

National Co-Chair Construction  
Toronto

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### education and year of call

- Called to the Ontario bar - 2002
- McGill University, LLB (Distinction) - 2000
- Queen's University, BA Honours (First Class Honours) - 1997
- Osgoode Hall Law School, Construction Law Certificate - 2015

### practice areas

litigation  
dispute resolution  
construction  
public-private partnerships  
commercial real estate  
aboriginal law  
construction litigation

### industries

construction  
infrastructure  
commercial real estate  
energy  
mining

### profile

Jason is a partner in McMillan's Advocacy and Dispute Resolution Group specializing in the P3, construction, and real estate industries. He is the National Co-Chair, Construction, a member of the firm's Professional Services Committee, and a Fellow of both the Canadian College of Construction Lawyers and the Construction Lawyers Society of America.

Jason has acted in the most complex construction disputes and sophisticated commercial transactions. He has assisted authorities, special purpose vehicles, and owners in resolving construction delay and cost overrun disputes involving changed site conditions, severe weather, contract changes, allegations of owner interference, protest actions, and increased financing costs in respect of underwater tunnels, biomass plants, prisons, hospitals, highways, service stations, electrical power stations and other infrastructure. Jason has resolved a dispute involving the correct calculation of a refinancing gain of an asset constructed through the P3 model and represented an international energy company with the purchase of construction projects and related assets in the context of one of Canada's largest ever construction bankruptcies.

Jason has appeared at all levels of court in Ontario and is seasoned arbitration counsel. In 2019, he was recognized by Lexpert/ROB Special Edition as one of Canada's Leading Infrastructure Lawyers and one of Canada's Leading Energy Lawyers. Jason has also been recognized by his peers in both the 2019 Canadian Legal Lexpert Directory as a Repeatedly Recommended Lawyer in the area of Construction Law and in Who's Who Legal: Construction – Future Leaders. He has been elected to the Ontario Bar Association's Construction and Infrastructure Law Section Executive three times and was the Executive's Co-Chair Program Coordinator.

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Jason is the author of the chapter on Dispute Resolution in the text by Timothy J. Murphy, *Public-Private Partnerships in Canada: Law Policy and Value for Money* and the co-author of the chapter on Construction Delivery Methods in McMillan's "soup-to-nuts" consideration of the construction process, *Construction Law in Canada*. He regularly speaks on Ontario's *Construction Act* and managing risk and dispute resolution in the P3, construction and real estate contexts. Jason is also the co-chair for some of Osgoode Hall's premier construction programs, including the full week *Construction Law Certificate* program, the *Construction Liens under the Construction Act* program, and the *Construction Delay and Impact Claims* program.

## directorships and professional associations

- Fellow, Canadian College of Construction Lawyers
- Fellow, Construction Lawyers Society of America
- Member, Diversity Law Institute
- Member, Trial Law Institute
- Ontario General Contractors Association, Associate Partner Member
- Canadian Bar Association
- Ontario Bar Association Construction and Infrastructure Law
- Advocates' Society

## representative matters

- Defeated over 20 cost overrun and delay claims forwarded by an international engineering contractor totaling over \$300 million for alleged owner interference and changes and were awarded all liquidated damages sought in the amount of \$37 million and a costs award of almost \$8 million on behalf of our owner-clients in relation to the construction of two biomass plants. Simultaneous language translation was used for approximately one-third of the 25 witnesses. There were almost 100,000 productions, 47 witness statements, 11 expert reports, over 1,000 pages of opening and closing statements with almost 5,000 hyperlinked records, one jurisdictional and three procedural motions, and a 200-page arbitration decision.
- Resolved at formal mediation the cost overrun and delay claims of over \$12 million from the special purpose vehicle, general contractor, and tunneling subcontractor against an authority in respect of a P3 asset. The dispute involved numerous alleged changed site conditions (including soil and rock quality issues, water ingress and pressure, ground contamination, and obstructions), severe weather, protest actions, an electrical shut down, and increased financing

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costs.

- Defended a public utility company against the approximately \$70 million cost overrun and delay claims of the Canadian subsidiary of an international general contracting company in CCAA proceedings and pursued a liquidated damages and related loss claim in the approximate amount of \$40 million in relation to the over \$200 million construction of an underground transformer station.
- Secured an arbitration victory for an authority against a special purpose vehicle respecting the correct calculation of a refinancing gain and the resulting monies properly payable to the authority in respect of a P3 asset. The authority was further successful in defeating the special purpose vehicle's allegations of dishonesty and bad faith.
- Represented the special purpose vehicle through the maintenance period of a federally regulated building asset in relation to a dispute amongst the maintenance provider, the construction contractor, and the authority for responsibility for a service failure and resulting deductions from payments otherwise due to the maintenance provider. The service provider claimed that the building asset failed to reach required performance levels due to faulty construction, while the construction contractor countered that deficient specifications provided by the authority resulted in the building asset's underperformance.
- Provided dispute resolution and claim evaluation advice to a special purpose vehicle in relation to delay, cost overrun, and land contamination claims valued at approximately \$60 million in respect of a rail transportation facility constructed through a P3 model.
- Settled a complex construction lien and trust matter involving the construction of an affordable condominium development on behalf of the owner-developer. There were over 20 separate lien and trust actions, including a negligence claim against the owner-developer's former lawyers, and over \$3 million in claims being made by the general contractor and the subtrades.
- Construction counsel to an international energy company on its purchase of numerous construction projects and related assets across Canada arising out of the Comstock bankruptcy proceeding, one of the largest construction bankruptcies in Canadian history.
- Represented a Canadian bank in relation to the complex re-financing of the construction of an Alzheimer's disease care facility. The representation included the registration of various construction lien postponements and the defence against several construction lien actions and related priority

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- claims of the general contractor and various subcontractors.
- Defended a Crown corporation's competitive bid selection process in relation to the construction of a world-class aquarium against allegations of unfairness, conflict of interest and bad faith.
  - Defended a Crown agent against numerous lien claimants in a complex, multi-party suit in relation to two large development projects respecting the construction of a court house and a government office building housing tribunal hearing rooms.
  - Defended the North American consulting arm of an international automotive manufacturer against numerous lien claimants and obtained judgment on a cross-claim against a design builder in relation to the negligent design, manufacture, and installation of recuperative thermal oxidizer systems supporting a paint line for a body and bumper manufacturing plant.
  - Secured payment in full and legal costs together totalling over \$1.2 million for mechanical and electrical consulting engineering services in support of the construction of an Ontario hospital through simultaneously forwarding a construction lien claim against the prime consultant and hospital and a construction trust claim against the prime consultant and its principals in their personal capacities.
  - Obtained an order discharging a certificate of pending litigation registered against the old Christie Bakery manufacturing plant and defeated the subsequent motion to stay the discharge order pending the hearing of the appeal on the basis that the appeal raised no "serious issue".
  - Obtained an order for security for costs on the (rarely granted) substantial indemnity basis in an amount over \$300,000 against an appellant purchaser of property.
  - Settled claims of a special purpose entity against the authority in relation to a delay in handover of certain sites and lost profits in relation to numerous transportation-related assets across Ontario under a single P3 model.
  - Provided advice to a consortium of insurance and bonding companies on the enforceability of a demand bond instrument to be used in a P3 context as an alternative to letters of credit.
  - Defended an international furniture manufacturing commercial landlord against a tenant's allegations of loss of business resulting from expansion of shopping centre and parking facilities.
  - Represented an international energy corporation in a product liability claim respecting the premature disintegration of

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pipng product in a geothermal loop system.

- Defended a truss component designer from a series of complex, multi-party design defect and negligence claims respecting the collapse of barn roofing systems across southern Ontario.
- Represented a national gaming and entertainment company in a product liability claim respecting complex and numerous roof-top heating, ventilation, and air-conditioning units servicing gaming floor areas.
- Defended a First Nation consultation process performed by a Crown agent on behalf of the Government of Ontario.
- Represented an educational institution in a matter involving the custody and handling of aboriginal remains.

## awards and rankings

- Recognized in the *2019 Lexpert/ROB Infrastructure – Special Edition* as one of Canada's Leading Infrastructure lawyers
- Recognized in the *2019 Lexpert/ROB Energy – Special Edition* as one of Canada's Leading Energy lawyers
- Recognized in the 2019 Canadian Legal Lexpert Directory as a Repeatedly Recommended Lawyer in the area of Construction Law
- Who's Who Legal: Construction - Future Leaders 2019
- McMillan Leadership in Mentoring Award - 2010

## community involvement

- St. Michael's College School – Enhanced Law Program Alumni Faculty Lead and Coordinator
- St. Michael's College School – Alumni Association Director
- St. Michael's College School – Career Day Speaker and Mentor
- North Toronto Soccer Club – House League Coach (2015)
- North Toronto Soccer Club – Nitros Volunteer Competitive Assistant Coach (2016)

## media mentions

- "[Ontario lawyers take refresher in handling delays](#)", *Daily Commercial News*, July 10, 2020
- "[Cranes swing back into action as COVID-19 pandemic restrictions begin to loosen](#)", *The Globe and Mail*, May 6, 2020
- "[Ontario relents on emergency holdback provisions](#)", *Daily Commercial News*, April 13, 2020

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- "[Ontario's AG and Authorized Nominating Authority confident in launch by Oct. 1](#)", *Daily Commercial News*, July 22, 2019
- "[Ontario construction lawyers keen for new adjudication regime](#)", *Daily Commercial News*, May 9, 2019
- "[CCPPP panellists compare optimal dispute strategies](#)", *Daily Commercial News*, November 15, 2018

## publications

### June 11, 2020

Construction through COVID-19 in Canada: A Guideline for what each Province and Territory is Doing  
[Current as at June 9, 2020]  
Construction Law Bulletin

### May 2020

Am I covered? The Supply of Project and Construction Management and other Consulting Services under Ontario's *Construction Act*  
Construction Law Letter, Vol 36, No. 5, pp 4-7

### April 10, 2020

Show Me the Money: Government of Ontario to Amend Emergency Order to Allow Release of Holdbacks  
Construction Bulletin

### April 8, 2020

Project Management Amid COVID-19 - The Triage  
Construction Law Bulletin

### April 3, 2020

The Impact of COVID-19 on the Construction Industry: A Reference Guide to the Changed Landscape  
Construction Law Bulletin

### February 2020

Lost in Transition  
Link2Build

### February 2020

Lost in Transition: Working Through the Silence Surrounding Leasehold Interests in the *Construction Act's* Transition Provisions  
Construction Law Bulletin

### October 2019

It's Time You Got Paid - Promptly  
The Generals

### May 2019

Public-Private Partnerships in Canada: Law Policy and Value for Money  
Contributing Author, Book, published by LexisNexis

**February 2019**

Performance Bonds: What Project Finance Lenders Should Know

Financial Services Bulletin

**March 2018**

Think twice before obtaining a labour and material payment bond – new liability for an old security

Construction Law Bulletin

**March 2018**

Change is Coming to Ontario's *Construction Lien Act* – What Do You Need to Know for 2018?

Construction Law Bulletin

**February 2018**

Out with the old and in with the new: transitioning from Ontario's old *Construction Lien Act* to the new *Construction Act*

Construction Law Bulletin

**December 2017**

Winter is coming – and so is Ontario's New *Construction Act*

Construction Law Bulletin

**December 2017**

Not as unconscionable as some might think: Court of Appeal orders purchaser to forfeit deposit after failing to close real estate deal

Real Estate Litigation Bulletin

**May 2017**

Rolling Liability for Continuous Breaches of Commercial Leases

Litigation Bulletin

**November 2016**

Subcontractors May Unknowingly Lack General Lien Rights

Litigation Bulletin

**October 2016**

Dispute Resolution in a P3 Context

Ontario Bar Association - The Unique World of Construction Law Arbitrations and Mediations

**September 2011**

Decisions, decisions – faced with non-payment, contractors must pursue the right claim and remedy

construction bulletin

**September 2011**

Sloppy accounting costs developer - *Construction Lien Act* protects parties down the chain

*Property Management Report* - July /August 2011

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## **July 2011**

Aboriginal claims – another layer of complexity and risk for the construction industry  
Construction and Aboriginal Law Bulletin  
also published in *TerraLex Connections* enewsletter

## **June 2011**

"Pay me now, or pay me later" – The risks of poor payment and accounting practices  
Construction Litigation Bulletin

## **January 2011**

'Open for Business' spells important changes for condo developers and the construction industry  
Construction and Commercial Real Estate Bulletin

## **December 2010**

aboriginal treaties are not "complete codes" – Supreme Court confirms duty to consult independent of treaty obligations (part II of II)  
Aboriginal Law Bulletin

## **December 2010**

limitation periods where 'discoverability' at issue can now be determined at summary judgment  
Litigation Bulletin

## **November 2010**

A little certainty for an uncertain process – Supreme Court confirms duty to consult not triggered or informed by adverse impacts from past actions (part I of II)<sup>1</sup>  
Aboriginal Law Bulletin

## **November 2010**

No holds barred: absolute privilege for judicial proceedings  
Litigation Bulletin

## **October 2010**

Supreme Court finds coverage for construction defect claim  
Construction Litigation Bulletin

## **August 2010**

Chinese Drywall - Construction Products Claims and Coverage Issues  
CCH: British Columbia Real Estate Law Developments

## **July 2010**

Chinese Drywall – Construction Products Claims and Coverage Issues  
Construction Litigation Bulletin



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## **May 2010**

Judicial Review - Another Weapon to Challenge Government  
Tendering Decisions?  
Projects and Construction Litigation Bulletin

## **May 2010**

Construction Law in Canada  
Contributing Author, Book, published by LexisNexis

## **March 2010**

Trust Me! – Ontario Court of Appeal expands pool of trust  
beneficiaries under the Construction Lien Act  
Construction Litigation Bulletin

## **February 2010**

Exposing the Mess Swept Under the Rug: Supreme Court of  
Canada Orders Damages for Breach of Tendering Contract  
Construction Litigation Bulletin

## **January 2010**

What is the duty to consult, anyway, and why is it important?  
Aboriginal Law Bulletin

## **January 2010**

The Lien Clock Doesn't Tick Forever  
Construction Litigation Bulletin

## **December 2009**

What to do as an Owner when Liens Arise and the *Construction  
Lien Act*  
Infrastructure Ontario at a 2009 meeting of its Vice Presidents,  
Counsel, and Project Managers

## **December 2009**

Toronto lawyers unveil design-build project guide  
Daily Commercial News and Construction Record

## **November 2009**

Effectively Structuring and Managing Design-Build Projects  
19th Annual Construction SuperConference - The Canadian  
Institute

## **presentations**

### **March 4, 2021**

*(Upcoming) Arbitration*  
Construction Dispute Symposium  
Chartered Institute of Arbitrators (CIArb) Canada Branch &  
Royal Institution of Chartered Surveyors (RICS) Co-speaker with  
Julie J. Hopkins

### **October 19, 2020**

*(Upcoming) The Osgoode Certificate in Construction Law*  
Osgoode Hall Law School – Professional Development

Co-Program Director with Geza Banfai and Howard Krupat

**July 21, 2020**

*Managing Construction Risk in 2020 and Beyond*

The International Concrete Repair Institute and the American Concrete Institute

**July 17, 2020**

*Successfully Litigating Delay and Impact Claims*

5th Annual Conference on Managing Risk in Construction

Contracts and Projects

The Canadian Institute

Speaker

**June 25, 2020**

The Legal Context of Construction Project Delay and Impact Claims

Advanced Construction Issues:

Construction Project Delay & Impact Claims

Osgoode Hall Law School – Professional Development

Co-Speaker with Andrea Lee

**June 25, 2020**

Advanced Construction Issues:

Construction Project Delay & Impact Claims

Osgoode Hall Law School – Professional Development

Co-Program Chair with Andrea Lee

**April 3, 2020**

Responses to Select Questions from the "The Impact of COVID-19 on the Construction Industry: McMillan Answers Your Questions" Webinar

**March 31, 2020**

Webinar: The Impact of COVID-19 on the Construction Industry: McMillan Answers Your Questions

**February 20, 2020**

Construction Liens Under Ontario's New: *Construction Act*

Strategies for Navigating the New Regime

Osgoode Hall Law School – Professional Development

Co-Program Chair with Sandra Astolfo

**November 15, 2019**

*How to Succeed in Dispute Resolution*

The Osgoode Certificate in Construction Law

Osgoode Hall Law School – Professional Development

Speaker

**November 11, 2019**

The Osgoode Certificate in Construction Law

Osgoode Hall Law School – Professional Development

Co-Program Director with Geza Banfai and Howard Krupat

**April 29, 2019**

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The New Adjudication Regime  
Osgoode Hall Professional Development – Ontario's New  
Construction Act: Adapting to the New Prompt Payment &  
Adjudication Regimes  
Co-speaker with Geza Banfai

**April 12, 2019**

Adjudication under the New Construction Act  
Ontario General Contractors Association Symposium  
Panelist with Bruce Reynolds, Glenn Ackerley, and Andrew Heal

**April 11, 2019**

Ontario's New Construction Act  
McMillan Construction Counsel Series

**November 2018**

Dispute Resolution in P3 Projects Panel Discussion  
The Canadian Council for Public-Private Partnerships 2018  
Conference

**March 2018**

The Construction Act - How Bill 142 has changed the  
Construction Lien Act – what you need to know  
McMillan Construction Counsel Series

**February 2018**

Changes to the *Construction Lien Act*  
The Six-Minute Commercial Leasing Lawyer  
The Law Society of Ontario

**September 2017**

Contracts, Consultants, and an Emerging Landscape: What you  
need to know  
Ontario Bar Association  
Co-Chair

**October 2016**

ADRIC 2016: ADR Canada's Annual National Conference:  
Reflections and Innovations  
"Med-Arb: Marriage of Opposites"

**October 2016**

The Unique World of Construction Law Arbitrations and  
Mediations, Ontario Bar Association  
"Arbitrations and P3 Projects: Unique Considerations"  
Co-Chair & Speaker

**June 2016**

Golf Day and Dinner Program – The Path Ahead – Infrastructure  
Ontario's Perspective with Marni Dicker  
Ontario Bar Association, Aurora, Ontario  
Co-Chair

**February 2016**

Recoverable Damages for Breach of Lease

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The Six-Minute Commercial Leasing Lawyer  
The Law Society of Upper Canada

**September 2015**

Lease Remedies 101: Navigating Your Options  
McMillan Corporate Counsel Series

**March 2012**

Aboriginal Law - The Legal Landscape and Application  
Presented to the Legal Group of Infrastructure Ontario

**December 2011**

Fundamentals of Construction Law  
2011 21st Annual Construction Super Conference, The  
Canadian Institute

**April 2011**

Civil Court Proceedings and the Enforcement of Orders - A  
Primer  
Presented to directors, executive team, and in-house legal of  
Teranet Inc.

**April 2011**

Certificates of Substantial Performance, the *Open for Business  
Act*, and how the *Construction Lien Act* affects Condo  
Developers  
Presented to in-house legal and project managers of Monarch  
Corporation

**March 2011**

De-Mystifying the *Construction Lien Act* - A Lender's Perspective  
Presented to in-house legal and construction and building  
finance account managers of Royal Bank of Canada

**February 2011**

De-Mystifying the *Construction Lien Act* - A Lender's Perspective  
Presented to commercial construction and building finance  
directors of the Bank of Nova Scotia

**November 2009**

Effectively Structuring and Managing Design-Build Projects  
19th Annual Construction SuperConference, The Canadian  
Institute

**October 2009**

The 'Discovery' and Management of Aboriginal Remains  
2009 Insight Aboriginal Law Conference

**May 2009**

Construction Contracts and Delivery Methods, Managing Risk,  
Disputes, and the Construction Lien Act  
2009 Annual Conference of the Ontario Association of Physical  
Plant Administrators (OAPPA)

**Fall 2008**

First Nations Consultation and the role of Archaeologists within



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the Legal Framework  
2008 Annual Meeting of the Canadian Archaeological  
Association

**Fall 2008**

The Significance of Hiawatha First Nation v. Ontario (Minister of  
the Environment), [2007] 2 C.N.L.R. 186  
First Nations Circle