



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 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.

Jason is the author of the chapter on Dispute Resolution in the

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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, 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 costs.
- Defended a public utility company against the approximately \$70 million cost overrun and delay claims of the Canadian

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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 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

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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 piping 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

- "[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
- "[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

May 20, 2020

Construction through COVID-19 in Canada: A Guideline for what each Province and Territory is Doing
[Current as at May 20, 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

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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

July 2014

Court affirms right of Province to "Take up" Treaty Lands – *Grassy Narrows First Nation v. Ontario (Natural Resources)*
Aboriginal Law Bulletin

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)¹
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

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

June 2, 2020

(Upcoming) Arbitration
Construction Dispute Symposium
Chartered Institute of Arbitrators (CI Arb) Canada Branch &
Royal Institution of Chartered Surveyors (RICS) Co-speaker with

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Julie J. Hopkins

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

March 31, 2020

Successfully Litigating Delay and Impact Claims
5th Annual Conference on Managing Risk in Construction
Contracts and Projects
The Canadian Institute
Speaker

March 30, 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

March 30, 2020

Advanced Construction Issues:
Construction Project Delay & Impact Claims
Osgoode Hall Law School – Professional Development
Co-Program Chair with Andrea Lee

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

The New Adjudication Regime
Osgoode Hall Professional Development – Ontario's New
Construction Act: Adapting to the New Prompt Payment &
Adjudication Regimes

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

September 2015

Lease Remedies 101: Navigating Your Options

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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
the Legal Framework
2008 Annual Meeting of the Canadian Archaeological
Association

Fall 2008



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