The Legal Affairs issue

With stories on:
BIM and design liability
How to handle an OCOT inspection
And more!

Plus a profile of GVCA Hall of Fame inductee
Roger Farwell
GVCA Journal January/February 2015

P3s Cost Too Much Says Ontario Auditor General

Building Information Modeling

CCA Issues Drug and Alcohol Resource Materials

What to Expect from an OCOT Inspection

Underground, but never out of mind

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MESSAGE FROM THE PRESIDENT

So Much RED TAPE!

Is it me, or is it getting harder than ever to actually do business? When I think about the amount of time any of us actually spends building, I can't help but feel that it’s a smaller and smaller slice of our days.

Instead of doing what we love, we’re spending heaps of time completing paperwork, visiting lawyers and accountants, or simply bringing ourselves up to speed with new legislation.

Don’t get me wrong. I’m all for bettering our industry with new laws and regulations as and when they make sense. Making our construction sites safer is a goal that everyone supports. But it seems that small business owners have to cut through more and more red tape with each passing year.

I’m lucky. Working for an established general contractor with a large staff helps me focus on the things I’m good at while our lawyers focus on their work, the accountants on theirs, etc. But I see every day what we at Ball Construction go through to stay on top of WSIB obligations, inspections from the Ministry of Labour and the College of Trades, Lien Act provisions and timing, employment law and standards, and so on. I can’t imagine how someone running a small shop or working for themselves stays on top of all these things while still finding time to actually build. It’s a minefield out there.

Even one misstep can ruin your company.

Luckily, GVCA is by your side. While it’s true that Martha and her staff can’t handle your accounts receivable paperwork, at least they can offer advice and support and training on the other big issues. They’ll help you sharpen that knife so you can cut through all that red tape with ease.

MESSAGE FROM THE CHAIR

When it Comes to Legal Affairs – and Almost Everything Else –

We’re Here for You

Construction is a complicated business. We all know that. There’s so much to know to get the job done, and so much more to know just to run a business.

Although we at GVCA can’t help you lay pipes, hang drywall or pull conduit, at least we can help keep your business on the level. Construction is a complicated business. We all know that. There’s so much to know to get the job done, and so more to know just to run a business.

We’re always offering the latest in information, and the newest education programs to help our members stay on the right side of the law. This magazine is one of those sources. So is our monthly newsletter. We also offer regular in-office and on-site training sessions on more hands-on issues such as safety training, understanding your legal obligations, knowing how to use the Lien Act to your advantage, understanding what it means to make your jobsite accessible, and reminding you why you need to create a workplace harassment policy.

As Gary said, none of those things is what you actually wanted to do when you hung out your shingle and went to work in construction.

But these are things you have to do to keep that shingle hanging. So when you need help to improve your safety programs, learn about CoR or even if you have a problem with what you think is an unfair or unethical tendering practice, give us a call. We’re your association and we’re here for you.
GVCA’s Crystal Ball Report is a unique and insightful member service. Updated daily by GVCA staff, the report tracks planned projects during the pre-bidding phases, following them from concept to design to prequalification, construction and completion.

GVCA members may access the report at no charge. Those who subscribe to it appreciate the opportunity to study the construction landscape well into the future and predict where their forces and efforts can be best targeted to ensure success. No other local construction association in Ontario offers this kind of pre-bidding data and no other report provides this depth of forward looking information. The Crystal Ball Report is construction intelligence at its finest.

Here are a few of the projects currently on display in the GVCA’s Crystal Ball Report:

**Construction Management Services, Steve Kerr Memorial Complex**
- **Value:** $11,300,000.00
- **Estimated Start:** April 2015
- **Estimated Completion:** August 2016
- **Status:** Working drawings. Tender preparation unknown.

For information, contact Steve Hardie at 519-292 20550 or rshardie@northperth.ca

**Comments:** Replacement includes a new Recreation Complex being constructed on vacant municipally owned property on the westerly side of Listowel. Initial conceptual plans identify a facility which will house two ice pads, walking track, community room and indoor aquatic facility. Construction of the facility will be completed in three phases. Total project budget including construction for phase one has been estimated at $11.3M.

**What’s new:** 
- Aug. 12, 2014
  - Prequalification complete
  - Waiting tender next update fall 2014

**Chicopee Hills Public School (Lackner Blvd at Fairway Rd N, Kitchener)**
- **Value:** $12,000,000.00
- **Estimated Start:** 2015
- **Estimated Completion:** 2016

**Project Details:**
- The Waterloo Region District School Board is currently preparing the Site Plan for the new Chicopee Hills Public School (to be located at Fairway Road and Lackner Boulevard) for submission to the City of Kitchener.

**What’s new:**
- January 2015
  - Questions about the safety of children walking to a proposed school near two busy regional roads, as well as environmental and planning concerns, may mean residents in southeast Kitchener will be forced to wait until September 2017 for a new school.

**Architect:**
- BJC Architects Inc, RR #2 8016 Highway #7 Guelph ON N1H 6H8
  - Ph: (519) 822-7390
  - Fax: (519) 822-5881
- Waterloo District School Board, 51 Ardelt Av Kitchener ON N2C 2R5
  - Ph: (519) 742-1452
  - Fax: (519) 742-1451

**Date Received:** June 25, 2014
**Last Update:** Jan. 21, 2015

**Kitchener Wastewater Treatment Plant Phase 3 Upgrades-Contract 3 Construction of Headworks and Secondary Treatment**
- **Value:** $125,000,000.00
- **Estimated Start:** April 2015
- **Estimated Completion:** Sept 2018
- **Status:** Working Drawings. Prequalification Open

**Project Details:**
- The following is the proposed construction schedule for the works:
  - Time for Completion – 31 months (C3HW) 42 months (C3SEC). Award of Contract – March 2015. Start of Construction – April 2015. Completion of Construction – September 2018. Partial substantial completion for Headworks will be in October 2017. One train of the secondary treatment part of the contract must be commissioned by the end of 2017 for the site to meet upgraded effluent quality requirements. The estimated construction cost for the proposed works is in the order of $125M.

**Owner:**
- Region of Waterloo,
  - 150 Frederick Street,
  - 4th Floor Kitchener ON N2G 4J3
  - Ph: (519) 5754481

**Date Received:** Nov. 13, 2014
**Last Update:** Jan. 21, 2015

**Chicopee Hills Public School (Lackner Blvd at Fairway Rd N, Kitchener)**
- **Value:** $12,000,000.00
- **Estimated Start:** 2015
- **Estimated Completion:** 2016

**Project Details:**
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  - Fax: (519) 822-5881

**Issuing Authority:**
- Waterloo District School Board, 51 Ardelt Av Kitchener ON N2C 2R5
  - Ph: (519) 742-1452
  - Fax: (519) 742-1451

**Date Received:** June 25, 2014
**Last Update:** Jan 21, 2015
DON’T MISS YOUR Payday

Virtue may be its own reward, but you should insist on being paid for your good work. Around every corner are deadlines that threaten to compromise your right to payment. Act before they expire to preserve or enforce your right to payment.

Written Notices under CCDC and CCA Contracts

The Canadian Construction Documents Committee and Canadian Construction Association contracts require you to give written notice to the opposite party in order to preserve your right to certain claims. For example, if a general contractor discovers a concealed site condition, G.C. 6.4.1 allows it five working days to give notice in writing to the owner of a potential claim. G.C. 6.5.4 allows a general contractor only ten days from the onset of a delay to give notice in writing to the owner of a potential claim. The language of your particular contract governs when and how you must give notice. However, here are a few rules of general application. First, you still need to give written notice even if the other party knows about the delay, concealed site condition, or other issue requiring notice. Second, give notice as soon practicable. Assume that the deadline for giving notice runs from the date that you recognized that you might make a claim for compensation. Third, be specific. Describe what the problem is and how it is interfering with your work. Fourth, make it clear that you are claiming, or may claim, compensation. Fifth, better late than never. Imperfect compliance with a notice provision is usually better than non-compliance.

Preserving Your Construction Lien

You have heard this before, but it bears repeating. If you are acting as a general contractor, your lien rights expire 45 days after the earlier of (i) the date the general contract is completed, terminated, or abandoned and (ii) the date that a certificate of substantial completion is published. If you are acting as a subcontractor or supplier, your lien rights expire 45 days after the earlier of (i) your date of last supply and (ii) the date that a certificate of substantial completion of the general contract is published.

Labour and Material Bonds

A labour and material bond is a guarantee made by a financial institution to the owner that the general contractor will pay amounts owing to its suppliers and subcontractors on the project. If a general contractor defaults upon a payment to a supplier or subcontractor, the supplier or subcontractor can look to the surety for payment. In order to make a claim on a labour and material bond, a subcontractor or supplier must give timely notice of its claim to the surety, owner, and the general contractor. The deadline for giving notice is governed by the language of the particular bond, but it is typically 90 or 120 days from the subcontractor or supplier’s date of last supply.
Failing To Plan Is Planning To Fail

You should adopt good systems to manage these important deadlines. Read your contract at the outset of a project to identify when you must give notice of a claim. Diarize the deadline to file a claim for lien and to give notice of a claim on a labour and material bond. Check trade media regularly to see when certificates of substantial completion are published. Finally, perform a monthly review of your accounts receivable to identify invoices that are approaching two years in age.

Limitation Periods

The basic limitation period in Ontario is two years. In other words, if you are owed a debt, or have a claim for breach of contract or breach of trust, then you have two years to start a lawsuit unless your contract prescribes a shorter period. If you miss the limitation period, then your claim is statute barred. The limitation period starts to run from the date that you “discovered” your claim. For example, in a claim for debt the clock starts to run on the date that your invoice is due. A claim for breach of contract will usually run from the date of the breach.

This article was written by Ted Dreyer and Ross Weber of Madorin, Snyder LLP in Kitchener. This article should not be relied on as legal advice.
One of the best ways to stay on top of your clients’ minds is to speak to them regularly. Of course, it’s not always practical – for you or them – to sit down over a cup of coffee. So the next best thing is to call or send regular emails. Trick is, the government’s making both of those things harder than ever to do.

The new anti-spam law, for example, limits who you can send emails to. It’s OK to send to past customers, but you can’t send things to unqualified prospects. Likewise, cold calling isn’t what it used to be. We’ve got a few helpful suggestions to help you stay on the right side of the law when it comes to marketing.

1 Understand consent

Canada’s anti-spam law (or CASL) is concerned with consent. If you have it, you can go ahead and send certain types of emails to customers, prospects and anyone else you care to name. If you don’t, you can’t.

That sounds simple enough, but things get complicated when you start to ask what is consent. It’s more than just asking someone to check a box on a web page confirming that they’d like to receive your newsletter. (Although that form of consent – express consent – is the best to have since it’s the easiest to prove.) Under the law, you’re assumed to have consent even if someone enquires about your services or if someone knowingly sent you his or her email address in a business capacity. Both of these are implied consent – and it’s enough to allow you to send emails legally.

2 Be aware of limitations

Just because you have consent doesn’t mean you can send emails to someone indefinitely. First off, you have to honour someone’s request to be removed from your email list. Second, implied consent is time-limited. It expires after two years. (Express consent, by the way, never expires – unless someone asks to stop receiving your emails.)

3 Keep records

The safest thing you can do to protect your business from accusations of wrongdoing is to keep records. Know who’s given you express consent, and be able to prove it. Know who’s given implied consent, know why their consent would be considered implied, and be aware of associated time limitations. Remember, the onus is on you to prove your innocence under the law.

4 Know that CASL also applies to texts

Promotional text messages are a nice idea, but they’re covered under the same rules as emails. All electronic communications are. CASL was designed to be technology neutral. Legislators wanted to create a law with as few loopholes as possible, so texts and instant messages are covered. On the other hand, you can continue to promote your business through social media and blogs as you please. CASL doesn’t cover use of those technologies.
Register to make cold calls

No one likes to make cold calls, but occasionally they’re a means to an end. That’s fine, but know that you can’t simply pick up the phone and start dialing anymore. If you do, you risk breaking the rules of the National Do Not Call List (DNCL). So how do you stay current? You’ll have to register with the National DNCL and follow its associated rules.

More red tape

If all this sounds like a lot of work for an ordinary, well meaning business to go through just to build relationships with new and prospective customers, you’d be right. But the actions of a few bad seeds have muddied the water for everyone. CASL and the Do Not Call List are government responses to problems of abuse that occur everyday in Canada and around the world.

It’s up to you to ensure you stay on the right side of the law – or face stiff penalties for violations.
Termination for Cause Substituted with a Two-week Suspension

Following an accident where an employee caused $14,000 worth of damages to his employer's truck and provided a false statement to the police as to what happened, the employer terminated the employee for cause. An Alberta labour arbitrator did not believe the employee's action warranted termination and substituted a termination for cause with a two-week suspension.

The Facts of the Case and Decision

The employee was a truck driver and had been working with the employer for about 10 months. He had about 10 years of experience as a trucker.

One day, the employee was operating one of the employer's tractor-trailers. He was waiting in line for a loading dock to open up and parked the truck approximately 30 to 40 feet behind another truck.

The employee bent over to pick up papers, which had fallen on the floor, when the truck rolled forward and hit the back of the other truck. The collision caused nearly $14,000 worth of damage to the truck.

After the collision, the employee was yelling at the other truck driver, claiming that the other driver backed into his truck. Additionally, he insisted that this was the case when he completed his police statement, even after he was told it was unlawful to make a false statement.

The employee insisted on his version of events right up until he saw the video confirming that he was actually the one who caused the accident. He was shocked to learn that it was his truck that rolled forward.

Given the employee's lack of remorse, lack of acknowledgment of any wrongdoing and short amount of service with the company, the employer terminated the employee immediately for cause. The termination letter noted that the security video showed that the statement the employee made to the police and to the employer was false.

Arguments Against – and in Favour of – Termination

The employee's union launched a grievance and argued that a lesser form of discipline should be substituted for the termination. The employee's rendition of events was consistent, and there was no motivation for him to lie and continue to lie. It was not that he lacked credibility; he truly believed that he was right when he told the story and made the police statement.

The employer argued the employee was not credible and that he knew, or ought to have known, that the driver in front of him did not back into him. According to the employer, the employee blamed the other driver, lied to the police, gave a dishonest and false account of the accident and continued this pattern of deceit. This was cause for dismissal.

The arbitrator considered whether the employee's explanation for his belief, and repeated assertions of his belief, was credible. The arbitrator agreed with the union: the employee was so convinced that he was in the right that he did not undertake the kind of objective analysis of the circumstances one would hope for from an experienced professional driver. He effectively convinced himself into believing something which, on a more fulsome analysis, he should have recognized was unfounded.

Although it would have been better for the employee to have shown some remorse and apologize both for the incident and his mistaken view of the event, the truth was that the employment relationship could be restored. The employee was typically a good worker and his mistake would likely not be repeated.

Therefore, the misconduct warranted some discipline because the employee was careless and caused an inadvertent accident, but did not warrant termination. It was to be substituted with a lesser form of discipline, namely a two-week suspension. Also, the letter of termination was to be removed from the employee's record and he was to incur no loss of seniority or benefits.
What can Employers Take from this Case?

As you can see, even a $14,000-error does not always lead to automatic termination. Unless there is a special circumstance, a system of progressive discipline should typically be used.

The interesting thing about this case is that one of the main reasons for the termination was the fact that the employee gave a false statement and kept insisting that it was true. Nonetheless, the arbitrator found that the employee truly believed his statement was true and he was not purposely lying. Therefore, the main foundation on which the termination was based was not supported. The discipline arose because the employee was careless and caused an inadvertent accident.

Before terminating an employee, carefully investigate to ensure that there are no valid mitigating factors that would explain or clarify what happened during an incident. When problems with behaviour or performance occur, discipline is necessary. By implementing a discipline process, you provide employees with an opportunity to become a productive part of your organization and you make any termination more defensible if taken to court.

Make sure to establish and implement a discipline policy and process that has been read by, understood and agreed to by employees at the time of hire. It is important that an employee knows or ought reasonably to have known that his or her actions would be cause for discipline.

This article was written by Christina Catenacci BA, LLB, LLM, Editor, HRinfodesk. For additional information please contact Yosie Saint-Cyr at editor@hrinfodesk.com.
The trend in construction software is moving away from large Enterprise Resource Planning (ERP) software like SAP and Oracle and towards more custom point solutions that handle specific parts of a project such as punch list management, estimating, 3D modelling and safety. While more options means more targeted solutions, it also means more software related questions that need to be asked at the beginning of a project.

Addressing critical software questions up front means that details regarding software use on a particular project can be included in the initial project documentation and contracts. This step is important for ensuring that all stakeholders understand cost implications, information ownership, and communication expectations up front and there are no surprises. The answers to these questions are not just nice to know, they are imperative when it comes to writing a project contract in today’s tech-dependent environment. Here are some key questions to ask:

**What software is each stakeholder using?**

By getting a full list of which software each stakeholder is going to be using on the project, you will be better equipped in the instance of a dispute. “If I know exactly what information was being recorded throughout the project, then it is much easier to ask for the right information in the instance of a dispute. This information could include project progress photos via drones, GPS tracking in vehicles, time and date stamped punch lists, etc.,” says Calley Callahan, principal with the law firm of Knolle, Holcomb, Kothmann & Callahan, P.C, and a specialist in construction related matters.

It is also possible to mandate the use of certain software on a project, which is typically done pre-bid to ensure all associated costs are included in the initial estimates.

**Who will carry the cost of the software?**

Software budgets differ greatly among companies and are sometimes left entirely out of project budgets by smaller contractors. In order to ensure that each stakeholder budgets accordingly for the software they will need to use on the project (ex: collaboration software used by every member of the design-build team) these costs and an outline of who is expected to carry what cost responsibilities should be clear from day one. A lack of communication regarding software cost responsibility can lead to budget disputes later on.

**Who is responsible for distributing updated information?**

In theory, the beauty of using cloud-based software is that updates or versions of things like models, material specifications lists, etc. do not need to be re-distributed with each update. However, this is only the case if everyone who needs access to the information is properly integrated into the software. In the instances where only one group of the project team is using a cloud-based software, it is important to identify who is ultimately responsible for ensuring other stakeholders are kept abreast of changes.
Do any stakeholders use a BYOD policy? If so, how do they control data ownership?

BYOD (bring your own device) policies are quite popular in construction as companies strive to find a practical balance between lean hardware budgets and the need to have good mobile devices on-site. BYOD is great on the day-to-day, but when someone leaves a company all of the project-sensitive information stored on their device goes with them.

In order to control the potential misuse of this project information, companies using BYOD policies need to put policies in place that dictate who owns the data on the phone and how it gets deleted. Typically this is achieved using cloud-based software that allows the device to be used solely for accessing and updating information via a secure connection, and not for information storage itself. If any stakeholders on your upcoming project are using a BYOD policy, confirm what their policies regarding information security are.

BYOD policy, confirm what their policies regarding information security are. Asking questions such as these at the beginning of a project and including the answers in a legally binding document is important for properly managing the use of software and technology on every project. In doing so you will ensure that all stakeholders are aligned from day one and avoid costly software related surprises later on.

This article was written by Lauren Hasegawa, a structural engineering graduate with a background in concrete restoration and the Co-Founder of Bridgit. Bridgit focuses on developing mobile-first solutions for the construction industry that help relieve on-site pain points, such as punch list management. Lauren can be reached at lauren@gobridgit.com and 647-400-9948.

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A SITE SUPER’S GUIDE TO

Preventing Falls

If you’re a site supervisor, you know that you have special obligations under the Occupational Health and Safety Act. It’s part of your job to know about potential and actual hazards in the workplace, and advise workers of these dangers, to ensure equipment, materials and protective equipment are maintained in good condition, and to provide workers with information and instruction on safe work practices. It’s also part of your job to ensure that workers work safely and use the protective devices required by law, and take every reasonable precaution to protect your site workers.

That’s a lot to know and do. Construction sites are inherently dangerous, energetic and distracting places. Hazards are everywhere. Particularly those that lead to slips, trips and falls – the leading causes of injuries to construction workers.

We’ve prepared a handful of tips to help you better prepare your workers for these dangers. Maybe this won’t be the last reference you ever use to protect your workers, but if it comes in handy even once, we’ll consider this a job well done.

1. Check for missing guardrails.
Do this now. Guardrails are the number one thing separating workers from falls, so make sure they’re in place everywhere: especially on scaffolds and floor edges. Inspectors from the Ministry of Labour will certainly have their eyes open for these safeguards.
2. Watch for good ladder habits.
Everyone’s been up on a ladder, got on a roll doing some work and reached just that little bit further or climbed just that little bit higher than he or she should to get that last bit of work done. But let’s be clear: that kind of thing isn’t safe. Always be on the lookout for good ladder practices. Check for the right slope, that the footing is secure, that workers always have three points on a ladder and that no one leans out too far or climbs too high.

3. Watch for floor and roof openings.
It’s way too easy for a worker who’s busy with another task to step through a floor or roof opening without even knowing it was there. As you walk your site, make sure all openings are covered securely and that all covers are painted with messages such as DANGER! OPENING—DO NOT REMOVE! DO NOT LOAD! Better still, install guardrails around the opening and put up a sign.

4. Make workers use the right equipment.
Required equipment is just that: required. Most workers understand that hard hats, safety boots and glasses aren’t optional. Make that message just as clear for gloves, fall harnesses and hearing protection.

5. Encourage professionalism.
Part of the duty of being a professional is acting like one. Professionals use their deep knowledge alongside the best tools to get the job done. In our business, being professional means more than just turning up for work on time and putting in a good shift. It means doing things the right way, and doing them safely.

Create a jobsite culture where workers feel free to fix problems that aren’t theirs. Tell them that if they see something wrong, they need to say something or do something. The idea of turning a blind eye to someone else’s dangerous work habits or ignoring a potential safety hazard is more than just illegal. It’s immoral. We all have to look out for each other’s safety.

7. Lead by example.
When workers see that you’re fastidious about safety, they’re more likely to follow your lead. Show your commitment to safety by inspecting the site every day and making sure everyone wears their harnesses, uses ladders safely and installs guardrails. Be a leader.

8. Be proactive.
Putting steps in place to mitigate a hazard is a good step to creating a safe work site. Eliminating hazards altogether is a better one. Try to implement newer, safer ways of getting a job done. Build a roof on the ground before hoisting it into place. Use extension handles on tools so that workers can access hard-to-reach places from the ground.

9. Give credit where it’s due.
We’re quick to punish those who break the rules. And we should be. But how many of us reward work well done? Be on the lookout for workers doing things the right way and give them a pat of the back or a few kind words for following the rules. It may not sound like much, but reinforcing good behaviour makes a difference.

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The construction industry is fraught with rules, regulations and codes that must be complied with from building codes to financial requirements. Failing to comply with these rules could lead to a hit to your business’s cash flow and your time. The financial compliance summaries below highlight some of these requirements.

**Workplace Safety Insurance Board**

Your business must remit WSIB payments based on the insurable earnings of you and your employees. As a business owner or executive officer, your earnings may be exempt from WSIB if you perform home renovation work exclusively, or you have applied as the one exempt officer (if your business is a corporation or partnership). There is a separate WSIB rate for non-exempt partners and executive officers when the individuals do not perform construction work and have not been elected as exempt. You must make a request to WSIB to obtain such a rate.

If your company uses subcontractors, you should obtain a clearance certificate for each subcontractor. Business owners should also ensure they are aware of the timelines and requirements for reporting a workplace accident.

**Employer Health Tax**

If you have annual payroll in Ontario of $450,000 or more, you must register for and remit EHT. Annual payroll is based on the payroll for the year for all associated corporations. The EHT rates vary from 0.98 percent to 1.95 percent depending on the Ontario payroll for the year above the $450,000 exemption. If your Ontario payroll is $600,000 or more, EHT must be remitted monthly. Annual EHT returns must be filed if you are registered for EHT and are due March 15 of the following year.

**Reporting**

**T5 Reporting**

If any dividends or interest are paid out of a corporation, T5 slips must be prepared and filed by February 28 of the following year.

**T5018 Reporting**

If your primary source of business income is construction and you use subcontractors, you must also consider if you need to file a T5018 – Statement of Contract Payments. If you pay a subcontractor over $500 in a year for services (or mixed service and goods payments), you must prepare and file a T5018 slip for each such subcontractor as well as a T5018 summary. The T5018 slips and summary are due within six months of your reporting period.

**Harmonized Sales Tax**

You are required to register for HST when you have sales of taxable supplies of $30,000 or more in any four consecutive calendar quarters. In certain circumstances it may be beneficial to register before reaching the $30,000 threshold to recover HST paid on expenses.

HST returns and payment of any balances are due the month following the reporting period for monthly or quarterly filers or three months after the period for annual filers.

Any associated businesses with taxable supplies of $10 million or more a year are considered large businesses for HST purposes and face a temporary recapture on some of their HST input tax credits until July 1, 2018.
While there are many requirements, there are some points you should consider to optimize deductions and minimize remittances and taxes.

Determine if you can apply to WSIB to designate an executive officer as exempt from premiums. To be considered an exempt officer, you must not perform any construction work; however periodic site visits are permitted.

Consider what earnings will trigger insurable earnings. Changes to the WSIB rules may result in dividends being insurable earnings. WSIB is in the process of providing guidance on dividends paid through a holding company which may result in savings strategies.

Is the business eligible for any tax credits such as cooperative education and apprenticeship credits? The apprenticeship tax credit can earn up to $12,000 annually per apprentice and the co-op tax credit can earn up to $3,000 per student per work term.

Owner remuneration planning to ensure optimal salary and dividend mix to optimize benefits while minimizing overall taxes.

Consideration regarding corporate or personal vehicle ownership to maximize deductions and minimize compliance requirements.

**Conclusion**

With the high level of compliance requirements in the construction industry, it is important to ensure compliance in each area. An external accountant can be a great resource in ensuring you are compliant and planning to maximize benefits while minimizing your overall taxes.

*This article is for information purposes only. It was written by Kimberly Aitken, CPA, CA and Wayne Root, CPA, CGA of RLB LLP Chartered Accountants and Business Advisors. They can be reached at 519-822-9933.*
Christmas Party

WSIB Rebate Ceremony
1st Annual Bonspiel

LinC New Year Kick Off
Ontario taxpayers paid too much to build PPP projects. That was the message delivered by auditor general Bonnie Lysyk in December, and it’s been panned by construction industry officials.

What’s the future of public-private partnership construction projects in Ontario?

Recall that in December, auditor general Bonnie Lysyk attacked the projects on the basis that they’re costing taxpayers as much as $8 billion more than if the public sector were to simply deliver these projects on its own. Those are bold words at a time when the provincial government is trying to wrestle more than $12.5 billion worth of deficit under control all while fixing the province’s aging infrastructure assets.

In considering 74 projects built using Infrastructure Ontario’s (IO’s) alternative financing and procurement (AFP) model, Lysyk’s office found that the province had made a few critical assumptions about the strength of the model. One of the auditor general’s concerns was the assumption that there is less risk of cost overruns and other problems when a private entity builds a project. Another is that the private sector pays about 14 times what the general government does to finance such projects.

Industry officials and others that support the use of P3s were quick to defend. IO’s board of directors issued a letter to economic development minister Brad Duguid explaining the value of P3s and the strength of IO’s AFP model.

 “[AFP] is the most responsible and effective approach to deliver large, complex projects that carry significant risks of cost overruns, schedule delays and maintenance requirements,” said the letter. “When risks transferred to the private sector are taken into account, AFP provides an estimated net benefit of $6.6 billion to the government and taxpayers. Private finance is an important tool to transfer risks to the private sector while still maintaining ownership and control of public infrastructure. IO’s approach has already protected the government and taxpayers from billions of dollars worth of risks.”

The Canadian Council for Public-Private Partnerships indicated it was concerned with the auditor general’s findings.

“Infrastructure Ontario has gained an international reputation as a best-in-class procurement agency, overseeing award winning projects, and a stellar track record of ensuring projects are done on-time and on-budget, reducing risk to taxpayers, and delivering high quality infrastructure for Ontarians,” said council president Mark Romoff. “While some special interest groups will try to use aspects of this report for political gain, they are doing so void of facts. To believe that the public sector can deliver every project on-time and on-budget or even has the capacity to manage multiple, complex projects at the same time, is simply unrealistic. The record speaks for itself. The transfer of risk to the private sector has real value and taxpayers are tired of projects costing far more than initially budgeted, deficient design and construction, and deferred maintenance, which is why governments have turned to P3s.”

An op-ed piece written by policy analysts at The Fraser Institute was similarly supportive of the role played by P3s in Ontario.

“Government-led projects would be cheaper (given the government’s lower cost of borrowing) if they were risk free. But that is simply not the case. In fact, government-led projects have a long history of being over budget and delivered late with taxpayers ultimately bearing the extra costs. P3s, on the other hand, have a strong record of delivering public infrastructure on time and on budget. In a recent analysis of 42 Canadian P3 projects from 2009 to 2013, an impressive 83 percent finished on time or early. In a separate analysis of 19 Canadian P3 projects from 2004 to 2009, an even more impressive 89 percent finished on time or early.”

Ian Cunningham, president of the Council of Ontario Construction Associations, says he was disappointed to hear of the auditor general’s findings. He argues that there is a premium to be paid for the risk transferred to the private sector to build such large – and complex – infrastructure, and there should be a premium paid for the creativity brought to the table by private consortia. “Traditional forms of government-led delivery don’t deliver the same kinds of solutions that the private sector can,” he said.

Will the auditor general’s report rock the boat as far as P3s are concerned? IO says it will take her findings seriously and act appropriately. Locally, the ship has sailed on the Ion light rail line – all documents are signed and construction is underway – so the project is likely beyond the scope of any forthcoming reform. But who knows how future projects will be affected.
Established by Bill Ross in London, the company has grown to include branches in Windsor, Kitchener, Mississauga and Hamilton. Form and Build currently supplies products from over 65 leading manufacturers with exclusivity on many of these products.

Joe Gibson, manager of the Kitchener Branch, joined Form and Build in 1997 as an outside sales representative with a background as an electrical mechanic. He has never looked back.

“Our company culture drives our business success which is sustained by bringing new and innovative products to the marketplace,” he says. “We have tremendous relationships with our clients on many different levels. I can remember when Bill Ross would meet with every member of the sales team every week. He knew every job in the province and pushed his team to succeed through knowledge, relationships and service.”

In the last year, Form and Build has implemented a new operating system – called Syspro – which has greatly improved the company’s everyday operating efficiency.

Gibson adds that the company spends a lot of time and effort on team building. In turn, this commitment is reflected in the branch team’s success. Each branch has outside sales representatives who visit clients’ job sites every day. When clients need help solving problems, sales reps will accompany manufacturers’ local technical reps to work directly on the site to help provide solutions.

Each branch also has inside sales representatives who provide technical support to clients throughout the day. Providing a high level of service to their customers is absolutely critical at Form and Build.

Discussing the marketplace, Gibson says that many items have become commodities in the distribution supply world – a trend driven by manufacturers and competition. If the purchaser sources out a product that their company does not carry, Form and Build usually has an equivalent in stock.

Form and Build launched their fastener and tools division – which includes products from Bosch, Milwaukee, Ramset and many more – in 2011. This division has experienced a steady growth rate annually. It was a natural fit with the company’s traditional product offering.

When asked about the future direction for Form and Build Supply, Gibson simply replied, “we will continue to maintain a high level of operational excellence so that our customers can rely on the same quality of products and services that they have grown to expect for years to come.”

Joe Gibson, manager of Form and Build’s Kitchener branch, knows customers will keep coming back as long as Form and Build keeps delivering exceptional service. Photo by JPB Photography.
ne of the most widely used models for construction projects in Canada is the design-bid-build model. In this model, the owner hires an engineer or architect to prepare the design drawings for the project, uses these drawings to elicit bids from general contractors, and then incorporates the design drawings into the main contract between the owner and contractor.

In the design-bid-build model, there is no privity of contract between the design professional and the general contractor. Therefore, the general contractor is precluded from using the contract to commence an action against anyone besides the owner. However, provided that the contract does not include a clause limiting the liability of the design professional, a general contractor can sue the designer in tort for damages caused by design flaws.

In Edgeworth Construction Ltd. v. N.D. Lea & Associates Ltd., the Supreme Court of Canada found that a designer who prepares design documents on which the general contractor relies when preparing its tender may be liable for negligent misrepresentation.

The liability of the parties discussed above reinforces the strict roles of each party in a design-bid-build project. The design professional is responsible for the design of the project, with the tortious liability reflecting this. However, the emergence of technologies such as Building Information Modeling blurs the strict roles defined in the design-bid-build model and the traditional apportionment of liability.

The term smart drawings refers to the use of parametric objects in BIMs that simulate real objects such as steel beams, wooden framing, drywall, laminate flooring, and all of the other materials that go into the construction of the building. Further, these smart drawings operate on a set of geometric rules that allow changes to one part of the design to affect other parts of the drawing. So, for instance, if the architect wants to increase the height of a doorframe by 18 inches, the smart drawings would automatically increase the ceiling and walls in proportion.

About Building Information Modeling
A building information model (BIM) uses computer technology to create a three-dimensional digital representation of a proposed construction project. This representation includes information on all the physical and functional characteristics of the facility and its related project/life-cycle information. A BIM is used both during the construction of a facility as a set of smart drawings that simulate the facility and after completion of the project as a repository of information for the facility to owner or operator to use and maintain throughout the life-cycle of the building.

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**The Collaborative Nature of BIMs**

One of the most distinctive features of using a BIM is the ability to work collaboratively during the construction process. The smart nature of BIMs means that changes to the design of the project are most easily, and cheaply, effected at the start of the project before actual construction begins.

As an example, General Motors used BIM in the construction of its Flint Global V6 Engine Plant expansion, bringing in the general contractor and subcontractors early in the design process to make changes and develop a design. This collaborative process led to the construction of the facility 25 weeks faster than a typical design-bid-build model.

Despite the various benefits of using BIMs and a collaborative design process, however, their use could also expose designers, contractors, and owners to additional liability.

**Liability and BIMs: the Problem of Design Liability**

In a design-bid-build model, many of the parties contributing to and using the BIM may not have any privity of contract. Further, disclaimers often accompany BIMs that state that the BIM is only for “informational purposes” and that parties are not to rely upon the owner and the contractor.

These two factors created an environment in which both contractors and designers were unsure of the legal effect of BIM use on the traditional design-bid-build model. In response, ConsensusDOCS, a coalition of design and construction industry organizations in the United States, issued the ConsensusDOCS 301 BIM Addendum on June 30, 2008. The addendum establishes rules for the allocation of design liability when using new technologies, such as BIM. It attempts to apportion liability with the following rules:

- Each party is responsible for any contribution it makes to a BIM or that arises from that party’s access to that BIM.
- Further, each party is responsible for any contributions made by a party for whom it is responsible, such as a general contractor responsible for the work of a subcontractor.
- Each party agrees to waive claims against the other party to the governing main contract for consequential damages relating to, or arising out of, access to the BIM.
- Each party has a positive duty to use their best efforts to minimize the risk of claims and liability arising from the use of or access to the BIM.

The above features of the addendum allocate risk directly to the parties contributing or accessing the BIM, while limiting other liability through waiving consequential damages and imposing the positive duty to minimize risks.

Despite its existence since 2008 and recent revisions to the Addendum in 2013, the standard form does not appear to be in wide use by the industry. In contrast, another standard form BIM contract, which came out of the United States and attempts to establish more rigid rules to dictate the liability of the parties involved, appears to be employed more frequently.

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**AIA Document E202 – 2008**

Unlike the addendum, the AIA Document E202 – 2008 requires the creation of a structure of responsibilities and reliance geared to defined “levels of development” of the BIM. As the American
Institute of Architects’ reference material notes, “it establishes the requirements for model content at five progressive levels of development, and the authorized uses of the model content at each level of development”.

Each LOD is assigned a model element author. Presumptively, responsibility for properly preparing each LOD rests on the model element author. The AIA document does not invoke the traditional language of a design-bid-build contract but replaces it with stages that assign liability to the specific author.

Lastly, the project architect by default is the party responsible for acting as the “model manager” from the inception of the project. However, the AIA document allows the role of model manager to be assigned to a different party at a particular phase of the project, allowing management of the model to mirror the model element author for each LOD. The model manager acts as a gatekeeper for the project’s BIM by checking the correctness of the three-dimensional model, overseeing access rights of parties to areas within their expertise or to specific stages in the design and construction process, and updating the contract documents on a rolling basis to reflect changes in the BIM.

A Canadian Approach to Design Liability and BIM

While Canadian designers and general contractors have been slow to adopt BIM use for their projects, some high-profile BIM projects have been completed in Canada. Two such projects stand out: the Erickson condominium project in Vancouver and the Krembil Discovery Tower in Toronto. Each of these projects had multi-million dollar budgets and used BIM extensively. Several other Canadian BIM projects are either completed or currently under construction phase.

Despite the growing popularity of BIM, there is no standard contract equivalent to the AIA document or the addendum in Canada. Therefore, one of the main concerns about the use of BIM was the uncertainty of the legal framework and roles of the parties.

The Institute for BIM in Canada (IBC) has been working on contract language documents and has announced that those documents are now final and endorsed and are now available on the IBC website. Those documents, when used in conjunction with the Canadian standard form construction contracts, will help to apportion risks and liabilities of the parties using BIM.

This article was written by Andrea W. K. Lee and Brennan Maynard of Glaholt LLP. It first appeared in the November/December 2014 edition of the Construction Law Letter.
Impairment in the workplace caused by drug and alcohol use compromises safety and poses a grave risk to construction companies. Navigating the complexity of an ever-evolving legal landscape with respect to drug and alcohol policies and testing, in the context of human resources, human rights, privacy, labour law and employment law issues, is an ongoing challenge for companies that strive to balance competing imperatives.

In an effort to assist companies in meeting their human resource objectives and effectively addressing drug and alcohol-related issues, the CCA has prepared a generic, customizable, Drug and Alcohol Policy, as well as a Fact Sheet on Employee Assistance Programs. These resources are intended to serve as guidelines for companies who want to develop a drug and alcohol program in their workplace. The CCA is not promoting any policy or program.

**Background**

On March 6, 2013, the CCA Board of Directors convened a forum to invite discussion on industry issues of national importance. The topic of drug and alcohol use in the workplace was identified as a major and widespread issue affecting construction companies.

The magnitude of the challenge for employers was found to be exacerbated by competing imperatives ranging from, foremost, ensuring safety on the jobsite, to workforce recruitment and retention, to human rights, privacy, and other legal issues. Employers who seek to assist impaired employees are often unsure of where to turn, and could benefit from the development
of resources to guide their efforts. It was also noted that although the majority of firms represented at the board table did have a drug and alcohol policy, the question of how the policy should be implemented was unclear.

At the conclusion of the discussion, the board directed the CCA Business and Market Development Committee to appoint a taskforce, and mandate it to investigate what role CCA should play vis-à-vis drug and alcohol issues, and review topical information, including the prospective development of a national standard. Taskforce members were appointed from among members at the Board meeting that offered to participate.

The Current Standard
From the outset of its deliberations, the taskforce acknowledged the Canadian Model for Providing a Safe Workplace published by the Construction Owners Association of Alberta in October 2010, and endorsed by the CCA, which describes itself as “a best-practice alcohol and drug policy that all stakeholders within the construction industry across Canada can adopt and follow”.

However, as noted in the independent legal opinion published within the Canadian Model, “the law relating to human rights, alcohol and drug dependencies and alcohol and drug testing is in an ongoing period of development...the interaction among issues associated with safety, human rights, privacy, labour law and the law of employment generally continue to be developed”.

Indeed, this evolution was illustrated on June 14, 2013, when the Supreme Court of Canada, in the case of CEP Local 30 v. Irving, struck down an employer’s random alcohol testing policy, but noted that the decision was made in the context of a unionized workplace. It did not, however, close the door on random alcohol testing. It noted that in a dangerous workplace, if the employer can demonstrate the existence of a drug or alcohol use problem among its workforce, it may be able to justify the imposition of a random testing policy.

Even more recently, on March 26, 2014, a court-ordered arbitration panel found that the random drug and alcohol testing policy of Suncor Energy was an unreasonable exercise of Suncor’s management’s rights. The panel sided with the union, Unifor, which represents 3,600 workers in the Fort McMurray area that had filed a grievance against the policy, and ruled that there was no evidence of an out-of-control drinking or drug culture at Suncor. The award is currently proceeding through a judicial review.

Survey
Against the backdrop of the Canadian Model, and ongoing legal developments, the taskforce undertook a literature review on the acceptable parameters of an employer’s drug and alcohol policy, including what elements should be included in a policy, and the legal limits on testing and random testing. The taskforce also compared and reviewed the drug and alcohol policies of various companies.

The taskforce then developed a survey, designed to determine how well equipped Canadian construction companies are to deal with drug and alcohol issues. This survey was sent to CCA members, and the information gathered was used to inform the action plan of the taskforce.

many companies are increasingly aware and concerned with drug and alcohol issues, but do not have a drug and alcohol policy in place
Broadly, the survey analysis revealed that there is a need for resources in this area. It was found that many companies are increasingly aware and concerned with drug and alcohol issues, but do not have a drug and alcohol policy in place, nor require testing.

In terms of testing, it was found that most companies perceive drug and alcohol testing as having both a positive and negative impact on workplace attitude and performance. Survey respondents cited the following positive impacts of testing: safety, deterrence, better recruitment results, and offering assistance to employees with dependencies. Conversely, the negative impacts of testing was attributed to the following issues: privacy and human rights; union issues; employee retention; trust within the employer-employee relationship (especially with random testing); and expensive and unclear test results.

**Generic Drug and Alcohol Policy and Information on Employee Assistance Programs**

Based on the results of the survey, the taskforce determined that the CCA membership would benefit from the development of a generic drug and alcohol policy, as well as information on employee assistance programs.

CCA’s generic drug and alcohol policy has been drafted for the purpose of offering companies that do not currently have a policy the opportunity to adopt it as a minimum standard, and customize it according to their needs. It features many of the common elements found among the Canadian Model and other policies. Variations in policies may be warranted depending on the laws affecting a company, as well as its size, specialty, capacity, and general interests.

The purpose of the Fact Sheet on Employee Assistance Programs is to offer guidance to companies dealing with employees in need of support to overcome drug and alcohol issues.

Both can be downloaded through the members portal of the CCA website. Note, however, that the contents of these resources are for information purposes only, and to not constitute legal advice. Please seek legal counsel prior to acting on any matters discussed in these resources.
Inspectors from the Ontario College of Trades are visiting construction sites in our area. More than a few GVCA members don’t know how to handle these field visits. We’ve got some suggestions.

Love it or hate it, the Ontario College of Trades (OCOT) is now a fixture in the province. Inspectors from the college have already popped up on a few sites in our region in the past 12 months, but GVCA members tell us they’re not sure how to handle inspectors’ visits, or what they have to do to avoid fines.

Bob Onyschuk is the director of OCOT’s compliance and enforcement division. He says that the first year or so of site visits have mostly involved educating people about the work of the college, and what workers need to do to stay in compliance.

“The truth is that we’re not a hard-nosed ticket-issuing compliance agency. We have issued many more, but we want to bring industries along gradually.”

“Some contractors see our visits as another attempt by government to add red tape,” he adds. “The reality is that the laws surrounding trades qualifications have always been on the books. We’re just actively enforcing them for the first time in a long time.”

By and large, Onyschuk says construction people have been accommodating to OCOT inspectors. After all, contractors are used to seeing Ministry of Labour inspectors on site and OCOT inspectors behave in much the same way. The challenge for the college’s enforcement team has been working in the motive power section, where site visits were few and far between, and inspectors were greeted with suspicion.

OCOT by the Numbers

Here are some figures given to us by the College of Trades about its enforcement activities since late 2013.

Inspectors performed about 12,000 field visits. This number was split almost evenly between the construction industry and the motive power sector.

Of the 6,000 construction field visits, about one-third were in the ICI sector and two-thirds in the residential sector. This fact is in keeping with the ICI sector’s overall good reputation for legislative compliance.

Inspectors issued in total only 300 tickets. They could have issued many more, but opted to take a gentler initial approach to compliance to bring industry along slowly.

Inspectors found about 4,000 people working in compulsory trades that were not licensed. Many of these workers were from the automotive power sector, in which trades qualification legislation was seldom enforced.
What Happens During an Inspector’s Visit?
For a start, an OCOT inspector has every right to appear on your site. Just as an inspector from the Ministry of Labour does, he or she will identify themselves, and can ask to see things like payroll records, employee schedules and registered training agreements. The OCOT inspector can also ask to speak with tradesworkers and any employers – to confirm that everyone complies with the Ontario College of Trades and Apprenticeship Act.

I’m a Tradesworker: What can I Expect?
If you work in a compulsory trade, the inspector may ask you to show such credentials as: a valid certificate of qualification; a valid statement of membership in the college’s journeyperson candidates class; or a valid registered training agreement (RTA). If you work in a voluntary trade, you won’t have to produce any documents.

Be mindful about the language you use when speaking with an inspector. Unless you are a member of the college and hold a certificate of qualification, a statement of membership, or a valid RTA, you cannot call yourself a journeyperson, a journeyperson candidate or an apprentice in a compulsory trade, or suggest that you can perform work in a compulsory trade. You also can’t call yourself an apprentice in a voluntary trade without holding any of these things.

You can be fined as much as $195 if you perform work in a compulsory trade without a valid statement of membership and certificate of qualification or a valid RTA in your trade.

I’m an Employer: What can I Expect?
First off, don’t expect a scheduled visit from an OCOT inspector. They come and go as they please, just as Ministry of Labour inspectors do.

You are responsible for ensuring that workers who do the work of compulsory trades have the require certification and are college members. If the inspector finds that your workers are performing compulsory work without valid documents, you can be fined as much as $295.

An inspector won’t ask you to produce proof of college membership – that provision of the act has not yet been brought into force – but he or she can ask to see, for example, payroll records or other documents that confirm worker status and journeyperson to apprentices ratios. At the end of the site visit, the inspector will ask you to sign a field visit report that lists the findings of his or her inspection.

Above All, Accommodate
Whether you’re a worker or an employer, you’re expected to cooperate with the inspector. You may not like being pulled away from your work to answer a load of questions, but that fact of the matter is that you have to. If you treat the inspector with respect, you’ll get the same courtesy in return, and get back on the tools quickly.

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No one disputes the effects of the underground economy on society: it takes much-needed tax dollars away from important social programs and gives wrongdoers a leg up on the competition. The Ontario and federal governments both recently announced actions to combat this major problem. Whether such efforts produce meaningful results remains to be seen.

It’s impossible to measure the exact value of construction’s underground economy. Statistics Canada pegs the total value of the underground economy at about $40 billion annually (or about 2.3 percent of GDP), and attributes about a third of that to our industry. No matter how you measure it, it’s a big problem with far-reaching effects. Governments rightly worry that under-the-table transactions rob them of tax dollars. Builders complain that it tilts the playing field away from those who follow the rules, and toward those who don’t.

Ontario Finance Minister Charles Sousa recently declared his government’s intent to unearth those who operate underground. He said in his November economic update that he would like to recover as much as $700 million in lost revenues over the next four years. Among the ways the government plans to do that: chase down corporate tax avoiders, crack down on cash payments for services, and ban those who don’t pay taxes from bidding on provincial contracts.

"We are making sure that anyone who wants to do business with the Ontario government has paid their taxes before being awarded a government contract," he said. "We are improving the way government ministries and agencies share information so there can be better enforcement."

Jeff Koller, government relations coordinator with the Interior Systems Contractors Association, says that’s a good start to fixing the problem, but it’s far from enough. In a letter to the Daily Commercial News, he said that $700 million is a small percentage of the total value of Ontario’s underground construction economy.

“The Ontario Construction Secretariat estimates revenue leakage at between $1.4 and $2.4 billion annually to the federal and provincial governments, just for the industrial, commercial, and institutional sector of the industry,” he wrote. “Add in residential construction, and the number becomes much greater.”

Koller’s suggestion: make general contractors supply pre-approved lists of trades and sub-contractors that they will engage for a project, and require each of those companies to demonstrate tax compliance for the prior five years.
CRA Strikes Industry Advisory Committee

The Ontario government isn’t the only entity with the underground economy on its mind.

The Canada Revenue Agency (CRA) recently struck an Underground Economy Advisory Committee that aims to give the CRA greater insight into the nature and scope of the problem. The committee includes officials from such groups as the Canadian Home Builders’ Association, Merit Contractors Association, the Canadian Federation of Independent Business, the Canadian Payroll Association and the Canadian Chamber of Commerce who will help deepen CRA’s understanding into the underground economy, help to reduce the social acceptability of participating in the underground economy, and create a range of tools to encourage compliance.

"Underground contractors who cut corners when it comes to their taxes are also likely to cut corners in their work," says Kevin Lee, CEO of the Canadian Home Builders’ Association. “That’s bad news for Canadian consumers. The Canadian Home Builders’ Association wants to ensure that Canadians don’t expose themselves to undue risk, both physical and financial. The Government of Canada’s underground economy strategy is a significant step in fighting this issue of vital importance to our members and to Canadians generally. We’re glad to have the opportunity to have a say in how the Canada Revenue Agency tackles this important problem.”

Some of the solutions being considered include messages to raise awareness of how the underground economy places unfair burdens on legitimate businesses while rewarding illicit ones, and targeting sectors, such as construction, in which the underground economy features prominently.

If the government – any government – is to make headway in combatting the underground economy, its starting point must be partnerships with industry. Only through such efforts can it better measure the scope of the problem it faces, and build the right tools to catch violators in the act.

It’s impossible to measure the exact value of construction’s underground economy. Statistics Canada pegs the total value of the underground economy at about $40 billion annually.
Roger Farwell, senior architect with WalterFedy, considers himself very fortunate. He entered the whole world of design and construction by attending the University of Waterloo. After one year of studying engineering, he transferred to the faculty of Environmental Sciences and the School of Architecture with the goal of becoming an architect.

During his studies at UW, Farwell did a co-op stint with WalterFedy – then called Horton & Ball, Walter, Fedy, McCargar, Hachborn – and was immediately inspired by the firm’s integrated approach to design and construction. Here, structural, mechanical, electrical and civil engineers collaborated with architects on projects as a single, integrated responsibility. This was a very forward thinking and novel approach to the marketplace.

Another aspect that Farwell feels very fortunate about was the University of Waterloo’s Architecture program which was under the Faculty of Environmental Studies. “At that time you were required to complete a degree in environmental studies first, and then complete your studies in architecture, so this was a great beginning. It gave me a strong sense of what we now consider the principles of sustainable design,” he says.

Farwell joined WalterFedy in 1977 and was appointed partner in 1980. The company’s integrated platform was really a catalyst for the architectural division of the firm. As they entered the 1980s, the upward growth curve on the architectural side of the firm was steep.

“Philosophically, the company differentiated itself in the marketplace with its fully integrated practice. The designs we produce are reflective of our clients’ cultures, their needs and wants,” says Farwell. “We strive to have a sense of connectivity with our customers’ cultures as opposed to something that we would claim as our brand. This approach has been very productive for us over the years. Our firm is all about community building and the sustainability of our community. We strongly believe that if we are not assisting in building better communities then we will not be physically building in the community. Our goal is to successfully connect ourselves to the prosperity of the community now and in future generations.”

Although Farwell has worked on many design projects, he has particularly enjoyed prototypical work.
For example, he worked with local industrialist Bill Kaufman and Norm McKee, then CEO of the Kitchener-Waterloo YMCA, to develop a new design and cultural approach to building YMCAs. The men transformed these facilities from downtown boys’ clubs into family centres. The model was so successful that it became the template for future Ontario YMCAs across the province.

When designing the new KidsAbility Centre for Child Development in Waterloo, Farwell was inspired by the possibility that this new facility could be the agent to promote a cultural shift in the organization while also enhancing the quality of services delivered to the children and their families.

“Again we were looking at changing the paradigm primarily with respect to the way in which the services were delivered to the children,” he says. “This new building was designed at the three-foot level, meaning we looked at everything from the child’s point of view. The therapists actually put me in every contraption that they used so that I could be sensitive to, and better understand the needs of, the children. This treatment centre is all about achieving potential and improving mobility. In the old culture the children would go to the therapists, now the therapists go to the children. I remember that there was a real commitment in the field, by the general contractor and every trade, almost as partners in the project, inspired and motivated about what we were going to achieve on behalf of these children and their families.”

Another project which was a game changer and fascinated Farwell was the building of the Air Traffic Control Tower at Hamilton Airport. This projected demanded absolute integration of all areas of design, architecture and engineering.

The project was being contemplated as a whole new class of air traffic control towers. It was being designed for the purpose of building safer skies by rearranging all the technologies in the cab. Before, all technologies were located in the cab so if something had to be fixed, it was done right alongside the air traffic controllers while they were working. This new design removed the maintenance of technologies from the cab to a supporting maintenance ring.

After completing this project, WalterFedy was awarded the commission to build the same class of tower at Ottawa International Airport along with the design and construction of a state of the art Research and Experimentation Centre. There are only four facilities like this in the world.

Roger Farwell absolutely attributes his fortunate life to having wonderful hard working parents as role models. “I owe a great deal of gratitude to my mother. She was the most resilient and optimistic person that I have ever known. And next to them, without question, a very supportive wife and family.”

“The designs we produce are reflective of our clients’ cultures, their needs and wants,” says Farwell. “We strive to have a sense of connectivity with our customers’ cultures…”
EDUCATION CALENDAR

**March 4**
BIM Lunch ’n Learn

**March 5**
Roadmap to Canadian Standard Construction Documents

**March 9**
IHSA’s Basic Auditing Principles

**March 10**
IHSA’s COR™ Essentials

**March 11**
IHSA’s COR™ Internal Auditor

**March 11 – April 22**
Basics of Supervising - Home Study

CONSTRUCTION CLAIMS’ SERIES

**March 18**
Session 1: Managing Construction Claims

**April 1**
Session 2: Delay and Impact Claims

**April 15**
Session 3: Claims Avoidance

**March 26**
Social Networking for Construction

**March 31**
LinC Coffee Connection Seminar: The Mystery of Municipal Approvals Site Plan Approval and Building Permits

**April 8**
Improving Cashflow Via Government Funding Programs and Other Recovery Strategies

EVENTS CALENDAR

**February 17**
GVCA Annual General Meeting
Hall of Fame Induction
Business Heritage Awards
Holiday Inn, Kitchener

**February 19**
GVCA Annual Ski Day
Osler Bluffs, Collingwood – registration required

**February 23**
Safety Group Presentation: Key Performance Indicators - registration required

**March 1**
Leaders in Construction Family Skate Day
Cambridge Ice Centre – registration required

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