The Official Publication of the Grand Valley Construction Association • Volume 5 • Issue 1 • January/February 2016

The Legal Affairs & Best Practices Issue

With reports on cyber security, ethics, good hiring practices, and more, as well as an update on Construction Lien Act reform from GVCA board member Ted Dreyer (pictured here).
Having a strong standing EPR platform is an integral part of the GVCA and the services we provide to our members. The GVCA, along with 11 other Ontario Local Construction Associations, formed a consortium called bestbidz and selected British Columbia’s Infinite Source to supply our new platform.

We invite you to try GVCA’s electronic plansroom risk free for one month. Enjoy customized Crystal Ball pre-bid reports, generate your own bulletin, use opportunity matching, set reminders, add projects to your dashboard, order documents, build your own “my searches” links and much more!

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MESSAGE FROM THE PRESIDENT

Let’s leap INTO 2016!

I am excited about the year ahead. We have lots planned. The great news is that we’re blessed with an extra day to do all this work. Let’s take advantage and hit the ground running.

I’d like to start the year by issuing a challenge to our members: send a message to the community telling them about the great career opportunities that abound in our industry. Here is a business that is excellent for anyone who loves to solve problems, work with his or her hands, make snap decisions, think creatively, manage risk and admire a job well done.

As each of us knows, this is also an industry that pays a good, living wage. Let’s face it: it’s getting more and more costly just to live these days. Minimum wage isn’t a solution for a family. It doesn’t pay the bills and keep the kids fed. Our industry pays more and looks after its own.

That’s something to be proud of. It’s also doing more to make itself more appealing to young people by embracing technology and new business practices.

So go ahead: leap into my challenge. Spread the good news about our industry.

Best wishes for 2016.

MESSAGE FROM THE CHAIR

Bringing members closer together

As many of you know, my personal goal as chairman this year was to encourage the industry to work more collaboratively. We’re stronger as a team when we all address our differences and concerns, and talk through these things openly and respectfully.

I am pleased to see that many members took my ideas to heart this year. Recall that we hosted a series of lunchtime sessions during the summer where members could meet with me and Martha just to chat. I was surprised to see more than just the usual suspects at these gatherings. And each person who attended helped deepen our understanding of the challenges faced by our members.

Inspired by the success of that exercise, GVCA took the lead in setting up even larger forums for members to express their concerns to one another. The Elephants in the Room series helped shed light on subjects that we all gripe about, but which we never seem to bring out into the open: relations between generals and subcontractors, and the quality of construction documents to name two. The sessions were well attended and productive. Expect to see more in the months ahead.

I’d like to close by thanking the board and our members for giving me the opportunity to serve as your chairman this year. I’ve enjoyed my term tremendously and look forward to being of further assistance to the association in the future.
Conestoga Meat Packers Ltd Expansion
313 Menno Street
Woolwich, ON

Project details
Conestoga Meat Packers Ltd. wishes to increase its processing plant size from approximately 137,000 square feet to 450,000 square feet. The immediate surrounding lands are agricultural land and farming operations.

What’s new
Servicing – the extension of water and sanitary sewers – is a concern. Although the Township of Woolwich recently negotiated more capacity from the City of Kitchener, all adjacent landowners, including those outside the settlement area, want to ensure their projects will have access to the services. Breslau Properties wants a guarantee that servicing capacity will be set aside for its lands in central Breslau, on which it plans to build 400 to 600 homes. Conestoga Meat Packers has its eye on access to sanitary sewers to help with a planned expansion of the company’s Menno Street processing plant.

At the other end of the village, Smart REIT has its own list of concerns. The company owns land on the north side of Victoria Street, bounded by Ebyscrest Road on the west side. The area is slated for commercial development. Smart REIT/Breslau North Development Inc. said the company’s holding originally totalled 57 acres, of which about 20 acres is inside the current settlement area. They would like to see all of their property inside the settlement area, but would settle for a reworking of the parcels to maintain 20 acres in a more useful configuration.

John Scarfone, Woolwich’s manager of planning, said the rationalization of the company’s lands will have to be a separate process, as the Region of Waterloo won’t approve any changes until it makes amendments to its own official plan. That could take place next year. The township plans to rework some of the settlement boundaries in Breslau, Elmira and St. Jacobs and elsewhere in 2016, although it will tackle these boundaries individually. In some cases, land currently in a settlement area may be removed and its allocation given to another property, which could make for a battle.

Next update
March 2016
The limitations of soft power. The concept of soft power is illustrated when a decision-maker’s investments are based on a nation’s cultural familiarity. While gut instinct should not be ignored, investors must complement their decisions with hard data and research.

Identifying stability. Investors prize political stability. However, there may be emerging opportunities where a false assumption of instability currently exists.

Emerging demographic trends. Understanding the impact of demographic change is critical to sustained investment success. Two global trends—the residential and commercial preferences of both an aging population and millennials—are influencing investment strategies.

Urbanization breeds opportunity. The world’s urban population reached 3.9 billion in 2014 and is projected to grow by 2.5 billion more by 2050. The resulting need for infrastructure should create opportunities that are appealing to both foreign governments and investors.

Global real estate investors looking for new opportunities are hungry for research and analysis to support critical project location decisions. In May 2015, Grant Thornton International Ltd surveyed experienced real estate professionals across our global network to gather those insights.

The resulting report—Uncovering opportunities for overseas investment and growth: Real estate and construction 2015—uncovered four key trends shaping global real estate investment decisions. Notably, the survey revealed that investors are finding Canada an increasingly attractive place to spend their money.

With the significant decline in the Canadian dollar, more and more investors are looking to invest in Canada.

Survey says: Four key trends guiding global investment

As global investment risk mounts, savvy investors are capitalizing on new opportunities others may have missed by understanding how four emerging trends play into strategic investment success.
FINANCIAL FOCUS

Fact-based market and trend analysis is becoming indispensable to international investment success. Increasingly, Canada is regarded as a strong environment for a range of real estate initiatives, positioning Canadian construction companies to benefit through contracts and partnerships with foreign investors.

Foreign investment in Canada rising

Significant opportunities exist for Canadian construction firms that can attract foreign investment money. According to the survey:

Of the 10 countries receiving major inward real estate investment in 2014, only 25 percent went to the five highest-ranked countries in the World Bank's political stability index, of which Canada is one. As the trend toward investing in stable regions continues, this number should rise.

In Toronto, Allied Properties REIT has attracted millennials by investing in properties that integrate office and living workspaces in the city core.

Instinct + analysis = success

As global investment risk mounts, savvy investors are capitalizing on new opportunities

This article was written by Bo Mocherniak, the national industry leader of the construction, real estate and hospitality practice at Grant Thornton LLP.
For professional contractors that rely on tools and equipment to get work done, equipment theft can waste valuable time and money. Construction job sites are easy targets for theft – both during and after work hours.

There are many ways that you can ensure tools and material goods are kept safe, from extra lighting around the job site to storing your tools in a locked storage box. Here are 10.

**TEN TIPS TO KEEP YOUR TOOLS SAFE**

**Signage**

One of the easiest and lowest-cost deterrents is adding a simple sign. Consider adding a sign that reads, “24 Hour Video Surveillance” or simply spray paint your firm’s name on equipment and tools.

**Security lighting**

Set up extra lighting and/or motion-censored lights around the job site.

**Barrier protection**

Adding some type of barrier protection, like a fence or guardrail, makes it tougher for the bad guys to get themselves in and your gear out.

**Alarm system**

Install an alarm system and/or security cameras. Monitoring can cost as little as $10 a week and offers 24-hour protection.

**Control site access**

A single job site entry point helps cut down on crime. Consider also installing geo-fencing, a virtual barrier that tracks behaviours using mobile phones.

**Neighbouring businesses**

Ask neighbouring businesses to watch your job site when you aren’t there.
SAFETY IN CONSTRUCTION

Convenience stealing

While you don't want to believe your employees could ever steal from you, it's important to take precautions before hiring. Reference checks can save money and challenges in the future.

Jobsite box protection

Tools and equipment should be kept in a safe and secure location. With the extra security of a jobsite storage box, like the KNAACK 4830-D, thieves will not have a chance of getting to your most valuable tools.

Use common sense

Make sure nothing is left out in the open throughout the day, especially at lunch time, and after everyone goes home. An inventory checklist for review at the close of business helps cut down on theft.

Documentation

Always photograph, document and record the serial numbers for your equipment, tools and material goods for insurance purposes, in the event that something is stolen. This will be extremely handy if you want to claim any stolen items with your insurance company.

While these tips will not guarantee your important items are always safe, they can help deter theft. If your jobsite is a victim of theft or crime, you should have a contingency plan in place, which should include the steps to take and important numbers to have on hand. As a further preventative measure, always ensure your equipment and tools have the proper warranties and have been registered with the manufacturer. This will make replacing your stolen tools much easier and in some cases cheaper.

This article was written by Mike Bykowski, a senior product manager at KNAACK, LLC.
Do you conduct criminal record checks?

Employers are increasingly looking to police record checks to inform their hiring decisions. No doubt a criminal record check can provide a valuable look at a job candidate’s past. Indeed, checks are required for certain jobs, but improper use of the information can easily lead to violations of human rights and privacy laws.

What are criminal record checks?

A criminal record check is a query of various databases for information relating to criminal convictions. Employers may request criminal record checks from job applicants, but it is the applicant who must obtain the check. In some jurisdictions, the employer must bear the cost of the check.

Employers need to understand that a criminal record lacks crucial contextual information. Records may include false or frivolous charges, as well as inaccuracies. Before judging an applicant based solely on the result of a record check, employers should discuss the record with the applicant. This is a matter of human rights, not to mention decency.

What are the legal problems with criminal record checks?

Criminal record checks facilitate discrimination, privacy breaches and the spread of inaccurate information. Depending on the jurisdiction, employers may base a decision to hire on a job applicant’s record of offences. In other words, the law permits them to discriminate against individuals with criminal convictions.

The Canadian Human Rights Act prohibits employers under federal jurisdiction from discriminating against applicants who have been convicted of a crime but received a pardon. Provincial laws vary. Ontario’s Human Rights Code, for example, prohibits employers and others from discriminating against or harassing a person on the basis of the person’s “record of offences,” meaning pardoned federal offences or any provincial offences. The Code exempts jobs if there is a reasonable and bona fide justification to discriminate based on a person’s record of offences, for example, employment in the vulnerable sector.

For a variety of reasons, it is probably a good idea to avoid basing hiring decisions on criminal records unless a clean record is a bona fide standard required by the job. Ask yourself:

- Do you require a candidate to have a clean record for a purpose rationally connected to the performance of the job?
- Do you believe in good faith that a clean criminal record is necessary to fulfill a legitimate work-related purpose?
- Is a clean record reasonably necessary to accomplish that legitimate purpose?
**Are criminal record checks worth the trouble?**

There are certainly reasons why an employer would want to peek at candidates’ past involvements with the law. But you must be careful to avoid stigmatizing individuals with criminal records by assuming they are unfit for the workplace.

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This article was written by Adam Gorley, editor, HRinfodesk. For more information, please communicate with Yosie Saint-Cyr, managing editor, HRinfodesk.com at editor@hrinfodesk.com.
TECHNOLOGY & INNOVATION

The construction sector is considered to be one of the most information intensive industries. Construction project participants exchange an extensive amount of data and information on a regular basis. In this electronic age, it comes to no surprise that construction employees have become entirely dependent on the convenience of email for communications. However, many tend to use email as an informal mode of communication. This results in the potential for inconsistent project commitments, inflammatory, crude, and irrelevant messages that could result in legal disputes.

All organizations should be made aware that under law, all electronic records can be requested at anytime and must be provided by court order.

This begs the question: if your organization were sued, could you provide records of all communications and transactions conducted by your project personnel during the project dates relating to certain issues during the project?

Luckily, there is a solution that could easily avoid these concerns and more: email archiving. Implementing an email archiving system can provide peace of mind and protection for your organization.
email archiving system allows you to search across the enterprise for all incoming and outgoing communications, project related or otherwise. Searching from an email archiving system offers additional search functions and shortens the time to locate critical communications. This increases productivity and reduces risk of dispute and litigation.

Beyond the legal implications, implementing an email archival system allows you to better manage the large volumes of existing emails and file attachments that continue to grow exponentially. Remember, the mantra that “the firm with the most documentation wins” only holds true if the firm can find its documents.

Implementing a system to accelerate a company creatively is Pund-IT’s goal. Pund-IT has reliable solutions personalized to the construction sector with email archiving, security, collaboration, and communication requirements tailored to ensure you do not face legal issues. Contact sales@pund-it.ca to find out more and #TechAboutIT.
GVCA SIGHTINGS

Christmas Party

LinC New Year’s After Party

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GVCA president Martha George kicked off the event with a brief overview about the prominence of design-build in the marketplace. “There has been a resurgence of design-build recently as owners are continually looking for faster ways to deliver projects,” she said. “With this method of construction, the contractor is responsible for all aspects of the project with the single point of responsibility to deliver the completed project.”

Citing the many benefits to the owner, Samuel McFall, business development manager for CSL and vice-chairman of the Canadian Design-Build Institute, pointed out that there are also many inherent risks to be aware of.

“The key benefit is that the owner gets to the table early with the builder in a non-adversarial, collaborative environment,” he said.

This is probably the best option for a client as they get to see several different design concepts along with the prices early. Compare this to the design-bid-build model where the owner would have hired an architect who would bring together his team and create a design that would go out to tender. In the case of design-build, the owner can go forward with a fixed price.

The most important part of the process to ensure quality is the statement of requirements (SOR) and how well it was prepared in the RFP. The owner needs to hire a consultant who knows the business and who can write a detailed SOR.

Time is saved with this method as the design-builder is able overlap the design and construction processes. Since the builder works directly with the designer, the drawings do not need to be as detailed early in the process as would be the case with the design-bid-build method.

There is also reduced administration for the owner who deals with only one person. The potential for disputes is reduced.
But this method is not all rosy, said McFall. It requires complex early planning in areas that would be very challenging to owners as to what they need to put into the contract. Performance-based terminology and performance specs can be daunting for the owner to understand.

There may also be a lack of available risk coverage and a lack of administrative experience when the owner does not have the skills to evaluate whether the project proposal meets expressed performance criteria. It is critical that the owner gain assistance in assembling a good set of SOR documents through to the RFP and document signoff stages.

**Insuring design-build**

Luis Copat, senior general adjuster for Crawford Global Technical Services, stated that, “we look at the project size and complexity and most importantly, we want to know how much experience you have as the design-builder with this type of project. What is the engineering complexity of the project and do the engineers have adequate insurance?”

Insurance is about transferring the risk away from you. The owner will always look at the design-builder as the target defendant. Underwriters are cautious about a design-builder’s experience level and the subcontractors it uses.

Copat is also very insistent on bonding. He said he likes to see major subcontractors such as mechanical and electrical have their own bonds.

“Unfortunately when you put design-build on your truck, your website and your business card, you are setting yourself up as the target defendant because you are the single source when there is an issue with the owner,” said Kevan Thompson, vice-president of construction for Cowan Insurance Group.

Design-builders can protect themselves from liability through builders risk and construction risk policies. The owner can rely on your liability and the liability of your subs, or you can buy a wrap-up policy that covers everything and everybody in the project.

The one issue with the wrap-up policy is that there can be very large deductibles. The owner could choose to buy the wrap-up policy. Although that may make you as a design-builder feel more comfortable, if a claim is made, you could be responsible for a very large deductible such as $250,000.

Design-build contractors should ask owners about wrap-up policies. They won’t always announce that they have purchased this kind of policy. Be very wary if an owner is not asking for an insurance certificate of liability.

The other area to be aware of is professional liability. The CCDC 14, which is the industry standard design-build contract document, was amended in 2012. It outlines the fact that the design-builder has to purchase professional liability itself and not just rely on the professional liability of the design consultant in the project. Builders using previous versions of the document may not be aware of this important change.

**Design-build and the law**

Speaking from a litigator’s point of view, Chris Stanek, a partner at Gowlings, emphasized that there are ways of resolving a dispute without always going to the courts and using the Construc-
tion Lien Act. Your rights are set out in the contract. Read it carefully.

In a design-build contract, there is tension over the design because there is an issue of who is responsible for the design. There are bound to be changes in design as you progress through the project and these changes need to be recorded so that an owner does not dispute this and the contractor gets paid for these changes.

“Every dispute is about price,” said Stanek. “Always document requests in the contract and what it will cost the owner and communicate this to the owner. This is where contractors need to protect themselves.”

Stanek says he sees a lot of liquidated damages clauses in design-build contracts these days. Case law sets out that there needs to be genuine pre-estimates of damages to be enforceable. Some liquidated damages, depending on the project, are very hard to set out and not often defendable.

“My advice to clients is that if you have a delay issue that is worth less than a half million dollars, don’t proceed with it,” he said. “Deal with it as a change order or changes to the contract.”

From an owner’s perspective another issue that arises because there is a fixed price and the contractor is delivering the project according to a set out criteria, is that design-build allows the contractor to cut corners and supply things in a different manner to increase profits. This makes some owners very nervous.

What is set out in the contract needs to be very well known to everyone involved so that you can use the contract. If someone is suggesting a substitution or change — it should be set out in the contract as to how to deal with this.

“Knowledge is power,” said Thompson. “Understanding what the risks are and managing them is critical. Our experience is that we do not get what would often be considered important information. You need to share this information with your broker. Any time there is a change order over 10 percent, I would recommend you let your broker know.”

If a job changes—if there is a significant material change in risk—then this pertains both to the insurer and to the bond coverage. The insurance and bond on the project now needs to change to cover the risk. This scope creep problem needs to be reported to the owner right away.

Don’t do anything, emphasized Stanek, that would give the bonding company a defense to your claim. Bonding companies have agreed to take on a certain risk and that risk is set out in the contract.

The collective advice is to document everything — it needs to be set out in the contract. Read the contract before you begin the project and do what is set out in the contract. ■
**BE a Construction Superhero!**

GVCA’s Building Excellence Awards are the premiere opportunity for you to show off your best work to the local construction industry. Held every two years, the awards celebrate the accomplishments of Grand Valley Construction Association members and their construction teams.

This year’s awards feature the usual array of categories celebrating the best in industrial, commercial and institutional construction, as well as best use of innovation and best restoration/conversion project. They also feature a new award category: for the member company that gives back to the community through charitable work. All projects completed between January 1, 2014 and December 31, 2015 are eligible for this year’s awards.

An independent panel will judge entries on criteria such as customer/trades satisfaction, quality of work_COMPLEXITY of project, trade loyalty and qualification, project management and execution, and safety.

The awards gala evening is scheduled for April 29 at Bingemans, and completed submissions are due in the GVCA offices by close of business February 29.

More information on the nomination and submission process is available at GVCA.org.

**BE a sponsor**

Since so many GVCA members attend the Building Excellence Awards, the gala evening is also one of the best times to be an event sponsor.

The GVCA is offering three sponsorship levels for this first-class event: the Superhero Sponsor (valued at $5,000), the Alter Ego Sponsor (valued at $2,500) and the Sidekick Sponsor (valued at $1,500). Each comes with its own perks, like free event tickets, recognition on attendees’ name tags, and reserved event seating.

For more information, visit GVCA.org or call the association offices.
Since 2007, GVCA has recognized members that are celebrating their 25th years in business (and have not been previously recognized). To date, hundreds of our members have reached this milestone.

Congratulations to the following companies. We will formally recognize this milestone achievement at our annual general meeting on February 16. For details on this event, please visit gvca.org or call 519-622-4822.

AGF Access Inc.
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MMMC Inc. Architects
Modern Crane
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Samuelson Properties Ltd.
Stybek Roofing Limited
Welmar Group Mechanical Contractors Inc.
Retired from MTE Consultants Inc. in 2011, Angelo Innocente has provided technical expertise, project focus and dedication to clients throughout the community. He has served as a senior project manager on numerous projects throughout the Waterloo Region, became vice-president of business development, and continues to support MTE Consultants on an advisory role as needed.

Graduating from Ryerson’s Civil Engineering Technology program in 1970, Angelo attributes his successful career to early experience on the front line working at his first job with a heavy construction contractor who was building the Christie Dam in Christie Conservation Area in Dundas, Ontario.

“I was fortunate to get my feet wet right out of college in the construction side of the business which I have never regretted,” he says. “It was the best experience ever as a young engineering technologist working right alongside the workers who were doing the job. They needed to rely on me to do the design layout making sure that the dam was built in the right spot, ordering the necessary materials and inspecting the work.”

Returning to Waterloo in 1974 Innocente continued designing subdivisions, roads and services and moved on to become a project manager with Cumming Cockburn Ltd. Consulting Engineers. He worked on the design of the five stages of the Victoria Street Reconstruction project from Margaret Avenue to Natchez Road in Kitchener.

After 13 years with Cumming Cockburn, Innocente joined MTE in 1988 as a partner. His work focused on expanding the firm’s engineering expertise and developing a new civil municipal division to service municipal governments. Over his 23 years with MTE, Innocente helped grow the company from 11 employees to more than 220.

Innocente has been passionate about contributing to his profession through leadership in professional organizations, supporting local colleges and contributing directly to the community.

As a long-standing member of the Ontario Association of Certified Engineering Technicians and Technologists, Innocente held just about every position on its board. He served as president in 1997, was awarded a life membership in 1999 and was given the Fellow OACETT designation in 2014.

He was the first technologist to be a member of the board of directors of the Consulting Engineers of Ontario (from 2009 to 2012) and continues to sit as president of the Conservative Business Association (in Waterloo Region).

While at MTE Innocente convinced senior staff and Board Members to support the design and construction of Anselma House on Ottawa Street in Kitchener. This was accomplished several ways with personal donations of cash by staff and MTE, and by providing the full civil, environmental and structural design services “work in kind” at no cost.

Innocente has also been a strong supporter of the community college system. He has been a member of the Conestoga College Civil Advisory Committee for 23 years and was a member of the board on the Carole and George Fletcher Foundation for College Student Bursary Awards from 2011 to 2014.

After two years of enjoying retirement, Innocente, his wife Linda and son Stephen decided to open Innocente Brewery. Stephen, who was educated as a molecular biologist, had been a cancer researcher in Scotland. On the weekends, he would rent facilities to brew beer and even won awards for his hobby work. When Stephen returned to the Waterloo region, he convinced mom and dad to start the brewery.

David his younger son joined the Innocente Brewing Company in May 2015, making it a truly family business. The business continues to do well and the family looks forward to future success.

Cheers to that!
Sittler Demolition is a second-generation, privately owned heavy-equipment business that has operated throughout southern Ontario since 1949. Says president Steve Sittler, “my father basically started the company with a truck and a steam shovel progressing through the years by adding more equipment as needed for projects.”

By the early 1980s, Sittler Demolition had grown into a small successful excavating business operating out of Elmira. It focused on site services and the occasional demolition project. Steve started working in the company in the mid-1980s—first part time after school, and ultimately full time.

The company expanded throughout the 1980s and early 1990s by way of strategic acquisitions. It opened a second division focusing on the growing markets for the recycling of construction materials.

“We next opened up a transfer station on Centennial Road where we would take in construction waste and sort it into different products,” says Sittler. “We were really ahead of the market-place at the time and had very little competition. Most companies were trucking their construction waste materials to landfill sites while we were sorting construction waste from site demolitions and deciding how best to recycle these products in order to sell them.”

Since the 1990s, the Ontario Ministry of Environment has legislated that contractors must sort their construction waste, but that law was not always enforced. It takes work to sort construction waste, but there are many benefits to doing so. It’s good for the environment, good for business and the community, and it saves money by eliminating the cost of trucking waste to landfill sites.

For those who look hard enough, there are markets for waste products just about everywhere. Scrap metal is always popular, while more and more contractors are crushing old concrete at the job site and reusing it. In a place like Toronto, it is just too expensive to truck those materials out of the city. Crushing concrete and selling it to someone else rather than trucking it away at no value just makes good economic sense.

Sittler Demolition sold its waste business, waste transfer station and roll off trucks to GFL Environmental Corporation in 2011. It continues to focus on demolition and environmental services, working with customers that go back 20 years.

“I think this speaks to the care we take in doing our projects and the quality of our workmanship,” says Sittler. “We do both exterior and interior demolition where we are often working with companies that are retrofitting buildings for new uses.”

Another Sittler advantage: the ability to advise clients about the best way to approach a project, even as far as get-
Sittler’s diverse experience with demolition on different projects sets the company apart. Local general contractors have worked with Sittler Demolition for years and trust the firm for its experience and workmanship. Simply: Sittler gets the job done right the first time.

“We always try to be innovative with each and every project for the customer with respect to how to recycle and reuse the construction waste materials in a way that makes the most sense economically,” says Sittler. “At the end of the day, our goal is to do the best job possible and provide solutions which will be beneficial to the customer.”

Heavy equipment has evolved a great deal over the years. Sittler likes to use the latest technology and tools available—to increase productivity and boost worker safety.

“One of the greatest challenges for us is finding skilled operators. You need a skilled touch to take apart a building and efficiently sort all the materials,” says Sittler. “Finding good, experienced employees is a real problem in our industry. The workers have to get the experience from somewhere. There are heavy equipment schools but it takes some real site experience to learn. We have a great group of people working at Sittler who care about the work we do for our customers.”

The photograph below was taken of Local 1081’s new building. This building provides us with a modern office environment but also a spacious meeting room and a separate training facility equipped with a large classroom and plenty of indoor training space. The property allows us to expand when our future requires it. This building now gives us the capability of hosting our own monthly membership meetings and we can also facilitate and train this membership, so that they continue to be the most valuable asset to any employer.
Predictions
FOR LIEN ACT REFORM

In 1983, the first commercially available cell phone weighed about two pounds, and the popularization of the Internet was still about ten years away. While the pace of change in the construction industry has been more gradual, it is still remarkable that Ontario’s Construction Lien Act is essentially unchanged since it was enacted in 1983.

The Reynolds review
Decades of advocacy for reform may finally be paying off. On February 11, 2015, the Government of Ontario hired Bruce Reynolds to conduct a review of the act with Sharon Vogel acting as co-counsel. Reynolds and Vogel are experts in construction law. Reynolds has more than 30 years of experience as a practicing construction lawyer with one of Canada’s largest law firms and is the co-author of several texts on construction law. The Ontario Government has asked Reynolds to produce recommendations for the reform of the act.

I participated in the Reynolds review as the chair of the Council of Ontario Construction Associations’ (COCA) Construction Lien Task Force. Together, our 12-member task force produced written submissions for the Reynolds Review entitled A Punchlist for Ontario’s Construction Lien Act. Our delegation met in person with Reynolds and Vogel on November 9 to press the case for reform. Our main message was that prompt payment legislation was COCA’s number one priority.

My predictions
Reynolds is expected to deliver his report to the Ontario Government on March 31 of this year.

Prediction #1: prompt payment
I am cautiously optimistic that he will recommend some form of prompt payment legislation. Prompt payment is politically possible. Prompt payment legislation for private sector contracts has been adopted in 31 U.S. states. There was also support for Bill 69, Prompt Payment Act, 2014 among all three parties at Queen’s Park.

On the other hand, Bill 69 had its critics and Reynolds will be sensitive to their concerns too. The following elements of Bill 69 drew criticism:

- The prohibition on progress payments tied to construction milestones.
- The deemed acceptance of progress payment within 10 days unless the owner delivered written particulars of its objections.
- The prohibition on deficiency holdbacks.
- The mandatory release of the basic holdback on the 46th day after substantial completion.
- Compulsory financial disclosure by public sector owners.

However, even the critics of Bill 69 acknowledged prompt payment as an important objective. I think we will see Reynolds put forward recommendations for prompt payment legislation that are a watered down, or refined, version of Bill 69, depending on your point of view.

Our main message was that prompt payment legislation was COCA’s number one priority.
Prediction 2: ADR
There will be some innovative ideas for alternative dispute resolution. Among them will be binding interim adjudication. Adjudication was adopted in Britain in the mid-1990s and is credited with preventing disputes from disrupting projects and sparing parties from protracted and costly litigation. If, for example, a project owner withheld payment from a contractor because of alleged deficiencies or delays, the owner or contractor may refer the dispute to an adjudicator. Within 28 days the adjudicator would render a binding decision on the amount, if any, that the owner may actually withhold from the contractor. The adjudicator’s decision is binding only until the end of the project, and the parties are free to re-litigate the same issues again if they wish once the project is complete. One measure of the success of adjudication in the U.K. is that parties rarely reopen a decision once it has been ruled upon by an adjudicator on an interim basis.

Prediction 3: incremental changes
I think the changes that Reynolds will recommend to lien claims and trust claims will amount to a tune up rather than radical reform. The main reason why legislative reform has been so long coming is that the interests of the various stakeholders are irreconcilable on some issues. I do not expect Reynolds to side with one group or another on any controversial issues. I do expect him to recommend a series of smaller reforms that will make lien claims and trust claims incrementally better.

Prediction 4: different rules for different sized projects
Lastly, I expect Reynolds will recommend a segmentation of the law as it applies to projects of different sizes. A remarkable aspect of the current act is that it is one-size fits all: the same rules apply to a bathroom renovation as to a multi-million dollar light rail project.

I do not expect Reynolds to side with one group or another on any controversial issues

However, different sized projects have different needs and resources. My guess is that Reynolds will depart from the one-size fits all model and introduce rules that apply differently to projects depending on their size.

Stay tuned
The making of law has been compared to the making of sausages: what comes out of the meat grinder often looks very different from what went in. However, I think that any lien act reform will look a lot like what is recommended in the Reynolds Review. This next step in the process is certainly one to watch.

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The reality is that those that ply their trade in data theft do so for two reasons: for profit and to embarrass people or companies. And because these people can steal and trade data anonymously and practically with impunity via the dark web, they’ll take whatever they can get their hands on. That includes the kind of data that you as a contractor create and use every day: your budgets, bid information, employee data, trade secrets, and other strategic information.

In a recent article that appeared in the Journal of Commerce, IT expert Bradley Freedman, who is also a lawyer at Borden Ladner Gervais in Vancouver, explained that access to smart building controls is particularly valuable information for thieves.

"Hijacking a prison’s access codes, a hospital’s temperature controls or an airport’s communication system could be catastrophic. While the small sub-contractor working on a project may not appear to be the likely target, the contractor could have information, such as access codes, that is valuable to many," Freedman said. When 110 million customer records were digitally stolen from Target Corporation in 2013, hackers used an HVAC contractor’s electronic billing connection. Cyber criminals usually target the weakest link in the chain.”

**Train your people**

As more and more construction work is performed online—in the form of collaboration and information sharing—the entire construction team has to be better about how they create and share data. Security begins with the people you hire and the teams you work with. In other words, a cyber attack won’t always come from outside your company. Sometimes it comes from within, and often without the person initiating the attack even knowing he or she was the catalyst.

A password left carelessly lying around, an infected USB stick installed in a machine, an innocent response to an authentic-looking phishing email, or a misplaced mobile device can become a tool for disaster in seconds. The first step to staying on top of cyber security is to train your people to become watchdogs. Develop and document a series of office best practices that ideally restrict access to critical information to just a few people who are as close to trained experts as possible. Doing so helps shrink the circle of those in the know, and helps you react quickly when it comes to a breach.

If that’s not practical, then make sure someone in your company keeps tabs on current and emerging cyber security best practices, and helps to train the rest of the team on dos and don’ts.
Beef up your systems

Personnel ideas aside, there are plenty of other steps you can take to protect your network from attack. Start by monitoring those applications that have access to your data. You can build all sophisticated IT infrastructure in the world around your own systems, but your system becomes evermore vulnerable to attack the more applications you install. Each has its own security strengths and weaknesses, and it only takes one breach to compromise your entire system.

If there were ever one hard and fast rule for keeping software protected, it’s that you need to keep it updated. The best software manufacturers work tirelessly to ensure that their products won’t be the ones to allow a hacker into your system. (Seriously: how damaging would it be to Microsoft’s credibility if Office were found to be the source of a significant security breach?) They pay people to find holes in their products, and then pay other people to close those loops. Each update released by these companies addresses software performance, user experience and security. Yes, it’s annoying to always have to download updates. Down time is a pain in the neck. Know what’s a bigger pain? A security breach.

Make security a priority for your partners and vendors. Since so much of everything we do these days is done online, security has to be a shared effort. Make sure everyone’s playing by the same rules and performing to the same standards. A breach in one team member’s network could mean a breach in everyone’s networks.

Finally, it’s best to prepare for the what-if scenario. Don’t simply pretend that a breach won’t happen to you. Make a plan to deal with an incident once it’s occurred. There are plenty of templates for these documents available online. The basic ideas behind each are to document everything that occurred up to the breach, find what caused the breach, notify those responsible for responding to the breach (not just the IT team, but also lawyers, for example), and communicate the problem to partners and other stakeholders.

Above all: be vigilant

If there’s one rule to cyber security, it’s to never rest easy. Everyone in your company should be constantly worried about attacks from within or outside the business. Thieves are motivated people who are usually one or two steps ahead of the rest of us when it comes to dreaming up new ways to steal and sell data. Although most of us don’t have the technical know-how to keep up with the bad guys, we can take steps to make sure we’re not the weakest links in the chain, and to make ourselves less attractive targets for theft.
Inspired somewhat by the work of the Charbonneau Commission that looked at corruption in Quebec’s construction industry, the Canadian Construction Association asked itself what it could do to help guide and shape good ethical practices in our industry. The national association quickly saw that no such industry-specific program existed, so it turned to BuildForce Canada, the national group that specializes in building and delivering industry workforce management solutions, for help.

Together the groups built a task force of contractors from all walks of the industry and all regions of the country that met regularly to design and develop a construction-specific, practical course for not only teaching the basics of ethics, but also working through real-life situations where the line between right and wrong is far from clear.

The idea of ethics is a hard concept to nail down. Sure, you can read books and study philosophy to give you a grounding in the idea of ethics, but when it comes down to behaving in an ethical manner in real-life situations, what can you do? Most of us turn to our internal moral compasses for guidance in such difficult moments, but even those are far from reliable or even consistent. What seems OK to you might be reprehensible to someone else.

Construction’s first ethics course—which will become a mandatory component of Gold Seal certification—is expected to go live this spring.
Kees Cusveller is the vice-president of alternative procurement and delivery with the Graham Group of Companies, and a member of the CCA’s board of directors. He sits on the task force that was charged with dreaming up the various scenarios that students will work through as they take the ethics course.

“It was easy to develop the kinds of scenarios, such as bid shopping, that are obviously wrong,” he says. “What was more challenging and more fun was to focus on the things that weren’t illegal, but weren’t quite morally right, either. The reality is that those are the kinds of things that can happen to any of us any day. We have to know how to deal with morally ambiguous situations, and this course will help.”

CCA and BuildForce plan to have a demonstration model of the course ready for presentation at the association’s annual conference in March. The groups are targeting a spring release, and the course will become a mandatory component of Gold Seal certification.

As to delivery, the program will include online and in-class components. The latter, which will doubtless involve role-playing, will be especially important.

“When you think of the demographic shift that’s about to occur in our industry—the baby boomers leaving en masse and a new generation coming in to replace these workers—the time to introduce an industry ethics program is now,” says BuildForce executive director Rosemary Sparks. “It will be invaluable to equip a new generation of workers with this tool.”
EVENTS CALENDAR

February 16
AGM, Business Heritage Awards and GVCA Hall of Fame – Holiday Inn Kitchener

February 18
Annual Ski Day Osler Bluffs, Collingwood

February 29
Building Excellence Awards Nomination Deadline

April 29
Building Excellence Awards

EDUCATION CALENDAR

February 16
Working at Heights

February 24 and 25
Construction 101

March 23, 24 and April 6 and 7
Construction Project Management 201

April 5
Emergency First Aid Level C with CPR

April 5 & 6
Standard First Aid Level C with CPR & AED

April 12
Working at Heights

April 13 and 14
Microsoft Project for Construction

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- $10 Million to $20 Million
- More than $20 Million

COMMERCIAL
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