



Edmonton Chapter
#102, 13025 – St. Albert Trail
Edmonton, Alberta T5L 5G2

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the edmonton Specifier

Construction Specifications Canada is an organization representing diverse interests in the construction industry and related professions. It is dedicated to improving the quality and flow of information between these interests, whether in the form of specifications, contract administration or marketing.

2012

CSC September Function BREAKFAST MEETING

- Date:** September 11, 2012
- Location:** Mayfield Inn and Suites, 16615 – 109 Avenue, Edmonton
- Time:** Registration and breakfast 7:00 AM, presentation 7:30-8:30 AM
- Cost:** \$25 CSC members / \$30 non-CSC members
- Topic:** Vapour Barriers for Slabs-on-Grade
- Presenter:** Keith Robinson, FCSC, RSW, CCS, LEED AP, Associate DIALOG

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VISIT YOUR WEBSITE AT

<http://edmonton.csc-dcc.ca/>

Help us develop a website that meets your needs. to the "Want More Info" link on-line and let us know.

Edmonton Chapter Executive

Elected Members

| | | |
|----------------------|-------------------------|---------------------|
| Chairman | Darlene Helfrich | 780 417-3757 |
| Director | Cam Munro | 780 395-3335 |
| Vice-Chairman | Skip Helfrich | 780 466-3101 |
| Secretary | Richard Lucid | 780 485-7612 |
| Treasurer | Darin Poburan | 780 231-1007 |

Officers

| | | |
|---|---|--|
| Architect | Linda Olson-Lipinski | 780 497-3975 |
| Association Liaison | Jozef Urban | 780 408-7149 |
| BIM & Sustainability | David Watson | 780 758-4147 |
| Education | Mike Ewaskiw | 780 237-7844 |
| Engineer | <i>(Position Available)</i> | <i>[000-0000]</i> |
| General Contractor | <i>(Position Available)</i> | <i>[000-0000]</i> |
| Interior Design | <i>(Position Available)</i> | <i>[000-0000]</i> |
| Manufacturer/Supplier | Mike Lafontaine | 780 447-2122 |
| Marketing, Promotion and Infonet | Kevin Osborne | 780 441-4258 |
| Membership | Donna DeVloot | 780 984-5612 |
| Newsletter | Tracey Stawnichy Neil Cochrane | 780 428-4000 780 478-8038 |
| Program | Steve Londry | 780 429-1580 |
| Specifications | David Watson | 780 758-4147 |
| Web Site Administrator | David Watson | 780 758-4147 |
| Trade Contractor | Frank Dudley | 780 803-2658 |
| Landscape | Rachel Curry | 780 901-5353 |
| At Large | See Executive Listing | Pg. ?? - ?? |

Advertising Rates

SPECIFIER

Footer Business Card: \$50/issue
 Business Card: \$50/yr, random location
 Full Page: \$500 All Issues; \$100 per issue
 ½ Page \$250 All Issues; \$50 per issue
 1/4 Page \$125 All Issues; \$25 per issue

WEBSITE

Rates covers your ad on our website 24 hours per day, 7 days per week. Business card on-line: Annual \$100
 Add \$50 to have a link to your company Web Site from the CSC Edmonton Chapter web page.

Chapter Sponsor

Includes Business Card On-Line, 2 Tickets to 6 Dinner Meetings
 Annual \$400 if received by May 1;
 \$300 if received by August 1;
 \$200 if received by November 1;
 \$100 if received by February 1

Student Sponsor

CSC Student Sponsorship Pays for 1 ticket to 6 Dinner Meetings for a NAIT or University Student.
 Annual \$175

Meeting Sponsor

\$50 for Individual (Personal) Sponsor
 \$100 for Corporate Sponsor

FOR FURTHER INFORMATION

Contact any member of the executive committee, attend one of our chapter meetings or send your name and address to CSC Edmonton Chapter c/o #102, 13025 – St. Albert Trail, Edmonton, Alberta T5L 5G2.

GOALS OF CSC

Construction Specifications Canada is a multi-disciplinary non-profit association dedicated to the improvement of communication, contract documentation, and technical information in the Construction Industry. CSC is a National association with chapters in most major Canadian cities.

To this end, CSC pursues the study of systems and procedures that will improve the coordination and dissemination of information relevant to the construction process.

We seek to enhance the quality of the design and management aspects of the construction activity through programs of publication, education and professional development, believing that by so doing, we can contribute best to the efficiency and effectiveness of the construction industry as a whole.

OBJECTIVES OF CSC

To foster the interest of those who are engaged in or who are affected by the compilation, or use any form of specifications for the construction industry.

To publish literature pertaining to the construction industry.

To engage in activities to improve procedures and techniques related to the construction industry.

The opinions and comments expressed by the authors do not necessarily reflect the official views of Construction Specifications Canada. Also, appearance of advertisements and new product or service information does not constitute an endorsement of those featured products or services.

ABOUT CSC

Our Mission

CSC (Construction Specifications Canada) is a national multi-disciplinary, non-profit association with chapters across Canada. CSC is committed to ongoing development and delivery of quality education programs, publications and services for the betterment of the construction community.

To this end, CSC pursues the study of systems and procedures which will improve the coordination and dissemination of documentation relevant to the construction process.

CSC seeks to enhance the quality of the design and management aspects of construction activity through programs of publication, education, professional development, and certification, believing that in so doing it can best contribute to the efficiency and effectiveness of the industry as a whole.

Our Vision

That Construction Specifications Canada is the construction community's first choice for quality documentation, education and networking.

Our Values & Core Beliefs

Quality, Professionalism, Teamwork, Integrity, Openness, & Innovation.

Objectives

To foster the interest of those who are engaged in or who are affected by the compilation or use any forms of specifications for the construction industry.

To publish literature pertaining to the construction industry.

To engage in activities to improve procedures and techniques related to the construction industry.

MEMBERSHIP IN CSC

In the construction industry's fast-paced environment, the need for and value of Construction Specifications Canada is greater than ever. CSC brings together individuals from all segments of the construction industry. All who have a vested interest in Canada's largest industry are invited to join CSC. When you join CSC you become part of the only association that brings together professionals from all aspects of the construction industry.

DESIGN TEAM

CSC offers members of the Design Team the opportunity to meet with other members and exchange information. It also affords you the chance to help improve technology and its management, and the means to improve ways in which your ideals are translated into clear, concise and complete documentation.

BUILDING TEAM

If you are a member of the Building Team, Construction Specifications Canada offers you the opportunity to become involved in formulating specifications. Your valuable input into the programs can help generate time and cost savings as well as improve performance.

SUPPLY TEAM

The multi-disciplinary composition of CSC allows members of the Supply Team to meet with other members of the construction team. CSC programs in data filing and information retrieval are geared to present convenient and concise information on your products for proper evaluation and specification.

THE STUDENT

If you are a student of architecture, engineering or construction technology, CSC will provide you with greater exposure to and a better understanding of the Construction Industry, giving you an excellent opportunity if you plan a career in the construction field.

Contact Donna DeVloo for membership information.

Officer Membership



Donna DeVloo
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CSC SEPTEMBER Function

Breakfast Meeting

TBD

CSC Calgary 2013

Annual Conference

May 22 – 26, 2013

CSC FACEBOOK

Visit CSC on Facebook.
 Visit: <http://www.facebook.com/pages/CSC-Construction-Specifications-Canada>

Chair's Message:

Darlene Helfrich



Greetings All!

Here we are approaching the fall..... After a terrific summer in our northern city!

I trust most have had at least a short break to enjoy the lush green we were provided this year. This term we have a couple of new bodies on our executive, welcome to Frank Dudley (Trade Contractor), Tracey Stawnichy (Officer Newsletter), and Neil Cochrane (also Officer Newsletter).

This year again we have a strong executive and I look forward to what we have in store! Also, this should be a large year for our fair city, let's keep our fingers crossed!

Darlene Helfrich, IDT, CTR
 Chapter Chair
darlenehelfrich@gmail.com

MESSAGE FROM THE PRESIDENT



July 2012

Claude Giguère, P.Eng., LEED AP

Sharing the experience

My name is Claude Giguere, P.Eng., LEED AP; I'm a principal at Pageau, Morel & associates, and a proud

member of CSC-DCC's Montreal Chapter. I am also the association's new president, taking the reins from Bruce Gillham, CTR, CCCA.

I would like to start my first President's Message with a big 'thank you' to all the members who are putting their confidence in me. I will do my best in serving you during this year, and I fully accept this huge responsibility with humility and pride. Leadership of such an important organization—one that reaches across the design/construction world to all corners of Canada—is a huge task. Fortunately, I am not alone. I will be assisted by the association staff, all the members of the Executive Council, and the Board of Directors.

In late May, I assumed the role of president at CSC's National Conference in Ottawa. The four-day event was a tremendous success for all those in attendance. I want to compliment the organizing committee for all the programs they put on. The annual Fun Night was another great experience, and the program of technical education sessions was as strong as ever. In fact, it was so good, I found myself faced with difficult choices in choosing which seminars to attend.

While in Ottawa, I was surrounded by so many architects, specifiers, engineers, product representatives, contractors, project managers, and others who have chosen to become part of CSC. We really are a very multi-disciplinary organization, bringing together so many types of people. At the conference, one thing really became clear to me—the strength of this association is its membership, and the work performed by all these individuals who are so passionate about not only their profession, but also their association. We have many dedicated professionals united under our banner, and I would like to see a membership increase again this year.

The work prepared by the Marketing Committee on the themes "Share the Experience" and "I am CSC" will surely help recruit new members and raise awareness of what we do to improve the nation's construction community. I ask all our Chapter Executive Committees to bring these great campaigns to their local communities; I feel they are excellent tools to convince people to join the CSC family. I'll also be increasing my presence on social media, communicating with current members and potential candidates from the design/construction industry. The association's recent increase in publication of French resources— such as *MasterFormat 2011, Section/PageFormat*, and, of

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course, *Le Magazine Construction*—will help in reaching the Francophone community across the country.

In the meantime, I am looking forward to working with everyone on the growth of the association, and the updating and refining of its technical and education material. We will improve our skills together for the betterment of the association. Please share the experience!

My name is Claude Giguère, and I am CSC.

I AM CSC

Neil Cochrane – Officer Newsletter (Co-Chair)



Present Industry Position:

Technical Sales Representative
Company: Roxul Inc.

Why I Joined CSC:

Initially, I joined because my new boss told me to. He explained that it was a professional association, and would benefit me greatly in that it would give me “a direct line” to the people that specify products on job sites. What I soon found out was that this was so much more. I was not treated as “just a sales guy” but instead I was welcomed as a colleague and have done everything I can to continue to improve my knowledge (both personal and professional) in the construction industry.

CSC Experience:

I have been a member of CSC since 2009. I have attended as many meetings as has been feasible, given the amount of territory I have and the travel it requires. I really enjoyed the formal course I took (PCD), but it has been the conversations with people with far deeper construction knowledge than me that I have really enjoyed. This is my first volunteering with the Edmonton Chapter and I am enjoying getting to use my writing skills.

What CSC Has Done For Me:

CSC has given me the opportunity to improve my knowledge and skill sets both professionally and personally. I’ve been able to make contacts at various levels of the industry, and had many laughs and made some very fond memories along the way.

Industry Experience:

- Since 2009 - Western Canada Tech Sales Rep – Building Envelope for Roxul.
- 2006 to 2009 – Worked in Southern Alberta in sales for a Roxul distributor – mainly mechanical isolation.
- Current Co-Chair for the CSC Edmonton Specifier.

Contact Email: neil.cochrane@roxul.com

Letter From The Editors

As you can tell, from Darlene’s message and from the overall “little” changes, there are two new Editors of your newsletter. While we don’t plan to make this a regular column, we felt that a small introduction was needed as we begin our journey.

First, we would like to acknowledge Len O’Connor for all his outstanding hard work on The Specifier since he took it over as the sole Officer Newsletter in 2009. One thing we realized very quickly is the amount of work that Len was doing to make this a monthly publication. His dedication and hard work has left some very big shoes to fill, but thankfully, Len is also very generous in giving us all his files and his guidance as we moved forward with this first edition.

Next, we want to make it known that our intention is to produce The Specifier every other month, for a Sept through May run. This will allow us to focus on making a quality publication, rather than just “meeting a deadline.” We may revise this in the future if we feel we can continue the quality that you have come to expect, on a faster time-table.

Finally, we have ideas for some changes to the newsletter layout and content, but this is **YOUR NEWSLETTER**. We are always interested in articles, cartoons, notices, and other worthwhile content. We want to hear from you what you like, don’t like, or any other suggestions that you may have. Constructive criticism will allow us to continually improve The Specifier and make it truly the publication of the Edmonton Chapter.

Respectfully,

Tracey Stawnichy and Neil Cochrane

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|  | <p>CSC SEPTEMBER Function Breakfast Meeting TBD</p> | <p>CSC Calgary 2013 Annual Conference May 22 – 26, 2013</p> |
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CSC EDUCATION

Officer Education



Mike Ewaskiw, CTR
Project Development
StonCor Group
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Principles of Construction Documentation

The PCD course is an introductory course that will enable the student to have a better understanding of construction documentation (specifications, drawings and schedules), products, bidding procedures and contracts. **It is also a prerequisite to all the other CSC education courses.**

Specifier 1

The Specifier 1 course is an intermediate level course that will take the individual beyond the concepts previously introduced in the PCD Course. Although some of the same topics are included in this course, the depth of comprehension and explanation exceed that of the PCD course. The Specifier 1 course is a prerequisite for the Certified Specification Practitioner (CSP) designation from CSC. Successful completion of the course may be credited toward the experience component requirements for the Registered Specification Writer (RSW) designation.

Technical Representative

The TR course will provide a better understanding of contract documents and bidding procedures, product representation, professionalism, and ethics, and will provide a new depth of understanding and explanation of concepts beyond what was previously introduced in the PCD course. The course is designed for the individual involved in the supply section of the construction industry such as manufacturer representatives, agents or distributors of products. The student will have successfully completed the PCD course.

Contact Mike for all of your education needs.

EDUCATION COURSES

Upcoming Classes: Starting September 10, 2012:

- [Principals of Construction Documentation \(PCD\)](#) – classes to be held at Stantec.
- [Specifier 2](#) – classes to be held at DIALOGUE.
- [Construction Contract Administration \(CCA\)](#) – classes to be held at IBI Group.

Classes run from Mid-September to Mid-December each year.

Cost: \$500.00 for members and \$600.00 for non-members.

Class Times: 6:00 – 9:00 PM for 11 weeks.

Upcoming Classes Online:

[Principles of Construction Documentation](#) - Course starts September 17, 2012.

[Specifier 1](#) - Course starts September 17, 2012.

[Technical Representative](#) - Course starts January 14, 2013.

PEOPLE AND PLACES

Fresh Faces (New Members)

Mr. Asim Razzaq, EIT

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Mr. Lyle Dewar, A.Sc.T., CET

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Mr. Ryan Land, P.Eng.

Director, Construction
 Noralta Lodge
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 Nisku, Alberta T9E 0H1
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Yes, We've Moved (Contact/Mailing Address Update)

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Mr. Bill Laws

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Darlene Germin, SCMP

Strategic Procurement Specialist
 Alberta Infrastructure – Project Services Branch
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All other information remains the same.

Mr. Brian H. Wilson

Strathcona County
brian.wilson@strathcona.ca

Ms. Elise Nelson

Procurement Manager
 Alberta Justice and Solicitor General
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|  <p>FRP Distributors INC Sustainable Concrete Solutions</p> | <p>CSC SEPTEMBER Function</p> <p>Breakfast Meeting</p> <p>TBD</p> | <p>CSC Calgary 2013</p> <p>Annual Conference</p> <p>May 22 – 26, 2013</p> |
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Ms. Carri Fjell, Arch.Tech.

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Gone, but Not Forgotten (Membership Expiration)

September 14, 2012

AAA Golf Tournament and Duggan House Open House
 Edmonton, AB

September 19, 2012

Lunch & LEED Brown Bag session Edmonton -
 September
 From 12:00 PM to 1:00 PM (MDT)
 Edmonton, AB

September 25, 2012

Tour Event: St. Joseph Seminary
 From 7:00 PM to 10:00 PM (MDT)
 Edmonton, AB

September 25, 2012

BIM Summit
 Doha, Qatar

September 27, 2012

APEGGA Mentoring Conference
 The Fairmont Palliser
 Calgary, AB

September 27 – 29, 2012

Backyard Biomimicry workshop
 St. Augustine FL, USA

October 1, 2012

APEGGA Mentoring Conference
 The Fairmont Hotel MacDonald
 Edmonton, AB

October 9, 2012

Lunch & Learn - Geothermal Heating & Cooling: The
 Viability of Geothermal Technology in Alberta
 From 11:30 AM to 1:00 PM
 Calgary, AB

October 15 - 19, 2012

buildingSMART International Meeting
 Tokyo, Japan

October 16, 2012

AAA PD Day
 Marriott Downtown
 Calgary, AB

October 18, 2012

ACSA – Loss Prevention and Control for Executives
 Courtyard by Marriott (2500 48 Ave NE)
 Calgary, AB

INDUSTRY NEWS AND EVENTS

Dates To Remember

August 21, 2012

Edmonton Wood Design Seminar – Featuring
 presentations by the 2012 Prairie Wood Design Awards
 Jury Members
 Edmonton, AB

September 11, 2012

Better Buildings Breakfast - Geothermal Heating &
 Cooling: The Viability of Geothermal Technology in
 Alberta
 From 7:30 AM to 9:00 AM
 Edmonton, AB

September 11, 2012

CONSTRUCT 2012: Specifying for High-Performance
 Buildings
 Phoenix, AZ

September 12, 2012

Alberta Chapter - CaGBC: Lunch & Learn - SAIIT's
 Green Building Technologies
 From 11:30 AM to 1:00 PM
 Calgary, AB

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October 19, 2012

NOMA 2012 Conference - BIM is a Team Sport Led by Design
Detroit, MI

November 7, 2012

GLOBAL Spec
Wind Energy Technology
(Watch for details)

November 7, 2012

14th Annual Canadian Private Equity Summit
Toronto, ON

November 13, 2012

Lunch & Learn - Health + Energy + Material – Designing a new prototype for interiors
From 11:30 AM to 1:00 PM
Calgary, AB

November 27 – 28

BIM Symposium
Edmonton, AB

December 6, 2012

Better Buildings Breakfast - Edmonton North LRT Expansion
From 7:30 AM to 9:00 AM
Edmonton, AB

January 07 - 10, 2013

Building Innovation 2013 - National Institute of Building Sciences Conference & Expo
Washington Marriott at Metro Center - Washington, DC

February 5 – 6, 2013

Canadian Oil Sands Summit 2013
Calgary, AB

May 22 – 26, 2013

CSC Conference
Calgary, AB

What Should I Look for During Submittal Review?



By David Stutzman on July 2, 2012 7:00 AM
(Sourced from <http://www.conspectusinc.com/blog/2012/07/what-should-i-look-for-during-submittal-review.html>)

An architect recently asked that I give an opinion about a shop drawing and what was actually installed on a project site. The installation was consistent with the shop drawings, but inconsistent with the contract documents. What I did not see as part of the submittal prompted this posting.

This could be an extensive list, but I want to focus on some basics that every reviewer - experienced and novice - should know. Specifics will vary firm-to-firm and project-to-project, but the basics remain the same.

Where is the transmittal?

The contractor's transmittal should list the applicable specification section number, title and paragraph number and drawing detail as references for the submittal. Without a transmittal you will be guessing at the scope of work covered by the submittal. No transmittal, no review.

Did I specify the submittal?

Be sure to check the specification section referenced in the contractor's transmittal to be certain the submittal was specified. If the spec section did not require the submittal be cautious. The best response is to return the submittal to the contractor without review. Document on your transmittal that the submittal is not required.

Where is the contractor's review stamp?

Contractors have an obligation to review and approve the submittal before sending it to the architect. If the contractor's stamp and initials are not on the submittal, stop here and return to sender without review.

The contractor's review is necessary to ensure each submittal is consistent with the subcontractor and material supplier's contracted scope of work and that the submittal is consistent with the contract documents.

What are the variations from the contract documents?

The submittal should clearly indicate variations from the contract documents. When undocumented discrepancies are discovered during review, ask the contractor to identify the differences before completing the review. Finding any undocumented deviation, may indicate there are others that are not obvious.

Do apply some discretion and common sense to these requests. Deviations from basic materials, manufacturers, models, sizes and operation are cause for concern, especially if the deviations affect aesthetics

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or performance. Minor deviations can be corrected by simple notation on the submittal.

Where is the substitution request?

Acceptance of manufacturers and products that are not specified requires a separate substitution request. Do not review and approve submittals including substitutions without separate documentation, proving the substitution meets the intent of the construction documents.

Consider the substitution request first, independent of the submittal. When accepted, then review the submittal. Otherwise, return the submittal without review.

More about substitutions:
<http://www.conspectusinc.com/blog/2011/04/acceptable-product-submittals.html>

Know the rules!

Before reviewing any submittal read the Division 01 specification section governing submittal procedures. Make sure you understand and enforce the rules from day one. Do not rely on your memory. Read and reread the specifications to be certain. Quote or cite the rules to the contractor to enforce them.

Playing by the rules makes the process smooth and efficient. Ignoring or selectively enforcing the rules can lead to unexpected, and sometimes expensive, consequences.

Specifications for LEED “Certifiable” Projects: 4 Approaches



Posted June 26, 2012 10:43 AM by Mark Kalin, FAIA FCSI LEED BD+C

(Sourced from http://www2.buildinggreen.com/blogs/specifications-leed-certifiable-projects-4-approaches?utm_source=Twitter&utm_medium=Twitter&utm_campaign=Twitter)

Many owners and municipalities are requesting

LEED “certifiable” buildings from their design teams. How is a specifier to respond?

In our experience with over 200 (real) LEED projects, we have seen four approaches.

Approach 1: Declare an early victory

The team completes the LEED scorecard and declares victory. There is no mention of LEED in the project manual and the contractor is asked to “make the right green choices.” There is no review of the scorecard after construction. While this is clearly a useless LEED approach, there are many who accept this result. In fairness, some are municipalities that are not able to mandate certification, others are architects who believe their professional training and personal commitment is the correct measure of sustainability.

Specifier’s Response: As always, at least include low-VOC products, high-performance products, and construction waste management in your specs.

Approach 2: Sprinkle in some requirements

The team completes the LEED scorecard, makes a determination of which design credits could be easily achieved, and includes only a few requirements in the specifications. Perhaps construction waste management, [FSC-certified wood](#), and Green Label Plus carpet are sufficient to demonstrate some interest in sustainable design. Data-intensive credits such as recycled content, regional materials, and low-emitting materials are typically avoided. Again, the scorecard is not evaluated after construction.

Specifier’s Response: Match the specs with the LEED credits selected. Include submittals at the level of detail that a LEED audit would require, such as [chain-of-custody](#) (CoC) documentation for [FSC](#) products and VOC levels for paints, coatings, sealants, and adhesives.

Approach 3: Everything but submitting for LEED review

The team completes the LEED scorecard, includes it and all relevant requirements in the project manual, and collects all the data from the contractor, but does not submit to GBCI for certification. The team makes an internal evaluation of whether the goal has been obtained, and declares success. This approach is

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frequently taken at colleges, where those that manage the projects need to respond to various faculty and student initiatives. There is some certainty that LEED Certification would have been achieved, but typically there is no energy model, no commissioning—generally, little attempt at any credit which involves increased expense.

Specifier’s Response: Again, match the specs with the LEED credits selected. Note that the credit numbering and language for all the different LEED rating systems is slightly different—be sure which LEED program the team is following.

Approach 4: Go beyond LEED

The design team is actually committed to sustainability, and regrets the owner can’t or won’t fund LEED Certification. The energy model is developed early and really informs the design. Products that meet the VOC limits, regional goals, recycled content are specified into the project without reference to LEED. The contractor is asked to include sustainability in their product choices. The contingency fund for construction includes sustainability as a reason for a change order. After all, isn’t that what design is all about—understanding the owner’s requirements and delivering the best result for the funds available?

Specifier’s Response: Same as Approach 3 above, but now there’s the opportunity to go beyond LEED requirements. Make sure environmentally committed firms like [Interface](#) and [Kingspan](#) have an opportunity to bid. Ask the project owner what their standard products are, to help minimize waste in the future. Look downstream and make sure the NFPA fire door inspections are actually done and documented.

Codes and Standards

Fire Code Interpretation

[FCI-12-02](#) – Used Oil Indoor Storage Tank(s) Supplying Used-Oil Fuel Burning Appliances

To view all STANDATA that has been issued for the 2006 Alberta Fire Code click [here](#).

LEGAL MATTERS



Bill Preston

PRACTICE AREAS

Over four decades, Bill has built a solid reputation as a skilled litigator and has amassed countless successful files in corporate-commercial law, with particular expertise in transportation law, construction law, matters of professional design, and business dispute resolution. In 2007 Bill was recognized by the National Post as one of the top construction law lawyers in Canada.

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Delay Claims

April 24, 2012

By Bill Preston

(Sourced from <http://www.rslaw.com/resources/articles-and-research/2012/04/delay-claims/>)

Today our Construction Industry is pressured by two overwhelming dynamics: the methods of construction available to contractors are becoming more and more innovative, cutting edge, and specialized; while, owners “need” the design and construction phases of their project to be as quick and as cost effective as heavenly possible. The confluence of these two dynamics often manifests in the impact costs of a delay from the initial schedule, which are becoming more and more expensive. Still, the owner wants to keep the original completion date while also pushing back against paying money for these impact costs. So, how is the law now fairly allocating these delay costs? I propose to review two recent Ontario cases to give you some insight.



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In Bre-ex v. Hamilton, the City in 2001 issued an Invitation to pre-qualified bidders to install a drainage system and construct a pumping station at its Glanbrook Landfill site for the purpose of stemming the leaking of contaminated water beyond the Landfill's boundaries. Included among the pre-qualified bidders was the operator of the landfill, Canadian Waste Services. Eventually the project was awarded to Bre-ex and it eventually completed a good project. But, Bre-ex's delay claim remained in dispute until the fall of 2011 (11 years!), when the Court awarded Bre-ex \$850,860.00 + court costs.

The facts in this Bre-ex case were a bit different:

- The Contract Documents included the Bid Documents, unlike the standard CCDC 18;
- Thus, the Construction Contract included a Bid Term not only requiring that the bidder describe its proposed method of work, but also prescribed:

Under no circumstances shall any of the investigations proceed prior to acceptance of the proposed methodology.

- This is also unlike CCDC 18 which provides:

The consultant will not be responsible for and will not have control, charge, or supervision of construction means, methods ...or procedures, ...required in connection with the Work...

While, the Bid Documents as well provided:
The City will require that Work commence immediately following award of the Contract, and will require the Work to be completed approximately the end of July, 2002.

Bre-ex proposed an ingenious methodology for laying the drainage pipe up to 16 meters below the surface of the existing garbage mound, and bid \$3.2mil, roughly 43% of the next lowest bid being that by the existing landfill operator, Canadian Waste. The advantage of Bre-ex's bid was technical innovation. While the others proposed an open trench system involving the costs of dewatering, rodent/seagull control, and odour management, Bre-ex proposed using stacked trench boxes and hydraulic sleeve and rollers guided from the surface by laser technology. No open trench; no significant odour; minimal dewatering; and no rodent/seagull costs! City Council loved the price and some of its knowledgeable staff recommended this proposed method. But others in City Hall as well as the

City's outside consultant were not convinced. On December 11, 2001, City Council awarded the project to Bre-ex. But, the doubters stalled delivery of the award letter to Bre-ex until Jan. 24th and obfuscated the Construction Contract's terms such that it was not signed until April the 12th! Until then, Bre-ex did not start installing the drainage pipe, because it feared that the doubters might persuade the City to include a Contract Term giving the City a Right of Termination and paying only the value to date for Bre-ex's work. Thus, Bre-ex lost the opportunity of beneficial winter conditions from January 6th to April 12th.

Here's how the Court arrived at its award of \$850,866.00 for Bre-ex's delay claim:

- As is so frequent for projects today, the Construction Contract did not spec a specific schedule, except start immediately and complete **approximately** by the end of July.
- Thus, given there was no precise schedule, the Court accepted its mandate to determine a reasonable fair schedule in the circumstances of the project, the owners expectations, and the work expected of the Contractor.
- This measure of reasonableness does not necessarily depend on the convenience of the Contractor.
- Here, everyone was aware that Bre-ex's method preferred winter conditions, thus the Court determined that it was reasonable that it ought to have started work on January 6th.
- The City's procrastinations concerning the terms of the Construction Contract were also found to be not reasonable, and accordingly the delay until the April 12th signing was caused solely by the City.
- Thus, though the City agreed to extend the schedule to permit Bre-ex to perform during the Winter of 2002-03, Bre-ex was entitled to:
 - a. **Lost business opportunity** reflecting that it couldn't seek other jobs during the period of doubt and lost benefit of the better bid pricing for work done in 2002-03;
 - b. **Increased expenses** for rental equipment, fuel, and labour costs in 2002-03; and,
 - c. **Financing costs** to cash flow the extended schedule.

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At the bottom line, the City paid \$4.8mil for the late project it could have timely obtained for \$3.2mil! Owners don't like that. And thus some try to avoid paying money on delay claims by inserting weasel clauses into the Contract Terms. The standard CCDC 18 is pretty straightforward:

6.5.3 *If the contractor is delayed by... any other cause beyond the Contractor's control... The Contractor shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the Owner.*

But, other Owners prefer subtle terms like the following:

32.5 *Any delay resulting in increased cost which is the result of improperly scheduled Work shall be borne by the party responsible therefore.*

32.6 *Delays in the Work shall be resolved in accordance with GC56*

What a Contractor will find if he reads further is that GC56 simply gives the Consultant a discretion to extend the remaining contract schedule; no mention is made of paying costs!

What will the law do? The Ontario case of *Dean Construction v. City of Toronto* gives us an insight. The City of Toronto issued an Invitation to Bid for construction of the Harbourfront Fire Station. This Invitation and the Construction Contract adopted soils reports which were misleadingly inaccurate. Dean eventually claimed for its delay costs necessitated by the unexpected actual site conditions. In turn, the City sought to hide behind the below weasel clause which it drafted into the Construction Contract:

In the event of delay caused by... any act of the... Corporation,... as, in the opinion of the Commissioner, the Contractor cannot reasonably be held responsible... the Commissioner may allow such additional time for completion as he may deem fair and reasonable.

The Court demolished the efficacy of the City's attempt as follows:

I find that the ... exclusionary clauses relied upon by Toronto ... have no effect with respect to Dean's claims ... These "exclusionary provision" are not effective ... on all legal remedies, ... The clauses did not specifically and unambiguously exclude ... legal remedies, ... Such broad general provisions granting an arbitrary power to the Commissioner must be drafted in the clearest and most precise language ...

CONCLUSION

My reading of these cases persuades:

1. Owners should shy from Bid Invitation terms which get into choosing among the various methods of construction proposed by the bidders;

2. The spec writer should prescribe only the Owner's ultimate designed purpose together with the requisite contract security to transfer the risks of methodology to the surety industry.
3. Also, use the fair and clear language of the standard CCDC terms to deal with delay,
4. Rather than relying upon the hope that the Court will uphold the Owner's weasel clauses as "perfect".
5. Judges will make every effort to wiggle around weasel clauses.

Alberta's Impaired Driving Law

(Sourced from

<http://www.industrymailout.com/Industry/LandingPage.aspx?id=1031119&lm=33457624&q=480906469&qz=671e2489b12417574f4dfab6f7068316>)

The Government of Alberta has passed tougher drinking and driving laws to encourage greater personal responsibility when behind the wheel. The [Traffic Safety Amendment Act, 2011](#), which provides stiffer penalties and more punitive seizure of vehicles in cases of suspected impaired driving, was proclaimed into force on June 25, 2012 and amends the [Traffic Safety Act](#). In addition, two related regulations have also been amended: the [Vehicle Seizure and Removal Regulation](#) and the [Operator Licensing and Vehicle Control Regulation](#).

The goal of the new impaired driving law is to reduce the number of drinking drivers on our roads – and that means fewer deaths and serious injuries. Drivers who are criminally impaired or refuse to provide a breath sample will receive the harshest penalties. And, these drivers will still be charged with a criminal offence.

Tougher consequences at the .05 to .08 level are designed to discourage drinking and driving – before drivers reach the criminally impaired level. Our goal is to create safer roads by ensuring that Albertans take responsibility for their actions behind the wheel.

- Alberta is focusing on those who receive Criminal Code offences, repeat offenders and new drivers.
- Education and enforcement are both key to Alberta's approach.
- This made-in-Alberta approach focuses on changing behaviours through mandatory courses and ignition interlock use.
- Alberta does not believe that fines are the

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solution. These changes do not include fines or demerit points.

- The focus is safer roads. Additional information, including the Key Changes, Q&As, Alcohol Impairment Levels, Statistics, and much more, is available on the Alberta Transportation website at <http://www.transportation.alberta.ca/impaireddriving.htm>, or see the [News Release](#).

Dear CSC Member,

We are quickly approaching the "Space Closing" deadline (August 24th / 2012) for advertising in the 2012-2013 edition of the CSC Directory of Members.

We offer full color advertisements, great exposure, great rates all connected to one high quality publication.

You know that great Member's Directory you receive as part of your CSC membership each year. Well, you have the opportunity to showcase your company, product, service or even yourself by placing an advertisement in the 2012-2013 edition but time is running out. If you've been putting it off, now is the time to act and secure your advertising space that will be seen by industry professionals across Canada and beyond.

The digital version is also available to be viewed by both CSC and non-CSC members anytime on our website (www.csc-dcc.ca) making your ads exposure ever greater!

- Our advertising rates have not changed in four years.
- You have a choice of business card, ½ page or full page advertisements.
- You can request special placement of your ½ page or full page ads.
- The digital version of the CSC Directory has direct links to your website and email address. This makes it easy for potential clients & customers to learn about your company and the products & services offered. They can also contact you with ease by email with the click of your mouse.

So don't delay any longer!

If you have already taken advantage of this opportunity please accept our thanks in helping to make the annual CSC Directory of Members a sought after "Go To" industry publication.

If you have any questions, please contact me by email or by phone at 416-777-2198. I will be happy to answer your questions and work with you in getting your advertisement included in the CSC Directory.

Regards,
Brad Noble
Membership and Client Services Manager



120 Carlton Street, Suite 312, Toronto, ON, M5A 4K2 Tel: 416-777-2198 Fax: 416-777-2197

ASSOCIATION LINKS

Important URL Links

- **Alberta Construction Safety Association (ACSA)**
www.acsa-safety.org
- **Architecture 2030**
www.architecture2030.org
- **BuildingSMART Alliance** (North American chapter of BuildingSMART):
www.buildingsmartalliance.com
- **Building Information Modeling (BIM) Forum**
www.insightinfo.com/bimforum
- **BuildingSMART International (formerly IAI)**
www.buildingsmart.com
- **Biomimicry Institute**
www.biomimicryinstitute.org
- **Biomimicry Guild**
www.biomimicryguild.com
- **Canada BIM Council**
www.canbim.com
- **Canadian Green Building Council (CaGBC):**

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www.cagbc.org

- **Canadian Green Building Council (CaGBC) – Alberta Chapter:**
www.cagbc/chapters/alberta
- **CCDC Documents:**
www.ccdc.org/home.html
- **Construction Specifications Canada (CSC)**
www.csc-dcc.ca
- **Construction Specifications Institute (CSI)**
www.csinet.org
- **IFD Library**
www.ifd-library.org
- **International Construction Information Society (ICIS)**
www.icis.org
- **MasterFormat 2012**
(Free downloadable PDF on Spex.ca Free page)
- **OmniClass**
www.omniclass.ca
www.omniclass.org
- **Spex.ca**
www.spex.ca
- **Uniformat:**
www.csinet.org/uniformat

<http://www.apegga.org/dward@apegga.org>

Alberta Roofing Contractors Association (ARCA)
Web: <http://www.arcaonline.ca>
Email: info@arcaonline.ca

Association of Science and Engineering Technology Professionals of Alberta (ASET)
<http://www.aset.ab.ca/>
Russ Medvedev
russm@aset.ab.ca

American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)
<http://www.ashrae.org/>
ashrae@ashrae.org

Building Owners and Managers Association (BOMA)
<http://www.bomaedmonton.org/>
edmonton@boma.ca

Consulting Engineers of Alberta (CEA)
<http://www.cea.ca/>
info@cea.ca

The Canadian Wood Council (CWC)
<http://www.cwc.ca/>
info@cwc.ca

Edmonton Construction Association
Darlene La Trace
www.edmca.com
contact@edmca.com
Interior Designers of Alberta
www.interiordesignalberta.com

Portland Cement Association
ConcreteTechnology@cement.org

Terrazzo, Tile & Marble Association of Canada (TTMAC)
<http://www.ttmac.com/>
association@ttmac.com

Interior Designers of Alberta
www.interiordesignalberta.com

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Alberta Association of Architects (AAA)
<http://www.aaa.ab.ca/>

Alberta Painting Contractors Association (APCA)
www.apca.ca
Connie Pruden
pc@apca.ca

Association of Professional Engineers, Geologists, and Geophysicists of Alberta (APEGGA)

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