

– Curriculum Vitae –

Jason J. Annibale

McMillan LLP, National Co-Chair, Construction
Advocacy and Dispute Resolution Partner

Overview

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

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

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

Jason authored the chapter on Dispute Resolution in the text by Murphy, Timothy J., *Public-Private Partnerships in Canada: Law Policy and Value for Money* and co-authored the chapter on Construction Delivery Methods in Richetti and Murphy, *Construction Law in Canada*. He regularly speaks and writes on construction law, including in respect of the management of risk and dispute resolution. He is also the co-chair and a speaker for the premier construction programs undertaken by Osgoode Professional Development (Osgoode Hall Law School), including the full week *Construction Law Certificate* program, the *Construction Liens under the Construction Act* program, and the *Construction Delay and Impact Claims* program.

Education

- Queen's University, BAH – 1997
- McGill University, LLB – 2000
- Called to the Ontario bar – 2002
- Osgoode Hall Law School, Construction Law Certificate – 2015

Rankings and Recognitions

- 2019 Lexpert/ROB Infrastructure – Special Edition
One of Canada's Leading Infrastructure Lawyers
- 2019 Lexpert/ROB Energy – Special Edition
One of Canada's Leading Energy Lawyers
- 2019 Canadian Legal Lexpert Directory
Repeatedly Recommended Lawyer in the area of Construction Law
- Who's Who Legal: Construction – Future Leaders 2019
- McMillan Leadership in Mentoring Award, 2010

Associations

- Construction Lawyers Society of America – Fellow
- Ontario Bar Association – Construction and Infrastructure Law Section
- Canadian Bar Association – Member
- Ontario General Contractors Association – Associate Partner Program Committee Member
- The Advocates' Society – Member
- Firm Memberships with the Canadian Construction Association, Toronto Construction Association, BILD, and Urban Land Institute

Community Involvement

- St. Michael's College School
 - Alumni Association Director
 - Career Mentor to Students and Alumni

- North Toronto Nitros Soccer Club
 - House League Coach (2015)
 - Volunteer Assistant Coach Competitive Program (2016)
- Dare to Dream Outreach Level Program

Passions

- Family – my wife, Kristina, and our two children (Joshua and Maria)
- Golf – I am a member at Spring Lakes Golf Club and always interested in the latest golf gear
- Soccer – fanatical about TFC, Real Madrid, and Juventus
- Fine writing instrument, ink, and stationary aficionado
- Wine, yoga, and weight training (in that order)

Representative Engagements

- Led a team of five lawyers, two counsel and numerous support personnel in the successful defence of cost overrun and delay claims totaling \$300 million in amount, advanced by an international engineering contractor, with recovery of all liquidated damages sought in the amount of \$37 million, plus costs awarded of almost \$8 million, on behalf of our owner-clients in relation to the construction of two biomass plants in British Columbia.
- Defence of a public utility company against the approximately \$70 million cost overrun and delay claims of the Canadian subsidiary of an international general contracting company now in CCAA proceedings and prosecution of liquidated damages and related loss claims of approximately \$20 million in relation to the construction of an underground transformer station. Mediated settlement was achieved and approved by the court in the CCAA proceedings. Outstanding claims remain in respect of an available performance bond.
- Providing dispute resolution and claim evaluation advice to an SPV in relation to delay, cost overrun, and land contamination claims valued at approximately \$60 million in respect of a rail transportation facility constructed using a P3 model.
- Resolved by settlement a complex construction lien and trust matter involving the construction of an affordable condominium development undertaken by owner-developer client, involving over twenty lien and trust actions, including a negligence claim against client's former lawyers, and over \$3 million in claims being made by the general contractor and the subtrades.

- Defence of a condominium developer in a syndicated mortgages class action and companion commercial list proceeding against investor claims of misrepresentation and the seeking of a judicial sale and other equitable relief arising from the syndicated mortgage having been accepted as part of the building financing.
- Successful representation at arbitration of an authority against an SPV respecting the correct calculation of a refinancing gain and the resulting monies properly payable to the authority in respect of a P3 asset.
- Mediated resolution of cost overrun and delay claims of over \$10 million from an SPV, general contractor, and tunneling subcontractor against an authority in respect of a P3 asset. Issues included numerous alleged changed site conditions, severe weather, protest actions, an electrical shut down, and increased financing costs.
- Resolved claims against an SPV in relation to a delay in handover of certain sites and lost profits in relation to numerous transportation-related assets across Ontario under a single P3 model. Settlement was achieved through the prescribed dispute resolution procedure prior to a formal mediation or the commencement of arbitration.
- Advised a consortia of insurance and bonding companies on the enforceability of a demand bond instrument to be used in a P3 context as an alternative to letters of credit.
- Construction counsel to an international energy company on its purchase of numerous construction projects and related assets across Canada arising out of the Comstock bankruptcy proceeding.
- Successful recovery in full including legal costs together totalling over \$1.2 million for mechanical and electrical consulting engineering services in support of the construction of an Ontario hospital using construction lien and construction trust remedies simultaneously.
- Defence of an automobile manufacturer against numerous construction lien claimants and successful judgment on a crossclaim against a design-builder in relation to the negligent design, manufacture, and installation of recuperative thermal oxidizer systems supporting a paint line for a body and bumper automotive manufacturing plant.
- Represented a Canadian bank in relation to the re-financing of the construction of an Alzheimer's disease care facility, including the negotiation of various construction lien postponements and the defence against several construction lien actions and related priority claims of the general contractor and various subcontractors.
- Defended a Crown corporation's competitive bid selection process in relation to the construction of a world-class aquarium against allegations of unfairness, conflict of interest and bad faith.

- Defended a Crown agent against numerous lien claimants in a complex, multi-party suit in relation to two large development projects respecting the construction of a court house and a government office building housing tribunal hearing rooms.
- Defended a truss component designer from a series of complex, multi-party design defect and negligence claims respecting the collapse of barn roofing systems across southern Ontario.
- Represented a national gaming and entertainment company in a product liability claim respecting complex and numerous roof-top heating, ventilation, and air-conditioning units servicing gaming floor areas.
- Defended an international furniture manufacturing commercial landlord against a tenant's allegations of loss of business resulting from expansion of shopping centre and parking facilities.