

Includes 2004 ECAO Annual Report

The Ontario **ELECTRICAL CONTRACTOR**

ECAO
ELECTRICAL CONTRACTORS
ASSOCIATION OF ONTARIO

Volume 42 • Number 4 • Fall 2004

Material Price
Protection
Strategies

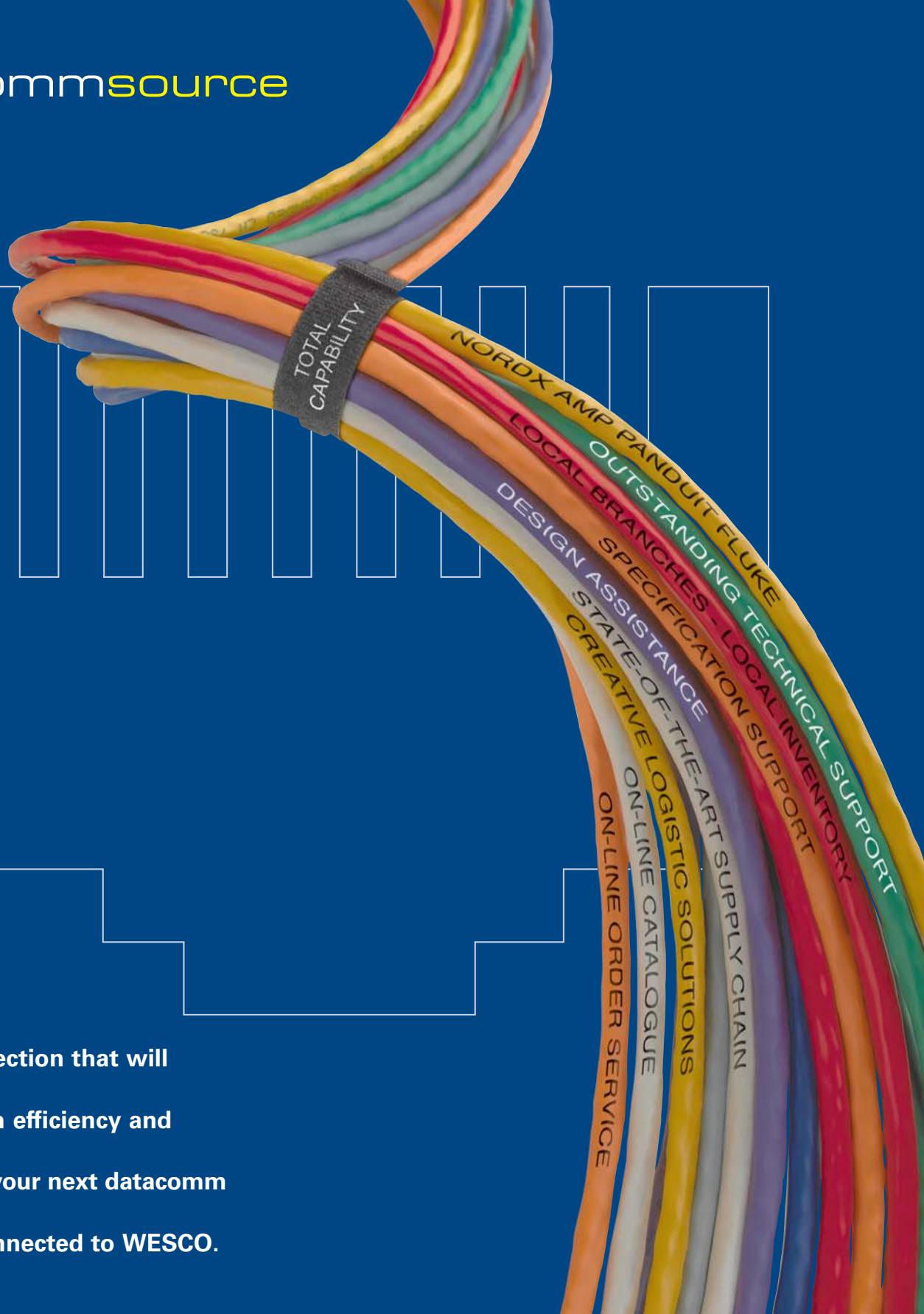
Transmission
System Code
Emphasizes
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On The Cover: Delegates enjoyed the Prince Edward Island scenery and hospitality during the 2004 National Industry Conference of the Canadian Electrical Contractors Association (CECA), which took place at the Delta Prince Edward in Charlottetown from June 17-20.

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CAN YOU PROTECT YOURSELF AGAINST MATERIAL PRICE INCREASES?

and, if so, how?

By Charles Wiebe and Markus Rotterdam, Glaholt LLP

Everyone knows how the prices of materials, particularly steel, copper and aluminium, have skyrocketed in the last year. This has caused obvious strains for contractors and subcontractors who typically enter fixed price contracts for their work. What, if anything, can they do to protect themselves from this market volatility?

The first question is, can contractors get out of fixed price contracts, and renegotiate new ones, when the price of materials escalates rapidly during the course of the project? Essentially, the law gives them virtually no way out unless their contract expressly gives them a way out. There is a doctrine, known as the doctrine of frustration, which allows courts to relieve parties from their contract if there

is an intervening event that was entirely unforeseeable at the time of the contract that renders the contract physically incapable of being performed. This is a very difficult test to meet. Frustration is usually applied only in the event of intervening events, such as insurrections and natural disasters that were never and could never have been contemplated by the parties at the time of the contract.

The difficulty in applying frustration to cases of economic duress caused by price fluctuations is the fact that the risk of price fluctuations is something that the parties contemplated at the time of the contract. Market fluctuations happen all the time. In fact, the stipulated price contract is common in the construction industry primarily



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because the contract concerns work that takes place over some period of time during which the price of material and labour will probably change. The parties were keenly aware of this risk at the time of the contract.

“impracticability,” but again the cases in which it has been applied are rare and extreme.

The next option, other than simply avoiding fixed price contracts altogether (which would be difficult in

gered? These are issues that should all be addressed in the clause itself in order to make it more effective in the end.

The problem is getting price escalation clauses incorporated into the contracts. Owners have no incentive to do so and they are the tender-calling authorities who lay out the ground rules for the tender. If contractors take the initiative to amend the tender in order to add the clauses, they will be disqualified for non-compliance. Tendering frowns on such negotiation.

Therefore, the best way to approach owners on this subject is through some industry body that tries to convince owners to structure their tender documents to incorporate these clauses. The argument to the owners would be that, if they do not incorporate these clauses, contractors will have no option in a sharply rising cost market such as this one, but to simply walk away from economically disastrous contracts. This will leave owners with the mess of finishing their projects and filing a law suit against the defaulting contractor that could cost them a lot of money and may lead

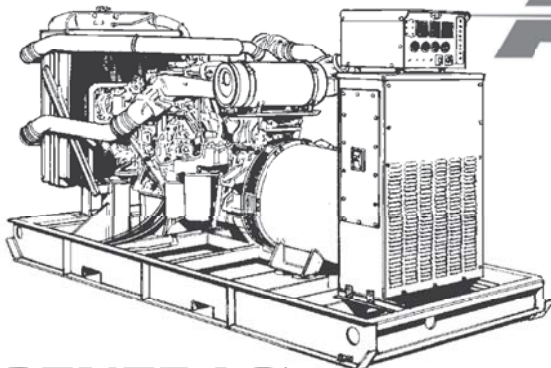
The problem is not so much the allocation of the risk of price fluctuations for steel, copper and aluminium, but the degree to which the prices have changed.

Owners want to avoid the risk and insist on the stipulated price, while contractors build in cushions into the stipulated price to protect themselves. The law will not relieve them of their contract when they have voluntarily taken on this risk.

The problem is not so much the allocation of the risk of price fluctuations for steel, copper and aluminium, but the degree to which the prices have changed. This is what was not contemplated by the contractor. Unfortunately, the law is not very forgiving. Some cases do give some relief under the doctrine of economic

the construction business), is to try and negotiate a clause in the contract that will expressly relieve the contractor from the stipulated price, namely a price escalation clause. These clauses allow the contract price to be adjusted in the event of a specified increase in the costs of materials. The first difficulty with such clauses is the practical one of determining the triggering event for the price increase and then the formula for the actual increase. What is the market against which the contract prices should be compared? By what percentage should the price be increased once the increase is trig-

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This introduces another problem though. Owners may agree to insert these clauses but no doubt will want some *quid pro quo*. The most likely one is a clause that gives the owner a discount from the stipulated price

not all contractors have. In addition, there is the risk that if the contractor does not complete the contract work, he is left with custom-made material that may not be usable.

- C** Another form of business protection is to shorten the period over

The best protections against sharply rising material costs are the business ones.

in the event the market fluctuates in the other direction. Contractors will be loath to give up the benefit of the stipulated price fixed in that event.

Perhaps then the best protections against sharply rising material costs are the business ones. Here are some of them:

- a** Suppliers may be prepared to lock into longer term supply contracts fixed prices.

Such contracts may be extended over the duration of the project, thereby protecting the contractor from the material price escalations altogether. Many contractors have established relationships with suppliers on exactly those terms and it will no doubt be a test for the suppliers as to whether they will stand by such relationships in a rising cost market.

- b** If one does not have such a relationship with a supplier, there is the option of prepurchasing the materials one needs for the project *en masse* at the beginning. In the alternative, one could buy futures in the commodities one needs, gambling that the prices for these commodities will eventually exceed the estimated prices. These strategies would however require financial resources that

which your tender price remains open for acceptance. Again, one's ability to do so may be severely restricted by the terms of tender; but one should keep this in mind.

- d** Yet another form of protection is to build into the contract price a cushion that accounts for the risk of extraordinary material price increases. Inflating the tendered price does carry with it the greater risk of losing projects, but the question one should ask in such a market is whether one would want to take on projects at prices that do not have such cushions.

A situation of drastic material price increases presents a challenge to contractors who operate in a business dominated by fixed price contracts, such as construction. The law unfortunately gives them little relief. Therefore, it is more up to their business acumen to find ways to weather the storm. In the end, one must always keep in mind that these price escalations usually do not last long.

Charles Wiebe and Markus Rotterdam are with Glaholt LLP, Toronto, Ontario and can be reached by e-mail at cgtw@glaholt.com.

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President's Message

By Dave Mason

It is a pleasure to present my first annual report to the members of ECAO. When I assumed office at the last annual meeting in Saint John's, I expressed my appreciation for inheriting an organization which was working well and consistently moving towards fulfilling its vision of industry leadership and self-management. I also noted that, as 2004 is a bargaining year, ECAO would have to focus on the near-term objective of renewing the no-strike/no-lockout accord (known as the Joint Proposal) and the Principal Agreement with the International Brotherhood of Electrical Workers (IBEW). The challenge was to ensure that we successfully met the labour relations objectives without relegating the provincial licensing initiative to the "backburner" and perhaps lose out on an opportunity to achieve greater influence in the management and regulation of our industry.

As it turned out, both of the association's primary interests moved ahead concurrently, one driven by the imminent expiry of the collective agreement; the other by the agenda of the newly elected government at Queen's Park. For ECAO, its contractor representatives and staff, the first half of the term was truly an exercise in association multi-tasking.

The Electrical Trade Bargaining Agency (ETBA) is to be congratulated for its hard work in successfully renewing the Joint Proposal and the Principal Agreement. The entire process took over eight months ending in March 2004 with a new collective agreement. The Joint Proposal received the strongest ratification vote ever from both the IBEW and the area ECA's, ensuring that the unionized electrical industry will remain strike free through 2007, an incredible run of 17 years.

As a member of the ETBA, I have first hand knowledge of the commitment and dedication of the contractor representatives who volunteer their time to ensure the success of ECAO's labour relations. Please take the time to read the full ETBA report, note the names of the representatives and join me in thanking them for a job well done.

During the provincial labour negotiations, ECAO also launched a government relations campaign at Queen's Park to educate the new Liberal government at Queen's Park about the provincial licensing legislation being proposed by the ECAO, Electrical Safety Authority (ESA) and the Ontario Electrical League (OEL). Following extensive government and stakeholder consultations, the Hon. Jim Watson, Minister of Consumer and Business Services, introduced Bill 70, an act that will enable the industry to administer and enforce a province-wide electrical contractor licensing and electrical trade certification system. Bill 70 is scheduled to become law in the fall session of the legislature. ECAO was founded to achieve this objective, and now more than 50 years later it is about to become a reality.

I was invited to the legislature along with other stakeholders for the introduction and first reading of Bill 70. Two things were readily apparent. First, ECAO is held in high regard among government circles for the positive quality of its government and stakeholder relations. Secondly, ECAO's willingness to be inclusive and to form partnerships with others in order to achieve its major objectives is a key ingredient in its success. The experience certainly validated ECAO's commitment to strong government relations and to developing strategic alliances as an effective component in our strategic plan.



2004 ECAO annual report

The Contractor & Industry Standards Committee, chaired by Glenn Carr, has steered the licensing plan through its various phases from inception and consultations to legislation. The success of the project is mainly due to the committee's efforts and attention to details. The next phase will be implementation, primarily the transfer of licensing from the municipalities to ECRA. The implementation process is daunting but I am confident that under Glenn's leadership the transition to province-wide licensing will be a smooth one.

During the 2003-2004 term, many other ECAO projects and plans began to mature and yield positive results.

ECAO's relations with ESA will be advanced with the establishment of the ESA Contractor Advisory Council, a body ECAO has advocated for many years. The council provides a communication vehicle between the contractors and ESA and, with more than a dozen contractor representatives, operates much like a permanent focus group. The council also oversees various ESA projects such as permit fee restructuring, which ensures contractor input to ESA's evolving business practices.

The association's fight to ensure fair competition and free access to work in the utility sector finally resulted in an Ontario Energy Board (OEB) decision concerning the Transmission Systems Code in which ECAO was successful on all its arguments. A full article on this victory for private contractors appears elsewhere in this issue of the OEC. In addition, ECAO has taken two local utilities to the OEB for various breeches of their distributor license.

The ECAO Associate Member class has grown in the past year and the members are being involved in various aspects of the association including the conference committee and public relations. Interest has grown to the point that a product exposition is being considered as an on-going event at ECAO.

Even the magazine in which this report appears has evolved into something new in the past year and I believe is more representative of the members and the industry.

I feel fortunate that these things have come to pass in my first year as president and I commit the ECAO to their successful implementation and the development of exciting new initiatives in the year ahead.

Member Services Committee

- **Brad Walker, Chair**
- **George Boals**
- **Scott E. Borland**
- **Ed Braithwaite**
- **Gary Carr**
- **Garry Fitzpatrick**
- **Greg Galbraith**
- **Bob Ritzman**
- **Gary Robertson, Secretary**

A key objective of this committee is to explore the opportunity for ECAO to provide services to the membership that are beyond the resources of individual companies, or services that are accessed at discounted rates on a group basis.

In keeping with this mandate, the committee developed an online survey designed to measure our membership's

needs and wants. The results of this survey will provide the committee with information that will assist the association in developing programs that our members want.

The committee successfully established the new Associate Members program and saw the initial 11 companies welcomed into this new membership category grow to 20. The newly established Associate Executive Council rose to the challenge in defining the role of Associate Members in ECAO by initiating a marketing campaign. Associate Members will be producing a calendar for ECAO contractors. The calendar will list suppliers and significant event dates.

Federated Insurance Company of Canada kicked off their new service

line of home and auto insurance for our members to complement their existing line of commercial general liability, commercial property, and equipment replacement insurance.

Through its affiliation with the Canadian Electrical Contractor Association (CECA), ECAO continues to make available to its members all items contained in the CECA publications catalogue. CECA is the exclusive Canadian distributor of products and publications of the National Electrical Contractors Association and produces its own items, such as job-site journals.

The committee continues to investigate opportunities for establishing discount plan programs for our members.

Human Resources Development Committee

- **Fred Black, Chair**
- **Gary Carr**
- **Gary Ganim**
- **Ron Goode**
- **Scott Kenyon**
- **John Wright**
- **Gary Robertson,**
Recording Secretary

The Human Resources Development Committee sources and develops courses and programs to ensure that contractors have access to the best employee training and executive development resources, in order to allow them to conduct their business as safely, efficiently and profitably as possible.

Electrical Project Supervision

Based on the NECA Management Education Institute's course and revised to reflect legal and management

practices in Ontario, the course continues to grow in popularity and has progressed to three levels of training. A review of the program was held with EPS instructors to discuss the addition of Lean Construction Techniques (The Last Planner) and WSIB training into the program.

The HR committee was actively involved in addressing issues with respect to workplace safety and insurance matters through direct representation on working committees at the WSIB. It is anticipated that new leadership at the WSIB will present new opportunities for our members.

The Human Resources Committee continued to monitor the performance of the Provincial Apprenticeship Committee (PAC) over the year. With the change in government, the

committee is preparing to present our concerns to the new minister and has engaged the association's lobbyist to act on our behalf.

Work continues on the following, established programs:

- Fire Alarm & Protection Certification Program
- Fire Alarm Contractor Registration Program
- Network Cabling Specialist
- Annual Ontario Technological Skills Competition and National Skills Competition
- Electrical Safety Awareness Month

The committee, through the leadership of its chair, Fred Black, believes that there needs to be greater awareness of the educational offerings that ECAO can provide.

Public & Member Relations Committee

- **Bradley Vollmer, Chair**
- **Don Allen/Robert Steven**
- **George Boals**
- **Doug Cormier**
- **Ken Crawford**
- **Jack Gibson**
- **Pat Martin**
- **Lucy Roberts,**
Recording Secretary

The Public and Member Relations Committee has two responsibilities. The first is to facilitate communications between the ECAO, its membership and the public. The second is to develop, promote and administer recognition awards.

In the process of carrying out our responsibilities the committee addressed the following issues:

- Electronic communication is being encouraged to reduce time and travel costs for committee members as well as staff time and material. ECAO is currently launching a campaign to obtain email addresses for all member communications and intends to meet its target of 66 per cent electronic communication by the end of 2004.
- Last year's conference, which was held in conjunction with the Canadian Electrical Contractors

Association in St. John's, Newfoundland, was a resounding success with the greatest attendance ever recorded. This year's conference will be hosted by the Windsor Electrical Contractors Association and promises to be an exciting and informative event. A new addition to the conference this year is ECAO's first ever Industry Product Exposition.

- ECAO continues to inform the membership via the monthly ECAO News and the quarterly Ontario Electrical Contractor magazine and well as bulletins and alerts, which are released as

2004 ECAO annual report

needed. ECAO formed a partnership with MediaEdge Publishing Inc. at the beginning of 2004 and this annual report issue is the fourth under their guidance. The magazine has a new look, some regular columns and now invites advertising in every issue.

- The ECAO website continues to be updated in order to provide the ECAO members with one-stop shopping for all association business. Members are urged to obtain their usernames and pass-

words to take advantage of this convenience.

- The Public Relations Committee continues to promote the Douglas J. B. Wright Award in recognition of ECAO members or employees who have made a significant contribution to the advancement of the electrical contracting industry. In addition to this, ECAO also awards those member companies with exemplary safety records through the R. H. Hugh Carroll Safety Awards. A new opportu-

nity for recognition currently under development is a Scholarship Award open to children of ECAO members or employees enrolled in a post-secondary institution. This award will commence in 2005.

- The Public Relations Committee welcomed two new committee members, Ken Crawford, C & M Electric in Ottawa, and Pat Martin, Tevelec in Mississauga, a representative of the newest category of membership at ECAO – an associate member.

Contractor & Industry Standards Committee

- **Glenn Carr, Chair**
- **Gary Beer**
- **George Boals**
- **Ed Braithwaite**
- **Mike Caletti**
- **Wayne Crockett**
- **Garry Fitzpatrick**
- **Wayne Gatien**
- **Dave Mason**
- **George McCue**
- **Case Opdam**
- **Joe Spadafora**
- **Eryl Roberts**
- **Gary Robertson,**
Recording Secretary

The Contractor & Industry Standards Committee strives to develop and implement standards within the electrical industry that allow contractors to conduct their businesses safely and to compete fairly across the province. This is accomplished by working through the ECAO and co-operatively with other stakeholders in the industry.

Provincial Licensing

ECAO's quest for industry self-management cannot be achieved by ECAO alone. The Contractor & Industry Standards Committee can only achieve the self-management objective in partnership with other like-minded organizations. The primary partner for ECAO in the development of industry standards is the Electrical Safety Authority (ESA). Other important stakeholders include the Ministry of Consumer and Business Services, the Ontario Electric League (OEL) and the reciprocal municipalities.

Since 2000, the Contractor & Industry Standards Committee has fashioned a coalition with the ESA and the OEL to convince the government to establish a system of province-wide contractor licensing. On April 29, 2004, the Hon. Jim Watson, Minister of Consumer and Business Services, introduced Bill 70, an act that will enable these industry partners to establish province-wide licensing of contractors and certification of the

electrical trades. Bill 70 has all party support and is expected to pass second and third reading early in the fall session of the legislature.

ECAO directors, committee members and staff are to be congratulated for their perseverance and dedication in striving for the goal of provincial licensing for which ECAO was originally founded in 1948.

Electrical Contractor Registration Agency

The purpose of the Electrical Contractor Registration Agency (ECRA) is to administer a provincial system of examining and registering master electricians and electrical contractors. It also serves as the Secretariat to the Reciprocal Recognition Program of municipalities for licensing Master Electricians. Chaired by Glenn Carr, ECRA is made up of three ECAO, three OEL and two ESA representatives, plus representation from the licensing municipalities. ECAO acts as the secretariat for ECRA.

ECRA delivers pre-master exam courses to assist exam candidates in their preparations to write the exam. This function is very critical with the imminent introduction of province-wide licensing where a large number of unlicensed contractors will be required to take the master's exam (or in certain circumstances be grandfathered). ECRA is the key component for achieving province-wide licensing. The industry plan is to transfer ECRA to the Electrical Safety Authority but maintain its bylaws, practices and private industry input. This marriage of ESA's provincial scope and resources and ECRA's accepted standards ensures the success of the industry's province-wide licensing plan.

In preparation for province-wide contractor licensing, ECRA is working in partnership with the reciprocal cities to ensure a smooth transfer from municipal to provincial licensing.

Standard Practices

In 2004, the ECAO Board of Directors approved a proposal originated by the Mechanical Contractors Association of Ontario (MCAO) to establish a new Ontario Construction Bid Depository Council. While ECAO is fully committed to the existing Ontario Bid Depository Council rules

and procedures, MCAO's proposal is not without its merits and may have the support of the general contracting community and as such, is worth pursuing. ECAO is represented in these discussions by retired past-president Case Opdam.

Another area of concern that has arisen is the escalating price of core materials, particularly steel, which has sent conduit prices skyrocketing. This situation poses serious contractual issues for electrical contractors, their suppliers and clients. The Contractor & Industry Standards Committee is investigating various contractual remedies and practical strategies for dealing with the destabilizing effects of increases to material prices.

ECAO continues to support the activities of the Ontario Joint Standard Practices Committee (OJSPC) and the Council of Ontario Construction Associations (COCA). ECAO is represented on the OJSPC by George Boals, Seymour & Boals Ltd. in Cornwall and on COCA by Dan Lancia, Holaco Installations in Hamilton.

ESA Relations

The Contractor & Industry Standards Committee's major responsibility is to maintain good relations with

those whom regulate our industry. The ESA, in its transition from a department of Ontario Hydro to a stand-alone government regulatory agency, has emerged as the primary partner for establishing electrical industry standards in Ontario. Five years after the creation of an independent ESA, we have finally achieved a contractor advisory committee within ESA's governance structure. ECAO's representatives on this new advisory council are Gary Beer, Glenn Carr, Dorothy Hart, Dan Lancia, Eryl Roberts, Philip Strickland and Frank Talenti. The Contractor Advisory Committee deals with immediate issues of concern raised by the contractor customers of ESA services and long-term strategic issues such as fee structures, licensing and education programs. It is also the source of industry subject experts for the various committees within ESA such as the Ontario Provincial Code Committee.

In addition, we also participate on the ESA Certified Contractor Program Committee, which is charged with developing the new electrical permit process and fee structure. ECAO members of this committee include Glenn Carr, Phil Strickland, James McKellar, and George Docherty.

Electrical Trade Bargaining Agency

- | | | | |
|--------------------------------|-----------------------|--------------------------------|--|
| • Peter Bryant, Chairman | ECA Northern Ontario | • Dave Mason | ECA Hamilton |
| • Rick Ball | ECA Thunder Bay | • Brian McDonnell | ECA London |
| • Mike Caletti | ECA Ottawa | • Ed Norman | ECA Quinte-St. Lawrence |
| • George Docherty | ECA Toronto | • Ray Porter/Bill Debosky | ECA Oshawa & District |
| • Dave Duffy | Georgian Bay ECA | • Tony Fanelli | Industrial Contractors Association (ICA) |
| • John Salvatore | Windsor ECA | • N/A | Electrical Power Systems Construction Association* (EPSCA) |
| • Wayne Gatien | Line Contractors | | |
| • John Raepple | ECA Central Ontario | • Eryl Roberts, Secretary | *non-voting members |
| • Erv Krause | Niagara Peninsula ECA | | |
| • Dario Maola | ECA Sarnia | | |

2004 ECAO annual report

The Electrical Trade Bargaining Agency (ETBA) is the exclusive bargaining agent representing ECAO contractors in their negotiations with the International Brotherhood of Electrical Workers Construction Council of Ontario (IBEW-CCO). The ETBA is made up of one representative from each of the area ECAs as well as one representative from the line contractors committee, the ICA and EPSCA. The ETBA negotiates and administers the provincial agreement with the IBEW-CCO and represents the interests of unionized electrical contractors with government and various industry tribunals. As such, the ETBA is a very active agency of ECAO which relies heavily on the contributions of the volunteer area representatives listed above.

2003-2004 was a particularly productive period for the ETBA during which:

- the agency renewed the joint proposal – the no strike/no lockout bargaining accord
- the agency successfully negotiated the renewal of the principal agreement for another three year term
- the agency concluded the first round of the market share research study conducted by the Ontario Construction Secretariat (OCS) and the Electrical Safety Authority (ESA), and
- the agency implemented the pre-apprenticeship program agreed to the previous year.

The Joint Proposal was ratified by 80 per cent of the IBEW members and was unanimous by the ETBA representatives who cast a vote. Concurrent with the renewal of the joint

proposal, the IBEW-CCO and the ETBA negotiated a travel, room and board protocol for mobile workers, a contentious issue left over from the previous round of negotiations. It was implemented with a successful ratification of the joint proposal.

The principal agreement was negotiated with a \$3.40 wage increase, or eight per cent, over the three-year term. The agreement also included innovative language improving occupational health and safety – every existing and new-start apprentice will be issued a proximity voltage detector as well as training on safe work practices.

A key element of the relationship between labour and management is ensuring that unionized electrical construction remains competitive. In order to manage this, we must measure it. The ETBA and the IBEW-CCO commissioned a study of ESA permits over the past three years to determine a rough measure of union market share. The initial report was delivered by the OCS in January. Though considerable work remains to be done in refining this data, both the IBEW-CCO and the ETBA believe it is an effective basis for managing our market recovery programs throughout the province.

One of the most difficult initiatives ever implemented by the ETBA is the pre-apprenticeship program. This is the third annual report to mention pre-apprenticeship. Though we concluded a memorandum of agreement instituting a pre-apprenticeship program across the province in the spring of last year, several areas have found it challenging to incorporate this program into their traditional apprenticeship system. This innovative concept for improving both unionized elec-

trical apprenticeship and unionized competitiveness is truly outside-the-box thinking. Despite the implementation problems, it is the largest pre-apprenticeship program in Ontario and the ETBA and the IBEW-CCO are committed to its success.

During the term of a collective agreement, the ETBA participates in ongoing policy matters in partnership with the IBEW-CCO through the Electrical Trade Joint Board (ETJB). The ETBA representatives on the ETJB are:

- Peter Bryant
- George Docherty
- Wayne Gatien
- Erv Krause
- Dave Mason, and
- Ray Porter.

In conjunction with the IBEW-CCO, these representatives establish negotiations policies and procedures and arbitrate grievances that might arise during the term of the agreement.

An important element of the joint proposal is an agreement to promote the unionized electrical contracting industry. The vehicle for meeting this objective is the Joint Electrical Promotion Plan (JEPP) – a not-for-profit corporation governed by an equal number of directors appointed by the IBEW-CCO and the ETBA. JEPP's objectives are to promote the unionized electrical contracting industry, to promote the superior quality and skill of unionized electricians, communication workers and contractors, and to develop leading edge management, technical and safety training programs. The ETBA is represented on JEPP by:

- Rick Ball
- Peter Bryant
- Wayne Gatien
- Dave Mason
- Greg Pahomey
- Eryl Roberts, and
- John Wright.

In 2003-2004 JEPP re-energized

its radio, print and tradeshow media promotion campaign. The effectiveness of these public relations activities is closely audited in order to ensure their success. Arising out of the 2004 negotiations, JEPP has been charged with the responsibility of formally certifying IBEW communications workers under the new trade of Network Cabling Specialist. Prior to December 2006, JEPP will certify 250 commu-

nication technicians and apprentices. In the last year, JEPP had successfully concluded the development of the Electrical Project Supervision (Foreman) Course. Ten ECAO members have received Train the Trainer instruction in all three levels of the EPS course and have delivered these courses to more than 200 ECAO member contractors and/or their employees.

Power & Utility Sector

- Wayne Gatien, Chair
- Jim Kellett, Chair – Line Contractor Negotiating Committee
- Bob Barrow
- Ed Braithwaite
- Tony Decuzzi
- George Docherty
- Mike Galley
- John Hayes
- Bent Hudson
- Peter Langenham
- Bill McKee
- Hugh Skinner

Plus members of the ECAO Board and ETBA, as required

Transmission System Code

Deregulation and restructuring of the energy sector in Ontario is a major concern for the Power and Utility Sector Committee. ECAO has been involved in the establishment of the Transmission System Code (TSC), which is basically a protocol for governing the activities of Hydro One since the beginning of the restructuring process. In 2004, the Ontario Energy Board (OEB) has finally released its decision on major issues within the TSC. In brief, the OEB opens large segments of the electricity transmission industry to electrical/line contractors. This decision is a major breakthrough for the high voltage industry and is reported in more detail elsewhere in this edition of the *Ontario Electrical Contractor* magazine.

Municipal Utility Practices

ECAO has also been vigilant with respect to the practices of municipal utilities, which attempt to establish monopoly positions in local electrical marketplaces. At the time of writing this report, ECAO has launched two complaints at the OEB alleging a violation of the distributors' license governing the activities of Hydro Ottawa and Whitby Hydro. ECAO has also intervened on a number of individual specific instances whereby local utilities have failed to separate their competitive and monopoly businesses in areas such as tendering for new construction work.

Provincial Joint Line Committee

The Provincial Joint Line Committee (PJLC) is made up of an equal number of union and management representatives. The PJLC is responsible for negotiating and administering the high voltage and utility components of the principal agreement. The severe depression in the private utility contracting marketplace has led the PJLC to radically amend its operating procedures. Since negotiations concluded in February 2004, the PJLC is committed to meeting 10 times a year and is in the process of developing a strategic plan aimed at reinvigorating the ECAO/IBEW unionized line-contracting industry. The total commitment of the line contractors and the PJLC in turning their industry around makes the Power & Utilities Sector Committee one of the hardest working and committed groups within ECAO.

The committee chairs would like to extend their thanks to the non-utility members of ECAO for their on-going support in the above initiatives.

2004 ECAO annual report

Executive Vice-President's Message

Over the past 25 years, I have witnessed a number of significant developments that have had an impact on ECAO electrical contractors – events or trends that changed our relationship with labour or actually changed the nature of the business in some fundamental way. Some changes were good for the industry, such as the development of province-wide collective bargaining (arguably), the growth of communication work as a part of the electrical contracting industry, and strike-free labour relations. Some were bad, such as the legislation allowing some general contractors to go non-union, the refusal of the government to enforce trade regulations and the growth of non-union competition. Others, like electrical utility restructuring, are full of promise for electrical contractors, but the transition has been a very rough ride.

One element of utility restructuring which is often overlooked, but has been a definite benefit to ECAO is the separation of electrical inspection from the old Ontario Hydro and the creation of the Electrical Safety Authority. This year marks the fifth anniversary of ESA as a stand-alone, independent organization.

While contractors have sometimes encountered problems with ESA's evolving business practices, perhaps exacerbated by the fact that ESA can no longer rely on monopoly money to cover its deficits, the transition has resulted in improved relations with and services to the contractor.

From the association perspective, the primary improvement has been the inspection authority's acknowledgement that the contractor is indeed a customer as well as an important component in the delivery of public electrical safety.

ECAO, the customer representative in this relationship, is now fully engaged with ESA advising on such issues as code, business practice, fees and fee structure, public awareness and licensing.

Over the past five years of development, ECAO and ESA have come to recognize that they are natural partners and that the best way to improve public electrical safety is to engage qualified electrical contractors and trades to do the work. The primary example of this has been the provincial licensing partnership through which we have been able to channel our quest for effective, enforceable trade and contractor licensing. And, at the same time, the ESA may have found a way to limit unsafe, underground electrical work and make better use of their inspection resources.

The proposed structure for licensing is indicative of the collaborative relationship between ECAO and ESA. The Electrical Contractor Registration Agency (ECRA), an industry-driven agency of ECAO, will be transferred intact to operate within ESA's regulatory affairs infrastructure. The standards will be the same as today and, more importantly, the representation will remain unchanged with two-thirds of the directors being contractors. In the past, I have referred to this process as "inoculating ESA with some private sector perspective."

Indeed, the success of the licensing partnership may have been the catalyst for the structural changes ESA made to its governance system with the addition of a Contractor Advisory Council – a standing industry focus group which provides two-way communication between ESA and its primary customers.



By Eryl Roberts

The council is made up of about a dozen contractors and association staff persons and acts as a forum for action and advice regarding all ESA/contractor related business issues, regulatory functions (including licensing when granted) and safety issues. It also sources industry subject experts to sit on various ESA committees. As a complaint department it has already dealt with a number of contractor concerns including the use of the plan review as a fee audit measure.

Another contractor committee is experimenting with a new fee structure based on man-hours of work rather than counting devices. This level of contractor involvement would not have been possible five years ago.

Through this process ECAO has taken on a new role as

the contractors' representative at the ESA provincial office and brings issues of general concern to the table. Elsewhere in this report are the names of the ECAO contractors who sit on these councils and committees and who make ECAO's presence at ESA meaningful and authoritative. I have first hand knowledge of their hard work on ECAO's behalf and they deserve the thanks and full support of the ECAO members.

What started out as a one-way, authoritarian relationship when inspections were under Ontario Hydro has gradually been formalized into a strategic alliance with significant dividends to both partners. I believe this to be one of those industry developments with the potential to fundamentally change our industry for the better.

Past Presidents

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Gordon Behling* - 1950 – 1951
Angus C. Fox* - 1951 – 1953
George Rysdale* - 1953 – 1955
Roland Demers* - 1955 – 1956
Clare Dent* - 1956 – 1957
Osman Ellis* - 1957 – 1958
Clare Dent* - 1958 – 1959
J. Keith LeGault* - 1959 – 1960
E. Ted Dodington* - 1960 – 1961
H. John McDonald - 1961 – 1963

Clayton Joice* - 1963 – 1964
William R. Roberts - 1964 – 1966
James P. Wilson* - 1966 – 1968
Mike T. Sharp - 1968
Noel A. George* - 1969 – 1971
Ross Sawle* - 1971 – 1973
James H. Wilson* - 1973 – 1975
C. Arthur Wilson* - 1975 – 1977
Douglas J. B. Wright* - 1977 – 1979
M. Mike Vukobrat* - 1979 – 1981
Jack A. Moncur - 1981 – 1983

H. Charlie Norris* - 1983 – 1985
J. Z. Gus Varga - 1985 – 1987
Rick W. Brodhurst - 1987 – 1989
John E. Waugh - 1989 – 1991
Blythe McCleary - 1991 – 1993
Wayne Gatien - 1993 – 1995
Ed Braithwaite - 1995 – 1997
Garry Fitzpatrick - 1997 – 1999
Case Opdam - 1999 – 2001
George Boals - 2001 – 2003
*Deceased

Board of Directors

Dave Mason, Chair, Director-at-large
Rick Ball, ECA Thunder Bay
Gary Beer, ECA Toronto
Fred Black, ECA Toronto
George Boals, Director-at-large
Ed Braithwaite, ECA Sarnia
Peter Bryant, Director-at-large
Gary Carr, ECA Oshawa & District
Glenn Carr, Director-at-large
Wayne Crockett, ECA London
Dave Duffy, Georgian Bay ECA

Greg Galbraith, Niagara Peninsula ECA
Wayne Gatien, Director-at-large
Jim Gruber, Director-at-large
Dan Lancia, ECA Hamilton
Larry Macdonald, ECA Toronto
Bill McKee, ECA Ottawa
John Raepple, ECA Central Ontario
Brad Vollmer, Windsor ECA
Brad Walker, ECA Quinte-St. Lawrence
Eryl Roberts, Executive Vice-President
Gary Robertson, Recording Secretary

2004 ECAO annual report

Objectives

- ▶ To present a favourable contractor image to our customers and industry colleagues
- ▶ To provide information by news media and research reports which will keep members up to date on industry and business trends
- ▶ To develop, promote and administer training programs which will advance the technical and business management skills of our industry
- ▶ To promote the safe use of electricity
- ▶ To respect the role each group plays within the electrical and construction industries and recognize those areas where cooperation will advance the opportunity for all segments to provide satisfactory customer service at a profit
- ▶ To maintain economically sound labour/management relations in the best interests of our customers
- ▶ To encourage the free flow of communications between ECAO and government
- ▶ To work with other government organizations toward the expansion of our national economy, a high level of employment and the development of the individual

Membership

ECAO represents only *bona fide* electrical contractors. There are two categories of membership for contractors. Contractors may join on a direct individual basis, or they may be members on an individual basis but their dues paid for through an area ECA. Companies and organizations that are not electrical contracting firms but have an interest in the industry are eligible for associate membership. There are presently 13 area ECAs.

ECA Central Ontario
 ECA Hamilton
 ECA London
 ECA Northern Ontario
 ECA Oshawa & District
 ECA Ottawa
 ECA Quinte-St. Lawrence
 ECA Sarnia
 ECA Thunder Bay
 ECA Toronto

Georgian Bay ECA
 Niagara Peninsula ECA
 Windsor ECA

Membership in the Electrical Contractors Association of Ontario affords membership in the Canadian Electrical Contractors Association (CECA), which gives ECAO members access to both CECA and National Electrical Contractors Association (NECA) products and services at member rates.

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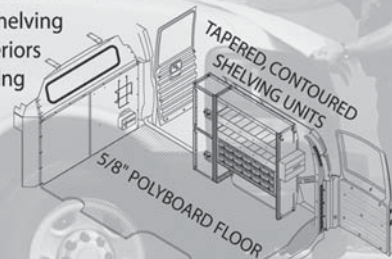
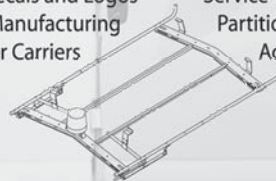
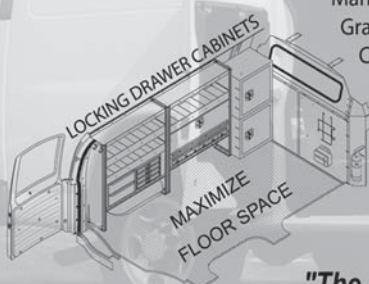
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TRANSMISSION SYSTEM CODE TO RECOGNIZE THE IMPORTANCE OF CHOICE FOR CUSTOMERS

By Robert Frank, Macleod Dixon LLP

On June 8, 2004, the Ontario Energy Board released its decision in proceeding RP-2002-0120, the review of the Transmission System Code (TSC). ECAO had intervened and participated in the TSC proceeding, making submissions on issues of contestability and the principles that should apply to contestable load connection work (Contestable Work.)

ECAO's submissions focused on the provision of contestable work by Hydro One Networks Inc (HONI). HONI and its competitive electrical contracting affiliate, Hydro One Network Services Inc. (HONSI). In summary, ECAO submitted that the way in which the pool funded option for contestable work was proposed in the Transmission System Code and the Customer Connection Process should not be

permitted for the following reasons:

1. it is inconsistent with previous board directives because:
 - a it allowed costing to be at an artificially attractive alternative to the market provided option (i.e. it did not require fully allocated costing), such that rate payers are subsidizing the pool funded option;
 - b it did not set a clear target date for eliminating the pool funded option, in order to provide certainty for alternative providers; and
 - c it allowed HONI to monopolize the connection market rather than require it to take steps to encourage competition, as previously directed by the board; and



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2. it involves an inappropriate transfer of system projects, customers and information from HONI to its affiliate, HONSI, which is in the business of providing electrical contracting services in competition with members of ECAO.

ECAO argued that, as structured, the pool funded option would allow HONI to continue to treat HONSI preferentially by providing it with a source of projects, customers and information, and by bidding for third-party contestable work at prices well below market. As a result, HONI would continue to be in breach of the Affiliate Relations Code and would not be acting in a manner that facilitates competition. Further, subsidization of the pool funded option by rate payers would continue to be an impediment to the development of a competitive

market which causes harm to ratepayers by depriving them of the benefits of cost reductions and innovations that would otherwise occur.

ECAO's submissions were largely adopted by the board. In summary, the relevant decisions of the board are as follows:

1. Contestability: the board found that the TSC should allow transmission customers the choice of contracting with any qualified contractor for the design and construction of connection facilities, whether or not the connection facility is pool funded, if the offer meets the following conditions:

- a The project requires a capital contribution from the load customer;
- b The construction work would not involve work with existing

connection facilities; and

c The contractor doing the construction is qualified to do the proposed work.

2. The TSC should contain provisions which require the transmitter to use the same fully allocated costing methodology for all purposes and to demonstrate the same. However, for an interim period, the current methodology of costing will continue to apply until such time as the board has carried out a detailed review of the issue.

3. In the event that a connecting customer chooses to obtain the services of an alternative contractor, the TSC should require the transmitter to:

- a Describe work that is contestable on the basis of conditions established in the code;



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- b** Provide a separate estimate for contestable and non-contestable work that can be audited if necessary to demonstrate no cross subsidy from non-contestable to contestable work;
- c** Provide a reasonable period of time for the customer to obtain competitive quotes for contestable work;
- d** Provide to the connecting party cost estimates and technical and engineering specifications and data. The cost estimates should be detailed specifically to the various components of the connection related work, which would allow the connecting party the ability to review and assess the estimated costs for fairness and accuracy; and

The decision is an important victory for ECAO members and all contractors

- e** Require the customer who chooses to hire an alternative contractor to construct the facilities to the specifications and standards of the transmitter and to assume full responsibility for the construction of that aspect of the expansion project.

The decision by the board recognizes the importance of ensuring that there is a level playing with respect to contestable work and, in particular, that the TSC provides customers with three key benefits: the choice of contracting with any qualified contractor for the design and construction of

connection facilities; the necessary information to make informed choices; and protections against subsidization of the utility.

The decision is an important victory for ECAO members and all contractors, and a positive step toward ensuring that ECAO members have a fair opportunity to bid for and obtain contestable work.

Robert Frank is a partner in the Toronto office of Macleod Dixon LLP, a recognized leader in national and international energy law services, with a particular emphasis on electricity, natural gas and emissions trading.

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FLOW-THROUGH SHARE PARTNERSHIPS AND CHARITABLE DONATIONS: individually or combined, these tax tactics can save you money

By Stanley M. Tepner, MBA, CA, CFP, TEP

Do you consider your income tax bill to be too high? Well, who doesn't? I have yet to have someone approach me and say, "Stan, I don't pay enough income tax. Can you tell me how to give a bigger chunk of my money to Revenue Canada?"

As a chartered accountant with a long tenure inside the investment and financial planning world, I take particular pleasure and interest in finding innovative ways to help individuals and companies reduce their income tax burdens. To locate, find or build these unique solutions, I frequently draw on the lessons learned during my initial 12 years of professional practice as a tax accountant.

Last issue, I discussed four powerful tax strategies for your portfolio. The fourth one, tax-deductible investing, in flow-through share partnerships, elicited a strong response. So let's first look at flow-through share investing in greater detail, and then review another powerful tax strategy that may help you dramatically reduce the after-tax cost of your charitable donations.

Revisiting Flow-through Share partnerships

Flow-Through Share Partnerships provide investors with direct access to the Canadian natural resources sector, and offer generous tax incentives. The partnership usually invests in a portfolio of flow-through shares issued by Canadian resource companies. These common shares are similar to each company's other common shares, with one notable difference: the proceeds from their issuance must be spent on resource exploration and the generous tax deductions generated by this exploration activity can be "flowed-through" to the partnership (and its investors).

In general, an investment in a flow-through partnership is fully deductible against a taxpayer's other income, with

most of the deduction available in the year the investment is made. For example, in 2004, the tax savings for an Ontario investor at the top personal income tax bracket on a \$10,000 flow-through investment would be \$4,641. His/her effective cost of ownership would be only \$10,000 - \$4,641 = \$5,359.

Once an investment is fully written-off, it is deemed to have an "adjusted cost base" (ACB) for tax purposes equal to \$0. When the investment is ultimately disposed of, the entire proceeds received will be taxed as capital gains.

These investments may be quite profitable on an after-tax basis, even without substantial capital appreciation. This is due to the different tax rates in effect when purchasing and deducting the investment (46.41 per cent) and when selling and treating the proceeds as capital gains (23.21 per cent).

For example, assume the \$10,000 investment is eventually sold for proceeds equal to its original value of \$10,000. The tax on the \$10,000 capital gain would only be \$2,321, which would net in \$7,679 after-tax. On an after-tax basis, the profit from this investment would be \$7,679 - \$5,359 = \$2,320, which



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represents a 43.3 per cent total positive return.

The difference in tax rates also provides substantial downside protection to an investment on an after-tax basis. The value of a \$10,000 investment can drop as low as \$6,980 and still provide a positive after-tax return: the after-tax proceeds are $(\$6,980 - (\$6,980 \times 23.21 \text{ per cent})) = \$5,360$, which compares to the after-tax cost of ownership calculated above as \$5,359.

The actual returns generated by Flow-Through Share Partnerships will be determined by the price at which the underlying common shares are bought and sold. The share values are subject to the ordinary risks of investing in a diversified portfolio of junior and mid-sized resource company shares, which are affected by fluctuations in capital market conditions, management skill, interest rates and commodity prices. The tax benefits help reduce the risks.

Most flow-through share partnerships are illiquid for up to 2 years, after which they will be rolled, on a tax-deferred basis, into a mutual fund. The mutual fund can then be retained in one's portfolio, redeemed, or gifted to a charity. The best times of year to acquire flow-through partnerships are in the spring and early fall. Each partnership is typically offered for sale for a relatively short time period (a few weeks up to two months, in most cases), after which it is closed to new purchasers.

An investment in a flow-through share partnership has many obvious tax advantages. As a standalone investment strategy, it could be ideal for your portfolio. But flow-through share partnerships can do even more to help you reduce your tax costs, especially when you have charitable giv-

ing obligations to take care of. This is the topic of the next section.

How to Reduce the Cost of Your Charitable Donations

Most higher-income individuals have significant charitable obligations to fulfill every year. Canada Revenue recognizes this, and encourages charitable giving by providing reasonably generous tax credits for the donations we make.

For example, if you make a gift of cash or property to registered charities and other qualified recipients in 2004, you are entitled to claim a federal tax credit of 16 per cent on the first \$200 of your gifts and 29 per cent on the balance, plus additional provincial tax credits. These credits reduce your federal and provincial or territorial tax, including surtaxes. For Ontario taxpayers, the tax credit amounts to 46.41 per cent of their charitable donations in excess of \$200 (for simplicity, we will apply the 46.41 per cent tax credit rate in all our examples to follow).

This means that a taxpayer can expect to receive a tax credit worth \$4,641 for every \$10,000 charitable donation made this calendar year, whether the donation is made in cash, or whether it is made in kind by the gift of property. The after-tax cost of the donation is thus only \$5,359.

Does it make sense to make a gift of property, instead of writing a cheque? Consider this scenario: you have an investment that has appreciated in value and are considering selling it this year to realize the capital gain. If you sell it on the open market, you will have to include one-half of the capital gain realized in your taxable income for 2004 (assuming this amount is not offset by capital losses realized in 2004).

If, for example, your investment has an ACB of \$5,000 and you sell it for \$10,000, the tax you will pay for a top-tax bracket Ontario taxpayer amounts to $\$5,000 \text{ (the gain)} \times 50 \text{ per cent} \times 46.41\% = \$1,160$.

If on the other hand, you gift a qualifying publicly-traded property worth \$10,000 (on an arm's length basis) to a public charity or public foundation of your choice, you are deemed to

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have disposed of it for the same \$10,000, but the tax payable on the gain would only be one-half of the tax paid on a sale of the property on the market, or \$580. In other words, you would only have to include one-quarter of the capital gain realized in your taxable income for 2004.

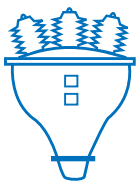
Gift Your Flow-Through Investments to Charity

It is the latter option, gifting your flow-through investments to a charity, that synergizes the aforementioned tax benefits. Let's take a look at the consolidated tax impact of this strategy:

<u>STEPS</u>	<u>TAX CALCULATION</u>	<u>OUT-OF-POCKET CASH</u>
Invest \$10,000 in flow-through		Expenditure \$10,000
Claim deduction	Deduction against income	Tax saving (4,641)
Gift \$10,000 worth of flow-through to charity	Donation tax credit	Tax saving (4,641)
Calculate capital gain	25% income inclusion	Tax cost 1,160
NET OUT-OF-POCKET COST FOR \$10,000 CHARITABLE DONATION		\$1,878

Now, compare the \$1,878 net out-of-pocket cost of this donation in kind to the after-tax cost of making a \$10,000 cash donation, which is \$5,359 (\$10,000 less 46.41 per cent tax credit). It amounts to only about one-third the cost of a cash donation for the same amount.

The key variable in the above comparison is clearly, "What will the flow-through investment be worth in two years when I will be ready to gift it?" As with most investments, future values are unpredictable, so let's compare three possible outcomes: first, where a \$10,000 initial investment declines to \$7,500, which becomes the eventual amount of the donation; second, where it remains at \$10,000 (as in our example above) and is gifted; and third, where it appreciates to \$12,500 and is gifted.



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Value of investment in 2 years	<u>\$7,500</u>	<u>\$10,000</u>	<u>\$12,500</u>
Initial investment (Cost of Donation)	\$10,000	\$10,000	\$10,000
Initial tax benefits	(4,641)	(4,641)	(4,641)
Donation tax credit	(3,481)	(4,641)	(5,801)
Capital gain tax payable	<u>870</u>	<u>1,160</u>	<u>1,450</u>
OUT-OF-POCKET COST OF DONATION	<u>\$2,748</u>	<u>\$1,878</u>	<u>\$1,008</u>

The Next Steps

Before embarking on this program, consider the following five items:

1. your marginal tax bracket for the year in which you make the contribution
2. the possible effect of Alternative Minimum Tax
3. the selection and availability of the appropriate Flow-Through Share Partnership for your needs
4. determining whether the charity you wish to gift the investment to is equipped and willing to accept this form of investment
5. readers may request more detailed literature about Flow-Through Share Partnerships and other investment and tax strategies by contacting my office.

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toolbox talks

004: Animal Encounters

Basic facts

Most animals are scared and will not harm you if you give them an escape route.

In new construction, an animal may return to where its home was only weeks ago.

Insects

Do not agitate a beehive, wasps' nest, or hornets' nest. Contact your foremen to have a trained and properly equipped person remove these.

If you are encountering mosquitoes, look for standing water in barrels or other manmade objects, and get rid of it. If the standing water is on natural land, ask your foreman to get permission to drain it.

Report indoor infestations to your foreman.

Rodents

Rodents are generally harmful. These carry disease and they destroy infrastructure.

Do not handle rodents.

Report the presence of rodents to your foreman so traps may be set.

Snakes

Very few snakes are capable of appreciably hurting humans.

Give a snake a wide berth and it will leave you alone. If a snake is occupying a cable tray or other area you need access to, do not attempt to remove the snake. A snake will usually leave on its own, if left alone. However, you should report it to animal control to ensure it and other snakes are vacated from the area.

Birds and mammals, generally


Never touch a baby bird or the babies of other animals. Doing so endangers you, as the mother may attack. It also marks the baby with your scent, which may endanger the baby.

If you encounter a wild animal, speak softly to it and back away from it. Do not make sudden moves.



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If you simply see a wild animal, don't approach it. Going toward the animal, no matter what your intentions, can easily be interpreted as an aggressive action.

Never approach a Canadian goose that is sitting down. This is likely a mother on her eggs. The gander is capable of driving his beak through your skull. The gander's wingspan can exceed five feet and he can easily destroy your eyes with one stroke.

Feral cats and wild dogs

These are generally harmless, if you don't approach them, and they reduce vermin.

Do not attempt to pet these animals. They do not trust humans and they will bite.

If a cat, dog, skunk, raccoon, or other animal advances on you, it may be rabid. Look for foaming at the mouth, glassy eyes, or staggering. Report it to animal control.

If a cat or dog is apparently starving, you may decide to feed it. It is safer for you to call the animal control people to capture the animal and take care of it.

Predators

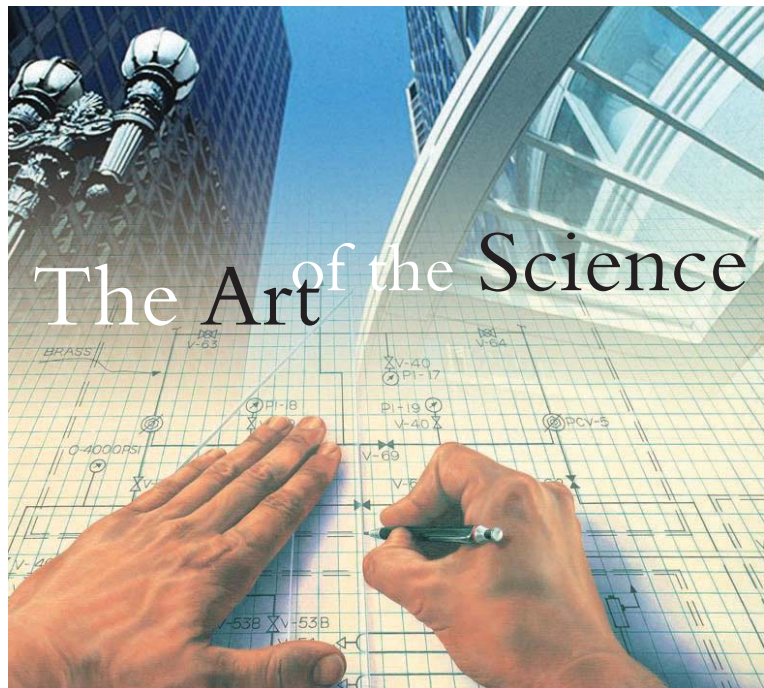
Boars, bears, cougars, coyotes, and wolves have been returning to areas previously noted as not having such animals. As their habitats continue to get squeezed, encounters with them will become increasingly common.

Black bears, weighing in at about 400 pounds, can do serious injury. So can other predators. However, you can usually startle them away with loud noise if they have a clear exit path. In fact, park rangers recommend that hikers do exactly that. Grizzly bears are largely absent from the 48 contiguous states, and they require a different response – playing dead.

If you have no way out and attack by a predator is imminent, your tool belt is full of weapons. Pull out your largest screwdriver and make threatening motions while backing away. This signals that you don't want to fight but can and will. If all else fails, remember that predators typically jump for a person's throat. Drop your

chin down and stab hard into its chest or neck as it jumps up at you. Put your weight behind the thrust.

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