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Volume 48 • Number 4 • Fall 2010



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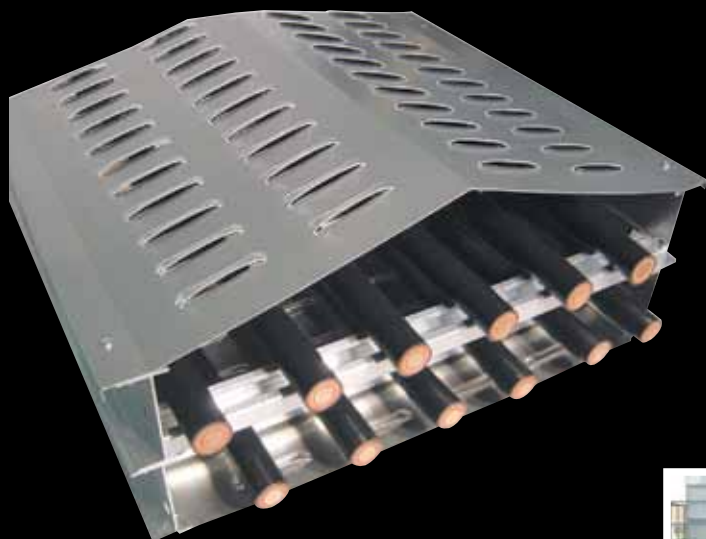
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On The Cover: (From left) recipient of the 2010 Douglas J. B. Wright Award, George Docherty, Guild Electric, his spouse Karen, ETBA Chair Dave Mason, President John Raepple and Executive Vice-President Eryl Roberts at ECAO's AGM (see story on page 18).

The Ontario Electrical Contractor is
published quarterly for:

ECAO
ELECTRICAL CONTRACTORS
ASSOCIATION OF ONTARIO

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*The Ontario Electrical Contractor is the official publication of
the Electrical Contractors Association of Ontario. Its purpose
is to provide information and editorial comment on issues
that are relevant to the electrical contracting industry.*

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Published by:

MediaEDGE
PUBLISHING INC.

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Toronto, ON M2N 6P4
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John Raepple

The President's Remarks

First of all, I want to extend my personal congratulations to George Docherty of Guild Electric for being chosen as this year's DJB Wright Award recipient. It is the Association's highest honour and is well deserved. Check out the front cover and the story on the Kingston Conference and AGM for more.

In the balance of this issue we look at the changing legal landscape over which electrical contractors have to travel and review some examples of how ECAO has responded currently and in the past.

Before I get into the detail of these articles, I would like to take this opportunity to comment on current events that didn't make it into this issue, but are on point. I am pleased to see that the *Open for Business Act* containing the *Construction Lien Act* (CLA) amendments sought by ECAO is in third reading and will likely be passed by the Legislature by the time this magazine is published. The major impact for electrical contractors will be the specific inclusion of industrial process work under the definition of "Improvements" in the CLA. It was also announced by Attorney General Chris Bentley that a more thorough review and consultation regarding the CLA will begin shortly. This announcement was made at the Council of Ontario Construction Associations' (COCA) Construction Day at Queen's Park. The review will focus on the amendments promoted by COCA and ECAO, which were not included in the *Open for Business Act*. We will keep you informed of progress.

Now back to Volume 48, Number 4 of *The Ontario Electrical Contractor*. The article provided by Heenan Blaikie LLP, entitled "Employee or Independent Contractor", reviews a court case that examines the transition of an originally independent sales person through the full spectrum of employment status. The end result was an 18-month severance award. This is relevant to the many contractors who employ long-term "consultants", but do not refresh the terms of their engagement regularly...an easy trap to fall into.

In a related article, at least as far as independent operators are concerned, economist John O'Grady examines the impact of the underground economy on Ontario's construction industry and the benefits and loopholes in Bill 119 that will make WSIB coverage mandatory for most construction workers in 2012.

John Margie and Markus Rotterdam of Glaholt LLP write about the ever-evolving state of bidding and tendering law. They open with "Hardly a

week goes by in Canada without...yet another bidding and tendering decision." It appears that in spite of a growing body of law, Owners and Generals are not inclined to change their behaviour, resulting in still more case law. Since electrical contractors often bid directly to owners as well as to generals, Margie and Rotterdam review the law as it applies to either state... contractor or subcontractor. Highly recommended reading if you wish to keep your company name out of the law books.

New obligations were put on employers when Bill 168 amended the *Occupational Health and Safety Act* to include minimum standards for prevention of workplace violence and harassment. ECAO responded by developing a guide for electrical contractors to aid with compliance with these new requirements. Deb DeCaire of Skipwith & Associates, ECAO group health provider, takes it a step further and outlines how an Employee and Family Assistance Program (EFAP) can be part of the prevention and/or remedial aspect of an employer's Bill 168 compliance measures. EFAPs are standard in the ECAO group plan for non-bargaining unit employees, and also available in most union health and welfare plans.

Finally, Gary Lehman has provided a short history of ECAO's Certified Fire Alarm Electrician (CFAE) program. When the Ontario Fire Code was amended to require specialized training and certification for electricians (and all others involved in testing and inspection of fire alarms), ECAO quickly launched a new 5 level program meeting the requirements of the Fire Marshal. The CFAE program remains one of ECAO's most popular offerings. The second annual CFAE instructors' conference took place in October 2010 where the delivery agents convened to devise ways of making it even better.

I want to thank all of the electrical contracting community (members or not) for your support in our efforts to help the electrical industry deal with the changing legal environment. Occasionally we create change, like province-wide licensing; sometimes reverse change, like the Lien Act; or simply respond to change in an effort to make the contractors' new responsibilities easier to manage, like fire alarm or Bill 168. Whatever it is, we cannot do it by ourselves.

I am sure you will find something in this edition that will help in your daily business. As always, your comments are welcome.

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The illustration on page 32 of the summer issue was created by Hadi Farahani. *The Ontario Electrical Contractor* inadvertently omitted inclusion of the appropriate credit with the illustration.



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ECAO Holds Industry Conference in the Limestone City

The ECAO 2010 Industry Conference was held June 23 to 27 at the Four Points by Sheraton in Kingston, Ontario. The conference began with a few tremors Wednesday afternoon at 1:41 p.m. when a 5.0 scale earthquake struck the Ontario-Quebec border region rattling buildings in Kingston for a few seconds. Memories of Cancun flashed before the members' eyes; however, the tremors lasted just a matter of seconds, allowing delegates to continue enjoying Kingston's small yet vibrant city. Nicknamed the "Limestone City," Kingston was the perfect location to mix business and pleasure with its historic buildings, boutique shops, farmers markets,

waterfront marina and many picturesque islands. The conference theme of "Winning the Battle" was also fitting given Kingston's military history.

To kick-start the conference, ECAO's Welcome Party was held in the Historic Fort Henry. As delegates entered the 19th century British military fortress, they mixed and mingled with each other, while sipping on cocktails and snacking on delicious hors d'oeuvres inside the fortification's wooden gates. An official welcome to Kingston was presented by Chris Whyman, Kingston's official Town Crier & Goodwill Ambassador, who just returned from England after competing in the 2010 Chestival World Town Crier Tournament and winning first place. Mr. Ed Norman, Martin Electric in Kingston, welcomed the delegates on behalf of the ECA Quinte-St.





Lawrence members. Delegates continued to mingle with friends and colleagues as the bagpiper lead the group to the Officers' Dining Rooms, where a three-course dinner was served in the Officers' Mess. The dinner not only was delicious, but very interactive. Guests were served by soldier servants in uniforms from the nineteenth century in the historic setting which dated back to 1832. Each guest was to be treated like a guest of the Officers' Mess during the reign of Queen Victoria. Delegates were not to say please or thank you to the servants, and a

president elected by guests in each room was responsible for mandating these rules. If a delegate was caught saying such words, the president would require the guest to sing a song, tell a joke or entertain the guests with a dance. Jack Gibson, Chairman of the Public Relations Committee, and Fred Black, ECAO Past President, were both too polite and "President" Jackie Bakmand requested they do a performance of their choice. Afterwards, delegates moved outdoors for a display of colour as fireworks were set off to end the evening (or at least before the rain

ended the evening). It was a great way to start the conference that was clearly enjoyed by all those who attended.

The following day began with the morning keynote presentation given by Dave Williams.

An emergency doctor, neuroscience researcher and scuba diver, Canadian astronaut Dave Williams was one of four Canadians selected for the Canadian Astronaut Program in 1992. He became

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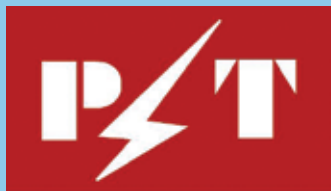
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the seventh Canadian in space when he flew as a mission specialist on the Space Shuttle Colombia in 1998. He also flew on a second space mission in August 2007, when the Space Shuttle Endeavour delivered a truss system and gyroscope to the International Space Station. Williams performed three space walks on that mission, a record for a Canadian astronaut. A new system that enables docked shuttles to draw electrical power from the station to extend visits to the outpost was activated successfully. His message was don't take chances and embrace all that is around you. He knows the catastrophic consequences that can happen when lives are at stake – appreciate life and all it has to offer.

Other business sessions included:

- Ken Wong, an award-winning professor at Queens School of Business and a frequently cited marketing authority.
- Lori Kieswetter, Ogilvy & Ogilvy, and George Vlastakis, Western Surety, provided a short presentation on Surety Bonds and answered delegates' questions.
- Dan Leduc, Ogilvy & Renault, brought

his expertise on tenders and answered questions concerning contracts and bids.

- Andrew Wilkins, Matrix Energy, gave a presentation on FIT and MicroFit programs and the impact they are beginning to have on the market and the opportunities they pose for contractors.

Spouses kept busy on Thursday, as their creative side came to life. A special workshop brought the spouses together to learn painting techniques which they then used to create a stunning masterpiece. Each free-hand design of their choice was applied onto a latte mug as they painted, sponged, chatted, laughed and sipped on mimosas. Once the group was satisfied with their creations, the representative from Crock-A-Doodle took each piece to be glazed and fired. The representative was impressed with the creativity of each participant and commented that our group was the most talented group yet. Each participant received their finished masterpiece the evening of the Gala. On Friday morning, participants watched and listened as historic Kingston came alive on the Confederation

Tour Trolley. A Guide took them through an exploration of the historic sites and modern attractions of Canada's second oldest city. Highlights of this entertaining tour included the Royal Military College, Fort Henry, Fort Frontenac, Kingston's penitentiaries, Bellevue House (residence of Sir John A. Macdonald, Canada's first Prime Minister) and Queens University. The Trolley allowed a stop at Canada's Penitentiary Museum, the award-winning museum dedicated solely to the preservation and interpretation of the history of our federal penitentiaries, where delegates wandered through the eight display rooms available. Visitors are often surprised at the complexity of a penitentiary environment. It isn't just about crime and punishment. In 2003, the Penitentiary Museum won the "Rand McNally Best of the Road" award.

As the electrical industry has evolved, so has ECAO's Products Exposition. This year's event was smaller as only 25 spots were available to suppliers and industry partners to showcase their products and services. The exhibitors that included renewable energy and green business practices



brought a fresh perspective on industry topics. Congratulations to prize winners Don Norman and Ken Crawford who were the recipients of ladders provided by Supplierpipeline, and Ray Porter, recipient of ECAO's Grand Prize of a \$2,500 gift certificate to Best Buy.

Thursday night, delegates climbed aboard the Island Star for an evening of food, fun and entertainment. Billy Bridger filled the night with sounds generated by his guitar and computerized accompaniment and his repertoire was popular with the dance crowd. He had the delegates laughing at his costumes and dancing and singing along. He even had Bill McKee, ECAO treasurer, dressed up like Bob Marley (no one else could pull off those dreads better than Bill). The evening was a hit and the sunset was spectacular.

On Saturday, delegates explored the unspoiled rural landscape and savoury wines of Prince Edward County. The growth of Prince Edward County's wine and viticulture industry is nothing short of spectacular, and Prince Edward County has officially been

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designated as Ontario's 4th Designated Viticultural Area (DVA). Delegates began their journey with a boxed lunch from Pinch. First stop was Huff Estate – best known for their Chardonnays. Second stop was to Sandbanks Estate Winery where delegates witnessed the ribbon cutting ceremony of their new showroom. Delegates approached the tasting bar and were overwhelmed by the many award-winning wines at their fingertips. They also learned that the Queen was served Sandbanks wine during her visit to Ottawa. Last stop was at By Chadsey's Cairn Winery where Richard Johnston, former MPP for Scarborough and Chair of the Council of Regents, now winery owner and operator, awaited delegates in a rustic barn

setting. Richard delivered an in-depth yet humorous presentation on the history of wines, the process, the pioneering, and the finished product.

Many delegates participated in a tour over to Wolfe Island for an in-depth look at the wind turbine farm. Not only did delegates get to ask the hard questions putting all those myths to rest, but they got to experience a turbine up close in parts and as a whole.

The Annual General Meeting of members took place Saturday. The Douglas J.B. Wright award was presented to Mr. George Docherty,



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Guild Electric, whose passion and personality has made him a strong leader within the electrical industry. The award pays tribute to his dedication and commitment to the electrical contracting industry as exhibited by Doug Wright through his years of service.

All things must come to an end and what better way to end it than with the President's Gala, the last evening of laughter, connecting with friends, good food and a little dancing. Filet of Soul, Kingston's

best known Rock and Roll band, helped get the party started after a delicious meal at the Four Points by Sheraton.

Delegates were also informed of the next opportunity to do it all again – this time in Costa Rica. The ECAO conference will be held March 19 to 26, 2011, at the J. W. Marriott Guanacaste Resort & Spa.



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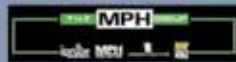
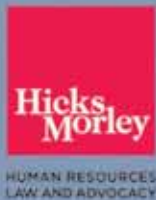
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ECAO's Annual General Meeting

ECAO held its Annual General Meeting on June 26 at the Four Points by Sheraton in Kingston, Ontario. Prior to the formal business portion of the meeting, President John Raeppe presented ECAO's safety awards. Congratulations to the following member companies on their achievements in safety excellence:

- **Earl Carr Electric Canada Ltd.**
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- **Panson Electric Contractors**
(Category: Rate Group 704 – 50,001 to 200,000 Total Work Hours)
- **S & T Electrical**
(Category: Rate Group 704 – 200,001 to 500,000 Total Work Hours)
- **Sutherland-Schultz Ltd.**
(Category: Rate Group 704 – over 500,000 Total Work Hours)
- **Advantage Electric Thunder Bay**
(Category: Rate Group 830 – up to 50,000 Total Work Hours)
- **K-Line Maintenance & Construction**
(Category: Rate Group 830 – over 50,000 Total Work Hours)

Following the safety awards presentations, President John Raeppe called on Dave Mason, D. J. Mason



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Electric, and ETBA Chair to present the Douglas J. B. Wright Award.

Dave Mason presented the 2010 Douglas J. B. Wright Award for contractor contribution and dedication for the betterment of the electrical industry to this year's recipient, George Docherty. George Docherty, Executive Vice President of Guild Electric Limited in Toronto, Ontario, is Director and Past-President and Treasurer of the Greater Toronto Electrical Contractors Association; Director of the Electrical Contractors Association of Ontario; Representative for Toronto on the Electrical Trade Bargaining Agency of ECAO; Trustee for the IBEW Local 353 Trust Fund; and Chair, Toronto Labour Relations Advisory Committee

In his presentation, Dave Mason commented on the contribution that George has made to the industry over the past 30 years, particularly in the area of labour relations, and said, "Here we are today, 20 strike-free years later, largely thanks to George's leadership and vision."

Congratulations, George!

Following a welcome to his hometown from Ian Cunningham, President of the Council of Ontario Construction Associations, John Raepple, called the meeting to order. The nominating committee report was accepted as presented, installing the 2010-2011 directors. The new Board held its first meeting following the AGM. The 2010-2011 directors are:

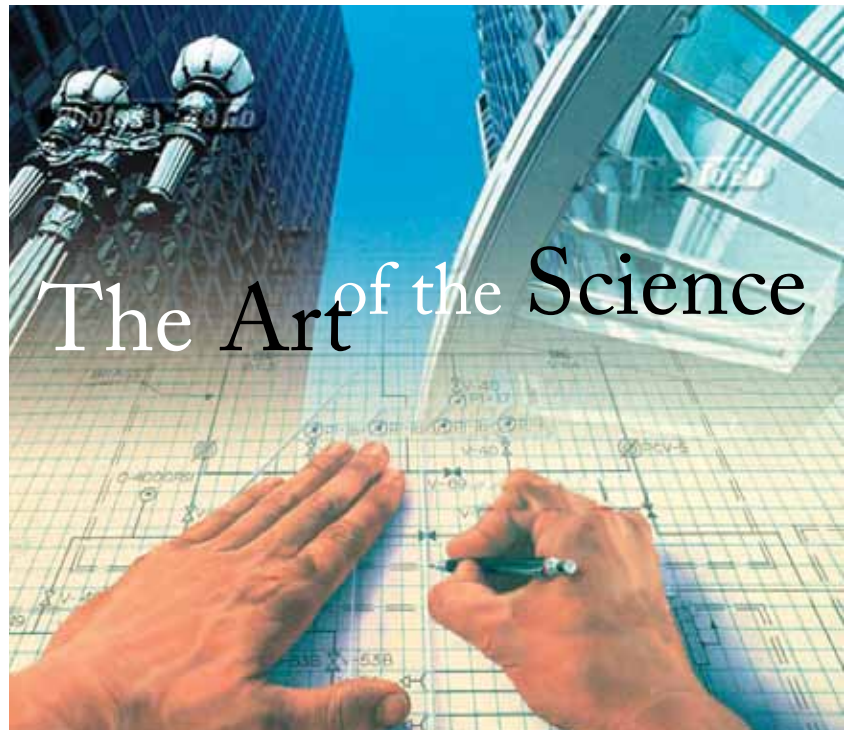
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- Jim Kellett
- Chris Krueger
- Joe Kurpe
- Dan Lancia
- Dave Mason
- Bill McKee
- John Salmon
- John Raepple

- John Salvatore
- Joe Spadafora
- Brad Walker

President John Raepple referred the members to the Annual Report highlighting the activities of ECAO over the last year and thanked the ECAO directors and committee members, ETBA representatives and ECAO staff for their continuing support.

At the Board of Directors Meeting following the AGM, the following officers were duly elected:

- Fred Black, Past-President
- John Raepple, President
- Jim Kellett, 1st Vice-President
- Dan Lancia, 2nd Vice-President
- Bill McKee, Secretary-Treasurer
- Eryl Roberts, Executive Vice-President



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The Certified Fire Alarm Electrician Program

A Short History of its Growth and Development

By G.W. (Gary) Lehman, P. Eng., GSC

The first Certified Fire Alarm Electrician (CFAE) Conference was held in October 2009. The conference provided opportunities for networking, input from experts in the field and sharing of best practices. The final plenary session was designed to hear feedback from everyone around next steps and ways to improve the program. Many very good ideas came out of the session and are in the process of being implemented. The majority of the participants agreed that the CFAE program is an excellent high-quality program producing well-trained fire alarm electricians. However, there was concern that all the good work to date was happening in anonymity. It was suggested that there was a need to market ourselves better and to tell our story. Therefore, the following is a short history of the growth and development of the very successful CFAE program.

In the early 1980s the Toronto Joint Apprenticeship Council with its progressive supplementary training for apprentices included time for fire alarm instruction. The idea of delivering extra training in fire alarm systems was adopted by the International Brotherhood of Electrical Workers (IBEW) Local 353 training centre and included on their calendar of courses for journeyperson training. A great deal of hard work by a number of the Local's instructors went into the design of a four level course to be delivered at the training centre for journeypersons. During an economic downturn in the early '90s, the Ontario Training & Adjustment Board (OTAB) acquired the course from Local 353. It was delivered to unemployed electricians through community colleges and IBEW training centres as a Trades Updating Program (TUP) to make them more employable.

In the late '80s, a high-rise fire at the Inn on the Park led to an investigation into cause. Subsequent high-rise and rooming house fires led to further inquiries by the Ontario Fire Marshal (OFM) and the Coroner's Office. As a result the Ontario Fire Code (OFC) was amended. Part of that amendment was to require those individuals who perform annual testing and commissioning

of a fire alarm system and/or who perform maintenance work and/or alterations to a fire alarm system to take an accredited training course.

Prior to the passing of this new Fire Code, the OFM approached the Electrical Contractors Association of Ontario (ECAO) to solicit their interest in developing this training and to deliver it to electricians across the province. A proposal was made to the Joint Electrical Promotion Plan (JEPP), a partnership between the IBEW and ECAO, to fund the development of such a course. The proposal was accepted and development began on what was called, at that time, the Fire Alarm Certification Program (FACP).

An independent educational writer was engaged and subject experts were sought. The search did not have far to go. Local 353 already had a four-level course. Why reinvent the wheel? Why not acquire the rights to the course and engage their instructors as subject experts? Bob Moore, Mike Mahon, Bill O'Halloran, Mark Steen and Doug Weston, all fire alarm instructors with expertise at the four different levels, worked with Ann Traurig of Traurig & Sparks to reformat and rework the original four-level course. Under the direction of Gary Lehman of G. W. Lehman & Associates, the course was completed and submitted to the Ontario Fire Marshal (OFM) for accreditation. The program was the first to be accredited. It received high marks from the OFM for having a grandfathering clause, a substantial hands-on element and for including a five-year renewal requirement.

The program was available to all IBEW training centres, ECA offices and community colleges on a universal basis. In endeavouring to facilitate the delivery of the program it was recognized that not all training facilities had the resources to meet the requirements of the hands-on training. JEPP was again called upon to provide the resources to build mobile training equipment for each of the four levels. This training equipment was available

to all IBEW training centres for a nominal maintenance fee and shipping costs. As well, community colleges were able to rent the equipment for their courses. All courses were coordinated through the ECAO office. This coordination involved printing and delivery of course manuals, arranging delivery of the training modules, data basing of marks, issuing of certificates for each level, issuing and maintaining photo ID cards and marketing the program. The initial interest was very strong and large numbers of participants were trained across the province.

With the goal of maintaining the course at a very high level, ECAO, through funding from JEPP, sanctioned the establishment of an Instructor Review Committee (IRC). This IRC was comprised of instructors from across Ontario who met once a year to review the course, address issues, make changes to align with changes in Codes and Standards and to share best practices around the delivery of the course. Recommendations from the IRC are sent to the Fire Alarm Steering Committee for approval. This committee was established at the very beginning with equal representation from labour and management. Its function was and is to set policy, make recommendations and do strategic planning for the program. Decisions from this committee are sent to the JEPP Board of Directors for ratification.

Throughout the '90's the program continued at a strong pace training electricians across the province to meet the needs of building owners and managers for testing and maintaining their

A History of Fire Alarm Training in Ontario

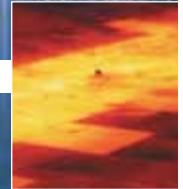
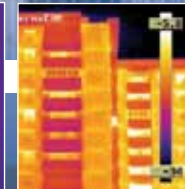
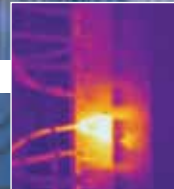
- 1968 MTCU – fire alarm training part of electrician curriculum
- 1980s Toronto JAC – supplementary fire alarm training for apprentices
- 1990s IBEW LU 353 – supplementary fire alarm training for journeypersons – continuing education
- Early 1990s – OTAB delivers fire alarm training for unemployed electricians
- 1997 – Ontario Fire Code requires additional training for fire alarm testing & inspection and changes to existing systems
- 1997 – ECAO receives accreditation from OFM for its FACP
- 2001 – ECAO rebrands the FACP to CFAE & registers its fire alarm contractors under the RFAC program
- 2009 – CFAE stages its first annual conference

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CFAE CONFERENCE

fire alarm systems. Training reached a peak of approximately 2,500 certified electricians. After five years, the renewal requirement came into effect and the EACP started renewing certifications. This renewal process required all certification holders to take a 40-hour renewal course that dealt with codes and standards changes, trouble-shooting techniques, conversion of conventional systems to addressable systems and an update on the latest fire alarm technology.

In early 2001, to promote recognition of the course and establish a recognizable logo, the program was rebranded and the Fire Alarm Steering Committee proposed a new name and logo. The program changed its name to the Certified Fire Alarm Electrician (CFAE) program and a new logo was designed.



In the process of refreshing the image of the program it was recognized that the pool of highly trained fire alarm electricians could not be marketed on its own. The electrical contractors were the vehicle for utilizing and marketing this well trained group. As a result a parallel program was established to register all electrical contractors as Fire Alarm Contractors who met the standards set out by ECAO. Such elements as fire alarm system installation experience, testing and inspecting experience, employment of CFAEs, \$2M insurance coverage and a signed compliance statement indicating they complied with all fire alarm codes and standards were used to qualify contractors to the program (see application form at http://www.ecao.org/com_hum_fire.asp). These registered contractors were now marketed under the name of Registered Fire Alarm Contractors (RFAC).



A complete marketing package was made available to these RFACs including branded Certificates of Inspection and Completion, panel stickers, truck logos and inspection/certification checklists. JEPP funded a marketing campaign to promote the RFACs and the CFAEs who they employed. This was accomplished through radio ads, print ads and trade shows such as PMExpo and SpringFest. On their website, ECAO added a specialty category, RFAC, under Find A Contractor to further market fire alarm contractors.

Recognizing the need for fire alarm instructors to meet, the CFAE program took another big step in its growth. In October 2009 it hosted the first annual CFAE Instructor's Conference at the Sheraton Toronto Airport Hotel. A social gathering took place on the Friday night amidst the booths of a small trade show populated by various fire alarm manufacturers and suppliers. Business sessions were held on the Saturday and included presentations by Siemens, Simplex, the Electrical Safety Authority, Morrison Herschfield and G. W. Lehman & Associates.

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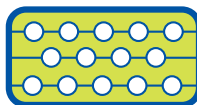
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Delegates at the 1st Annual CFAE Conference

Saturday evening dinner/entertainment provided another opportunity for fellow instructors to network and share ideas. Sunday culminated in guest speaker Bruce Patterson from the OFM followed by a plenary session facilitated by Gary Lehman about next steps and future plans. It was agreed that the conference was very beneficial and there was consensus that a second annual conference should be held and that, in future, it should be expanded to include not only the instructors but also all CFAEs. As this brief history indicates, the

CFAE is a high-quality successful program that has evolved over the years with the hard work and dedication of all of those involved to make it what it is today. It also has benefited from the ongoing support of ECAO and JEPP. With continued input and support, as it has in the past, it will evolve to meet the changing needs of the participants and the requirements of the industry. Everyone felt the CFAE program was a high-quality program producing well-trained fire alarm electricians. However, all this good work may not be well known. It

was suggested that we need to tell our story! How did it begin and develop? What makes it successful? This article is an attempt, then, to answer those questions and to tell the story to this point. ECAO is planning to have a CFAE corner in future issues of this publication (see page 44).

*G. W. (Gary) Lehman P. Eng., GSC
Steering Committee Chair & Administrator
(1997-2009)*

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What is Bill 168 and How Does it Impact You as an Employer?

On June 15, 2010, Bill-168, the *Occupational Health & Safety Amendment Act* (Violence & Harassment in the Workplace) 2009, came into effect.

It amends the current *Occupational Health & Safety Act* by establishing minimum standards for protecting employees from violence and harassment in the workplace. The bill presents unique challenges to employers in terms of understanding the requirements, realizing the far-reaching implications and developing strategies for compliance.

The legislation requires employers to develop:

- Violence and harassment policies and programs;
- Employee reporting and incident investigation procedures; and
- Emergency response procedures (violence only)

How widespread is workplace violence?

- From April 1, 2008, to March 31, 2009, the Ontario Ministry of Labour Inspectors made 417 field visits and issued 351 orders related to violence in the workplace. (MOL, 2009).
- In 2007, there were 2,150 allowed lost-time claims from assaults, violent acts, harassment and acts of war or terrorism in Ontario (WSIB, 2007).
- Bullied employees waste 10 to 52 per cent of their time at work. Research shows they spend time defending themselves and networking for support, thinking about the situation, being de-

motivated and stressed, not to mention taking sick leave due to stress-related illnesses. (CSC)

- According to the 2004 General Social Survey, 17 per cent of all self-reported incidents of violent victimization, including sexual assault, robbery and physical assault, happened at the workplace. This represents over 356,000 violent workplace incidents in Canada (StatsCan, 2007).
- There is evidence that violence has increased in Canadian workplaces over the past five years.
- 66 per cent of organizations reported an increase in aggressive acts within their workplaces; and
- 82 per cent reported an increase in both formal incident reports and grievances (CIWV, 2000).

What are the consequences of workplace violence?

Workplace violence affects the health, safety and security of employees, supervisors and employers.

According to a 2004 Statistics Canada survey:

- Victims of workplace violence reported feeling angry (21 per cent), being upset, confused or frustrated (20 per cent) and feeling fearful (15 per cent);
- 25 per cent of victims found it more difficult to carry out day-to-day activities after an attack; and
- Workplace incidents were two times more likely to be reported to police than non-workplace incidents.

The emotional and physical trauma to victims, their families and their co-workers has immeasurable personal cost.

Employees of violence often:

- Feel de-motivated and stressed; and
- Take sick-leave related to stress.

Violence exacts a toll on the workplace as well, through:

- Harm to the company's image;
- Difficulties in employee recruitment, retention and training;
- Reduced morale and productivity;
- Strained management-employee relations;
- Absenteeism and sick-leave;
- Short- and Long-term Disability costs;
- Drug plan costs;
- Workplace accidents and WSIB costs; and
- Stress-related lawsuits.

For more information on Bill-168 please visit the Occupational Health & Safety website at: www.labour.gov.on.ca/english/hs/sawo/pubs/fs_workplace_violence.php

This site can provide you with information on how to properly implement and maintain workplace violence and harassment policies and programs.

What Can You Do to Help Your Employees?

Implement an Employee and Family Assistance Program (EFAP). These programs protect the employer and the employee against Workplace Violence or Harassment.

EFAPs are the weapon of choice in the fight against workplace stress. They are designed to support employees with work and/or personal concerns. Counselling is available for issues related to employee

family relationships, bullying at work, addictions, such as health and alcohol-related problems, or financial and legal issues.

Employers that offer EFAPs are “not only showing that they think about their employees’ well-being, but are also addressing their duty of care to the workforce”. An EFAP could be useful when it comes to fighting a stress-related court claim or tribunal, where claimants may argue a stress-related illness was due to employer negligence.

EFAPs provide confidential, professional assistance for a broad range of personal and family problems. While the program can be used for crisis intervention, the ideal time to use the program is before problems escalate or become unmanageable.

EFAP is a pro-active option for helping your employees manage their personal health and happiness.

Research indicates that implementing an EFAP can result in significant cost-savings to the employer due to:

- reduced absenteeism
- reduced short- and long-term disability and drug claims
- fewer on-the-job accidents
- increased productivity and morale

What Services are Available?

An EFAP offers your employees and their eligible dependents short-term counselling, either in-person, by phone or online.

What Does the Program Offer?

In addition to counselling, an EFAP covers your employees for an assessment and referral for a full spectrum of personal difficulties including, but not limited to:

- work-related stress;
- relationship and family issues;
- separation/divorce/custody;
- financial and legal difficulties;
- alcohol and drug dependency;
- gambling and other addictions;
- eating disorders;
- difficulties with children;
- psychological disorders;
- anger management;
- sexual harassment and abuse;

- bereavement;
- aging parents;
- child/elder care resources; and
- retirement planning.

How Does an EFAP Work?

An employee in distress calls a toll-free number. They are assisted by a counsellor with setting up an appointment at a time and office location that is convenient to them. The counsellor will work with the employee to address their specific concerns and help them develop efficient and practical solutions. If longer term counselling, hospital treatment, or specialized services are required, the counsellor will arrange an appropriate referral and followup.

Who Provides Counselling?

All EFAP health professionals are registered psychologists or registered counsellors chosen specifically for their extensive experience in dealing with a variety of psychological and health issues.

They provide a non-judgmental and unbiased source of expertise and support and will listen carefully to the employees’ concerns and will help guide them toward positive outcomes.

How do I ensure my Employees that Counselling is Confidential?

You will not be given any information about who used the service or the type of service requested.

EFAP counsellors are required by law to maintain the strictest confidentiality. No one who inquires about or receives services under this plan will be identified to anyone (including the employer) without the employees’ written approval.

Who Do I Contact to Implement an EFAP?

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Preventing Workplace Violence & Harassment under Bill 168 – A Guide for Electrical Contractors

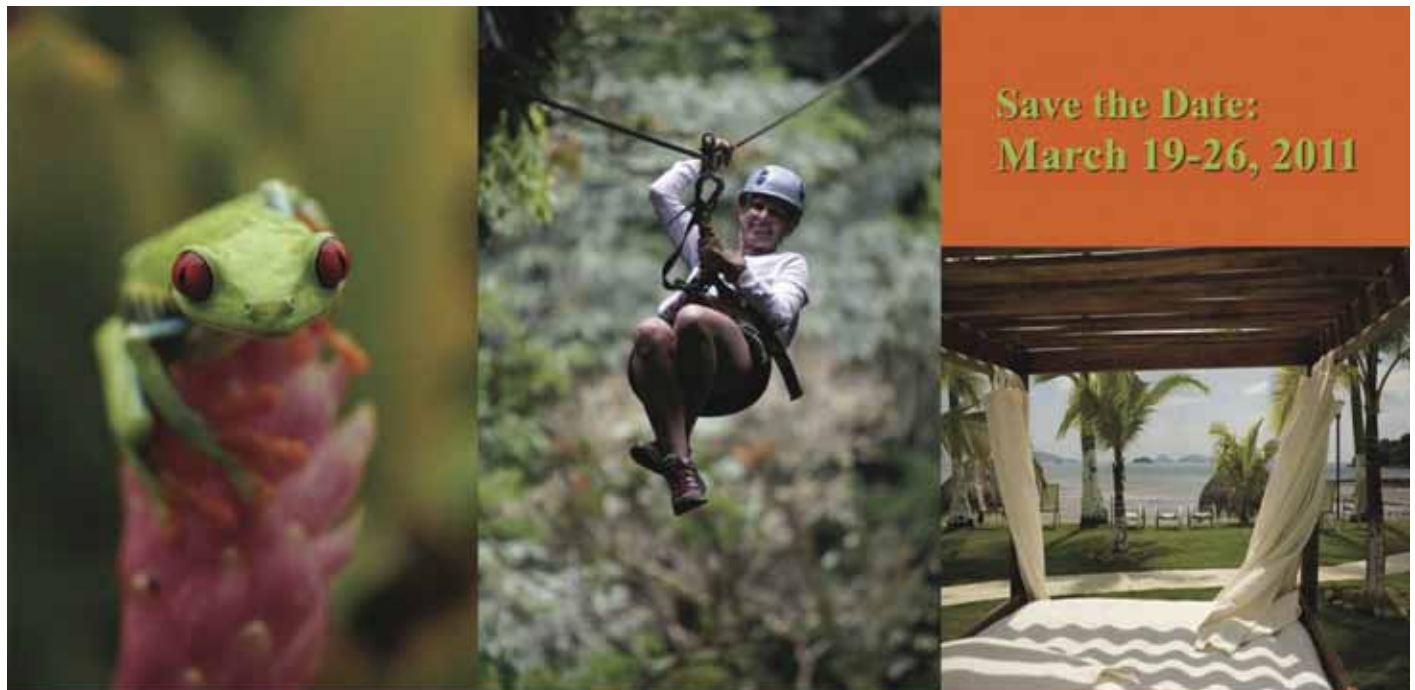
Bill 168, which amends the Occupational Health and Safety Act (OHSA) to require worker protection from violence and harassment in the workplace, came into effect on June 15, 2010.

For some years now, the Ministry of Labour (MOL) has taken the position that the general duty under the OHSA on employers to take every precaution reasonable in the circumstances to protect the health and safety of workers includes taking reasonable precautions to prevent workplace violence. However, while many jurisdictions in Canada have specific requirements regarding workplace violence in their respective occupational health and safety legislation,

there was no similar explicit requirement in the OHSA or its regulations.

Accordingly, Bill 168 imposes new and express obligations on employers.

ECAO retained Hicks Morley to produce a guide to assist its members in meeting these obligations. The guide is available on the Publications page of the Members section of the ECAO website at www.ecao.org/members/publications.asp. To access the site, members are required to obtain their username and password from the ECAO office at 416.675.3226 X300 or ecao@ecao.org.



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Employee *or* Independent Contractor?

Now There's a Third Option

In its recent decision in *McKee v. Reid's Heritage Homes Ltd.*, the Ontario Court of Appeal has confirmed that Ontario law recognizes "dependent contractor" as an intermediate status between employee and independent contractor, and that dependent contractors are entitled to reasonable notice of termination.

The plaintiff was Elizabeth McKee, who in 1987 entered into an agreement with Reid's Heritage Homes Ltd. to sell houses. The agreement, which McKee signed on behalf of her operating business, provided that Reid's would supply 69 homes for her to advertise and sell in exchange for a fee for each home sold. The agreement prohibited McKee from providing services to any company that was not controlled by Reid's. The agreement also provided for termination by either party for any reason on 30 days' notice.

After McKee sold the first 69 homes, Reid's continued to provide homes for her to sell. McKee stayed very busy with work for Reid's and over time, without Reid's involvement, hired, trained and managed her own sub-agents with whom she split sales commissions. The relationship continued in this way until 2005, when Reid's told McKee that she and her sub-agents would have to work for Reid's as "direct employees." McKee declined employment on the terms offered by Reid's and sued for wrongful dismissal.

The trial judge held that the original 1987 agreement was "spent" after the sale of the initial 69 homes, so the 30-day termination clause did not survive to govern McKee's termination 18 years later. The trial judge found that although the agreement was spent, the parties had,

through their continued practice and business relationship, implicitly agreed that McKee would continue to work exclusively for Reid's and that Reid's would continue to pay to sell homes. The trial judge found that at the time of termination, McKee was an employee and not an independent or even a dependent contractor, as her activities selling houses was an integral part of Reid's business. Having found that McKee was an employee, the trial judge decided that based on her position, years of service, her age, (64), and the limited opportunities available to her, she was entitled to 18 months' severance in lieu of notice.

The first issue for the Court of Appeal was whether to uphold the trial judge's finding that McKee was an employee. Reid's argued that McKee was neither an employee nor an independent contractor but rather a

“dependent contractor.” The Court of Appeal agreed that the law recognizes “dependent contractor” as an intermediate position between employee and independent contractor status, but rejected Reid’s argument that McKee was a dependent contractor rather than an employee.

The Court of Appeal found that the intermediate category of dependent contractor consists, at least, of those non-employment work relationships that exhibit a certain minimum economic dependency, which may be demonstrated by complete or near-complete exclusivity. The Court held that workers in the dependent contractor category are owed reasonable notice upon termination.

The Court ruled that the legal principles applicable to distinguishing between employee and independent contractors apply equally to the distinction between employees and dependent contractors. Therefore, the dependent contractor category arises as a “carve-out” from the non-employment category and does not

affect the range of relationships captured by the employment category. The first step is to determine whether a worker is a contractor or an employee using the traditional test to distinguish employees from independent contractors. For that analysis, the central question is, “whose business is it?” In making this determination, exclusivity and whether the individual engages workers to help perform the work are relevant, but not determinative.

The fact that McKee operated a business in her work for Reid’s was not determinative of her work status, nor even was the fact that she hired and supervised her own sales staff. Based on the trial judge’s findings that McKee worked exclusively for Reid’s, was subject to Reid’s control as to how she provided her services, performed her sales function in model homes provided by Reid’s and used stationery and forms provided by Reid’s, was financially dependent on fixed commissions received from Reid’s, and was part of a sales force that formed a crucial element of Reid’s business, the Court of Appeal upheld the conclusion that she

was an employee. The Court of Appeal stated that because the determination of employee or contractor status is a case-specific, discretionary analysis, the trial judge’s findings of fact are owed considerable deference.

Under the 1987 agreement, either party could terminate the relationship on 30 days notice, a termination period that would violate the *Ontario Employment Standards Act, 2000* if applied to an employee. Since McKee was found to be an employee, not a dependent contractor, and because the trial judge found that the 1987 agreement was spent, the issue of whether the 30-day notice period would have been sufficient for a dependent contractor did not arise. As Reid’s did not dispute that McKee would be entitled to 18 months’ severance if she was an employee, the Court of Appeal upheld the 18-month period assessed by the trial judge.

Article provided by Heenan Blaikie LLP

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Industry Briefs

ECAO/IBEW Golf Tournament

The Electrical Contractors Association of Ontario and the International Brotherhood of Electrical Workers (ECAO/IBEW) Golf Tournament was held July 13, 2010, at the Royal Ontario Golf Club in Milton, Ontario.

This was the 5th annual tournament, which sells out every year to representatives from the electrical construction industry including labour, management, government, consultants and suppliers to the industry.



Announcement: New Fee Schedule Effective October 27, 2010

The Electrical Safety Authority (ESA) has completed its annual fee review. This review includes the engagement of ESA's Consumer, Industrial and Contractor Councils to gather their feedback for consideration when making changes to fees for inspection services.

The following principles are applied by ESA when conducting the annual fee review:

- Recognize and respond to customer needs and continue to deliver electrical inspections that will positively impact public safety across all customer segments.
- Ensure consistency in the application of fees across like or similar items.
- Recover the costs associated with providing services and safety initiatives; ESA must be self-sustaining with its principal source of revenue through inspection services.
- ESA must continue to control its costs while still meeting its safety mandate.
- Fee increases are to be in line with inflation net of productivity improvements.

As a result of this year's review, ESA will make the following fee changes effective October 27, 2010:

- Inspection fees based on an hourly rate will increase from \$125 to \$130 an hour
- Fee items based on devices or components will increase by 2.5 per cent
- The minimum fee of \$71 will remain unchanged
- Reduction in fees pertaining to MicroFIT and FIT (Feed-in-Tariff) program inspections (already in effect)

- Reduction in fees pertaining to retrofit program inspections (already in effect)

Visit ESA's corporate website www.esasafe.com in October 2010 for more information including:

- Quick Reference Guides
- Updated Application Forms (including the Fee Estimator Application Form)
- The full Fee Schedule (available for viewing/downloading)

Please forward any comments you may have in regards to the fee schedule to the ESA Customer Service Centre email address: esa.feeschedule@electricalsafety.on.ca. Your comments are an important part of our annual review and we encourage your feedback.

ECAO Makes Submission to Expert Advisory Panel on Occupational Health and Safety

The Minister of Labour has appointed Tony Dean to lead a review of Ontario's occupational health and safety prevention and enforcement system, with the support of a panel comprised of safety experts from labour and employer groups and academic institutions (Expert Advisory Panel).

The panel will research best practices which improve workplace safety in national and international jurisdictions and will look at a range of issues including:

- Safety practices in a workplace and entry-level safety training
- Impact of the underground economy on health and safety practices
- Legislation and how it serves worker safety

Tony Dean with the support of the Expert Advisory Panel will report back to the Minister of Labour in Fall 2010 with recommendations and options for operational, policy and structural improvements for consideration.

Areas of focus are as follows:

- Efforts to Improve Collaboration and Integration of the Partners in the Occupational Health and Safety System (Ministry of Labour, Workplace Safety and Insurance Board, Health and Safety Associations)
- Underground Economy
- Vulnerable/Precarious Workers
- Incentives/Supply Chains
- Joint Health and Safety Committees/Internal Responsibility System
- Technology/Innovation
- Training

ECAO believes in competent, well-trained and licensed participants in the electrical trades in Ontario. Part of this responsibility includes active support for health and safety in the workplace. Indeed apprenticeship programs and the licensing of master electricians and electrical contractors include a mandatory component of occupational health and safety training. The WSIB Committee of ECAO welcomed the opportunity to respond to the consultation process outlined above and made its submission on August 18, 2010.

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FL430S Steel box with plastic flange

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In Memoriam
Dario Maola

Surrounded by his family, Dario Maola passed away peacefully at home on Friday, August 6, 2010, at the age of 62. Dario was born on July 16, 1948, in Casalvieri, Italy, and moved to Canada in 1958. He enjoyed 26 years as a successful contractor while operating DMW Electrical Instrumentation Inc. in Sarnia. Dario has been a faithful member of local and provincial construction associations for many years, serving as President of the Electrical Contractors Association of Sarnia, Director of the Sarnia Construction Association and as the Sarnia representative on the Electrical Trade Bargaining Agency of ECAO.

Dario will be greatly missed by his friends and colleagues in the electrical industry.



In Memoriam
John Kudlak

John Kudlak passed away July 28 after a valiant but brief battle with cancer. He was President of Kudlak-Baird Limited (now Kudlak-Baird (1982) Limited) in Mississauga, Ontario. The company was incorporated in 1959 and held membership in the Greater Toronto Electrical Contractors Association, the Electrical Contractors Association of Ontario, the Canadian Electrical Contractors Association, the National Electrical Contractors Association in the US and the Canadian Federation of Independent Business.

John was born in Dobra, Poland, in 1925, came to Canada in 1936 and moved to Toronto in 1941. He attended Central Tech in 1946 where he studied to be an electrician. He was drafted when the war came but after the war he became an electrician and started Kudlak-Baird Limited in 1959. He sold the business to Henry Drozdowski in 1982, but remained involved in the business until his retirement in 1989. He passed away July 28, 2010, at the age of 85.

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Figure 1 (a) Select New, and (b) an empty Task screen appears.

2. Press the Menu key and then select New (Figure 1a).

The New screen appears (Figure 1b), which features easy to understand fields that allow you to provide details about the task.

3. Use the trackball to navigate each field and enter information.

Some fields require manual entry while others allow you to auto-fill using a pull-down menu. For these non-text fields, you select the field, press the trackball again, and then make your selection from the options provided.

To make changes after the task has been created, select the relevant field and press the trackball.

4. After filling in the relevant fields, press the Menu key and select Save. Doing so saves your task, and you should now see the task has been added to the Tasks list.



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Issues in Bidding and Tendering



By John Margie, Partner and Markus Rotterdam, Legal Researcher, Glaholt LLP

Rarely a week goes by in Canada without the publication of yet another bidding and tendering decision. Owners keep drafting broader privilege clauses to try to exclude every claim imaginable only to find out that the clause did not necessarily prevent claims. General contractors continue to carry subcontractors' bids only to tell them later that the subcontract will be awarded to another subcontractor, despite a body of case law that tells them that it cannot be done.

Electrical contractors are often on the receiving end of both trends. While the general principles of Contract A/Contract B in tendering law apply to both tenders of an owner and tenders of a general contractor, electrical contractors who contract directly with an owner will face a different set of tendering challenges from those being retained by a general contractor. In what follows, we will briefly set out some recent development in both areas.

Contractor Bids

On February 12, 2010, the Supreme Court of Canada released its highly anticipated decision in *Tercon Contractors Ltd. v. British Columbia (Ministry of Transportation and Highways)*, which had been under reserve since March 23, 2009.

In 2000, the Ministry issued a Request for Expression of Interest ("RFEI") and later a Request for Proposals ("RFP") for the construction of 25 kilometres of highway in

British Columbia. Six proponents, including Tercon and its competitor, Brentwood Enterprises Ltd. ("Brentwood") responded to the RFEI. The subsequent RFP stipulated that only the six RFEI proponents could submit proposals, with the contract for the project to be awarded to the lowest bidder.

The RFP contained the following exclusion clause:

"Except as expressly and specifically permitted in these Instructions to Proponents, no Proponent shall have any claim for any compensation of any kind whatsoever, as a result of participating in this RFP, and by submitting a proposal each proponent shall be deemed to have agreed that it has no claim."

Brentwood realized that it could not complete the project alone and approached Emil Anderson Construction Co. ("EAC") to submit a proposal as a joint venture. EAC had not participated in the RFEI. Brentwood and EAC signed a jointly prepared proposal which reflected their equal sharing arrangement, and submitted it in Brentwood's name, with EAC described as a major member of the team.

Brentwood's bid came in at approximately \$24 million. Tercon's bid was \$2 million higher. The Ministry chose Brentwood as the preferred proponent, but there was some concern that its bid might be ineligible as a joint venture. The Ministry decided that the award would be made in the name of

Brentwood alone and any Contract B would also be in the Brentwood name. Brentwood and EAC would later conclude a separate agreement to formalize their joint venture.

Tercon brought an action seeking damages arguing that the accepted bid was ineligible and that by accepting that bid, the Ministry had fundamentally breached its Contract A obligations to Tercon.

The trial judge held that the Ministry breached the express provisions of the tendering contract by accepting a bid from an ineligible bidder. By doing so, the Ministry breached the implied duty of fairness to bidders. The trial judge also found that the exclusion clause, properly interpreted, did not exclude Tercon's claim for damages, since it was not within the contemplation of the parties that this clause would bar a remedy in damages arising from the Ministry's unfair dealings with an ineligible bidder.

The British Columbia Court of Appeal allowed the Ministry's appeal and held that the exclusion clause was a complete answer to Tercon's claim.

By a majority of 5:4, the Supreme Court of Canada allowed Tercon's appeal. The ruling was based on two findings:

1. The Ministry accepted a bid from an ineligible entity and breached Contract A.
2. The exclusion clause did not allow the Ministry to do that.

Based on its earlier decision in *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, [1999] 1 S.C.R. 619, the court held that there was no doubt that the Ministry was contractually bound to accept bids only from eligible bidders. The court repeated that an implied obligation to accept only compliant bids was necessary to give business efficacy to the tendering process, since a bidder must expend effort and incur expense in preparing its bid and must submit bid security and it would make little sense for a bidder to comply with the tender requirements if the owner was allowed to accept a non-compliant bid.

It was clear from the outset that only those who had submitted proposals during the RFEI process would be eligible to submit proposals under the RFP. The Ministry argued that there was no term of the RFP that restricted the right of proponents to enter into joint venture agreements with others, and that this arrangement merely left Brentwood, the original proponent in place and allowed it to enhance its ability to perform the work. The Ministry attempted to rely on a clause in the tender documents that provided that “if in the opinion of the Ministry a material change has occurred to the Proponent since its qualification under the RFEI, including if the composition of the Proponent’s team members has changed ... or if, for financial or other reasons, the Proponent’s ability to undertake and complete the Work has changed, then the Ministry may request the Proponent to submit further supporting information as the Ministry may request in support of the Proponent’s qualification to perform the Work.” The Supreme Court held that the material change provisions in that clause did not permit the addition of an entirely new entity as the Ministry had done.


The Supreme Court held that the exclusion clause did not cover the Ministry’s breaches in this case because the clause only applied to claims arising “as a result of participating in [the] RFP,” and did not apply to claims resulting from the participation of other, ineligible parties. Central to “participating in this RFP” was participating in a contest among those eligible to participate. A process involving other bidders was not the process called for by the RFP and being part of that other process was not in any meaningful

sense “participating in this RFP.” The words of this exclusion clause were not effective to limit liability for breach of the Province’s implied duty of fairness to bidders.


The minority of the Supreme Court agreed that the Ministry had breached the terms of its own RFP when it contracted with Brentwood, knowing the work would be carried out by a joint venture. However, the minority agreed with the B.C. Court of Appeal that the exclusion clause was clear

and unambiguous and that no legal ground or rule of law permitted the court to override the freedom of the parties to contract (or to decline to contract) with respect to this particular term.


While the minority’s decision to enforce a strong exclusion clause might have reduced litigation in this area, the majority’s decision appears to be consistent with the Supreme Court’s earlier tendering decisions that held that while an exclusion clause gives the




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owner the right to take a more nuanced approach to cost, i.e., a right to award based on criteria other than price, such a clause does not give the owner the right to accept non-compliant bids.

Recently, there also appears to be a trend to allow bids that arguably were non-compliant. In another Supreme Court decision, *Double N Earthmovers Ltd. v. Edmonton (City)*, [2007] 1 S.C.R. 116, the majority of the Court upheld an owner's decision to accept a bid that the minority found to be clearly non-compliant. In the recent decision in *Bot Construction Ltd. v. Ontario* (Ministry of Transportation), [2009] O.J. No. 5309, the Ontario Court of Appeal upheld a tender award that a lower court found to be clearly non-compliant. All nine judges in the SCC agreed that Brentwood's joint venture bid was non-compliant. The decision in *Tercon* may therefore assist in reaffirming the statement that non-compliant bids ought not to be accepted, even in the face of a very strongly worded privilege clause.

Subcontractor Bids

The standard authority on the law of bidding and tendering as it applies to subcontractor bids remains *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, [2001] 2 S.C.R. 943, which stands for the following main propositions:

1. Contract A comes into existence when the general contractor carries the subcontractor's bid in its bid to the owner;
2. The general contractor, if awarded the contract, must award the subcontract to the subcontractor whose bid it carried, unless after the close of the prime bid, the owner or contractor has a reasonable objection to the subcontractor;
3. The subcontractor must perform Contract B upon award;
4. The general contractor cannot engage in bid shopping.

More recently, an Ontario town intended to renovate its community centre. A general carried the bid of an electrical subcontractor in its bid to the town. The general contractor's bid was the low bid, but all bids received by the town exceeded the budget. The town asked the three lowest bidders to revise their bids. The general contractor, in turn, invited the original electrical subcontractor, whose bid had been low, and a competitor to submit revised bids. The revised bid of the competitor was lower than the revised bid of the original subcontractor, and the general used the competitor's bid in its revised submission to the town. The original subcontractor sued the general contractor for lost profit, and the general contractor made a claim against the town.

The general contractor argued that its revised submission to the town was an entirely new contract which did not oblige it to use the subcontractor it originally carried.

The court heard evidence regarding the standard practice of contractors during the tendering process that the construction industry, for a number of years, had followed informal guidelines issued by the Canadian Construction Association. These guidelines provide, in part, that if the project is over budget, the owner should negotiate with the low bidder which should cascade down to the low subcontractor. In the event negotiations between owner and low general contractor should fail to produce a contract, bid requests could then be enlarged to the three low bidders from the general contractor level down to the subcontractors.

The court held that the general contractor should have included the reduced bid of its original subcontractor in its own bid and that by failing to do so, it breached its contract with that subcontractor. The subcontractor was awarded damages in the amount of its profit margin as set out in its bid, plus 30 per cent based on the fact that the subcontractor had historically been able to increase its anticipated project profit margin by that percentage.

In either case, whether submitting a bid directly to an owner or to a general contractor, read and re-read the terms upon which you are submitting your bid. Owners will continue to draft broader and stronger privilege clauses to avoid liability and contractors will continue to act in their self-interests. In either case electrical subcontractors must understand the terms upon which they are submitting their bids.

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Toolbox Talks

036: FLAME-RESISTANT APPAREL

Street clothes

Artificial fabrics such as nylon and polyester melt into the skin before igniting.

Fabrics melted into the skin make burns deeper and more severe.

Fabrics melted into the skin are extremely painful to remove.

Don't wear artificial fabrics on the job site.

Shirts, pants, underpants, socks, jackets, gloves and hats are all items that should be made of a natural fibre, rather than nylon or polyester.

Flame-resistant clothing wear

Wear flame-resistant clothing when working on any equipment that is field-marked to warn of electric arc hazards.

Wear flame-resistant clothing when working on any equipment that may produce an arc blast. Essentially, this is all energized three-phase equipment that has contacts that open and close. If in doubt, ask your foreman for the flash hazard analysis of the equipment you will be working on, and find out what the flash protection boundary distance is for that equipment.

Flame-resistant clothing is made from special flame-retardant materials. Nomex is one of the most widely recognized trade names of such materials.

Flame-resistant clothing protects you from arc flashes, not steady flame.

Flame-resistant clothing will not protect you if you decide, for example, to walk into a burning building. But, it does provide a high degree of short-term protection.

Flame-resistant clothing, if worn properly so that it is securely sealed, will provide a barrier between you and superheated plasma gas.

You must wear the other PPE appropriate to your job, along with the flame-resistant clothing. The only purpose of the clothing is to protect you from an arc flash.

Always wear safety glasses or goggles along with the flame-resistant clothing, even if you are wearing the flame-resistant hood and face shield.

Do not open or remove the flame-resistant clothing if you are within the flash protection boundary distance.

Keep in mind that an arc flash can happen at any time. It does not know whether you are taking a break or not. If you are standing in the path of an arc flash, what you are doing at the time doesn't matter.

Flame-resistant clothing care

Inspect your flame-resistant clothing before wearing it.

Give it the smell test, as well as a visual check. If it is not clean, you risk exposure to pathogens.

Look for tears or pinholes, as they can allow plasma through.

Look for stains or anything that may create an ionization path across or through the material.

Launder per manufacturer's instructions. It's best to use a surfactant or non-abrasive detergent – read the label and reject detergents that contain wood pulp.

Do not launder flame-resistant clothing more times than the manufacturer allows.

When washing flame-resistant clothing, do not mix it with garments made of other materials. Doing so may contaminate the flame-resistant clothing with fibres from the other materials, and that could allow a breach of the suit under flash conditions.

Dry the suit immediately after washing and do so per the manufacturer's instructions. Any material left damp will degrade more rapidly than if dried properly. Also, material left damp will grow moulds that can allow a breach of the suit under flash conditions.

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Underground Economy in Construction

– It Costs Us All

Prepared by John O’Grady, Prism Economics & Analysis

Over the period between 2007 to 2009, the annual estimated revenue losses to the WSIB, the tax system, the Canada Pension Plan and the EI system from underground practices in Ontario’s construction industry was in the order of \$1.4 billion to \$2.4 billion. Notwithstanding increases in enforcement by the Canada Revenue Agency, the Ontario government, and the Workplace Safety and Insurance Board (WSIB), underground practices remain a serious challenge for the construction industry in Ontario.

In the construction industry, the most important enabler of underground practices is the ability of contractors to improperly style their workers as ‘independent operators’ (i.e., sub-contractors) rather than as employees. Construction employers who characterize their work force as ‘independent contractors’ evade their obligations to provide WSIB coverage, and to make Canada Pension Plan (CPP) and Employment Insurance (EI) contributions.

Equally important, employers are not required to issue earnings statements (T-4 slips) to so-called ‘independent operators.’ In turn, this sets the scene for widespread under-reporting of earnings. “Independent operators’ are the basis of more than 80 per cent of the underground economy in Ontario’s construction industry. There can be no solution to reining in the underground economy which does not tackle the independent operator problem.

The media often focus on the ‘cash economy.’ While cash payments are an important contributor to underground practices, especially for evading the Goods and Services Tax (GST), the cash economy pales in significance when compared to the ‘independent operator’ problem.

Three indirect indicators point to a continuation, or further embedding, of underground practices in Ontario’s construction industry. First, the share of

‘independent operators’ in the employed construction labour force rose in 2009 to 22.2 per cent from 19.7 per cent in the prior year. Though lower than the peak of 24.2 per cent in 1999, the trend is moving in the wrong direction. Second, the ratio of cash to purchases by households increased sharply in 2009. The implication is that the cash economy also increased in size. And third, spending on residential renovations increased significantly. This sector accounts for around half of the underground economy in Ontario’s construction industry.

Important efforts have been made by the Canada Revenue Agency, the Ontario government, and the WSIB to step up their enforcement efforts. This has had a positive impact. While the underground economy is still a major challenge for the construction industry, our estimates suggest that the share of construction work that is carried out using underground practices has probably levelled off. Enforcement appears

to have stemmed the flow of new entrants into the underground economy, though it has not yet had a significant impact on those who already operate there.

There is a risk that the introduction of the HST will cause an increase in the amount of underground activity. This is not anticipated to be a significant effect as it will chiefly apply to cash-based transactions in the residential renovation sector where the practice is already widespread. The primary effect of the introduction of the HST on revenue losses will be to increase the amount of tax revenue that is lost from transactions that are already conducted on an underground basis. Had the HST been in effect, the losses to the provincial government would have been approximately \$290 to \$375 million.

One of the most significant statutory changes is Bill 119 which will extend mandatory WSIB coverage to independent operators and most executive officers. However, Bill 119 will not take effect until 2012. Consequently the impact of Bill 119 is not evident in these estimates of underground activity.

Bill 119 will have a significant impact, if it is effectively implemented, especially on the underground economy in the ICI sector. The ICI construction industry, and especially the unionized ICI construction industry, has a strong interest in ensuring effective implementation of Bill 119.

Bill 119's impact on the residential renovation sector may be diminished owing to a provision that exempts homeowners from requiring proof of WSIB coverage and also exempts them from liability for unpaid WSIB premiums related to work done on their premises.

The scale of the underground economy in Ontario's construction industry continues to be a serious threat to labour standards and to a level playing field for contractors. The most important underground practice is classing as 'independent operators' workers who should be classed as employees. By styling workers as 'independent operators,' contractors achieve an unfair and illegitimate competitive advantage that can range from 20 per cent of labour costs

to as much as 50 per cent. As well, these contractors may also avoid or diminish important employer obligations under the Occupational Health and Safety Act. The underground economy is so large that it contaminates the competitive environment by shifting competitive advantage to those contractors who evade their responsibilities as employers.

The underground economy undermines the coverage of benefit plans and weakens support for apprenticeship and training. By

shifting costs onto others, the underground economy increases the operating costs of workers and contractors who follow the rules. Even with the implementation of Bill 119, significant challenges will remain.

Article provided by The Ontario Construction Secretariat. The full report is available for download on the OCS website at www.iciconstruction.com. Questions may be directed to Katherine Jacobs at kjacobs@iciconstruction.com.



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Improper or unchecked torquing of wheel nuts are the most common factors in these claims. When wheel nuts are over-torqued, studs can become stretched causing them to break. Rims can also crack as a result of over-torquing. In both of these situations excess force is placed on the remaining wheel nuts and studs. The increased force on the remaining studs weakens them, causing them to break, resulting in a detached wheel.

Under-torquing can be just as serious, allowing the wheel nuts to be loosened easily under much less force. Again, the result is a detached wheel.

There are some products on the market that can assist with this problem by either alerting when a wheel nut has lost torque, or by preventing the wheel nuts from backing off. However, proper torquing by a qualified technician is the

best measure you can take to prevent detached wheels. Whenever the wheel nuts have been removed for tire repair or replacement, it is essential that the wheel nuts be torqued to the manufacturer's specifications.

But your obligation does not end there. Wheel nut tightness should be checked after a certain period of use, usually 80 kilometres. Your drivers must be made aware of this requirement and be advised that they must have this done. Your best defence, should a lawsuit arise, is documentation that you have performed all maintenance and safety measures to ensure that your vehicles are safe. Many businesses are putting reminders in their vehicles. A sample wording is as follows:

"Your wheel nuts have been torqued to manufacturer's specifications. Wheel nut tightness should be checked after 80 kilometres of driving."

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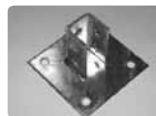
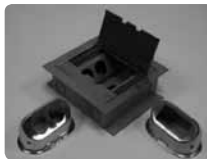
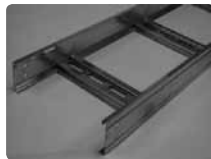


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Volume 48 • Number 4
Fall 2010

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