

4 important construction industry trends to watch

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Overview

The construction industry has remained strong in Canada but still faces several challenges such as labour shortages, supply chain challenges, contractor insolvencies and congested courts. There are also many new and emerging trends in the industry that look to address these challenges as well as evolve the industry.

Four key emerging trends in the construction industry:

1. Disclosure of insurance policies in litigation

Proponents argue that disclosure of insurance policies in litigation may assist parties to be in a more informed position to reach a negotiated settlement. It will be interesting to see whether any Canadian authority will follow the rule-led expansive approach of New York and New Jersey. In the meantime, litigants in Canada will face a patchwork of rules, based on the province or territory of their disputes.

2. Disclosure of settlement agreements

While Ontario has most recently revisited the immediate disclosure rule in depth and at the appeal level, courts in other provinces have also considered the issue and applied the principles. In general, such other provinces recognise and adopt the obligation to disclose settlements in certain circumstances; however, the remedies for a failure to do are less severe compared to Ontario and include elevated cost sanctions or abuse of process remedies but only in rare and exceptional cases.

Given the severe consequences and remedies for failure to comply with the immediate disclosure obligation, it is imperative to give or receive appropriate advice in connection with resolving disputes while a party to proceeding.

3. Use of innovation and technology

Consistent with society's focus on innovation, the construction industry has been increasingly incorporating technology into its processes to improve on metrics such as accuracy, efficiency and safety. Drones, autonomous vehicles, digital twins, 3D printing, modular construction and wearable devices are only a few ways that innovation is changing the landscape of the industry. At the same time, there is a focus on collaboration, with the parties working together towards a common vision, sharing equally in the risks and rewards of the project. The place where this focus on innovation and collaboration commonly intersect is through the use of Building Information Modeling (BIM). The use of BIM technology, as well as other innovations, is a trend that is expected to grow moving forward.

4. Use of blockchain technology in the construction industry

For several years, blockchain technology's potential to revolutionise the legal industry has been a frontrunning subject of interest and has generated a great number of articles discussing the use of "smart contracts" in real world situations.

Despite these significant technological developments, however, the use of smart contracts in the construction industry remains not only far from common practice but is virtually unheard of. With that in mind, and to keep an eye on future developments, a noteworthy new form of blockchain-based contracts is emerging: "live contracts." Although the terms "smart contracts" and "live contracts" are sometimes used interchangeably, a live contract purports to be easily understandable from both human and computer perspectives. Indeed, live contracts aim to allow for automation without giving full control to machines.

You can read the full Construction Law 2023 Trends and Developments Practical Guide on the [Chambers website](#).

For more information on any of the topics discussed in this report, please reach out to any of the key contacts below.

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