

June 5, 2025

Infrastructure Ontario
1 Dundas Street West, Suite 2000
Toronto, ON M5G 1Z3

Attention: Mr. Herman Ng

**Re: Infrastructure Ontario (IO) OAA 600 and CCDC 31 Supplementary
Conditions – “Constructor” Obligations Under the *Occupational Health
and Safety Act* (OHSA)**

Mr. Ng,

We are writing on behalf of the Ontario Association of Architects (OAA), the Association of Registered Interior Designers of Ontario (ARIDO), and the Association of Consulting Engineering Companies–Ontario (ACEC–Ontario) regarding our serious concerns with certain terms included by IO in its Supplementary Conditions to both the OAA 600 – 2021 Standard Form of Contract for Architect’s Services (the **IO OAA 600 SCs**) and the CCDC 31 – 2020 Service Contract between Owner and Consultant (the **IO CCDC 31 SCs**) as provided by you on April 11, 2025.

The terms cited below were introduced in the IO OAA 600 SCs and IO CCDC 31 SCs after industry consultation was concluded last fall. Unfortunately, there was no opportunity to consult on the terms cited below before the SCs were finalized. Consequently, we are highlighting implications related to these terms in this letter.

GC02.4 to GC02.6 of the IO OAA 600 SCs and paragraphs 2.1.32 to 2.1.34 of the IO CCDC 31 SCs require the Consultant “to act as the “constructor” and fulfil all obligations as “constructor” under the OHSA. **These terms are of significant concern, primarily because these are not activities that are covered by the definition of engineering or architecture.** Furthermore, design consultants “design” a project; they do not “undertake” a project for the owner. Not only do these terms expose the Consultant to uninsured risk, but requiring the Consultant itself to undertake this role may also expose all other “employers” under the OHSA to liability.

We are concerned by the introduction of language that nullifies available insurance coverage and may inadvertently work against IO’s broader risk management objectives. The *R. v. Sudbury* line of cases have made clear that a key part of all “employers” obligations under the OHSA (including IO) is to ensure the role of “constructor” is undertaken by a person with sufficient skill, knowledge, and expertise to assume these critical obligations. Failure to properly delegate this role could result in an “employer” being found not to have been duly diligent in exercising its obligations under the OHSA.

As noted, the role of “constructor” is not usual or customary to the practice of architecture and/or engineering and is uninsurable under professional liability insurance policies. Consultants’ insurance policies do not cover any errors, omissions, or negligence in their performance of any “constructor” obligations. As such, it is the industry’s standard understanding that Consultants are not responsible for construction means and methods, including site safety. The roles and responsibilities of a constructor represent a liability assumed under contract that does not otherwise exist in common law and, therefore, a claim would also be declined on this basis.

For these reasons, we strongly recommend that IO not require any Consultant to perform the work of a “construction project” as such terms are defined under the OHSA since the performance of such works are outside the practice of architecture and/or engineering. Understanding, however, that IO may nevertheless elect to assign “construction project” works to a Consultant, at a minimum, all terms of the IO OAA 600 SCs and IO CCDC 31 SCs should be revised to make clear that the Consultant’s obligation is not to undertake this role directly, but instead to facilitate this role being undertaken by a person or entity qualified to do so.

In this way, Consultants are not misled into believing they must undertake this role directly, exposure to uninsured risk is mitigated, and the interests of all employers on site are better protected.

We hope that IO will be amenable to implementing these changes to its IO OAA 600 SCs and IO CCDC 31 SCs, and we remain happy to discuss them further with you. Should these changes not be implemented, however, it is our intention to issue formal notices to our respective members that alert them to these concerning contract terms and the risks they pose to Consultants.

Sincerely,



Kristi Doyle

Executive Director, Ontario Association of Architects



Andrew Hurd

Executive Director, Association of Consulting Engineering Companies–Ontario



Sharon Portelli

Executive Director, Association of Registered Interior Designers of Ontario

CC: Ontario General Contractors Association