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INSIGHTS

CANADA'S "BUILD DECADE" WILL ALSO BE A "DISPUTES DECADE"

by Prem Lobo and Dan Ross





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If you want to forecast the next wave of commercial litigation, just follow the federal budget.

**2025 Federal Budget
Projected 5 Year Spending:**
Infrastructure - \$115 Billion
Defence - \$81.8 Billion



Canada’s 2025 budget signals a step-change in infrastructure spending that is unlike anything seen in decades. It commits \$115 billion over five years towards major infrastructure across core public assets and trade/transport corridors. In parallel, Canada has also set out an ambitious defence agenda: \$81.8 billion over five years to rebuild, rearm and reinvest in the Canadian Armed Forces, including a “build, partner, buy” procurement philosophy that aims to prioritize Canadian suppliers before turning abroad and to award 70% of federal defence contracts to Canadian firms within a decade, up from about 43% today.

More projects, more suppliers, more contracts and more pressure to deliver quickly. For both litigators and loss quantification experts, the chief takeaway is not only the scale of Canada’s planned investments, but what generally tends to follow when governments spend at this scale and speed, with evolving objectives, and a crowded field of stakeholders: more disputes, in more places, and with more parties at the table.

How investment turns into litigation

Large public programs inevitably produce friction. They create a dense web of contracts, approvals, financing and stakeholder expectations. Add in compressed timelines, labour constraints and political pressure, and the likelihood of disagreements climbs. The result is an “aftershock” of claims that often arrives years after the first shovel hits the ground.

1. Higher procurement volume + tighter margins = more bid disputes

More tenders attract more bidders. As competition intensifies, bids are priced more tightly, leaving less room for error and unexpected costs. With thinner margins, there is greater likelihood that procurement outcomes will be scrutinized and challenged. Ottawa’s defence procurement strategy also prioritizes sovereign control and domestic IP retention, which will add a further layer of high-stakes and interpretive requirements. Put together, expect more disputes over evaluation criteria, fairness, domestic-content rules and bid compliance.

2. More government contracts lead to more contract terminations

A significant increase in government contracts is likely to lead to an increase in contract terminations – whether for cause or for convenience. Government contracts often follow Public Works and Government Services Canada’s (PWGSC) Standard Acquisition Clauses and Conditions (SACC). SACC set out various payments to be made to a contractor upon a contract termination, including payments for finished goods, work in process and reasonable profit. However, there is often considerable professional judgment and interpretation required for proper application of SACC, including with respect to costs under Contract Cost Principles 1031-2 and the determination of reasonable profit.



3. Faster approvals can push risk downstream

A new Major Projects Office will be tasked with identifying and fast-tracking projects in Canada's national interest, reducing approval timelines from the previous average of five years to a maximum of two. Policy efforts to accelerate projects may shorten pre-construction timelines, but at the cost of increased risk. Compressed front-end schedules often mean that design and scope are still evolving once work starts, which are classic conditions for change-order disputes, delay and disruption claims, and eventual disagreements over areas of responsibility. When projects move from conception to execution at speed, disputes are more likely.

For instance, parties may end up disputing whether cost overruns stem from properly approved change orders and scope evolution, or from contractor inefficiencies and execution issues. Sorting out these claims typically requires a methodical, fact-based review that gets down into the details.



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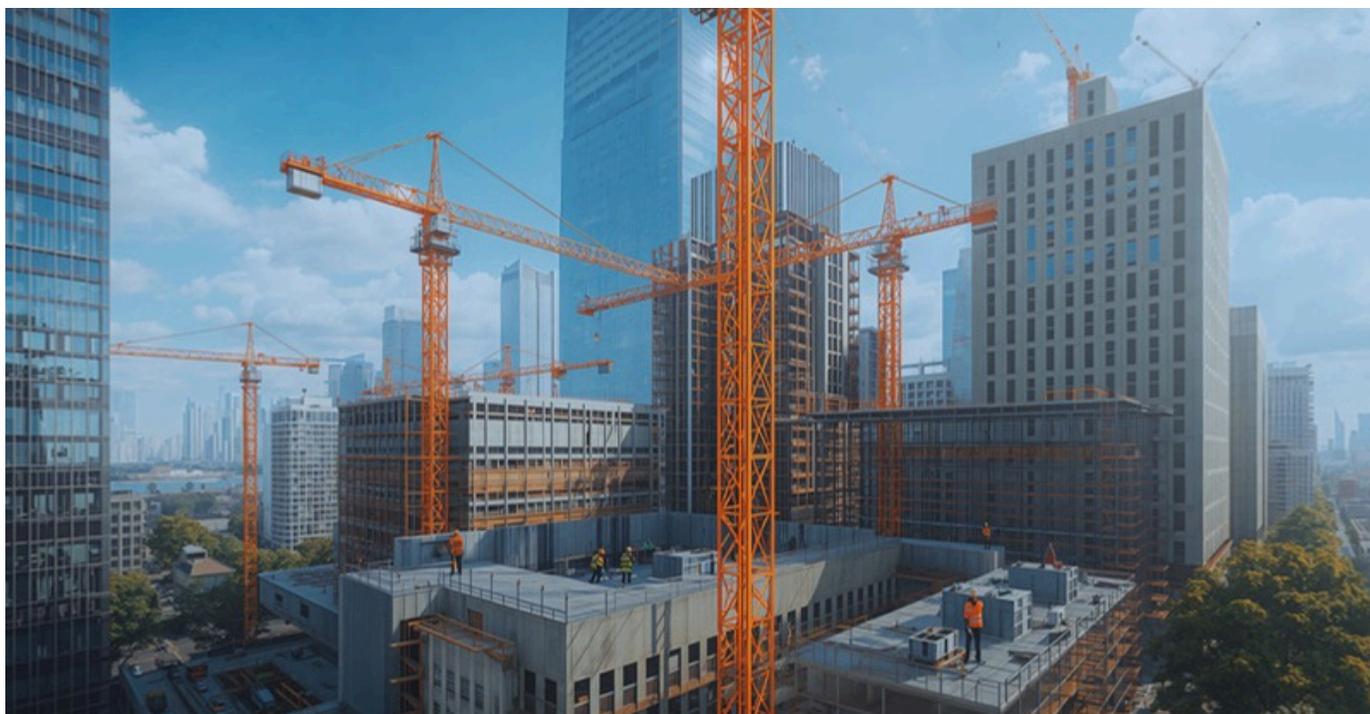
4. Capacity constraints become delay and cost-overrun claims



Labour availability, productivity pressures and supply-chain disruption are not abstract risks – they materially affect real projects. With infrastructure and defence procurement ramping up at the same time, the competition for skilled trades and specialized inputs will intensify. The resulting strain can be expected to drive subcontractor claims and disputes involving cost escalation, force majeure and terminations.

5. More multi-party delivery models, more cross-claims

The 2025 budget emphasizes greater leveraging of private capital for public projects, including a \$1 billion investment for Business Development Bank of Canada (BDC) to launch a fund-of-funds initiative aimed at encouraging greater institutional participation. As more projects are financed and delivered through public-private partnerships, joint ventures, and tiered subcontracting, the number of contractual relationships will multiply. With more parties at the table, performance issues are likely to result in cross-claims cascading across the delivery chain – between owners and project entities, prime contractors and subcontractors, JV partners among themselves, and designers and builders. All of which requires a methodical, fact-based approach to quantifying losses up and down the value chain.



6. Land and corridor priorities raise expropriation issues

Major resource, transit and trade-corridor projects rarely fit neatly within existing rights-of-way. They require land assembly, easements, temporary access and are likely to involve negotiations with multiple landowners and rights holders. The budget also allocates \$19 billion toward Indigenous infrastructure and places greater emphasis on Indigenous partnership in major projects. Even where the expropriation authority is clear, compensation is rarely simple, particularly where business losses, injurious affection, relocation costs or partial takings are in play.

The damages question is often “how much and why?”

While liability often turns on contractual interpretation, resolution often turns on money: what losses were actually caused, which costs were incremental, what would have happened “but for” the delay or breach, and how should business interruption losses be properly measured and supported. The earlier that counsel can frame a defensible damages theory, the more leverage they will typically have at mediation, arbitration, or trial.

Where CHS fits in

Cohen Hamilton Steger & Co. assists commercial litigators with the quantification issues in their cases. We work with Counsel to translate complex project events into credible damages analyses that are supported by evidence and grounded in commercial reality. Our experience spans a broad range of project-related matters, including procurement disputes, breach of contract claims, expropriations, and insurance claims involving business interruption and construction delay.

Canada’s “build decade” is about to begin, and commercial disputes are likely to follow. These large-scale public investments are intended to strengthen our nation’s resilience and sovereignty, but they will also generate a steady stream of matters where disciplined, defensible damages analysis can materially influence outcomes.



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AUTHORS



Prem Lobo
CPA, CA, CBV, CPA (U.S.), CFE, CFF,
AM, ABV, CEIV, CIA
Principal
416 304 7020
plobo@cohenhamiltonsteger.com



Dan Ross
CPA, CA, CBV, CFF
Principal
416 304 7024
dross@cohenhamiltonsteger.com

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With offices in Toronto and Ottawa, CHS is a leading Canadian boutique specializing in damages quantification, business valuation and forensic accounting services. Our Principals have been involved in many of Canada's largest financial quantification mandates and provided expert testimony in matters in various Canadian and international courts and arbitrations.



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