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Have an **IDEA** for the **Specifier ?**

**We would love to hear from you!**

Announcements, upcoming events, or technical articles are welcome and encouraged! Any submissions for the Specifier can be emailed for review and we will do our best to get it into print. Deadlines are the last Friday of the month for the following month's newsletter. Share your knowledge — **this is YOUR industry!**

Kelley Sawatzky, Temporary Newsletter Editor  
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# BREAKFAST MEETING

## HOT TOPICS— A COMPENDIUM OF THE LATEST LEGAL ISSUES ARISING IN CONSTRUCTION SPECIFICATIONS

Presented by Marina Pratchett,  
QC Fasken Martineau DuMoulin LLP

Marina Pratchett will address legal issues of interest to us on a potpourri of topics including the following:

- problems arising from specifying a specific product or system
- dangers of adding 'legal' clauses to specifications
- performance specifications
- specifications that inadvertently off-load design responsibility to Contractors
- legal concept of duty to warn and its application to Specification Writers
- specifying green: legal issues

Agenda: 7:00–7:45 am Breakfast (full course self-serve buffet style)  
7:45–8:00 am Chapter Business  
8:00–9:00 am Guest Speaker Presentation

Location: Sandman Hotel, 180 West Georgia Street, Vancouver  
Enter Moxie's Classic Grill escalator entrance. The ballroom is located straight through the restaurant at the back of Moxie's.

Cost: \$32.00 for pre-registered CSC members / Association Executive Directors  
\$48.00 for non-members  
Prices include HST

*Register On-Line or complete and return the attached Registration Form*

Parking: Sandman Hotel Parking: Enter off Cambie Street, pass the Sandman Hotel Breezeway, underground parking to the left, press buzzer to access parkade and take elevator to restaurant level. Cost is \$1.25 per 15 minutes.  
Easy Park: Across the street on the corner of Georgia and Cambie Streets. Cost is \$1.50 per 30 minutes.

Skytrain: Exit at Stadium-Chinatown Station. Walk 2 minutes



CSC Vancouver is a Registered AIBC Provider  
AIBC Members will receive 1 Learning Unit for attending each CSC Breakfast meeting.

Register online at <http://vancouver.csc-dcc.ca> or fill out the form here

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Executive 2011 –12**

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**2012 PROGRAM**

*All Meetings are (U.N.O.):  
7 am Breakfast  
Sandman Inn, Vancouver*

**OCTOBER 6**

**LESSONS LEARNED: LIVING BUILD-  
ING CHALLENGE**  
*Max Richter, MAIBC, LEED AP*

**NOVEMBER 9**

**Vancouver Construction Fair:**  
**“Simple But Revealing”**  
*A focused look at manufacturers’, sup-  
pliers’ and distributors’ products within  
the Vancouver market.*  
8:30am–4pm, Wall Centre

**NOVEMBER 17**

**“Getting to Green” from a Contractor’s  
Perspective**  
*Susan Hildebrand, GSC, LEED AP,  
Scott Construction Group*

**DECEMBER 15**

**BC’S Construction Outlook**  
*Keith Sashaw, President, VRCA*

**JANUARY 19**

**Hot Topics—A Compendium of the  
Latest Legal Issues Arising in  
Construction Specifications**  
*Marina Pratchett, QC, Fasken Martineau  
DuMoulin LLP*

**FEBRUARY 16**

**Improving Sustainability with  
Portland Limestone Cement and  
Pervious Concrete Pavements**  
*Bryan Russell, LEED AP BD+C  
& Rob Asquith, Lehigh Concrete,  
and Todd Kruszewski, PEng, MBA,  
Director of Market + Technical  
Affairs, CAC*

**MARCH 15**

**Prefab Design and Construction**  
*Oliver Lang, MAIBC, Lang Wilson Prac-  
tice in Architecture Culture*

**APRIL 19**

**The Architectural Woodwork Stan-  
dards—Answers for Specification  
Writers and Design Professionals**  
*Jim Taylor, Principal,  
Seagull Enterprises*


**MAY 17**

**UBC Faculty of Pharmaceutical  
Sciences / Centre for Drug Research  
and Development**  
*Bill Uhrich, MAIBC, HCMA  
Saucier + Perrotte Architects and Hughes  
Condon Marler Architects*

**MAY 23-27**

**OTTAWA, ONTARIO  
CSC NATIONAL  
CONFERENCE 2012:  
“REFLECTIONS”**

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*The opinions and comments expressed by the authors published herein do not necessarily reflect the official views of Construction Specifications Canada. Also, appearance of advertisements and new product or service information does not constitute an endorsement of products or services featured.*

# WORD'S FROM THE CHAIR

— January 2012



## Happy New Year, 2012

Sitting at a recent CSC breakfast meeting, I was delighted to learn of the great experiences and thoughts about our Vancouver CSC Chapter and the value that it brings from an independent specification writers perspective.

Working independently isn't always easy. Being on your own with no one to bounce ideas off with, share experiences and knowledge, and occasionally to vent, can be a bit lonely and frustrating at times.

It was explained to me, how many specification writers have met through this association and how valuable this association has been to them. There is great networking, collaboration and sharing of ideas, updates and trends for both materials and technology.

In some cases, there is a sharing of work load, and even leads for new work, when some are busier than others and this helped them out of a bind a time or two!

So if you know a Specification Writer who is on an island, and I don't mean Vancouver Island, please forward them our newsletter, or better yet invite them out to a breakfast meeting!

## Board Movement:

**Lori Elling/Newsletter Chair** is moving on to new adventures,

We would like to thank Lori for all that she has done with the CSC Newsletter, taking it to a whole new level, she has done a fantastic job. We would also like to thank Lori for all the help she gave to our board and to our members all the while she was with CSC.

We will all miss you Lori and we wish you all the best in your future endeavors!

*continued on next page...*

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...Words from the Chair, continued

**Help Needed:**

**2012 CONSTRUCTION FAIR LEADER / COODINATOR**

We looking for some \one to head up the 2012 Construction Fair — we have a large constituent of helpers but need a leader. Please call me at 778 840 1012 or email@ mschwartzman@cgcinc.com

**This Months Meeting:**

We start our 2012 breakfast meetings off with Marina Pratchett QC, from Fasken Martineau DuMoulin speaking about the latest legal issues arising in construction specifications, it promises to be a good presentation, see you there January 19th

Wishing you all the best for a Happy, Healthy and Prosperous New Year.

Melodie Schwartzman, CTR  
CSC Vancouver Chapter Chair

**BOARD VACANCY**

We are looking for someone to take over the Newsletter duties and sit on the board for the remainder of the year. You would be required to receive the reports of various officers, gather a bit of industry news, and forward the information to our desktop publisher. In addition, you would attend monthly meetings from February through May. If you like it, perhaps you'd like to stay on for next year. Try it! You'll like it! It is a great experience (just ask us) and have the opportunity to work with industry leaders (just ask us!)

Please contact Kelly Sawatzky (604) 676-8113 or Melodie Schwartzman (778)840-1012 if you are interested.

## INDUSTRY ORGANIZATIONS

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### DIVISION 01: GENERAL REQUIREMENTS

Construction Waste Management – BuildSmart

<http://www.metrovancouver.org/buildsmart/>

### DIVISION 02: EXISTING CONDITIONS

Demolition / Deconstruction – BuildSmart

<http://www.metrovancouver.org/about/publications/Publications/dlctoolkit08web1.pdf>

### DIVISION 03: CONCRETE

Cement Association of Canada

<http://www.cement.ca/>

Canadian Precast Concrete Institute

<http://www.cpci.ca/>

### DIVISION 04: MASONRY

Masonry Institute of BC

<http://www.masonrybc.org/>

Masonry Institute (American)

<http://www.masonryinstitute.com>

### DIVISION 05: METALS

Canadian Institute of Steel Construction

<http://www.cisc-icca.ca/>

### DIVISION 06: WOOD, PLASTICS, & COMPOSITES

Architectural Woodwork Mfrs' Assoc.

<http://www.awmac.com/bcchapters.php>

Western Red Cedar Lumber Association

<http://www.wrcla.org/>

### DIVISION 07: THERMAL & MOISTURE PROTECTION

Roofing Contractors Association of BC

<http://www.rcabc.org/>

BC Sheet Metal Workers Associations

<http://www.smacna-bc.org/>

### DIVISION 08: OPENINGS (DOORS, WINDOWS)

Steel Door Institute

<http://www.steeldoor.org/>

Canadian Steel Door Manufacturers Assoc

<http://www.csdma.org/>

Door Hardware Institute

<http://www.dhi.org/>

Glazing Contractors Association of BC

<http://www.gca-bc.org/>

### DIVISION 09: FINISHES

Association of Wall and Ceiling Contractors of BC

<http://www.awccbc.org/>

Gypsum Association

<http://www.gypsum.org/>

Master Painters Institute

<http://www.paintinfo.com>

Carpet and Rug Institute

<http://www.carpet-rug.org/>

National Flooring Covering Association

<http://www.nfcaonline.ca/>

National Wood Flooring Association

<http://www.nwfa.org/member/>

Terrazzo, Tile and Marble Assoc. of Canada

<http://www.ttmac.com/>



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Contact the Newsletter Editor for info on advertising in this space — we also have full page ad space especially for your product launches!

## TECH NOTES

### Site conditions different from bid documents

By: Bill Preston, Robertson Stromberg Pedersen Barristers and Solicitors—CSC Saskatoon Chapter

You will find that the **Site Conditions are different than the Bid Documents** upon which you bid your stipulated work. You feel you're entitled to an extra, right? Not necessarily; it depends! What to do? Clearly, if your Contract Terms permit you to promptly give a Written Notice of a Claim for Extras and also entitle you to retain your right to have a dispute determined later, **do so perfectly**. Otherwise, read on. A recent Ontario case involving a Subcontract dispute which did not have these dispute/defer terms can help provide you with some answers.

In *Asco Construction Ltd. v. Epoxy Solutions Inc.*, Epoxy was awarded the concrete floor topping repair Work for renovations to the Kingston Grand Theater. Epoxy's Bid Price was based upon both a sketch reporting the existing floor elevations as well as an Architect's detailed spec's of what finish Epoxy's Work had to achieve. The problem was with the elevations on the sketch; in places, they were out by as much as 2", and all of the discrepancies would reasonably increase Epoxy's costs by as much as 45%! Who bears the risk of sucking up these costs? Asco, the General Contractor, took two positions: Firstly, it weaseled by saying that if later it was determined Epoxy's costs increased, it would plead to the Owner's Consultant for payment of these costs; and secondly, that Epoxy had no claim for Extras because it ought

to have known when it bid the job that the elevations on the sketch were approximate and thus Epoxy ought to have included this risk in its Bid Price. The Owner's position was simple: the Bid Documents required Asco, as the General Contractor, to do whatever elevation surveys were needed; while, the Court determined that Asco/Epoxy Subcontract Terms had not passed this obligation on down to Epoxy. Finally, Epoxy took the position that it could not have been aware that the sketch elevations were significantly different from the actual. But, unfortunately, Epoxy did not have in its Subcontract Terms the below usual terms found in the CCA/CCDC Standard forms:

8.1.3 If a dispute is not resolved promptly, the Contractor shall give instructions for the proper performance of the Work to prevent delays pending settlement of the dispute. The Subcontractor shall act immediately according to such instructions.

8.3.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the Notices in Writing required.

Thus, Epoxy refused to start its Work until Asco either prepared the floor surface to near the elevations on the sketch drawings, or agreed to pay an extra for Epoxy's increased costs. Asco did neither. Rather, it tried to persuade Epoxy to start its Work by using words (often heard on other construction projects) like:

"You must start. If later it is found that more costs are required, it will be dealt with at that time."

"I agree with you that there is not sufficient information supplied by the sketch; we will later refer the matter to the Consultant."



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... Site conditions different from bid documents... continued

“You are one month behind schedule. Dumping this on us...being a month late...kind of unprofessional joke and if you do not meet and solve this with architect’s approval...I will find a new subcontractor for the job. I have no more patience for you.”

Eventually, Asco’s weaselling did not entice Epoxy to start performance of its Work, and thus Asco terminated Epoxy and hired another for costs above Epoxy’s Bid Price.

Asco sued Epoxy for both its additional costs as well as for impact costs which it incurred because Epoxy delayed the Project’s completion. In turn, Epoxy counterclaimed for lost profits because Asco had wrongly terminated its Subcontract. Epoxy won hands-down! Asco was denied its claim while Epoxy was awarded it lost profit on the basis that Asco wrongfully terminated the Subcontract! Here’s the Judge’s reasoning:

1. Where there is a Subcontract bid process, a Prime Contractor stands in the same position and has the same obligations toward a Subcontractor as apply to an Owner tendering the Prime Contract.
1. Thus, in the absence of a warning announcing the unreliability of the sketch, or a well drafted weasel clause in the Bid Documents, Asco has a duty to reasonably make available to Epoxy the actual floor elevations, or at least elevations sufficiently close as to permit Epoxy to do its Work without a Change Order.
2. And, if as here, Epoxy before starting Work discovers that the elevations are so far off as to substantially change its costing and/or schedule, Epoxy must not start the Work because to do so is an acceptance of the surface without a change in either the price or schedule.
3. Rather, Epoxy must get a Change Order or a Change Directive; Judges won’t require that the price of the Change Order be certain, because they will imply reasonable market value, but Asco must agree that Epoxy is entitled to an extra payment by it, not the Consultant nor the Owner for whom Asco does not have the authority to commit their credit.
4. And, in this case, Asco never agreed.
5. Thus, if the Subcontract had included the usual dispute/defer CCA/CCDC standard terms, Epoxy must perfectly give Asco a Written Notice and defer termination of its claim until later.
6. But here, because the Subcontract did not have these terms, Epoxy was in a tough spot; does it start Work and hope that someone will later make a sympathetic extra payment?
7. Or, does it take the chance that later a Judge will decide either that:
  - 8.1 Epoxy ought to have known that the sketches elevations were only unreliable estimates which Epoxy should have either verified before bidding, or priced in its Bid Price; or,
  - 8.2 The elevation variances were not “substantial to a degree changing the character of Epoxy’s Work”.
9. Here, the Court had no trouble finding:
  - 9.1 A two inch variance and a cost change of 45% is “substantial”; while,
  - 9.2 The Court did not expect Epoxy to be aware of this variance at the time of its take off because the actual floor

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... Site conditions different from bid documents... continued

surface was not viewable given the demolition debris and scaffolding covering the floor, and the fact that usually, in the industry, bidders do not invest in the costs of an elevation survey until they have been awarded the Work.

- 10. Thus, Epoxy was always entitled to access to the Project's Site once Asco brought the As-Built Floor Elevations close to those reported in the sketch which was part of the Bid Documents.
- 11. And, for this reason Asco's termination was wrongful, entitling Epoxy to lost profits and Court costs.

### CONCLUSION

Here's what I take from this case:

- 12. The Bid Caller should make sure that its Bid Documents and the eventual Construction Documents call for pretty much the same Work, and that any difference can be solved by a no credit Site Instruction.
- 13. The Bid Caller has a duty to disclose all known material circumstances or to clearly warn the Bidder to investigate and take the risks.
- 14. While, the Bidder should exhaust its opportunity to investigate and seek clarifications or addenda so as to be able to reasonably take off a Bid Price from the Bid Documents.
- 15. And, the Bidder should assure that the spec'd Contract B (the Construction Contract) has the usual CCDC/CCA dispute and deferral terms so that it can start and complete what the Bid Caller wants, while continuing to be entitled to a fair award on its Extras claims.
- 16. Otherwise, if the Construction Contract spec'd in the Bid Documents does not have these usual terms, the Bidder runs the risk of having to refuse to work and later having to pay the extra expenses of a competitor to do its Work because it was unable to satisfy the Judge that there was a substantial difference between the Bid Documents and the Construction Documents to the degree causing "a change to the very character of the Bidder's Work."

## MEMBERSHIP REPORT

.....

Dec. 2011

The Vancouver Chapter membership has increased to 169 members.

Four new members have joined the CSC Vancouver Chapter.

Please help us to welcome:

Mr. Wayne Hendersen from Trex

Ms. Carrie Spencer, BA from RDH Building Engineering Ltd.

Mr. Andrew MacPhail, LEED AP, Dipl. BT from CEI Architecture Planning Interiors

Mr. Todd Gerrard from Enercorp

We hope to see you out at our upcoming CSC Vancouver Breakfast Meeting on January 19th, 2012. Presented by Marina Pratchett, QC Fasken Martineau DuMoulin LLP on Hot Topics—A Compendium of the Latest Legal Issues Arising in Construction Specifications.

## EDUCATION REPORT

.....

Congratulations to the fall 2011 Technical Representative (TR) course participants. A very successful course with four new graduates on their way to become Certified Technical Representatives (CTR) after their panel presentations in January.

The Education Committee would like to thank TR course Administrator and Instructor Glenn Chatten of Specworks Consulting Inc. as well as guest speaker Melodie Schwartzman for helping the students understand the concepts of being great technical representatives and making this course a success.

*continued on next page...*

... Education Report... continued

In the new year we are pleased to offer the Construction Contract Administration (CCA) course starting on Monday January 16th(tbc) and running for approximately 14 weeks. Registration is limited so do not wait to get your registration forms sent in. Course fees are \$650+HST for members and \$750+HST for non-members.

CSC Vancouver Chapter's proposed education schedule for 2012 is as follows:

- January—CCA
- April—PCD
- September—Specifier I

If you or your colleagues have any interest in taking these courses with us, please let us know by contacting our Education Officer, Spencer Todd at [spencer.todd@stantec.com](mailto:spencer.todd@stantec.com)

## ADVERTISING: NEWSLETTER & WEB

Advertising with us will provide you with the opportunity to reach readers within the industry through the newsletter and on the CSC Vancouver website.

Size	Members	Non-Members
1/4 page	\$45	\$60
1/2 page	\$80	\$100
Full page	\$140	\$175

You will receive advertising space on the second page of the Specifier and on the CSC chapter website. The ad will be placed in one issue of the Specifier and reside on the website for one month. Ads must fit on one page only and are not limited to copy content or visual features.

If you are not sure whether the Specifier would be an appropriate tool for you, please email me with your questions. If you would like to advertise, or have any questions, please let me know. All advertising content is subject to pre-approval by the responsible CSC Committee.

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**ANNOUNCEMENTS**  
.....

CSC will be holding a half day seminar on Product Assessment and Selection in March.

Stay tuned for more information!



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## DIRECTOR'S REPORT

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### January 1, 2012

Last month I referred to the Association's Strategic Plan. However, it got lost and we found it under a pile of wrapping paper. Please find it below.

Please note that I will be attending the next Director's meeting in March 2012.

If you want any further information about the activities of CSC nationally, please contact the undersigned.

Kelly Sawatzky

Director, Vancouver Chapter

## STRATEGIC PLAN

### 1. Marketing Strategy:

To increase awareness and participation in CSC branded products.

**Owner:** Marketing committee chair

**Initiatives:**

To develop a marketing plan - broken down into separate plans related to industry, youth, other organizations

**Goals:**

- Increase membership,
- Increase participation and
- Increase sales

**Metrics:**

- 10% increase in membership,
- 20% increase in education, and
- 10% increase in sales

### 2. Communication Strategy

Within membership to increase dialogue between members/chapters

**Owner:** Executive Director

**Initiatives:**

- Frequent short communication w/ members,
- encourage 2-way communication,
- provide separate communication w/ R&C members

### Goals

- Get consistent message to members,

### Metrics

- 6 messages by President in addition to those in Construction Canada,
- electronic audit related to communication,
- get at least 2 reports to registered and certified members separate from other communications

### 3. Membership Strategy

CSC cannot exist without a strong and engaged membership. The membership strategy is about building and maintaining membership

**Owner:** 4th VP

**Initiatives**

- Increase membership of emerging, and young design professionals, maintain existing members

### Goals

- Target young professionals – A/E, GC and subtrade contractors, interior designers, FM people, technicians/technologists;
- demonstrate value of membership to members;
- increased diversification of members,

*continued on next page...*

...Strategic Plan... continued

**Metrics**

- 6%+ in new members;
- 0 membership cancellations

**4. Education Strategy**

CSC will have a development program that promotes our education programs within CSC, schools and other associations

**Owner:** VP ECC

**Initiatives:**

- Create a mentoring program geared towards D/C community;
- Develop sustainable and consistent course delivery system

**Goals**

- Have course criteria that satisfies accreditation requirements;
- Attract younger demographic to take courses

**Metrics**

- Within 2 years have course accreditation

**5. Certification Strategy**

Improve recognition of CSC designations within Canadian construction industry

**Owner:** President

**Initiatives:**

- Get reciprocity from other certifying bodies;
- Get recognition from other professional associations;
- Have recognition of CSC designations as core points for professional continuing education programs

**Goals**

- Create alliance with CaGBC;
- Create alliance with cBc

**Metrics**

- Timeframe to be determined

**6. Association Governance Strategy**

CSC will have the right governance structure to support long term growth and development of the Association

**Owner:** President

**Initiatives:**

- Develop, maintain and implement goal oriented strategic plan;
- Develop an orientation plan within all levels of Association;
- Development a succession plan for chapter and board executive

**Goals**

- All Ass'n exec and chapter exec will be knowledgeable in strategic plans and CSC policies;
- Smooth transitioning w/in chapters and at EC;

**Metrics**

- Year 1 – have goal oriented strategic plan in place;
- Year 2 – EC and chapter exec. orientation;
- Year 3 – succession plan is implemented.

Strategy	Owner	Initiatives	Goals	Metrics	Performance
Marketing – to increase awareness and participation in CSC branded products	Marketing committee chair	Marketing Plan - broken down into separate plans related to industry, youth, other organizations	Increase membership, participation and sales	10%+ in membership, 20%+ in education, and 10%+ in sales	Committee members have changed, Website up and running, Mbr Kits sent out to each member and available to chapters. Launched “Share the Experience” and “ I am CSC” at Conference 2011 Need to look at metrics for this area.
Communication – within membership – increase dialogue w/ members	Exec. Director	Frequent short communication w/ members, encourage 2-way communication, provide separate communication w/ R&C members	To get consistent message to members	6 messages by President in addition to those in Construction Canada, electronic audit related to communication,	Presidents messages to be sent out shortly after the Board meeting.
Membership/Chapter development – build and maintain membership	4th VP	Increase membership of emerging, and young design professionals, maintain existing members	Target young professionals – A/E, GC and subtrade contractors, interior designers, FM people, technicians/technologists; demonstrate value to members; increased diversification of members	6%+ in new members; 0 cancellations	New contest prizes New Kits GRV/London Chapter rejuvenation ongoing.
Education – CSC will have a development program that promotes our education programs within CSC, schools and other associations	VP – ECC	Create mentoring program geared towards D/C community; develop sustainable and consistent course delivery system	Have course criteria that satisfies accreditation requirements; attract younger demographic to take courses	Within 2 years have course accreditation; get at least 2 reports to registered and certified members separate from other communications	Specifier 2 was completed and has been already been offered. TR Online gone live Specifier 1 On line beta course starts Sept 12, 2011.

Strategy	Owner	Initiatives	Goals	Metrics	Performance
Certification – improve recognition of CSC designations within Canadian construction industry	President	Get reciprocity from other certifying bodies; get recognition from other professional associations; have recognition of CSC designations as core points for professional continuing education programs	Increase # of registered/certified (R/C) members; give more understanding of the value of R/C members	2% of members becoming R/C annually	
Industry Alliances – continue to develop alliances and partnerships with other organizations to the benefit of membership and the industry	Chair – Publications	To seek new alliances and partnership opportunities	Create alliances with CaGBC, and cBc	Time frame?	Continue existing alliances
Association Governance – CSC will have structure to support long term growth and development of the Ass'n	President	Develop, maintain and implement goal oriented strategic plan; develop orientation plan within all levels of Association; development succession plan for chapter and board executive	All Ass'n exec and chapter exec will be knowledgeable in strategic plans and CSC policies; smooth transitioning w/in chapters and at EC;	Year 1 – have goal oriented strategic plan in place; Year 2 – EC and chapter exec. orientation; Year 3 – succession plan is implemented.	