Singleton Urquhart LLP
1200 – 925 West Georgia Street
Vancouver, BC V6C 3L2
T 604. 682 7474
F 604. 682 1283
su@singleton.com
www.singleton.com

Glenn A. Urquhart, Q.C., C. Arb.

RESOLVING CONSTRUCTION DISPUTES – THE ALTERNATIVE DISPUTE RESOLUTION PROCESS

© 2009 Singleton Urquhart LLP

RESOLVING CONSTRUCTION DISPUTES

THE ALTERNATIVE DISPUTE RESOLUTION PROCESS

Glenn A. Urquhart, Q.C., C. Arb.

TABLE OF CONTENTS

I. INTRODUCTION ... **3**

II. REFEREE ... **3**

A. FAIRNESS COMMISSIONER ... 5

III. MEDIATION ... **5**

A. GENERAL ... 6
B. THE PROCESS ... 7
C. SETTLEMENT ... 8
D. MEDIATION-ARBITRATION PROCESS ... 8
E. CONCLUSION – MEDIATION ... 9

IV. ARBITRATION ... **9**

A. SELECTION OF THE ARBITRATOR ... 10
B. JURISDICTION OF THE ARBITRATOR ... 12
C. THE ARBITRATION PROCESS ... 13
D. THE HEARING ... 14
E. THE AWARD ... 14
F. ENFORCEMENT OF THE ARBITRATOR'S AWARD ... 14
G. APPEALING THE AWARD ... 14

V. CONCLUSION ... **15**

© 2009 Singleton Urquhart LLP

RESOLVING CONSTRUCTION DISPUTES

THE ALTERNATIVE DISPUTE RESOLUTION PROCESS

Glenn A. Urquhart, Q.C., C. Arb.

I. INTRODUCTION

The purpose of my comments is to discuss with you this afternoon a method of resolving construction disputes that does not involve the courts. Since approximately 1990 more and more construction cases have been turned over to the alternate dispute resolution (ADR) process. As a result there are almost no construction cases proceeding through the courts in British Columbia. I understand the same process is occurring in many other provinces in Canada. This change is so for a number of factors.

The alternate dispute resolution process can be more effective, more efficient, less costly and more timely than the standard process through the courts. There are now in British Columbia a well trained compliment of referees, mediators and arbitrators to assist parties to a construction conflict in resolving the issues between them.

Most businesses desire resolution of their dispute with other parties in a construction project in a timely and efficient manner. Generally this can be achieved by using the alternate dispute resolution process. Thus it is very important for people in the construction industry to understand the alternate dispute resolution process, how it works, and how it can be utilized by members of the industry in resolving construction disputes.

There are three principal areas that I wish to review with you today as a means of resolving construction disputes. They are as follows: (A) Referee; (B) Mediation; and (C) Arbitration. All processes can work for any party. It is necessary for the parties to determine and obtain guidance from trained and knowledgeable people in the alternate dispute resolution process as to best method that will serve your purpose in resolving your dispute. Let me deal with these issues in order.

II. REFEREE

The Referee process is not a new one and has been around for some time. It is used primarily in large construction projects with a value over approximately $2,000,000 to $3,000,000. Construction documents usually contain a provision that where there is a dispute, that the parties will attempt to negotiate the dispute, and if they cannot arrive at an amiable solution, then it will be referred to the Referee who is appointed pursuant to the Parties Contract. There are specific

© 2009 Singleton Urquhart LLP

time periods set down when the claimant must submit the dispute or claim to the Referee for a Change Order or an Equitable Adjustment under the contract. The submission to the Referee can be made by any party which claims that it is entitled to an adjustment or a change to the contract. The timeframes normally specified are that either party may submit a dispute or a claim within 10 days of being aware of the nature of the dispute or claim and that the Respondent would submit a Reply to the Referee within five days of receiving the claimant's submission, and the Referee would then provide a determination within 10 days.

The object is to have the Referee determine disputes at the time, or within a reasonable time of the dispute or claim arising during the course of the project. In this way the matter can be resolved and the project proceeds on.

The Referee is normally selected by agreement between the parties once the contract has been entered into. If the parties cannot agree on an appropriate Referee then there can be an application made to a court or an independent party to select a Referee. An independent party may in fact be somebody such as the British Columbia Mediation and Arbitration Institute ("BCMAI").

The use of a Referee on a construction project is normally a term of the contract or, alternatively, a subsequent agreement that if or when a dispute or a claim arises that a Referee would be appointed and become involved. It is important that the Referee's decision is not binding on either party unless it is clearly specified to be binding in the contract. Normally the provisions of the contract provide that after the Referee's decision has been delivered to the parties they each have a period of time, usually 15 days, to appeal the decision by requesting an arbitrator be appointed to arbitrate the appeal, which is in effect a new trial and I will discuss the arbitration procedures below.

There is of course a drawback with respect to using a Referee. In my experience the Referee process works more than adequately if the decisions by the Referee on the dispute or claim can be made by the Referee during the progress of the project. This procedure seems to work particularly well if the contractual terms provide for an equitable adjustment, and that the Referee is to base his opinion on being equitable, namely, applying principles of fairness. If the Referee has that mandate to apply principles of fairness as opposed to strict legality with respect to the contract it is very difficult to subsequently overturn the Referee's determination, enough though it is not binding. This is so because a subsequent arbitrator has difficulty putting himself or herself in the position of the Referee who probably heard the matter five or six months earlier and has made a determination based on fairness.

In an arbitration where there is an equitable adjustment provision in the contract then normally the arbitrator is also bound to apply principles of fairness as opposed to strict legal positions. Thus, in

© 2009 Singleton Urquhart LLP

an equitable adjustment type of contract the decision of the Referee during the course of the work may in effect be binding on the parties.

An important factor is selecting a Referee who has suitable experience and qualifications to perform the job as the Referee. In addition, the Referee must have prestige and influence so that the parties will accept the Referee's determination as being a binding resolution of the dispute.

A. FAIRNESS COMMISSIONER

In some situations the contract has provided for a Fairness Commissioner who meets with the parties when a dispute or claim arises by either party during the course of the project and attempts to resolve it very quickly by meeting with both parties, hearing their positions and providing non-binding comments as to the validity of the dispute or the claim. This process has been adopted with considerable success on the Sea-to-Sky highway, and is also being used on the Pitt River Bridge construction. What this approach using a Fairness Commissioner does is assist the parties by having an independent party provide objective comments as to the dispute or claim at an early date during construction.

One of the most important features of the Referee Determination is that it is made quickly and in a timely fashion during the progress of the work. I am concerned about using the Referee process after the work on the project has been completed. I say this because the Referee should be used by the parties during the course of the work to make timely and quick decisions so that the project can be moved forward. Once the project is completed the Referee can get bogged down with myriad of submissions and arguments which delay and increase the cost of the whole Referee process, which is still non-binding. Thus, if there are a number of disputes or claims that are unresolved at the end of the project these should be referred to mediation or arbitration, which I will discuss below. This is so because the Referee process, in being a non-binding process, is usually not as effective as it can be during the progress of the work.

Thus, if the project has been completed, the parties should resort to other alternate dispute resolution processes, namely, mediation and arbitration.

III. MEDIATION

Mediation is a process which has received greater acceptance by business, particularly in the last 10 years. The business and insurance community has recognized that trials are too costly and has therefore resorted to mediation as a dispute resolution process. The process has been effective in the construction industry and this approach has been confirmed by the dramatic drop in litigation in the British Columbia courts relating to construction disputes.

© 2009 Singleton Urquhart LLP

There are two types of mediation and they are as follows:

A. Mediation which is agreed between the parties or provided for in the construction contract;

B. Mediation which can be statutorily required pursuant to B.C. General Regulations 4/2001. Under this type of mediation one party can demand that the other parties to an existing litigation attend a mediation and participate in it pursuant to the Regulation.

It is arguable whether failure to attend the Regulation 4/2001 mediation will have any serious consequences, but most parties do attend the mediation and many times they are successful. The difficulty with this type of mediation is that if one party elects not to contribute or actively participate in the mediation, it can result in a failure of the mediation. Whereas if all the parties agree to participate there is a much higher opportunity for success.

A. GENERAL

In my opinion one of the most important factors to take into consideration in a mediation is the appointment of the mediator. The parties should ensure that the person that is to be appointed as the mediator is someone who is conversant with the construction industry, has had experience in construction mediations and is respected by the parties. It is very important that a mediator not have any bias or conflicts that would affect the mediator's ability to assist the parties in the mediation.

The whole purpose of the mediation is to achieve a resolution on an expeditious basis at a reasonable cost.

The mediation is established by the appointment of the mediator, who in turn at a preliminary meeting assists the parties in determining the length of the mediation, starting times, location, when mediation briefs are to be supplied, the production of expert reports and matters of this nature leading up to the date of the mediation. Most mediations can be resolved in one day; however, there are some that take more than one day. These are however unusual. The purpose of the mediation is to agree upon an accepted value for the claims that are in dispute. There are many ways that the claim can be resolved. Not all of the claims require a monetary resolution; there may be other considerations that can result in a resolution.

The mediator is not present at the mediation to make findings or rulings as to who is at fault or the amount of any contributory negligence. The mediator does not make rulings that are binding on the parties. One of the important features of a mediation is that it is conducted on a confidential

© 2009 Singleton Urquhart LLP

basis and therefore all the discussions at the mediation are without prejudice and cannot become evidence in any subsequent proceedings.

Thus, a Mediation Agreement is prepared and executed at the mediation so that all parties agree and acknowledge that the mediation is without prejudice to any parties. The importance of this agreement is that it allows all the parties to be open and frank with respect to the mediation discussions, particularly with the mediator. This agreement on without prejudice discussions is made so that the parties have no fear that anything revealed in discussions at the mediation become evidence at a subsequent proceeding.

A mediation, if the parties work hard at the mediation, is capable of delivering unplanned rewards and dividends for the parties. It may be necessary during the mediation to caucus with each party, and everything that is discussed at the caucus is also without prejudice. The intent of the caucus is for each party to explain to the mediator what is the position of the party and what they are prepared to contribute to the mediation to resolve it. At the caucus, unless otherwise indicated, the information that is disclosed to the mediator at the caucus is not to be disclosed to the other side(s) unless there is an agreement to that effect. Thus the primary role of the mediator is to assist the parties to have clear, effective communications and exchange of information. There may be options that arise that can bring the parties closer together, and it is also an opportunity to test the validity of some of the parties' assumptions, facts and opinions.

The mediator may provide a neutral opinion on the value of the case to each of the parties.

The parties should actively participate throughout the mediation and they should advise the mediator as to what is their position and what they expect to accomplish in the mediation. The mediator should be persistent because it is the mediator's obligation to try and shepherd the parties towards a resolution.

The mediation process is an opportunity for each party **to** assess their case, and the case being advanced by the opposing parties. This occurs by the mediator exploring, identifying and discussing alternatives and resolutions that are available to the parties.

In a mediation not all controversies are capable of resolution. However, the parties should not take unmovable positions because a mediation is a compromise of a dispute and the positions of the parties.

B. THE PROCESS

The normal process that is followed in a mediation is that the claimant prepares a brief which is circulated to the other side, and at the mediation a short summary of that position is orally

© 2009 Singleton Urquhart LLP

delivered by the claimant to the Respondent. The Respondent, having delivered a Mediation Brief, also responds to the comments of the claimant, and if necessary there is a Reply by the Claimant.

It is usually at this initial stage that the parties caucus so that the mediator can ascertain what is the nature of the dispute and what are the parties' positions so that the mediator can be in a position to try and achieve a resolution.

One of the most important factors is that the parties stay at the mediation all day and work at resolving it by determining how they are prepared to resolve the mediation. The mediation may involve two parties or, alternatively, it may involve a large number of parties. In my opinion most mediations can solve the problem if the parties work hard at it and are reasonable in their approach towards the mediation, by making compromises and utilizing options as to the manner in which the dispute can be resolved.

It may also be helpful, during a mediation where the parties are not too far apart to have the principals of both parties meet (without lawyers) to see if they can resolve the dispute.

C. SETTLEMENT

If a settlement is achieved, then that settlement should be transcribed by the mediator and the parties should execute the Preliminary Settlement Agreement before adjourning the mediation A more detailed Final Settlement Agreement/ Release can be prepared (if required) at a later date. That Preliminary Settlement Agreement is binding on the parties. What was discussed prior to the Settlement Agreement is really irrelevant. The Preliminary Settlement Agreement can be used for whatever purpose the parties desire.

The courts have found that a form of Mediation Settlement Agreement can in fact be enforced in the court even though it is only one page long. The authority for this is *Century v. Cressey*, 2003 BCCA 655.

D. MEDIATION-ARBITRATION PROCESS

In this process if a settlement is not achieved at the mediation phase it is then converted to an arbitration with the mediator becoming an arbitrator. I do not agree with a mediation-arbitration process. The problem I see is that the mediator wants all the parties to be frank in their discussions with the mediator. However, if the parties know that the mediator will, if the mediation is unsuccessful, become the arbitrator who provides a binding decision, then the parties may be less than frank at the mediation with the mediator. This process can result in a failed mediation; where if both parties were frank with the mediator a resolution could have been achieved.

© 2009 Singleton Urquhart LLP

E. CONCLUSION – MEDIATION

The important factors in a mediation are:

1. Selecting a qualified competent mediator properly who sets up the mediation process with pre-mediation meetings;

2. Convincing the parties that a mediation is a compromise solution of a dispute;

3. Ensuring the parties have confidence in the mediator and that there is no bias by the mediator towards either of the parties;

4. Advise the parties of the alternative, namely litigation, its cost and the effect on the parties;

5. Always draft a Mediation Agreement at the end of a successful mediation and have the parties execute or sign the agreed Mediation Agreement.

IV. ARBITRATION

The arbitration process normally arises out of a failed Referee process or a failed mediation process or by an agreement between the parties to arbitrate. The purpose of an arbitration is to provide a final binding decision on the parties pursuant to the arbitration agreement between the parties and the arbitrator as to what are the relevant issues between the parties.

An arbitration is similar to a trial except that the parties are able to pick the arbitrator of their own choice as opposed to the courts where the Judge is normally appointed usually without the agreement of the parties. The court process is considerably more formal and more lengthy, and more expensive. Some examples of the difference in expense are the following:

1. Use of the court system means that the Government in British Columbia will be charging the claimant $400 per day for use of the court room. That money, $2,000, must be paid by the claimant at the end of each week.

2. The length of the trial hearing per day is normally from 10:00 a.m. to 12:30 p.m. and 2:00 p.m. to 4:00 p.m. An arbitration can run from 9:00 a.m. until 12:00 p.m. and from 1:00 p.m. to 5:00 p.m., which is double the productive time of the court system.

3. An arbitration can be conducted in less formal surroundings and in a less formal manner.

© 2009 Singleton Urquhart LLP

4. The court trial will normally not occur until all the typical processes, such as disclosure of documents, examinations for discovery, interrogatories etc. are utilized. In an arbitration these procedures may or may not be necessary, and if they are necessary, they are usually accomplished more quickly and to a less complicated degree.

Some of the factors:

1. Confidentiality;
2. Selection by the parties of the Arbitrator;
3. Speed – less preliminary trial type process;
4. Helps to maintain existing relationship between the parties
5. Choice of location.

The process of arbitration can be set in motion in a number of ways. The simplest ways are the following:

1. Arbitration is provided for in a contractual agreement. It is important in the contractual matrix on a construction project to ensure that all parties are involved in the arbitration process. This is so because it is necessary to involve perhaps architects, engineers, subcontractors and other parties in any arbitration so that the total matter is fully resolved at the same time.

2. If there is no agreement in the contract documents the parties can simply agree to resolve their dispute by arbitration and the appointment of an arbitrator.

3. The parties can approach an arbitration agency, such as the BCAMI for assistance in setting up an arbitration.

It is important to note that in the contractual relationship if an arbitration is mandatory pursuant to the Contract Documents, then the parties are not entitled to utilize court services except in unique circumstances.

A. SELECTION OF THE ARBITRATOR

The first important matter that should occur is the selection of the arbitrator by the parties. My recommendation is that unless there are very unusual circumstances there should only be one arbitrator appointed. The appointment of one arbitrator reduces cost and the problem of having each party appoint a person, and those two arbitrators then agree on a third chairperson arbitrator.

© 2009 Singleton Urquhart LLP

This is a very expensive and time-consuming process because it is difficult to get all of the arbitrators together for a hearing and any adjournments.

The most important step in any arbitration in my view is the selection of the arbitrator in construction cases. In an arbitration the parties have a unique opportunity to select the person they want to act as their arbitrator, who will provide the parties with a binding Award on their dispute. Thus it is important to determine the type of arbitrator you want and to retain one who has the appropriate expertise, experience and qualifications to deal with the dispute.

Similar to a mediator, the person should have construction experience and should have been involved in a number of prior construction arbitrations. It is relatively easy to determine the suitability of an arbitrator by finding out from them what work they have performed and then discussing the issue with other counsel or parties that have been involved with that person as an arbitrator.

In my opinion the arbitrator should have at least been involved in a minimum of five paid arbitrations where the arbitrator acted as the sole arbitrator.

Once the arbitrator has been appointed then a formal Arbitration Agreement should be entered into between the arbitrator and the parties, indicating the basic issue(s) to be determined, e.g. the provisions of a construction contract, delays, costs, etc. by providing this information to the arbitrator and incorporating it into an Arbitration Agreement. This Agreement defines the jurisdiction or limits of the arbitrator's authority under the Arbitration Agreement. The Arbitration Agreement should indicate which rules are to be applied; are the BCICAC rules to be applied, or as indicated in some contracts, some other form of rules?

The parties can always agree that some provisions of the rules need not apply or additional provisions will apply. There are many types of arbitrations that can be used, such as a binding arbitration or a non-binding arbitration, or contractual arbitrations, or documents only arbitrations. In the latter type of arbitration it is not necessary to have a full hearing, but the arbitrator is merely supplied with submission document by each party, and no formal hearing is held.

In some cases a mediator is converted into an arbitrator. As I have stated earlier, I do not agree with this process. There should always be two separate individuals, a mediator and another who is the arbitrator. I am of this view because a mediator cannot function properly with the parties, if the parties know that if they cannot reach an agreement the mediator will then convert into an arbitrator.

The function of the arbitrator is to act like a judge, keeping in mind that the arbitration is a private process based upon the law and natural justice. The arbitration award, unless the parties agree, is

© 2009 Singleton Urquhart LLP

not to be disseminated to the public. The arbitrator should be a neutral person, and should have a working knowledge of construction law and must treat the parties fairly and equally. An arbitrator cannot be a witness or an advocate for either party and must apply the relevant law.

In dealing with the law there has been a recent decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick* [2008] 1 S.C.R. 291. This case indicated the principles that must be applied by the arbitrator in an arbitration. The Supreme Court of Canada has decreed that henceforth the courts are to choose between two standards for reviewing arbitration decisions, namely, correctness and unreasonableness. Thus, one of the basic principles is that the award of the arbitrator must be reasonable in the sense that the decision must have justification, it must be transparent and it must be intelligent within the decision-making process. An arbitrator's decision must fall within the reins of possible, acceptable outcomes which are dispensable in respect of the facts and the law that arise during the arbitration. In addition, in dealing with the contractual portion of the arbitration, the arbitrator must advance or promote the true intent of the parties at the time of entering into the contract. Therefore an unrealistic result from use of a literal meeting would not be utilized if it could not be contemplated in the commercial atmosphere in which the contract was entered into.

An arbitrator must also establish the words of the contract in light of the whole of the contract and the intention of the parties that are expressed in that contract. But the arbitrator must keep in mind sound commercial principles and good business sense. The provisions of the contract should not be read as standing alone, but in light of the contract as a whole and the provisions thereof (see *Group Eight Investments Ltd. v. Taddi* [2005] B.C.J. No. 2134 (C.A.) at paragraphs 19 and 22, and also *Scanlon v. Castlepoint Development Corp.* [1992] 99 D.L.R. 4th, Leave to Appeal was Refused, [1993] S.C.C.A. No. 62.

B. JURISDICTION OF THE ARBITRATOR

The jurisdiction of the arbitrator or the arbitrator's legal authority arises from the intention of the parties in the Arbitration Agreement and/or the arbitration statute. The intention of the parties is to be determined from the Arbitration Agreement or the provisions of the contract between the parties if one exists.

An arbitrator has also the jurisdiction to make preliminary rulings, such as issues related to discovery of documents and individuals, and issues as to whether there are points of law that could be considered in advance.

It is import that lawyers recognize when they are acting as arbitrators that there is a significant difference between litigation and arbitration. An arbitration is an adversarial process but it need

© 2009 Singleton Urquhart LLP

not be confrontational. Arbitrations can be flexible; however, there must be some rules to be used to control the conduct of the arbitration.

The arbitrator has a duty to hear all the relevant evidence advanced by the parties. All the parties should be present at the arbitration. The basic principles of natural justice apply. That is, the arbitrator should be unbiased and fair to both sides. He must listen to both sides and must allow both parties to present their cases fully and to answer the case of the other side.

C. THE ARBITRATION PROCESS

After the arbitrator has been appointed, the arbitrator should convene a meeting to discuss a myriad of factors with the parties, some of which are the following:

1. Date and location of the arbitration;

2. Hearing times during the day;

3. Discovery process;

4. Experts – and are their reports to be utilized;

5. Documents – the relevant documents should be assembled by the claimant, and the respondent should provide the additional relevant documents it believes are relevant then they should be assembled in chronological order and presented to the arbitrator at least one week in advance of the hearing;

6. The parties should also provide the arbitrator with opening submissions and/or a statement of the claim and response. A schedule should be required by the arbitrator as to timing of these events;

7. Witnesses – if possible, each party should exchange a list of witnesses;

8. Witness Affidavits – the parties should agree that the witness statements will be provided to the arbitrator in the form of statements or affidavits; this process expedites the hearing to a considerable degree as it is not necessary to spend a great deal of time on direct evidence and the opposing party can proceed almost immediately into cross-examination on the statement or Affidavit. There should be dates when in an agreed schedule as to when these documents should be produced;

9. Court Reporter – the issue should be discussed as to whether a court reporter is needed;

© 2009 Singleton Urquhart LLP

10. Site View – the parties may agree that the arbitrator should view the site at some time before the arbitration commences. In my opinion a site view would be a unique or unusual.

D. THE HEARING

The hearing is very similar to a trial except as indicated above, it is under a more relaxed atmosphere, and the usual Rules of Evidence apply but can be relaxed to some degree. The procedure that would be followed at the arbitration hearing would resemble that which occurs in a court room.

The arbitrator also has the right, pursuant to the *Commercial Arbitration Act* to issue Subpoenas to witnesses to attend and bring relevant documents.

E. THE AWARD

After the completion of the hearing the arbitrator will provide an Award. In some cases there is a timeframe set for the delivery of the Award. The arbitrator's Award is different from the Reasons for Judgment obtained from the court. The Reasons for Judgment are not really an Award until such time as an Order is filed subsequent to the Reasons. The Award of an arbitrator cannot be amended except with the consent of both parties. The Award should generally follow the same reasoning process as would Reasons for Judgment of a trial.

All Awards must be in writing and can deal with the question of costs, unless that has been agreed upon at an earlier date.

F. ENFORCEMENT OF THE ARBITRATOR'S AWARD

The arbitrator's Award can be enforced by filing it with the courts in British Columbia and may be enforced in a similar basis as a Judgment of the Court.

G. APPEALING THE AWARD

The time period in the enabling Statute is normally limited to either 30 days or 6 weeks. In British Columbia it is 30 days. An appeal is taken by making an application to the court primarily on the basis of an error in law. The following are grounds for attacking the Award:

1. Error of law or fact and law made by the arbitrator. It is difficult to attack the facts adjudicated upon by the arbitrator.

2. The arbitrator lacked or exceeded jurisdiction.

© 2009 Singleton Urquhart LLP

3. The arbitrator is guilty of misconduct. The primary argument related to misconduct normally revolves around the issue of bias.

As indicated above the Supreme Court of Canada has set down criteria of reasonableness and correctness, and the Award should be reasonable and should be correct, and if so, it is difficult to appeal the Award.

Once the arbitrator has signed and delivered the Award, the arbitrator is then functus unless the parties agree to re-open the Award or, alternatively, the arbitrator has left part of the Award undecided or for future discussion such as a question of costs. In that case the Award is an Interim Award and the final Award would be made by the arbitrator after dealing with the subsequent matter.

V. CONCLUSION

All of the above processes using alternate dispute resolution procedures are unique and have been found to work in various circumstances. It is necessary to determine which process works best for you, and how to incorporate that process in your construction projects. In my opinion the best manner of doing that is determining that in advance with the parties prior to entering into any agreement so that there is no doubt as to what process or processes are to be followed. In my view there is no doubt that the alternate dispute resolution process has definite advantages over the court system, both in the area of economics and in timeliness of results.

The following are five tips from Jam's Global Construction Solutions on alternate dispute resolutions:

1. Choose an effective ADR process while everyone is still friends is a good idea;
2. A project neutral takes any perceived bias out of the dispute evaluation process;
3. A project neutral removes the dispute resolution to the front end of the project;
4. A project neutral helps to prevent small problems from festering into big ones;
5. The project neutral can work with the parties to proactively prevent disputes.

These materials were prepared by Glenn A. Urquhart, Q.C., C.Arb., Singleton Urquhart LLP, Vancouver, BC for a conference held in Vancouver, BC hosted by Pacific Business & Law Institute, January 27, 2009

© 2009 Singleton Urquhart LLP