

# Helmut K. Johannsen P.Eng., C.Arb, FCIArb

## Retired Counsel

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### PROFESSIONAL BACKGROUND

Helmut Johannsen is Counsel (retired) and a former member of the Alternative Dispute Resolution Group, Construction and Infrastructure Law Group, and Co-Chair of the International Construction Projects Group at Singleton Urquhart Reynolds Vogel LLP.

His transactional and dispute resolution practice focuses on all aspects of law related to construction, engineering and procurement.

He has acted as counsel on complex civil litigation cases and arbitrations involving construction, engineering, procurement and technical matters.

Helmut assists clients in the areas of:

- developing and preparing procurement processes
- preparing standardized procurement documents and contracts
- drafting, tendering, negotiating, award and interpretation of all types of equipment, supply, construction, architectural and engineering contracts
- documents and contracts for major infrastructure and energy projects, including power plants, rapid transit, LNG and gas pipeline projects
- related construction insurance and bonding

His dispute resolution practice includes negotiation, litigation, arbitration, mediation and other alternative dispute resolution processes. He is a Chartered Arbitrator (ADR Institute of Canada) and has acted as arbitrator (sole, panel member and panel chair), dispute panel member and referee on a number of construction and engineering disputes.

In addition to being a Lawyer and Arbitrator, Helmut previously worked as and still remains a Registered Professional Engineer with a background in geotechnical, structural and municipal engineering. This complementary knowledge and experience in engineering and construction, including ability to read and understand drawings and technical specifications, and his experience in dispute resolution, allows Helmut to act effectively as an arbitrator or adjudicator, and to provide clients with strategic advice not only in early resolution of disputes but also, prior to award of contracts, in identifying and mitigating risks to minimize disputes during the performance of contracts.

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### RANKINGS + RECOGNITION

- Ranked in the area of Construction Law by *Best Lawyers Canada*®
  - Recognized in *Who's Who Legal* as one of North America's Best Construction Law Global Thought Leaders
  - Recognized in *Who's Who Legal* as a Leading Lawyer in each of the following: Construction Law; Government Contracts; and Mediation
  - Recognized as a Leading Construction Lawyer in the *Canadian Legal Lexpert*® Directory
  - Recognized in the *Lexpert*®/Report on Business Infrastructure Special Edition
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Alternative Dispute Resolution  
Construction and Infrastructure  
Law  
Domestic and International  
Arbitration

(604) 764-0022

### Assistant:

N/A

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### EDUCATION

- Called to the Yukon Bar, 2017
- Diploma in International Arbitration, Chartered Institute of Arbitrators, 2015
- Chartered Arbitrator, ADR Institute of Canada, 1988
- Called to the British Columbia Bar, 1981
- Bachelor of Laws, University of British Columbia, 1980
- Bachelor of Applied Science (Civil Engineering), University of British Columbia, 1975

## MEMBERSHIPS

- Fellow, Past President and ex-officio board member of the Canadian College of Construction Lawyers
  - Fellow, and board member (2020-2023), American College of Construction Lawyers
  - Fellow, International Academy of Construction Lawyers
  - Professional Member, Dispute Resolution Board Foundation
  - Member, International Bar Association, co-chair (2018& 2019) of International Construction Projects Committee, and past chair of Project Execution Subcommittee
  - Past director of ADRBC and chair of arbitrator credentials committee
  - Member, ADR Institute of Canada (Chartered Arbitrator, 1988-present)
  - Member, International Council for Commercial Arbitration (ICCA)
  - Registered Professional Engineer, BC Association of Professional Engineers & Geoscientists (1977-present)
  - Member, Tunneling Association of Canada
  - Member (past chair), Construction Law Section of Canadian Bar Association
  - Member, Builders Lien Act Reform Project Committee, British Columbia Law Institute
  - Council Member (2018 & 2019), International Bar Association Section on Energy, Environment, Natural Resources and Infrastructure Law (SEERIL)
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## EXPERIENCE

### **Procurement, Negotiation and Preparation of Contracts:**

- Represented owner in advising on procurement strategy and preparing procurement documents and EPC contract for new process plant in New Brunswick currently under development.
- Represented international EPC contractor regarding two major LNG projects in B.C., including reviewing contracts and advising on risks and revisions required during negotiation of contracts.
- Represented an EPC contractor in negotiating and finalizing an EPC contract with a First Nations band for a new sewage treatment plant in the lower mainland of B.C., including reviewing and advising on revisions to technical output specifications and performance guarantees.
- Represented Terasen Gas (now FortisBC) in negotiation of a contract (including specifications) for construction of a new gas pipeline under the new Sea to Sky Highway, concurrently with construction of the new Sea to Sky Highway under a PPP contract with the Province.
- Assisted the legal advisor team to Transports Québec and the Agence des Partenariats Public-Privé du Québec for the 7.2 km Autoroute 25 toll highway PPP project in Quebec, which included the design, construction, financing, operation and maintenance of the completion of Autoroute 25 in the Montréal Metropolitan Area (including a cable stayed bridge and dedicated transit lane). This was the first PPP project that closed in Quebec.
- Represented Waneta Expansion Limited Partnership and personally prepared, negotiated and finalized all process and procurement documents, including RFPs, competition agreements and a \$587 million EPC contract, plus related engineering and other contracts, for the 335MW Waneta Expansion Powerplant Project. Member of owner's Management Committee monitoring project development, execution and early dispute resolution. Project completed ahead of original schedule, within original budget and no significant claims.
- Represented Barrick Gold Corporation in negotiating and finalizing new project management, construction management, construction, EPCM and EPC contracts, including target price and incentive sharing contracts, for the \$8 billion Pascua Lama Project, a major gold and silver mine that straddles the borders of Argentina and Chile. Also represented Barrick Gold Corporation in relation to an Alliance Agreement and EPCM template agreement for use on other projects.
- Special Advisor to Manitoba Hydro in relation to procurement and construction strategies and contracts for the \$3.2 billion Bipole III HVDC project in northern Manitoba which includes both conventional and EPC contracts and international suppliers and contractors, and advised Manitoba Hydro on procurement strategy and construction contracts for the \$6 billion Keeyask Generating Station Project.
- Represented Terasen Gas (now FortisBC) in preparing procurement documents, negotiating and finalizing a fully negotiated EPC contract for a peak-shaving LNG plant, including advising on and negotiation

performance guarantees and specifications. Project completed within original schedule, with less than 1% in change orders and claims, and surpassed all performance guarantees.

- Represented Korean engineering and construction contractor in negotiation of an EPC contract for a major project in the Oil Sands in Alberta, and assisted in resolution of claims arising from changed conditions encountered during execution.
- Represented major oil and gas utility companies, developed risk management strategies, and prepared, negotiated and finalized contracts for: construction of compressor stations on EPC basis; major pipelines; directional drills; underwater pipeline crossings; upgrades to existing facilities; and construction of regional and head offices and maintenance yards. Worked with project teams to review, comment on and assist in revising specifications and drawings to ensure completeness and eliminate ambiguities in and conflicts between documents.
- Represented Columbia Power Corporation and prepared all RFPs, proposal competition agreements and a fixed price EPC contract, plus related engineering and other contracts, for the 185MW Arrow Lakes Generating Station project (completed 22 months ahead of original schedule, within original budget, and exceeding all performance guarantees), as well as for the successfully completed 120MW Brilliant Expansion Generating Station.
- Represented contractor and negotiated contracts and construction specifications for oil field access roads for projects in Komi Republic and Russia, and for construction of a man-made island in Caspian Sea, Kazakhstan for an oil drilling platform.
- Represented Gold Reserve Inc. in negotiating and finalizing EPCM contracts (awarded April 2006) for the development of the Brisas mine project in Venezuela (capital cost US\$ 638 million), including process, infrastructure, tailings and camp facilities. EPCM contracts included EPC contracts within them for specific aspects of the project.
- Represented Abbotsford Regional Hospital and Cancer Centre Inc. and Partnerships BC regarding the P3 procurement process, output specifications and Project Agreement for a new 60,000 m<sup>2</sup>, 300 bed acute care hospital and regional cancer treatment center developed under a P3 contract for design, construction, financing, operation and maintenance.
- Represented Rapid Transit Project 2000 Ltd. in preparing, negotiating and finalizing the EPC Electrical & Mechanical Systems Contract, the EPC Vehicle Fleet Purchase contract and the EPC Automated Fare Collection contract for the \$1.2 billion Millennium Line rapid transit project in Metro Vancouver, and advised on and reviewed procurement documents and construction contracts for the balance of the project, including the guideway, tunnel and all stations.

#### **Dispute Resolution – General:**

- Represented owner in major disputes arising out of the failure of an EPC project, including in a CDN\$50 million claim against the owner's insurer and a concurrent CDN\$50 million claim against the EPC contractor. All claims efficiently and quickly resolved through short mediations, to the complete satisfaction of all parties.
- Represented owner in a CDN\$100 million claim presented by an EPC contractor in connection with alleged changes in subsurface conditions. Claim was successfully resolved through negotiation prior to completion without initiating arbitration or litigation proceedings.
- Represented road construction contractor in connection with major claims for changed conditions and additional compensation for construction of a new 130 km mine access road in remote northwestern B.C., including major river and mountain crossings, all resolved in contractor's favour as owner misinterpreted contract specifications.
- Represented numerous highway maintenance contractors in B.C. in claims against, and in defence of claims by, the Ministry of Highways under various Highway Maintenance Contracts, particularly over interpretation of specifications for construction and maintenance.
- Represented marine contractor in claims against owner, and in defence of claims by subcontractor, in dispute over interpretation of soil densification specifications for stone columns for a new loading facility.
- Represented owner in defence of claims by EPC contractor for alleged changed subsurface conditions and interpretation of bore hole results for soil densification design to meet foundation requirements.
- Represented major U.S. equipment supplier in dispute in Ontario with an EPC contractor over the supply, installation and commissioning of major equipment for an 800MW thermal power plant in Ontario.
- Represented, at various times, owners, contractors and subcontractors in connection with claims for additional costs and changed conditions, including damages for excessive settlement or differential

settlement, adequacy of foundation design, and alleged changes in subsurface conditions, for all types of projects.

- Represented surety in defence of numerous claims under performance bonds in BC, Saskatchewan, Ontario and Northwest Territories, including claims involving independent power projects, bridges, processing facilities, cogeneration projects, hospital construction, infrastructure and facilities, and in working on completion of bonded contracts.
- Represented EPC contractor in the defence of \$40 million action relating to an EPC contract for the design, supply and installation of 16 km overland coal conveyor at the Quintette Coal Mine, including many issues related to foundation design and subsurface conditions.
- Represented owner in a multi-million-dollar claim under EPC contract against a manufacturer for faulty design of major equipment for a pulp mill, which was successfully resolved by mediation in favour of owner.

#### **Dispute Resolution – Alternative Dispute Resolution:**

- Prepared numerous dispute resolution provisions for various EPC and PPP contracts, including for Dispute Review Boards, Dispute Adjudication Boards, Referee, Expert Determination and Independent Expert Review.
- Advised clients on arbitration and mediation provisions in international and domestic contracts, including arbitration and mediation processes, institutions, rules and procedures.
- Appointed Project Adjudicator on major highway interchange project in Manitoba.
- Appointed Chair of Arbitration Tribunal in dispute over claims and counterclaims in excess of \$300 million in central Canada over three EPC contracts for a major process facility, concluded in 2020.
- Appointed as member of arbitration panel established under the dispute resolution provisions of the 25 year P3 Concession Agreement for the design, construction, operation, maintenance, rehabilitation and financing of the Sea to Sky Highway.
- Advised counsel on construction and technical issues in an ICC arbitration of a dispute in Ecuador over the EPC supply of a gas-fired turbine genset.
- Advised EPC contractor on arbitration procedure and strategy regarding major breach of contract dispute between contractor and owner for a new bulk material handling and ship-loading facility in Aruba.
- One of three counsel in a three year international arbitration under the rules of the International Chamber of Commerce over an EPC contract, which involved all aspects of design, operation and maintenance of a complete, turnkey paperboard plant.
- Independent counsel to arbitrator in an international construction arbitration where questions over the arbitrator's jurisdiction, applicable law and rules of procedure arose after the hearing commenced and would have resulted in an unenforceable award. Assisted both the parties and the arbitrator by preparing a new arbitration agreement to apply retroactively that allowed arbitration to resume and be successfully completed without challenge.
- Independent counsel (with consent of parties) to a non-lawyer DRB, and to a non-lawyer referee, under various contracts for infrastructure construction, where the dispute resolution provisions were not working to assist the parties and the DRB/referee to revise and improve the process to work more productively and efficiently.
- Member of three-person arbitration panel in a construction dispute involving a contract for a new water distribution pipeline system.
- Chair of three-person arbitration panels, including in disputes over a major sewer line construction involving claims for changed subsurface conditions.

Sole arbitrator in a number of construction disputes, including: between a municipality and a contractor over development of a subdivision; between a municipality and a contractor over construction of sewer and water lines; between a contractor and subcontractor over changes in a construction contract; between owner and contractor over EPC supply and installation of a pre-packaged sewage treatment plant; between an owner and contractor on a large project constructed by construction management; and between an owner and contractor over the design and construction of a major vessel.

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#### **PUBLICATIONS**

- Co-author, "Dispute Review Boards: Fast, Effective Dispute Resolution," Letter of the Law, Fall, 2017

- Co-author, with Nicholas Shkordoff and Tom Barlow, of Canada Chapter of “The Public Private Partnership Law Review,” ed. 1, 2014
- Author, “Contractor/Subcontractor Default Insurance,” Journal of the Canadian College of Construction Lawyers, 2012
- Co-author, “Design-Build Project Delivery Challenges for Dams,” with John Nunn (Klohn Crippen Consultants Ltd.), September, 2002, published with conference proceedings for the Canadian Dam Association Annual Conference, September, 2002

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## PRESENTATIONS

### Presentations (from 2013 forward)

- *Construction Claims: Extras & Change of Scope*, Speaker, The Osgoode Certificate in Construction Law Program, annually from November 2014 to October 30, 2020 (Toronto, Ont.), April 13, 2016 (Calgary, Alta), and annually 2018, 2019 and 2020 (Edmonton, Alta.).
- Co-Chair, *Managing Risk in Construction Contracts*, The Canadian Institute, March 9-10, 2020 (Edmonton, Alta.).
- *Procurement Strategies and Project Disputes – Causes and Resolution*, Project Management Conference, November 26-27, 2019 (Yellowknife, NWT.).
- *USMCA: The United States-Mexico-Canada Agreement*, Canadian College of Construction Lawyers Annual Conference, May 30-June 2, 2019 (Niagara-on-the-Lake, Ont.).
- *Experts – Cost and Delay in Arbitration*, 13<sup>th</sup> Annual WCCAS Energy, Mining & Resources Arbitration Conference, May 7, 2019 (Calgary, Alta.).
- *Spotlight on Arbitration – ADR for Construction Professionals including Project neutrals, DRBs, DABs, Mediation & Arbitration*, The Canadian Institute, January 28, 2019 (Edmonton, Alta.).
- *Mitigating Subsurface Risk and Disputes In EPC Design-Build Projects*, The Eighth International Society of Construction Law Conference, September 26-28, 2018 (Chicago, Ill.)
- *Med-Arb: The Delicate Art of Combining the Best of Two Worlds*, Chair, ADRBC Symposium, June 2018 (Vancouver, B.C.).
- Co-Chair and speaker, *Managing Risk in Construction Contracts & Projects*, The Canadian Institute, Marcy 10-11, 2018 (Edmonton, Alta.).
- *The North American Free Trade Agreement*, American College of Construction Lawyers Annual Conference, February 24, 2018 (Dana Point, Calif.).
- *In the Minds of the Mediators – Demystifying the Mediation and Arbitration Process* (Moderator and Speaker) and *Bridging Divides – Aligning the Contract You Sign with the Contract You Execute* (Speaker), also Co-Chair, Canadian Institute's 10th Annual Managing Risk in Construction Contracts and Projects Conference (West), January 30-31, 2018 (Edmonton, Alta.).
- *Design-Build Contracts, Managing RFP and Tendering Risks, and Alternative Dispute Resolution*, Project Management Conference, November 21, 2017 (Yellowknife, NWT.).
- *Construction Claims: Extras & Change of Scope*, Government of Yukon Project Managers, October 2017 (Whitehorse, Yukon)
- *Damages: The Who, the What and the How Much*, Speaker, Energy Arbitration 2017 Conference, North American Branch of the Chartered Institute of Arbitrators, April 28, 2017 (Houston, Tx.).
- *Design-Bid-Build & Design-Build/EPC Contracts, Project Delivery Models 2016* Affinity Institute Conference, September 27, 2016 (Vancouver, B.C.)
- *Design-Build/EPC Contracts: Legal and Practical Issues Encountered*, 2016 Annual Conference of International Bar Association, September 20, 2016 (Washington, DC).
- Four sessions, *Avoiding and Resolving Problems with EPC and Design-Build Construction* (Speaker), *The ABC of Construction Delivery Systems: DBB's, EPC's, EPCM's, Alliance Contracts and the Like* (Chair and Speaker), *Some Strategies to Manage Subsurface Risks on Energy Projects* (Speaker), and *Security and Promptness of Payment: The Tension Between Certainty and Speed*, (Speaker), Sixth Society of Construction Law International Biennial Conference, September 15, 2016 (Sao Paulo, Brazil).
- *International Commercial Dispute Resolution*, Speaker, BC Arbitration & Mediation Institute Symposium, May

31, 2016 (Vancouver, B.C.).

- *Effective Advocacy and Management in Arbitration – The Art of Writing Domestic Arbitration Awards*, Speaker, BC Arbitration & Mediation Institute Symposium, May 31, 2016 (Vancouver, B.C.)
- *Ethical Obligations of Arbitrators and Advocates*, BC Arbitration & Mediation Institute Symposium, May 31, 2016 (Vancouver, B.C.)
- *Project planning, contractual structure, overcoming court challenges as well as other litigation and commercial roadblocks in project execution in respect of large residential and commercial projects*, Moderator, Canadian College of Construction Lawyers Annual Conference, May 27, 2016 (St. John's, Nfld).
- *Some Strategies to Manage Subsurface Risks on Energy Projects*, Speaker, SEERIL 2016 Biennial Conference, International Bar Association, April 19, 2016 (New York, USA)
- *Expert Evidence at the Fringe- Delay and Disruption*, Panelist, Third Annual Conference of the International Academy of Construction Lawyers, March 18-20, 2016 (Rome, Italy).
- *P3's Best Practices/Lessons Learned*, Chair and speaker, panel discussion on key issues arising out of P3 Project Agreements including addressing back to back obligations and interface agreements, American College of Construction Lawyers Annual Conference, February 18-21, 2016 (Laguna Beach, California).
- 8th Annual Managing Risk in Construction Contracts, Conference Co-Chair and also speaker on *Pre-Procurement and Pre-Contract Award Due Diligence*, The Canadian Institute, January 20-21, 2016 (Vancouver, Canada).
- *Bankability Issues in Construction Contracts and Arbitration of Disputes*, Project Management Conference, Government of Northwest Territories, November 23-24, 2015 (Yellowknife, NWT).
- *Design-Build (EPC) Contracts, Construction Contracts: Beyond Standard Terms*, Pacific Business & Law Institute, November 18, 2015 (Vancouver, Canada).
- *The Alphabet Soup of Project Delivery Methods*, chair and speaker, 3-hour panel discussion, International Projects Committee, 2015 International Bar Association Annual Conference, October 27, 2015 (Vienna, Austria)
- *Design Build: Dream Project or Never Ending Nightmare?*, Chair and speaker, panel discussion on key design-build/EPC issues, International Construction Projects Committee Working Weekend Meeting, May 16, 2015 (Cancun, Mexico).
- 7th Annual Managing Risk in Construction Contracts, Conference Co-Chair, also speaker on *Drafting Clear Contracts – Being Alive to Anticipated Issues and Drafting for Them Efficiently*, The Canadian Institute, November 25, 2014 (Edmonton, Canada)
- *Financial Security in Construction Contracts and Bankability Issues (of Infrastructure Contracts)*, Chair and speaker, 3-hour panel discussion, International Projects Committee, 2014 International Bar Association Annual Conference, October 23, 2014 (Tokyo, Japan).
- *Planning Subsurface Risk Allocation in EPC Contracts*, American College of Construction Lawyers & Canadian College of Construction Lawyers Program Segment at the Construction Law International Conference, Society of Construction Law, September 18, 2014 (Kuala Lumpur, Malaysia).
- *Practice Trumps Theory*, speaker in panel discussion, Canadian College of Construction Lawyers Annual Conference, May 29-June 1, 2014 (Vancouver, Canada).
- *Tribunal Appointed Experts: A Controversial Debate*, International Academy of Construction Lawyers Annual Conference, April 4-6, 2014 (Miami, United States).
- *Practical Tips for Drafting RFP's for Design/Build (EPC) Projects/Services* and also *Design/Build (EPC) Project Delivery in Practice – Some Practical Issues*, each a one-hour presentation at the Project Management Conference, Govt. of Northwest Territories, December 3-5, 2013 (Yellowknife, Canada).
- *Managing Risk in Construction Contracts*, The Canadian Institute, November 26-27, 2013 (Edmonton). Conference Co-Chair and speaker on panel discussion *Change Order Terms: Solutions to Manage the Challenges Faced by The Key Stakeholders*. (Edmonton, Canada).
- *What is Disruption (in Construction) and how is it Quantified and Proven?* Meeting of the International Construction Projects Committee, International Bar Association, May 17, 2013 (Oslo, Norway)

Numerous presentations prior to 2013, including: *Great Debate: be it resolved a Guaranteed Maximum Price Contract is an illusion* (2013 San Francisco); *Allocating & Mitigating Subsurface Risks on Complex Projects– A Practical Approach* (2012 London, UK); *Allocating Subsurface Risks on Complex Projects – Practical Measures to Mitigate Subsurface Risks and Disputes on EPC and P3 Contracts* (2012 Melbourne, Aus.); *Bolstering Risk Management Practices to Prepare for the New Proposed Enforcement Mechanisms under the New West Partnership*

*Trade Agreement* (2012 Vancouver); *Construction Risk Mitigation Through Project Planning Prior to Tender* (2011 Yellowknife); *As Tears Go By: The Impact of Fundamental Changes on Long-Term Contracts – Impact of Change in Law* (2011 Dubai); *Comparison of Contract Default Insurance & Performance Bonds* (2011 Paris, France); *Challenging Contract Clauses* (2011 Ottawa); *Achieving Efficiency and Fair Bidding Amidst Public Procurement Standardization* (2011 Vancouver); *Developing Contracts at the Pre-Tender Stage*; *Contracts that Work – Recent Developments in EPC Contracts*; *Structuring Negotiations*; *Drafting Terms and Practice Points – Construction Contracts and Specifications*; *Top Ten Errors in Construction Contracts*; *Insurance and Risk Management for Construction Projects*; *Acronyms and Contract Drafting*; *Surety Law*; and *Introduction to Construction Insurance*.

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## NEWS + INSIGHTS

- [The 8th International Society of Construction Law Conference](#) - Aug 24, 2018 • Co-authored
- [Dispute Review Boards: Fast, Effective Dispute Resolution](#) - Dec 21, 2017
- [Keeping things on track](#) - Nov 29, 2017 • Co-authored
- [Singleton Reynolds welcome three new lawyers](#) - Aug 11, 2016 • Co-authored
- [John R. Singleton Q.C. and Helmut K. Johannsen to speak at PBL's The Construction Industry - Major Projects](#) - May 31, 2016 • Co-authored