



CONSTRUCTION **SUPER**CONFERENCE **2021**

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A New Normal In ADR? – Effective Use Of Experts In Mediation, Arbitration, Dispute Advisory Boards And Dispute Resolution Boards Post-COVID-19

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Panelist - Dara Hendrix, Managing Director, Berkley Research Group

Panelist - Meera Wagman, Managing Director, Secretariat

Panelist - Lorna Cuthbertson Tardif, Partner, HKA



The Role Of The Expert In Each Of The Following Areas:

1. Mediation
2. Arbitration
3. Dispute Advisory Boards
4. Dispute Resolution Boards
5. Experts Jointly Appointed



The Benefits Of Early Retention Of An Expert

1. Advice on the project.
2. Advice on claims.
3. Advice and impact on the acceleration of the process for dispute resolution.
4. Clarification of the issues (Advice on what documents and information to capture and retain).

The Benefits Of Early Retention Of An Expert (cont'd)

5. Identification of the other experts.
6. Assistance in development of long-term strategy.
7. Maximizing the risk assessment value to reduce damages and/or increase recovery.



The Expert's Role With Technology To Maximize The Outcome And Minimize Litigation Costs

1. Project management standards of care and practice.
2. Early involvement of the expert with key stakeholders to capture documents.
3. Timely identification of key documents.



The Expert's Role With Technology To Maximize The Outcome And Minimize Litigation Costs (cont'd)

4. Assurance of obtaining the requested information.
5. Establishment of the ongoing flow of data.
6. Reduction of the possibility of errors.

The Expert's Role With Technology To Maximize The Outcome And Minimize Litigation Costs (cont'd)

7. Improvement of the effectiveness of the data and data collection.
8. Avoidance of the need to clean-up bad data and anticipation of problems.
9. Provision of meaningful assistance to the legal team so that they understand the risks and the implication of those risks.

Likely Results When Experts Are Retained Later In The Dispute

1. Clients have adopted strategies that may not be most advantageous.
2. Clients may not have a grasp on all of the issues.
3. Clients may not learn of their own weaknesses.
4. Identification of additional experts may be delayed or retained too late.

Likely Results When Experts Are Retained Later In The Dispute (cont'd)

- 5. Counsel may convey a story that is not entirely persuasive and may not focus on strengths and weaknesses.
- 6. The opposition's position may not be effectively attacked.
- 7. The overall acceleration of the process may be negatively impacted or delayed (no one is reading or discussing the same things).

Nuances Of Mediation, Arbitration, DAB, DRB and Jointly Appointed Experts

1. Some forums are better suited for joint expert teaming or hot tubbing.
2. What will the expert's role be?
3. Counsel is not always in favor of using an expert in each of these areas.



Nuances Of Mediation, Arbitration, DAB, DRB And Jointly Appointed Experts (cont'd)

4. An expert can bring the tools that enable solutions to be arrived at quickly.
5. Adjudication within the Canadian system.
6. Some forums are more well-suited for technical matters.

Post-COVID-19

1. The timing of the value of early retention should not change.
2. Retention of an expert early makes more sense.
3. Some issues are hard to convey early.
4. Involvement of an expert even in a mediation is easier to justify.
5. It is harder to cross-examine an expert in a remote setting.

Concluding Remarks

Questions?



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The background of the slide is a composite image. It features a construction site at sunset, with silhouettes of workers on a building's steel framework and a large tower crane. Overlaid on this is a semi-transparent image of a person in a white business suit and a red patterned tie, with their hands clasped in front of them. The text is overlaid on the central part of the image.

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