



The New Normal in Construction Contracts and Dispute Resolution

Co-Chaired by

John Logan, Q.C.
Jenkins Marzban Logan LLP

David Mckenzie
Jenkins Marzban Logan LLP

April 21st, 2022 • UBC Robson Square (800 Robson Street) • Vancouver, BC

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CO-CHAIRS



John Logan, Q.C., Managing Partner, Jenkins Marzban Logan LLP, Vancouver, BC. John is a founding partner of Jenkins Marzban Logan LLP. He has tried his fair share of cases, and feels particularly suited to dispute work as he can recall only the victories. He represents a long list of companies involved in the construction industry, including many of the largest contractors in British Columbia and Canada. John frequently acts as an arbitrator, referee, or mediator in commercial and construction disputes. He has an "AV" rating from *Martindale Hubbell* in both construction and commercial litigation; has been included once in a while in the LEXPERT ALM 500 as one of the top 500 lawyers in Canada; and is rated as one of British Columbia's top construction lawyers by *Lexpert*, *Best Lawyers*, *Chambers and Partners*, and *Who's Who Legal*. He is regarded by his mother as the best lawyer in the universe.



David McKenzie, Partner, Jenkins Marzban Logan LLP, Vancouver, BC. David's practice is focused primarily on construction law. David has appeared before all levels of court in British Columbia and has been involved in numerous mediations and arbitrations. His practice includes a significant amount of construction-related solicitor work, and he has drafted and negotiated many construction contracts and tender packages. David is a member of the BC *Builders Lien Act* reform committee. He is also a contributing author and member of the editorial board for the *BC Builders Lien Practice Manual*. David is a regular speaker at events for the construction industry and the legal profession, and he has also taught legal courses to both aspiring architects and aspiring lawyers.

FACULTY



Laura Cundari, FCI Arb, Partner, Blake, Cassels & Graydon LLP, Vancouver, BC. Laura is an experienced advocate, appearing as lead counsel at all levels of court in Canada, as well as before arbitral and administrative tribunals. She has extensive experience litigating and arbitrating disputes in the food, beverage and agribusiness, energy, mining, construction, cannabis, hospitality, retail, technology and infrastructure sectors. Laura is a fellow of the Chartered Institute of Arbitrators (CI Arb) and an Arbitration Place NexGen Arbitrator with particular expertise in the arbitration of complex domestic and international disputes. She was appointed in 2021 by the Government of British Columbia to serve a five-year term as a roster member for BC's Bid Protest Mechanism and Dispute Resolution panels, which were established under the New West Partnership Trade Agreement and the Canadian Free Trade Agreement.



Gautam Dhillon, Senior Associate, Borden Ladner Gervais LLP, Vancouver, BC. Gautam has a robust corporate commercial practice with a focus on large infrastructure projects. Gautam has experience in all aspects of infrastructure projects across a range of project delivery models, including public-private partnerships. He regularly acts for both proponents and lenders on project finance transactions and advises clients on secondary market public-private partnership transactions.



Charlene Hiller, Partner, Bennett Jones LLP, Vancouver, BC. Charlene Hiller practises law related to capital projects, construction and infrastructure, procurement and service delivery. Her practice includes environmental matters. She also advises on documents, processes and negotiations for construction, supply, services and related contracts and template documents for infrastructure, commercial, industrial and other projects and clients.



David Little, Partner, Bennett Jones LLP, Vancouver, BC. David Little focuses on construction and infrastructure, procurement, public private partnerships, development and service delivery. David has extensive experience with major projects, facilities, service models, transportation and energy. He is ranked by national and international ranking agencies and is a Fellow of the Canadian College of Construction Lawyers (CCCL).



Christopher O'Connor, Q.C., Principal, O'Connor Alternate Dispute Resolution, Vancouver, BC. Christopher O'Connor has practised extensively in the area of commercial litigation, arbitration and mediation. He received a BA with Distinction from Carleton University in 1973 and a Juris Doctor from the University of Toronto in 1976. He completed the Leadership in Law Firms Program at Harvard University in 2009. He has been accredited the designation Chartered Arbitrator

by the Arbitration and Mediation Institute of Canada and is a Fellow of the Chartered Institute of Arbitrators in London, England and is an accredited mediator and arbitrator at the British Columbia International Commercial Arbitration Centre. He specializes in construction arbitration and mediation, with emphasis on commercial disputes, construction disputes, and insurance issues.



Douglas Sanders, Partner, Borden Ladner Gervais LLP, Vancouver, BC. Doug Sanders is a member of BLG's Corporate Commercial Group in the Vancouver office, and their Public-Private Infrastructure Projects Group nationally. Doug is both a lawyer and an engineer, and practises in the areas of public-private partnerships, construction contracts (negotiation, drafting, and review), shipbuilding contracts, power plant and industrial EPC contracts, and generally contracts to design or construct any asset.

Recognized as a leading lawyer in construction and infrastructure by the foremost legal rankings publications, Doug focuses on large infrastructure projects and has

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The landscape of construction projects has changed in significant ways over the last couple of years. A proactive and informed approach to both front end planning and back end dispute resolution can save your budget and avoid protracted delays, litigation and relationship breakdowns.

This program is essential for lawyers and construction professionals who seek to ensure that their construction projects proceed effectively, efficiently and on budget. Delegates will be equipped with useful tools to address many of the key issues that can affect construction projects by providing the unique opportunity to learn from the real world experience of experts in the field.

KEY AREAS ADDRESSED:

- Emerging issues in procurement
- Choosing and building your contract
- Specific drafting tips to avoid and address issues
- Mediation and arbitration

WHO SHOULD ATTEND?

- Lawyers
- Construction and development company owners and c-suite officers
- Construction managers, contractors, subcontractors and suppliers
- Project control managers, prime contract managers and claims consultants
- Designers, engineers and architects
- Construction insurers and risk managers

worked on major projects in many Canadian provinces, and around the world. Doug is also a frequent author and speaker for various organizations and publications on these areas of law.



Jade Scrymgeour, Associate, Bennett Jones LLP, Vancouver, BC. Jade Scrymgeour practises corporate law with an emphasis on project development, construction, infrastructure, procurement, public private partnerships, development and service delivery. As a member of the Capital Projects Group, Jade provides advice to owners and contractors in the structuring, drafting and negotiation of a range of project development agreements. Jade also advises owners and bidders in the drafting and negotiation of procurement documents.

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APRIL 21ST, 2022

9:00 Welcome and Introduction by PBLI

9:05 Chairs' Welcome and Introduction

John Logan, Q.C. & David McKenzie
Jenkins Marzban Logan LLP

PART I: RISK MANAGEMENT ON THE FRONT END

9:10 Procurement

Charlene Hiller, David Little & Jade Scrymgeour
Bennett Jones LLP

- Considering project delivery models
- Considering procurement options
- Structuring tenders, RFPs and other procurement models
- Addressing cost and schedule uncertainty

10:00 Questions and Discussion

10:10 Refreshment Adjournment

10:25 Comparative Contracts

David McKenzie, Jenkins Marzban Logan LLP

- Strengths and weaknesses of contract types in light of schedule and cost uncertainties
 - CCDC 5B agreements
 - CCDC 3 – Cost Plus contract
 - CCDC 2 – 2020 Stipulated Price contract

11:10 Questions and Discussion

11:20 Specific Clauses and Drafting Tips

Douglas Sanders & Gautam Dhillon
Borden Ladner Gervais LLP

- Delay and schedule clauses
 - Extreme weather and acts of God
 - Supply chain disruptions
- Clauses for dealing with cost uncertainty, including material price escalations

12:05 Questions and Discussion

12:15 Catered Lunch

PART II: RESOLVING CLAIMS ON THE BACK END

1:15 Takeaways from Crosslinx

Raymond D. Schachter, Synergy Business Lawyers LLP

1:30 Dispute Resolution Options

John Logan, Q.C., Jenkins Marzban Logan LLP

- What works for your dispute?
- Good, cheap, fast: pick two
- Is arbitration the “new normal”?
- When does litigation make sense?
- Why most disputes end at a mediation
- How to have an effective mediation

2:00 Questions and Discussion

2:10 Refreshment Adjournment

2:25 Arbitration of Construction Claims

Laura Cundari, Blake, Cassels & Graydon LLP

- The nature of arbitration
- The new *Arbitration Act*
- The new Vancouver International Arbitration Centre (VanIAC) rules
- Other options for arbitration rules
- Key points on arbitration clauses
- Appointing an arbitrator

3:10 Questions and Discussion

3:20 Conducting the Construction Arbitration: How Different is it From Litigation?

Christopher O'Connor, Q.C., O'Connor Alternate Dispute Resolution

- Appointing the arbitrator
- Procedure: the significance of the applicable rules and Act
- Designing your own procedure
- Consolidation of arbitrations
- International model, litigation model, hybrid model
- Simultaneous or consecutive exchange of materials
- Pleadings, statement of case
- Documents, reliance or litigation disclosure
- Witness statements, will say, or statement of evidence in chief
- Presentation of evidence, proof through own documents and evidence
- The hearing
- Avoiding classic mistakes

4:10 Questions and Discussion

4:20 Chairs' Closing Remarks – Forum Concludes

INFORMATION

Four Ways to Register:

1. Telephone us: 604-730-2500 or toll free 877-730-2555
2. Fax us: 604-730-5085 or toll free 866-730-5085
3. Mail your registration form with payment
4. Register at www.pbli.com/construct22

Registration: The registration fee for in-person attendance is \$795.00 plus GST of \$39.75 totalling **\$834.75**. The registration fee for webinar attendance is \$695.00 plus GST of \$34.75 totalling **\$729.75**. Registration fee covers your attendance at the program, electronic materials, a boxed lunch and refreshments throughout the day.

Early Bird Discount: For in-person attendance, register by March 21st, 2022 and receive a \$100 discount on the registration fee (\$695.00 plus GST). Early Bird Discount does not apply to webinar attendees. Discounts cannot be combined.

Group Discount: Register four persons from the same organization at the same time and you are entitled to a complimentary fifth registration. Discounts cannot be combined.

Payment: You may pay by VISA, MasterCard or cheque. Cheques should be made payable to the Pacific Business & Law Institute. Registration fees must be paid prior to the program.

When and Where: Check-in begins at 8:30 a.m. The program starts at **9:00 a.m. (PDT)**. **Provincial health regulations will apply.** UBC Robson Square is

located at the basement level of **800 Robson Street** in Vancouver, BC. Please visit <http://robsonsquare.ubc.ca/find-us/> for directions.

Materials: The faculty will prepare papers and/or other materials explaining many of the points raised during this program. Please contact us at registrations@pbli.com if you are unable to attend the program and wish to purchase a set of electronic materials.

Your Privacy: We will keep all information that you provide to us in strict confidence, other than to prepare a delegate list containing your name, title, firm and city for our faculty and the program delegates. We do not share our mailing lists with any non-affiliated organization.

Cancellations/Transfers: Refunds will be given for cancellations or transferring registration from in-person to webinar (less a \$60.00 administration fee) if notice is received in writing five full business days prior to the program (**April 12th, 2022**). After that time we are unable to refund registration fees. Substitutions will be permitted. We reserve the right to cancel, change or revise the date, faculty, content, availability of webinar or venue for this event.

Course Accreditation: Attendance at this course can be listed for up to **6 hours** of continuing professional development credits with the Law Society of BC.

Registration Form Pacific Business & Law Institute

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