



## Professional Services

### Process Management

# Adjudication can be a most powerful tool

## Method lauded as way to settle construction contract disputes

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Disputes between owners, builders and architects can cause costly construction delays and tie up cash flow necessary to keep a building project afloat.

Including an adjudication clause in a construction contract can speed up conflict resolution and help maintain healthy working relation-

ships, says Stephen Morrison, a lawyer with the Toronto law firm of Cassels Brock & Blackwell, who specializes in real estate, construction and environmental disputes.

"In the classical arbitration model, the decisions of the arbitrator are final," says Morrison. "In adjudication the decision result and any interim award are only binding until the conclusion of the contract itself. The

advantage is that the adjudicator's decision allows the parties to resolve any dispute quickly, informally and relatively inexpensively so that the construction project can be completed.

"If any of the parties are dissatisfied with the adjudicator's decisions, the issue can be revisited through arbitration and litigation when there isn't a construction schedule on the line. If that happens, the final decision-maker never hears about the adjudicator's decision, so as not to be influenced by it."

Adjudication models are gaining acceptance in Great Britain, but while the right to adjudicate has been written into British law, the Canadian process is currently informal.

"To the extent that Canadians want to incorporate adjudication into their own construction contracts, they can adopt the British rules, or make up their own rules specific to the contract," says Morrison.

The parties should choose an adjudicator in advance. The adjudicator should be a



Stephen Morrison

can prevent the breakdown of personal relationships between construction project players.

"This process allows people who have a disagreement to hand it over to the adjudicator, so they can still go to lunch together and not go to bed thinking what a jerk the other person is. It preserves the working relationship by making a neutral party the bad guy."

In a typical arrangement, parties aren't prevented from revisiting an issue that's been adjudicated. In the British experience, however, most decisions reached by an adjudicator are never challenged later on.

retired judge, a senior legal practitioner with experience in construction law, an independent architect, or an experienced member of the construction industry with no connection to the parties.

The contract would spell out under which set of circumstances adjudication would be triggered, and how many days each party is given to prepare and present its case.

"For the adjudication process to work effectively, it has to be done in a very summary fashion," says Morrison. "The dispute has to be placed in the hands of the adjudicator for a week or two, and the adjudicator is not required to follow all the formal rules of evidence and safeguards of a normal arbitration or court case. They must, however, observe some obvious features of natural justice — for example, that both sides be heard, and that the decision is impartial."

Morrison says referring disputes to a third party

"On the other hand, most adjudication rules provide that you can't revisit any issue that you don't bring up during the term of the contract," says Morrison. "It encourages people to bring their disagreements to the table in a timely fashion."

Some fear the adjudication model may result in disputes being submitted to an adjudicator that the parties could have resolved on their own. "This is not the intent," says Morrison. "Disputes should only be submitted to adjudication when all good faith negotiations have failed."

Morrison is presenting a seminar entitled Adjudication in the Construction Process to the Ontario Bar Association on September 21.

### Economic Snapshot

## B.C. growth will be stronger than previously projected

Midway through 2006, British Columbia's economy is doing better than most economic pundits expected at the beginning of the year. For example, based on the first six months of 2006, employment in the province will grow by 3.3% to 3.7% for the year as whole, well above the 2.0% to 2.5% projection made at the start of the year. (In 2005, employment grew by 3.3%.) Year to date, most of the increase in employment has occurred in public administration (+30,800 jobs), retail and wholesale trade (+48,000 jobs) and education (+25,500 jobs).

Sustained strong growth within the three major components of domestic demand — consumer spending, business investment and government spending — appear likely to carry the province into 2007 at full speed. A high level of net migration, together with healthy increases in real incomes, will underpin housing demand well into 2007. With year-to-date housing starts up by 15%, overall housing starts in 2006 should total between 35,000 and 40,000 units, compared to 34,700 in 2005. In 2007, the effects of higher interest rates and escalating house prices (+20% year over year in May) will cause housing demand to cool



JOHN CLINKARD

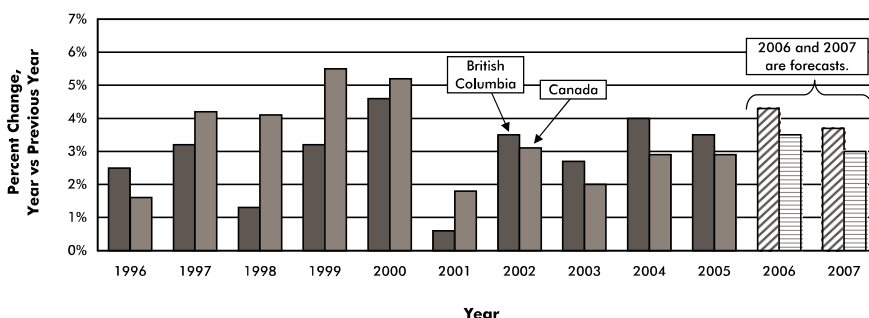
somewhat. Starts next year are likely to be in the range of 30,000 to 35,000 units.

Business non-residential construction, which is up 25% in real terms in the first half of 2006, should continue strong throughout 2007 and into 2008. Four longer-term projects have been recently announced: the Trans Mountain Pipeline Expansion in Valemount-Burnaby (\$1.6 billion); the Prince Rupert Port Expansion (\$500 million); and two projects in the Thompson/Okanagan region, the Summer Hills Resort project (\$780 million) and the Woodsdale Ranch Residential Resort (\$700 million).

The effects of stronger-than-expected growth in the first half of this year make it likely that B.C.'s gross domestic product (GDP) gain for the year as a whole will be in the range of 4.0% to 4.5%, compared to 3.5% in 2005. With healthy prospects continuing into next year, the province's 2007 GDP growth — currently projected at 3.7% — will be stronger than in all other provinces except Alberta. ♦

John Clinkard was Senior Economist and Director of North American Macro Economics for CIBC from 1983 to 2002. He has over 25 years experience in international, national and regional research and analysis.

### Real Gross Domestic Product (GDP) Growth: British Columbia vs Total Canada



Data source: Statistics Canada/Chart: Reed Construction Data - CanaData.

## Weigh the options

Continued from Pg. PS-1

For Brook McLroy, using Bullfrog to provide energy for the ground floor it rents in a reconverted Toronto factory is an extension of the firm's holistic and environmental approach to urban design and master planning, says associate Antoine Belaieff.

The approach includes designing communities that aren't entirely dependent on cars to get around, he points out.

After reading about the electricity retailer, Belaieff persuaded the principles of the firm to sign on. "They didn't need much persuading."

Belaieff is also a Bullfrog residential customer and says some of his colleagues are considering the options as well.



"They want to do it because it's the right thing to do and to exhibit corporate responsibility"

Tom Heintzman  
Bullfrog Power