

Weighing the advantages of arbitration vs. litigation in construction disputes – webinar

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The choice between arbitration and litigation as a means of resolving construction disputes really depends on the objectives of the parties involved. The opportunity for private dispute resolution can be appealing to those wanting to keep out of the public eye, while the availability of multiple levels of appeal may be of interest to those seeking litigation. Weighing the pros and cons of arbitration versus court proceedings was among the topics covered during Osler's Construction and Infrastructure Disputes: Specialized Practices and Procedures webinar, the first in a series. Presenters for this webinar were partners Roger Gillott, Melanie Gaston and Carly Fidler, Litigation, and Lia Bruschetta, associate.

With the private dispute resolution aspect of arbitration, parties can avoid the publicity that often comes with court proceeding decisions. Also with arbitration, the parties can choose the decision-maker, with the prospect of selecting someone with strong industry knowledge and who has a good understanding of the roles of the players involved. Generally there is also more procedural flexibility with arbitration.

A successful arbitration procedure depends on several factors, including the strength of the original arbitration clause in the contract, the negotiation of an effective procedural order with the arbitrator and the various parties involved, and the arbitrator's ability to manage the procedure along the way. The original clause has to be properly drafted, and the arbitrator needs to make the tough calls, and to make them early.

The next webinar in September will focus on the common law duty of good faith in construction disputes.

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