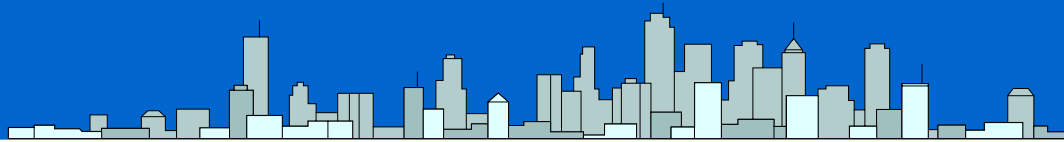


# ***Arbitration and Mediation for Condominium Repair Projects***



Arbi•tech

Gerald R Genge  
BUILDINGCONSULTANTS INC.



•  
•  
•

## *Critical Issues*

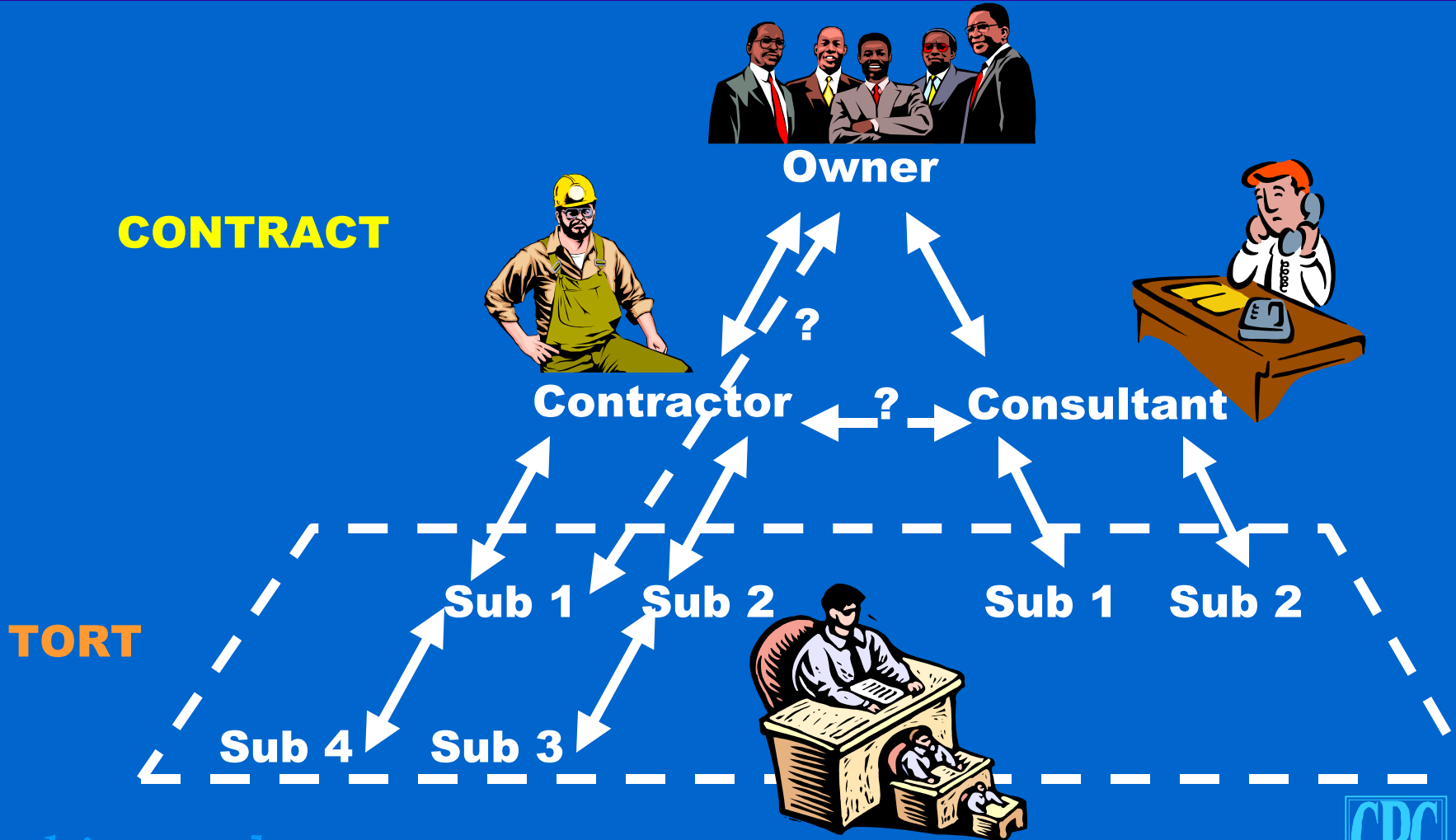
- 1) Form(s) of Contract
- 2) The Consultant's role
- 3) Alternative Dispute Resolution Provisions and Process

•  
•  
•

## *How do you form a Contract?*

1. An **offer** that can be accepted,
2. An **acceptance** that has been communicated,
3. Some form of “**consideration**”,
4. Legal **capacity** to make a contract, and
5. Compliance with **statutory law**.

# Contractual Relationships



•  
•  
•

# *Forms of Contract*

- Negotiation and Handshake
- Purchase Orders to a Quote
- CCA/CCDC Documents

⋮

# *CCDC 2 Stipulated Price Contract*

ADR provisions in CCDC 2 – GC 8.2

1. (GC 8.2.1.1) – Appoint a **Project Mediator within 30 Days** of award, or
2. (GC 8.2.1.2) **15 days from request of a party** (usually after a dispute has occurred)



## *Consultant's Role in ADR (CCDC 2)*

- (GC 2.2.6) Must act with complete **impartiality** in their role as the first “arbiter” of the Contract.
- (GC 2.2.7) The Consultant, when asked in writing by either party to rule on a claim, must give a “**finding**” within “**a reasonable period of time**”.

## *Relevance of the “Finding”*

- (CG 8.2.2) ... **Finding is final and binding** unless a party formally disagrees within **15 working days** or
- The parties are deemed to have agreed with the Consultant's "finding".



•  
•  
•

## *How to Challenge a “Finding” ...*

### Issue a Notice of Dispute

(CG 8.2.2) Within 15 days, write to the other party and the Consultant outlining the basis of the dispute citing the **matters in dispute** and the **Contract provisions** on which they rely.



## *Reply to Notice of Dispute*

(CG 8.2.2) Within **10 days**, write to the other party and the Consultant outlining the basis of the dispute citing the **matters in dispute** and the **Contract provisions** on which they rely.

If no response, the challenger could go to court to have the respondent forced to comply with the terms of the Contract.



# *Referral to a Project Mediator*

- (CG 8.2.4) After a properly executed challenge and reply to the Consultant's finding, you are supposed to negotiate for 10 days and then ask that the Project Mediator to aid in resolving the dispute.
- (CG 8.2.5) Afterward - Project Mediator has 10 days to resolve the dispute or issue a Notice of Termination

# *Steps and Time Lines*

1. Party identifies a dispute and ask for Consultant's "Finding" .....Reasonable time (CG 2.2.7)
2. Notice of Dispute "Finding" .... up to 15 days (CG 8.2.2)
3. Notice of Reply.... up to 10 days (CG 8.2.2)
4. Negotiation .... minimum 10 days (CG 8.2.4)
5. Mediate Dispute .... up to 10 days (CG 8.2.5)
6. Notice of Termination .... up to 10 days (CG 8.2.6)
7. Notice of Non-Binding Arbitration .... up to 10 days (CG 8.2.7)
8. Hold all disputes to end of project to resolve or litigate.

•  
•  
•

## *Failure to Arbitrate...*

(CG 8.2.8) If you don't request arbitration within 10 days all disputes are held until the earliest of:

1. Substantial Performance of the Work,
2. Termination of the Contract, or
3. Abandonment of the Contract, and then

All disputes are consolidated into a single arbitration.

•  
•  
•

## *Who can provide Arbitration?*

Typically, arbitrators are chosen from

1. Experts in the matter under dispute, or
2. Lawyers/retired judges versed in contract law.

Rosters of Qualified arbitrators are available.  
(ADRIO)

**Project Mediator can not become the Arbitrator**

•  
•  
•

## *Which ADR Rules?*

1. CCDC 40 - Rules for Mediation and Arbitration of Construction Disputes
2. Arbitration Act , 1991
3. ADRIC Rules
4. Your own rules...

•  
•  
•

## *Other Rules...?*

(GC 8.2.7) the parties may agree to refer the unresolved dispute to... any other form of dispute resolution". E.g. court, another mediator, another arbitrator, coin toss, etc.



# *Impediments to Dispute Resolution*

1. Time frame is tight (45 working days to mediate).
2. (CG 8.2.3) Both parties are to act expeditiously and in good faith but disclosure may be incomplete.
3. Belief that ADR simply adds a costly layer to an already expensive legal process.
4. The “process” causes review and rehearsal of positions at a pace that fuels the anxiety and thus promotes conflict.

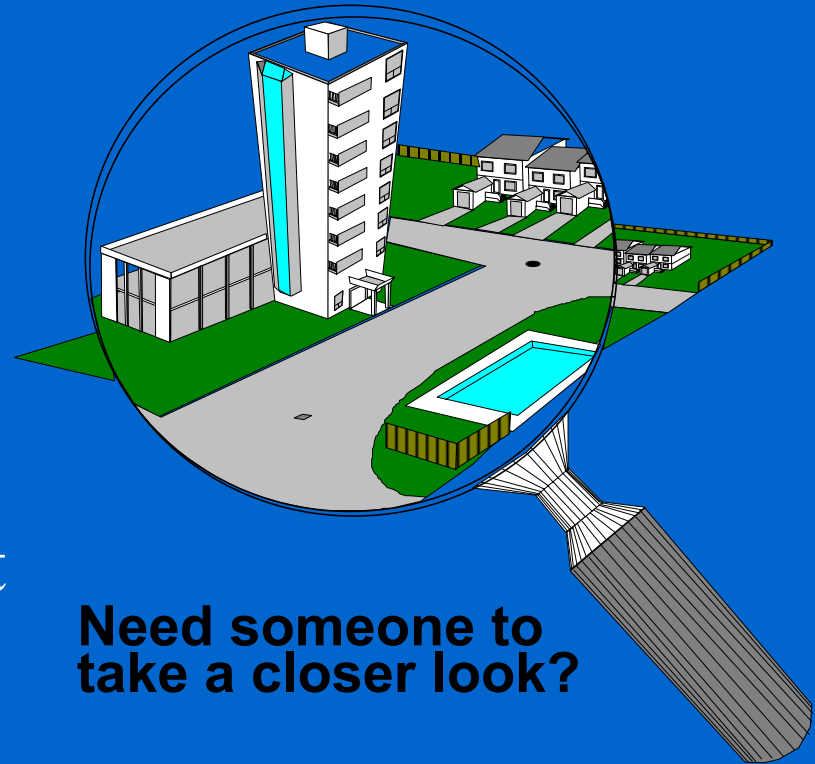
# *Benefits to Dispute Resolution*

1. Allows contractual relationships to continue without shadow of law suit.
2. Good-faith discussions foster mutual respect.
3. It is far less costly financially and emotionally to resolve disputes yourself rather than go to court.
4. If you go to court, you'll be putting the outcome into the hands of the least-informed person in the room.

•  
•  
•

# *Thank you . . . . Questions?*

- Engineering
- Litigation Consulting
- Arbitration and Mediation
- Facility Audits and Capital Expenditure Planning
- Specifications and Contract Administration



**Need someone to  
take a closer look?**