

Our File: 161520

November 9, 2018

The Honourable Justice Richard LeBlanc, Commissioner
Commission of Inquiry Respecting the Muskrat Falls Project
5th Floor, Suite 502, Beothuck Building
20 Crosbie Place
St. John's, NL A1B 3Y8

Dear Commissioner:

**RE: Submission on Protection of Commercially Sensitive Information during
Phase One Hearings**

Parties with standing have been asked to make submissions concerning the identification and treatment of commercially sensitive information during phase one Inquiry hearings, excluding water management issues which are to be dealt with in an *in camera* hearing.

Eight weeks of hearings have concluded without disruption due to commercial sensitivity concerns, save only for the testimony of Mr. LeMay, part of which has been deferred for *in camera* presentation. Nalcor Energy submits that phase one hearings can be completed by appropriately balancing the objectives of openness and transparency with the legitimate need to protect the commercial interests of the parties.

The Commission has provided an interpretation note which includes the following:

1. It is presumed that information should be disclosed unless a valid reason is provided for its non-disclosure.
2. The burden is on the party seeking that information not be disclosed to explain why it should remain confidential.
3. Information which reasonably might harm the competitive position, interfere with the negotiating position or result in financial loss or harm to a provider of information or to a third party will be considered as being of a commercially sensitive nature. As well, information supplied to a provider on a confidential basis by a third party will be considered as being of a commercially sensitive nature.
4. Documents of a commercially sensitive nature as described above should not be disclosed where the person requesting non-disclosure establishes that disclosure would reasonably be expected to:

(a) harm the competitive position of the provider or third party;

- (b) result in significant financial loss to a provider or third party due to premature disclosure;
- (c) result in a negative impact, financial or otherwise, in ongoing or future negotiations with others;
- (d) materially prejudice the financial, economic or other interests of government of the province, Nalcor, its subsidiaries and more generally the people of this Province; or
- (e) be injurious to the ability of the government of the province generally to manage the economy of the Province.

Considering those witnesses yet to testify during phase one and what is presently known or anticipated by Nalcor about the content of their evidence, Nalcor submits that protection of commercially sensitive information should be addressed as follows.

Astaldi Arbitration

That there is a dispute between Astaldi Canada Inc. (Astaldi) and Nalcor Energy subsidiary Muskrat Falls Corporation (MFC) is publicly known. Astaldi and MFC are parties to a Civil Works Agreement for the construction of the Muskrat Falls Generating Station intake and powerhouse, spillway and transition dams (Contract CH0007), and to subsequent agreements including those known as the Bridge Agreement and the Completion Agreement.

Astaldi has delivered a Notice of Arbitration dated September 27, 2018, a copy of which is enclosed. MFC placed Astaldi in default on September 28, 2018 and issued a stop work order on October 18, 2018. Procedural disputes concerning the Notice of Arbitration have been before the courts of Newfoundland and Labrador and the courts of Ontario.

By the Notice of Arbitration Astaldi has given notice of its position that Contract CH0007, the Bridge Agreement, the Completion Agreement and subsequent agreements fixing Astaldi's entitlement to compensation for work performed are unenforceable, that Astaldi is entitled to payment for "all work done and all services and materials supplied on a cost reimbursable, *quantum meruit* or *quantum valebant* basis, with industry overhead and profit in each case," or alternatively to "damages for negligence and breach of contract in an amount equal to the difference between the price of the original Agreement, and Astaldi's incurred cost at completion, including reasonable overhead and profit." The relief claimed by Astaldi in the Notice of Arbitration includes an award "compensating Astaldi for all work, services and materials supplied to the Project, including reasonable overhead and profit" and an award "of damages in the amount of \$500,000,000."

Disclosure of documentation, testimony and other evidence by each of Astaldi and MFC to the other will be governed by the procedural rules found to be applicable to the arbitration proceeding and to rulings of the arbitration panel. It cannot and should not be presumed that those procedural rules and rulings will provide for the same disclosure as do the rules of procedure of this Inquiry, or as would apply under the *Rules of the Supreme Court, 1986*.

Considering the initiation of arbitration by Astaldi and the nature and value of the claims asserted by Astaldi, there is significant potential for adverse impact on the commercial interests of Nalcor Energy if evidence relating to that dispute, which is at present not available to Astaldi, is released to it other than through the arbitration process.

Matters directly concerning the CH0007 contract, such as the procurement process, the execution of the work and the cost of the work fall within phase two of the Inquiry. Evidence concerning those matters should be deferred until phase two. How commercial sensitivity of that evidence will be protected will have to be addressed separately prior to the start of phase two hearings.

For phase one, documentation concerning the planning, cost estimating and risk assessment for matters generally within the scope of work of Contract CH0007 has been disclosed to the Commission by Nalcor Energy. Various of those documents have already been entered as exhibits. For example P-130, the Decision Gate 3 Project Cost and Schedule Risk Analysis Report, has risk registers and Westney risk analysis reports appended to it. However, Nalcor Energy considers any disclosure of planning, cost estimating and risk assessment information that ties more specifically to the CH0007 contract scope of work to be commercially sensitive. Nalcor Energy counsel have applied that standard when redactions have been proposed for documents to be released to parties with standing or to be entered as exhibits. To this point there have been no disagreements with Commission counsel regarding how such requests have been resolved. Nalcor Energy believes that the same approach can be applied to the testimony of the witnesses yet to testify in phase one.

Nalcor Energy therefore submits as follows:

1. Determination of how commercially sensitive evidence related to the Astaldi dispute that falls within the scope of phase two of the Inquiry will be protected should be deferred until that phase and does not need to be resolved in order to compete the evidence in phase one.
2. The standards used by Nalcor Energy and Commission counsel for redactions to exhibits related to Astaldi matters should continue to be applied in the expectation that they will adequately address phase one concerns, and the testimony of the remaining witnesses should be restricted in a consistent manner, should that be necessary.
3. If Commission counsel consider it necessary to present any commercially sensitive evidence related to the Astaldi dispute, then that should be done either *in camera* in phase one, or deferred until phase two and dealt with in a manner to be determined at that time.
4. If an *in camera* hearing is considered necessary in phase one, then Astaldi counsel and representatives should be excluded from participation and from any other access to the evidence presented. The same restriction would apply to exclusion of Nalcor Energy counsel and representatives if any commercially sensitive information that is confidential to Astaldi were to be presented. Other counsel may attend and participate in an *in camera* hearing provided adequate confidentiality undertakings are in place.

Testimony of Jim Keating

Mr. Keating is the Nalcor Energy Executive Vice President, Corporate Services and Offshore Development. He is expected to testify concerning information known to Nalcor Energy relating to the potential for natural gas to have been used as a fuel for the generation of electricity on the Island of Newfoundland. By virtue of his position he is privy to information provided by operators of offshore oil projects and others that has been provided on a confidential basis or that is

subject to non-disclosure agreements. Nalcor Energy holds equity positions in offshore developments and has access to confidential information in that capacity. The confidential information available to Mr. Keating is commercially sensitive in that disclosure publicly or to commercial competitors may impair Nalcor Energy's competitive positions or those of its partners, either directly, or indirectly by undermining the willingness of companies in the oil and gas sector to share useful information in the future.

Mr. Keating has been interviewed and his transcript is under review for identification of commercially sensitive areas. Nalcor Energy proposes that its counsel will engage in discussion with Commission counsel in an effort to find a balance between public disclosure of the information necessary to show how the potential for use of natural gas for electricity generation was considered prior to being screened out as an option, and the need to preserve and protect Nalcor Energy's commercial interests in its oil and gas operations.

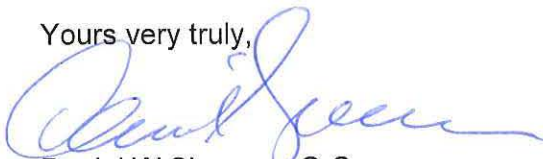
Should testimony that includes disclosure of commercially sensitive information become necessary, Nalcor Energy submits that it should be held *in camera*. Nalcor Energy has no objection in principal to the attendance of counsel for all parties with standing subject to appropriate undertakings to maintain confidentiality. However, an issue that will have to be addressed is whether other counsel or their law firms represent clients who might be in competitive positions with Nalcor Energy or its partners and whether special arrangements, such as confidentiality screens, must be implemented.

Other Muskrat Falls Project Contractors

Nalcor Energy and its subsidiaries are currently party to numerous contracts with companies, in addition to Astaldi, that are or have been engaged in providing construction and other services to the Muskrat Falls Project, including the Labrador Island Link and the Labrador Transmission Assets. There are currently active claims for extra payment being pursued by a number of contractors. Many contracts remain open with the potential for claims for extra payment to be asserted.

To this point in the phase one hearings testimony has generally not reached into commercially sensitive areas relating to those contracts or disputes. Nalcor Energy submits that such evidence can be properly deferred to phase two for determination of how it is to be managed. An example occurred during the testimony of Jason Kean where an objection was entertained and the matter resolved. Nalcor Energy proposes that this approach be applied for the remainder of phase one.

Yours very truly,



Daniel W Simmons Q.C.

IN THE MATTER OF an
Arbitration under the **ARBITRATION ACT**
RSNL1990 CHAPTER A-14 as amended

BETWEEN:

ASTALDI CANADA INC.

Claimant

-and-

MUSKRAT FALLS CORPORATION

Respondent

NOTICE OF ARBITRATION

27 September 2018

Counsel for Claimant

Duncan W. Glaholt
Glaholt LLP
#800, 141 Adelaide St. W.
Toronto M5H 3L5 Ontario
Canada

Astaldi Canada Inc. (hereafter "**Astaldi**") submits this Notice of Arbitration to **Muskrat Falls Corporation** (hereafter "**MFC**") pursuant to Article 31 and Exhibit 16 of a Civil Works Agreement dated 29 November 2013, as amended from time to time thereafter (hereafter the "**Agreement**").

1.0 Description of the Agreement

1. Astaldi submits this Notice of Arbitration pursuant to Article 31 and Exhibit 16 of Civil Works Agreement CH0007 dated 29 November 2013, updated and amended in various respects including a Bridge Agreement dated 27 July 2016, a Completion Contract dated 1 December 2016, a 2017 Settlement Agreement dated 14 December 2017, a Re-Advance Agreement dated 11 June 2018, and an Incentive Funding Contract dated 6 September 2018.

2. Article 31.4 of the Agreement provides that:

If the Dispute is not resolved with the assistance of the Dispute Review Board, a Party may by Notice to the other Party require the Dispute to be resolved by binding Arbitration in accordance with Exhibit 16 - Dispute Resolution Procedures.

3. Article 1.19 of the Agreement provides that:

This Agreement shall be construed and the relations between the Parties determined in accordance with the Applicable Laws of Newfoundland and Labrador and Canada, including any limitation periods, and reference to such Applicable Laws shall not, by application of conflict of laws rules or otherwise, require the application of the Applicable Laws in force in any jurisdiction other than Newfoundland and Labrador. Except for Disputes required to be resolved in accordance with Article 31, the parties hereby irrevocably attorn to the Courts of the Province of Newfoundland and Labrador and Canada for the resolution of any dispute arising hereunder.

4. Exhibit 16, Part B, cl.1.4 of the Agreement provides that:

If any provision of [Exhibit 16 Part B] is inconsistent with or contrary to a mandatory provision of the *Arbitration Act*, c. A-14, RSNL 1990, the mandatory provision of the arbitration legislation shall be applied.

5. Exhibit 16, Part B, cl.5.1 of the Agreement provides that:

The arbitration shall be conducted in Toronto, Ontario, Canada at a location to be determined by agreement of the Parties.

6. Exhibit 16, Part B, cl. 10.3 of the Agreement provides that:

The arbitrator may [...] make an interim order on any matter with respect to which a final award may be made, including an interim order for preservation of property which is subject matter of the dispute.

7. Astaldi states that the arbitration provisions of the Agreement are separable from the other provisions if MFC's conduct throughout has rendered the balance of the Agreement unenforceable.

8. Astaldi states that:

- (a) all matters between the parties to which this arbitration relates have progressed through senior project managers, project sponsors or representative Vice Presidents, and Chief Executive Officers of each company without resolution;
- (b) the parties have either agreed that the matters to which this arbitration relates shall proceed directly to arbitration, or, alternatively, MFC is estopped from requiring a Dispute Review Board to be empaneled to review the matters to which this arbitration relates; and,
- (c) the provisions of the Agreement regarding appointment of a Dispute Review Board are permissive in nature, objectively futile, and have either been waived or rendered unenforceable by the conduct of the parties.

2.0 Issues in dispute

2.1 MFC's "pain share" scheme

9. At the time of or shortly after entering into the Agreement, MFC came to realize that it had underbudgeted the cost of the Muskrat Falls project, originally projected to be a \$6.2 Bn, 824 mw hydro-electric power generation project connecting the Province's enormous Lower Churchill River/Muskrat Falls electrical generation capacity to local markets and markets in Nova Scotia and the northeastern United States.
10. MFC and its sole shareholder, Nalcor Energy (hereafter "**Nalcor**"), thereupon and in an effort to transfer financial obligations and responsibility from themselves and others for whom they were legally responsible, developed and implemented a "pain share" scheme whereby Project cost growth and schedule extension risk would be passed down to Astaldi regardless of liability or the role of MFC or its other contractors in causing cost growth and schedule extension.
11. While the precise date and particulars of MFC's pain share scheme have always been and remain within the exclusive knowledge of MFC and Nalcor, MFC subsequently conducted itself in furtherance of these improper, undisclosed and extra-contractual objectives to acquire and exercise a complete discretion over all issues of scope, price and time that were otherwise the subject of the parties' Agreement:
 - (a) MFC sought and obtained full discretionary power to affect Astaldi's legal and practical interests;
 - (b) MFC sought and obtained from Astaldi un-restricted, executive level access to otherwise confidential financial information of both Astaldi and its parent company and guarantor Astaldi S.p.A and regularly accessed and monitored that information;
 - (c) MFC used the confidential financial information so obtained to manage and control Astaldi's cash flow to suit MFC's objectives under its pain share scheme;

- (d) MFC acquired and exercised direct discretionary control over Astaldi's solvency and used this control to keep Astaldi on the brink of financial default particularly during times of negotiation of compensation and schedule revision events;
- (e) Rather than provide proper contractual funding when earned and due, MFC insisted on a system of extra-contractual cash advances reimbursable at the sole discretion of MFC;
- (f) MFC directed extra work and accelerated work knowing that Astaldi was unable to fund such work without corresponding compensation, but then denied Astaldi that compensation to precipitate a financial crisis and bargain for harsher, more one-sided commercial terms;
- (g) MFC made assurances to Astaldi that extra work and schedule acceleration efforts would be compensated, and then either reneged on such assurances or qualified them out of existence once MFC had the benefit and Astaldi the burden of such extra work or schedule acceleration;
- (h) Although MFC was legally responsible to Astaldi under the Agreement for the performance of all other contractors on the Project ("Company's Other Contractors"), MFC pursued its "pain share" scheme to impose upon Astaldi the immediate consequences of MFC's mishandling and the breaches of Company's Other Contractors;
- (i) MFC extended its discretionary power and control over all aspects of scope, price and time, improperly and extra-contractually and in furtherance of MFC's attempt to impose ever greater "pain share" upon Astaldi and without due regard for the legitimate legal, practical or commercial interests of Astaldi, and in way that was self-serving and contrary to Astaldi's interests;

- (j) MFC selected Astaldi as the repository for all blame and damages that would otherwise have accrued to MFC's account for cost growth and schedule delay on the Muskrat Falls Project;
- (k) MFC negligently and intentionally interfered in the contractual relationships of Astaldi with its subcontractors and suppliers and misrepresented of the state of payments and availability of funds for the payment of subcontractors and suppliers, encouraging subcontractors and suppliers to lien the Muskrat Falls Project; and,
- (l) MFC's imposed pain share scheme is inimical to Astaldi's reasonable expectation of honest performance of the Agreement by MFC, and the Agreement and all subsequent amending agreements and all performance security acquired by MFC under or pursuant to the Agreement and its amendments are unenforceable by MFC.

12. Examples of MFC's implementation of its pain share scheme in breach of contract, breach of fiduciary duty and breach of duty of honest performance include but are not limited to the following:

- (a) MFC's arbitrary imposition of \$8.1 million holdback on earned milestone payments;
- (b) MFC's arbitrary and discretionary slow down of earned payments;
- (c) MFC's refusal to permit Astaldi to integrate schedule information with that of Company's Other Contractors;
- (d) MFC's arbitrary allocation of fault to Astaldi for crane rail repair caused by MFC's defective design;
- (e) MFC's initial denial of contractual entitlements to escalation, followed by admission of liability and then arbitrary stoppage of payment;

- (f) MFC's direction and discipline of key Astaldi staff;
 - (g) MFC's admission of Astaldi's entitlement to extension of time and commensurate compensation, and then arbitrary stoppage of payment on such compensation;
 - (h) MFC's failure or refusal to process change requests for admitted costs;
 - (i) MFC's failure or refusal to pay approved progress payments when due;
 - (j) MFC's negligent and intentional interference with subcontractors and suppliers, and misrepresentation of the state of payments and availability of funds for the payment of subcontractors and suppliers"; and
 - (k) MFC's commitment in June and July of 2018 to process payments to Astaldi on an expedited basis to specifically support Astaldi's cash flow needs, and then in July of 2018 renegeing on that promise in order to impose new, harsh and unfair commercial terms.
13. Notwithstanding MFC's breaches of contract, fiduciary duty and duty of honest performance, Astaldi has continued to perform its contract, and supply work, services and materials to MFC when and how demanded by MFC, in good faith and full dedication to the Project, and with the reasonable expectation of fair dealing and honest performance on MFC's part.
14. Further particulars of MFC's breaches will be provided during the course of this arbitration.

2.2 The consequences of MFC's pain share scheme

15. As a direct result of MFC's implementation of its pain share scheme, and breaches of contract, fiduciary duty and duty of honest performance:
- (a) The Agreement and its subsequent amendments, including the Bridge Agreement dated 27 July 2016, a Completion Contract dated 1 December 2016, a 2017

Settlement Agreement dated 14 December 2017, a Re-Advance Agreement dated 11 June 2018, and any subsequent agreements no longer represent the bargain between the parties with respect to scope, price or time. The Agreement, its subsequent amendments and any subsequently executed Term Sheets are all unenforceable at the instance of or for the benefit of MFC.

- (b) The true agreement between the parties, in all but name alone, is for the Work to be completed on a cost reimbursable or *quantum meruit* basis.
- (c) MFC has constituted itself Astaldi's fiduciary in completing the Work described in the Agreement and has breached that duty.
- (d) Contract scope has become a moving target within the discretionary and unilateral control of MFC and the Agreement is no longer applicable in that regard.
- (e) Contract time has become at large, within the discretionary and unilateral control of MFC, and the Agreement is no longer applicable in that regard.
- (f) Contract price, as set out in the Agreement, has been abandoned or superseded and MFC is obliged to compensate Astaldi for all work done and all services and materials supplied on a cost reimbursable, *quantum meruit* or *quantum valebant* basis, with industry standard overhead and profit in each case.
- (g) Having by its conduct converted the Agreement into a fully cost reimbursable agreement, MFC is obliged to conduct itself honestly and transparently in the facilitation of Astaldi's ability to continue the Work to completion on that basis. Astaldi is entitled to, and is ready, willing and able to complete the Work on that basis.
- (h) MFC must be deprived of the benefit of its improper and undisclosed MFC pain share scheme.

16. Alternatively, if by its conduct MFC has not become Astaldi's fiduciary in the completion of the Work as a result of implementing the MFC pain share scheme, and has not breached its fiduciary duty and duty of honest performance as pleaded above, and if the Agreement remains enforceable at the hands MFC, which is not admitted but denied, then Astaldi states that MFC is liable to Astaldi in damages for negligence and breach of contract in an amount equal to the difference between the price of the original Agreement, and Astaldi's incurred cost at completion, including reasonable overhead and profit.

3.0 Request that the dispute be arbitrated

17. Astaldi requests that all disputes between Astaldi and MFC be arbitrated before a tribunal composed of three members pursuant to Exhibit 16, Part B, cl. 8.2 of the Agreement.

18. Astaldi seeks:

(a) A declaration that:

- (i) apart from separable arbitration provisions, the provisions of the Agreement and all subsequent amendments to scope, price and time are inoperative or unenforceable in the circumstances or have been superseded in the circumstances;
- (ii) Astaldi is entitled to compensation and shall be compensated by MFC on a restitutionary *quantum meruit* and *quantum valebant* basis for full value of all work done, materials supplied and services rendered by Astaldi to MFC since 29 November 2013;
- (iii) MFC by its conduct has undertaken and is charged with fiduciary duties and obligations to Astaldi, including but not limited to the duty to fully and accurately communicate with Astaldi regarding all work performed and to be performed on an ongoing basis and to fairly compensate Astaldi for such work and that MFC has breached those fiduciary duties;

- (iv) MFC by its conduct has waived or is estopped from alleging any purported default of Astaldi under or advancing claims or seeking relief pursuant to the Agreement including but not limited to any termination rights, or claims upon contract security, parental guarantees of Astaldi S.p.A, letters of credit, or exercise of rights of set-off, pending final Award in this matter; and
 - (v) Having by its conduct converted the Agreement into a fully cost reimbursable agreement, MFC is obliged to facilitate Astaldi's ability to continue the Work to completion on that basis, and Astaldi is entitled to, and is ready, willing and able to complete the Work to completion on that basis.
- (b) Interim relief including but not limited to:
- (i) a temporary and continuing order, or partial interim award to preserve the jurisdiction of the arbitral process mandated by the severable provisions of the Agreement by prohibiting MFC from taking any steps to place Astaldi in default under the terms of the original Agreement, or to terminate that Agreement, or to remove Astaldi from the Project, or to remove scope of Work from Astaldi or otherwise interfere with its site presence;
 - (ii) a temporary and continuing order, or partial interim award to preserve the jurisdiction of the arbitral process mandated by the severable provisions of the Agreement by prohibiting MFC from making any claim upon, or drawing down upon any security for the Work under the original Agreement, including but not limited to any and all performance bonds, advance payment guarantees, letters of credit, parental guarantees by Astaldi S.p.A, or common law or contractual rights of set off or deduction, until such time as the issues in this arbitration including all rights and

remedies in relation to the Work and Agreement security have been finally determined;

- (iii) an order or interim partial award finding and declaring that MFC is required to continue funding Astaldi labour, subcontractors, suppliers and material purchases on and for the Project, as Astaldi's fiduciary, and on a timely cost reimbursable basis, until further order of this tribunal, or final Award in this arbitration.
- (c) An Award fairly and completely compensating Astaldi for all work, services and materials supplied to the Project, including reasonable overhead and profit.
- (d) An Award of damages in the amount of \$500,000,000 for MFC's negligence, breach of contract, breach of fiduciary duty and breach of its duty of fair dealing.
- (e) Such further and other relief as counsel may advise and the arbitrators permit so as to completely resolve the issues between the parties in this case.

4.0 Names and Addresses of the Parties

19. Claimant:

Name:	Astaldi Canada Inc.
Address:	780 ave Brewster, Suite 03-300 Montreal, Quebec Canada H4C 2K1
Telephone:	1-514-933-5525

Legal Representatives of Claimant:

Name: Duncan W. Glaholt
Firm: Glaholt LLP
Address: 141 Adelaide Street West, Suite 800
Toronto, Ontario
Canada M5H 3L5
Telephone: 1-416-368-8280
Facsimile: 1-416-368-3467
E-mail: dwg@glaholt.com

20. Respondent:

Name: Muskrat Falls Corporation
Address: 350 Torbay Road Plaza, Suite 2
St. John's, Newfoundland
Canada A1A 4E1
Telephone: 1-709-733-1833
Facsimile: 1-709-754-0787
Email: scotto'brien@lowerchurchillproject.ca

5.0 Name of proposed arbitrator (along with resume)

21. Astaldi nominates the following to serve as an arbitrator in this dispute:

Stephen Morrison, LL.B., C. Arb, C. Med, FCIArb
Arbitration Place Toronto
Bay Adelaide Centre West
333 Bay Street, Suite 900
Toronto ON M5H 2R2
T: +1 (416) 848 0203
F: +1 (416) 850 5316
smorrison@arbitrationplace.com

22. Mr. Morrison's resume is enclosed with this Notice of Arbitration as Appendix A.

6.0 Place of arbitration, rules of law and language of arbitration

23. By virtue of Exhibit 16, Part B, cl.5.1 of the Agreement, the seat of this arbitration is Toronto, Ontario.
24. By virtue of Article 1.19 the substantive law to be applied is the law of the Province of Newfoundland and Labrador.
25. Astaldi requests that the place of the arbitration be Arbitration Place, 333 Bay Street, Toronto, Ontario, Suite 900.

RESPECTFULLY SUBMITTED ON BEHALF OF ASTALDI CANADA INC. THIS

27th day of September 2018:



Duncan W. Glaholt
Glaholt LLP
Counsel for Astaldi Canada Inc.

Appendix A



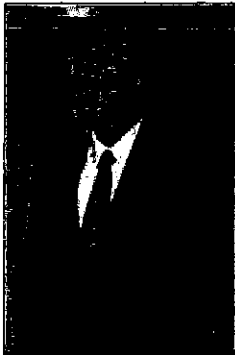
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Stephen Morrison, LL.B., C.Arb., C.Med., FCI Arb



Contact Information

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Stephen Morrison graduated with honours from Osgood Hall Law School in 1976 and was called to the Ontario bar in 1978. Following a career in criminal law, in 1982, Stephen co-founded The Rose Corporation, a land development and investment company where he served as president and in-house legal counsel until 1999. The Rose Group, at various times, owned or controlled private and publicly-traded enterprises in automotive parts manufacturing, telecommunications, general insurance, oil and gas exploration, retirement living, hotels, film studios, mini-warehousing, and financial services. Stephen has gained valuable practical and legal experience in all facets and dimensions of these activities, including land acquisition, development approvals, financing, construction contracting, environmental matters, joint venture arrangements, and public/private partnership structures.

Stephen is regularly engaged in the resolution of commercial disputes, including matters arising from development and construction projects, financing failures, delay and impact claims, contract tendering issues, environmental problems, insurance coverage disputes, and breach of trust claims. He has a firm grasp of the law in these areas and a detailed understanding of many development, construction, architectural, engineering, and environmental remediation technologies. Stephen was also a panelist with the Condominium Dispute Resolution Centre and regularly acts as a neutral in the resolution of disputes in this area.

As a result of his combined business and legal background, Stephen has a unique ability to fashion practical resolutions to complex disputes. He understands that the parties prefer workable solutions to protracted litigation. As a mediator, Stephen brings a facilitative and imaginative approach to the resolution of difficult conflicts. A good listener, he helps each party to identify and rank its needs. A creative thinker, he assists the parties to find inventive ways of meeting those needs. A persistent facilitator, he is unrelenting in his pursuit of an agreement. And, as someone who loves a challenge, Stephen especially enjoys cases involving complex, multi-party disputes. In his role as an arbitrator, Stephen understands that the parties are entrusting to him the fair resolution of a dispute that they have been unable to settle themselves in a timely and cost-efficient manner. Second only to his determination to render an equitable and legally correct decision is Stephen's commitment to ensuring that, regardless of the outcome, all parties feel confident that they have been heard and understood. He delivers clear, well-reasoned, and timely written decisions.

Stephen's commitment to excellence in practice has been recognized by the ADR Institute of Canada by granting him the designations Chartered Arbitrator and Chartered Mediator. He is also a Fellow of the Chartered Institute of Arbitrators.

Contact

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