



INTERNATIONAL
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How to Fast-track Construction Dispute Resolution

Best practice interlocutory logistics to fast track the dispute resolution journey.

Background

- One of the general duties or paramount objectives that an arbitral tribunal or judge should observe at all times is to adopt procedures suitable to the circumstances of the dispute, avoiding unnecessary delay or expense, so as to provide a fair and efficient means for the final resolution of the dispute in question

Innovative Procedural Measures

- Scott schedules
- Redfern schedules
- Reed retreat
- Sachs protocol
- Kaplan opening

Scott Schedule Typical Example

1 No of Item	2 Full particulars of each item of work alleged to have been improperly or unskilfully performed, stating the defects complained of	3 Plaintiff's estimate of the cost of remedying the defects complained of, and, where the remedial work has been done, the cost thereof, identifying the relevant documents	4 Defendant's estimate of the cost of remedying any admitted defects	5 Defendant's observations	6 Column for Official Referee
1	DRAWING ROOM The paintwork on all wooden surfaces is peeling off, owing to insufficient preparation of the surfaces. Only one coat of paint was applied, instead of two as specified. It will be necessary to strip off the paint and repaint with two coats	\$1,000.00	(Either: Nil Or: \$40,.00)	(Either: The work of preparation was properly done. The defects complained of have been occasioned by hard wear in the two years which have elapsed since the work was done. Or: It is admitted that a small area of paintwork in the NE corner of the room requires repainting).	

Scott Schedule Benefits

- Increase the possibility of settlement
- Identification and clarity of areas of argument
- Allow identification of differences
- Assist in avoiding confusion at hearing
- One convenient document which sets out competing claims

Example Claimant's Redfern Schedule

Document requested	Relevance and materiality of the documents requested to the outcome of the dispute	Responses and objections to the claimant's request to produce documents	Decision of the arbitral tribunal
<p>1. Any and all documents (including documents in electronic form) consisting of information on the general structure of management and the decision-making processes of the respondent, including minutes of board meetings, shareholders' meetings, and other documentation related to the decision-making process at the top level</p>	<p>The claimant asserts that the way in which the management processes were organised at respondent were inadequate and/or were the cause of the delays to production and the generally poor quality of the product.</p> <p>To prove these assertions, the claimant needs to know the respondent's management structure and needs documents normally produced for the purposes of a company's management at the level of top management (i.e. boards, shareholders' meetings, etc.)</p>	<p>This request is so wide that an order for their production would impose an unreasonable burden on the respondent: see the IBA Rules on the Taking of Evidence, Art. 9.</p>	
<p>1. A record of all previous complaints from customers since production began</p>	<p>Such documents will allow the claimant to establish the management methodology adopted by the respondent, and to demonstrate that this methodology was inadequate and unprofessional.</p>	<p>This request is too wide. However, the respondent is prepared to produce a list of complaints received over the last 18 months, whilst keeping the names of the customers confidential.</p>	
<p>1. All correspondence and other documents with the respondent's legal advisers concerning complaints by other customers</p>	<p>Such correspondence will demonstrate the steps to which the respondent went to deny liability for obvious deficiencies in the product.</p>	<p>To the extent that any such correspondence exists (which is denied), it would be covered by legal professional privilege.</p>	

Reed Retreat

- The Reed Retreat is a conference of arbitral tribunal members where there is for example a panel of three members
- The aim is to stimulate the members of the tribunal to familiarise themselves with the documents so they can engage with the other tribunal members in a meaningful dialogue

Sachs Protocol

- The aim of the Sach's Protocol is to assist the tribunal in its dealings with experts.
- *After the parties have submitted their first briefs, the tribunal invites both parties to provide the tribunal and the opposing party with a list of three to five persons they consider to be fit to serve as an expert for the determination of a particular question.*
- *In a second step, the tribunal will choose two experts, one from each of the two lists, and appoint these experts together as an "expert team".*

Kaplan Opening

- Intended to be a hearing before the tribunal after the first round of written submissions and witness statements have been delivered but prior to the main hearing
- The main advantage of this process is that it adds convenience and efficiency to the tribunal's decision making
- The tribunal gets a better understanding of the case sooner, which facilitates its preparation for the ultimate hearing

Further Processes

- treatment of Preliminary Issues;
- proceeding by an Agreed Statements of Facts,
- proceeding by an Agreed List of Questions or Issues; and
- limited time / Stop clock hearing

Conclusion

- As a general proposition, all litigants want results faster and cheaper
- Rather than litigating, litigants more often than not just want a resolution of their dispute
- Resolving disputes efficiently is not necessarily achieved by proceeding fast and doing things cheaply. What needs to be considered are the concepts of time, cost and quality

References

[1] Dr Klaus Sachs “Experts: Neutrals or Advocates” (2010) ICCA Congress, Conference Paper 13

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