

Construction Law notes

Role of the Construction Contract

Industry's use of standard form contract

- Desirable due to minimum expense in preparing contract for each project
- Seeks to control and regulate construction process by defining duties, relationships and rights
- Requires the contract:
 - o Scopes the project (owners requirements)
 - o Identifies & assigns project risks
 - o Informs each party of what it is required to do, and what it is entitled to do
 - o Sets out each party's rights should the other party fail to fulfil its contractual obligations
- Standard form contracts
 - o AS4000 (construct only) (MOST COMMON)
 - o AS4902 (design & construct)
 - o PC-1 (representing owners)
 - o ABIC-MW & ABIC-SW (major or simple works)

Use of standard form contracts

- 'one size fits all' means it can have a broad spectrum of applications
- However, amendments can alter entire risk allocation under a contract and have unintended results

Criticisms

- Adversarial
- Rare to have fair/even risk allocation
- Extensive amendments reduce benefit of having a standard form contract

Purpose

- Traditional contract theory
 - o The fundamental purpose of a contract is to precisely delineate the roles, responsibilities and obligations of the contracting parties and to provide legal recourse should a party fail to uphold their contractual promises
 - o Parties seek to maximise their *self-interest* in the transaction, with little concern for the interests of the other party.
 - o Result is that traditional contracts tend to see parties dealing with each other in an antagonistic manner.
 - o Traditional contract theory is dominated by the notion of freedom of contract.
 - o NOT SUITED to long-term, complex construction projects
 - o Contract often forgotten about, only used when dispute arises
- Relational contract theory
 - o As a project management tool → used on daily basis, assists parties to:
 - maintain effective and open lines of communication throughout the life of the project;
 - build and maintain trusting relationships; and
 - approach problems cooperatively and seek solutions on a best for project basis and to the benefit of both parties.
 - o Contract should emphasis importance of positive working relations and facilitate project management i.e. assist parties to maintain open lines of communication
 - o Stresses importance of teamwork

- Rather than focusing on discrete transactions, should focus on continuing relationship
- Main difference
 - Tradition model concentrates on how disputes are to be resolved
 - Relation model seeks to avoid disputes through good management and positive working relations

Dispute avoidance strategies in contract

1. Duty to act in good faith and cooperate
 - New Engineering Contract in UK (NEC3) has clause:
 - *Employer, contractor, the project manager and the supervisor shall act as stated in this contract and in a spirit of mutual trust and cooperation*
 - ConsensusDOCS (USA) requires parties to:
 - *each accept the relationship of mutual trust, good faith, and fair dealing established by this Agreement and covenants with each other to cooperate and exercise their skill and judgment in furthering the interests of the Project... Within the scope of their respective exercise, the Parties shall together actively and continually pursue collaboration in the best interests of the Project. The Parties shall endeavour to promote harmony and collaboration among all Project participants.*
 - Requires loyalty to the promise itself and as excluding bad faith behaviour
 - Does not require altruism, or complete disregard for one's self-interest and commercial aims
 - Loyalty to a promise encompasses a bundle of overlapping duties which include cooperation, honest and reasonableness
 - Contractual good faith requirements are legally enforceable (e.g. *United Group Rail Services Limited v Rail Corporation of New South Wales* 2009)
 - There is NO EQUIVALENT in Australian contracts
 - And it will not change the culture of construction industry alone, BUT may be a good start
2. Risk management
 - Risk management is a process of identifying and understanding risk and determining an appropriate methodology to minimise or eliminate that risk
 - NOT risk allocation
 - NEC3 risk management
 - Has early warning system to manage risk
 - Requires contract and superintendent to warn of any matter that could:
 - Increase the total of prices;
 - delay completion;
 - delay meeting a key date; or
 - impair the performance of the works in use.
 - As such, motivates parties to engage in collaborative problem-solving
 - Parties attend a risk reduction meeting and obliged to cooperate in four respects
 - make and consider proposals for how the problem can be avoided or reduced;
 - seek solutions that will bring advantage to all those who will be affected;
 - decide on the actions which will be taken and who will be required to perform these actions; and
 - decide whether the risks that flow from the problem have been completely avoided, if not, such risks remain or should be noted in the risk register.
 - This approach highlights how collaborative risk management can be effective DURING the course of construction
 - Fosters a problem-solving environment
 - Case example: London 2012 Olympics
 - 50,000 early warning notices were issued

- Projects delivered on time, within budget, no outstanding disputes
- Risk reduction meetings held every week

3. Conflict management & on-site dispute resolution

- Crucially important that contract provides system that allows any disputes to be resolved while project is on foot (DAPs)
- Real-time resolution of disputes helps to ensure any disputes have only a minimal effect on relationship of parties
- Several overseas standard form contracts have DAPs provisions
- NO Australian contract has DAPs

Dispute Avoidance Process (DAP)

What is it?

- Relatively recent innovation designed to change the adversarial culture on construction projects
- From one that facilitates and fosters disputes to one that **enables the proactive prevention of disputes and the real time resolution**
- Aims
 - o To prevent disputes, BUT
 - o If a dispute develops, provide real time resolution
- DAP does NOT refer to ADR

Purpose

- Setting up a DAP sends signal to all parties that the Principal is committed to avoiding disputes and engaging in constructive problem-solving
- Bring in neutral third-party experts to change the adversarial culture common on construction projects
- Facilitate positive working relations

3 levels of prevention

- Primary prevention
 - o Reviewing draft contract documents and making recommendations to the parties about risk allocation & any provisions that may detract from open lines of communication & the effective use of a DAP;
 - o Facilitating early project meetings that encourage parties to identify issues that may arise on the project ('hot spots'), and take steps to minimise the risk of these issues escalating into disputes; and
 - o Promoting open communication and facilitating positive working relationships between the parties to create an environment that is conducive to problem-solving.
 - o If appropriate, encouraging parties to modify any inequitable risk allocation
 - o Identifying and discussing any clauses which encourage or facilitate an adversarial relationship between parties
- Secondary prevention
 - o Conducting regularly scheduled site-visits and meetings with the parties;
 - o Requiring parties to raise any issues of concern with the members of the DAP in a timely fashion;
 - o Providing early advice as to how parties can best develop solutions to any current or foreseeable problems on the project; and
 - o Reviewing all project documents in between site meetings & raising any concerns with the parties about issues that could potentially escalate into conflicts or disputes.
 - o Allows for early identification of potential conflicts.
- Tertiary prevention
 - o Conducting hearings or utilising other dispute resolution processes to resolve disputes in 'real-time', thereby preventing the deterioration of the parties' relationship which can, in turn, lead to more conflicts.
 - o Primary and Secondary stages are about dispute avoidance, this stage is about successful management and resolution of any disputes that the parties were unable to avoid.
 - o Tertiary prevention primarily relates to a DAP's ability to prevent the parties having to resort to arbitration or litigation to resolve any disputes that may arise during the course of construction.

Dispute Resolution Boards (DRBs)

What is it?

- Panel of three independent third-party experts who are appointed by the contracting parties at the commencement of the project
- They remain up-to-date with project developments through regular site visits, meetings with key project personnel
- DRB uses its technical knowledge regarding the type of construction being performed
- DRB plays proactive role in early identification and resolution of potential problems
- Creature of contract

- Helps parties AVOID disputes; and
- Helps parties RESOLVE disputes DURING course of construction

History

- Eisenhower Tunnel Project – first recorded use of DRB in 1975
 - o 1968 tunnel was financial disaster, late and over budget, government incorporated DRB, 2nd tunnel delivered on time, within budget and reports showed relationship between parties remained positive at all stages of project
- DRBs are most popular DAP, with 98% success rate
 - o 21 countries have used DRBs
- Guides & specifications:
 - o 1989 American Society of Civil Engineers published *Avoiding and Resolving Disputes in Underground Construction*
 - o 1996: rebranded *Construction Dispute Review Board Manual*
 - o 2000: American Arbitration Association (AAA) released its own *Dispute Review Board Operating Procedures*
- Industry bodies dedicated to promoting DRBs
 - o Dispute Resolution Board Foundation (DRBF) formed in 1996
- Standard form contracts
 - o ConsensusDOCS launched series of standard form contracts, including clauses for a DRB
 - o Moved DBRs more mainstream

Best practice in DRBs

Drafting a DRB specification

- Member expertise considerations
 - o Involves 3 members who have expertise
 - o Usually consists of:
 - Engineers
 - Project managers
 - Experienced contractors
 - Construction lawyers
 - o Best practice?
 - Engineer, contractor and construction lawyer

Preventing Conflicts Escalating into Disputes

- DRB should:
 - o Encourage the parties to cast their minds on the **potential project 'hot-spots' and develop solutions** to ensure these do not erupt into disputes;
 - o Encourage senior project personnel to prepare a **joint** presentation for every DRB site inspection/meeting. This presentation should outline anticipated or potential claims and disputes, proposed solutions to outstanding issues, and the state of other claims and/or disputes; and

- Encourage parties to refer a conflict to the DRB for resolution, if the DRB believes that the conflict could rapidly escalate into a dispute if left unresolved by the parties.
- Should be proactive approach
 - Ensures open lines of communication between parties at all stages of the project
 - Allows parties to develop positive working relationships
 - Parties temper opportunistic and adversarial behaviour knowing their respected peers are 'watching' the project
- DRB should be **actively involved** not just a safety net
- DRB should have ongoing role in monitoring progress of the project

Role of DRBs in resolving disputes

- Parties should exhaust negotiations before formally referring a dispute to a DRB hearing
- Hearings
 - Parties should proactively use the DRB and approach whenever sign of escalating conflict
 - **Real-time resolution**
 - DRB hearing = site meeting
 - Simple and fair procedures
 - Inquisitorial rather than adversarial
- Outcome of hearing
 - Prompt, non-binding written recommendation
 - Unanimous (preferably) and written for the benefit of the losing party

Managing cost of DRB

- Should be .05-.51% of total contract costs
- Shared with parties

Why do DRBs work?

- Judgment is better than arbitrator or judge as DRB knows the project and are always present
- Presence of DRB tempers conduct of parties by fostering cooperation
- Parties adopt more credible position
- Speed with which matters are dealt with means decisions are more likely accepted in good faith
- Confidential low-key nature preserves good site relationships

Improvements?

- Disputes with subcontractors or consultants, not usually covered by DRB
- Involvement of insurers
 - Insurance premiums should be lower due to presence of DRB
- Gender imbalance
 - Only 7 women on DRBs

Dispute Adjudication Boards (DABs)

Definition

- Panel of experienced, respected, impartial and independent reviewers
- Board is normally organised before construction begins and meets at the job site periodically
- DAB members provided with contracts, plans, specifications etc. and become familiar with project procedures and participants and updated on progress and developments
- DAB meets with Employer and Contractor's representatives and encourages resolution of disputes
- When dispute arises, parties refer it to DAB

Similarities and differences with DRBs

- Similarities
 - o Both involve a panel of independent and experienced professionals;
 - o Set up prior to construction beginning;
 - o Kept abreast of site developments through regularly scheduled site visits and meetings with the parties.
 - o Parties refer disputes to the Board.
 - o Parties share equally the cost of the DAB.
- Differences
 - o DRB = recommendation, DAB = decision
 - o DRB = dispute avoidance, DAB = dispute resolution

History

- FIDIC introduced DAB into one of its standard form contracts in 1995
- Now included in all FIDIC contracts
- World Bank mandates the use of FIDIC Red Book (DAB) on all construction projects it funds
- FIDIC in 2017 changed the name to DAAB (added 'avoidance')
- FIDIC Red Book has provisions on all DAB protocols

DAB process

- Some contracts require ad hoc DABS to be established once dispute is on foot, however **DAB is usually established prior to commencement**
 - o DAB convened after dispute lacks the ability to develop a working understanding of the project
- Procedure
 - o Party refers dispute in writing to DAB
 - o Other party has 21 days to respond
 - o DAB issues a decision in writing within 84 days (12 weeks) after receiving both parties' positions regarding the dispute
 - o Decision is binding

DAB decision

- Process is highly regulated and stilted
- Informality and speed of DRBs = juxtaposed with a formal and rigid structure for DABs
 - o In this respect, may be harder to resolve disputes
 - o Parties are increasingly not abiding by DAB decisions

Binding decision?

- Either party can serve a notice of dissatisfaction with the DAAB decision.
- Are the parties required to comply with the DAAB's decision if a notice of dissatisfaction has been served?

- Drafters envisioned that this clause requires parties to give prompt effect to the DAAB's decision, notwithstanding an intention to have it reviewed in subsequent negotiation or via arbitration.
- Alternative interpretation is that the DAAB's decision should not be given prompt effect if the decision is subject to potential revision in subsequent negotiations or future arbitration.
- Under this interpretation, only once no notice of dissatisfaction has been served, or the time limits for challenging the DAAB decision have passed, must the DAAB decision be complied with.
- Example: *CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK*
 - o Dispute about variation orders referred to one-member DAB, who awarded \$17m to the contractor
 - o Owner filed notice of dissatisfaction and argued the effect was to prevent the DAB decision from becoming final and binding (unless upheld in subsequent arbitration)
 - o Arbitration Held
 - DAB was binding and enforceable
 - o Singapore High Court Held
 - Overturned, DAB decision could not be enforced by an arbitrator without first reviewing the underlying merits of the decision
- Effect of above ^
 - o FIDIC added new clause 21.4.3, providing "*The decision shall be binding on both Parties, who shall promptly comply with it whether or not a Party gives a NOD with respect to such decision under this Sub-Clause.*"

How popular are they?

- DABs did not have a history of promoting an environment and culture that was focused on dispute avoidance.
- Time will tell whether changes in 2nd edition change that.
- Reports that many users of FIDIC standard form contracts are deleting the DAB provision, or if obliged by funding institutions to retain the clause, they ignore it once the contract is signed and purposefully fail to appoint DAB members (but see new clause 21.2 – 3rd party entity can appoint)

Improvements?

- Develop training manual that emphasises dispute avoidance
- Provide training & accreditation of DAAB members

Dispute Resolution Advisor (DRA)

What is it?

- Independent individual known as DRA jointly appointed to monitor the contract from project commencement to completion
- Effectively, a project facilitator and mediator
- Familiar with project and key personnel, thus able to identify potential problems
- When disputes arise, DRA is able to adopt an adviser role and assist the parties in choosing the most appropriate, speedy and economical dispute resolution technique for that dispute
- DRA looks at avoidance rather than resolution

Key features

- 1 person, not 3-person panel
- DRA does not resolve, he helps parties choose the most appropriate dispute resolution mechanism → does not evaluate merits of the dispute
- Plays avoidance role and tries to change the traditional adversarial culture on construction sites

History

- Independent Intervenor (1986, UK)
 - o Mediator/conciliator, paid a small retainer shared by parties called in to settle disputes immediately
- Dispute Advisor (1989, UK)
 - o Role is to advise on the means of settling disputes
 - o Can assist in resolution but primary duty is adviser

DRA's role

- Limited to assisting parties to choose the most appropriate method for resolving the dispute (thus, Dispute Advisor)
- Encourages parties to problem solve and engage in good faith negotiations

Two distinct phases

- Different person for each phase
- 1) Pre-contract phase
 - Educate prospective contractors about the effective use of DRA, how it seeks to avoid and resolve disputes
 - Depends on parties buying into process
 - Provides parties with confidence everyone is committed to dispute avoidance
 - Another goal is to ensure parties understand the nature and full requirements of the project
 - o Especially the complexities the project may face
 - Lays positive foundation of cooperation and collaboration for the project rather than an adversarial relationship
 - Pre-contract phase undertaken by an *independent* consultant, who is not the person ultimately appointed as the DRA at project commencement.
 - o The independent consultant facilitates discussions between the owner, designated project manager, the designers and other consultants, and the 'pre-qualified Head Contractors'.
 - Process
 - o Each party separately interview regarding their understanding of the project risks
 - Where they think risks will arise
 - The proposed contractual machinery for resolving disputes
 - o Pre-contract report

- Discussions culminate in the production of a report by the consultant which identifies:
 - Likely areas of dispute
 - Parties' views on risk allocation
 - Consultant recommends reallocation of key areas of risk + modifications
- ^^ This enables parties to make more informed assessment of the proposed risk allocation
 - Further meetings are held with parties either on individual basis or collectively, with a view to achieve a consensus on final terms in the construction contract

2) Construction phase

- DRA is now an independent expert (experienced in the type of construction performed and/or in a contractual interpretation)
 - o Jointly chosen, appointed and remunerated by parties
- DRA required to become familiar with the project and participants by regularly visiting site and meeting with parties
- DRA is permitted to communicate with parties on an ex parte basis
 - o This is allowed because DRAs are never involved in evaluating merits of a dispute → usually ex parte is improper
 - o Allows DRA to gain insight into parties' views of a situation which they may not be inclined to share in an open forum

Approach to Dispute Resolution

- Multi-tiered system beginning with maximum party control, each tier becomes more interventionist and culminates in short-form arbitration
- Initial stage
 - o Conflict arises, encouraged to negotiate
 - o If resolution cannot be achieved within 28 days, formal notice of dispute is issued and triggers DRA dispute resolution process
- 2nd stage (14 days)
 - o Parties participate in ADR (on DRA's selection/guidance)
- 3rd stage (14 days)
 - o Negotiations between senior staff
- 4th stage (8 days)
 - o Short-form arbitration
 - Involves only 1 claim or issue;
 - Arbitration conducted and concluded within one day.
 - Each party has the opportunity to present its position to the arbitrator, whether by way of written or oral submissions, affidavits or other documentary evidence; and
 - The arbitrator has 7 days to make a written award, including reasons, which is final and binding.

Improvements

- Involve senior staff before ADR
 - o Senior executives do not have emotional attachments, may be better idea to get SEs in first so there can be business decisions

Combined Dispute Board (CDB)

What is it?

- Standing body comprised of 1-3 independent persons knowledgeable in the subject matter of the parties' contract and chosen by parties to assist them in performing the contract
- Involved in the contract from the outset, CDBs are able to intervene early and propose solutions before positions have grown entrenched, or sometimes before parties realise they are heading towards dispute

History

- Developed by International Chamber of Commerce (ICC), usually focusses on arbitration
- Started incorporating CDB to a number of their construction contracts etc.
- Intended to be intermediate approach **between DRB and DAB**

Dispute avoidance

- Didn't repeat FIDIC's mistake of focusing only on dispute resolution
- Looks at dispute AVOIDANCE AND RESOLUTION

Differences between DRBs and DABs?

- Predominantly in HOW it resolves disputes
 - o CDB issues Recommendations with respect to dispute, BUT can issue a Decision if a party requests and no other party objects
 - o If there is an objection, CDB decides if they issue a Recommendation or a Decision

Operation

- Default position = non-binding recommendation
- HOWEVER, if both parties prefer to have immediately binding decision without deference, CDB is empowered to make a Decision
- When parties disagree about recommendation/decision, CDB decides and weighs up:
 - o Whether decision would facilitate the performance of the Contract or prevent substantial loss or harm to any party
 - o Whether a decision would prevent disruption of the contract
 - o Whether a decision is necessary to preserve evidence
- Regardless of above, CDB must provide R or D within 90 days
 - o HOWEVER, best practice for DRB is issues in a relatively shorter period of time

CDB's written output

- Rules say recommendation/decision should include:
 - o summary of Dispute, the Parties' respective positions and the Determination requested;
 - o summary of relevant provisions of Contract;
 - o chronology of relevant events;
 - o summary of the procedure followed by the DB; &
 - o a listing of the submissions and documents provided by the Parties in the course of the procedure.

Evaluation

- R or D
 - o ICC's guidelines on CDB is quite good with the recommendation/decision
 - o Ability of CDB to craft a convincing R or D is crucial in helping parties resolve their dispute
 - o There are instances where DAP models have failed entirely to prevent and resolve disputes
 - CDB seeks to redress this issue through convincing R & D

- Providing parties with a right to ask CDB to issue a decision over a recommendation affords parties (who are already in dispute) with another issue to disagree on, namely whether the CDB should issue a recommendation or a decision.
- Potential to increase & amplify tensions between the parties.
- May also increase the likelihood of a CDB's recommendation/decision being rejected by the parties because they have become entrenched in their positions regarding the way the dispute should be resolved.
 - o If DRB recommendations are typically accepted in good faith, then it is questionable whether having the ability to issue a decision serves any purpose...
 - o Under ICC's DB Rules, if neither party rejects a DRB's recommendation within 30 days of receiving the recommendation, it becomes binding on the parties.
 - o Thus, DRB's recommendation has much the same effect as a decision of a DAB, but with the added benefit of preserving the consensual and flexible problem-solving environment that DRBs foster.

Overall

- Not enough use for it to be measures on effectiveness
- Overall, relatively awkward rather than useful compromise

Independent Dispute Avoidance Panel (IDAP)

- Designed to suit requirements of one specific project, 2012 London Olympics
- Used to AVOID contractual disputes during works

Composition

- 11 senior construction professionals
 - o Legal, commercial, architectural and engineering expertise
- All were independent of ODA (Olympic Delivery Authority)
- No women
- They did not act collectively, rather a pool of experts with Chair of IDAP allocating the best-suited expert to a particular contract
- Each member required to be highly conversational with the projects
 - o To advise on avoiding disputes generally as well as particular disputes that were likely to arise

General Dispute Avoidance

- Designated member and 1 other IDAP member conducts workshop involving project manager, senior representatives, owner, contractor and key sub-contractors
- Workshop, had to discuss
 - o 1. Importance of dispute avoidance and role of IDAP
 - o 2. the dispute avoidance procedures under NEC3;
 - o 3. the requirements of the contract and the risks that might eventuate during its execution; and
 - o 4. the process of involving the Designated Member if a party believes a conflict is at risk of escalating into a dispute.
 - o THESE helped facilitate positive working relationships
 - Initial training on DAPs is crucial for participants to realise the benefits of DAP process

Preventing conflicts turning into disputes

- Designated member ran informal quarter-day meeting to discuss progress of project
 - o Also look at any conflict that has developed
- Meeting held ANNUALLY until project completion
- Secondary prevention
 - o Not best practice! Designated member should be visiting site more regularly.
 - o No requirement for the parties to regularly provide progress reports to the Designated Member.
 - o Negative impact on ability of DM to foresee potential conflicts & assist parties to prevent the escalation of conflicts into disputes, because DM doesn't have a working knowledge of the project.

Stopping conflicts escalating into disputes

- Parties could refer to the DM any issue 'in relation to which they consider that the involvement of the Designated Member could result in the avoidance of the dispute'.
- Referral of a conflict to the DM was an *optional* procedure, and the DM would only assist if *all* parties agreed to the DM's involvement.
- Parties could bypass this dispute avoidance procedure entirely, and instead trigger the dispute resolution procedures of the contract
- *If* parties chose to call upon the DM to help prevent escalation of a conflict into a dispute, DM schedules a meeting with parties.
 - o Informal process. Parties not entitled to make written submissions.
 - o DM only given *existing* documents that may be needed to enable DM to understand the issue.

- Not a hearing.
- DM communicates with parties ex parte
- Appropriate because DM is akin to DRA → doesn't play role in resolving dispute by assessing merits, thus ex parte communication is okay

Dispute Resolution

- If a DM was unable to assist the parties avoid a dispute, their role with respect to that dispute ceased.
- Dispute was then referred to a member of the Adjudication Panel.
- Adjudication Panel undertook an assessment of merits of dispute and issued a binding decision.
- Adjudication conducted within a strict timeframe (maximum of 28 days), thereby offering a quick & efficient system for resolving disputes during the course of construction.
- Adjudication Panel
 - ODA established a 12-member Adjudication Panel, which operated alongside the IDAP.
 - Members of the IDAP could **NOT** also be members of the Adjudication Panel.
 - Adjudication Panel did not perform its duties as a collective entity.
 - It operated as a pool of experts with diverse knowledge, skills and experience from which the most appropriate would be appointed to a particular contract.
 - The adjudicator for each project was specified in each contract, rather than being nominated following the crystallisation of a dispute.
 - Not best practice! Adjudicator specified in the contract may not be the most appropriate for the dispute that has subsequently arisen.
 - For example, if the dispute involves questions of law or contract interpretation, it would be preferable for the adjudicator to be a lawyer. Preferable to delay appointing an adjudicator until after a dispute has arisen, to ensure that the most suitably qualified person is appointed for the particular dispute.
- Process
 - Applicant provides a written *notice of adjudication* to the other party & adjudicator named in the contract, with a description of the dispute and the decision that the applicant wishes the adjudicator to make.
 - Adjudicator, within 3 days of receiving the notice of adjudication, advises parties whether s/he is able to decide the dispute. If the dispute is outside the expertise of the adjudicator, the adjudicator resigns.
 - Within 7 days of notice of adjudication, applicant must provide the other party & adjudicator with the information on which it relies.
 - In determining the dispute, the adjudicator may:
 - review and revise any action or inaction of the project manager or supervisor related to the dispute;
 - adopt an inquisitorial approach in ascertaining the facts and the law related to the dispute;
 - instruct a party to provide further information relating to the dispute within a specified period of time; and
 - instruct a party to take any other action which he considers necessary to reach his decision and to do so within a stated time.
- Decision
 - Decision is binding on Parties unless and until revised by the Tribunal and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award.
 - Adjudicator's decision is final and binding if neither Party notifies the other within the times required by this Contract that he is dissatisfied with a matter decided by the Adjudicator and intends to refer the matter to the Tribunal.
 - Tribunal = UK Technology and Construction Court (TCC), a specialist court dealing specifically with technology and construction disputes.

- Similar to DAB, i.e. binding decision that parties must comply with, notwithstanding that the dispute may be escalated and later revised through arbitration.
- BUT, unlike DAB, the adjudicator has had no prior involvement in the project and would not have witnessed the circumstances leading up to the dispute (similar to adjudication under Australian Security of Payment legislation).
- Parties are more likely to embrace a DAP's evaluation of the dispute if they are confident that the DAP has been privy to the events leading up to the dispute and has in-depth understanding of the project.

Success?

- Adjudicator's lack of prior involvement in project, and strict time limits imposed on the adjudicator to render a decision, make it questionable whether the decision will result in the *final* resolution of the dispute, i.e. without requiring review by the TCC.
- BUT of the 3 adjudications that arose during the course of the London Olympics project, not a single one was escalated to the TCC!
- However
 - Head of Legal for ODA, says the project 'didn't really get any disputes' and while the IDAP were consulted a number of times, 'generally the project managers sorted matters out for themselves'.
 - This suggests that parties were able to sustain open lines of communication and resolve problems amicably.
 - Results suggest that the IDAP was effective, BUT there is also evidence that it was not the principal reason behind the lack of disputes on London Olympic projects.
 - DMs tended not to be called in by parties to play a dispute avoidance role.
 - Query: was it NEC3 contract that was more pivotal to the small number of disputes on London Olympic projects?
 - Perhaps it was a combination of NEC3 and the IDAP that were effective in helping the parties achieve outstanding results...