COST EFECTIVE RESOLUTION OF BUILDING DISPUTES
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INTRODUCTION

This is not a paper intended to offer advice as how to prosecute building litigation more effectively. It is intended for practitioners who from time to time may find themselves being consulted for advice by clients who either cannot afford expensive litigation, or whose best interests would be served by finding a relatively fast an inexpensive alternative.

The author of this paper had over twenty years of practical experience as a project manager and consultant in the building and construction industry prior to studying law. For the past fourteen years he has practiced as a barrister at the NSW Bar, with a specialisation in building and construction. The intent of this paper is to offer some observations based on his experience, and his unique perspective. It is intended that some of the issues raised in this paper will perhaps be explored informally and in more detail with conference delegates, at the conference itself.

The first part of the paper briefly examines some of the inherent obstacles that typically exist in achieving cost effective dispute resolution in building and construction disputes. It highlights the fact that the both the building industry and legal system have a strong bias towards confrontational distributive bargaining rather than promoting prompt resolution.

The second part identifies some strategies which may prove useful in promoting sensible informal settlement. If these strategies are adopted they can often go some way towards ensuring that the possibility of reasonably prompt resolution isn't effectively scuttled by "playing hardball" and the gamesmanship which typically follows the issue of the first solicitor's letter.

The third part of the paper briefly reviews the most commonly used forms dispute resolution practices used in building and construction disputes. No reference is made to processes available under the provisions legislation such as the he *Building and Construction Security of Payments Act* (NSW 2009) which are not dispute resolution processes per se'. The merits of each approach are briefly considered together with an indication as to how, in the author's view, they can be used most effectively.

The paper concludes that considerable scope exists for improvement in the ways in which building and construction disputes are typically managed by legal practitioners. The adoption of pragmatic diagnostic strategies at the time of initial client briefing and the early application of appropriate resolution processes can do much to resolve many building disputes cost effectively, and without the complete dissipation of the assets of those involved.

OBSTACLES TO PROMPT RESOLUTION

Neither the building and construction industry nor the legal system are particularly well orientated towards promoting cost efficient dispute resolution. By virtue of their operation they contain many inherent obstacles which can impede and frustrate the sensible and prompt resolution of even relatively simple disputes.

The Nature of the Building and Construction Industry

The building and construction industry is extremely complex. Even relatively straight forward projects consist of a myriad of contractual and subcontract relationships. They involve numerous specialists, suppliers and professionals. All participants in a typical project usually have widely diverse backgrounds, training and divergent self interests. All these are brought together in a series of short term relationships, for the sole purpose of constructing what is usually a “one off project.” It is little wonder given the lack of incentive to build long term relationships, that the behaviour of many participants is driven almost exclusively by self interest.

The industry also has its own unique communication media, industry jargon. Despite it’s apparent sophistication the industry largely reliant on a semiskilled labour force, much of which does not have a high level of communication and/or literacy skills. Much of the construction industry turns simply on oral instructions and assurances of continuity of payment. If performance is not considered forthcoming or adequate, payment is simply withheld.

Terms like “backcharging” are well known and understood in the industry. Under such practices subcontractors which are deemed not to have performed as required, or are considered to have caused or contributed to any form of loss to a head contractor, have a sum of money deducted from their final payments. In some circumstances final payment is simply withheld in the knowledge that recovery is beyond the means of the subcontractor involved.

Given their need for ongoing work, and/or weaker bargaining position most small subcontractors seldom have the ability to successfully challenge such practices. The situation is further aggravated by the fact that in the industry good administration and record keeping is typically the exception rather than the norm. The smaller the subcontractor or supplier, the less likely he/she will have sufficient records to sufficiently establish that it has suffered a legal wrong, or to successfully prove a legal entitlement.

Building and construction work is procured using a range of delivery methods. These include lump sum, cost plus and schedule of rates contracts. The various forms of contact distribute risk in different ways between the builder and the proprietor. Unlike other forms of procurement the “lump sum fixed price contract” has traditionally been the one favoured by large institutions and private sector clients. The supposed “advantage” is that the builder takes most (if not all) of the risk of the eventual cost of the building or structure being constructed.

In theory at least there is nothing wrong with the builder taking the risk, providing that he/she is in a financial position to do so and he/she can make adequate allowance in the

agreed price for any unforseen contingency. The reality is that if builders were to adequately price the risk they would soon be out of business. This is because the system works to reward the builder who submits the lowest price. The result is that builders are often required to contract for work on very small profit margins. If an unforseen problem is encountered there can be immense financial pressure on the builder to seek ways of extracting additional payment from the client to cover the unforseen cost. Where this is resisted the result is inevitably further disputes over other items, on account of which the builder seeks to recover or mitigate its losses.

It should also be appreciated that where a builder or subcontractor has suffered financial loss, it is itself usually brought under considerable and unrelenting pressure from its suppliers who still require payment notwithstanding any lack of commensurate cash flow from the client to the builder.

All these factors, without more, create a fertile bed of self interest, dominated by short term relationships in which disputes of various kinds can and do prosper and thrive. Without careful management disputes which arise, often result in protracted and expensive disputation. Regrettably the result is often the complete financial destruction of the eventual losing party, (and sometimes also the winner).

The involvement of Lawyers

Unfortunately many disputes have often become extremely acrimonious by the time a client first seeks legal advice. Having failed to obtain the desired outcome over perhaps many months or even years of their own efforts, the disputing parties finally turn to lawyers for advice. Such advice is often sought as a last resort, in an attempt to “force” the unwilling party on the other side into reluctant submission. Faced with this client mindset at first instance, it is easy, with the best of intentions, to offer a course of action which whilst reflecting the “strong response” sought by the client, does little to steer the dispute towards cost efficient resolution.

More often than not the initial solicitor’s correspondence to the other side includes a “letter of final demand” threatening dire consequences and litigation if the “demand” is not met. This usually only inflames the dispute and ensures that the recipient will also seek legal advice and in an attempt to justify and further protect their preferred position. Threats and demands of this kind are often made without legal practitioners really having a real understanding of all the issues involved, including the potential legal issues. It goes without saying that this type of conduct hardly lays the groundwork for a mutually acceptable early resolution of the dispute.

Even if the other side can be intimidated into the prescribed course of action, capitulation is often quiet incorrectly construed as a cost effective “resolution” of the dispute. From experience all the apparent early capitulation by a weaker party normally signals is a retreat to higher ground, from where with time, a more effective counter attack can (and will almost certainly) be launched. At the very least a humiliated combatant will inevitably withdraw all reasonable co-operation for the remainder of the project, and thereafter insist on strict compliance with the provisions of the written contract, irrespective of any flexibility and co-operation which may otherwise have been forth coming.

If a dispute is not resolved by an exchange of lawyer's letters, the inevitable result is often the issue of a statement of claim or summons commencing legal proceedings. While this is often done with the intention of forcing the other side towards some form of acceptable settlement, the reality is often quite different in practice. The issue of proceedings usually serves as a signal to the other side that "the gloves are off" and that there is little point in trying to be sensible by continuing to work towards a mutually acceptable outcome. All practitioners are aware that once legal costs and the costs of litigation begin to mount, these can often rapidly overtake the cost of what was initially being fought over. The focus in any settlement discussions then no longer turns exclusively on how the original dispute can be sensibly and cost effectively resolved, but on who is going to wear the legal costs which have been incurred.

The further the dispute progresses towards a hearing or determination, the more determined parties usually become to recover their costs. Nothing does more to ensure that the dispute continues to a hearing and legal determination than a refusal by one side to accept any responsibility for any part of the other sides legal costs. This is often partly because their own legal costs are often considerable by this stage and/or they were perhaps given an "over optimistic assessment" of their prospects by their solicitor and/or counsel.

Ignorance

It is essential that legal practitioners working in this area have at least some understanding of the way the industry operates. Without a basic grasp of construction terminology and practice it is possible that the position of the other side may be completely misunderstood and/or misconstrued. Similarly it is possible that an inaccurate assessment may be made of the true merits of a client's case. (This is particularly important at the early stage when little is known about the other side's perception as to the real causes of the dispute).

With appropriate knowledge, tact and enquiry it may be possible to quarantine and deal with many of the issues in dispute at an early stage. If this can be done promptly it can prevent the dispute over one rotten apple, spreading to the all the other apples in the box.

By way of illustration only, some of the industry concepts which need to be understood include the following:

- Provisional Sums
- Prime Cost Items
- Preliminaries
- Overheads and Profit
- Liquidated Damages
- Progress Certificates
- Practical Completion
- Critical Paths
- Variations
- Prolongation

- Acceleration
- Latent defects
- Resource levelling
- Price composition

For the purposes of illustration only the terms “Practical Completion” and “Liquidated Damages” are discussed further in this paper. The effect of the other concepts can, depending on the circumstances of the individual dispute be even more significant and relevant in correctly diagnosing the real basis of a dispute, and promoting early and cost effective resolution and settlement.

Practical Completion and Liquidated Damages

Many building and construction contracts make reference to a “Date For Practical Completion.” Without more it generally taken in the industry to mean “*the stage of completion by which the building is reasonably complete and able to be taken into use by the Proprietor*.” The stage is of contractual significance because it is usually linked to an obligation on the part of the Proprietor to release part of the security (or “retention money”) which it has held against the contracting builder successfully completing the project. It is also significant because it also usually marks the beginning of what is known as the “defects period”, at the end of which, and subject to the rectification of any identified defects, the contractor is taken to have discharged most of its contractual obligations.

Practical completion is also significant because it is usually the point at which the Proprietor is obliged to take over responsibility for the building, including responsibility for the building’s insurance. Unless the term is clearly defined in the contract disputes can arise on account of the parties having differing views and opinions as to the level of completion which reasonably constitutes “practical completion.” This is particularly important where the project is to be delivered for occupation in a number of “stages”.

It is in the builder or contractor’s interest to assert that “practical completion” has been achieved as early as possible. Proprietor’s by contrast typically like insist on the work being effectively complete, before agreeing that this stage has been reached and releasing any of the security being held.

Practical Completion is also problematic as it is often linked to what are known as “*liquidated and ascertained damages*” (more commonly known as LAD’s). Liquidated damages clauses normally allow the Proprietor to withhold a predetermined amount of money from any money otherwise due, if builder or contractor does not achieve practical completion by a specified date. The liquidated damages are normally calculated at a daily rate specified in the contract.

The size and threatened application of liquidated damages can have a significant effect on the posture adopted by a builder or contractor as the project progresses. It is common for builders to submit numerous delay and variation claims for “extras” as insurance against a proprietor seeking to apply liquidated damages if the project fails to achieve practical completion by the specified date. These are commonly traded off to

some extent at the end of the project in the finalisation of the project accounts, depending on whether or not liquidated damages are applied by the proprietor.

The conflicting long term objectives of builders and proprietors in regard to practical completion, delay, variation claims and liquidated damages often significantly influences the position adopted by the parties in any dispute. On its face the dispute explained to the solicitor at the time of the first briefing may appear to have nothing to do with any of these particular issues. Unless these issues are however clearly identified and considered at an early stage, it is unlikely that the dispute will be easily resolved, as the real issues will often remain unaddressed and/or unresolved.

Commercial versus Legal Advice

It is a common misconception that when a client approaches a solicitor regarding a building dispute that it is seeking purely "legal advice." From experience what the client often needs is sound "commercial advice." Providing legal advice is usually only a part of providing good commercial advice.

If the point is missed, legal advice alone, founded in our adversarial system, is likely to do little to assist in promotion of a cost efficient resolution to the dispute. By focusing exclusively on the apparent strict "legal issues" arising out of the clients instructions, the real underlying causes of the dispute may remain completely unaddressed. If this turns out to be the case, valuable time and money will be expended without any meaningful progress, and/or any real benefit to either side.

It is not uncommon for clients to inform their legal advisors that they are seeking legal advice because the dispute involves a matter of "principle." This has very little to do with the law as seldom, if ever, do the moral and legal rights of a client fully align. More accurately stated what many clients are infact seeking is to have their moral rights recognised. Alternatively they are seeking vindication and/or vengeance to appease a sense of outrage they feel at an apparent injustice which they perceive they have unfairly suffered.

Unless a distinction is drawn at an early stage between a clients possible legal rights, and the need to also address moral rights and other human needs in a holistic way, it is unlikely that solutions will be identified which will be in a clients commercial or personal best interest. This notwithstanding that they have perhaps been given very good "legal" advice.

The Dormant Cross Claim

It is not uncommon for legal advice to be given for a fairly straight forward matter which results in the commencement of legal proceedings. It is also not uncommon for this to evoke a significant cross claim by way of eventual responses as the other side seeks to mitigate any potential loss, and/or to strengthen their bargaining position.

The cross claim is often generated on the basis of claimed defective or incomplete work, or damages arising out of claimed "late completion". The cross-claim is often filed, with or without, the taking of "expert advice" about the matters forming the basis of the claim.

From experience is it apparent that many of the so called “experts” in the industry have a propensity to overstate the seriousness of alleged defects and the cost implications of rectification. It is not uncommon for some experts offer their opinions on a “worst case scenario,” and/or based on unrealistic and/or untested assumptions.

By the time the true merits of any cross-claim eventually crystallise the client has often become convinced of its entitlement to damages equivalent to the “complete cost of rectification” as identified by its own experts in one or more of their initial “expert reports”. This distorted perception alone is often responsible for many a client’s subsequent unwillingness to consider pragmatic settlement proposals on some more realistic basis.

STRATEGIES FOR SUCCESS

It is said that “the one thing about common sense, is that it isn’t very common”. The strategies for cost effective resolution of building and construction disputes are mostly common sense.

Firstly they involve seeking to avoid some of the more obvious pitfalls described above. Secondly they involve putting maximum effort into correctly diagnosing the real cause and consequences of the dispute. Thirdly they can involve making recourse to some of the recognised ADR processes where these are appropriate to the dispute in question.

Identifying all the Issues

If the prospects of a cost effective outcome is to be seriously promoted it is essential that sufficient time and resources be put into identifying the real issues at the outset. Caution and wisdom suffer greatly in the cauldron of pressure and urgency. While it is always tempting to fire off a strongly worded first letter at the client’s request, it may be in the clients best interest to make detailed further enquiries before such action is contemplated.

Time and resources well spent at the early stage identifying all the relevant issues will more than be overtaken by the other costs of litigation if the matter is not resolved in a cost effective manner. If however proper enquiry is made in order to more clearly identify the complete picture (including the other side’s perception of the cause of the dispute,) it is more likely that the real issues will not be overlooked in the search for a mutually acceptable and cost effective resolution. The success of such an approach will be largely governed by the lawyer’s inquisitorial ability and tactfulness in dealing with the client from the outset.

Positions versus Needs

Building and construction disputes often erupt on account of a party claiming that the other party has failed to properly perform its legal obligations. Alternatively the aggrieved party claims that its legal rights have somehow been infringed. The reality is that disputing parties generally tend to adopt positions on account of fears or needs which

they have (or perceive they may have.) These issues are typically well camouflaged in contractual “jargon” and “legal speak.”

It is a fact of life that when someone feels under threat or siege they are less likely to co-operate than if they are given to believe that it is in their best interests to do so. This does not just mean that they may choose to avoid costly litigation if the comply with what is being demanded of them. It means that if parties can be persuaded that some of their perceived fears can be allayed and their needs met they will more readily alter their stated position.

From experience the breakthrough in settlement of the many of building and construction disputes is brought about by the most unlikely factors. These include a party’s willingness to acknowledge that inconvenience and frustration has been caused by its actions, to offer an apology or to accept at least some responsibility for a given state of affairs. Often the breakthrough comes by proposing a practical solution which has nothing do with a party's actual or perceived legal rights.

The Big Picture

All too often clients develop a “near sightedness” which deteriorates with every day the dispute remains unresolved. As the dispute progresses in a “blow by blow” war of attrition, considerable effort is directed towards gaining the maximum strategic advantage out of each exchange. This does little to increase the prospect of cost effective dispute resolution.

With communications directed via legal representatives, and responses sanitised for maximum legal effect, the wider perspective can easily be lost. Unless a conscious effort is made by all concerned to consider the “big picture’ it is unlikely that effective and mutually acceptable settlement terms will be easily identified and adopted.

One way of ensuring that the big picture is kept in focus is to continually review what the consequences are likely to be in the event that the dispute is not promptly resolved in a cost effective manner. A useful exercise is to try and help the client visualise how it is likely to view the current discussions and its current position if the situation deteriorates and remains unresolved in six months time. It may well be that what is currently an unpalatable solution or offer may turn out (with the benefit of six months perfect hindsight) to have been a pragmatic cost effective solution. Careful reflection on this possibility can ensure that what appears at first instance not to be acceptable terms of settlement are not summarily rejected on account of a failure to see the offer on a time/cost continuum and in terms of the “big picture.”

EFFECTIVE DISPUTE RESOLUTION TECHNIQUES

Alternative dispute resolution has been around for some time. Parties to disputes are increasing being referred by the courts to mediation at an early stage of the litigation process. Indications from the judiciary are that this trend is likely to continue with parties being required to go to mediation far earlier in the litigation process than has previously been the case.

Many building disputes are also routinely referred out to a court appointed referee for the purposes of the preparation of a referees report. The concept of third party intervention is increasingly being embraced as a means to promoting cost effective dispute resolution.

There is no reason why disputing parties should not be encouraged to explore third party intervention at an early stage and before commencement of legal proceedings. The earlier the intervention the greater the likelihood that the matter can be resolved in a cost efficient manner. Such early intervention, at the very least, usually results in a better definition and narrowing of the issues in dispute even if the matter is subsequently litigated. This can substantially reduce the length and cost of any judicial hearings.

Other benefits of early third party intervention can include

- identification of appropriate cost effective mechanisms for dealing with various aspects of the dispute
- the re opening of direct communication lines between the parties
- the possibility of renewed face to face negotiations
- identification of the underlying issues which also need to be addressed
- a better understanding by both sides of the merits of their respective positions
- an improved ability to make informed decisions and to give and receive instructions

The most commonly used dispute resolution techniques in building and construction are mediation, expert appraisal, the use of expert conclaves and expert determination.

Mediation

The use of mediation is well known. It is the introduction of an appropriate third party intermediary with the aim of assisting the parties to negotiate more effectively. The stated aim is usually to seek to establish common ground and if possible to explore the possibility of early settlement by creative problem solving.

Much of the success of any mediation will be dependant on the skills of the mediator and the attitude of the parties and their legal representatives. Without an appropriate captain to chart an appropriate course the ship will remain firmly wedged on the reef. Without the assistance of a willing and motivated crew, the captains best endeavours and suggestions will be of little value or effect.

In building and construction disputes the mediator should ideally be a person not only with suitable mediation training and experience but also with qualifications and practical experience in building and construction. If a mediator can be agreed who also has legal qualifications this will also be a distinct advantage. The benefits of having the correct mediator cannot be overstated. If the mediator is quickly able to build confidence with the parties because of his inherent industry knowledge they are more likely to take the trouble to explain what the real underlying issues are which have led to the standoff in the first place. Once they have formed the view that they have been heard they are also more likely to trust the mediators judgement because he/she is then in an ideal position to offer workable solutions.

The role of the legal representatives is also crucial to any mediation. From experience they can be of invaluable assistance, providing they work with the mediator. It is essential that legal representatives engage in the process with a mindset of seeking to settle the dispute. This is quite different to the adversarial mindset which is the hallmark of the legal system.

It is not uncommon for mediations to falter even before they begin because the lawyers on one side set unrealistic preconditions to participating in the process. Ideally the mediation should be between the disputing parties. It is their dispute and they are the ones who will have to live with the consequences of success or failure. The lawyers should, in my view, only available to give advice where deemed appropriate. The mediation should not be allowed to become a forum where the lawyers for both sides seek to impress their respective parties by their "strong performance" and "hard line" at an early stage of the dispute.

There is little point in embarking on the cost of mediation, just to be seen to have "tried." The mediation process is capable of delivering significant results providing a thoroughly competent mediator is engaged and the parties and the legal representatives on both sides approach the process with a positive attitude.

Expert Appraisal

Expert appraisal is the process in which a third party is introduced in order to provide the parties with an objective sober assessment of the merits of their respective cases. The intention is promote early settlement by clarifying the respective strengths and weaknesses in the cases for both sides, should the matter proceed to litigation. It provides the parties with the opportunity to carefully consider the financial and other risks before embarking on the litigation process.

Ideally expert appraisal should also be carried out by a person with both building and legal qualifications. A graded arbitrator or with these credentials is probably ideal. There are also competent part time members of various Tribunals in NSW who may be suitable to facilitate a review process.

An expert appraisal can be tailored to suit the requirements of the parties. Ideally an agreed process is identified with tight time frames to minimise cost and maximise benefit. During the process the parties are each given the opportunity to provide documentation to the expert. This can, by prior agreement, also include the making of short oral or written submissions in support of the material tendered.

At the end of the process the expert can be required to address senior executives or representatives from both sides as to his/her assessment of the respective merits of the material he/she has reviewed. The expert can also offer advice as to how the unresolved matters might best be progressed and give an indication of the likely consequences if the matter is not resolved without litigation.

Even when a formal expert appraisal process is not followed there is still substantial benefit in seeking an independent advice at an early stage. This can easily be obtained by consulting a specialist barrister with experience in building and construction cases.

Such advice can flag difficulties in a client's case at an early stage and ensure that all the relevant issues are promptly identified and addressed. The added benefit of this approach is that it will also send a clear signal to the other side that the dispute is being taken seriously. It can help reinforce the perception that the case is being well prepared and that there are compelling reasons why settlement should be promptly explored if the "inevitable" litigation is to be avoided.

The Expert Conclave

Building and construction cases rely heavily on expert evidence. This is usually evidence of a technical nature and relating to quantum. Expert evidence can include opinion on the nature and extent of any claimed defects and the methods and costs of repair. It can also include opinion on structural issues and on the adequacy of building services. These can include electrical, mechanical, hydraulic, transportation and other essential services.

Expert reports are usually independently prepared by experts for both sides. They are normally based on documents provided, a view of the subject premises, design documents and copies of contractual correspondence. The reports contain the expert's conclusions based on their view of the materials provided and their assumptions. As already stated above it is not uncommon for such experts to be extremely "pedantic" about the matters they are asked to comment upon. Building and construction expert reports are often filled with many pages of material flagging relatively minor defects which while they may be technically correct, are of little assistance in identifying the really significant issues which need rectification. The result is often a distorted impression of the real seriousness and likely cost of repair of the issues of real concern.

Unless the positions of the experts are moderated at an early stage parties will not be placed in a position to negotiate a sensible settlement based on an accurate assessment of the technical merits of their respective cases. The best way to do this is to arrange for a conclave of the experts from both sides. The purpose of the conclave is for the experts to meet and discuss their opinions point by point and to see where they can reach common ground. From experience significant progress can be made when the experts are given the opportunity to exchange ideas on the assumptions they have made in the compilation of their reports. Often when an assumption is pointed out as being incorrect an expert will be willing to revisit the relevant aspect in his/her report.

Ideally the conclave of experts should take place in the absence of the parties and their legal representatives. This is because they need to be able to undertake their work without having to "play to the grandstand." The end of the process should be a joint report in which the parties set out the items on which they are in agreement and those which remain in dispute. This can be further reduced to a scott schedule for the purposes of any subsequent litigation.

Significant benefit can be achieved if the conclave of experts is chaired by an appropriate and suitably qualified person. This is because such a person can ensure that the time is well spent, all salient issues are properly explored and that the experts do not simply spend the time defending their respective opinions, without seeking to find

common ground. Ideally the chairperson should be someone with similar qualifications to the experts in order to command appropriate respect.

Expert Determination

Expert determination is the determination of aspects of a dispute by a suitably qualified expert. This technique is especially useful in dealing with disputes as they arise. It removes the uncertainty which, if left unaddressed, has a tendency to poison the working relationships between the parties for the remainder of the project. Unresolved disputes also tend to attract further disputes and become part of a larger ambit claim which is left to be dealt with at the end of the project. These ambit claims typically result in a dispute eventually being referred to arbitration or alternatively result in litigation.

Typical applications where expert determination may be appropriate include disputes involving delay claims, disputes over quality and disputes involving quantum. They are also useful in resolving disputes where specialist finishes or technology is involved and the expertise in the area is fairly limited. Such disputes are not readily and equitably dealt with by non specialist adjudicators or the courts.

Small disputes can easily be dealt with on a consensual basis by way of a simple agreement to refer the matter to expert determination and the parties agreement to be bound. Larger disputes can be approached using the rules for expert determination published by professional bodies such as the Resolution Institute (formerly IAMA).

Caution should however be exercised when deciding whether or not an aspect of a residential dispute should be referred to expert appraisal. This is because consumer protection legislation in several states including NSW makes arbitration awards unenforceable on certain types of residential contracts. If the expert determination takes on the form of arbitration it may turn out to be unenforceable at law, notwithstanding the stated intention of the parties who have submitted themselves to the process.

CONCLUSION

From the above discussion it is clear that considerable scope exists for improvement in the ways in which building and construction disputes are typically managed. Providing sufficient time is spent at an early stage it is possible to steer many disputes towards a cost effective form of resolution.

Much is however dependant on whether informed and pragmatic diagnostic strategies are employed at the time of initial client briefing. If this is done then the application of appropriate resolution tools can do much to promote the prompt and cost effective resolution of most building and disputes.

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