

The Dispute Board Federation

Geneva

Excellence in Dispute Resolution since 2001

March 2009

Issue: 40



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Featured Events

Future combined
FIDIC -DBF
and
International Finance Corporation
related programmes
and events include:

Saigon

DAB Training
25 - 26 March 2009

Sarajevo

ADR Practical Training
Programme
31 March - 1 April 2009

Dubai

DAB Training
15 -16 April 2009

Dubai

DBF Dinner Meeting
for Professional Members
16 April 2009

Australia

Mediation Training
28 - 30 April 2009

Singapore

Mediation Training
5 -7 May 2009

Hong Kong

DAB Training
12 - 14 May 2009

Tokyo

DAB Training
19 - 20 May 2009

Sarajevo

Call For Papers DBF Winter Symposium 12 -15 November 2009 Istanbul Turkey

on

The Role of ADR & Dispute Boards In The Effective Rebuilding of Immediate Post-Conflict Countries

Overview

The effective rebuilding of immediate post-conflict countries involves a combination of construction, diplomacy, risk management and an effective way to prevent dispute from arising during the process. This year's symposium seeks to probe the relationships between all of these subjects in the hope of arriving at the optimum strategy for use by the DBF and its partners in the resolution of disputes on infrastructure projects and the effective delivery of those projects within the necessary time constraints and within the prescribed budgets.

Content

The 2009 DBF Winter Symposium is seeking papers that explore ADR and Dispute Board topics from an infrastructure development perspective and with a focus on the analysis and practical tools related to:

- Operational Disputes
- Financial risk abatement and management with ADR
- Interaction between disputes and risk avoidance
- Creating value through effective use of ADR and Dispute Boards
- Mediation in post conflict situations
- Dispute Boards under Civil Law
- Dispute Boards and ADR under Sharia Law
- Mediation of infrastructure project disputes under Sharia Law

Suggested questions to be explored include (please note that these questions are only intended to serve as examples and are not meant to restrict potential ideas in any way):

- The future of Dispute Boards and ADR
- Developing a model for the practical use of ADR in post conflict countries
- Financing the large infrastructure projects

- Solutions to effective on time completion and delay avoidance
- Risk Management in post conflict country development
- Mediation of construction disputes in a cross-cultural setting
- What are the challenges for increasing the extent of potential interactions between dispute resolvers and the principal parties to reconstruction?

Where appropriate, papers should include specific examples illustrating how ADR practitioners, Employers and Contractors could apply any of the proposed approaches and how to communicate them to all levels of participation. It is anticipated that most authors will elect to focus on certain aspects of this topic and will not cover all issues. The organising committee is particularly interested in reviewing papers that explore areas representing diverse perspectives on ADR and Dispute Boards. Abstracts should clearly outline what will be covered in the paper. The papers will appear online as part of the symposium proceedings, and be submitted, upon author request, to suitable peer-reviewed publications for publication consideration. The DBF reserves the right not to publish any paper that does not meet its criteria and standards.

Procedure for Submission of Abstracts

Submit electronically an abstract or outline for your proposed paper by 1 June 2009 to:

Herbert Wilson
Executive Director
Dispute Board Federation
e-mail: h.wilson@dbfederation.org

Minimum Requirements: The submission should include a brief description of the subject of the paper; whether the paper, for review purposes, should be considered theoretical, applied, or both; a list of key items to be covered and a short biographical introduction to the author's experience, prior publications and presentations. An e-mail response stating your abstract has been received will be sent within three days of receipt.

Procedure for Reviewing Abstracts

Submitted abstracts will be evaluated by a DBF review group for their potential to be presented at the 2009 DBF Winter Symposium, which will be held on 12 - 15 November 2009 in Istanbul Turkey. Because of limited time during the symposium, not all accepted abstracts/papers can be guaranteed for presentation at the symposium. Papers to be presented at the symposium will be selected based on the abstracts submitted. It is anticipated that travel and lodging expenses for authors selected as award winners will be reimbursed up to a specified amount. A final determination as to the number of papers invited to present will be made after all abstracts have been submitted and reviewed.

Paper Prizes

A number of paper prizes are anticipated. Details about prizes will be included in the Newsletter when they become available.

Prizes are contingent upon winning authors' permission to include their papers in the online symposium proceedings published in conjunction with the DBF Winter 2009 Symposium.

Submission of Papers

All papers, based on accepted abstracts, must be completed and submitted no later than September 30, 2009.

The procedure for submission of papers includes the following specific guidelines:

- Submissions that have a copyright must be accompanied by written permission to reprint
- Submissions should be made electronically to Herbert Wilson.

DAB Training
9-10 June 2009

For a full listing of programmes and events, brochures and more information and/or to register please go to:

www.dbfederation.org



DISPUTE BOARDS AND BUSINESS IN VIETNAM

The DBF in conjunction with FIDIC are pleased to present a very special programme in Saigon on 25 & 26 March 2009

In addition to the intensive DAB programme, those who attend will meet with country leaders of Viet Nam as well as IFC officials for a discussion of current issues dealing with dispute boards and their use in infrastructure development as well as in related industrial and related applications.

This two day programme covers all aspects of Dispute Boards and their proper use and satisfies all of the requirements of FIDIC's Module 3. Additionally The course also provides the participants with a hands-on approach to learning this vital subject.

Taught by leaders in the field of Dispute Boards this programme provides each participant with a thorough grounding in dispute boards, their various differences and operation and their use in the all common forms of contract particularly the FIDIC Conditions of Contract. Most importantly the course is taught from the perspective of those who are construction professionals.

Publication and Presentation

The DBF reserves the right to publish all papers and to copyright all published papers without a previous copyright. In addition, excerpts or synopses of the papers may be published for promotional purposes.

Questions

Please direct questions regarding this call for papers to:
Herbert Wilson email: h.wilson@dbfederation.org

The programme is of benefit to all government and planning officials, regional and local procurement officers, consultants and consulting engineers, as well as all contractors, quantity surveyors, architects, legal advisors and all involved with the implementation and management of works contracts.

To register or for more information please click here: [Vietnam Programme](#)

Thoughts on Decision Writing

by Chris Chilton

Over the next few months, the DBF will be launching its intensive and interactive two day course, "The *Decision: Structure and Organisation*". This is in response to the demand for advice on effective Dispute Board decision writing.



Whilst the course will look at the broader issues of a Dispute Board decisions, Chris Chilton, chair of the DBF Board Selection panel, shares his thoughts on aspects of the writing process.

I love being a writer. What I can't stand is the paperwork.
Peter De Vries

As professionals, our words are what endure. Long after the face and the voice are forgotten, the decision that sits in someone's file lives on, particularly in the heart of the party against whom the decision was made. We have a tendency to protect our own work, to think that because we have gone through our words several times, they can't be improved on...but...they always can.

But ...other than it being a requirement, why do we write a decision in the first place? It's all about communication.

Communication is the process of transferring information from a sender to a receiver with the use of a medium in which the communicated information is understood by both. So the key to it all is understanding

If you want people to understand, you've got to explain
Joe J McKay. CEO Blackfoot Indian Writing Co.

Understanding is a psychological process. It is related to an abstract or physical object, such as, person, situation, or message whereby one is able to think about it and use concepts to deal adequately with that object. Nothing more and nothing less.

Remember that words add no value unless they support communication and understanding *i.e.* to present the reasons for the decision and the decision itself. Words, sentences and paragraphs - plain and simple.

It depends on what the meaning of "is" is.
Bill Clinton 1998

One of the dangers of expertise in one area is the presumption that we can be expert in other areas. This has been evidenced recently by professional services firms moving away from their core business and offering a range of services, which only dilutes their original expertise. So it is with writing. The core of the business of writing are words, sentences and paragraphs. Never be ashamed to take advice on these things. Never be ashamed to reach for the dictionary.

My spelling is wobbly. It's good spelling but it wobbles, and the letters go in the wrong places.

Istanbul 2009



Winter Symposium Save the Date

The Dispute Board Federation is holding its 2009 Winter Symposium in Istanbul Turkey the 12th through the 15th of November 2009.

This promises to be an exceptional event with leaders in International Finance, Insurance, Construction, Alternative Dispute Resolution, and Dispute Boards come together for lively debate and discussions on the future of Dispute Boards, their integration with Alternative Dispute Resolution such as Mediation and the re-building of the infrastructure in courties that are emerging from recent conflict.

The Symposium is divided into working sessions, discussion groups and lectures all on these subjects with the presentation of papers on these subjects along with the presentation of a prize for the most insightful and thought provoking paper.

Winnie the Pooh (A A Milne) 1926

Most IMPORTANTLY use Plain English!

Incomprehensible jargon is the hallmark of a professional

*Kingman Brewster
President Yale University 1977*

The Campaign for Plain English (www.plainenglish.co.uk) gives some great examples of getting it wrong. Try this:

"The results of the price barometer illustrate that the reprieve in the pace of price inflation evident in the first quarter has abated."

And this,

"If there are any points on which you require explanation or further particulars we shall be glad to furnish such additional details as may be required by telephone."

How much better instead are:

"Prices are rising again" and "If you have any questions, please phone."

The Golden Rules

The longer the message. The greater the chance of misinterpretation.

If you get all the facts, your judgement can be right; if you don't get all the facts, it can't be right.

However no set of rules can replace the expertise that professional Dispute Board members bring to bear. But there is no doubt that these rules can make that expertise more transparent and easier to understand.

Your words will be scrutinised - every letter, every word, every mark on the page - particularly by the party who feels most disadvantaged by your decision. This is the ideal place to aim. The loser, despite having lost, reads your decision and in doing so develops respect, even if reluctantly, for you and your work.

The over-arching rule is clarity. This is about structure, correct grammar, punctuation, precision, non-ambiguity, conciseness, completeness and elegance

- **Precision:** Say what you need to say - no more and no less
- **Non-ambiguity:** Understand the precise meaning of the words you use. Choose words that in their context can only be reasonably interpreted in one way. And make sure that is the way that you intend them to be interpreted.
- **Conciseness:** Be to the point. No repetition. No waffle. Don't be long-winded. Stick to the point and consider only the matters for which you are being retained.
- **Completeness:** The balancing act is between completeness and conciseness. Never include things because you don't know whether or not they should be included. Leave that to the young student who scribbles down all of their knowledge comfortable that "it's *all in there somewhere*". Express ideas and reasons completely. Give the full story.
- **Elegance:** Your writing must flow and it must have rhythm just as the work of the Dispute Board will have flow and rhythm.

What makes this kind of writing difficult?

In a word: readers.

I am often asked what is the difference between general professional writing and writing in support of dispute resolution. Why is "legal" writing so difficult? Generally because legal documents have a unique and diverse readership; you as author, your fellow Board members, the Employer, the Contractor, the parties representatives, arbitrators, judges - each with a

In addition to the working sessions there will be a gala dinner for all participants and the opportunity for networking amongst the approximately 200 planned participants.

Please save the dates and note the time restrictions for the submissions of papers.

Registration for this Symposium will open 1 August 2009.

If you would like more information or to be put on the waiting list for this Symposium please contact Jonathan Varoqui email: j.varoqui@dbfederation.org.

Looking forward to an outstanding event.

Herbert Wilson
Executive Director
The Dispute Board
Federation

Focus on Books



Chern on Dispute Boards

By Cyril Chern

Hardcover, 392 pages
Wiley-Blackwell

The essential guide to parties commissioning large capital construction projects, those advising them, and those bidding to carry out such work, and importantly those serving on dispute boards.

Everything that one needs for successful dispute board operation and use with FIDIC contracts and all major forms.

different agenda.

The biggest obstacle to professional writing is the necessity for changing a typewriter ribbon

Robert Benchley 1949

The best advice however is that we should all use a good dictionary. Here's a list of some of the books that I carry around with me. We live in the world of William Gate's Office Assistant, that delightful bouncing paperclip, and the inevitable spell checker that invariably gives you a version of language that doesn't quite match your expectations. But there is no shame in using a dictionary too. My recommendations include:

Bryan A Garner, *A Dictionary of Modern Legal Usage, 2nd Edition*, Oxford, 2001

The Oxford Guide to English Grammar, Oxford, 1996

The Oxford Guide to the English Language, Oxford, 1985

The Oxford Guide to English Usage, Oxford, 1994

Shorter Oxford English Dictionary, Oxford Dictionaries, 2007

Charlton Laird, Michael Agnes, *Webster's New Roget's A - Z Thesaurus*, John Wiley, 2009

Margot Costanzo, *Legal Writing*, Cavendish Publishing Limited, 1993

Sir Ernest Gowers, *Complete Plain Words*, Penguin, 1986

R L Trask, *Mind The Gaffe*, Penguin, 2001



Dispute Boards: Procedures and Practice

By Gwyn Owen and Brian Totterdill

Hardcover, 304 Pages

Thomas Telford Ltd

A useful guide to the various contract procedures which require or permit the use of Dispute Boards. It gives a detailed explanation of the interpretation and application of each requirement, both practical and legal/contractual, while referring to the international Conditions of Contract published by FIDIC as well as to other published procedures where relevant.

For more information or to purchase these books go to our bookstore: [DBF Bookstore](#)

New DBF Documents Available Soon

The Documents Committee of the Dispute Board Federation is pleased to announce that its new edition of the DBF set of Documents including the updated *Dispute Board Rules & Procedures*, *Dispute Board Member Form Agreements*, *Writing the Decision Guidelines*, along with new form clauses for the use of Dispute Boards and the newest aspects of integration of mediation clauses into standard form agreements will be released within the next 45 days.



The new standards of ethics for Dispute Board Members is also to be released shortly thereafter and will provide useful guidelines for conduct of Dispute Boards and their Members.

These new documents will allow users to customise their existing form agreements to better comply with good practise standards for Dispute Boards and to ensure that the Dispute Board provisions are in line with the Agreements for Dispute Board Members. All forms will be available on-line at no cost through our website.

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