



Dzungst & Associates LLC, 2021 Webinar Series

04 An approach to the efficient resolution of disputes in the Construction Sector

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The challenges and difficulties facing arbitration in the construction sector

- The four major challenges facing construction sector arbitration
 - Lack of clarity as to the claims and defences
 - Ritualistic approaches to the production of evidence
 - Inadequate availability of experienced arbitrators
 - Procedural paranoia

Some suggested solutions

- Collegiate cooperation among the arbitration professionals
- Competence and experience – but also availability
- Intermediate adjudication
- Effective case management techniques
 - Clear definition of issues
 - Clear definition of agreed facts
 - Clear definition of agreed matters of opinion

Some suggested solutions

- Effective case management techniques (continued)
 - Fair yet firm formulation and enforcement of procedural directions
 - Control of fact-finding
 - Encouragement of settlement consultations
 - Limited use of experts at the award-writing stage

READING LIST

- Wittmann, N. "Using a 'Scott Schedule' in Arbitration", a post on the ADR Institute of Canada: <https://adric.ca/using-a-scott-schedule-in-arbitration/> (accessed on 30 September 2021)
- IBA Rules on the Taking of Evidence in International Arbitration (2010): <https://www.ibanet.org/MediaHandler?id=68336C49-4106-46BF-A1C6-A8F0880444DC> (accessed on 30 September 2021)
- IBA International Principles on Conduct for the Legal Profession, adopted on 28 May 2011 by the International Bar Association: https://www.icj.org/wp-content/uploads/2014/10/IBA_International_Principles_on_Conduct_for_the_legal_prof.pdf (accessed on 30 September 2021)
- 2019 International Arbitration Survey: International Construction Disputes: <https://www.pinsentmasons.com/thinking/special-reports/international-arbitration-survey> (access on 30 September 2021)
- The Technology and Construction Court Guide, 2nd Edition, updated 9 February 2015: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819807/technology-and-construction-court-guide.pdf (accessed on 30 September 2021)
- The American Arbitration Association Construction Industry Arbitration Rules and Mediation Procedures - Including Procedures for Large, Complex Construction Disputes (2016): <https://www.adr.org/sites/default/files/Construction%20Rules.pdf> (accessed on 30 September 2021)
- ICC Commission Report - Controlling Costs in Arbitration: <https://iccwbo.org/content/uploads/sites/3/2018/03/icc-arbitration-commission-report-on-techniques-for-controlling-time-and-costs-in-arbitration-english-version.pdf> (accessed on 30 September 2021)
- Rules on the Efficient Conduct of Proceedings in International Arbitration (Prague Rules, 2018):
- ICC Commission Report: Construction Industry Arbitrations Recommended Tools and Techniques for Effective Management (2019 Update): <https://praguerules.com/upload/medialibrary/9dc/9dc31ba7799e26473d92961d926948c9.pdf> (accessed on 30 September 2021)
- Chartered Institute of Arbitrators, Guidelines for Witness Conferencing in International Arbitration (2019): <https://www.ciarb.org/news/ciarb-s-new-guidelines-for-witness-conferencing-in-international-arbitration/> (accessed on 30 September 2021)
- Effective Management of Arbitration - A Guide for In-House Counsel and Other Party Representatives (2018): <https://iccwbo.org/publication/effective-management-of-arbitration-a-guide-for-in-house-counsel-and-other-party-representatives/> (accessed on 30 September 2021)
- ICC Arbitration and ADR Commission Report on the Accuracy of Fact Witness Memory in International Arbitration (2020): <https://iccwbo.org/content/uploads/sites/3/2020/11/icc-arbitration-adr-commission-report-on-accuracy-fact-witness-memory-international-arbitration-english-version.pdf> (accessed on 30 September 2021)