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Dispute Resolution in Engineering

by ***Ir. Zafrul bin Mahmood,*** *FIEM, P. Eng.*

DISPUTE resolution is by no means a foreign subject for most engineers. Depending on the nature of disputes, engineers are often in the best position to play a major role in the resolution of such disputes. The seven types of dispute resolution naturally divide themselves into two categories:

a) Final Determination Procedures
- Court litigation
- Arbitration
- Expert determination

Other than being appointed as arbitrators and experts by professional bodies, engineers have been known to also take on party appointments namely as counsel or representative, technical adviser, expert witness, witness of fact and assisting counsel to prepare the case.

b) Preliminary Determination Procedures
- Mediation
- Early neutral evaluation
- Adjudication
- Dispute boards

The preliminary procedures serve as filters so that the number of disputes moving to final determination is greatly reduced in the interest of costs and time. It is seen, therefore, in such procedures that engineers have a noble role to play in the resolution of disputes in the construction industry.

In the United Kingdom, New Zealand, the states of New South Wales, Victoria and Western Australia, and now Singapore, the principal mode of construction dispute resolution has shifted to adjudication. This is a swift dispute resolution process that results in a decision which carries 'temporary finality" unless reversed in arbitration or litigation. Meanwhile, the successful claimant is at liberty to enforce the decision.

Consequently, IEM has now approved the setting up of a panel of adjudicators and is in the final stages of drafting its Adjudication Rules. With the Construction Industry Development Board Malaysia (CIDB) moving forward aggressively to gazette the proposed Construction Industry Payment and Adjudication Act or CIPAA, engineers and professionals alike will be taking on greater roles as dispute resolvers who would be deemed to have the desired knowledge, experience and expertise.

Against this backdrop, it is hoped that this month's feature of JURUTERA would not only provide engineers with the current developments in dispute resolution but to also create interest and eventual participation in the field. ■

FUTURE THEMES

February 2010
Water Resources Engineering (Submission by early December 2009)

March 2010
Mining and Quarry Engineering (Submission by early January 2009)

April 2010
Special Issue on IEM Southern Branch (Submission by early February 2009)