



Talk on “The Challenges and Behaviour of Dispute Resolution Methods in Malaysian Construction Industry”

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With the motivation to educate our fellow engineers on the disputes resolution methods, Engineering Education Technical Division (E2TD) organized a talk entitled of “The Challenges and Behavior of Dispute Resolution Methods in Malaysian Construction Industry” which presented by Dr. Chong Heap Yin from Universiti Tunku Abdul Rahman.

The talk attracted around 60 participants where it aimed to expose the participants with numerous dispute resolution methods available in construction industry where at the same time, give a better insight on their strength and weakness and able to identify the factors to be considered when selecting dispute resolution methods.

Every project is bound to have disagreement. Dispute resolution methods do not require full legal process and become mainstream option to traditional dispute resolutions. Typically, conflict in project management is inevitable but it is manageable. It would exist where there is an incompatibility of interest. At the same time, conflicts could be solved via confronting, compromising, smoothing, forcing, and avoiding.

On the other hand, dispute is defined as an assertion of opposing views or claims or a disagreement as to rights. The conflicts and dispute are co-related. The conflict would turn into the dispute when the contracting parties failed to manage the conflict and the dispute resolution would be applied either through binding or nonbinding approach while there could be advantages and disadvantages appeared in every dispute resolution method.

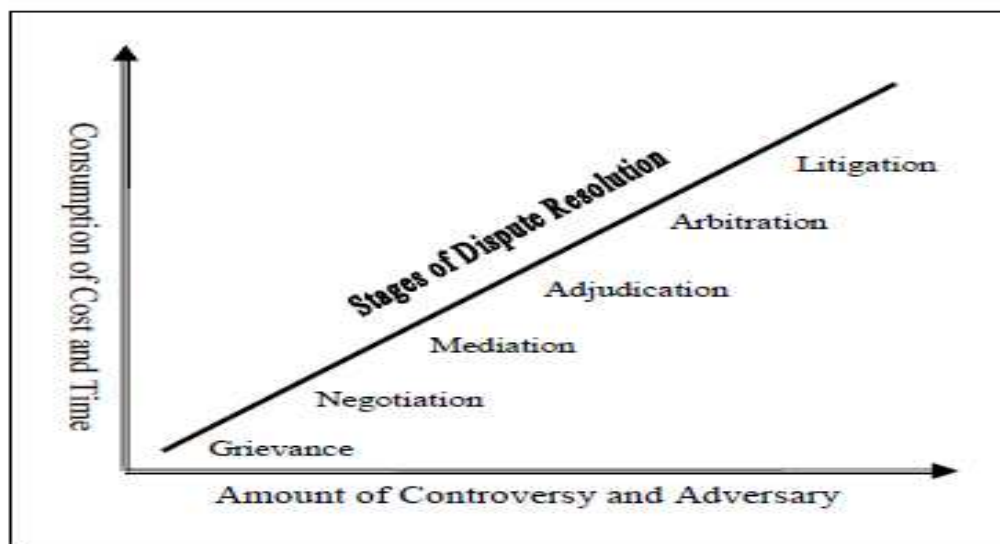


Figure 1: Stages of Dispute Resolution

Figure 1 shows the stages of dispute resolution. The first stage of dispute resolution is grievance where it is the least confrontation and time consuming as the party(s) involved would just follow or surrender due to his/her limited understanding or resources. In developing countries, the grievance is very obvious and common, even though it may jeopardized the person involved.

The second stage is negotiation, which is considered a very popular informal method in dispute resolution. At this stage, it tries to communicate the grievance and negotiate for a settlement. The negotiation technique is a preferred choice of the disputants, with most disputes being resolved through this process. It is the least expensive, and it can preserve the working relationship of the parties involved where in negotiation, the parties have absolute freedom with respect to the form, process and type of agreement. However, negotiation is not always workable and bringing consensus in the end. It is because projects will be diverging from what has been anticipated and triggered to other more formal method of dispute resolution.

At this moment, mediation or conciliation would take place to reach a settlement after the negotiation. Paradoxically, mediator in the process of mediation or conciliation has no power to impose a solution and his/her function is to help or guide disputants to focus on their arbitration and litigation. The alternative to arbitration is to the use of adjudication looking into the perspective of the characteristics and benefits. Adjudication deals with the payment problem between the contracting parties. Usually, it is under a contractual provision in the contract and enforceable by law.

Subsequent stage is the use of arbitration. Here it is clear that the disputants need an arbitrator, an independent expert to act as the decision maker. The parties must agree to the appointment and are bound by the arbitrator's decision. Arbitration is conducted in private and confidentially.

Last but not least, litigation is the following stage of dispute resolution. Litigation is costly, delaying and risky .It also brings a number of variables and unable to satisfy the litigants. On the other hand, the court proceedings consist of several layers too, which is the hierarchy of the courts.

In conclusion, the dispute should be resolved as early as possible in the stages of dispute resolution. The contracting parties' controversy and adversary would be increased together with the consumption of cost and time once higher stage of dispute resolution applied.