

ARBITRARILY SPEAKING 01

The Newsletter of Alan K Chuck Consulting Engineer and Chartered Arbitrator **Volume 1 No.1 2003**

From the Arbitrator's Study

Welcome to this, the first issue of **Arbitrarily Speaking**. I hope you find the contents interesting and worthwhile. I acknowledge the input of Brenda Rossmann AM, Small Business Counsellor, whose idea it was, and Wendy Hughes Chuck, my in-house public relations consultant, who turned the concept into a reality.

During the past two years, I have had to learn a lot about marketing and the numerous other tasks associated with setting up a new business. That work is beginning to bear fruit, as one or two clients actually make contact out of the blue. The new Security of Payment regime in Victoria should lead to a significant amount of adjudication work, even if this is at the expense of arbitration work further down the dispute resolution track.

In the meantime, there has been no shortage of pro bono and committee work, and I have received great satisfaction from hours spent in committee meetings for both civil engineers and arbitrators. The Victorian Chapter of the Australian Branch of the

Chartered Institute of Arbitrators, founded in 2002, is, as far as we know, the first of its type, whereas the Victorian Local Association, founded in 1890, is the oldest continuously operating overseas branch of the Institution of Civil Engineers.



March will see me heading back to Hong Kong to renew connections there, and the fact that the visit will coincide with the Rugby Sevens and a Hong Kong Welsh Male Voice Choir reunion is, of course, purely fortuitous! I shall then go on to Taiwan to keep abreast of the High Speed Rail Project there.

Alan K Chuck

New Payment Regime for Victorian Construction Industry

From 31 January this year, a new scheme to expedite payments between parties to building and construction contracts has been in operation in Victoria. The Victorian scheme, which is based on the New South Wales model, has established a new form of dispute resolution, known as Adjudication, as an interim measure pending final settlement by arbitration, mediation or litigation. Details of the scheme are given in the Building and Construction Industry Security of Payment Act 2002, which is available on the Victorian Government's web site: www.dms.dpc.vic.gov.au.

The Australian Branch of the Chartered Institute of Arbitrators has been appointed as one of the nine founding Adjudicator Nominating Authorities by the Victorian Building Commission. This means that any party to a building payment dispute may, in the absence of agreement on the identity of an adjudicator, ask the Branch to appoint an adjudicator from its panel to hear the dispute. Alan Chuck and other members of the Victorian Chapter are undertaking training courses to enable them to act as adjudicators.

Further information on the operation of the adjudication scheme may be found at the Building Commission web site: www.buildingcommission.com.au

A feature of the scheme is the very short time limits allowed for actions by the various parties. While their intent, to speed up cash flow to small sub-contractors, is commendable, it remains to be seen how this will work in practice.

Legal eagles will be watching with interest to see if any of the first few determinations under the scheme are challenged in the courts and, if so, what the attitude of the Victorian courts will be.

UK correspondent Peter Chapman reports that adjudication continues to flourish there, with a corresponding drop in the number of arbitration referrals, although international arbitration continues apace. While the English and Scottish courts are generally supportive of adjudication, some individual judges are at odds over such matters as observance of natural justice and the adjudicator's permitted degree of pro-activity. Full details of the latest cases may be found at www.adjudication.co.uk/cases. Peter also reports that Dispute Review Boards, once found only in the USA or on aid-funded overseas projects, are now appearing in UK domestic projects.

Briefly

Alan K Chuck Consulting Engineer has been appointed to the Victorian Government Department of Infrastructure's panel of consultants, to assist the Director of Public Transport in producing reports at times when the Department's own resources are over-stretched.

Congratulations to Frank Bishop, the Institution of Civil Engineers' Country Representative for Victoria and Tasmania, who was awarded an AM (Medal of the Order of Australia) in the recent Australia Day Honours list.

Trivia Corner

Which 19th century arbitrator went on to become Prime Minister of Australia?
Clue – his nickname was Toby Tossplot. Answer next issue.

New Fire Protection for Historic Church

Auburn Uniting (formerly Methodist) Church, in Oxley Road, Hawthorn, has received a new, state-of-the-art fire protection system. The Church, designed by brilliant young Melbourne architect Alfred Dunn (1862-94) in the American Romanesque style (called Richardsonian Romanesque in USA, after its leading exponent), was built in 1888-89, at the height of Melbourne's land boom. It includes a contemporary pipe organ by the Melbourne builder George Fincham (1828-1910), since enlarged to three manuals in 1967.



VESDA control panel and sampling tubes in the organ chamber

Both church and organ have survived the intervening 113 years relatively unscathed. However, the effects of a major fire are too terrible to contemplate. Even if insurance were available at reasonable cost, the original materials, such as the solid oregon roof truss members, are no longer obtainable at any price. After looking at the sorry record of other historic buildings and/or organs destroyed by fire, the Church Council decided to take preventative action. For most of the 20th century, fire protection

meant sprinklers, and the installation of such a system would have been prohibitively expensive. Furthermore, should sprinklers ever be activated, it is likely that the resulting water spray could cause significant damage to sensitive electro-mechanical devices such as the pipe organ.

Fortunately, a 1983 invention by an Australian engineer, Martin Cole, has done away with the need for sprinklers and their associated pipework and penetrations. Cole's invention, Very Early Smoke Detection Apparatus (VESDA), consists of sampling tubes and a small pump. Air from the protected area is continuously sampled and monitored by a laser analyser, and any combustion products cause an alarm to be raised. This rings a bell locally, and is relayed to the local fire brigade's despatch system by telephone link. The VESDA system is invisible and almost inaudible to the congregation, and operates continuously without significant maintenance. Alan K Chuck Consulting Engineer provided project management services pro bono.

For further information on VESDA systems, contact Vision Systems Limited, www.vesda.com.

Credits:

Design and installation of VESDA system:
All Essential Fire & Security Pty Ltd, Deepdene, Victoria,
www.allessentialfire.citysearch.com.au.

Alarm Signalling Equipment and Fire Monitoring:
Fire Fighting Enterprises, Dingley, Victoria,
www.ffe.com.au.

New Dispute Resolution Scheme for Internet Domain Names in Australia

Has someone been cyber-squatting on your desired Internet address? Is someone else's Internet address so similar to yours that your customers are being confused? Help is now at hand. For a one-off payment of \$A1500, you may have your dispute arbitrated by a one-person tribunal. There is normally no oral hearing, and the award will be handed down within 14 days of appointment, and may be published on the Internet. The arbitrator's decision is binding on the relevant Registrar, and is usually in the form of an instruction to the Registrar either to cancel a domain name or to transfer it to the successful party. The arbitrator's award is final, unless appealed to a court under certain limited conditions. Each party bears its own costs.

The Chartered Institute of Arbitrators' Australian Branch www.arbitrators.org.au is an accredited service provider under auDRP, and has five experienced arbitrators ready to handle your case. Contact the Scheme Administrator, Malcolm Longstaff, at info@arbitrators.org.au. Mr Longstaff will appoint the arbitrator best qualified and available to hear your dispute. Alan Chuck is one of the panel of arbitrators.

This Newsletter is written in general terms and should not be used as a substitute for advice with respect to any particular transaction or set of circumstances. We welcome your comments, questions and suggestions on the Newsletter. If you would like further information on the topics covered in this issue, please contact the Melbourne office.

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