

DRBF Forum

Volume 17 Issue 1 March 2013



Optimizing the Use of Partnering and DRBs on Projects

By Kurt L. Dettman

Introduction

Some state Departments of Transportation use both partnering and Dispute Review Boards (DRBs)¹ on projects. Questions have been raised, however, about the interplay between partnering and DRBs: If a project is considering using both processes, can they co-exist or do they overlap functions? If a project implements both, what is the best way to optimize their use without duplication of effort (and cost)? This article examines these questions and proposes some ways to address them.

What are the Similarities and Differences Between Partnering and DRBs?

The beginning point of this discussion is distinguishing between the two processes. In 1991, the Construction Industry Institute published *In Search of Partnering Excellence* to promote partnering

as a means of reducing adversarial relationships. That study used the following definition of partnering:

... a long-term commitment between two or more organizations for the purpose of achieving specific business objectives by maximizing the effectiveness of each participant's resources. This requires changing traditional relationships to a shared culture without regard to organizational boundaries. The relationship is based upon trust, dedication to common goals, and an understanding of each other's individual expectations and values. Expected benefits include improved efficiency and cost effectiveness, increased opportunity for innovation, and the continuous improvement of quality products and services [Construction Industry Institute, *In Search of Partnering Excellence*, Special Publication 17-1, University of Texas, 1991].

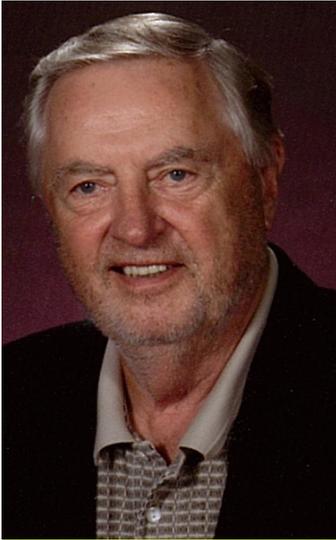
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¹ This article focuses on the use of U.S.-style Dispute Review Boards, not on FIDIC, Multilateral Development Bank, or ICC Dispute Boards. However, readers using different Dispute Board approaches are encouraged to consider the role that partnering could play in other contexts.

This is the first part of a two-part article on the interplay between Partnering and Dispute Review Boards. The first article will explore the issues raised by the use of both approaches on construction projects. The second article will provide information on the different ways that users of Partnering and DRBs are implementing the two approaches.

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President's Page



Roger Brown
President
DRBF Executive
Board of Directors

"Sometimes it is not enough that we do our best; we must do what is required."

Sir Winston Churchill
(1874 - 1965)

DRBF Members, Supporters and Friends,

In thinking about what to say for my second Presidents Page in the Forum I thought maybe I could do some plagiarizing by reviewing what my predecessors had to say. Many of you want to know more about how to get on your first DRB. They had some excellent ideas and recommendations so here goes. Go to the DRBF website and search for past *Forums* and read:

- April 2001 by Bill Baker on [networking advice to help you get selected as a Board Member](#)
- February 2003 by Brian Shipley [Letter from a new DRBF member indicating benefits he rec'd from joining](#)
- August 2009 by Jim Brady on [DRBF mission and why more DRB's will be necessary in the immediate future](#)

I have also learned the Regional Boards are discussing the concept of a mentoring program for first time conference attendees that are interested in serving on Boards. This sounds like a great idea and I look forward to hearing more about the implementation of a program. I am aware that some Board members are taking new recruits to a DRB site visit and meeting, with the parties' approvals, to gain experience and acquaint the parties with a new face.

If any of you would like to network further by assisting with committee work please contact the DRBF office or the president of your region (see the committee's activities I listed in the last *Forum* article). Getting active in the DRBF is an excellent way to establish friendship and establish your credentials for serving on a Board.

Regarding membership retention as well as recruiting new members, the DRBF is working on a questionnaire to find out what additional information, services, education or other that we could provide to our members. Any ideas that you might have would be appreciated. Please send them to my attention (rogger@browncg.com) with a copy to Ann McGough (amcgough@drb.org).

As I previously discussed I have appointed a Finance Committee chaired by Doug Holen to review several issues for the DRBF, one of which is increased funding. Their final recommendations will come later this year, however since you have just received your annual dues statement, I would encourage particularly those whose income is provided in whole or part by service on DRBs to upgrade your membership level from "individual" to a "sponsor or sustaining" membership. The DRBF relies on member dues to cover all basic operating expenses, and those costs rise each year based on inflation. Increasing your commitment provides further support for the Foundation's outreach programs focused on increasing the utilization of DRBs.

It is also time for all of you to consider attending the annual International Conference being held in Paris on May 2 to 4. It will be well attended by our International group and the opportunity for networking will be excellent. In addition, with a EURO train ride you can take a few days extra and tour several countries all within two hours of Paris. Visit the DRBF website for further information.

DRBF Executive Board of Directors



The members of the Executive Board of Directors are:

- Roger Brown, President
- Graham Easton, President Elect
- Volker Jurowich, Immediate Past President
- Murray Armes, Secretary
- James P. Donaldson, Treasurer
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- Paul Taggart, Director and President, Region 2 Board
- Doug Jones, Director and President, Region 3 Board
- Romano Allione, Past President
- James J. Brady, Past President
- Peter M. Douglass, Past President
- Gwyn Owen, Past President
- Joe Sperry, PE, Founder, Honorary Director

The Executive Committee meets monthly. Recent topics have included:

- The 2013 budget was approved unanimously.
- A committee was formed to develop DRBF recommendations for One Person Dispute Boards.
- The Board approved the selection of Singapore as the host city for the 2014 International Conference.

Summaries of the Executive Board meetings are available to all DRBF members on the DRBF web site. To access the Board of Directors Meeting Minutes Summary, go to www.drb.org. Click on the Member Login button, and then click on DRBF Board of Directors.

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- William (Tim) Sullivan
- Barry Tozer
- Spencer Flay

Executive Board of Directors

Meeting Schedule

- March 18
- April 15
- May 20

The Board of Directors for each region meet on a regular basis. Questions or ideas for the Boards should be submitted to the Board President directly or to Ann McGough at amcgough@drb.org.

DRBF Adds Region 3 From ‘Down Under’

By Graham Easton



As the fireworks burst over Sydney to celebrate the start of the New Year, they also marked the completion of DRBF’s most recent expansion initiative, namely the creation of DRBF Region 3 comprising Australia and New Zealand.

Since the inception of the DRBF, there has been a growing interest and awareness of the role of Dispute Boards within the Australian infrastructure, engineering and construction sectors. In 2003, a small core of local DRBF members established the Dispute Resolution Board Australasia Inc. (DRBA) as a ‘focus’ group and chapter of DRBF, in order to assist these industries with training, implementation and promotion of Dispute Board concepts.

From that time, the membership of DRBA has grown considerably to more than 120 members and the utilisation of Dispute Boards ‘down under’ is now increasing at an exponential rate. Much of this expansion can be attributed to the efforts of the DRBA Executive group

and committee members over the past ten years. In particular, the DRBA has progressively developed a more proactive role for Dispute Boards in dispute “avoidance and prevention” compared with the original concept of dispute “resolution”. This is emphasised by a number of Australian owners / principals electing to use the name “Dispute Avoidance Board” rather than the traditional “Dispute Resolution Board”.

In recognition of this growth, in 2011 the DRBF Executive Board set up a special subcommittee under the chairmanship of Past President Hal McKittrick to plan the creation of DRBF Region 3, building upon the DRBA’s successful track record and presence within Australia. Hal’s committee and the DRBA’s Ron Finlay have worked assiduously over the last 18 months to produce the ‘Region 3 Agreement’, a landmark in the evolution of DRBF’s expanding international presence. The Region 3 Agreement establishes a formal framework governing the ongoing relationship between the



DRBF Executive Board and the DRBA.

The key features of the Region 3 Agreement are that it will fully integrate the activities of DRBA with those of DRBF in a mutually beneficial way. All existing members of DRBA will become DRBF members and will have full access to the range of resources, services and assistance which the DRBF provides. The current members of the DRBA committee will take their places as the new Region 3 Board of Directors and the current President, Doug Jones, will now represent Region 3 on the DRBF Executive Board. In addition to ensuring the ongoing expansion and development of

Dispute Boards within Australia, the future role of the Region 3 Board will be expanded to foster the promotion of the DRBF's activities in adjacent geographical areas such as Singapore and Hong Kong.

The creation of Region 3 'down under' will serve to broaden and consolidate the DRBF's international role. We welcome all our new members in Region 3 and look forward to the many important contributions which Region 3 will undoubtedly make to the development and promotion of Dispute Board concepts worldwide.



Representatives from the DRBF Executive Board and DRBA sign the Region 3 Agreement. Show left to right, front row: Roger Brown and Doug Jones; back row: Graham Easton, Harold McKittrick, Ron Finlay, Volker Jurowich, Romano Allione and Graeme Peck.

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The Forum welcomes articles on all aspects of Dispute Resolution Boards, and members are encouraged to submit articles or topics to the DRBF, attn: Editor.

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Ethics in Today's World of DRBs:

Claims Consultant Having No Direct Knowledge of the Project and No Contemporaneous Access to Documents and Data Making a Presentation and Analysis of Dispute At Formal DRB Hearing

By James Phillips Ph.D.

The question for discussion raised in the previous *Forum* prompted several readers to write in with their comments. Ken Haines of Fulcrum Associates in Garden City, New York wrote in and commented "...it seems to be more a question on admissibility of testimony." He went on to say "so, what's the problem? As a claims consultant in an expert role, visiting a job site to view the conditions is preferable, but not a fatal blow to the analysis and testimony."

However, he does point out that "... [t]here are occasions when the conditions that are central to a dispute are no longer observable by the time the consultant has been engaged." In that instance, depending on how the consultant addresses those conditions he/she can no longer observe, will go toward the weight of their testimony and presentation, rather whether there is an ethical problem with its presentation.

Ken also points out that many times the "...real hurdle the consultant/expert frequently faces is whether is/her testimony is credible and consistent with the facts and project documents." I could not agree more with Ken. This again will go to the weight the Board gives to his/her testimony, rather than whether it is ethical to present such testimony.

Allen Thompson from Miami also wrote in on this issue. Allen points out that the question should turn on whether it falls "...under the rules of engagement."

Allen raises an interesting point here. Many Boards at the outset of the project set up a set of procedures for the conduct of informal and formal hearings. Boards routinely set up briefing schedules for when presentations are due to the Board and to the other side, and when responses are due to these submissions.

It might be possible, however unlikely, that the Board prohibits such presentations and requires only submissions and presentations that are contemporaneous with the life of the project. The *DRBF Practices and Procedures Manual* provides that DRBs and DABs may hear presentations which include "...a summary of position statements, discussion and explanation of documentary evidence, and presentation of visual aids and demonstrative evidence." I have never heard of a restriction to hear only contemporaneous analyses and arguments in the parties' presentations, and if a reader has run across this, please write in and share those circumstances.

The Foundation's Canon of Ethics speaks to this issue only in a very indirect way. Canon 4 provides that the "Board members... .conduct.... hearings in an.... orderly and impartial manner." Obviously, this gives little guidance on this issue.

I am in agreement with Ken and Allen on this question. It seems to be more of a weight of the testimony question than an ethical question. The Board can give



Jim Phillips Ph.D.
Chair
DRBF Ethics
Committee



whatever weight it chooses to the parties' presentations, and if the Board chooses to give more credibility to a contemporaneous analysis, that is certainly within their purview. These comments by readers are helpful in clarifying issues that may be ethical dilemmas.

This raises the purpose for this column and the Foundation's commitment to providing a forum for discussions about ethical issues that we all come into contact with from time to time. I would encourage all readers who are faced with an ethical challenge to take advantage of the opportunity of contacting experienced colleagues or to write in or call me with a question. The Foundation has established a protocol whereby we can confidentially discuss an ethical dilemma that is posed and provide a consensus based answer to those in this business who might need some advice. The Foundation's commitment to providing an opportunity for discussion of ethical challenges is a large component of the DRBF's mission to ensure that the DRB and other similar processes are delivered at the highest level of professional integrity and ethical conduct.

Next Ethics Challenge

Assume that you are sitting on a DRB that was not formally set up until a year after the Notice to Proceed was issued and work began. Also assume that as soon as the work began, the owner began complaining to the contractor that there were not enough people prosecuting the work on the project to prevent the contractor from falling behind schedule. Sure enough, the contractor did begin falling behind the schedule and the communications between the parties became increasingly harsh and hostile. By the time of the first DRB meeting, the parties were barely speaking and there was a backlog of Notices to File a Claim and Requests for Schedule Updates.

What should the Board do?

Ethics Commentary or Question?

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(continued from page 1)

As members of the DRBF will know, the DRB is established at the beginning of a project, receives project updates, periodically meets with the project parties, promotes dispute avoidance by discussing issues with the parties in the regular meetings, provides informal advisory opinions when requested, holds informal (but thorough hearings) on disputes, and issues detailed, non-binding findings and recommendations that the parties can accept, reject, or use as the basis for further negotiations.

Partnering focuses primarily on the parties' management relationship and day-to-day issues and conflicts that arise during the course of the project. A typical partnering session covers issues such as:

- What are the project's goals and objectives?
- What will the project's performance metrics be?
- What is working/not working from a management standpoint?
- What are the management issues, commercial issues, or construction challenges that project team should focus on?
- What can the project teams do to work better together (more collaboratively) to make the project function better?
- What are the lines of communication and decision making, and how can they be made more effective?
- Is there an issue resolution ladder to address issues or conflicts before they turn into disputes?
- Does the management team need to have field level working groups established to develop and implement specific management initiatives?

Partnering sessions bring all stakehold-

ers to the table so that a broad range of project management issues can be addressed. These can include a multiplicity of project participants such as the design engineers and consultants, as well as third parties such as funding entities, utilities, railroads, municipal or county agencies, etc. Partnering sessions also are intended to promote trust and confidence between the project parties by having them open up on issues and challenges that they face depending on their contractual, funding, regulatory, or management relationship to other parties and the project as a whole.

DRBs can address similar issues, such as:

- At the kick-off meeting, are key stakeholders represented?
- What is the project organization (responsibility and reporting chain)?
- What is the screening/resolution process for disputes, issues and claims that might get to the DRB?
- What are the challenges that the parties have or expect in execution of the project?
- At periodic meetings, what are the pending issues, challenges, or potential disputes and how do the parties intend to resolve them?
- (If requested by both parties) what is the DRB's verbal advisory opinion on a potential dispute to aid the parties in resolving it themselves without a formal claim?

However, the DRB process is not the same as partnering in some significant respects:

- Except perhaps for the kick-off meeting, the DRB deals almost exclusively with the owner and contractor organizations, not other stakeholders.



- The DRB does not involve itself in day-to-day organizational or project management issues.
- Although the DRB can ask questions, it does not delve into the root causes of problems or issues in the same manner that partnering sessions can address.
- The DRB must remain neutral and objective (above reproach in conduct or perception), especially on issues that may become formal disputes.
- DRBs do not provide advice on day-to-day project management issues.
- The DRB must make the “hard calls” on formal claims that may leave one party in a “losing” position on either or both of the facts or contract terms in dispute.
- Unlike a partnering facilitator, the DRB is not permitted to explore compromises or identify commercial solutions to help the parties resolve disputes.
- Once the DRB has issued findings and recommendations on a dispute, its job is done as to that issue.

In essence, the partnering facilitator (and partnering process) has much more flexibility and maneuvering room to manage the “political and commercial space” between and among the project management team (and other stakeholders). Although the DRB process has dispute prevention features, in order to preserve its neutrality and objectivity for resolution of formal claims, it must keep a respectful distance between itself, the parties, and the day-to-day management of the project. In contrast, the partnering facilitator is hired to reduce or eliminate that friction between the parties (and stakeholders) in order to address day-to-day management issues, conflicts and

relationships.

Can Partnering and DRBs Co-exist on a Project?

Partnering and DRBs can co-exist as long as the parties understand and accept the differing, but often complimentary, roles of partnering and DRBs. For example, partnering can be used effectively to set up collaborative and successful management teams (and manage day-to-day project management issues as they come up). DRBs can be used to address potential disputes in the Board’s regular meetings and/or through the advisory opinion process, and of course, be available for authoritative third party opinions on claims if that is what is needed to assist the parties in resolving disputes through further negotiation.

Obviously one of the biggest challenges for the parties is the cost of using both partnering and DRBs. These costs include the out-of-pocket expenses for the partnering facilitator and the DRB, as well as the transactional costs of the parties preparing for and participating in both partnering sessions and regular DRB meetings (and potentially, hearings). Those of us who have handled construction claims either as an advocate or as a third party neutral know the enormous costs and delay associated with formal claim resolution process—typically, the combined costs of partnering and DRBs are a fraction of the “battle costs” of even one formal claim resolution process. That said, many organizations today are facing budget crises that require every expense to be looked at carefully.

One way to address the cost issue is to

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do a risk management “cost/benefit” analysis that combine the following factors: size of project, type and size of claims that may arise, frictional costs of resolving claims, and other intangible benefits that come from a collaborative, smooth functioning project team. Most likely projects of a sufficient size and complexity will be needed to justify the carrying costs of both partnering and DRBs on the same project. However, if one views the partnering and DRB costs as “risk mitigation,” then the size of project versus the outlay of costs would probably militate in favor of a dollar threshold where the potential size of the claims and attendant battle costs outweigh the costs of partnering/DRBs. An alternative for smaller projects could be initial partnering session and appointment of a Dispute Resolution Advisor (as done by Caltrans and the Ohio Department of Transportation), with the idea that the parties can activate either or both if needed.

If a project selects both processes, what is the best way to optimize their use without duplication of effort (and cost)?

Returning to an early theme of this article, the key to optimizing both partnering and DRBs is to clearly understand (and implement) their different roles, but in a complementary manner. This could be done in the following way:

- Hold an initial partnering session with project participants and a broad range of stakeholders to establish goals and objectives for the project; commit to a collaborative, cohesive and trustworthy project management team; address any particular issues early on (what’s working that needs

to be kept or enhanced? what’s not working that needs to be fixed?); implement clear lines of communication and decision making; establish an issue resolution ladder to manage issues and conflicts in real time; and clearly define the role expected of the DRB in relation to the partnering process.

- At DRB kick-off meeting discuss and understand the dispute prevention aspects of the DRB process; brief the DRB on the project management approach and philosophy reflected in its partnering approach; discuss the proactive use of advisory opinions on issues or disputes that could become formal claims; discuss the dispute resolution role of the DRB; and discuss how partnering will work in conjunction with the DRB process.
- Hold regular partnering sessions with the project team (and key stakeholders) to assess how the partnering relationship is working; address specific management or other issues that have arisen; and explore whether the DRB process could assist in any issues or disputes that might become formal claims.
- Between regular DRB meetings keep the DRB fully informed about the issues on and status of the project; at regular DRB meetings be prepared for open communications on issues or challenges facing the project; use the DRB for advisory opinions where appropriate; and keep in mind that even the formal process is advisory in the sense that it is a non-binding recommendation to assist the parties in coming to resolution of claims at the project level.
- Partnering also could be used as part



of the parties' process in considering the DRB's advisory recommendations or formal recommendations on disputes. Interestingly, one could envision a process where a partnering facilitator could assist the parties in negotiations after a DRB has issued formal findings and recommendations.

- As a practical cost-saving measure, after the initial partnering session and DRB kick-off meeting, the follow up partnering/DRB meetings could be held on the same day to minimize the transactional impact on the project team. For example, the DRB meeting could be held first (with the Partnering facilitator in attendance, observing only); issues and challenges could be identified for the DRB; and after the DRB meeting there could be a partnering session to address the issues that came up in the DRB meeting or any other management issues that the parties choose to address).

Conclusion

Partnering and DRB processes have distinct roles to play on projects. Project teams should understand and implement those roles in a thoughtful and deliberate manner. However, partnering and DRBs can successfully be combined as complementary processes on construction projects, thus enhancing the project delivery process for all participants and mitigating the risk of disputes and claims.

Kurt L. Dettman is the DRBF Region 1 Director of Training, Chair of the DRBF Training Committee, Co-chair of the Region 1 Transportation and Energy Committees, and member of the Region 1 Board of Directors. He can be reached at kdettman@c-adr.com.

Northwest Regional Conference and Training Workshop

June 7, 2013

Radisson Gateway Hotel
Seattle, WA USA

This one-day conference and workshop covers the essential elements for a successful DRB process, with a look at case studies from the region.

The morning session is the DRBF's Chairing/Advanced workshop for advanced DRB practitioners. The afternoon conference will include panel discussions and a presentation on the use of DRBs in underground construction, and how they compare and contrast to other types of construction projects.

Participants can register for just one session or the full day. Lunch will be provided for all participants.

Visit www.drb.org for complete event details and registration.



DRBF Appoints New Country Representatives

The DRBF is pleased to welcome the following newly appointed DRBF Country Representatives:

Caribbean: Martyn Bould

Martyn Bould has served as a construction and development adviser, arbitrator and mediator in the Caribbean for more than forty years. A member of the DRBF since 2000, he was recently prompted by Gordon Jaynes to contact Country Rep Coordinator Andy Griffiths to suggest that the timing is right to appoint a DRBF Representative for the Caribbean.

The Caribbean, like the rest of the world, has experienced financial difficulties since 2008 with the curtailing of some development projects. However, recent years have seen a resurgence including the US\$ 3.5 billion Baha Mar project in Nassau. Martyn's firm, Rider Levett Bucknall (RLB), is project monitor for the Export-Import Bank of China, and a DRB is in place to monitor and resolve disputes.

Martyn says "We see both the increasing need and also the desire amongst Caribbean countries to utilise the services of DRB's as it is compatible with the culture of these islands to resolve as opposed to litigate disputes." As Country Rep he intends to promote the use of DRBs throughout the region, and hopes to identify additional country-specific reps as knowledge of the benefits of the DB process grows - along with use of DBs - throughout the Caribbean.

Iceland: Johann Kroyer

Having served since 1997, Pall Olafsson recently decided to step down as the

DRBF Country Representative for Iceland. We take the opportunity to thank Pall for his contribution to the DRBF.

Pall and the other Icelandic DRBF members recommended Johann Kroyer as his replacement. Johann has a strong foundation in construction, having worked for 10 years for Skanska and 17 years for Istak, the biggest Icelandic construction company. In those positions, he became very familiar with the FIDIC conditions of contract and Dispute Boards.

Since 2001, Johann has worked for Landsvirkjun, the National Power company of Iceland, and since 2008 for Landsvirkjun Power, a wholly owned subsidiary of Landsvirkjun. From 2002 to 2008, he was the Project Manager on behalf of Landsvirkjun for the two principal civil works contracts on the Kárahnjúkar HEP of 690 MW, the 198 meter high CFRD Kárahnjúkar dam, and the tunnelling system of over 60 km, mostly excavated by three TBMs. These two contracts were carried out by Impregilo Spa, Italy, and was valued at over US\$2 billion. The contracts were based on Landsvirkjun's own conditions of contract. However, during the contracts negotiations led by Johann, it was agreed by the parties to introduce a three member DRB for these contracts. This was Iceland's first Dispute Review Board. Based on the Karahnjukar project experience, Johann recommended the FIDIC conditions of contract for the next hydroelectric project, the ongoing 100 MW Budarhals project. This project uses an ad-hoc three member Dispute Board. This panel is now being implemented to address a specific issue of dispute.



Johann is personally involved in preparing new tender/contract documents for upcoming Geothermal Power Projects in Iceland, and plans to use an ad-hoc DRB on some of the contracts.

Singapore: Gerlando Butera

Chris Redfearn also decided to step down as the Country Rep for Singapore, after seven years in the position. Our thanks and appreciation go to Chris.

We are pleased to report that Mr Gerlando Butera has agreed to take over as the Country Rep for Singapore. Gerlando has been a member of the DRBF since 2009, and has attended each of the last four DRBF International Conferences (London, Istanbul, Sao Paolo and Sydney). Within that period, he also attended a number of the UK members’ meetings, and completed the “DRBF Training of Trainers” course in July 2010. He was recently appointed to chair the organizing committee for the International Conference in 2014.

A solicitor by profession, Gerlando is qualified to practice in Hong Kong as well as England and Wales. His career history has been almost entirely concerned with dispute avoidance and dispute resolution, with particular focus on construction, engineering and infrastructure projects.

He spent most of his career in London, but relocated to his firm’s office in Singapore last September. The practice focuses exclusively on international arbitration/dispute resolution and infrastructure projects work throughout the region. His work embraces countries as far afield as India and China, as well as

closer jurisdictions such as Indonesia, Malaysia, Thailand and the Philippines along with Singapore itself.

Gerlando believes that the greatest challenge for the DRBF in Singapore, and within the region generally, is to educate and convince local employers of the value and benefits of using Dispute Boards for major projects. Some initiatives he intends introducing as Country Representative include engaging with the Singapore International Arbitration Centre to develop a training programme for potential DB members together with the maintenance of a panel and nomination procedure for appointments to projects in the region; presentations to and meetings with government departments; presentations to contractors’ and engineers’ associations, and the Society of Construction Law; coordination with other Country Representatives in the region; and developing the membership base within Singapore.

We look forward to hearing of progress made in promoting the DB concept and of any developments in these regions.



Interested in becoming a Country Representative for the DRBF?

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Andrea Del Grosso

Japan

Naoki Iguchi

Libya

Emhemmed Ghula

Malaysia

Sundra Rajoo

Mauritius

Kailash Dabeesingh

Mexico

Herfried Wöss

Namibia

Riaan de Witt

Nepal

Sanjeev Kiorala

Netherlands

Lyda Bier

Pakistan

Khalil-Ur-Rehman Khan

Peru

Emanuel Cardenas

Phillippines

Salvador P. Castro, Jr.



Poland
Krzysztof Woznicki

Switzerland
Michel Nardin

Portugal
Manuel Maria Agria

Thailand
Pratim Ghose

Qatar
Wayne Clark

Turkey
Levent Irmak

Romania
Alina Oprea

United Arab Emirates
Andy Hewitt

Saudi Arabia
Nabil Abbas

United Kingdom
Murray Armes

Singapore
Gerlando Butera

Contact details for all Country
Representatives are available
on the DRBF website:
www.drb.org

Southern Africa
Anton van Langelaar

Spain
Pablo Laorden

Sri Lanka
Tilak Kolonne

DRBF Introduces Webinar Program

The DRBF now offers a one hour “Introduction to Dispute Boards” webinar, specifically designed for potential new users or employers interested in learning more about the unique dispute avoidance components of the process as well as the benefits of a properly implemented Board. Participants log on to a website to view a standard PowerPoint presentation, guided by a DRBF representative. Questions can be asked in real time, and some content can be customized for specific audiences.

The webinar program is an extension of the standard materials available to any DRBF member for use when meeting with potential new users. Other tools include a standard PowerPoint presentation, brochures, and other support materials. Contact DRBF Communications Director Ann McGough at amcgough@drb.org for details.



DRBF Offers Introductory FIDIC Contracts Training in Zambia

The DRBF ran a 5-day training event in FIDIC contracts for the Road Development Agency in Lusaka, Zambia in November 2012. The event was organised by ACEZ on behalf of the RDA.

The course was run by Dick Appuhn and Christopher Miers, both of whom are FIDIC President's List adjudicators and who regularly train professionals in FIDIC contracts. The course provided an intensive, introductory training to three FIDIC contracts: the Conditions of Contract for Construction (Red Book) - First edition 1999; Conditions of contract for Plant and Design-Build (Yellow Book) - First edition 1999; and Conditions of Contract for Construction - MDB Harmonised Edition 2010.

Twenty-four experienced Engineers from the RDA were taken through the three contracts in detail, considering duties and obligations, roles and responsibilities, management procedures, and comparing each contract to consider

the differences between them. Each day delegates worked through real project case scenarios, considering the practical application of the terms of the contracts.

Discussion took place regarding the pre-contract preparation of the particular conditions as well as considering the numerous typical situations which can arise on the types of projects which the RDA are undertaking. Special attention was given to avoiding and addressing disputes: one day of the course was dedicated to a consideration of the contract provisions for dealing with claims and working with Dispute Adjudication Boards; and a final day was spent with delegates in role-play in DAB hearings with the RDA Engineers undertaking the roles of DAB, Contractor and Employer.

The feedback was excellent. However most delegates thought there was a lot to get through in 5 days. Certainly it was intensive – for delegates and for the trainers too!

Forum Newsletter Editorial Deadline

Our readers love to hear DRB success stories, challenges facing the process, and the latest industry news and events. If you have new information about DRBs, DRBF members, or an article to share, please tell us!

Contact Forum Editor Ann McGough by email at amcgough@drb.org

Deadline for the June issue is
May 1, 2013

DRBF Committee Reports



Finance Committee

Chair:

Doug Holen

Members:

Jim Donaldson

Pete Douglass

Steve Fox

Ann McGough

Jack Norton

Gwyn Owen

The Finance Committee has met monthly, with the goal of assessing the DRBF's revenues, researching alternative sources of income, and providing recommendations to the DRBF Executive Board for policies and procedures.

The committee did a review of the membership fee structure. The last increase to membership fees was in 2005. The committee's recommendation to increase some categories of membership beginning in 2014 was reviewed and approved by the Executive Board of Directors at their February meeting. Details will be provided to all members prior to the membership renewal cycle.

In addition, the committee has been reviewing recommendations for the DRBF's reserve fund, to ensure that the Foundation is financially stable and in keeping with recommendations from the DRBF's accounting consultants. The committee is also exploring professional fundraising options and grant applications for specific projects.

For questions or to submit an idea for the committee, please contact Finance Committee Chair Doug Holen at dholen@comcast.net.

Training Committee

Chair:

Kurt Dettman

Members:

Alan McLennan

Ann McGough

Chris Miers

The Training Committee is chaired by Kurt Dettman, the Training Director for Region 1, and its members are: Training Director for Region 2, Chris Miers; the President Elect for Region 3, Alan McLennan; and DRBF Communications Director, Ann McGough. The overall focus of the Training Committee is to establish and implement consistent training policies and procedures across all regions, with flexibility for regional variations.

The committee has established a list of priorities over the next year. Top initiatives include: establishing training policies and procedures that will be included in the DRBF Policies and Procedure Manual; establishing proposal and pricing templates for training workshops; developing standardized training materials and establishing a web based library of training materials for collaborative use by all DRBF trainers; and creating a list of approved DRBF trainers (with as needed "train the trainer" programs). In addition, the committee will be coordinating with the DRBF Manual committee to ensure that training standards are covered appropriately in the planned Manual update.

For questions about the Training Committee or to submit an idea for a training workshop topic, contact Committee Chair Kurt Dettman at kdettman@c-adr.com.



Region 2 Board of Directors Election

Region 2 of the DRBF has a seven person Board of Directors. At the upcoming International Conference in May, the Board will transition and the positions of President Elect and two general Board member positions will be vacant.

The Elections Committee, consisting of Dick Appuhn, Paul Taggart, and Jim Perry, held an open call for nominations. The criteria for candidates and election administration is as follows:

- a) Each candidate must have a proposer and a seconder. Candidate, proposer and seconder must be members of the DRBF for at least 3 years.
- b) The candidate must be, or commit to become, a sustaining member of the DRBF.
- c) A candidate for the position of President Elect (other than regular Board member) must provide, with his/her CV demonstration of having participated actively in the organization of the DRBF (be it as Country Representative, committee member or other).
- d) All candidates must supply their CV, which will be distributed to the membership with the invitation to vote.
- e) All DRBF Region 2 members have a vote.
- f) Voting is done by e-mail, in advance of the Annual International Conference.
- g) The Elections Committee is the organizing body of the election.
- h) The President Elect serves for 3 years: President Elect, President, Past President.
- i) Terms start and end at the Annual International Conference, usually held in May each year.

Ballots are distributed to all members of Region 2 in April. Contact Ann McGough at amcgough@drb.org if you did not receive a ballot. Deadline to submit ballots is April 26, 2013.

Candidates for President Elect

Murray Armes
Christopher Miers

Candidates for Director

Mark Entwistle
Levent Irmak
Michel Nardin
Alina Oprea

Calendar of Events



April 10, 2013
CDOT Training Workshop
Denver, Colorado

May 2-4, 2014
13th Annual International Conference
Paris, France

May 30, 2013
DRBF Training Workshops
Administration & Practice Workshop
Chairing/Advanced Workshop
Atlanta, Georgia

May 30-31, 2013
DRBF Training Workshops
Offered in Dutch
Antwerp, Belgium

June 7, 2013
Northwest Regional Conference
Seattle, Washington

September 20-21, 2013
17th Annual Meeting & Conference
September 18 - DRBF Golf Tournament
September 19 - Training Workshops
Miami, Florida

Visit www.drb.org for complete event details and registration.

The DRBF will announce dates for two events in the fall,
the 6th Annual UK Member's Meeting in London, UK and a
Regional Conference in Johannesburg, South Africa.

Stay tuned for details!

DRBF 13th Annual International Conference May 3–4, 2013 • Paris, France

The DRBF is grateful for the support of the following conference sponsors:

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Associations

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Contractors

FIDIC

International Chamber
of Commerce

Society of
Construction Law

Syntec-Ingenièrie



Join the DRBF in Paris for an impressive program on dispute resolution with some of the top Dispute Board practitioners working in the field today.

Day one offers a full day of practical case study in workshop format. For the first time, the two-day conference will offer split sessions on Friday afternoon and Saturday morning, and simultaneous translation will be offered in English and French. Participants will have the choice between sessions on the mechanics and procedures of how Dispute Boards function or more advanced topics for experienced practitioners. Content will include an update on the use and financing of Dispute Boards by international financing institutions and the European Union; a look at best practice in public/private partnerships in international construction projects; and the impact of the ICC Dispute Board Center and FIDIC Conditions of Contract. Legal experts will explore the use of DBs in the civil law countries of France, Germany, Italy and Spain, and report on current developments in enforcement and other matters.

Optional social activities include a Welcome Reception on Thursday evening (included with registration), and the Gala Dinner on Friday evening (additional fee) at Le Pavillion Dauphine. Discounted registration for DRBF members, academics and public agency employees. Complete details, including program agenda, presenters, fees, and list of registered delegates, is available on the conference website.

VENUE:

Concorde La Fayette Hotel • 3, Place du General Koenig • Paris, France 75017
Discounted group rates available

**For complete details and online registration,
visit www.drb.org**

Training Workshop May 2, 2013

In addition to the regular conference, the DRBF offers a one day workshop featuring small discussion groups and practical case studies. The workshop will be held the day before the conference on Thursday at the Concorde La Fayette Hotel.

The Workshop will be split into two sessions. One session will offer workshops designed to attendees who are aware of Dispute Boards, but would like to understand more about their basic operation and principles. This is the TRACK A. Three of the Track A workshops will be offered in French and English.

For those attendees who participate frequently in DRBF conferences and workshops, the DRBF offers a workshop session aimed at challenging these experienced practitioners. This is the TRACK B. The Track B workshops will be available in English only.

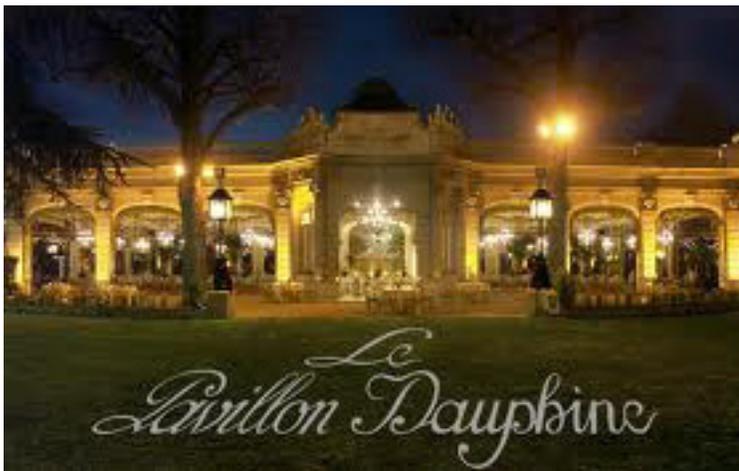
Workshop registration is limited to 80 participants. This is a great opportunity to meet and discuss the functioning of Dispute Boards with some of the best known Dispute Board Members in the world.

A complete workshop agenda and list of distinguished tutors is available on the conference website.

Gala Dinner May 3, 2013

Join conference delegates, speakers and guests on Friday evening for an entertaining dining experience in the elegant tradition of the Belle Epoque at Le Pavillion Dauphine. Dinner tickets are \$200 per person, inclusive of beer and wine. Cocktail attire. Live entertainment. A short walk or taxi ride from the host hotel.

**Visit their website to learn more about Le Pavillon Dauphine:
www.pavillon-dauphine.com**





Welcome to New DRBF Members Member Additions October 2012 – February 2013

Bijan Ahmadzadeh
San Francisco PUC--Construction Mgt.
Bureau
San Francisco, CA USA

Oliver Alexander
Amereller Rechanwaelte
Berlin, GERMANY

Michael Bampton
Henry Davis York
Sydney, NSW AUSTRALIA

Paul W. Berning
Alameda, CA USA

Ian Briggs
Minter Ellison Lawyers
Brisbane, QLD AUSTRALIA

David Campbell-Williams
Rushcutters Bay, NSW AUSTRALIA

Paul Carter
Peter Kiewit Infrastructure Co.
Milton, ON CANADA

Kenneth William Casley
K. W. Casley & Associates
Wellington Point, QLD AUSTRALIA

Bogdan Ciobotarencu
SC Amfiteatru Impex SRL
Cluj Napoca, Cluj ROMANIA

Vlad Ciobotarencu
SC Amfiteatru Impex SRL
Cluj Napoca, Cluj ROMANIA

Peter Degerholm
Calderglan Associates Ltd
Lower Hutt, NEW ZEALAND

Warren Fischer
Ashgrove, QLD AUSTRALIA

Peter Fitzgerald
Gympie, QLD AUSTRALIA

Spencer Flay
Corrs Chambers Westgarth
Sydney, NSW AUSTRALIA

Peter Gemell
Everything Infrastructure
North Sydney, NSW AUSTRALIA

Steven Goldstein
Edmund Barton Chambers
Martin Place, NSW AUSTRALIA

George H Golvan, QC
Owen Dixon Chambers West
Melbourne, VIC AUSTRALIA

Didier Guynet
Aeroports de Paris Inganierie
La Celle Saint Cloud, FRANCE

Pham Thu Hang
Consultancy Development & Training
Center Vietnam Eng. Consultant Assoc
Hanoi, VIETNAM

Edward J. Henderson
Kilpatrick Townsend & Stockton LLP
New York, NY USA

Tim Holland
Glebe, NSW AUSTRALIA

Richard Kell, AM, FTSE
East Lindfield, NSW AUSTRALIA

Andrew King
Mudjimba, QLD AUSTRALIA

Dr. Kamal Laksiri
CEB
Boralasgamuwa, SRI LANKA

David Lanceley
DFL Associates Ltd
Caernarfon, Gwynedd UK

Lindsay Le Compte
Australian Constructors Assoc. Ltd.
North Sydney, NSW AUSTRALIA

AnaMaria Legendre
Aleman, Cordero, Galindo & Lee
Panama City, PANAMA

John Lewer
Lake Haven, NSW AUSTRALIA

John Livengood
Washington, DC USA

Edward Lozowicki
Sheppard Mullin
San Francisco, CA USA



Paul Mabry
San Francisco, CA USA

Anthony Makin
Tony Makin Associates
Sydney, NSW AUSTRALIA

Murray Malott
McNally Construction Inc.
Hamilton, ON CANADA

Brian Millar
Allens
Sydney, NSW AUSTRALIA

James S. Miller
Marsh Risk Consulting
Charlotte, NC USA

Bob Minnikin
Minnikin & Co Pty Ltd
Timborine Mt, QLD AUSTRALIA

G. William Myers, PE, JD
Law Office of G. William Myers PC
Martinsburg, PA USA

Madhav Raj Nadarajan
Kollam, Kerala INDIA

Miho Niunoya
Atsumi & Sakai
Tokyo, JAPAN

Ian Nosworthy
Cowell Clark
Adelaide, SA AUSTRALIA

Anil Parikh
MTA Capital Construction
Freehold, NJ USA

John Paterson
J. D. Paterson & Associates
Mount Waverly, VIC AUSTRALIA

John-Henry Pelsler
John-Henry Consulting
Volksrust, SOUTH AFRICA

Amy Phillips
West Friendship, MD USA

Sunu Pillai
University of Pittsburgh School of Law
Cranberry Township, PA USA

Xavier Poulet-Mathis
Avocat au barreau de Paris
Paris, FRANCE

William Prettitore
Analytic Consulting
East Moriches, NY USA

Michael Rollo
Leighton Holdings Limited
St Leonards, NSW AUSTRALIA

S. C. Sharma
Delhi, INDIA

Keith G. Skelton
Keith Skelton Associates
Nr Kandy, Central SRI LANKA

George E. Spofford IV
GrayRobinson, PA
Tampa, FL USA

Mamas Stavrou
Navigant
London, UK

John C. Theiss
Davis Wright Tremaine LLP
Seattle, WA USA

Russell Thirgood
McCullough Robertson Lawyers
Brisbane, QLD AUSTRALIA

Neil Turner
Construction & Contract Services Pty Ltd
Crows Nest, NSW AUSTRALIA

Michael Wietzorek
Dusseldorf, NRW GERMANY

Do you know someone interested in joining the DRBF?

Help us expand by sharing information with your colleagues. Complete membership information can be found on the DRBF web site (www.drbf.org) or contact the main office

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DRBF 17TH ANNUAL MEETING & CONFERENCE

THE JAMES ROYAL PALM HOTEL • MIAMI BEACH, FLORIDA

SEPTEMBER 18 • GOLF TOURNAMENT
SEPTEMBER 19 • TRAINING WORKSHOPS
SEPTEMBER 20-21 • ANNUAL MEETING & CONFERENCE

Join the DRBF for an engaging program on dispute avoidance and resolution through the use of Dispute Boards. With insightful presentations from companies and public agencies using the process to in-depth discussions on new developments in dispute resolution, this year's conference will engage those new to Dispute Boards as well as experienced practitioners. There will be ample opportunity for networking during the conference, as well as social programs including a golf tournament at one of Miami's top courses and the ever popular Al Mathews Awards Dinner. Mark your calendar and plan to join us in Miami!