

PRINCIPLES OF NATURAL JUSTICE IN ARBITRATION

A Ranasinghe



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PRINCIPLES OF NATURAL JUSTICE IN ARBITRATION

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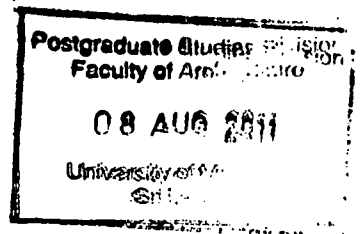


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DECLARATION

I declare that this thesis is my own account of my research and contains as its main content work which has not previously been submitted for a degree at any tertiary institution.

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ABSTRACT

The construction industry process is a challenge to all participants of the industry. In the event of constructing a building, the architect takes up the challenge in conceptualizing the design to satisfy the needs of the employer, the structural engineer designs it in a safe manner using suitable materials by optimizing the cost, the quantity surveyor prepares an accurate estimate for a unique structure matching suitable specifications, the contractor takes the risk of bidding for the job and building to all other constraints in order to obtain a profit. Therefore in every process of construction a professional is involved with a certain responsibility sharing risks, agreeing on a set time, achieving a quality product to cost constrains.

In this environment conflicting motives, intricate relationships, emotions, interactions, various reasoning etc. stay at the backdrop of actions, reactions and decisions taken by the parties.



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Inevitably differences occur resulting in conflicts leading to disputes and the parties invoke relief under dispute resolution clauses particularly arbitration according to the Arbitration Act No 11 of 1995.

The researcher is of the view that the existence of natural justice in arbitration process would deliver satisfactory dispute resolution.

The issue for the researcher is to gain an understanding of natural justice variables affecting the delivery of a satisfactory dispute resolution procedure. The most

condensed definition of Natural Justice is “On just means to reach just ends” as defined by an eminent justice, VR Krishna Iyer.

Therefore the research is aimed at investigating construction disputes to the satisfaction of the parties in terms of time expenditure, procedure and components of natural justice viz., various forms of bias, such as right for representation, right to be heard, right to receive adequate notice etc and thereby to derive a new knowledge. A survey was carried out on a sample of stakeholders in Sri Lanka and the survey data was analyzed using statistical principles. Statistical data was supported by a semi-structured questionnaire and case analysis wherever appropriate and feasible using the triangulation method. It was found that arbitrations is the favored dispute resolution method conforming to the requirements of natural justice yet was not favored by disputants in terms of time and expenditure



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It has also been concluded in the research that arbitration is a better way of resolving construction disputes and the procedure adopted conforms to the requirements of natural justice and that natural justice has a better application in arbitration than in litigation.

This type of research is still a new phenomenon within the Sri Lanka dispute resolution arena.

The contribution of this work is to fill the gap in furthering construction dispute procedure for speedy and cost effective delivery of resolution much needed for dispute resolution in the construction industry.

★

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17th May, 2010

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LIST OF ABBREVIATIONS

AA	:	Attitude Aggregate
AAA	:	American Arbitration Association
ADR	:	Alternate Dispute Resolution
AIQS	:	Australian Institute of Quantity Surveyors
AS	:	Australian Standards
BI	:	Behaviour Index
BOQ	:	Bill of Quantities
BOT	:	Build Operate Transfer
CJ	:	Chief Justice
COL	:	Colombo
ICE	:	Institute of Civil Engineers
ICSID	:	International Centre for the Settlement of Investment of Disputes
ICTAD	:	Institute for Construction Training & Development
IQS(SL)	:	Institute of Quantity Surveyors
J	:	Justice
JCC	:	Joint Contracts Committee
LCIA	:	London Court of International arbitration
LJ	:	Lord Justice
MBA	:	Master Builders Association
NBCC	:	National Building and Construction Council
NPWC	:	National Public Works Contract
NWPC	:	National Public works Conference
QS	:	Quantity Surveyor
RAIA	:	Royal Australian Institute of Architects
Rs	:	Rupees
SL	:	Sri Lanka
SLIA	:	Sri Lanka Institute of Architects
SLS	:	Sri-Lanka Standard
U.K.	:	United Kingdom
UN	:	United Nations
UNCITRAL	:	United Nations Commission International Trade Law
USA	:	United States of America



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VI	:	Value Index
FIDIC	:	Federation Internationale Des Ingenierurs – Counseils
IESL	:	Institute of Engineers of Sri Lanka



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