

CONSTRUCTION ECONOMIST

The Journal of the
Canadian Institute of
Quantity Surveyors

Le Journal de l'Institut
canadien des économistes
en construction

FALL 2019



Creating a Legacy
Craig Woodall



Leadership Interview
Doug Jones



PQS Member Profile
Marie Foley



David Dooks, David Lai, and Sheila Lennon with the recipients of the David Lai YQS Congress Bursary for 2019, Alexander Ings, Daniel Josiah, Elodie Bruignone, Sami Moufti, and Gabriel Esu.



- Canadian Housing – Trends & Data
- CIQS 60th Anniversary – 1959 & Onwards
- Project Profile – Trans Mountain Pipeline
- Sustainability Corner – Leaving a Legacy

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The mission of CIQS is to promote and advance professional quantity surveying and construction estimating; to establish and maintain national standards; to recruit, educate and support our members.

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OUR CONCERN FOR THE
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Interview with Doug Jones



Doug Jones, AO

PART 1: Dispute project lawyer experience
Prior to your practice as a leading international arbitrator, you worked for over 40 years in infrastructure contracting and dispute resolution. Can you tell us more about the types of matters you worked on?

I have been fortunate to have the opportunity to advise on a wide range of infrastructure projects, domestic and international, in my time as a lawyer. I was a Partner and the National Head of the Major Projects, Construction, and International Arbitration practice groups at Clayton Utz until 2014.

I have had experience in public-private partnership (PPP) and private finance initiative (PFI) project delivery for road, rail, power, and defence projects in Australasia and elsewhere. Acting for governments and the private sector in a range of these projects has enabled me to devise innovative ways of bidding successfully for and closing such transactions.

My experience also has included the delivery of infrastructure projects for Department of Defence facilities and equipment acquisitions, airports, ports, roads, and rail projects, acting for owners (both government and private sector), financiers, contractors, consultants and subcontractors. A memorable project was the Taiwan High-Speed Rail PPP (US \$18 billion), now a commercial success, where I led a team of lawyers acting for the concession company in Taipei. All the disputes were resolved during that project, with none remaining at its conclusion. I was very proud of that outcome.

How has the international construction industry developed/evolved, in your view, since you began your practice?

I have witnessed many changes to the dispute resolution landscape over my career. However, in recent years it has become clear that increasing global trade has led to a greater number of complex cross-border disputes. These international disputes can

involve multiple parties and long-term business relationships requiring a nuanced commercial and legal approach. This will no doubt continue to drive changes in dispute resolution over the coming years.

PART 2: Adjudication experience
What has been your experience in adjudication and dispute boards?

My experience with dispute boards predates my experience in adjudication. I have been a member of the Dispute Resolution Board Foundation (DRBF) since 1996.

My interest in the dispute board concept as a method of 'real-time' project issue resolution has been ongoing. I was influential in the establishment of the Australian branch of the DRBF and have served on its executive since 2006. I served as President of the Australasian chapter from 2009-2014, and of Region 3 (as it became) from 2014-2017. I am an enthusiastic supporter of dispute boards after observing its positive contribution to project outcomes when acting for clients in major projects and, latterly, in serving as a member of dispute boards.

Statutory adjudication has been adopted as a method of compulsory project dispute resolution in Australia, New Zealand, and other countries where I have practiced. Since its introduction in 1999, I have acted as counsel for parties and as an adjudicator in this process. It has had a profound effect on construction industry dispute resolution.

It should be said, however, that dispute boards have continued to be used in Australia to facilitate projects after the introduction of statutory adjudication and with considerable success. Adjudication has rarely been used in projects that have had the benefit of dispute boards. It is characterised as a last resort rather than as an active contributor to project issue resolution.

Recently, statutory adjudication has been introduced in Ontario. It follows the adoption in Common law jurisdictions in the Asia-Pacific region, and it will be fascinating to watch its development here.

PART 3: International arbitrator experience
What is your experience in international arbitration?

My experience encompasses my practice as an arbitrator, involvement in international professional associations and academic writing. I have been involved in over 120 arbitrations in areas including construction, infrastructure, energy, commodities, intellectual property, joint venture, and investor-state disputes; spanning over 30 jurisdictions around the world. I have had experience as arbitrator under a wide range of institutional rules, in disputes of values up to billions of US dollars. I am the Australian government nominee on the ICSID panel of arbitrators.

As well, I have held appointments at several international professional associations, served as the Chair of the Board of Trustees of the Chartered Institute of Arbitrators (CI Arb) from 2006-2008, and as CI Arb President in 2011. I was also Chair of CI Arb's Centenary Celebrations, and, in 2016, I was appointed one of the four Companions of the CI Arb. I am currently serving as the President of the International Academy of Construction Lawyers (IACL) and am a Past President of the Australian Centre for International Commercial Arbitration (ACICA). In 2018, I chaired the International Council of Commercial Arbitration (ICCA) Congress hosted in Sydney.

I have published and presented extensively on topics in international arbitration, and I am the author of the textbook *Commercial Arbitration in Australia*, published by Thomson Reuters, in its 2nd edition.

Why do you think arbitration is an effective mechanism for resolving construction disputes?

Arbitration is the preferred method of international dispute resolution, in the construction industry reflected in the number of leading standard form contracts that include arbitration agreements. It is the product of a number of international arbitration's key advantages. Although the benefits are many, I will mention two.

The first is that arbitral awards are far more assured of international enforcement under the New York Convention than are foreign judgments. This is a key benefit in the construction industry where participants are often drawn from a range of different countries, and want a method of dispute resolution that will be effective.

The second is the ability of the parties to appoint a decision-maker of their own choosing, such as an arbitrator who specialises in their industry. This allows parties to ensure that their technical and complex disputes will be heard by someone with the expertise needed to provide a sophisticated commercial resolution.

Its use has faded a little in domestic cases where statutory adjudication has been adopted.

What advice do you have for arbitrators/parties in resolving their disputes?

My work for the last five years has been that of an independent arbitrator, adjudicator and mediator. My answer comes from that perspective.

Arbitrators should do their best within the bounds of party agreement to adopt cost-efficient and expeditious, but fair, means to reach the outcome. This requires taking a proactive approach to understanding the issues in dispute as the case progresses and reviewing the progress with the parties on a regular basis, rather than waiting for a final hearing to learn what is actually in dispute. Regular case management conferences can be of valuable in assisting parties to tailor the proceedings for the purpose of achieving a just and cost-effective outcome.

My advice to parties is to concentrate on the strengths of their cases and not argue every conceivable point no matter of the merit.

PART 4: Links in Canada

How did you come to establish a base in Canada? What were your motivations for doing so?

I married a Canadian. Professor Janet Walker and I joined personal forces after the deaths of our spouses and I am delighted to be a permanent resident of Canada, with a home and a professional base here. I am exceptionally fortunate that Janet and I are both in international arbitration, travelling often to work in places remote from Canada.

My connection with Canada, however, pre-dated marrying Janet. I have been an Honorary Fellow of the Canadian College of Construction Lawyers since 2007 and an honorary fellow of the American College of Construction Lawyers since 2009. In that way I became familiar with professional life in Canada and its legal culture – but it is only since I have had a home here that I have really come to know Canadian winters.

Now with my professional base in Toronto, I am keen to play a part in the dispute resolution community here and to offer my services as an arbitrator and adjudicator.

Do you think that Canada is an arbitration-friendly jurisdiction?

The answer to this question must be an unequivocal yes. Both domestically and internationally, the provinces of Canada enjoy modern, forward-thinking arbitration legislation and courts that are uniformly supportive of the arbitration process. There is a very significant amount of domestic commercial arbitration – more than one finds in a number of other developed common law jurisdictions. This is a consequence of the quality of the domestic commercial arbitrators. There is nevertheless room for substantial improvement in the development of Canada as a seat for international commercial arbitration, which is a mission presently undertaken by a number of leaders in the field, including my wife.

What are your future plans for your practice in Canada?

I am hoping to continue to develop my practice as an arbitrator and adjudicator from my base in Toronto. This will no doubt develop along with the international work I am doing in other parts of the world.

In your view, what are the most pressing issues facing the Canadian construction industry now and in the future?

As a newcomer to Canada, there are others more qualified than I am to identify the key issues facing the Canadian construction industry. It does occur to me, however, that significant issues emerge from the cycles of development in the resources and oil and gas industries which present challenges for the industry to maintain resources during downturns and meet demands during periods of peak activity.

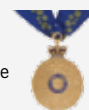
The development of public-private partnerships in the provision of public infrastructure is also something I have had longstanding involvement with in Australia. It seems that despite the use of this delivery method in Canada, more can be done to enhance the public infrastructure, particularly in the transportation area, than is presently occurring. This is a challenge in which the Canadian construction industry has a key interest. ▼

Breaking News

Professor Douglas Jones, AO has been appointed to sit as an International Judge in the *Singapore International Commercial Court* (for the period November 1, 2019 to January 4, 2021).

Doug Jones, AO* is a leading independent arbitrator in international commercial and investor-state disputes with over 40 years' prior experience in infrastructure contracting and dispute resolution. He is a member arbitrator at Arbitration Place in Toronto, a door tenant at Atkin Chambers in London and he has an office in Sydney. For more information, visit his website at www.dougjones.info.

* Officer of the Order of Australia (AO) is an individual appointed for distinguished service of a high degree to Australia or to humanity at large.



About the author

Interview conducted by Arif Ghaffur, PQS(F), Editor of *Construction Economist*.