



Planning for, and managing, ICT project disputes.



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What we'll cover today



Some of the common causes of ICT project disputes



Key issues to address when drafting and negotiating contracts for ICT projects to avoid disputes arising



Tips on how to manage issues before they become disputes



Important steps to take if a dispute does arise

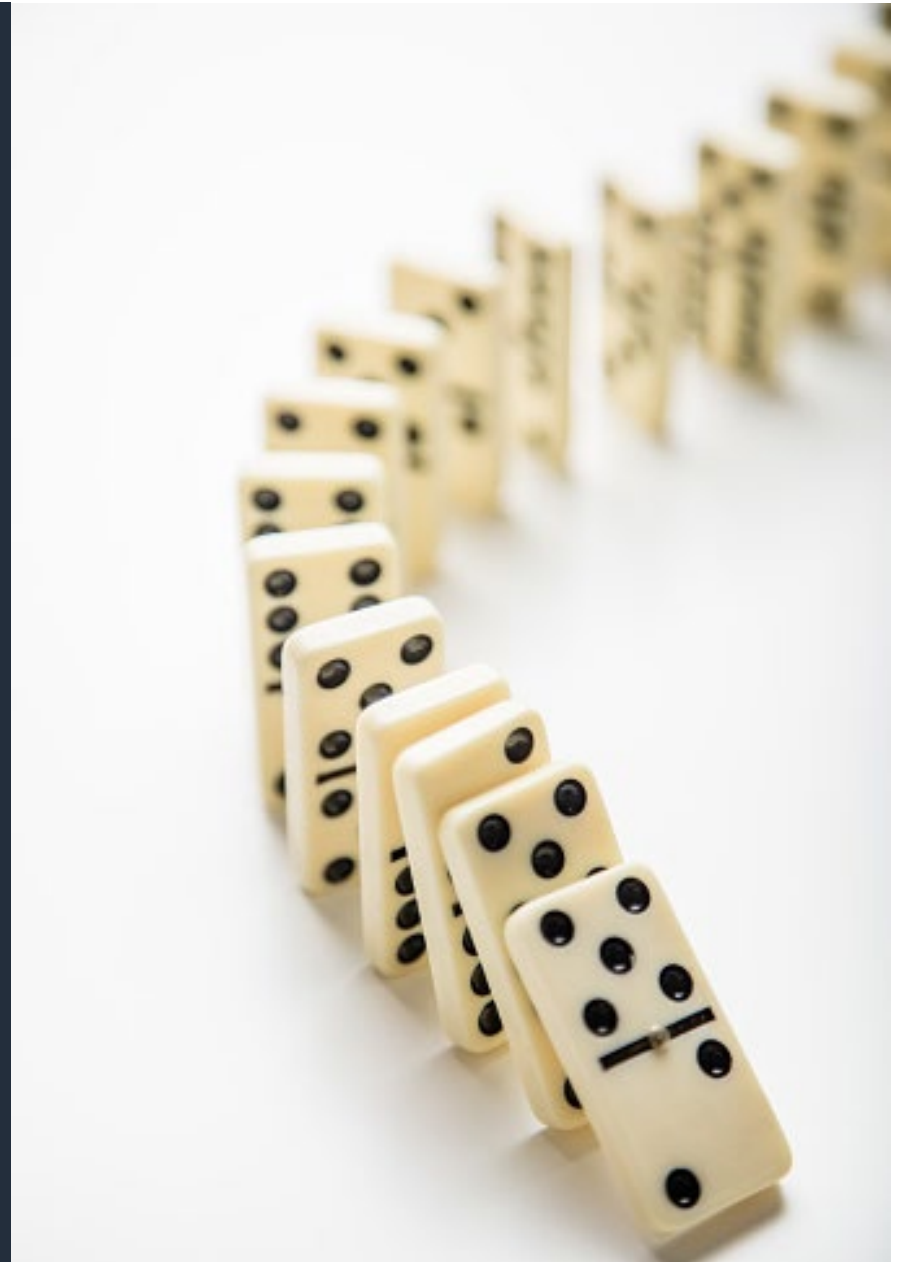
ICT projects go off the rails at alarming rates

- **New Zealand Law Society 2018** - most studies put the failure rate of software development projects at around 70%.
- **Standish Group** has reported that only 16.2% of IT projects were deemed successful by being completed on time and budget, with all the promised functionality.
- **Boston Consulting Group** found that 70% of digital transformations fall short of their objectives.
- **The 2020 Global Application Modernization Business Barometer Report** found that 74% of organisations that had started a legacy system modernization project failed to complete it.



Common causes

- Failure of the supplier to deliver on time and to the expected level of quality.
- Misunderstandings between the parties around requirements and each party's role in achieving those requirements/ Unclear scope.
- Failure to treat an ICT project as a business project/ having the wrong requirements.
- Supplier over-promising to get the gig.
- No clear dependencies and no management of dependencies.
- Poor project and vendor management and governance (including parties being slow to identify and address problems).

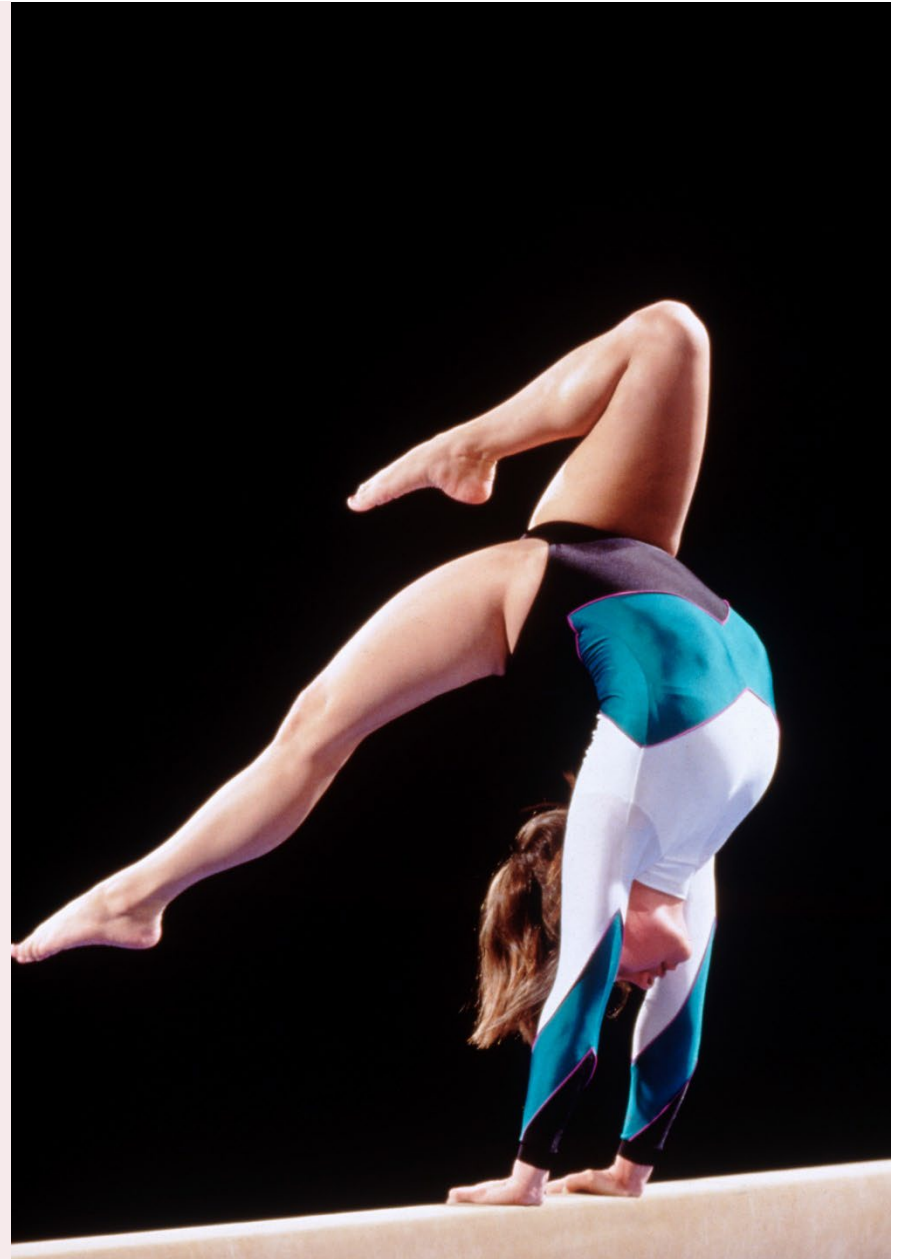


A comment on agile

Lower failure rates (The Standish Group Chaos Study from 2020 shows that Agile projects are 3x more likely to succeed than Waterfall projects)

BUT

Potentially harder to resolve disputes/deal with poor performance



Agile disputes



Lack of fixed requirements/scope



Joint project teams



Gathering evidence is expensive and time-consuming



A reluctance to call time or use remedies

Addressing issues in the contract

- Keep the contract out of the drawer.
- Clear descriptions of scope – Statements of Work/service schedules are critical and need legal review or at least direction.
- Clear processes for agreeing details and consequences if they cannot be agreed at the outset.
- Governance and change regimes that are followed and incentivise early identification of issues.
- Practical remedies (and a commitment to exercise them) and liability provisions that are useable.



Why are ICT
project disputes
often particularly
complicated/
difficult to
resolve?

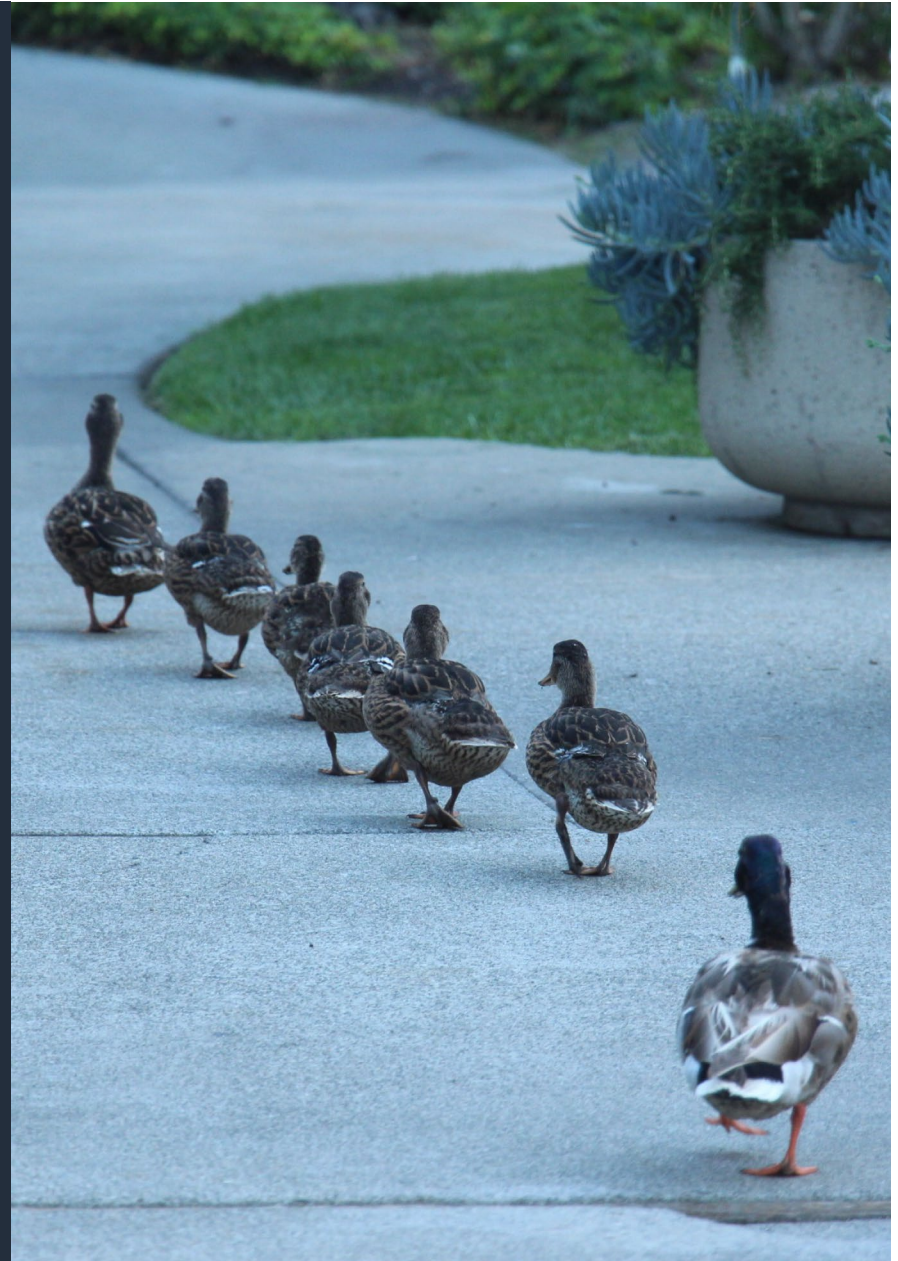
Tips for managing issues before they become disputes

- Document all amendments to scope, time or money.
- Identify and respond in writing to allegations of fault. It need not be formal, but it should be written.
- Identify and act early on issues that are shaping into disputes. Use in-house legal teams wherever possible, well before the problem has occurred.



Important steps if a dispute does arise

- Get your ducks in a row.
- Identify the objective.
- Identify the merits.
- Consider the alternatives, for you and for the other party.
- Make a good plan, and stick to it. Hope for the best, but plan assiduously for the worst.
- Engage the dispute resolution processes.
- Be very careful about notice provisions.
- Consider termination for convenience.
- Use mediation - but at the right time.



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