

The efficacy of using independent experts in dispute resolution clauses – Are they practical for complex disputes?

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In the recent decision of *Onslow Salt Pty Ltd v Buurabalayji Thalanyji Aboriginal Corporation* [2018] FCAFC 118 ('*Onslow v BTAC*') the full bench of the Federal Court dismissed an appeal regarding the Federal Court's first instance decision refusing to stay proceedings in the matter.¹ The primary judge refused to stay proceedings despite the plaintiff not following the requirements of a dispute resolution clause included in a Deed that specified the use of an independent expert to resolve disputes between the parties. Although it is a well established principle that parties should be held to their agreed dispute resolution procedures, this decision highlights the exceptional circumstances where a court may refuse a stay and depart from the commercial bargain struck between the parties to an agreement.

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