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The implementation of alternative dispute-resolution methods by architectural practitioners in South Africa

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Abstract

Disputes within the built environment are usually diverse, with their complexity often depending on the number of role players and difficulty of the construction project. Disputes can be resolved through litigation, but this is often costly and time consuming. A study in 2012 reveals that, among others, arbitration, mediation, negotiation and adjudication are different forms of Alternative Dispute-Resolution (ADR) methods preferred and used to resolve disputes in the built environment. This article offers insight into the current preference and application of ADR methods by architectural practitioners in the South African built environment. Registered persons, as defined by the South African Council for the Architectural Profession (SACAP), formed the population of this study. According to SACAP, a registered person is defined as a person who is registered in one of the categories of professionals and/or candidates. The study will refer to architectural practitioners as a collective population group. A questionnaire survey was distributed to 13 622 registered SACAP

professionals and candidates to determine the implementation of ADR methods. This questionnaire was distributed by the Chief Operations Officer, Mrs Barbara van Stade to the aforementioned SACAP database. The survey response amounted to 396 participating architectural practitioners, resulting in 2.91% of registered architectural professionals and candidates in the South African built environment. Consequently, this is the most comprehensive study on the preferred use of ADR methods by architectural practitioners in the built environment of South Africa. This study specifically focuses on architectural practitioners who have been involved in settling disputes between the period of 2012 to 2016. The findings reveal a shifting preference in ADR methods used since what the previous study found in 2012. Although previous studies indicate adjudication as the preferred method to resolve disputes, the data reveals that architectural practitioners increasingly make use of negotiation, followed by mediation and then arbitration. This study identifies current ADR trends, and provides a perspective on the future development of ADR mechanisms for architectural professionals in the South African built environment.

Keywords: Alternative dispute resolution (ADR), architectural practitioners, built environment, South African Council for the Architectural Profession (SACAP)

Abstrak

Dispute in die konstruksiebedryf is oor die algemeen uiteenlopend en die kompleksiteit daarvan is gewoonlik afhanklik van die aantal rolspelers en moeilikheidsgraad van die konstruksieprojek. Geskille kan soms opgelos word deur litigasie, maar dit is dikwels duur sowel as tydrowend. 'n Studie in 2012 onthul dat arbitrasie, bemiddeling, onderhandeling en beoordeling onder meer verskillende vorme van alternatiewe geskilbeslegting (ADR) metodes is wat verkies en gebruik word om geskille in die konstruksiebedryf op te los. Hierdie studie bied insig tot die huidige voorkeur en implementering van ADR-metodes soos toegepas deur argitektuurpraktisyns in die Suid-Afrikaanse boubedryf. Geregistreerde persone, soos beskryf deur die Suid-Afrikaanse Raad vir die Argitektuurprofessie (SACAP), het die bevolking van die studie gevorm. Volgens SACAP word 'n geregistreerde persoon gedefinieer as iemand wat geregistreer is in een van die kategorieë van professionele mense en/of kandidate. 'n Vraelys is versprei na 13 622 geregistreerde SACAP professionele mense en kandidate om die huidige implementering van ADR-metodes te bepaal. Hierdie vraelys is uitgestuur deur die hoofbedryfsbeampste, Mev Barbara van Stade, aan die voorgenoemde SACAP-databasis. Die vraelys is volledig voltooi deur 396 argitektuurpraktisyns en verteenwoordig dus 2.91% van geregistreerde professionele mense en kandidate in die Suid-Afrikaanse boubedryf. Hierdie is die mees omvattende studie oor die voorkeur en implementering van ADR-metodes soos gebruik deur argitektuurpraktisyns in die bouomgewing van Suid-Afrika. Hierdie artikel fokus spesifiek op argitektuurpraktisyns in die boukunde wat vanaf 2012 tot 2016 by geskilbeslegtingprosedures betrokke was. Die waarnemings dui op 'n verskuiwing van voorkeur rakende ADR-metodes sedert die vorige studie se gepubliseerde navorsingsresultate in die gebruik daarvan in 2012. Alhoewel vorige studies onthul dat beoordeling as die mees gekose metode gebruik is, toon die huidige resultate van die studie 'n toenemende gebruik in onderhandeling, gevolg deur bemiddeling/mediasie en dan arbitrasie. Hierdie studie identifiseer huidige ADR-tendense en bied 'n perspektief op die toekomstige ontwikkeling van ADR-meganismes vir argitektuurpraktisyns in die Suid-Afrikaanse konstruksie-industrie.

Sleutelwoorde: Alternatiewe geskilbeslegtingprosedure (ADR), argitektuur-praktisyns, Suid-Afrikaanse Raad vir die Argitektuurprofessie (SACAP)

1. Introduction

According to Statistics South Africa (2018), the South African construction industry has recorded a negative growth since 2016, losing approximately R1.7 billion in value.

In countries facing difficult economic times, the built environment often experiences an increase in risk and liability issues, leading to regular dispute occurrences (El-Adaway & Kandil, 2009: 819; Loosemore, 2009: 95; Soo & Lam, 2012: 115). Annual reports from major South African construction companies indicate that losses are mainly attributed to disputes and the poor economic status of a country (Group Five, 2013; Murray & Roberts, 2013; WBHO, 2013).

Several studies have been conducted on the complex nature of the South African construction industry and the number of role players contributing to disputes arising from contracts (Povey, 2005; Povey, Cattell & Michell, 2006; Verster, 2006; Verster & Van Zyl, 2007; Maritz, 2007; 2009; Van Zyl, Verster & Ramabodu, 2010; Bvumbwe & Thwala, 2011; Maiketso & Maritz, 2012; Du Preez & Verster, 2012; 2013; Powell & Nielsen, 2013; Sithole, 2016; Balogun, Anzari & Thwala, 2017). Studies on effective dispute resolution include and discuss the different mechanisms and procedures that assist in resolving disputes (Powell & Nielsen, 2013; Sithole, 2016; Balogun *et al.*, 2017). Available alternative dispute-resolution (ADR) mechanisms used to resolve disputes include arbitration, mediation, adjudication, negotiation, fact-finding, mini-trials, conciliation, neutral evaluation, and expert determination (Bunni, 2000: 105; McCreary, Gamman & Brooks, 2001: 329; Seifert, 2005: 149; Gebken & Gibson, 2006: 264). Despite the fact that ADR mechanisms and processes specifically designed to assist both parties in dispute settlement exist in the South African construction industry (Butler & Finsen, 1993), the rate at which disputes occur in the architectural environment is unclear (De Oliveira, 2012: 80; Wilcocks, 2016).

From the literature it is also unknown which ADR methods are currently preferred by South African architectural practitioners. It is against this background that this study was initiated to identify the preferred application of ADR as indicated by architectural practitioners in the built environment of South Africa. To achieve this aim, the study set out two objectives, namely to identify how many architectural practitioners have recently been involved in the process of dispute resolution, and to determine which ADR method/s do architectural

practitioners prefer to implement when faced with these disputes. Identifying such methods and their specific benefits will assist practitioners in ensuring that proper decision-making processes are put in place to deal with disputes, in future building projects.

2. Literature review

In order to understand the use of ADR methods in the South African built environment, it is important to introduce the current theory on the various ADR concepts included in this study. The existing theory focuses on the general description of ADR mechanisms, goals, advantages and disadvantages, the general application of ADR in the South African built environment, causes of disputes, and dispute methods commonly used in the South African built environment.

2.1 ADR concept, mechanisms and main goal

The majority of ADR practitioners prefer the acronym ADR to refer to appropriate/amicable dispute-resolution methods (Goldsmith, Pointon & Ingen-Housz, 2006: 7). According to the *Collins Dictionary of Law* (Stewart, 2006: 22), "Alternative Dispute Resolution (ADR) is used to resolve disputes through means other than by approaching the ordinary courts". For the purpose of this study, ADR is defined as a legal method that allows for the resolution of a conflict and/or dispute through a process that is tailored for the particular form of conflict and/or dispute.

The main goal of ADR is to provide a wide range of mechanisms/procedures that are appropriate to all parties, in order to resolve disputes effectively without the use of litigation (Finsen, 2005: 221-222; Du Preez, Berry & Oosthuizen, 2010: 164). These mechanisms/procedures include agent resolution, ombudsman, adjudication, conciliation, negotiation, mediation, and arbitration (Pretorius, 1993: 3; Finsen, 2005: 32; Verster & Van Zyl, 2007: 3; Verster, Ramabodu & Van Zyl, 2013; Wiese, 2016).

2.2 Advantages and disadvantages of ADR

Studies on the advantages and disadvantages of ADR mechanisms/procedures identified various positive and negative attributes that might become specific to a particular case or situation (Finsen, 2005: 221-222; Goldsmith *et al.*, 2006: 15-16; Victorian Law Reform Commission, 2008: 207-208; Ramsden, 2009: 1; Reynolds, 2010: 77; Sorsa, 2011: 88; WIPO, 2012: 5). Table 1 shows a summary of the positive and negative attributes of ADR.

Table 1: Advantages and disadvantages of ADR

<i>Advantages</i>	<i>Disadvantages</i>
Allows access to justice by being time and cost efficient and making it more accessible than traditional litigation.	May not be suitable to every form of dispute.
It is mostly time efficient, with cases being resolved in a matter of weeks or months.	ADR could be viewed as an additional stage and if the outcome is not successful it could add to a delay.
Reduces the costs of court, lawyers' fees and experts' fees.	Practitioners and/or adjudicators may charge for their involvement in the ADR. Without a successful result, this will become an additional expense.
Promotes active participation by allowing both parties to engage and explain their viewpoints and experiences.	A party may be vulnerable in stating a case should there be an unequal power relationship, particularly if the party is not represented during the proceedings.
Flexible and creative in mediating the issues at hand, with parties allowed to decide how to resolve the dispute which may include remedies not available in litigation, i.e. change in the policy or practice of a business.	ADR is not afforded the same safeguards as the courts, such as the right to reasons for the decision.
Attempts to enhance cooperation between the parties, thereby enabling them to preserve their future relations.	Lack of enforceability.
Reduces stress associated with court appearances.	
Remains confidential.	It may be used as a delaying tactic to obtain useful information from the opposition before proceeding with litigation.

2.3 ADR in the South African built environment

Although ADR is extensively used and developed internationally, the built environment of South Africa was introduced to the process of ADR with Quail (1978: 165), establishing the introduction of the mediation process in 1976. Since the late 1980s, standard forms of ADR have evolved, each with their own characteristics, as a result of a search for quicker and cheaper alternatives to litigation (Chong & Zin, 2012: 433). Some of these procedures are negotiation, conciliation,

mediation, arbitration, adjudication, mini-trial, private judging, summary jury trial, early neutral evaluation, last offer arbitration and mediation, and last offer arbitration (Sithole, 2016: 36). Some of the methods are institutionalised in the Dispute Resolution Boards (DRBs) (Fenn, Lowe & Speck, 1997: 514), Dispute-Review Boards and Dispute Adjudication Boards (DAB) (Bunni, 2000; Seifert, 2005), among others (Steen, 1994; CRCCI, 2007; Ehrlich, 2012: online).

The built environment of South Africa makes provision for ADR methods in a variety of contracts. These include, among many others, the Joint Building Contracts Committee Principal Building Agreement (JBCC PBA) (2018), the General Conditions of Contract for Construction Works (GCC) (2015), International Federation of Consulting Engineers (FIDIC) (2017), the Professional Client/Consultant Services Agreement Committee (PROCSA) (2017), and the South African Institute of Architects Client-Architect Agreement (SAIA CAA) (2008). It is necessary to understand that new procedures and methods are vital to expand the fast-track nature of the construction industry. The development and implementation of ADR methods often increase with accelerated rates of construction, design and procurement documents (Finsen, 2005: 214-216). Finsen (2005: 216) and Verster (2006: 17) argue that ADR is an essential part of the management of construction projects playing a fundamental role in the successful completion of complex projects. According to Povey (2005: 2), the facilitator of the ADR process could be a practising professional with the necessary experience, or a retired industry professional. Facilitators must be registered with the Association of Arbitrators (AOA: 2014).

2.4 Cause of disputes within the South African built environment

Disputes arising within the built environment are usually diverse in nature because of the complexity of the construction industry (Bvumbe & Thwala, 2011: 32; Thumbiran, 2015: 1). The underlying cause of disputes between the client and the contractor is that contracting parties attempt to protect their own interest (Iwamatsu, Akiyama & Endo, 2008: 119). While clients seek to minimize construction costs, contractors aim to maximise their profits (Iwamatsu *et al.*, 2008: 119; Powell & Nielsen, 2013). Different studies confirm the various interconnecting factors contributing to a dispute (CRCCI, 2007; Reid & Ellis, 2007; Murdoch & Hughes, 2008; Bvumbwe & Thwala, 2011: 35; Sithole, 2016: 25). Sithole (2016: 25) summarises the causes of disputes in construction contracts as:

- Contractual issues – e.g. improperly or poorly drafted contracts
- Management issues – e.g. poor management of time, targets, tendering, procedures
- Design issues – e.g. change in design, scope, conditions, poor quality, errors, delays
- Communication issues – e.g. poor communication from client and contractor, unclear site instructions, lack of information, unavailability of information
- Quality issues – e.g. non-performance, defects, poor quality, control, and assurance
- Payment issues – e.g. non-payment, delayed payments, claims
- Human issues – e.g. conflicting cultural backgrounds, stress, behaviour, personalities, misunderstandings
- External issues – e.g. project uncertainty, skills shortage, labour unrest, economic environment.

2.5 Dispute methods commonly used in the South African built environment

A study conducted by Van Zyl, Verster and Ramabodu (2010: 521) revealed that negotiation, conciliation, mediation, adjudication and arbitration are the most preferred ADR methods used in the built environment of South Africa. These methods can be divided into two main types of ADR, namely adjudicative and non-adjudicative. Table 2 illustrates the categories of ADR methods under adjudicative and non-adjudicative.

Table 2: Adjudicative and non-adjudicative ADR methods

<i>Non-Adjudicative</i> <i>(Disputing parties seek a compromise)</i>	<i>Adjudicative</i> <i>(A neutral third party decides on the dispute)</i>
Negotiation Mediation Conciliation	Adjudication Arbitration

Although there are many different methods/procedures of ADR, Figure 1 shows a summary of the most common methods used in the South African built environment.

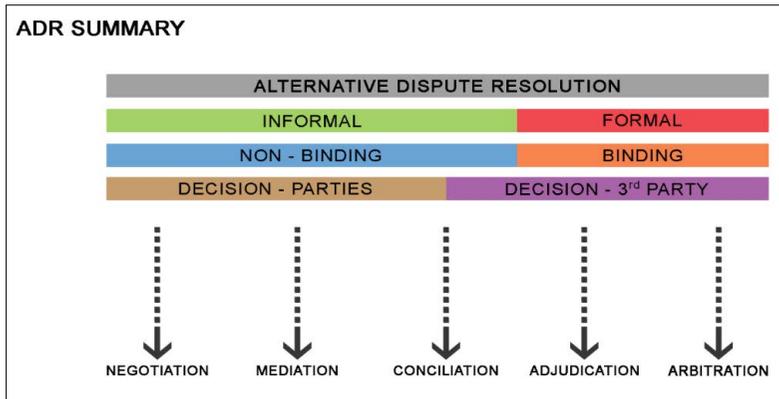


Figure 1: Summarised illustration of various ADR methods

Once there is a better understanding of ADR and the benefits that it offers, the built environment can be positively adjusted and equipped for the settlement of disputes.

3. Research methodology

The purpose of this research was to identify the preferred application of ADR as indicated by architectural practitioners in the built environment of South Africa, with the specific focus on practitioners that have been involved with dispute settlements between 2012 and 2016. The study used a quantitative research approach which allows for the use of structured questionnaire surveys, enabling researchers to generalise their findings from a sample of a population (Courtright 2007: 273; Boubala 2010: 55; Edwards & Holt, 2010: 25-41; Hallowell, 2010: 27; Kheni, Gibb & Dainty, 2010: 1107; Creswell, 2014).

The survey tested the personal experience of architectural practitioners regarding their involvement with dispute resolution over the past five years (2012-2016) and identified the preferred ADR methods implemented by participating architectural practitioners. A quantitative research approach supports the use of dichotomous questions and checkboxes to measure data (Mathers, Fox & Hunn, 2009: 20). Quantitative research also allows for the use of descriptive statistics to analyse data (Brown, 2011: 11). Several

data-analysis strategies are available. For this study, however, the frequencies were used to calculate percentages of preferences (Williams, 2007: 67; Bhattacharyya & Johnson, 2014).

3.1 Sampling method, population and response rate

A list of 13 622 architectural professionals and/or candidates, registered in South Africa, was obtained from the official body, The South African Council for the Architectural Profession (SACAP) (2015: 27) (Van Stade & Chiunda, 2016). Without placing any limitations, the questionnaire survey was administered to all 13 622 members. Responses from 396 participating architectural practitioners were received. The 396 participants represent 2.91% of registered SACAP members in South Africa. Krejcie & Morgan (1970: 608) state that a sample size of 370 is valid for a population of 15 000 for general research activities in the construction-related profession.

Statistician, Steffens (2017) also clarified that a response rate of less than 5% is not unusual in studies with a population this size. Steffens (2017) further stated that the response rate is acceptable to represent the respondents' views and opinions. These statements support the validity for a sampling size of 396 out of 13 622 architectural practitioners.

3.2 Data collection

An online-created structured questionnaire survey (SurveyMonkey, 2016) was distributed to the 13 622 participants by sharing the questionnaire link through e-mail.

The online survey was anonymous, allowing participants to feel comfortable and answer the questions truthfully. The need for a second data-collection method was recognised and made available in hardcopy format to practitioners who found the online survey method impractical, or who did not have electronic access. In an attempt to reach as wide as possible an audience, the hardcopies were distributed at relevant architectural conferences.

Topics on the preferred choice of ADR methods implemented by architectural practitioners were extracted from reviews of the literature and resulted in a two-section questionnaire. Section A requested information on the respondent's profile to obtain personal information on the category of SACAP registration, gender, educational background, and age. Section B established the involvement of architectural practitioners with dispute resolution over the past five years and investigated the preferred ADR

methods implemented by architectural practitioners. In section B, the respondents were required to indicate their level of involvement, in practice, with ADR and ADR methods. The data from these measurements were tabulated. To reduce the respondent's bias, fixed closed-ended questions were preferred for Sections B of the questionnaire (Vicente & Reis, 2010: 260).

3.3 Data analysis and interpretation of findings

Microsoft Excel® (Microsoft Office® suite 2007) was used to determine the preferred ADR methods, using descriptive statistics (Bhattacharyya & Johnson, 2014).

For the questionnaire survey, Section A used dichotomous questions and checkboxes to obtain the respondents' personal information. In Section B, respondents answered a dichotomous question to determine their involvement with ADR and used the checkbox option to indicate their preferred ADR method. After tabulation of the data responses, a bar-chart presentation was compiled to show the calculated frequencies and percentages of the findings. These results form the data that was used to compare the 2012 study to the 2016 data in order to observe the change in preference of ADR methods used by architectural practitioners against ADR methods preferred by the built environment in 2012.

4. Findings

4.1 Respondents' profile

The first part of the questionnaire contained questions relative to the profile of the respondents, the people in the best position to indicate the current status of ADR in the architectural practice. Table 3 shows the category of SACAP registration of the respondents. It is obvious that the majority (39.7%) of the respondents were professional

architects, male (69.9%), and had either a Master's degree (31.2%) or a Baccalaureus degree (33.2%); 35.8% of the respondents were aged between 25 and 35 years.

Table 3: Respondents' profile

<i>Category of SACAP registration</i>	<i>Frequency</i>	<i>Percentage (%)</i>
Candidate architectural technologist	39	9.8
Candidate senior architectural technologist	17	4.3
Candidate architect	18	4.6
Professional architectural technologist	53	13.3
Professional senior architectural technologist	61	15.6
Professional architect	157	39.7
Other	50	12.7
Total	396	100.0
<i>Gender</i>	<i>Frequency</i>	<i>Percentage</i>
Male	276.8	69.9
Female	119.2	30.1
Total	396	100.0
<i>Highest education qualification</i>	<i>Frequency</i>	<i>Percentage (%)</i>
Master's degree	123	31.2
Baccalaureus	132	33.2
Diploma	81	20.8
Certificate	38	9.5
Matriculation	11	2.6
Other	11	2.6
Total	396	100.0
<i>Age</i>	<i>Frequency</i>	<i>Percentage (%)</i>
25-35 years	142	35.8
36-45 years	103	26
46-55 years	72	18.2
56-65 years	56	14.2
66 or more	23	5.8
Total	396	100.0

4.2 Involvement with ADR

The second part of the questionnaire first asked participants if they have recently been involved with dispute resolution. Figure 2 is a graphical summary indicating the percentage of architectural practitioners who have been involved in dispute settlements between 2012 and 2016.

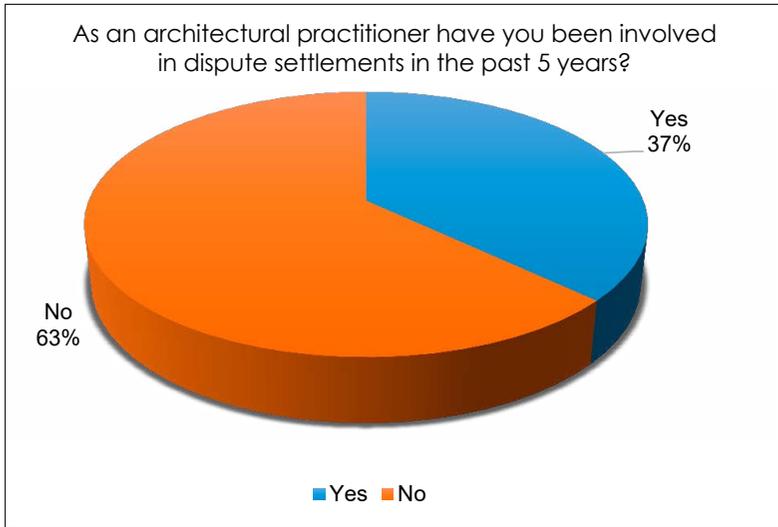


Figure 2: Graphical summary of practitioners who have been involved in dispute resolution

The study revealed that the majority (63%) of the respondents have not been involved with dispute resolution. Only 37% of the respondents have been involved in some form of dispute resolution between 2012 and 2016. The researcher is of the opinion that a large number of architectural practitioners have not been involved with dispute resolution, due to their lack of knowledge on appropriate ADR methods and the benefits it could have. This statement is supported by a previous study conducted by Wilcocks (2016: 93), indicating that there is a strong link between the respondents' level of knowledge and their involvement in dispute resolution. The study proved that 70.9% of the respondents, who have hardly any or no knowledge regarding ADR, have not been involved with dispute resolution between 2012 and 2016.

Wilcocks' (2016: 45) study also indicated that only 39.3% of the architectural practitioners are familiar with ADR. This suggests that the majority of practitioners in the built environment do not have appropriate knowledge on this topic. Among other reasons, this could serve as an explanation as to why the majority (63%) of the participants have not been exposed to ADR mechanisms and its benefits.

4.3 Preference of ADR methods

The second part of the questionnaire asked which method(s) were preferred by architectural practitioners who have implemented ADR in an attempt to resolve a dispute. Figure 3 is a graphical summary of the ADR methods implemented by architectural practitioners between 2012 and 2016.

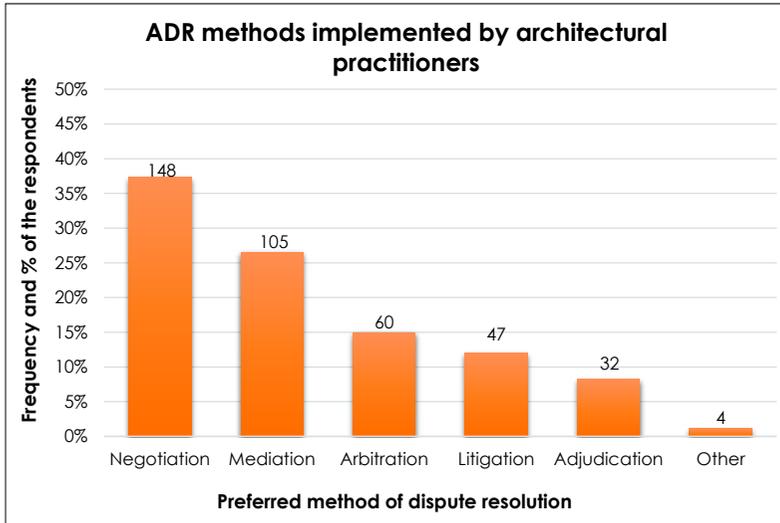


Figure 3: Graphical summary of ADR methods implemented by architectural practitioners between 2012 and 2016

The majority of the participating architectural practitioners preferred negotiation (37.3%) and mediation (26.5%) as the means of resolving disputes in the South African built environment. Only 14.9% of the respondents prefer arbitration and 8.2% prefer adjudication. The data revealed that, although litigation does not form part of ADR procedures, it is still implemented by 11.9% of the practitioners.

Negotiation is one of the most commonly used ADR methods for resolving disputes, because it is an informal method that is used as a preventative measure to avoid fully fledged disputes between parties (Chong & Zin, 2012: 430). Research also indicates that parties, who have been involved with disputes, favour mediation or negotiation as a method of ADR (Brand, Steadman & Todd, 2012; Rao, 2009: 320).

Using a population size of 45 participants, a similar study for the built environment done in 2012 by du Preez and Verster (2013: 5) lists the

preferred ADR methods as arbitration, adjudication, negotiation, and mediation. A comparison between the preferences of ADR methods in 2012 with the results of this study shows a change from arbitration (20.2%) and adjudication (19.3%) to negotiation (37.3%) and mediation (26.5%). Figure 4 shows a graphic representation comparing the current preference of ADR methods implemented by architectural practitioners to those in the built environment noted in the 2012 study by Du Preez and Verster.

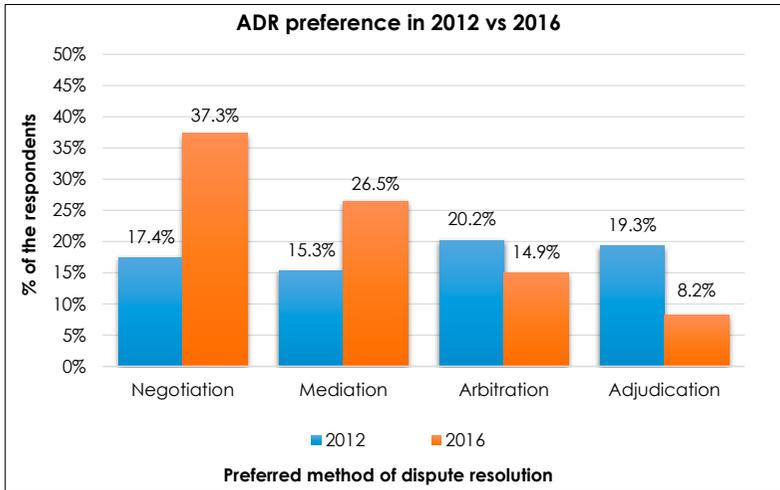


Figure 4: Graphical comparison of the most preferred method of ADR between 2012 and 2016

This comparison displays the ever-changing nature and implementation of various ADR methods within the built environment of South Africa. Although Du Preez and Verster (2013: 5) argue that the construction industry is changing towards the implementation of adjudication as a preferred method for resolving disputes, the comparative data covering the five years from 2012 to 2016 indicated a different scenario. In 2012, Figure 4 shows negotiation, also known as agent resolution, ranking as the third preferred method of ADR in the built environment, while it became the most preferred ADR method implemented between 2012 and 2016 by architectural practitioners. In 2012, mediation was the least preferred ADR method in the built environment, but between 2012 and 2016, it has been the second most preferred ADR method implemented by architectural practitioners.

Negotiation is a private, voluntary and consensual process whereby parties attempt to resolve their differences personally by agreement without the intervention of an independent third party (Havenga & Havenga, 2010: 286; Ramsden, 2009: 2), while mediation is an ADR method in which a neutral third party, known as the mediator, seeks to resolve a dispute between the parties in conflict (Chong & Zin, 2012: 430).

The benefits of using negotiation is that both the discussion and the outcome can remain confidential (Havenga & Havenga, 2010: 286). The benefit of using mediation is that the parties are in agreement and willing to assist the mediator and mediation proceedings in reaching a settlement (Ramsden, 2009: 3; Chong & Zin, 2012: 430).

Despite its confidential benefit, negotiation is the simplest way of settling disputes, because the parties control the process and the outcome; the parties themselves are in the best position to know the strengths and weaknesses of their own cases (Wang, 2000: 191). The outcome of a case through mediation can result in the immediate resolution of the dispute, if the parties agree based on their interests and needs (LawTeacher, 2013: online). Because arbitration takes decision-making power away from the parties, parties do not learn how to resolve their own conflicts more effectively in the future, as does mediation (LawTeacher, 2013: online). Adjudication procedures have a 28-day timetable, which means that parties involved can lose considerable sums of money in a very short timescale (Expert Evidence, 2017: online).

This might be the reason for the change in ADR preferences, as more architectural practitioners are familiarising themselves with the process of ADR, and trying to avoid any formal court litigation.

5. Discussion and conclusion

Based on the findings of this study, it was concluded that architectural practitioners in the built environment in South Africa who were involved with ADR between 2012 and 2016 preferred to use negotiation and mediation as methods to resolve disputes.

A literature study reveals that available ADR mechanisms used to resolve disputes include arbitration, mediation, adjudication, negotiation, fact-finding, mini-trials, conciliation, neutral evaluation, and expert determination. Some benefits of using ADR methods include time and cost efficient, active participation of parties, confidential, and no courtrooms. Despite the benefits, some ADR methods may not be suitable to every form of dispute.

Although arbitration and adjudication were known in 2012 as the most preferred ADR methods to resolve construction disputes, architectural practitioners preferred negotiation and mediation in 2016. This points to the evolutionary challenges of ADR in the South African built environment. A study by Du Preez and Verster (2013: 5) suggests that arbitration and adjudication will remain profound as a support system to ADR.

6. Recommendations

It is recommended that architectural practitioners keep track of the continuous development of ADR methods. Depending on the circumstances of specific construction disputes, architectural practitioners should study the different types of ADR processes, methods and procedures, as ADR has a variety of attributes. These include, among others, avoiding formal court litigation, flexibility, cost effectiveness, time-saving, confidentiality, privacy, and the preservation of business relationships.

To limit the current lack of ADR knowledge, architectural practitioners should develop ADR implementation guidelines for their firms that focus on choice, procedure and methods best dealing with the interest of the parties involved in the dispute. These implementation guidelines should specifically focus on serving as a mechanism for avoiding formal court litigation.

It is recommended that SACAP and Voluntary Associations educate members through online training, continuing professional development (CPD) and bespoke ADR courses, mentorship programmes and workshops. This should be done on a regular basis, as ADR methods/procedures implemented are constantly changing, due to the changing nature of the South African construction industry.

Further studies should investigate possible activities to inform architectural practitioners of the benefits of ADR. This will ensure good working relationships between practitioners and clients as well as possibly limiting costly and time-consuming court procedures. Similar studies could also examine the possible impact when ADR methods are not implemented during construction disputes and how to address these issues. Thus, the study could be expanded by including the rest of the construction industry.

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