



Current challenges and opportunities for improvement of construction dispute resolution systems.

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The challenges

- Construction disputes cost too much and take too long.
- This cost and delay adds to parties' stress associated with the dispute.
- The cost, delay and stress can impede resolution of the dispute.
- They can also impede access to justice - parties may feel that justice is out of reach.

CHALLENGES

Components of construction dispute resolution system

- There are three components of design of a construction dispute resolution system:
 - the dispute resolution institution
 - the dispute resolution mechanisms
 - the case management process




Institutional design

- The institutional design of the construction dispute resolution institution is critical to ensuring access to justice.
- Three components of the institutional design:
 - Constitution
 - Competence
 - Expertise



Constitution of institution

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- The constitution of the construction dispute resolution institution includes:
 - the types of institution, such as a court or tribunal
 - the positioning within the judicial hierarchy
 - the jurisdiction of the institution
 - the functions the institution is authorised to exercise.

Competences of institution



- The competences of the construction dispute resolution institution include:
 - constitutional competence
 - institutional competence
- Constitutional competence refers to the proper role of the institution in the government and governance of the polity.
- Institutional competence concerns the capacity of the institution to exercise its jurisdiction and functions:
 - this includes the dispute resolution mechanisms the institution can use to resolve construction disputes.

Expertises of institution



- The expertises of the construction dispute resolution institution include:
 - contributory expertise
 - interactional expertise
- Contributory expertise refers to legal expertise – the skills, knowledge and experience needed to contribute to the application and development of the law.
- Contributory expertise in building and construction law is specialised legal expertise.

Expertises of institution

- Interactional expertise refers to the need to interact with other disciplines of relevance to construction disputes, including building, engineering and architecture.
- Interactional expertise assists the institution to understand and resolve the real issues involved in construction disputes.
- The institutional design can incorporate both expertises by providing for two types of specialist decision-makers – lawyers and technical experts.

Dispute resolution mechanisms

- Institutional competence includes the dispute resolution mechanisms the institution can use to resolve disputes.
- The dispute resolution mechanisms include:
 - adjudicative (non-consensual) mechanism
 - consensual mechanisms such as mediation and conciliation
 - hybrid mechanism such as med-arb or arb-med.
- Institutional expertise includes having members of the institution with expertise in the use of different dispute resolution mechanisms:
 - legal members for adjudication
 - technical members for conciliation and mediation.



Appropriate dispute resolution

- Appropriate dispute resolution involves matching the forum to the fuss:
 - **forum**: the dispute resolution mechanism
 - **fuss**: the individual dispute.



Multi-door courthouse

- The institutional design can provide for a multi-door courthouse.
- This is a dispute resolution centre offering a variety of dispute resolution mechanisms and matching the appropriate mechanism (the forum) to the individual dispute (the fuss).



The case management process

- The institutional design should provide for case management of construction disputes from filing to finalisation.
- The overriding purpose is to facilitate the just, quick and cheap resolution of the real issues involved in the dispute.
- The case management process should be:
 - simple;
 - relevant and proportional; and
 - efficient and effective.
- This involves differential case management – tailoring the case management directions to fit the individual dispute.



IBQC Good Practice Guidelines

- The IBQC Good Practice Guidelines for the Development of Construction Dispute Resolution Tribunals and Decision-Making Institutions assist in the design of the dispute resolution institution, mechanisms and case management process to facilitate access to justice for all in construction disputes.

