



CAASA, encouraging  
the effective use of  
adjudication within the  
South African  
construction industry.



CONSTRUCTION  
ADJUDICATION  
Association of South Africa

Disputes in the construction industry between the Employer and Contractor or Contractor and Subcontractor, are commonplace. All standard forms of contract provide processes for the resolution of disputes. The preferred processes in the past were arbitration and litigation.

#### WHY ADJUDICATION?

Arbitration allowed the parties to appoint an arbitrator of their own choosing, preferably someone with a sound knowledge of the construction contract and the nature of the dispute. Litigation, on the other hand, relied on the judge allocated to hear the matter being conversant with the issues placed before him. The fact that the parties had no choice on the appointment of the judge and that the allocation of a court date could take many months, if not years, meant that arbitration was the favoured route, and still is today for certain types of disputes. It is generally the norm when parties have proceeded to adjudication but have not accepted the outcome.

However, arbitration proceedings themselves can take many months, particularly if the dispute is complex, involving multiple witnesses and experts.

Construction and engineering disputes, in their myriad of forms, are most commonly based on

two main things – payment of money and/or the granting of additional time.

By the time a dispute is resolved in arbitration or litigation the project may be long completed and any relationship there was between the parties is non-existent. There is little comfort to a party to a dispute if the matter is only resolved months or years after the dispute actually arose. Justice delayed is justice denied.

Adjudication was seen as an answer to this problem as it would enable a dispute to be settled as expeditiously as possible during the currency of a project, thereby preserving the relationship between the parties through to completion. The appointment of an adjudicator with good industry knowledge, a decision based on the documents submitted by the parties only, avoiding hearings unless necessary, and allowing the adjudicator to use his/her own knowledge and expertise greatly speeds up the resolution of disputes. The adjudicator's decision is final, unless challenged by one of the parties within a specified time period, in which case it is referred



to arbitration or litigation for final resolution. Nonetheless even if challenged the parties have to comply with the adjudicator's decision until the outcome of the arbitration or litigation.

### **HOW ADJUDICATION HAS EVOLVED**

The momentum grew. Whereas, in earlier forms of contract the adjudicator was appointed only when a dispute arose, as the industry realised the value of adjudication, this transformed into standing one- or three-person Dispute Adjudication Boards (DAB), appointed at the very outset of a project, and, in the latest FIDIC contracts, DAAB's – Dispute Adjudication and Avoidance Boards - with the emphasis on assisting the parties to avoid disputes.

Voluntary adjudication has proven to be a fast, cost effective dispute resolution option that is able to achieve a fair and equitable outcome for all. Recognising this in countries such as the United Kingdom, Australia, New Zealand, Hong Kong, Singapore and Malaysia, legislation has been introduced to make adjudication mandatory for most construction related disputes.

Similar draft legislation was issued for comment in South Africa in 2015 and was welcomed by all in the industry. Unfortunately, it has not progressed since. Hopefully with government's focus on the roll out of infrastructure as a means of stimulating the economy, the legislation will be back on the table soon.

Nevertheless, the courts have recognised the construction adjudication procedure as a distinct means for resolving construction disputes and there is a growing body of case law that indicates the court's willingness to enforce adjudicators' decisions. There is an increased appreciation among contracting parties (employers and contractors) across the South African construction industry of the definite advantages of referring a dispute to adjudication.

However, adjudication has also faced challenges in its evolution. In the past, adjudicators and arbitrators were selected and appointed from the industry, more for their technical and commercial knowledge than for their legal acumen, and an understanding of how adjudication should work. The legal fraternity itself had only a minor role and tended to treat adjudication as a form of arbitration.

Circumstances have changed. Today many lawyers specialise in construction disputes although they may not understand the intricacies of adjudication. The running of the dispute process is often taken out of the hands of the parties and dealt with by these lawyers, and everything slows down. Retired judges who had often been appointed as arbitrators began to act as adjudicators, but still acted as if they were arbitrators. As a result, some say that arbitration has morphed into litigation, and adjudication into arbitration.

Providing an accessible, open platform for the discussion of construction adjudication issues in South Africa.

## THE ROLE OF CAASA

It is in response to the above that CAASA was formed.

The Construction Adjudication Association of South Africa's (CAASA) primary objective is to encourage, promote and develop the effective use of adjudication as a means of resolving disputes in the construction industry by providing an accessible, informal, regular and open platform for discussing construction adjudication issues, problems and practices.

CAASA provides a panel of adjudicators made up of a diverse selection of practicing adjudicators with extensive construction experience and a proper understanding of adjudication. CAASA not only aims to develop and maintain the panel for purposes of appointments to act as adjudicators on request, but to also implement suitable quality assurance criteria.

In addition to the panel, CAASA intends to implement a low value dispute adjudication service with the aim of making adjudication available to a far larger part of the construction industry than currently is the case.

## BENEFITS OF MEMBERSHIP

The benefits of membership include:

- access to a curated library of content including full case transcripts, articles and papers of talks presented at meetings and conferences;
- regular training;
- legal updates and information sharing in relation to adjudication practice in South Africa and elsewhere;
- the opportunity to network with those in the industry who share a keen interest in promoting adjudication and influencing its development;
- webinars and virtual Q&A sessions on topical issues;
- an annual conference; and
- a members' only newsletter.
- relationships with other worldwide bodies or organizations with similar or related interests.

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