GLOBAL POUND CONFERENCE SERIES 2016-17

SHAPING THE FUTURE OF DISPUTE RESOLUTION & IMPROVING ACCESS TO JUSTICE

LOCAL VOTING RESULTS

JOHANNESBURG
June 29, 2017

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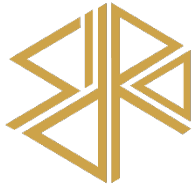

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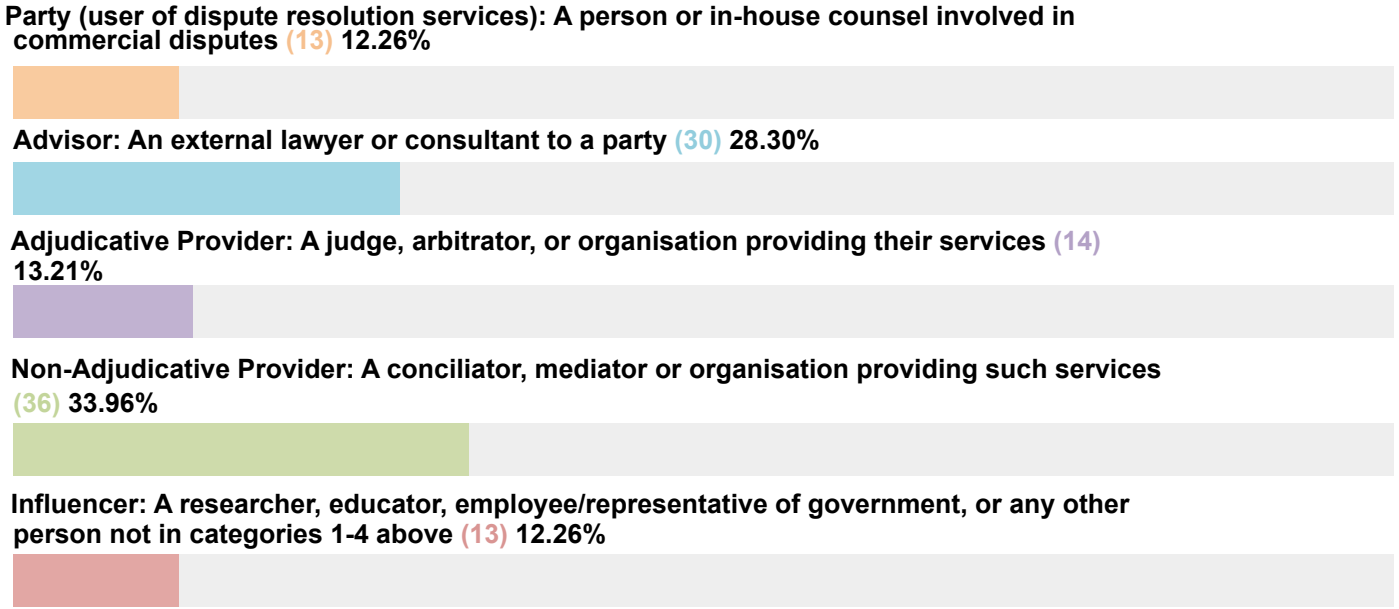
Session 1

Session 1 – Demographic Results

Which category of stakeholder will you vote as today?

(If your regular practice involves several of these options, please select the one in which you have primarily been involved).

(106)



Session 1 Question 1 – Group Results

What outcomes do parties most often want before starting a process in commercial civil dispute resolution?

(Pease rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).

(588)

1.Action-focused (e.g. prevent action or require an action from one of the parties) (189) 62.00%

2.Financial (e.g. damages, compensation, etc.) (185) 61.00%

4.Psychological (e.g., vindication, closure, being heard, procedural fairness) (99) 33.00%

5.Relationship-focused (e.g. terminate or preserve a relationship) (87) 29.00%

3.Judicial (e.g. setting a legal precedent) (28) 9.00%

Other (0) 0.00%

Session 1 Question 1 – Cross Sorted Results

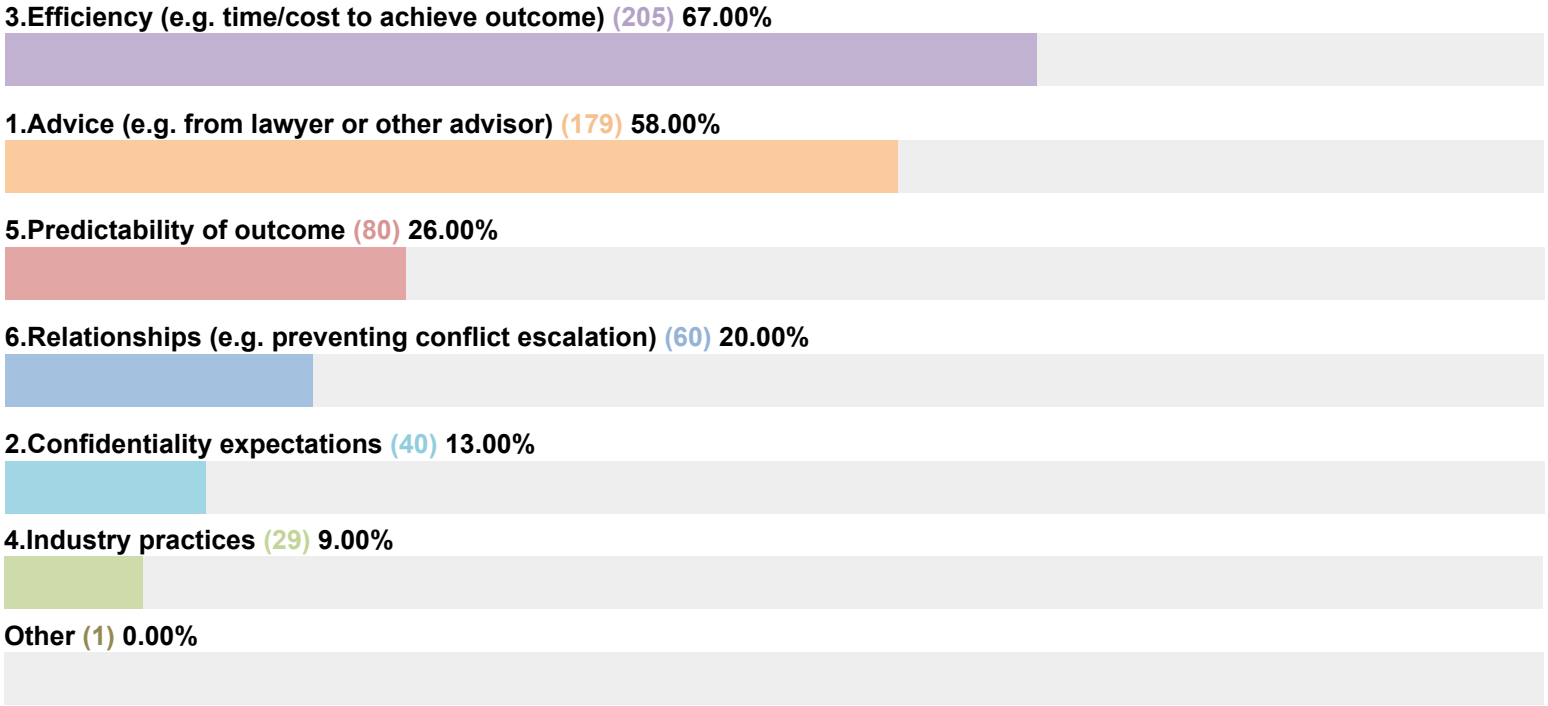
AVG Rank	Party (user of dispute…	Advisor: An external lawyer…	Adjudicative Provider: A judge,…	Non-Adjudicative Provider:	Influencer: A researcher,
1	1.Action-focused (e.g. prevent action… 64%	2.Financial (e.g. damages, compensation,… 78%	2.Financial (e.g. damages, compensation,… 64%	1.Action-focused (e.g. prevent action… 63%	1.Action-focused (e.g. prevent action… 69%
2	2.Financial (e.g. damages, compensation,… 54%	1.Action-focused (e.g. prevent action… 68%	1.Action-focused (e.g. prevent action… 56%	2.Financial (e.g. damages, compensation,… 53%	2.Financial (e.g. damages, compensation,… 67%
3	5.Relationship-focused (e.g. terminate or… 46%	4.Psychological (e.g., vindication, closure,… 28%	5.Relationship-focused (e.g. terminate or… 38%	4.Psychological (e.g., vindication, closure,… 45%	4.Psychological (e.g., vindication, closure,… 31%
4	4.Psychological (e.g., vindication, closure,… 36%	5.Relationship-focused (e.g. terminate or… 16%	3.Judicial (e.g. setting a… 26%	5.Relationship-focused (e.g. terminate or… 34%	5.Relationship-focused (e.g. terminate or… 19%
5		3.Judicial (e.g. setting a… 10%	4.Psychological (e.g., vindication, closure,… 15%	3.Judicial (e.g. setting a… 5%	3.Judicial (e.g. setting a… 14%
6					

Session 1 Question 2 – Group Results

When parties involved in commercial disputes are choosing the type(s) of dispute resolution process(es) to use, which of the following has the most influence?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).

(594)



Session 1 Question 2 – Cross Sorted Results

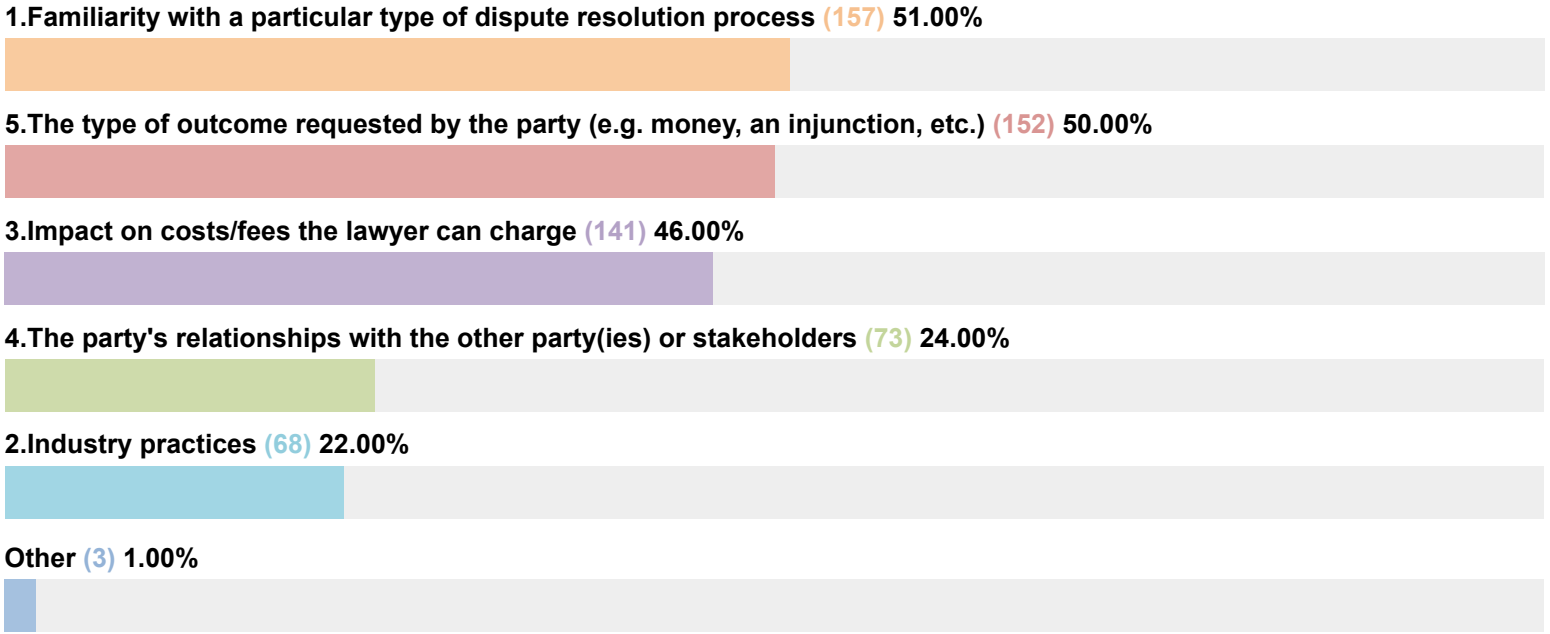
AVG Rank	Party (user of dispute…	Advisor: An external lawyer…	Adjudicative Provider: A judge,…	Non-Adjudicative Provider: A	Influencer: A researcher,
1	3.Efficiency (e.g. time/cost to… 64%	1.Advice (e.g. from lawyer… 80%	3.Efficiency (e.g. time/cost to… 74%	3.Efficiency (e.g. time/cost to… 72%	3.Efficiency (e.g. time/cost to… 72%
2	1.Advice (e.g. from lawyer… 42%	3.Efficiency (e.g. time/cost to… 64%	1.Advice (e.g. from lawyer… 64%	1.Advice (e.g. from lawyer… 47%	1.Advice (e.g. from lawyer… 67%
3	6.Relationships (e.g. preventing conflict… 39%	5.Predictability of outcome 27%	5.Predictability of outcome 31%	5.Predictability of outcome 25%	5.Predictability of outcome 25%
4	5.Predictability of outcome 31%	4.Industry practices 15%	6.Relationships (e.g. preventing conflict… 17%	6.Relationships (e.g. preventing conflict… 24%	6.Relationships (e.g. preventing conflict… 17%
5	2.Confidentiality expectations 22%	6.Relationships (e.g. preventing conflict… 11%	2.Confidentiality expectations 7% 4.Industry practices 7%	2.Confidentiality expectations 23%	2.Confidentiality expectations 11%
6	4.Industry practices 3%	2.Confidentiality expectations 2%		4.Industry practices 10%	4.Industry practices 8%
7				Other 1%	

Session 1 Question 3 – Group Results

When lawyers (whether in-house or external) make recommendations to parties about procedural options for resolving commercial dispute, which of the following has the most influence?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).

(594)



Session 1 Question 3 – Cross Sorted Results

AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A	Influencer: A researcher,
1	3.Impact on costs/fees the... 58%	5.The type of outcome... 65%	1.Familiarity with a particular... 57%	1.Familiarity with a particular... 60%	1.Familiarity with a particular... 53%
2	5.The type of outcome... 44%	1.Familiarity with a particular... 48%	3.Impact on costs/fees the... 50% 5.The type of outcome... 50%	3.Impact on costs/fees the... 46%	2.Industry practices 44% 5.The type of outcome... 44%
3	1.Familiarity with a particular... 42%	3.Impact on costs/fees the... 45%	4.The party's relationships with... 31%	5.The type of outcome... 44%	3.Impact on costs/fees the... 42%
4	4.The party's relationships with... 36%	2.Industry practices 25%	2.Industry practices 12%	4.The party's relationships with... 27%	4.The party's relationships with... 17%
5	2.Industry practices 14%	4.The party's relationships 17%		2.Industry practices 21%	
6	Other 6%			Other 1%	

Session 1 Question 4 – Group Results

What role do parties involved in commercial disputes want providers to take in the dispute resolution processes?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).

(582)

5.The parties initially do not have a preference but seek guidance from the providers regarding optimal ways of resolving their dispute (197) 66.00%

2.The providers decide on the process and the parties decide how the dispute is resolved (127) 42.00%

3.The parties decide on the process and the providers decide how the dispute is resolved (91) 30.00%

1.The parties decide how the process is conducted and how the dispute is resolved (the providers just assist) (86)

4.The providers decide on the process and how the dispute is resolved (80) 27.00%

Other (1) 0.00%

Session 1 Question 4 – Cross Sorted Results

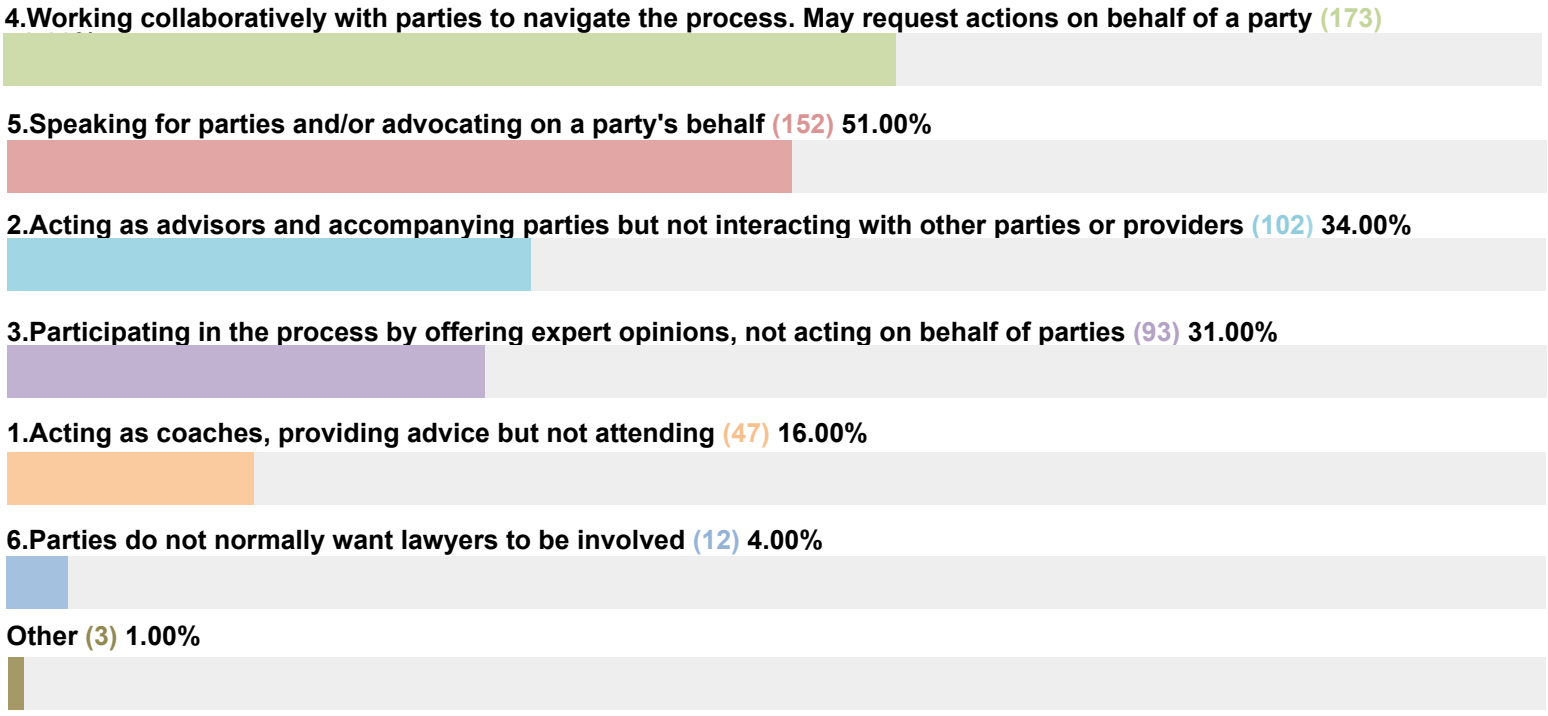
AVG Rank	Party (user of dispute...	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider:	Influencer: A researche
1	5.The parties initially do... 61%	5.The parties initially do... 72%	5.The parties initially do... 69%	5.The parties initially do... 71%	5.The parties initially do... 56%
2	2.The providers decide 56%	3.The parties decide on... 41%	2.The providers decide 41%	2.The providers decide 52%	2.The providers decide 50%
3	1.The parties decide how... 44%	4.The providers decide 35%	3.The parties decide on... 38%	1.The parties decide how... 31%	1.The parties decide how... 36%
4	3.The parties decide on... 19% 4.The providers decide on... 19%	2.The providers decide 27%	4.The providers decide 36%	3.The parties decide on... 24%	3.The parties decide on... 33%
5		1.The parties decide how... 25%	1.The parties decide how... 15%	4.The providers decide 22%	4.The providers decide 25%
6		Other 1%			

Session 1 Question 5 – Group Results

What role do parties involved in commercial disputes typically want lawyers (i.e., in-house or external counsel) to take in the dispute resolution processes?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).

(582)



Session 1 Question 5 – Cross Sorted Results

AVG Rank	Party (user of dispute...	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A	Influencer: A researcher,
1	4.Working collaboratively with parties... 76%	5.Speaking for parties and/or... 70%	4.Working collaboratively with parties... 69%	4.Working collaboratively with parties... 51%	4.Working collaboratively with parties... 58%
2	5.Speaking for parties and/or... 45%	4.Working collaboratively with parties... 60%	5.Speaking for parties and/or... 49%	5.Speaking for parties and/or... 48%	2.Acting as advisors and... 44%
3	2.Acting as advisors and... 36%	2.Acting as advisors and... 26%	2.Acting as advisors and... 38%	2.Acting as advisors and... 37% 3.Participating in the process... 37%	3.Participating in the process... 36%
4	3.Participating in the process... 30%	3.Participating in the process... 25%	3.Participating in the process... 31%	1.Acting as coaches, providing... 24%	5.Speaking for parties and/or... 31%
5	1.Acting as coaches, providing... 12%	1.Acting as coaches, providing... 14%	1.Acting as coaches, providing... 8%	6.Parties do not normally... 2%	6.Parties do not normally... 19%
6		Other 4%	6.Parties do not normally... 5%		1.Acting as coaches, providing... 11%
7		6.Parties do not normally... 1%			

Word Cloud – Session 1

What words would you use to describe a sophisticated commercial party?

Make a Question or Comment – Session 1

SA has been through a traumatic past and we know the value of talking and negotiating	11
Should mediators & arbitrators that are also practising advocates not be able to take work directly from the public to save the costs of having an instructing attorney which could also have an impact on independance?	7
Amazing that advisors and non adjudicatives are less focussed on the relationship than the users. Time to focus on that?	4
It is important to note that parties are both plaintiffs and defendants. Not just plaintiffs	4
I think that we are a more communal society than other societies, hence the significance of relationships.	4
I'm surprised that legal precedent ranks so low, as this factor determines how parties assess risk in settling matters	4
Talking and negotiating is important - and even more we need to become much better at listening! (deep listening)	4
Many matters settle before court. Law is not developing because of this.	3
Is it not then a good thing that cases are settled out of court? The fundamental idea of what justice means cannot surely be static	3
Lawyers play a filtering role in discussions about prospects of success and correct process	3
Are parties' view about litigation choices not influenced primarily by whether they are typically claimants, or typically defendants?	3
If parties are predominantly influenced by efficiency and legal costs, why do they not attempt mediation in every case? That is not what is happening on the ground.	3
Wondering how applicable or useful our current dispute resolution systems are when dealing with deep-rooted societal problems, eg. feesmustfall ?	3
How does this align with Judge Cameron's reference to race and assumptions about the competency of the current cadre of judicial officers!	2
The importance of relationships in the process of mediation reflects SA as a society underpinned by principles of Ubuntu and its importance in instances of disputes or conflict	2
Any lawyer who predicts an outcome is foolish. There are too many variables	2

Make a Question or Comment – Session 1

The reason why SA had a successful transition from old regime to the democratic country was, amongst others, that the leaders like Mr Mandelay believed in a win win solution which relationships are part thereof. I firmly believe that parties in commercial disputes must not only focus on financial win. They should also care about building and maintaining relationships and this could be achieved through mediation .	2
It is extremely unethical to make recommendations to your client based on your own personal interest (fees)	2
Must parties forego a mutually acceptable outcome for the sake of "developing the law"?	2
The Min of Health's opinion is that the fees earned by lawyers drive medical negligence litigation.	2
To mediate any dispute the little person is still in the hands of the big corporate to agree or disagree. Courts need to give adverse cost orders against parties who refuse to mediate	2
Should the moderators not be disciplined sufficiently so as to ensure that sessions do not overrun?Going on for 30min longer than allocated thows everything out and makes it difficult to concentrate	2
Sometimes disputes between the lawyers end up taking centre stage and those between the parties become secondary	2
test question 1	2
The risk of taking a chance with a new process or a different approach is avoided. You can be criticized for that less than if the usual process is followed	1
Would mediation not assist in reaching the 4 pillars of accountability of medical practitioners more so than litigation?	1
Looking from Zimbabwe, legal fees in SA are low.	1

Session 2

Session 1 – Demographic Results

Which category of stakeholder will you vote as today?

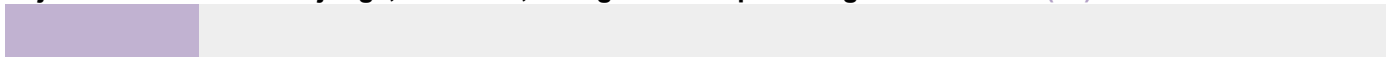
(If your regular practice involves several of these options, please select the one in which you have primarily been involved).

(95)

Party (user of dispute resolution services): A person or in-house counsel involved in commercial disputes (8) 8.42%

Advisor: An external lawyer or consultant to a party (30) 31.58%

Adjudicative Provider: A judge, arbitrator, or organisation providing their services (14)



Non-Adjudicative Provider: A conciliator, mediator or organisation providing such services

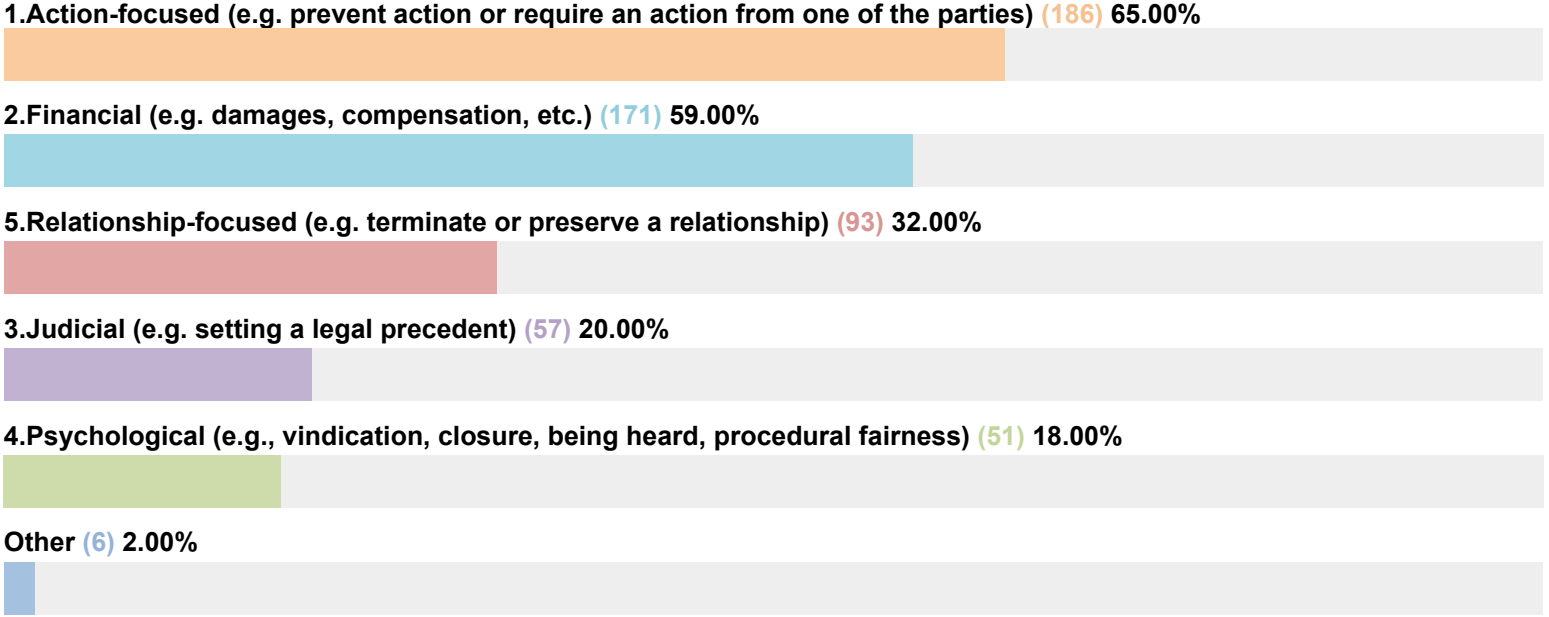
Influencer: A researcher, educator, employee/representative of government, or any other

Session 2 Question 1 – Group Results

What outcomes do <u>providers</u> tend to prioritise in commercial dispute resolution?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).

(564)



Session 2 Question 1 – Cross Sorted Results

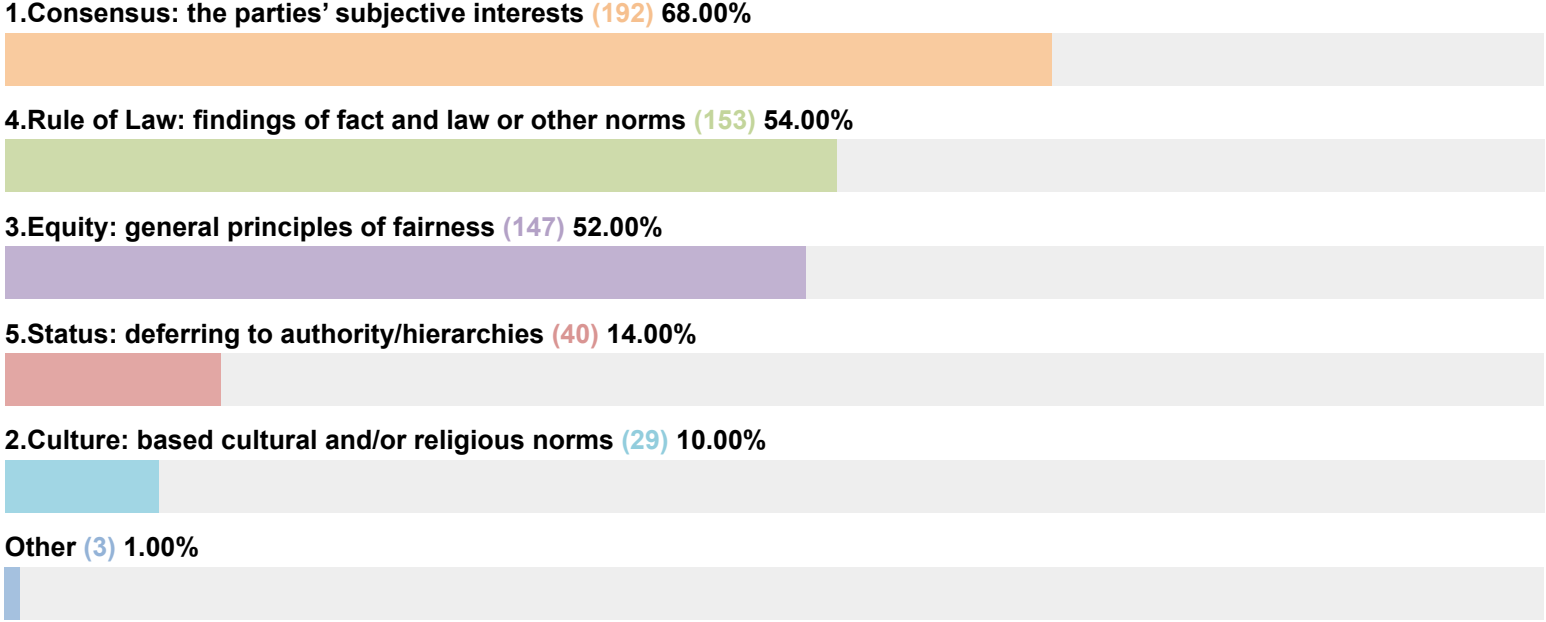
AVG Rank	Party (user of dispute...	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A	Influencer: A researcher,
1	2.Financial (e.g. damages, compensation,... 75%	2.Financial (e.g. damages, compensation,... 71%	1.Action-focused (e.g. prevent action... 57%	1.Action-focused (e.g. prevent action... 66%	1.Action-focused (e.g. prevent action... 67%
2	1.Action-focused (e.g. prevent action... 67%	1.Action-focused (e.g. prevent action... 70%	2.Financial (e.g. damages, compensation,... 52%	5.Relationship-focused (e.g. terminate or... 52%	2.Financial (e.g. damages, compensation,... 61%
3	5.Relationship-focused (e.g. terminate or... 38%	3.Judicial (e.g. setting a... 27%	3.Judicial (e.g. setting a... 38%	2.Financial (e.g. damages, compensation,... 51%	3.Judicial (e.g. setting a... 30%
4	4.Psychological (e.g., vindication, closure,... 13%	4.Psychological (e.g., vindication, closure,... 16%	5.Relationship-focused (e.g. terminate or... 36%	4.Psychological (e.g., vindication, closure,... 27%	5.Relationship-focused (e.g. terminate or... 27%
5	3.Judicial (e.g. setting a... 8%	5.Relationship-focused (e.g. terminate or... 13%	4.Psychological (e.g., vindication, closure,... 10%	3.Judicial (e.g. setting a... 5%	4.Psychological (e.g., vindication, closure,... 15%
6		Other 3%	Other 7%		

Session 2 Question 2 – Group Results

The outcome of a commercial dispute is determined primarily by which of the following?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).

(564)



Session 2 Question 2 – Cross Sorted Results

AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A	Influencer: A researcher,
1	1.Consensus: the parties' subjective... 67%	4.Rule of Law: findings... 80%	1.Consensus: the parties' subjective... 71%	1.Consensus: the parties' subjective... 81%	4.Rule of Law: findings... 64%
2	3.Equity: general principles of... 50%	1.Consensus: the parties' subjective... 62%	4.Rule of Law: findings... 60%	3.Equity: general principles of... 65%	3.Equity: general principles of... 52%
3	4.Rule of Law: findings... 42%	3.Equity: general principles of... 38%	3.Equity: general principles of... 57%	4.Rule of Law: findings... 27%	1.Consensus: the parties' subjective... 45%
4	5.Status: deferring to authority/hierarchies 25%	5.Status: deferring to authority/hierarchies 18%	2.Culture: based cultural and/or... 5% 5.Status: deferring to authority/hierarchies 5%	2.Culture: based cultural and/or... 19%	5.Status: deferring to authority/hierarchies 27%
5	2.Culture: based cultural and/or... 17%	2.Culture: based cultural and/or... 2%	Other 2%	5.Status: deferring to authority/hierarchies 8%	2.Culture: based cultural and/or... 9%
6				Other 1%	Other 3%

Session 2 Question 3 – Group Results

In commercial disputes, what is achieved by participating in a non- adjudicative process (mediation or conciliation) (whether voluntary or involuntary - e.g. court ordered)?

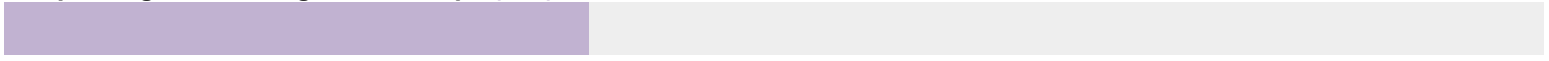
(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).

(558)

4.Reduced costs and expenses (162) 57.00%

5.Retaining control over the outcome (123) 43.00%

3.Improving or restoring relationships (108) 38.00%



1.Better knowledge of the strengths/weaknesses of the case or likelihood of settlement (104) 36.00%

2.Compliance (e.g. avoiding cost sanctions, meeting contractual obligations) (46) 16.00%

6.Tactical/strategic advantage (e.g. delay) (15) 5.00%

Other (0) 0.00%

Session 2 Question 3 – Cross Sorted Results

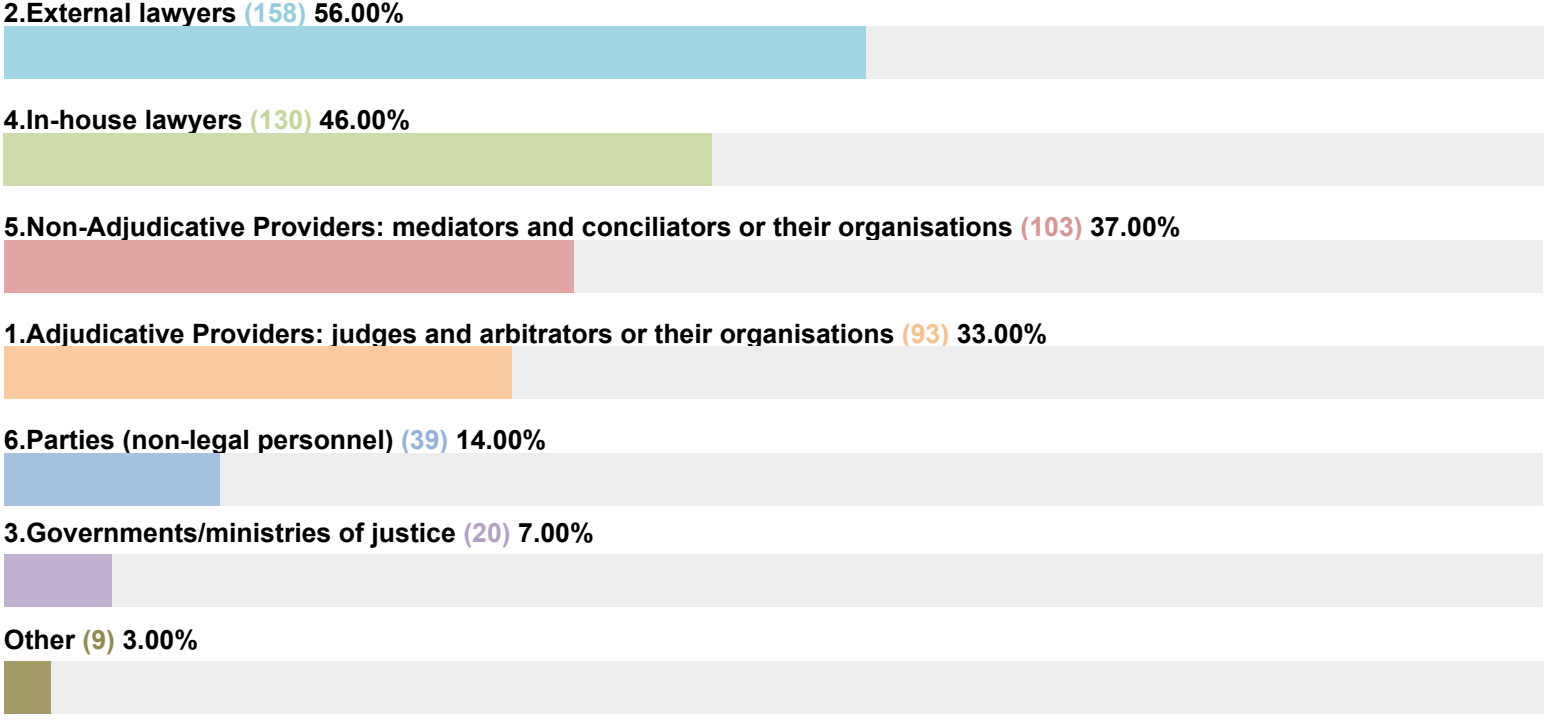
AVG Rank	Party (user of dispute...	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A	Influencer: A
1	4.Reduced costs and expenses 67%	1.Better knowledge of the... 47% 4.Reduced costs and expenses 47%	4.Reduced costs and expenses 64%	4.Reduced costs and expenses 63%	4.Reduced costs and expenses 61%
2	1.Better knowledge of the... 63%	5.Retaining control over the... 43%	5.Retaining control over the... 43%	5.Retaining control over the... 53%	1.Better knowledge of the... 42%
3	3.Improving or restoring relationships 46%	3.Improving or restoring relationships 32%	3.Improving or restoring relationships 40%	3.Improving or restoring relationships 43%	3.Improving or restoring relationships 36% 5.Retaining control over 36%
4	5.Retaining control over the... 25%	2.Compliance (e.g. avoiding cost... 24%	1.Better knowledge of the... 36%	1.Better knowledge of the... 20%	2.Compliance (e.g. avoiding cost... 21%
5		6.Tactical/strategic advantage (e.g. delay) 7%	2.Compliance (e.g. avoiding cost... 17%	2.Compliance (e.g. avoiding cost... 11%	6.Tactical/strategic advantage (e.g. delay) 3%
6				6.Tactical/strategic advantage (e.g. delay) 9%	

Session 2 Question 4 – Group Results

Who is primarily responsible for ensuring parties involved in commercial disputes understand their process options, and the possible consequences of each process before deciding which one to use?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).

(552)



Session 2 Question 4 – Cross Sorted Results

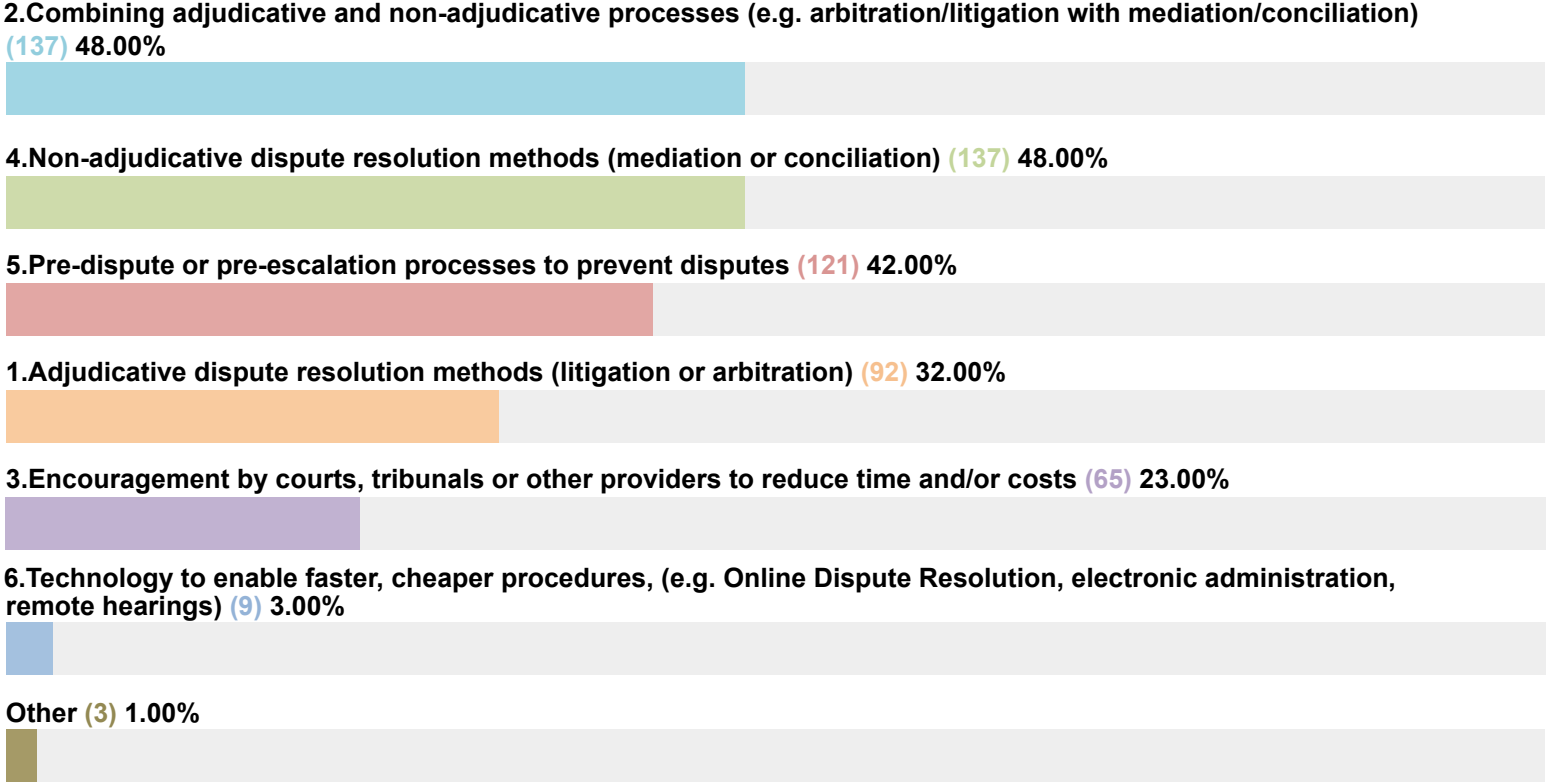
AVG Rank	Party	Advisor:	Adjudicative Provider:	Non-Adjudicative Provider:	Influencer:
1	2.External lawyers 79%	2.External lawyers 76%	1.Adjudicative Providers: judges and... 55%	2.External lawyers 51%	4.In-house lawyers 50% 5.Non-Adjudicative Providers: mediators 50%
2	1.Adjudicative Providers: 38%	4.In-house lawyers 50%	4.In-house lawyers 40% 5.Non-Adjudicative 40%	4.In-house lawyers 50%	2.External lawyers 37%
3	4.In-house lawyers 33% 5.Non-Adjudicative Prov 33%	1.Adjudicative Providers: 28%	2.External lawyers 33%	5.Non-Adjudicative Prov 48%	1.Adjudicative Providers: 33%
4	Other 13%	5.Non-Adjudicative Provi 22%	6.Parties (non-legal 17%	1.Adjudicative Providers: 29%	6.Parties (non-legal 17%
5	6.Parties (non-legal 4%	6.Parties (non-legal 13%	3.Governments/ministries 10%	6.Parties (non-legal 16%	3.Governments/ministries 7% Other 7%
6		3.Governments/ministries of justice 9%	Other 5%	3.Governments/ministries of justice 7%	
7		Other 2%			

Session 2 Question 5 – Group Results

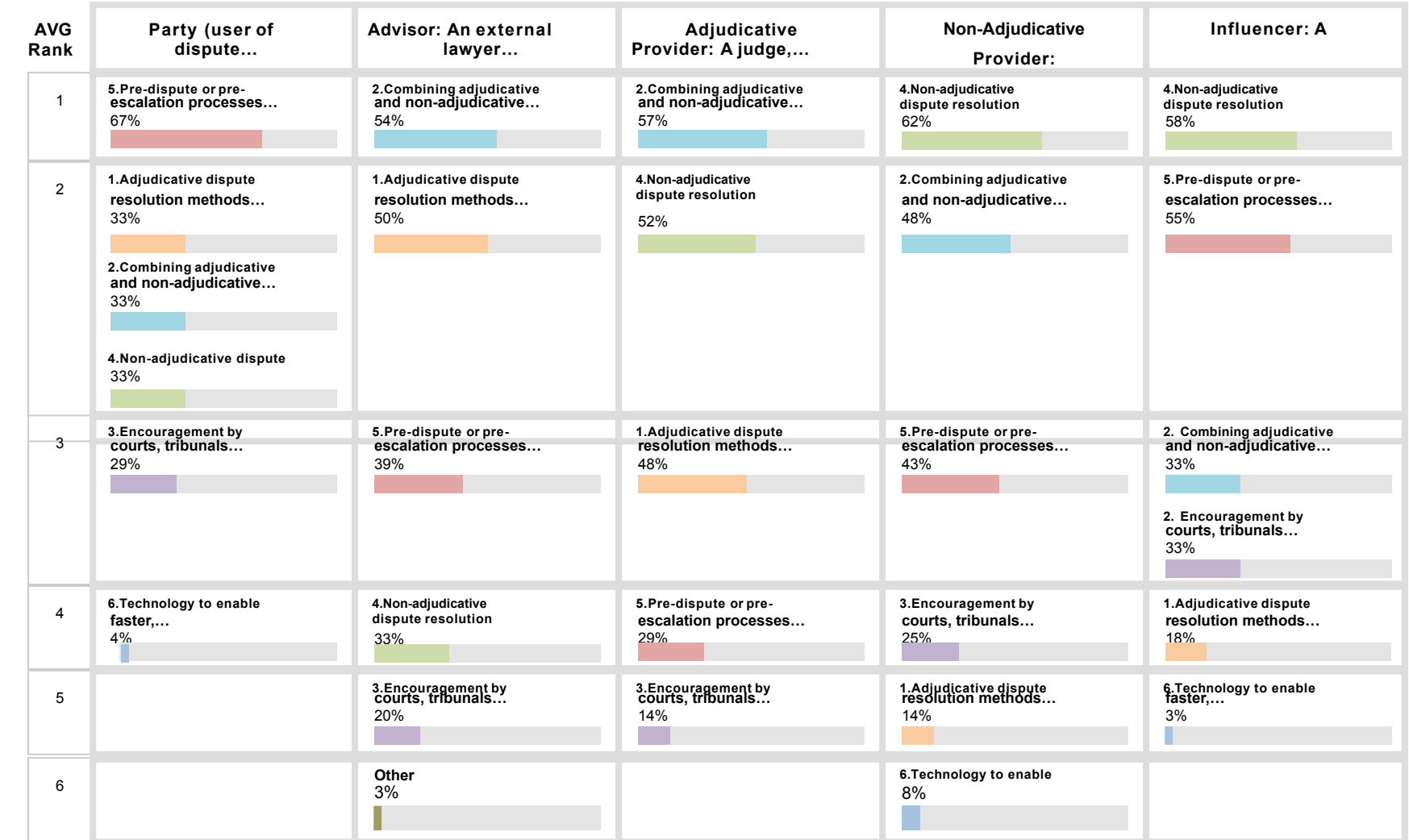
Currently, the most effective commercial dispute resolution processes usually involve which of the following?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).

(564)



Session 2 Question 5 – Cross Sorted Results



Word Cloud – Session 2

What words would you use to describe what can be done to exceed parties' expectations?

Make a Question or Comment – Session 2	
This is such an important event... It is unfortunate that more NGOs, students, restorative justice people, communities are not also involved... They would have perhaps provided different perspectives, eg. on expanding access to justice, reducing the gap between communities and remote power centres etc	10
Can an economic settlement by an insurer ever provide a reasonable outcome for the insured doctor whom have been deprived of the oppertunity to defend themselves?	6
The effectiveness of the dispute resolution mechanism is largely influenced by its credibility, for example arbitration is quite advanced and used frequently and preferred in most commercial disputes whereas mediation is viewed from the perspective that it is only suited to family and industrial disputes. Perhaps focus on creating a professional regulatory body for mediation in RSA? That will certainly help	6
The main difficulty with litigation is the unpredictability of the outcome. As a result parties engage more in mitigation and risk management. Most actions instituted end up in settlement	5
Mediation is not promoted by lawyers because the process is not understood. Mediation & arbitration training should be compulsory for all lawyers	5
An essential element in the determination of the process to be chosen is the consequence of the process. Especially for the recalcitrant party	3
Shouldn't providers be encouraging parties to attempt to mediate and educating them on what that could mean for them?	3
Are we not at risk of speculating on behalf of the parties to the dispute with parties not very well represented here today?	3
Here is an important discussion for lawyer-mediators - how to meet the expectations of the 42% of parties and 80% of advisors who consider the outcome of a commercial dispute to be determined primarily by the law.	3
Can expectations ever be met?	2
Conciliation in the context of the CCMA is not mediation. It is facilitated horse trading. If the perception among lawyers, especially labour lawyers, is that conciliation and mediation are synonymous, the integrity and credibility of mediation will be undermined.	2
We need an independent problem-solving service for communities. Communities have on-going barriers to justice.	2
Isn't the reason why mediation has been accepted as mainstream in the international relations environment because it hasn't had the disadvantaged as being labeled as "legal" in the past? This means practitioners in that field have been more open to effective solutions. The challenge in the legal industry is for clients to know (like diplomats do) that not every dispute (not even every legal dispute) is best resolved by law.	2
Is mediation not the only value added dispute resolution procedure that allows a reasonable outcome for all parties?	1
The perception is entering a mediation is a sign of weakness or an indication that the parties are willing to settle or pay money when they may not be	1
Simply getting parties to mediate is part of the power struggle.	1
How do you get experience if you need experience to get experience?	1

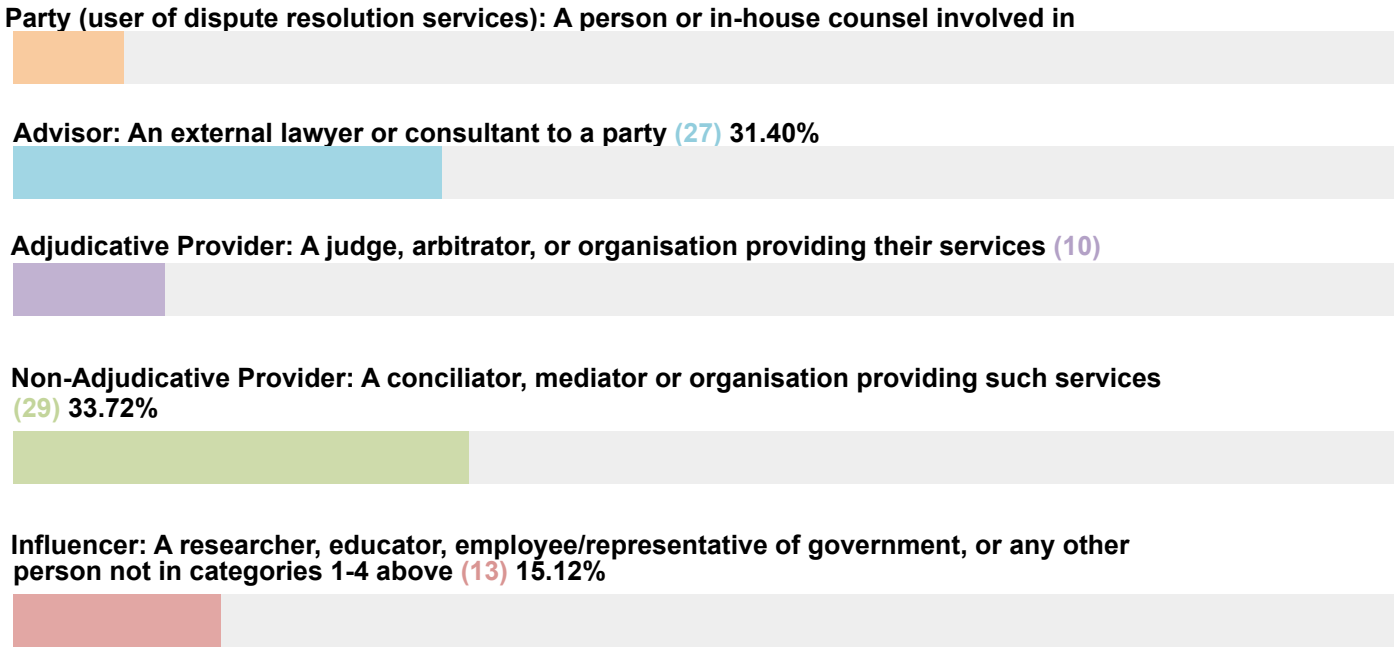
Session 3

Session 3 – Demographic Results

Which category of stakeholder will you vote as today?

(If your regular practice involves several of these options, please select the one in which you have primarily been involved).

(86)



Session 3 Question 1 – Group Results

What are the main obstacles or challenges parties face when seeking to resolve commercial disputes?

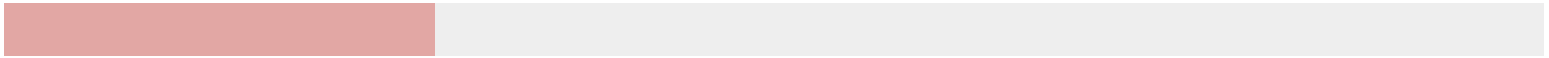
(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).

(492)

2.Financial or time constraints (166) 66.00%

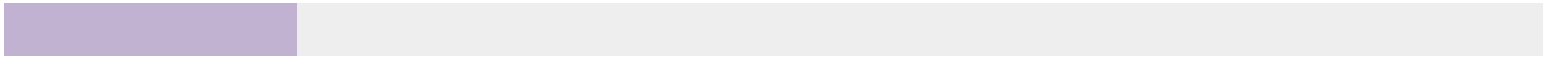
4.Insufficient knowledge of options available to resolve disputes (154) 61.00%

5.Uncertainty (e.g. unpredictable behaviour or lack of confidence in providers) (71) 28.00%



1.Emotional, social, or cultural constraints (53) 21.00%

3.Inadequate range of options available to resolve disputes (48) 19.00%



Other (0) 0.00%

Session 3 Question 1 – Cross Sorted Results

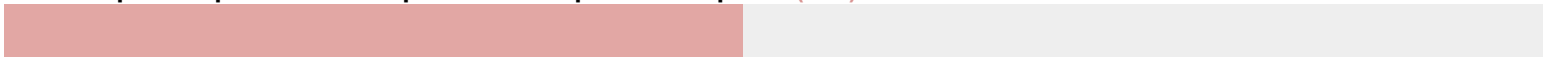
AVG Rank	Party (user of dispute...)	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: A	Influencer: A researcher,
1	2.Financial or time constraints 71%	2.Financial or time constraints 75%	4.Insufficient knowledge of options... 73%	4.Insufficient knowledge of options... 65%	4.Insufficient knowledge of options... 72%
2	4.Insufficient knowledge of options... 57%	4.Insufficient knowledge of options... 52%	2.Financial or time constraints 70%	2.Financial or time constraints 62%	2.Financial or time constraints 61%
3	5.Uncertainty (e.g. unpredictable behaviour... 48%	5.Uncertainty (e.g. unpredictable behaviour... 36%	5.Uncertainty (e.g. unpredictable behaviour... 27%	3.Inadequate range of options... 32%	5.Uncertainty (e.g. unpredictable behaviour... 25%
4	3.Inadequate range of options... 14%	1.Emotional, social, or cultural... 25%	1.Emotional, social, or cultural... 23%	1.Emotional, social, or cultural... 20% 5.Uncertainty (e.g. unpredictable behaviour... 20%	1.Emotional, social, or cultural... 22%
5	1.Emotional, social, or cultural... 10%	3.Inadequate range of options... 12%	3.Inadequate range of options... 7%		3.Inadequate range of options... 19%
6					

Session 3 Question 2 – Group Results

To improve the future of commercial dispute resolution, which of the following processes and tools should be prioritised?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).
(492)

5.Pre-dispute or pre-escalation processes to prevent disputes (122) 48.00%



2.Combining adjudicative and non-adjudicative processes (e.g. arbitration/litigation with mediation/conciliation) (118) 47.00%

4.Non-adjudicative dispute resolution methods (mediation or conciliation) (110) 44.00%

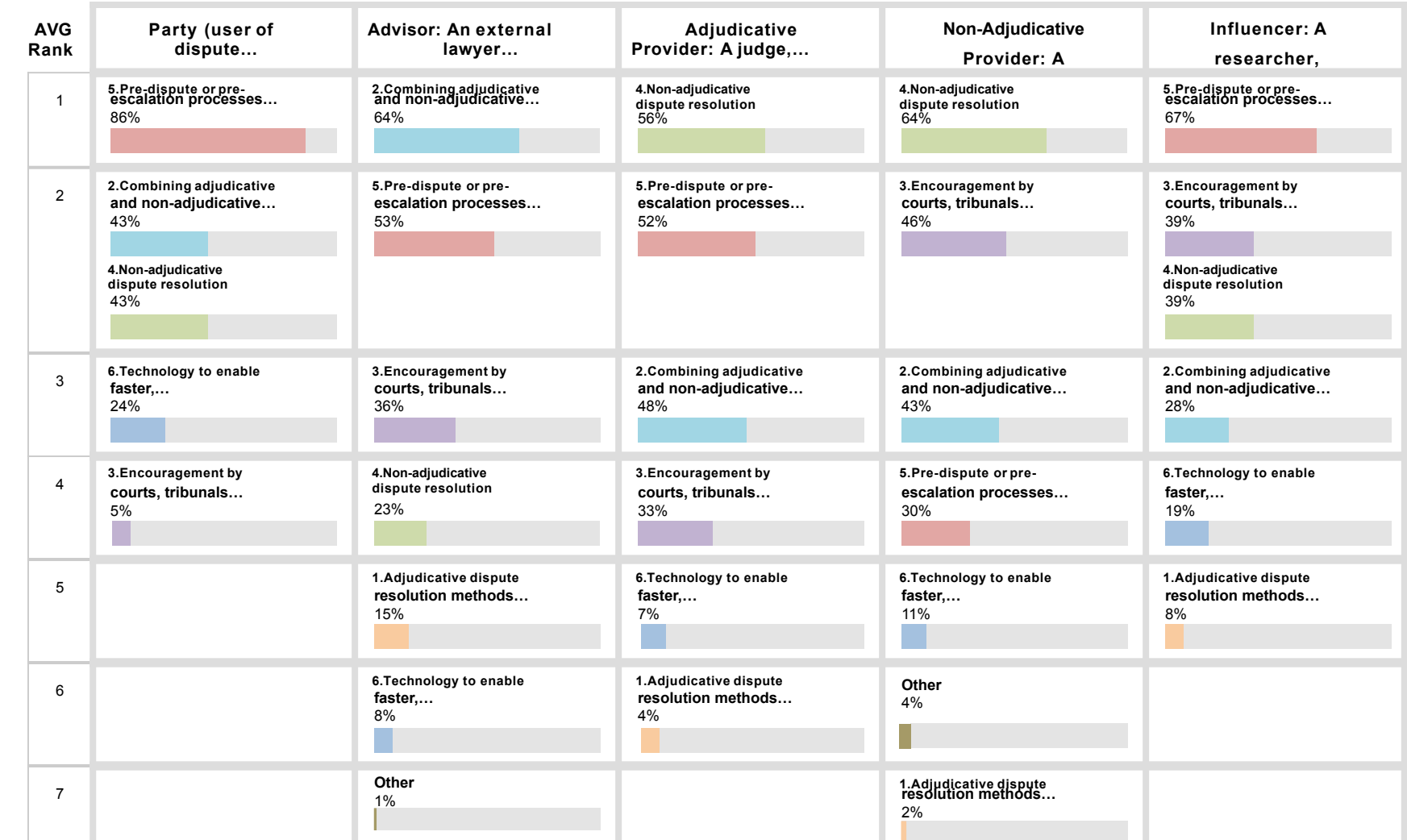
3.Encouragement by courts, tribunals or other providers to reduce time and/or costs (91) 36.00%

6.Technology to enable faster, cheaper procedures, (e.g. Online Dispute Resolution, electronic administration, remote hearings) (29) 12.00%

1.Adjudicative dispute resolution methods (litigation or arbitration) (18) 7.00%

Other (4) 2.00%

Session 3 Question 2 – Cross Sorted Results



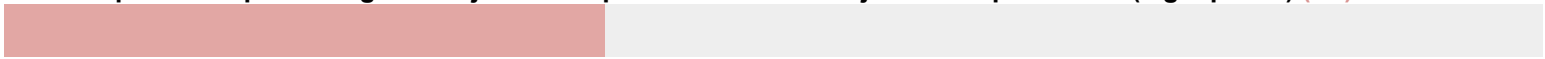
Session 3 Question 3 – Group Results

Which of the following areas would most improve commercial dispute resolution?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).
(498)

2.Cost sanctions against parties for failing to try non-adjudicative processes (e.g. mediation or conciliation) before litigation/arbitration. (137) 54.00%

5.Use of protocols promoting non-adjudicative processes before adjudicative processes (e.g. opt-out) (99) 39.00%



3.Legislation or conventions that promote recognition and enforcement of settlements, including those reached in mediation (95) 37.00%

1.Accreditation or certification systems for dispute resolution providers (94) 37.00%

4.Quality control and complaint mechanisms applicable to dispute resolution providers (64) 25.00%

6. Rules governing third party funding (9) 4.00%

Other (0) 0.00%

Session 3 Question 3 – Cross Sorted Results

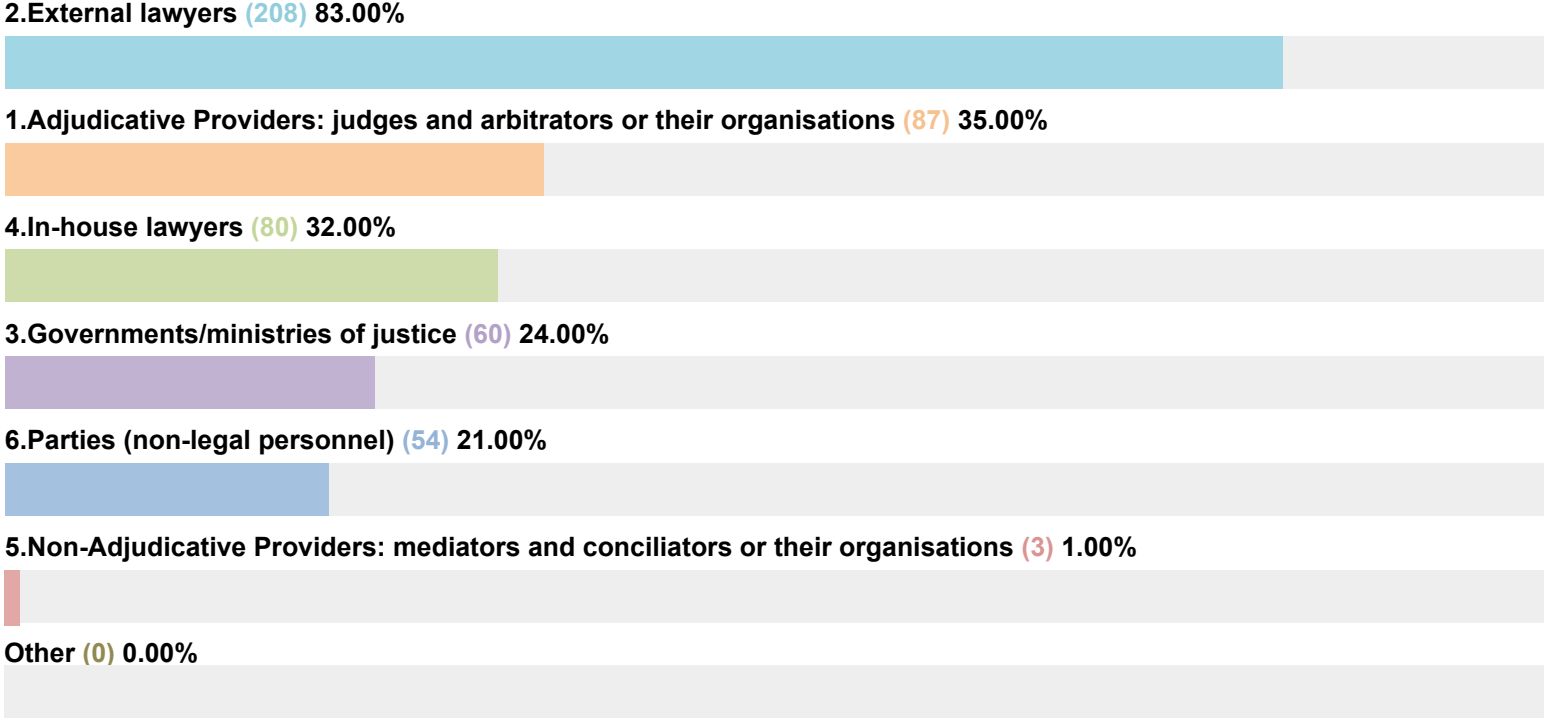
AVG Rank	Party (user of dispute...	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider:	Influencer:
1	5.Use of protocols promoting... 71%	2.Cost sanctions against parties... 59%	2.Cost sanctions against parties... 63%	1.Accreditation or certification systems... 55%	2. Cost sanctions against parties... 55% 2. Legislation or conventions that... 55%
2	1.Accreditation or certification systems... 43% 3.Legislation or conventions that... 43%	5.Use of protocols promoting... 42%	3.Legislation or conventions that... 47%	2.Cost sanctions against parties... 54%	5.Use of protocols promoting... 36%
3	2.Cost sanctions against parties... 33%	3.Legislation or conventions that... 35%	4.Quality control and complaint... 40%	5.Use of protocols promoting... 38%	1.Accreditation or certification systems... 21%
4	4.Quality control and complaint... 10%	4.Quality control and complaint... 32%	1.Accreditation or certification systems... 30%	3.Legislation or conventions that... 31%	6. Rules governing third... 18%
5		1.Accreditation or certification systems... 28%	5.Use of protocols promoting... 20%	4.Quality control and complaint... 23%	4.Quality control and complaint... 15%
6		6. Rules governing third... 4%			

Session 3 Question 4 – Group Results

Which stakeholders are likely to be most resistant to change in commercial dispute resolution practice?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).

(492)



Session 3 Question 4 – Cross Sorted Results

AVG Rank	Party (user of dispute...	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider: ...	Influencer: A
1	2.External lawyers 86%	2.External lawyers 89%	2.External lawyers 90%	2.External lawyers 77%	2.External lawyers 88%
2	1.Adjudicative Providers: judges and... 38% 6.Parties (non-legal personnel) 38%	1.Adjudicative Providers: judges and... 36%	4.In-house lawyers 33%	4.In-house lawyers 46%	1.Adjudicative Providers: judges and... 42%
3	3.Governments/ministries of justice 24%	6.Parties (non-legal personnel) 30%	1.Adjudicative Providers: judges and... 30%	1.Adjudicative Providers: judges and... 33%	4.In-house lawyers 30%
4	4.In-house lawyers 14%	4.In-house lawyers 25%	3.Governments/ministries of justice 27%	3.Governments/ministries of justice 28%	3.Governments/ministries of justice 27%
5		3.Governments/ministries of justice 19%	6.Parties (non-legal personnel) 20%	6.Parties (non-legal personnel) 15%	6.Parties (non-legal personnel) 12%
6		5.Non-Adjudicative Providers: mediators 2%		5.Non-Adjudicative Providers: mediators 1%	
7					

Session 3 Question 5 – Group Results

Which stakeholders have the potential to be most influential in bringing about change in commercial dispute resolution practice?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).
(486)

1.Adjudicative Providers: judges and arbitrators or their organisations (125) 50.00%

3.Governments/ministries of justice (115) 46.00%

2.External lawyers (106) 43.00%

5.Non-Adjudicative Providers: mediators and conciliators or their organisations (49) 20.00%

4.In-house lawyers (45) 18.00%

6.Parties (non-legal personnel) (44) 18.00%

Other (2) 1.00%

Session 3 Question 5 – Cross Sorted Results

AVG Rank	Party (user of dispute...	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider:	Influencer: A researcher,
1	1.Adjudicative Providers: judges and... 57% 2.External lawyers 57%	2.External lawyers 65%	1.Adjudicative Providers: judges and... 52%	1.Adjudicative Providers: judges and... 56%	3.Governments/ministries of justice 64%
2	3.Governments/ministries of justice 43%	1.Adjudicative Providers: judges and... 47%	2.External lawyers 44%	3.Governments/ministries of justice 49%	1.Adjudicative Providers: judges and... 45%
3	5.Non-Adjudicative Providers: mediators 19%	3.Governments/ministries of justice 44%	3.Governments/ministries of justice 37%	2.External lawyers 31%	5.Non-Adjudicative Providers: mediators 30%
4	6.Parties (non-legal personnel) 14%	6.Parties (non-legal personnel) 17%	4.In-house lawyers 33%	6.Parties (non-legal personnel) 23%	6.Parties (non-legal personnel) 24%
5	4.In-house lawyers 10%	4.In-house lawyers 14%	5.Non-Adjudicative Providers: mediators 30%	4.In-house lawyers 21%	2.External lawyers 15%
6		5.Non-Adjudicative Providers: mediators 13%	6.Parties (non-legal personnel) 4%	5.Non-Adjudicative Providers: mediators 20%	4.In-house lawyers 15%
7					Other 6%

Word Cloud – Session 3

What words would you use to describe the most common impediments that keep parties from resolving their disputes?

Make a Question or Comment – Session 3

How does one change the mindset of litigators who are entrenched in their perceptions that litigation is the way to sort out disputes?	11
The perception of objectivity and independence can be compromised if one party pays the mediator	5
Mediation initiatives must be wedded to the need for radical transformation of the legal profession	4
More should be done to educate the public at large about the ADR options available to them	4
Mediation should be part of PLT & Pupilage	3
Inviting the opposing party to a pre-mediation consultation should not be accompanied by fear & distrust on the part of the legal representatives of a party so invited. Such an invite should be celebrated as an opportunity to resolve the dispute early without enormous costs.	2
86% of the parties want to avoid disputes...this should be part of the discussion. The providers can only prioritise processes they are familiar with - look at the voting results.	2
What are the cost implications of having two mediators for medical malpractice disputes? Is this not too much of a resource and financial stretch? I would propose good process mediators getting involved and maybe having a port of call for technical/clinical input?	2
There is an odd paradox in punishing people for not volunteering to entertain ADR	2
From and external lawyer - the lawyer's driver is looking weak and the risk of taking on a new or unknown process.	2
The fact that the outcome in mediation is not binding makes the process less certain	1
A mediation settlement is binding & can be made an order of court so should assist the indigent in getting legally binding solutions	1
A combined approach of adjudicative and non adjudicative seems to be the better approach as it allows People to opt out of the process if they want to	1
Would Judges give cost orders against parties who refuse to mediate?	1
Mediation without the objective information will be counter productive!	1
Surely lawyers can't mediate their own clients matters? ADR should be a collaboration between all the right people, to the ultimate benefit of the parties.	1
From a mediator - the vast majority of mediations locally and internationally are successful. This should please clients	1

Make a Question or Comment – Session 3

Surely lawyers can't mediate their own clients matters? ADR should be a collaboration between all the right people, to the ultimate benefit of the parties.	1
From a mediator - the vast majority of mediations locally and internationally are successful. This should please clients.	1
Mindset at the bar is a problem but how does one educate a qualified advocate?	1
From a lawyer-mediator - parties (govt in particular) need to step out of the shadow of the lawyer and make decisions to use mediation.	1
Interesting that the same factors hindering the adoption of mediation are also hindering transformation of the legal profession. It is a question of mindset	1
Senior lawyers who are busy are usually not obstacles to mediation. Lawyers who are not that busy are more likely to be obstacles to mediation.	1
Education is not necessarily the answer. Educated people use their education to build arguments to support their viewsite.	1
What are the guidelines for a good adjudicator?	1

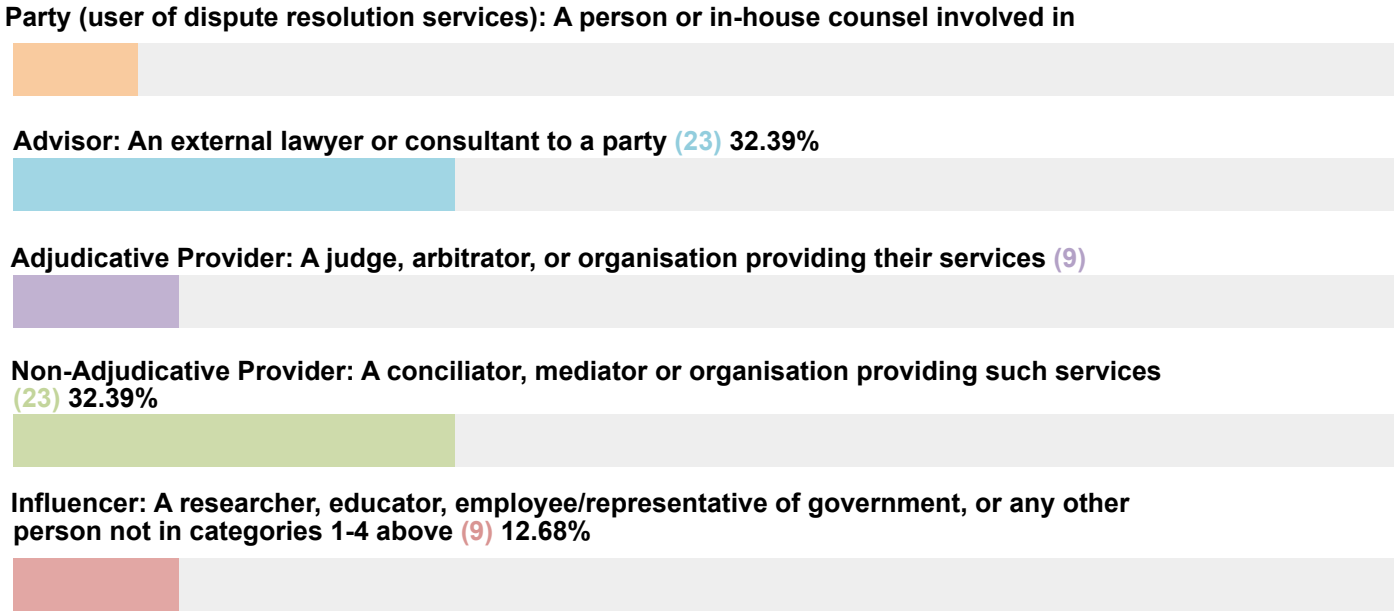
Session 4

Session 4 – Demographic Results

Which category of stakeholder will you vote as today?

(If your regular practice involves several of these options, please select the one in which you have primarily been involved).

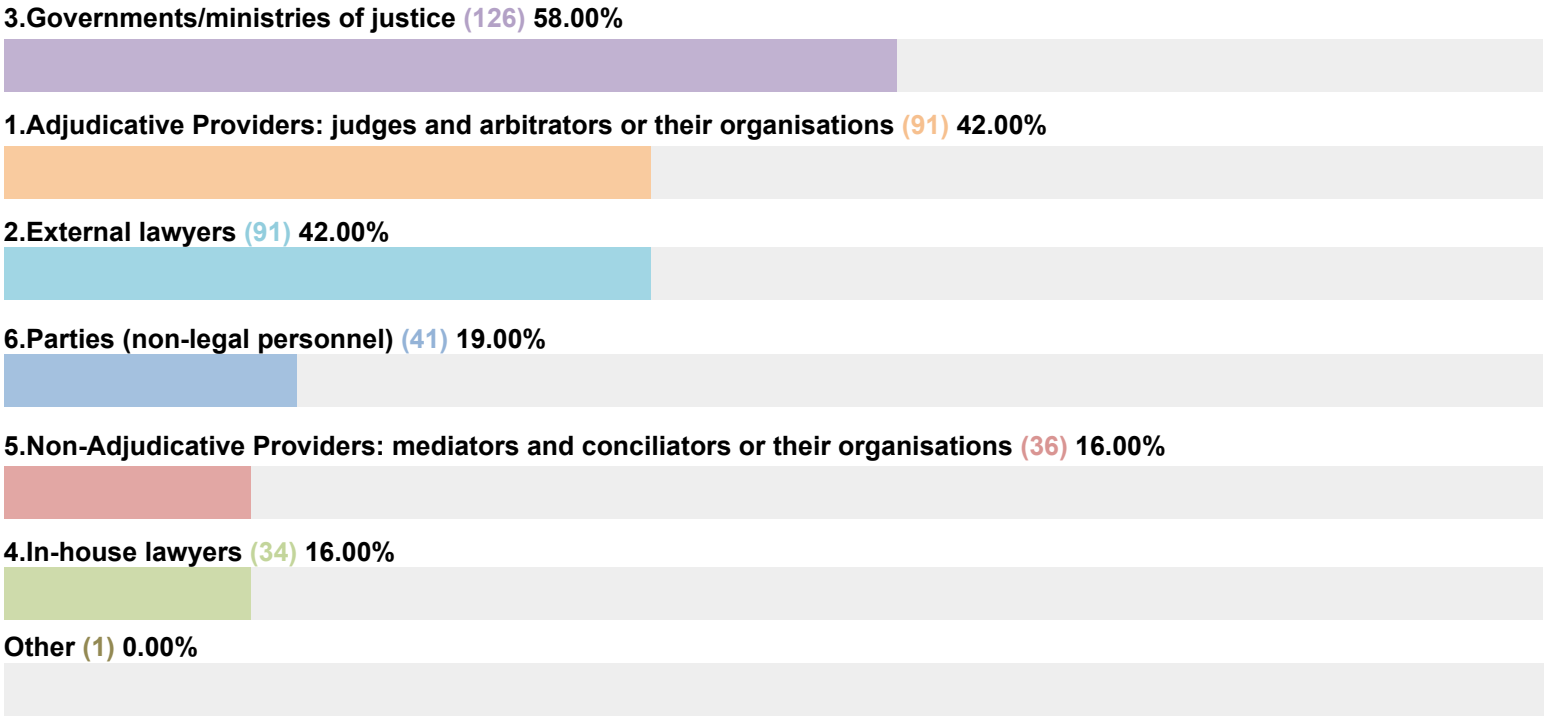
(71)



Session 4 Question 1 – Group Results

Who has the greatest responsibility for taking action to promote better access to justice in commercial dispute resolution?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).
(420)



Session 4 Question 1 – Cross Sorted Results

AVG Rank	Party	Advisor: ...	Adjudicative Provider:	Non-Adjudicative Provider:	Influencer:
1	3.Governments/ministries of justice 67%	3.Governments/ministries of justice 68%	1.Adjudicative Providers: judges and... 56% 2.External lawyers 56%	3.Governments/ministries of justice 49%	3.Governments/ministries of justice 74%
2	1.Adjudicative Providers: judges and... 48%	2.External lawyers 59%	3.Governments/ministries of justice 48%	1.Adjudicative Providers: judges and... 42%	1.Adjudicative Providers: judges and... 37%
3	2.External lawyers 29%	1.Adjudicative Providers: 41%	4.In-house lawyers 26%	2.External lawyers 41%	6.Parties (non-legal 33%
4	5.Non-Adjudicative Providers: mediators 24% 6.Parties (non-legal 24%	6.Parties (non-legal personnel) 14%	5.Non-Adjudicative Providers: mediators 11%	6.Parties (non-legal personnel) 25%	5.Non-Adjudicative Providers: mediators 26%
5	4.In-house lawyers 10%	4.In-house lawyers 9% 5.Non-Adjudicative Providers: mediators 9%	6.Parties (non-legal 4%	4.In-house lawyers 22% 5.Non-Adjudicative Providers: mediators 22%	4.In-house lawyers 15%
6					2.External lawyers 11%
7					Other 4%

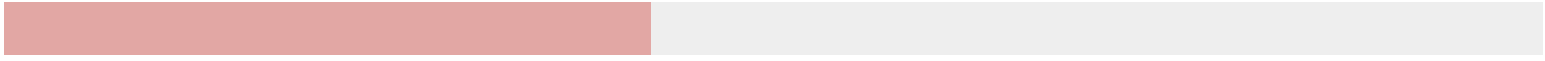
Session 4 Question 2 – Group Results

What is the most effective way to improve parties' understanding of their options resolving commercial disputes?

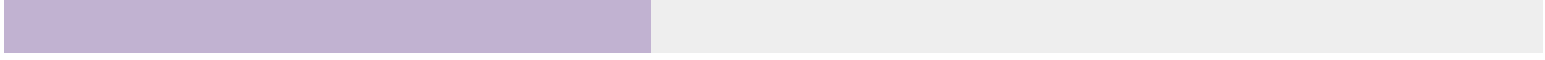
(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point). (420)

2.Education in business and/or law schools and the broader business community about adjudicative and non-adjudicative dispute resolution options (121) 55.00%

5.Requiring parties to attempt non-adjudicative options (i.e., mediation or conciliation) before initiating litigation or arbitration (93) 42.00%



3.Procedural requirements for all legal personnel and parties to declare they have considered non-adjudicative dispute resolution options before initiating arbitration or litigation (92) 42.00%



1.Creating collaborative dispute resolution centres or hubs to promote awareness (79) 36.00%

4.Providing access to experts to guide parties in selecting the most appropriate dispute resolution process(es) (34) 16.00%

Other (1) 0.00%

Session 4 Question 2 – Cross Sorted Results

AVG Rank	Party (user of dispute…	Advisor: An external lawyer…	Adjudicative Provider: A judge,…	Non-Adjudicative Provider:	Influencer:
1	2.Education in business and/or… 62%	2.Education in business and/or… 56%	3.Procedural requirements for all… 56%	2.Education in business and/or… 65%	1.Creating collaborative dispute resolution… 63%
2	3.Procedural requirements for all… 48%	5.Requiring parties to attempt… 52%	2.Education in business and/or… 48% 5.Requiring parties to attempt… 48%	5.Requiring parties to attempt… 43%	2.Education in business and/or… 48%
3	5.Requiring parties to attempt… 43%	3.Procedural requirements for all… 50%	1.Creating collaborative dispute resolution… 41%	3.Procedural requirements for all… 35%	3.Procedural requirements for all… 37%
4	1.Creating collaborative dispute resolution… 38%	1.Creating collaborative dispute resolution… 30%	4.Providing access to experts… 7%	1.Creating collaborative dispute resolution… 33%	4. Providing access to experts… 26% 5. Requiring parties to attempt… 26%
5	4.Providing access to experts… 10%	4.Providing access to experts… 12%		4.Providing access to experts… 22%	
6				Other 1%	

Session 4 Question 3 – Group Results

To promote better access to justice for those involved in commercial disputes, where should policy makers, governments and administrators focus their attention?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).

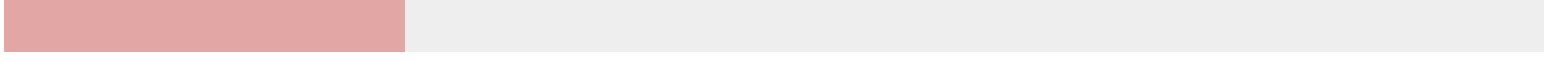
(414)

2.Making non-adjudicative processes (mediation or conciliation) compulsory and/or a process parties can "opt-out" of before adjudicative processes can be initiated (146) 67.00%

3.Pre-dispute or early stage case evaluation or assessment systems using third party advisors who will not be involved in subsequent proceedings (121) 55.00%

1.Legislation or conventions promoting recognition and enforcement of settlements including those reached in mediation (64) 29.00%

5.Use of protocols promoting non-adjudicative processes (mediation or conciliation) before adjudicative processes (56) 26.00%



4.Reducing pressures on the courts to make them more efficient and accessible (27) 12.00%

Other (0) 0.00%

Session 4 Question 3 – Cross Sorted Results

AVG Rank	Party (user of dispute...	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider:	Influencer:
1	2.Making non-adjudicative processes (mediation... 81%	3.Pre-dispute or early stage... 61%	2.Making non-adjudicative processes (mediation... 85%	2.Making non-adjudicative processes (mediation... 76%	1. Legislation or conventions promoting... 63% 2. Making non-adjudicative processes (mediation... 63%
2	3.Pre-dispute or early stage... 71%	2.Making non-adjudicative processes (mediation... 59%	3.Pre-dispute or early stage... 59%	3.Pre-dispute or early stage... 56%	3.Pre-dispute or early stage... 46%
3	1.Legislation or conventions promoting... 33%	5.Use of protocols promoting... 33%	1.Legislation or conventions promoting... 33%	5.Use of protocols promoting... 36%	4.Reducing pressures on the... 21%
4	5.Use of protocols promoting... 10%	4.Reducing pressures on the... 25%	5.Use of protocols promoting... 19%	1.Legislation or conventions promoting... 27%	5.Use of protocols promoting... 8%
5	4.Reducing pressures on the... 5%	1.Legislation or conventions promoting... 22%	4.Reducing pressures on the... 4%	4.Reducing pressures on the... 5%	
6					

Session 4 Question 4 – Group Results

Which of the following will have the most significant impact on future policy-making in commercial dispute resolution?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).

(414)

2.Demand for increased efficiency of dispute resolution processes, including through technology. (154) 70.00%

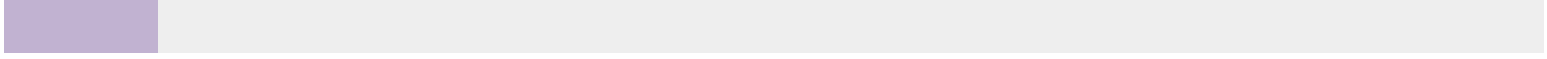
1.Demand for certainty and enforceability of outcomes (82) 37.00%

4.Demand for increased transparency (57) 26.00%

6.Demand for processes that allow parties to represent themselves, without lawyers (55) 25.00%

5.Demand for increased uniformity and standardisation (44) 20.00%

3.Demand for increased rights of appeal/oversight of adjudicative providers (22) 10.00%



Other (0) 0.00%

Session 4 Question 4 – Cross Sorted Results

AVG Rank	Party (user of dispute...	Advisor: An external lawyer...	Adjudicative Provider: A judge,...	Non-Adjudicative Provider	Influencer: A researcher
1	2.Demand for increased efficiency... 81%	2.Demand for increased efficiency... 70%	2.Demand for increased efficiency... 76%	2.Demand for increased efficiency... 74%	2.Demand for increased efficiency... 81%
2	4.Demand for increased transparency 43%	1.Demand for certainty and... 48%	6.Demand for processes that... 52%	1.Demand for certainty and... 42%	4.Demand for increased transparency 48%
3	5.Demand for increased uniformity... 38%	5.Demand for increased uniformity... 29%	1.Demand for certainty and... 33%	6.Demand for processes that... 30%	1.Demand for certainty and... 30%
4	1.Demand for certainty and... 24%	4.Demand for increased transparency 22%	3.Demand for increased rights... 19%	4.Demand for increased transparency 28%	6.Demand for processes that... 22%
5	6.Demand for processes that... 14%	6.Demand for processes that... 20%	5.Demand for increased uniformity... 14%	5.Demand for increased uniformity... 14%	5.Demand for increased uniformity... 11%
6		3.Demand for increased rights... 12%	4.Demand for increased transparency 5%	3.Demand for increased rights... 12%	3.Demand for increased rights... 7%
7					

Session 4 Question 5 – Group Results

What innovations/trends are going to have the most significant influence on the future of commercial dispute resolution?

(Please rank your 3 preferred answers in order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' = 1 point).
(426)

3.Greater emphasis on collaborative instead of adversarial processes for resolving disputes (141) 63.00%

1.Changes in corporate attitudes to conflict prevention (108) 48.00%

2.Enhanced understanding regarding how people behave and resolve conflict (e.g. from brain and social sciences) (63) 28.00%

6.Technological innovation (e.g. on-line dispute resolution) (50) 22.00%

5.Harmonisation of international laws and standards for dispute resolution systems (41) 18.00%

4.Greater emphasis on personal wellbeing and stress reduction of parties (20) 9.00%

Other (3) 1.00%

Session 4 Question 5 – Cross Sorted Results

AVG Rank	Party (user of dispute…	Advisor: An external lawyer…	Adjudicative Provider: A judge,…	Non-Adjudicative Provider:	Influencer: A researcher
1	3.Greater emphasis on collaborative… 76%	3.Greater emphasis on collaborative… 67%	3.Greater emphasis on collaborative… 67%	3.Greater emphasis on collaborative… 62%	3.Greater emphasis on collaborative… 67%
2	1.Changes in corporate attitudes… 29% 6.Technological innovation (e.g. on-line… 29%	1.Changes in corporate attitudes… 52%	1. Changes in corporate attitudes… 56% 2. Enhanced understanding regarding how… 56%	1.Changes in corporate attitudes… 57%	1.Changes in corporate attitudes… 44%
3	2.Enhanced understanding regarding how… 24% 4.Greater emphasis on 24%	5.Harmonisation of international laws… 26%	4.Greater emphasis on personal… 11% 6.Technological innovation 11%	6.Technological innovation (e.g. on-line… 30%	5.Harmonisation of international laws… 41%
4	5.Harmonisation of international laws… 19%	2.Enhanced understanding regarding how… 23%		2.Enhanced understanding regarding how… 29%	2.Enhanced understanding regarding how… 26%
5		6.Technological innovation (e.g. on-line… 22%		5.Harmonisation of international laws… 12%	6.Technological innovation (e.g. on-line… 19%
6		4.Greater emphasis on 10%		4.Greater emphasis on 6%	4.Greater emphasis on 4%
7				Other 4%	

Word Cloud – Session 4

What words would you use to describe the changes to focus on in the future?

Make a Question or Comment – Session 4

Agree strongly with John about lifeskills in schools being a good starting point. Maybe part of the life orientation curricullum?	6
Mediation companies are profit driven & not inclusive. Training as a mediator is expensive and trained mediators are not welcomed by organisations they are not trained with	6
I agree that mediation should be implememted at the very early stages. In hospitals mediating a dispute when the complaint arises will save millions	5
Where to from here? Are we going to be another talk show and no action?	4
There needs to be a sorting process of disputes. The adjudicative approach is too passive in the early stages of court and arbitration process	4
We cannot look at RAF matters or med neg matters as clogging up the system. They are the only matters on the trial roll. People seldom go to trial court in any other matters anymore. The current manner in which personal injury matters are dealt with by our courts is hampering both parties' rights of access to court. The process is unfair and exploited. Personal injury matters should go to mediation 1st	3
Will there be some kind of Declaration from the global GPC around what needs to be done (based on the outcomes here and internationally)? This could be used as an advocacy tool...	3
From a softer point of view it makes sense not to make mediation complulsary to avoid it having the opposite effect of what it is trying to achieve but when you look at an organization e.g. The RAF, they wont mediate unless forced to. So the parties might have the power to choose but they might not have the will.	3
How likely is it that the big stick of compulsory mediation will find its way into our rules of court? There seems to be an inexplicable reluctance on the part of our legislators to go down this road	3
Is there a way to promote greater dialogue between the ADR practitioners (many of who are lawyers) with the stakeholders who are seeking greater access to justice - the Benchmarks, Legal Resources Centre, Centre for Study of Violence and Reconciliation, feesmustfall students etc...?	3
What does greater transparency mean? It is the second most important demand of parties.	3
How does this community get the judiciary or the department of justice involved?	2
The small claims court has a community model that can be built on.	2
One criticism I have of this conference is the lack of discussion on funding.	2
The courts have tried to implement case management processes, by having more productive PRETRIAL conferences for example, but they still remain formulaic, if there is. Compulsory mediation it will become equally formulaic	2

THANK YOU