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## Conciliation: A founding element in claims management

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### Abstract

Claims management in the Construction Extension to the Project Management Body of Knowledge supports the prevention and handling of claims in the construction industry. The competitive and fast track nature of the construction industry lends itself to the increased risk of dispute in the development phase of a project life cycle. Professionals in the industry who are often required to manage a project are faced with the task of procurement of contracts and dealing with disputes which may arise. The question raised is, are the professionals' conciliation skills sufficient to address these tasks effectively?

**The purpose of the paper** is to identify the skills required by professionals to effectively apply conciliation in their daily tasks and to determine whether a basic understanding of conciliation would improve the overall application of claims management.

**Methodology:** A literature review was conducted to identify the requirements for effective conciliation practice whereupon a mixed methods approach was used to gather data. A questionnaire based on the literature review was distributed to determine the level of knowledge and skills of the professionals in regard to conciliation. In support of the quantitative data, interviews were conducted with professionals in the industry to gain their opinion regarding the value of conciliation as a claims management tool.

**Value:** A good understanding of the theoretical skills required for effective conciliation may add value to claims management process.

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**Keywords:** Claim Management;conciliation;construction industry;theoretical skills.

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## 1. Introduction

Dispute is inevitable in the construction industry (Finsen, 2005; Povey, 2005) and may invariably stem from a difference which occurs on site between the parties. Professionals are challenged by the risk of dispute from procurement to the development stage of a project. Claims management is addressed by the Project Management Institute (PMI) in the Construction Extension to the Project Management Body of Knowledge (PMBOK) (Project Management Institute (PMI), 2007) however; little emphasis is placed on Alternate Dispute Resolution (ADR). The successful application of ADR is supported by cost, contract and claims communication in the claims management process as depicted by Verster (2006) in the project management knowledge and skills areas diagramme. The effective application of ADR methods generates more available time to be spent on the management of the project. Problems may stem from the ineffective settling of differences on site which develop into disputes (Verster, 2006). Early identification of possible disputes and settling differences in the form of conciliation on site (solving problems), may lead to the successful completion of a project (Richbell, 2008) and as such, a reduction in ADR interventions.

The more commonly used methods in the South African construction industry are arbitration, adjudication and mediation as identified in the Joint Building Contract Committee Principal Building Agreement (JBCC PBA) Dispute clause 30 (2013). There is no reference to conciliation. Conciliation may suffice as a method of dispute resolution required in the JBCC PBA Dispute clause 30.1 (2013). The General Conditions of Contract for Works of Civil Engineering Construction (GCC) (2010) refers to the Amicable Clause 10.4 as a means of dispute resolution, this with the help of an impartial third party. This equates to conciliation. In the South African construction industry mediation is a process whereby the mediator is expected to recommend a non-binding solution if the mediator fails to guide the parties to an agreed solution. However, where the mediator is not expected to make a recommendation, such mediator is referred to as a conciliator (Finsen, 1993; Bevan, 1992; Pretorius, 1993; Finsen, 2005).

Although research suggests that there is a tendency to adjudication (Alusani, 2012), mediation is also favoured in the South African construction industry (Povey, Cattell & Michell, 2006). The method of mediation is initiated with conciliation which addresses the facilitative process. This is followed by the evaluative process of mediation. The evaluative process may often be conducted by an expert (Finsen, 2005) which may in all probability involve additional costs relating to the use of the services of an expert. The only enforcement of the mediation process is in the contractual process wherein the JBCC PBA 2000 Edition 5.1 Clause 40.6.3 (2007) stipulates that on settlement, a mediation agreement should be recorded and signed, upon which the mediation would be considered final and binding. The JBCC PBA 2000 Edition 6 Clause 30 has no mention of a concluding agreement for mediation however, Clause 30.1 states that a decision made between the parties themselves should be in writing and signed by them. This may apply to conciliation facilitated on site.

Mediation need not be conducted by an expert (Finsen, 2005) and as such, this may be also apply to conciliation; suggesting that all professionals may facilitate conciliation on site. Should conciliation be applied as a method on its own in the construction industry, the conciliator cannot impose a binding decision of a settlement (Boulle & Rycroft, 1997).

The question raised is, how will conciliation on site add to effective claims management?

## 2. Claims Management

The process of claims management addresses the prevention and mitigation of the effect claims have on a project (PMI, 2007). Claims management is integrated with all the management areas addressed in the PMBOK (2008) and the PMBOK construction extension (2007). The Project Management Institute identify the importance of resolving disputes in the form of alternate dispute resolution (ADR) however; limited emphasis is placed on this important process (PMI, 2007). Emphasis was placed on claims management in the construction extension to the PMBOK due to the popularity of the PMBOK in the South African construction industry. The popularity of the PMBOK was established through qualitative research.

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