



GLOBAL POUND
CONFERENCE SERIES
JOHANNESBURG 2017

SHAPING THE FUTURE OF DISPUTE RESOLUTION
& IMPROVING ACCESS TO JUSTICE
JUNE 29, 2017

Founder Diamond Sponsors



HERBERT
SMITH
FREEHILLS



SINGAPORE
INTERNATIONAL
DISPUTE
RESOLUTION
ACADEMY

SOUTH AFRICAN GLOBAL POUND CONFERENCE 29 JUNE 2017 ANALYSIS OF RESULTS

Prepared by Felicity Steadman of Conflict Dynamics
and Shidaan Bismillah of Mediate Works

**We suggest that the document is printed in colour so that the
diagrams are easier to read.**

Contents

INTRODUCTION	2
COMMENTARY ON RESULTS	3
SESSION 1	3
STAKEHOLDER DEMOGRAPHICS.....	3
RESPONSES AND COMMENTARY	3
COMPARED WITH INTERNATIONAL TRENDS.....	10
SESSION 2	10
STAKEHOLDER DEMOGRAPHICS.....	10
RESPONSES AND COMMENTARY	11
COMPARED WITH INTERNATIONAL TRENDS.....	17
SESSION 3	18
STAKEHOLDER DEMOGRAPHICS.....	18
RESPONSES AND COMMENTARY	18
COMPARED WITH INTERNATIONAL TRENDS.....	25
SESSION 4	25
STAKEHOLDER DEMOGRAPHICS.....	25
RESPONSES AND COMMENTARY	25
COMPARED WITH INTERNATIONAL TRENDS.....	32
CONCLUSIONS	32

INTRODUCTION

The Global Pound Conference (GPC) was an event organised by the International Mediation Institute (IMI), and took place across the world over the period March 2016 to July 2017. The views of approximately 4000 individuals were polled at conferences held in 24 countries and online

The purpose of the Global Pound Series was to facilitate the development of 21st century dispute resolution tools at domestic, regional and international levels. It was intended to encompass all forms of dispute resolution, including litigation, arbitration, conciliation, and mediation. The Series considered how disputants in civil and commercial conflicts select and use dispute resolution processes, and how such processes could be changed to respond more effectively to users' needs. Questions explored included how dispute resolution could be more proportionate in terms of costs and time, preferred outcomes and their enforceability, as well as the impact of outcomes on reputations and relationships, and other social or cultural issues that may concern users.

There is more available about the IMI and global GPC results [HERE](#)

The Johannesburg event took place on 29 June 2017. There were approximately 110 stakeholders drawn from 5 stakeholder groups. There were generally more Non-Adjudicative Provider participants at the event, i.e. conciliators, mediators and organisations providing such services, than Adjudicative providers.

The demographics of the survey participants in each session are described at the outset of each session, as follows:

1. **Party** (user of dispute resolution services): A person or in-house counsel involved in commercial disputes.
2. **Advisor**: An external lawyer or consultant to a party.
3. **Adjudicative Provider**: A judge, arbitrator, or organisation providing such services.
4. **Non-Adjudicative Provider**: A conciliator, mediator or organisation providing such services.
5. **Influencer**: A researcher, educator, employee / representative of government, or any other person not in categories 1-4 above.

We are circulating this document a year after the Johannesburg GPC event took place along with a short follow up survey, to re-engage participants and to continue our advocacy for effective dispute resolution in South Africa.

Please read the results and commentary below, and complete the survey [HERE](#)

COMMENTARY ON RESULTS

SESSION 1

STAKEHOLDER DEMOGRAPHICS

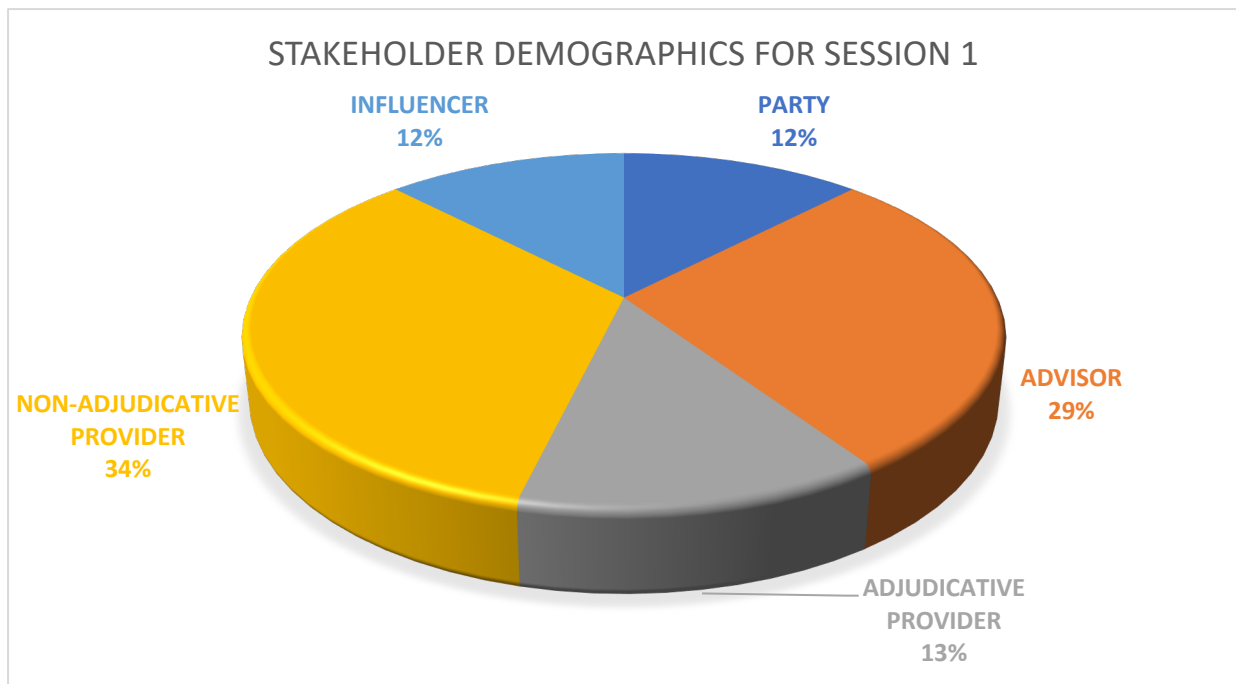


Figure 1

RESPONSES AND COMMENTARY

Question 1

What outcomes do **parties** most often want before starting a process in commercial dispute resolution? The results were ranked by order of priority: '1st choice' = 3 points, '2nd choice' = 2 points, '3rd choice' = 1 point

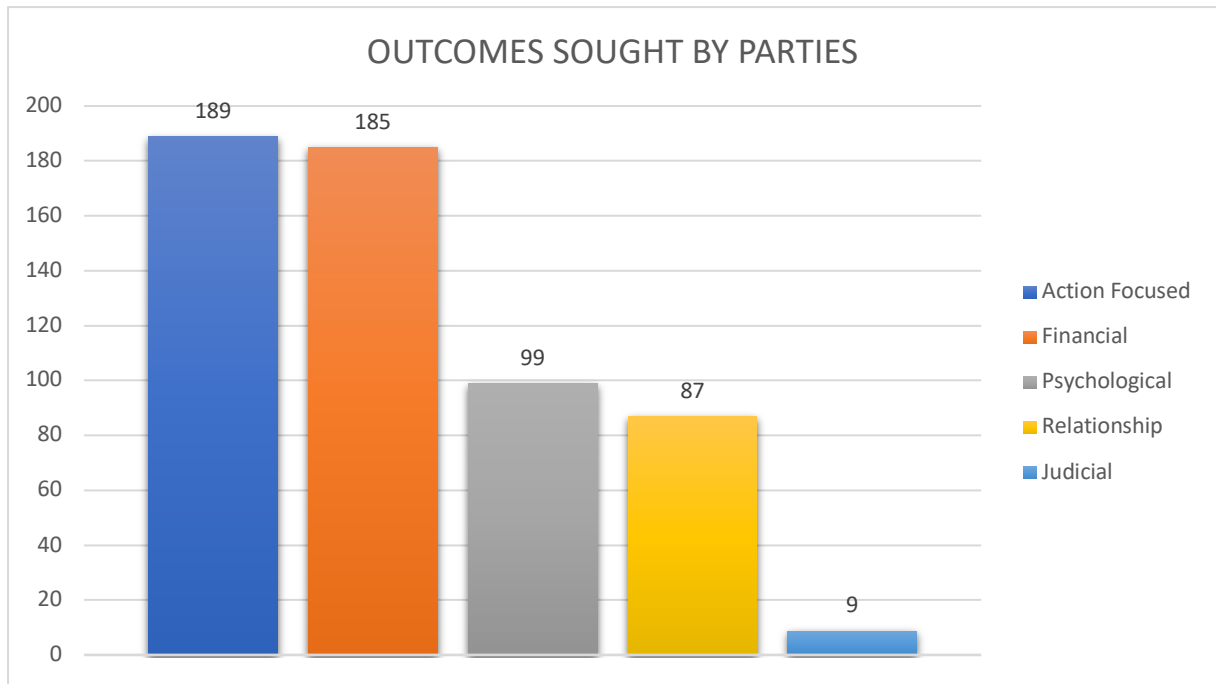


Figure 2

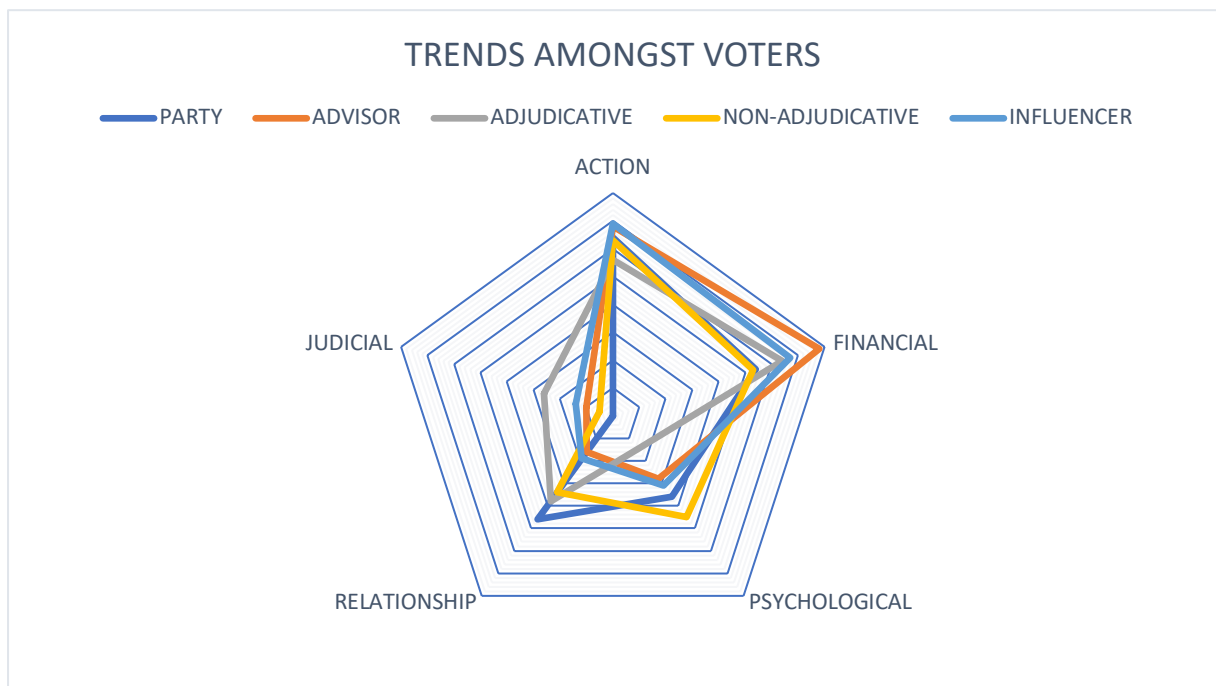


Figure 3

An interesting trend amongst all stakeholders in the survey was that very little emphasis was placed on the importance of judicial relief for parties; no Parties voted in favour of judicial relief. Adjudicative stakeholders placed the most emphasis on judicial relief. However, it was still substantially less than they did for action focused and financial relief. Party and Non-Adjudicative Providers placed greater emphasis on relationship and psychological outcomes than other stakeholders. (Figures 2 and 3)

Question 2

When parties involved in commercial disputes are choosing the type(s) of dispute resolution processes to use, which of the following has the most influence? The results were ranked by order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' =1 point

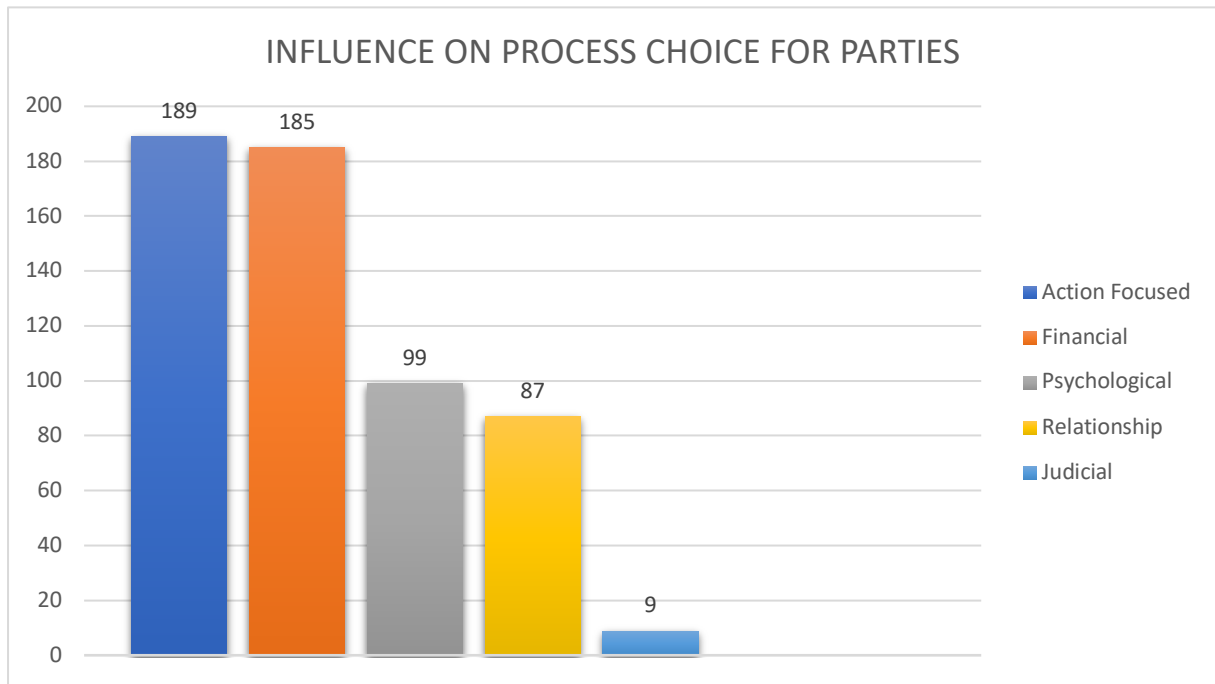


Figure 4

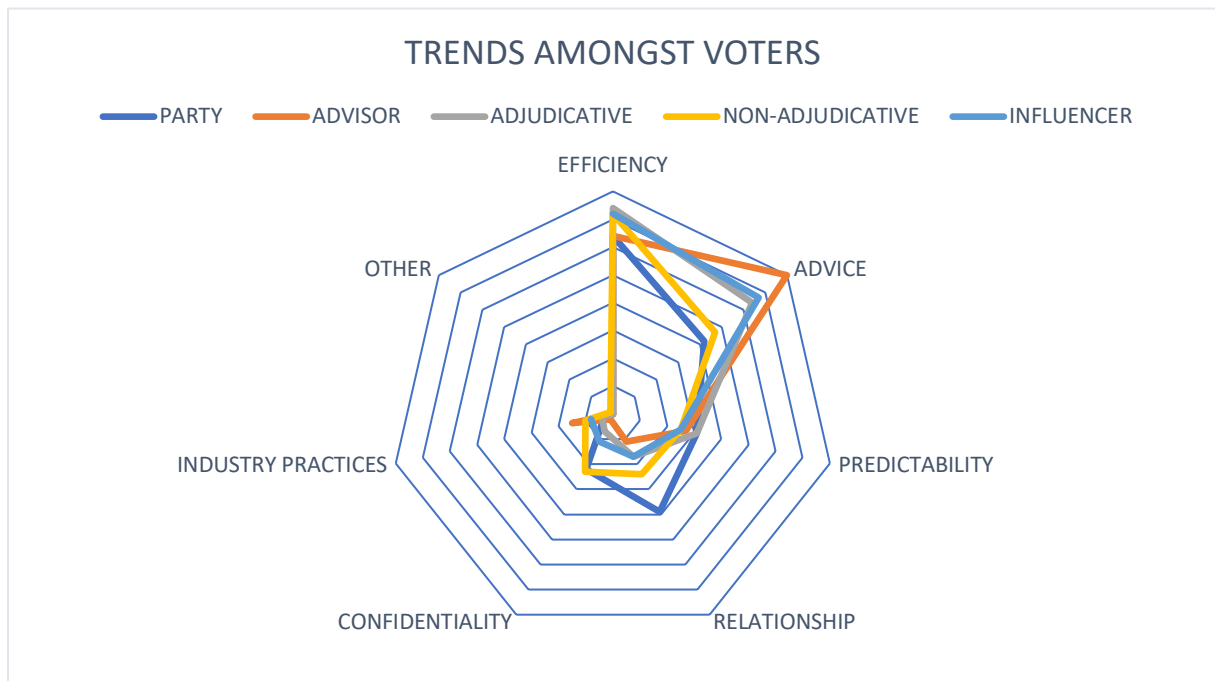


Figure 5

When comparing question one and question two it is noticeable that each stakeholder had an inherent bias towards their discipline. In question one, Adjudicative stakeholders believed that parties required judicial relief. In question two Advisors said that advice was the most important factor when parties are choosing a dispute resolution process. In both instances, Parties placed little or no weight on these factors. Influencers said that relationships play a role when parties are choosing dispute resolution processes. Efficiency was roundly viewed to be the main consideration when parties are choosing a dispute resolution process. Interestingly, confidentiality was not identified as a reason for choosing a particular dispute resolution process despite this being generally considered as a benefit of both mediation and arbitration. (Figures 4 and 5)

Question 3

When lawyers (whether in-house or external) make recommendations to parties about procedural options for resolving commercial disputes, which of the following has the most influence? The results were ranked by order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' =1 point

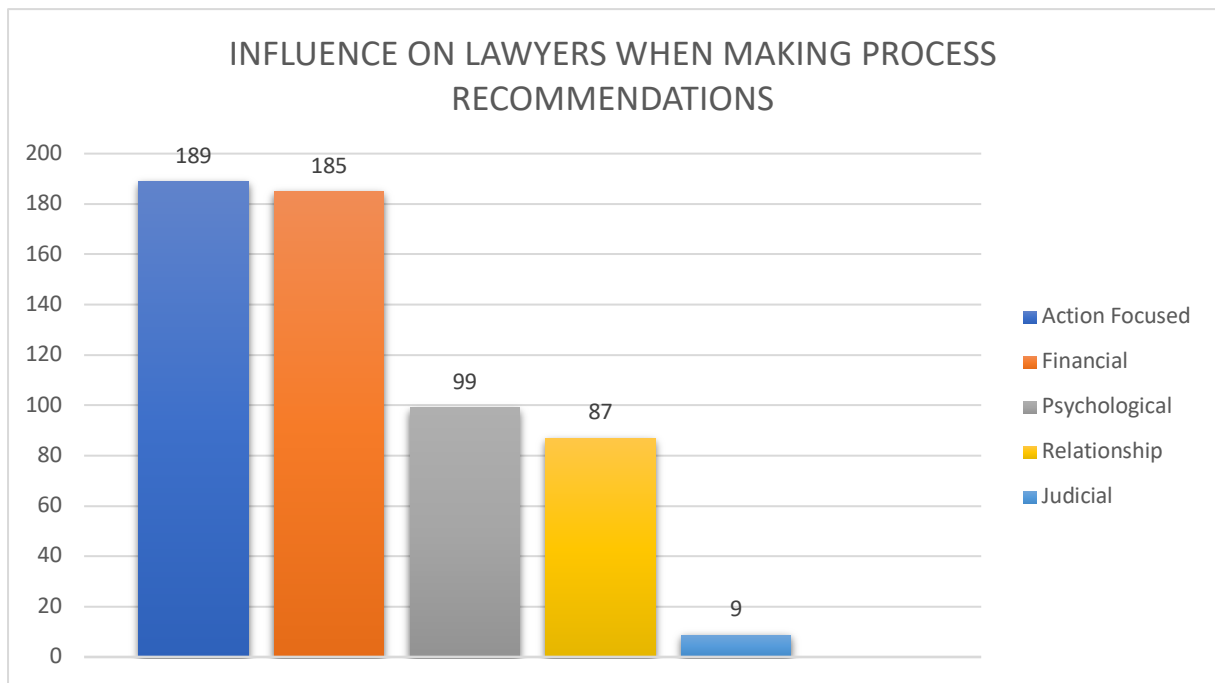


Figure 6

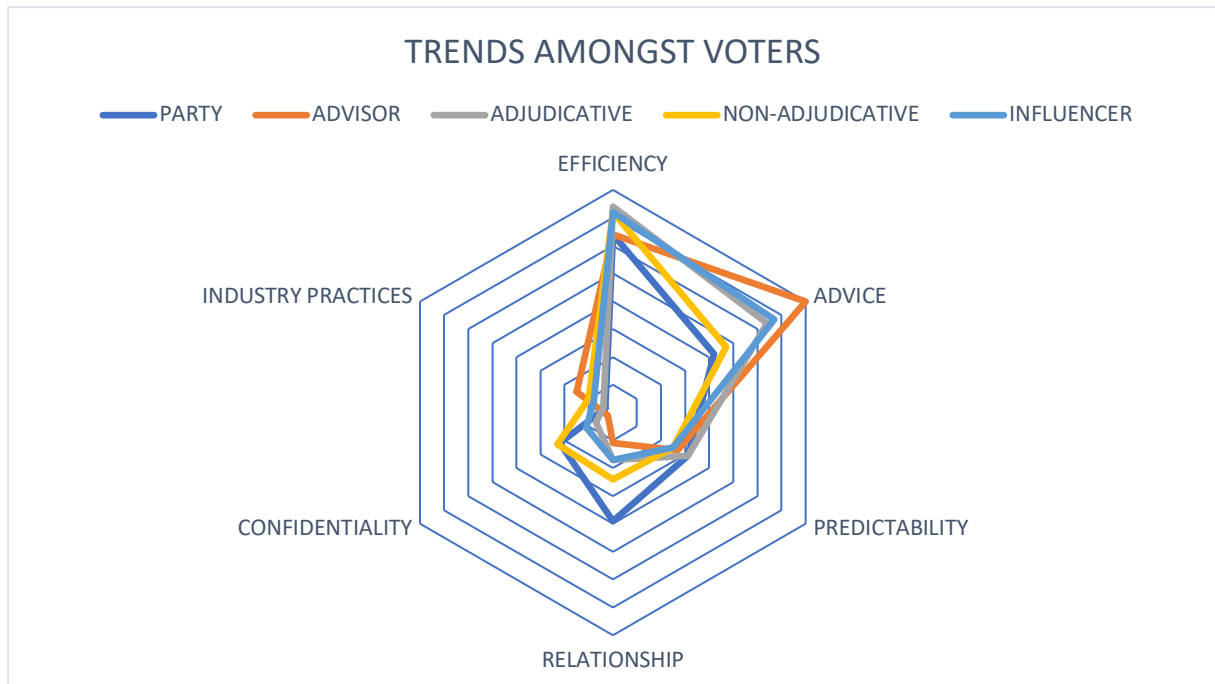


Figure 7

The participants in the survey generally placed a similar degree of emphasis on the familiarity of the process, legal fees the lawyer can charge, and the outcome requested by the parties as the main influences when suggesting a process. The Advisors placed slightly more emphasis on the parties' requested outcome when recommending process options but the glaring anomaly from the results for this question was that Influencers said that industry practices played a substantial role in this consideration. Advisors also placed little emphasis on relationships when suggesting options for resolving commercial disputes. Lawyers are often described as "the gate keepers" in relation to party choice of dispute resolution process. The results for this question might well indicate that lawyers, who are more familiar with adjudicative options which generally deliver more certain outcomes, will tend to recommend processes with which they are more familiar and which deliver certainty. (Figures 6 and 7)

Question 4

What role do parties involved in commercial disputes want providers to take in the dispute resolution processes? The results were ranked by order of priority: '1st choice' = 3 points, '2nd choice' = 2 points, '3rd choice' = 1 point

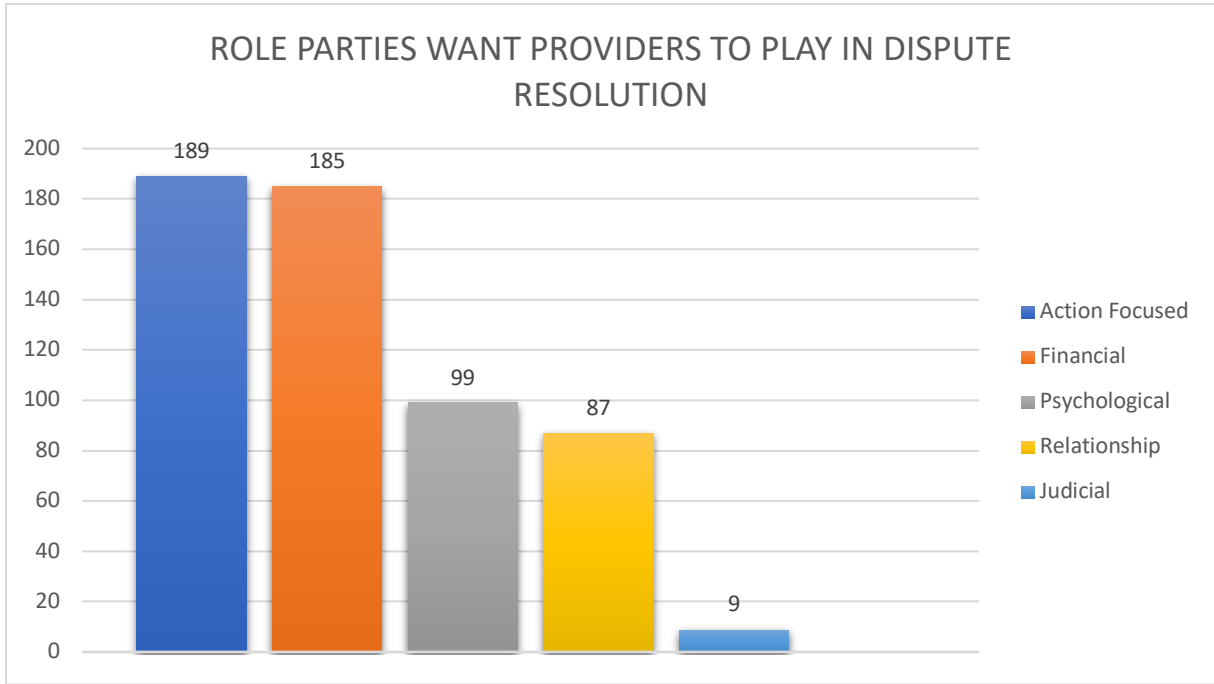


Figure 8

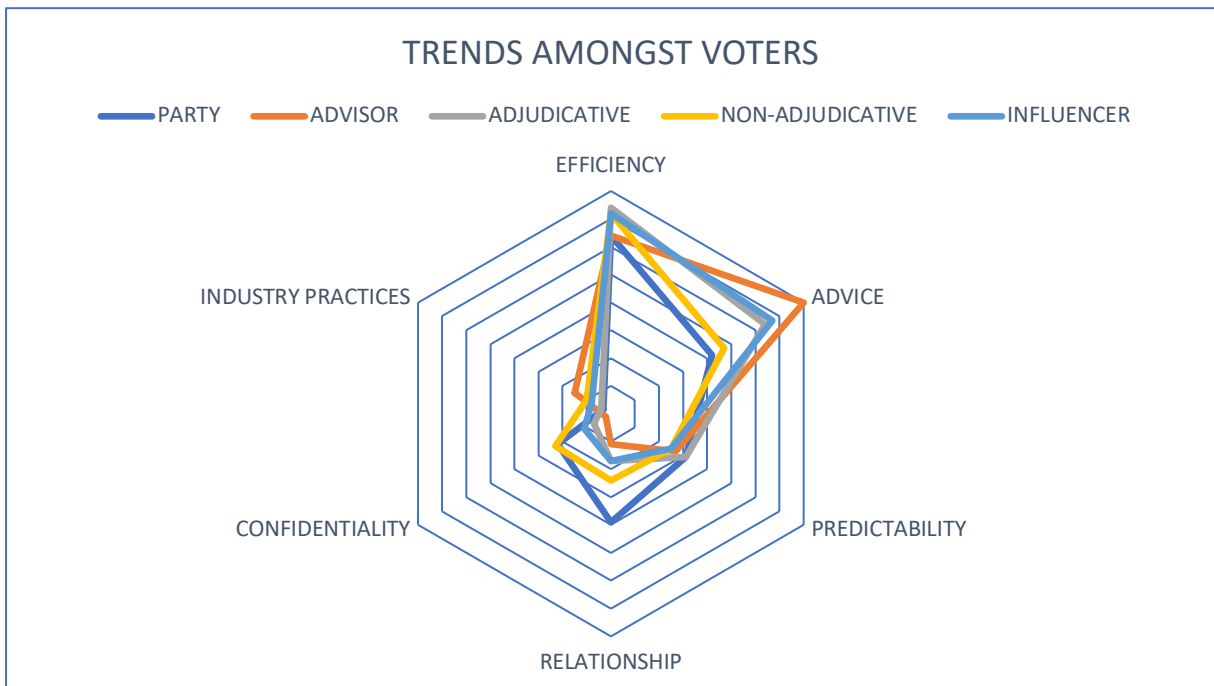


Figure 9

The results for question 4 were mostly congruent. Generally stakeholders wanted providers to respond to parties' requests for advice about dispute resolution, rather than to decide on process or how the matter should be resolved. The biggest deviation from stakeholder to stakeholder was that Advisors did not think that parties wanted Providers to decide the process and that rather parties should decide on how a dispute is resolved. (Figures 8 and 9)

Question 5

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? The results were ranked by order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' =1 point

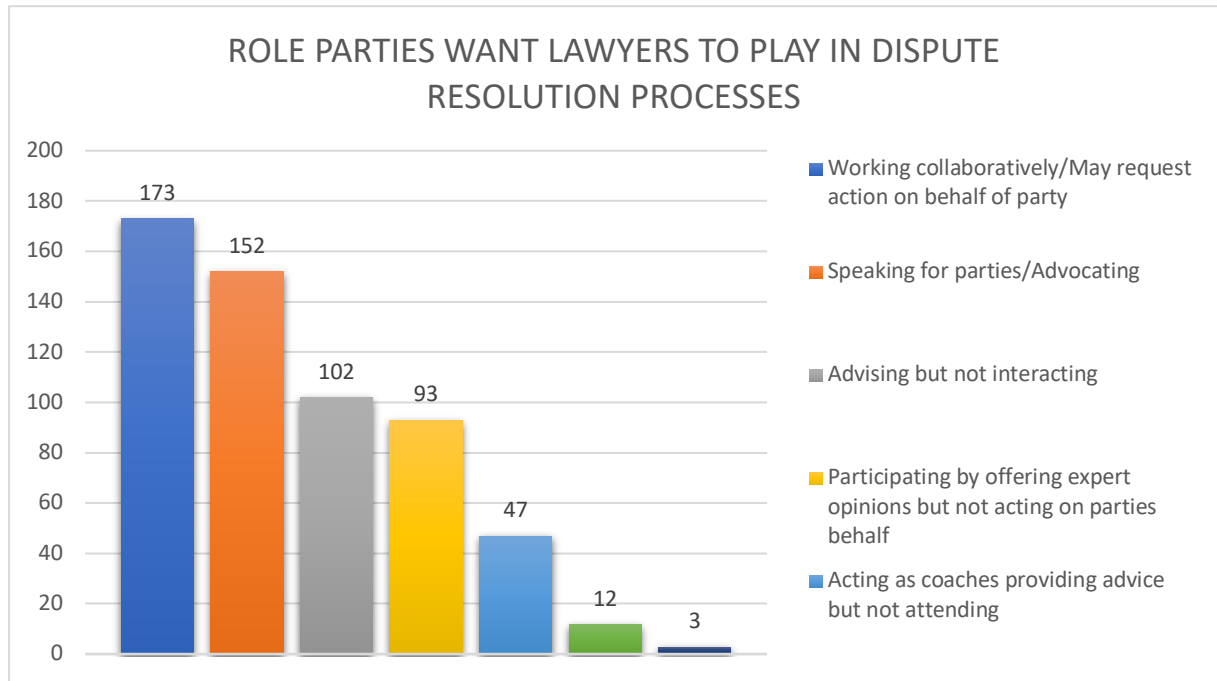


Figure 10

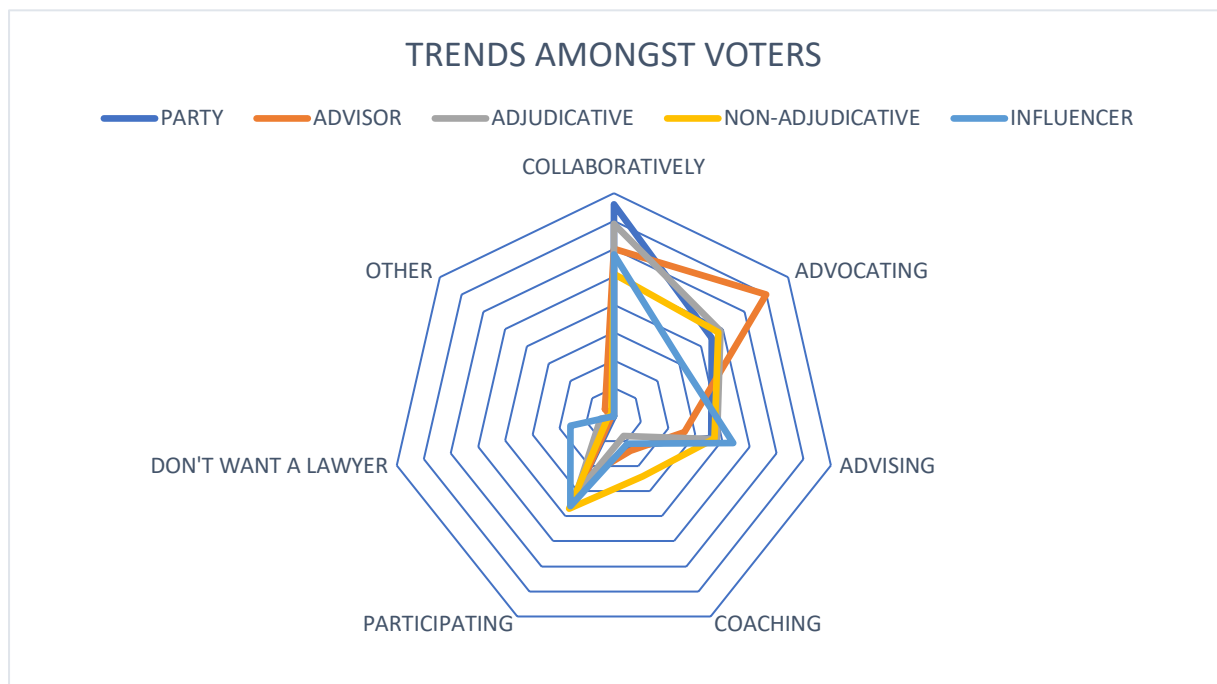


Figure 11

An interesting observation is that most of the stakeholders thought that parties would want lawyers to play some role in the dispute resolution process. The parties themselves indicated that they would like to collaborate with lawyers and, furthermore, the parties who voted did not support the option that lawyers should not play a role in the dispute resolution process. Non-Adjudicative Providers, mediators, clearly also see the value of lawyers in dispute resolution. This contradicts the view of some lawyers who believe that they are unwelcome in mediation. (Figures 10 and 11)

COMPARED WITH INTERNATIONAL TRENDS

By comparison, the international trends indicate that when lawyers (whether in-house or external) make recommendations to parties about procedural options for resolving commercial disputes, an important factor for international and local Influencers is industry practice. When deciding the role that parties involved in commercial disputes want providers to take, Adjudicative Providers and Advisors in South Africa ranked the option that parties decide how a process is conducted and resolved much lower than their international counterparts.

SESSION 2

STAKEHOLDER DEMOGRAPHICS

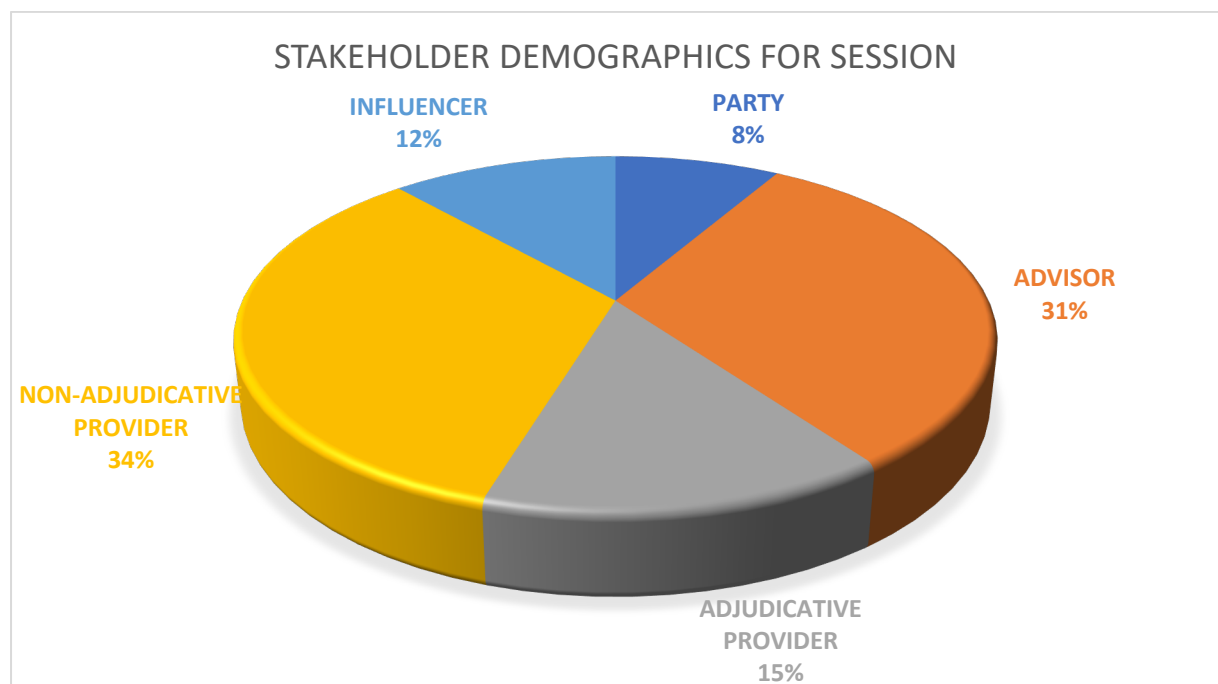


Figure 12

RESPONSES AND COMMENTARY

Question 1

What outcomes do providers tend to prioritise in commercial dispute resolution? The results were ranked by order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' =1 point.

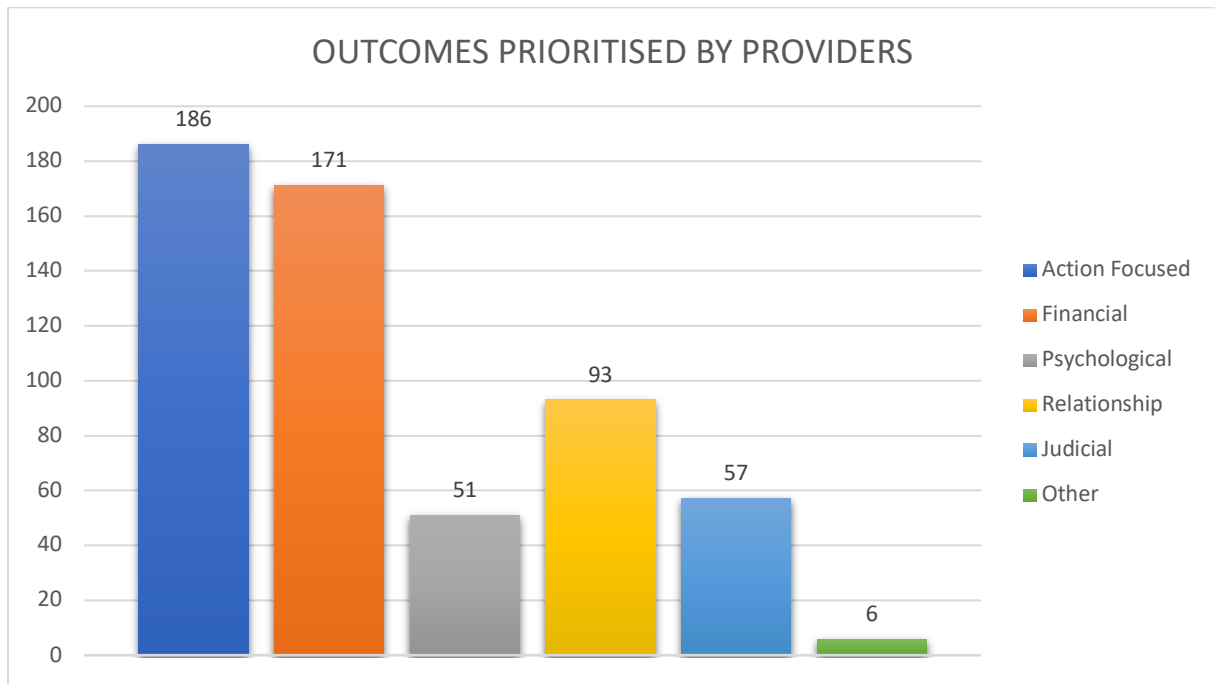


Figure 13

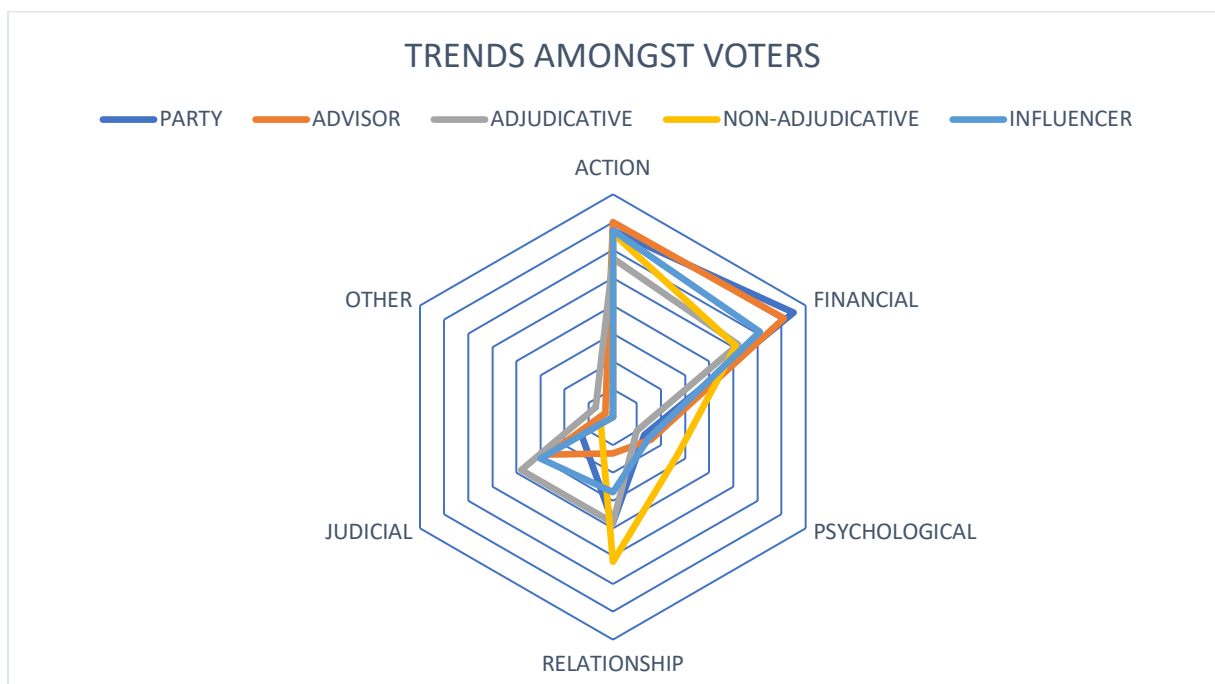


Figure 14

It is apparent from the responses in this session that, with the exception of Non-Adjudicative Providers, stakeholders generally placed little emphasis on relationships or psychological benefits in their choice of dispute resolution process. Indeed, overall, the stakeholders think that providers prioritise action and financial considerations in choice of dispute resolution process. Considering that most participants in this session were providers of dispute resolution processes, this is noteworthy. (Figures 13 and 14)

Question 2

The outcome of a commercial dispute is determined primarily by which of the following? The results were ranked by order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' =1 point.

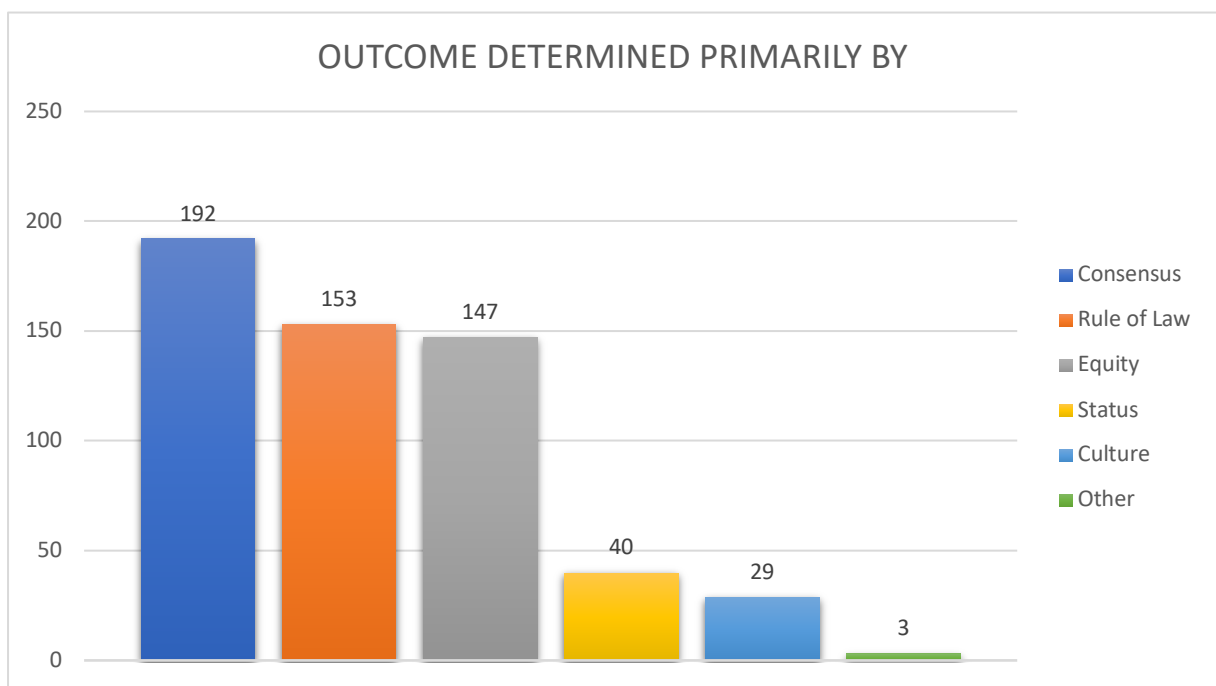


Figure 15

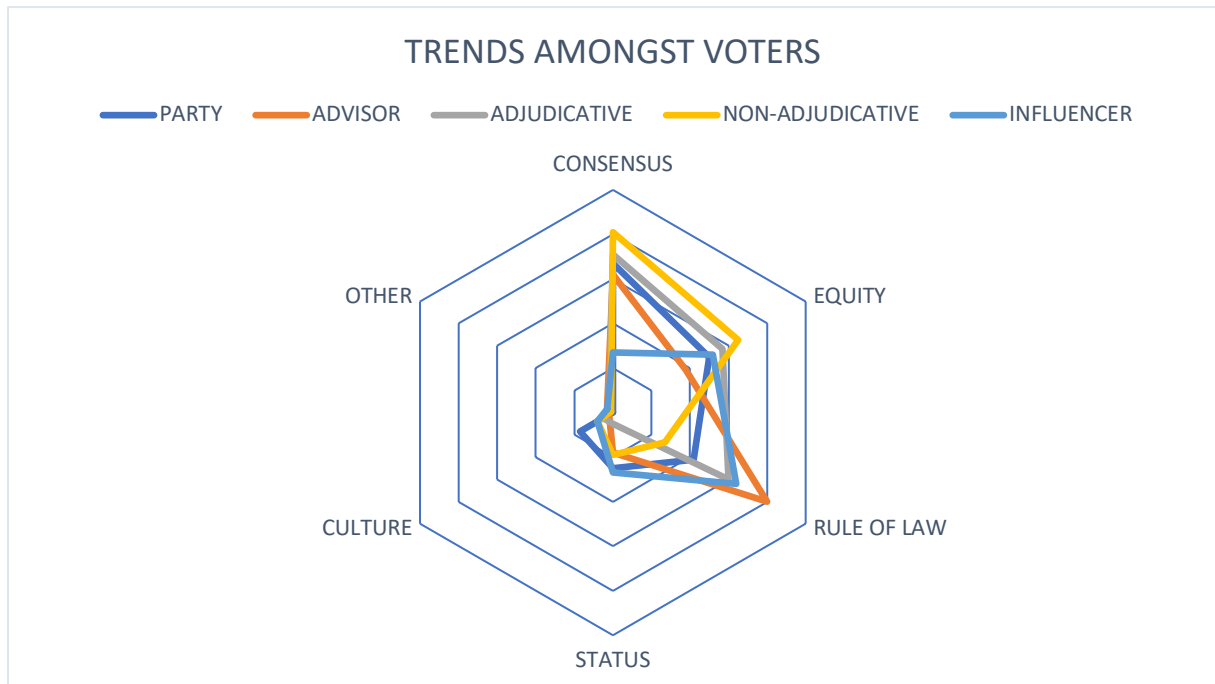


Figure 16

When assessing what determines outcomes, Advisors placed more emphasis on the rule of law than consensus and the inverse was true for Non-Adjudicative Providers. When comparing Advisors, Non-Adjudicative and Adjudicative Providers, the Adjudicative Providers appeared to hold the middle ground. The trend in this question is generally towards the consensus being the basis for determining the outcome of commercial disputes. On the other hand, culture was considered of least relevance. (Figures 15 and 16)

Question 3

In commercial disputes, what is achieved by participating in a non-adjudicative process (mediation or conciliation) (whether voluntary or involuntary - e.g. court ordered)? The results were ranked by order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' =1 point.

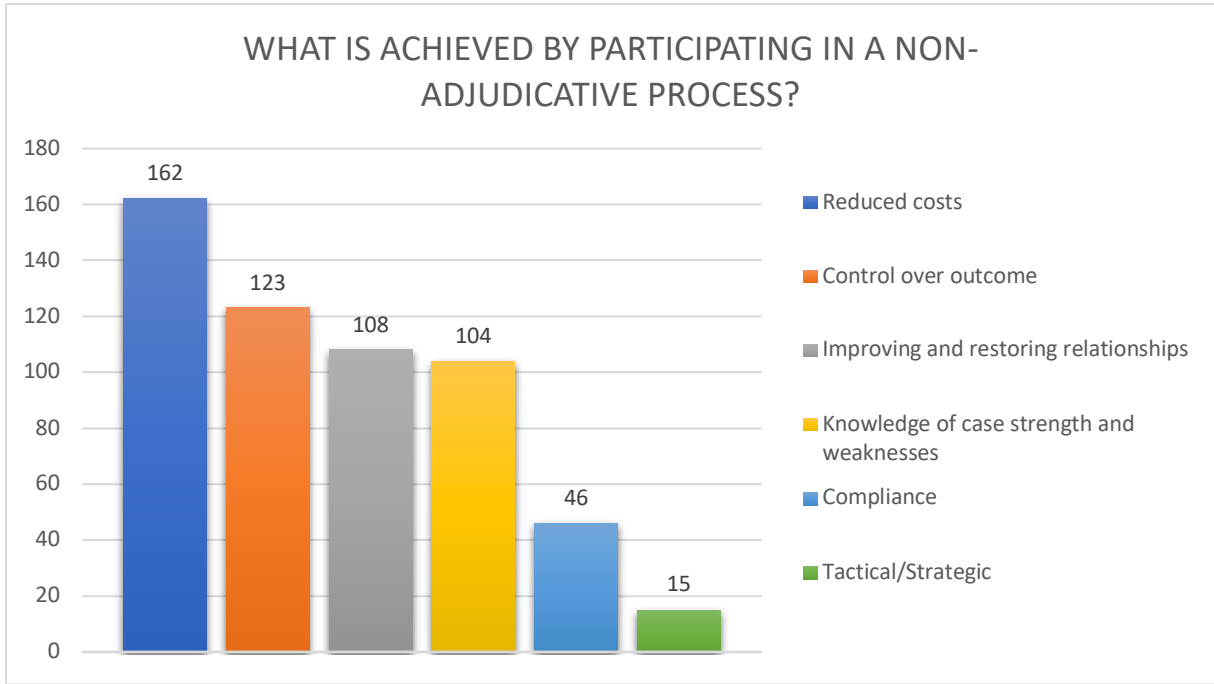


Figure 17

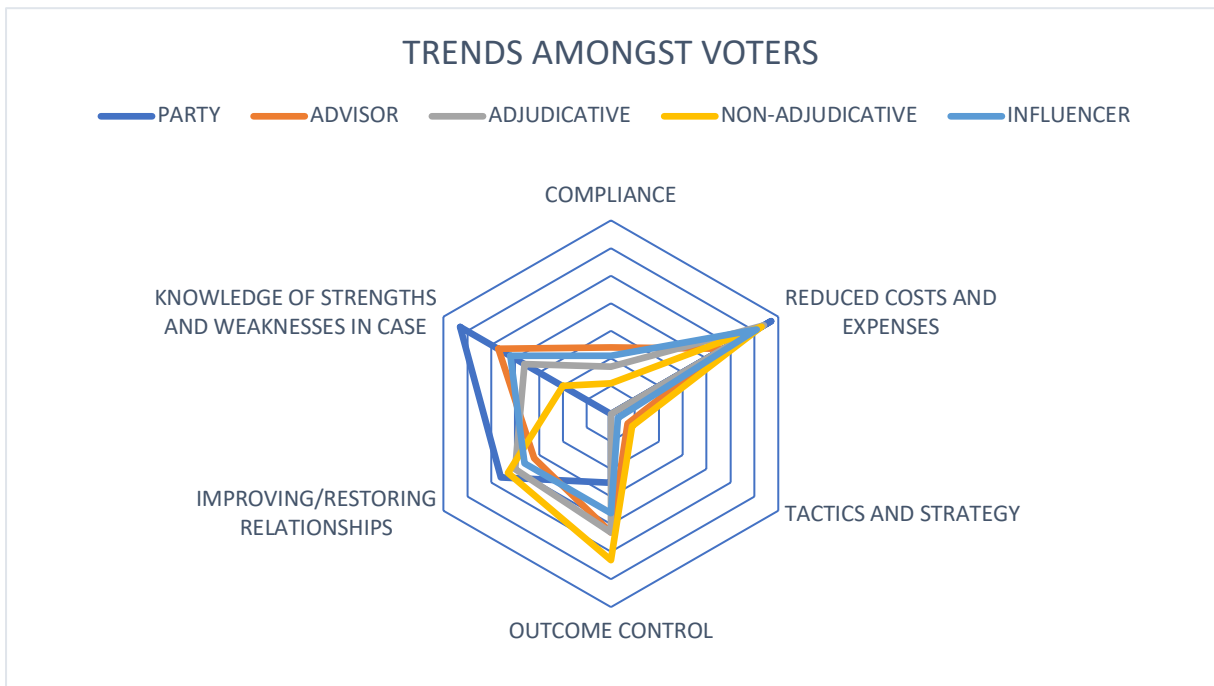


Figure 18

The stakeholders all tended to agree that reduced costs and expenses is the main achievement in using non-adjudicative processes. It is interesting that compliance rated as low as it did amongst all stakeholders, considering that mediated agreements become binding agreements and even orders of court. The common fear of Parties and Advisors that non-adjudicative processes would reveal the strengths and weaknesses of a case was confirmed by the responses to this question. (Figures 17 and 18)

Question 4

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? The results were ranked by order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' =1 point.

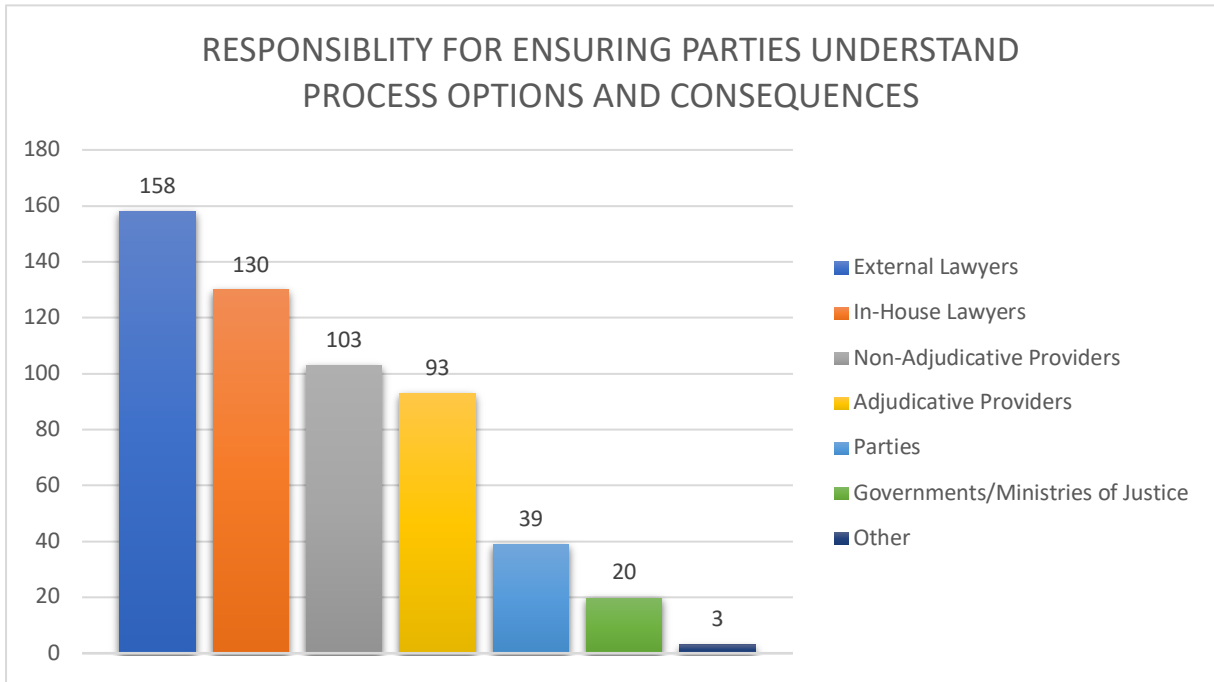


Figure 19

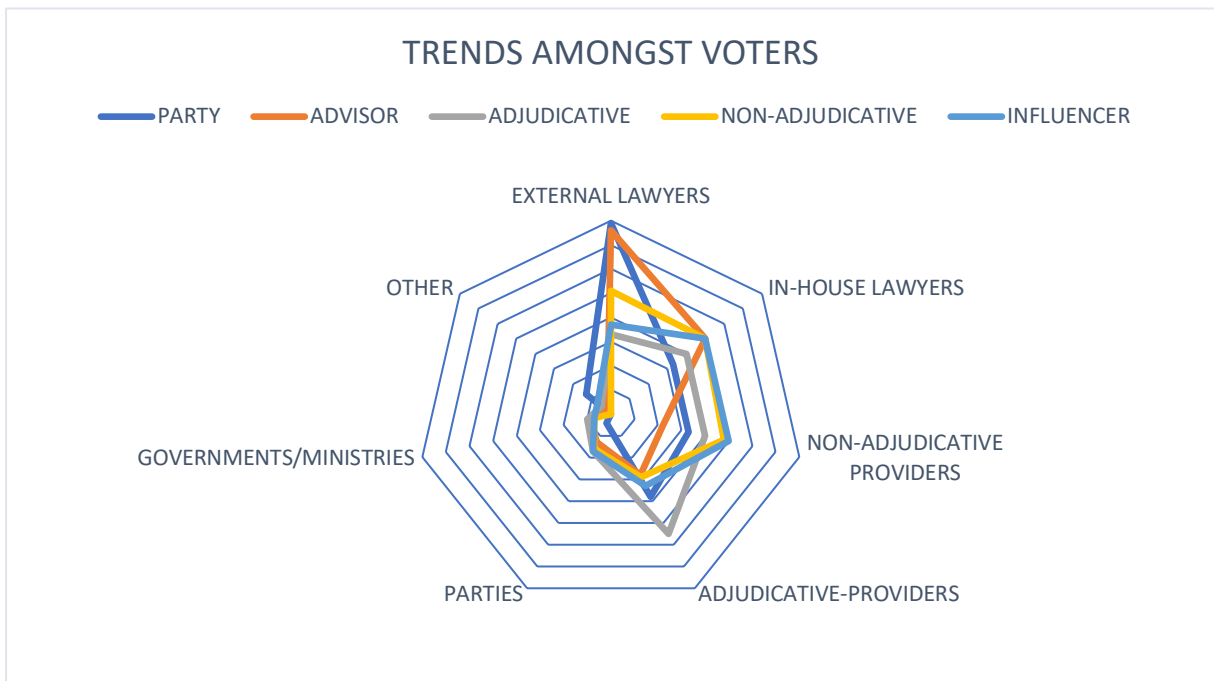


Figure 20

Parties and their Advisors agree that external lawyers should be responsible for ensuring that parties understand their process options and the consequences of their choices. This should reassure external lawyers of their ongoing role in dispute resolution. Adjudicative Providers interestingly took the view that it should be their responsibility to ensure that parties understand the process options and consequences before deciding which one to use. Generally, no stakeholders considered that Government or Ministries of Justice should have a role in ensuring parties involved in commercial disputes understand their process options and the possible consequences of each process. (Figures 19 and 20)

Question 5

Currently, the most effective commercial dispute resolution processes usually involve which of the following? The results were ranked by order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' =1 point.

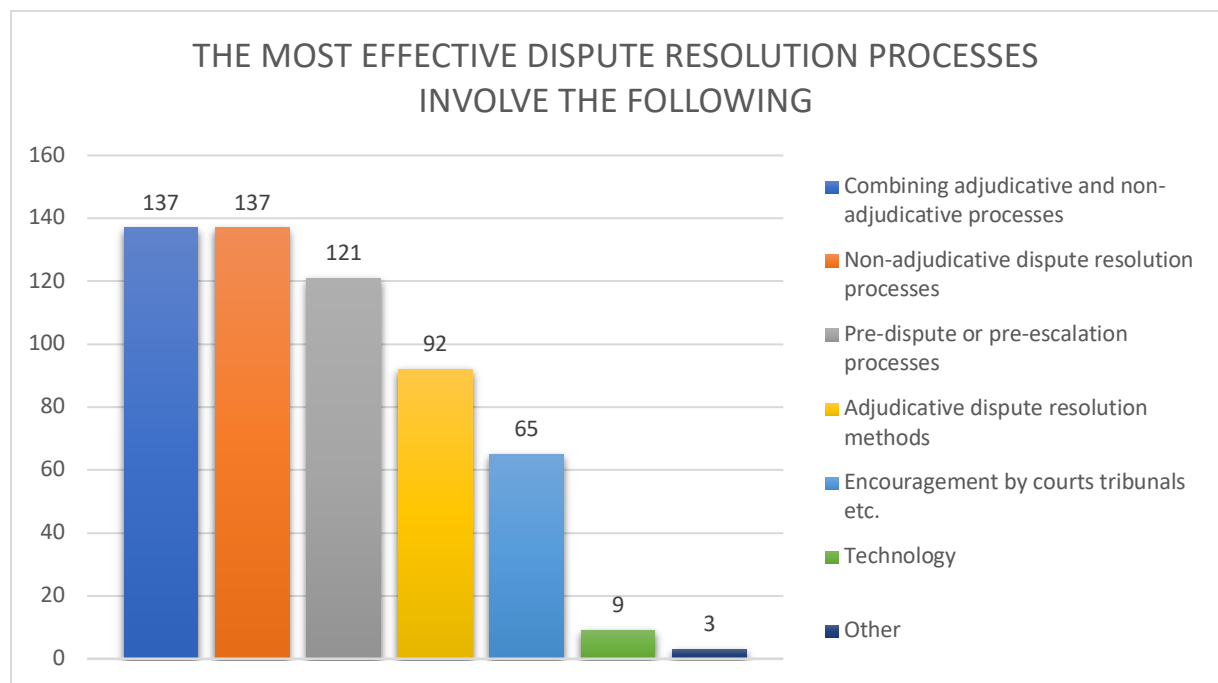


Figure 21

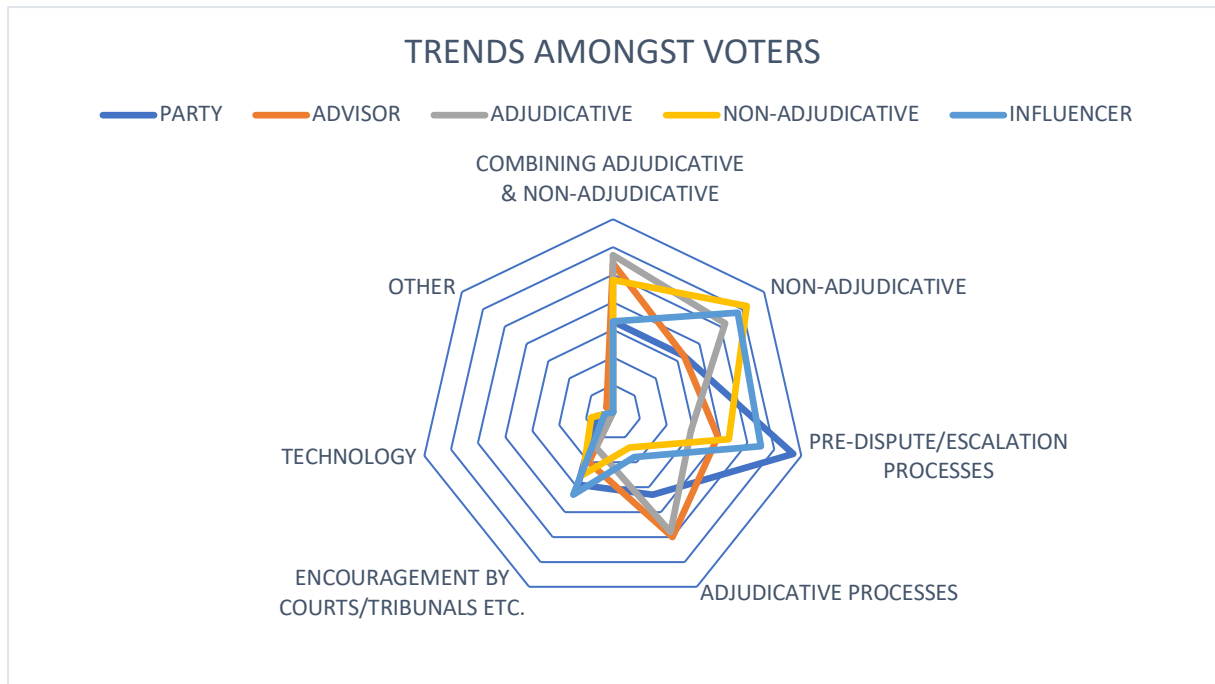


Figure 22

Generally, stakeholders are of the view that combining adjudicative and non-adjudicative processes was the most effective approach to dispute resolution. Parties appeared to consider pre-dispute/escalation processes significantly important, too. Predictably, the Advisors and Adjudicative Providers also favoured adjudicative processes. Technology, such as online dispute resolution, increasingly popular in Europe and the United States, was not considered by any stakeholder as being effective. (Figures 21 and 22)

COMPARED WITH INTERNATIONAL TRENDS

By comparison, the international trends indicate that Party stakeholders in South Africa place more emphasis on the duty of external lawyers to inform them of their process options compared to their international counterparts. In addition compared to their international counterparts, South African Influencers placed twice as much emphasis on the duty of Non-Adjudicative Providers to inform them of dispute resolution process options.

SESSION 3

STAKEHOLDER DEMOGRAPHICS

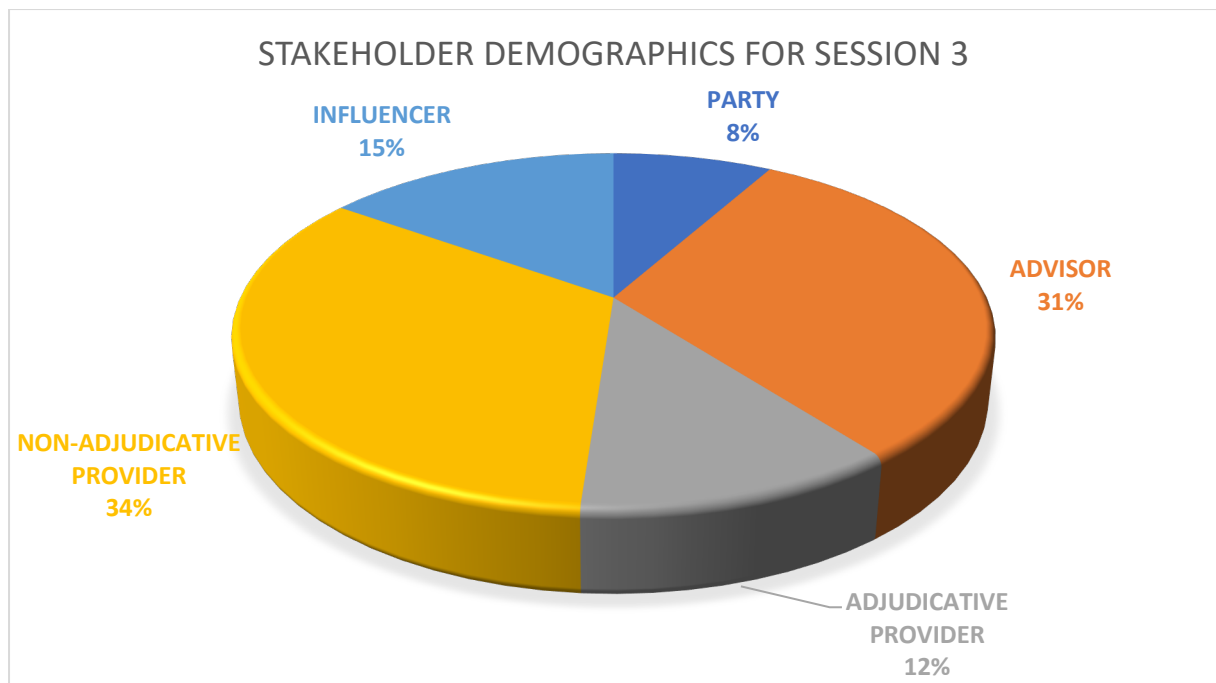


Figure 23

RESPONSES AND COMMENTARY

Question 1

What are the main obstacles or challenges parties face when seeking to resolve commercial disputes? The results were ranked by order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' =1 point.

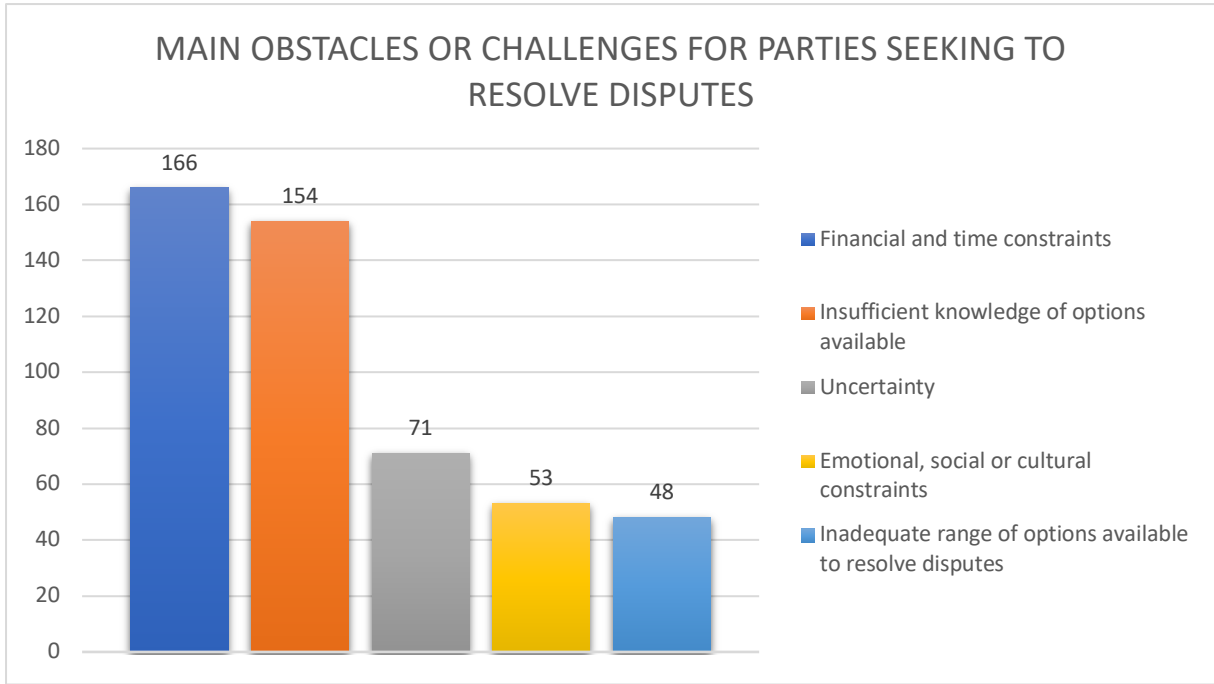


Figure 24

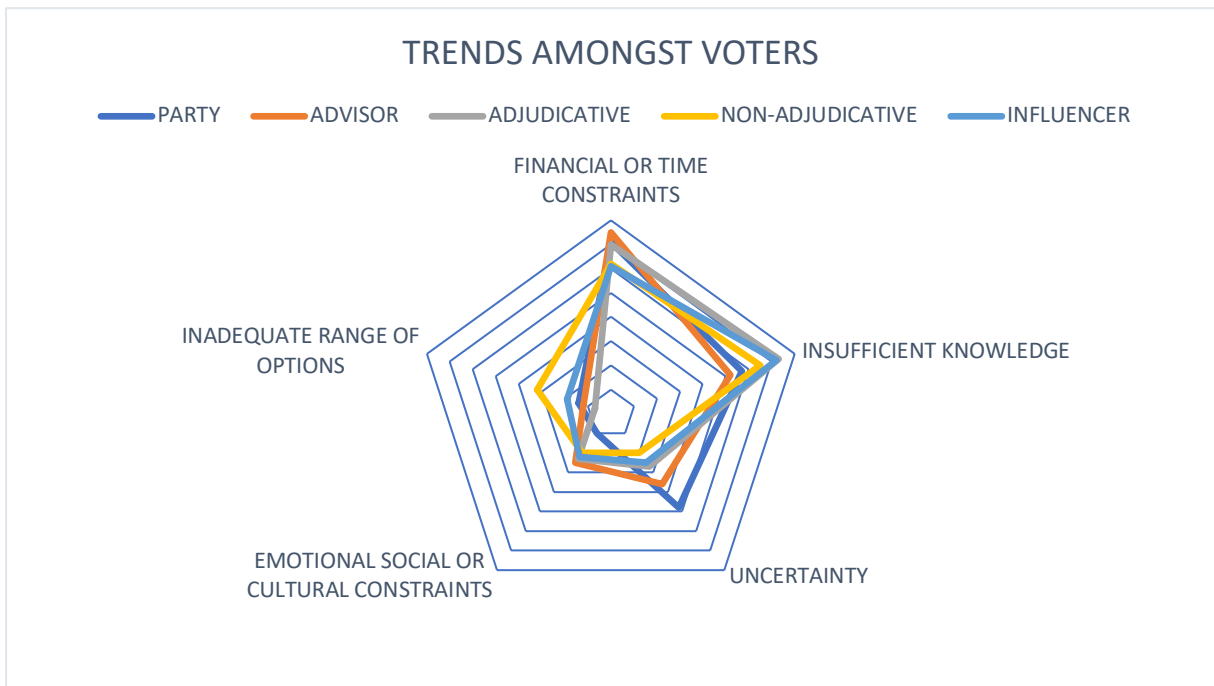


Figure 25

Stakeholders all tended to agree that financial and time constraints, and insufficient knowledge of dispute resolution options available are the biggest obstacles when seeking to resolve commercial disputes. Parties also noted uncertainty as an obstacle, which is perhaps why we currently see such little use of mediation in commercial disputes. *(Figures 24 and 25)*

Question 2

To improve the future of commercial dispute resolution which processes and tools should be used? The results were ranked by order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' =1 point.

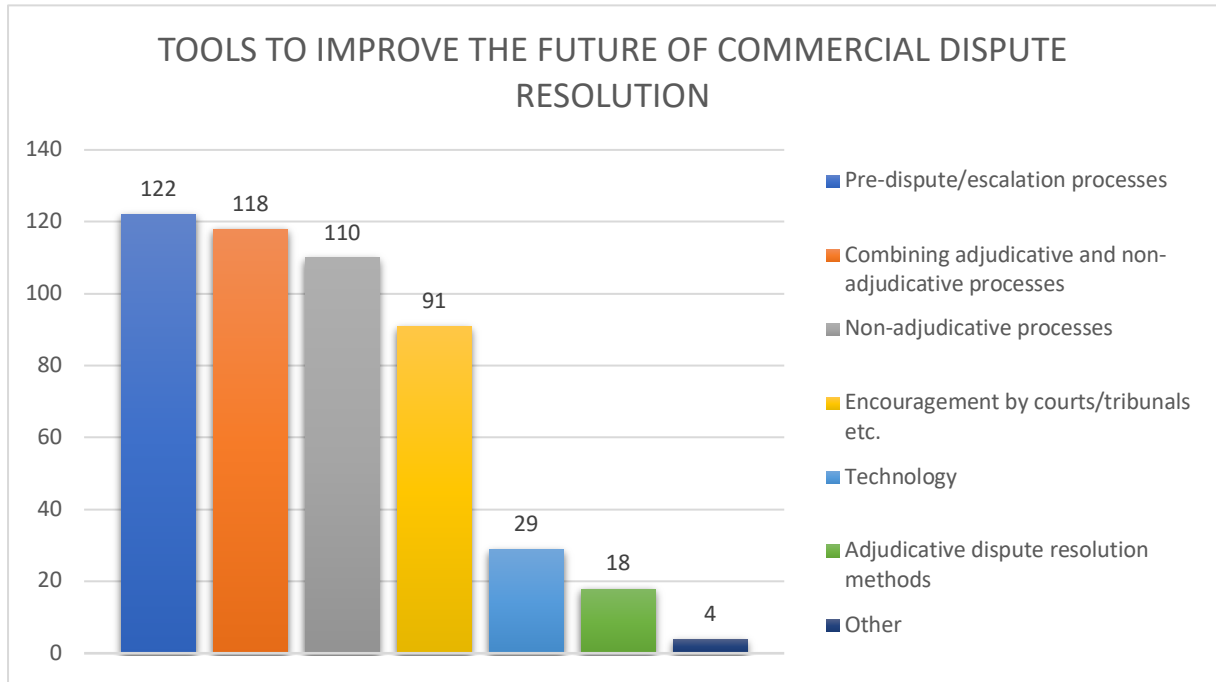


Figure 26

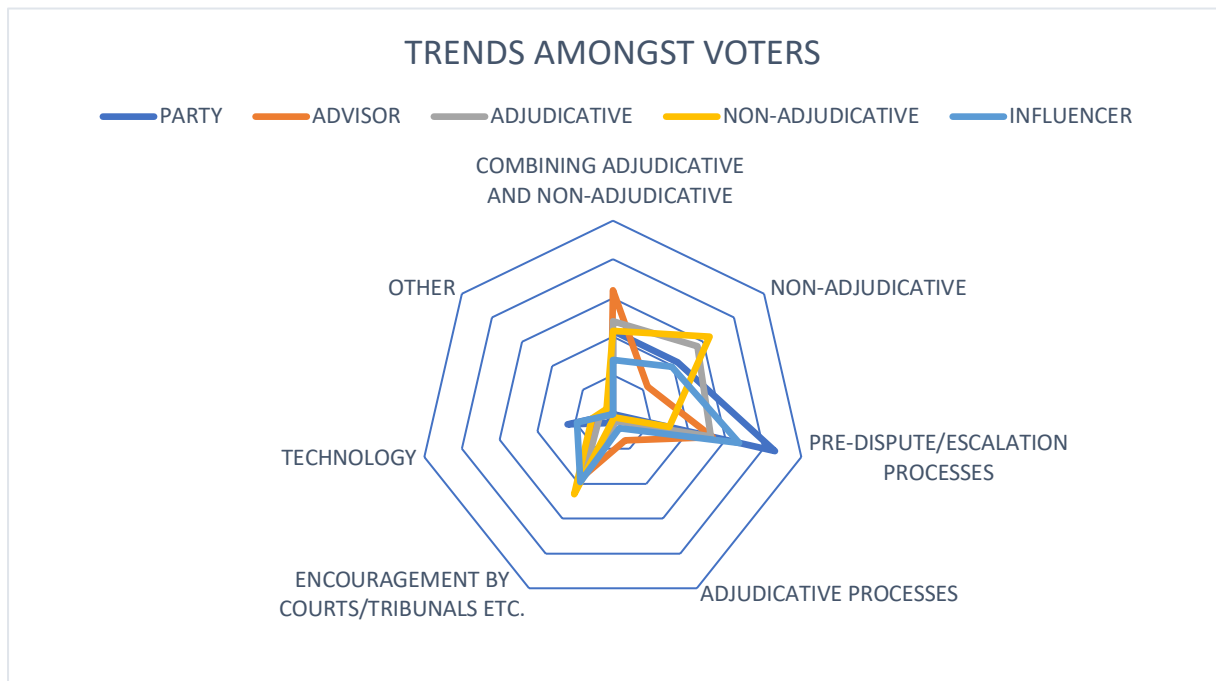


Figure 27

Overall, stakeholders emphasised pre-dispute/escalation processes in order to improve the use of commercial dispute resolution. Parties, their Advisors and Influencers, as well as Adjudicative Providers, supported this position strongly. Predictably, Non-Adjudicative Providers said that non-adjudicative processes should be prioritised, along with pre-dispute/escalation processes. There was generally little support for the use of technology, or any encouragement by courts/tribunals. (Figures 26 and 27)

Question 3

Which of the following areas would most improve commercial dispute resolution? The results were ranked by order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' =1 point.

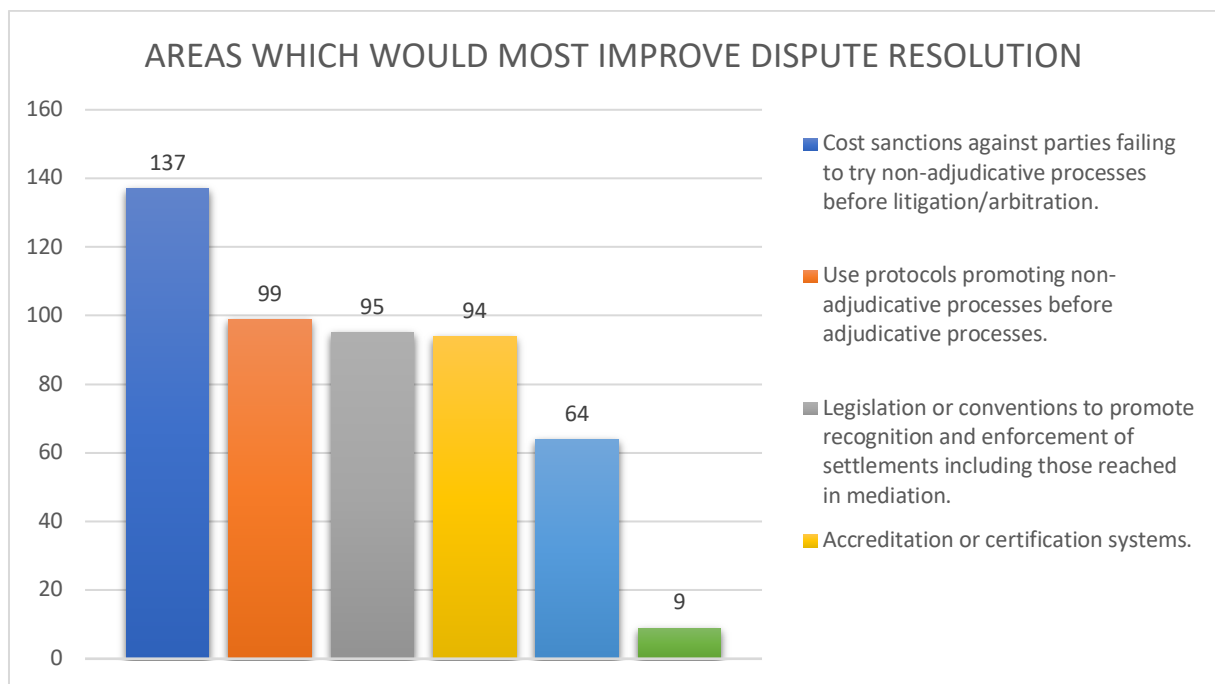


Figure 28

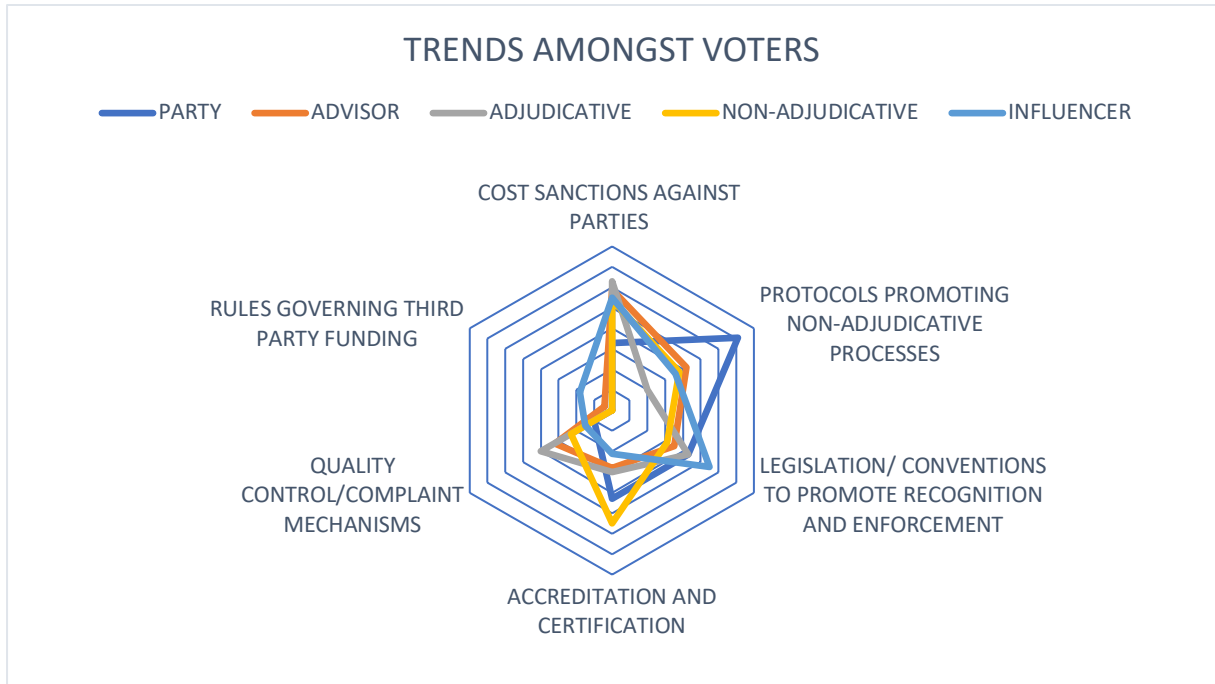


Figure 29

There was a strong view amongst all stakeholders that cost sanctions against parties failing to try non-adjudicative processes before litigation/arbitration would most improve the use of commercial dispute resolution. This is consistent with the experience in the UK and elsewhere in the world, where judicial sanction has been used, where parties could have attempted negotiation prior to litigation, but didn't. The parties gave emphasis to protocols promoting non-adjudicative processes, probably meaning contract clauses and industry protocols. [\(Figures 28 and 29\)](#)

Question 4

Which stakeholders are likely to be most resistant to change in commercial dispute resolution practice? The results were ranked by order of priority: '1st choice' = 3 points, '2nd choice' = 2 points, '3rd choice' = 1 point.

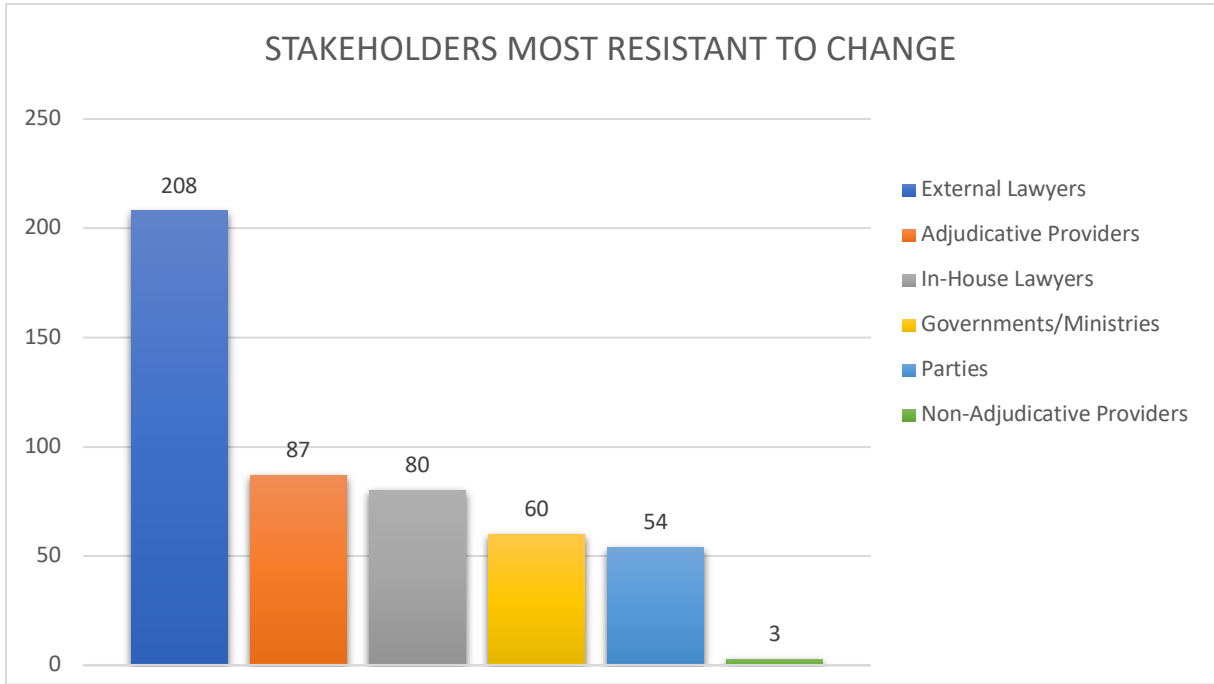


Figure 30

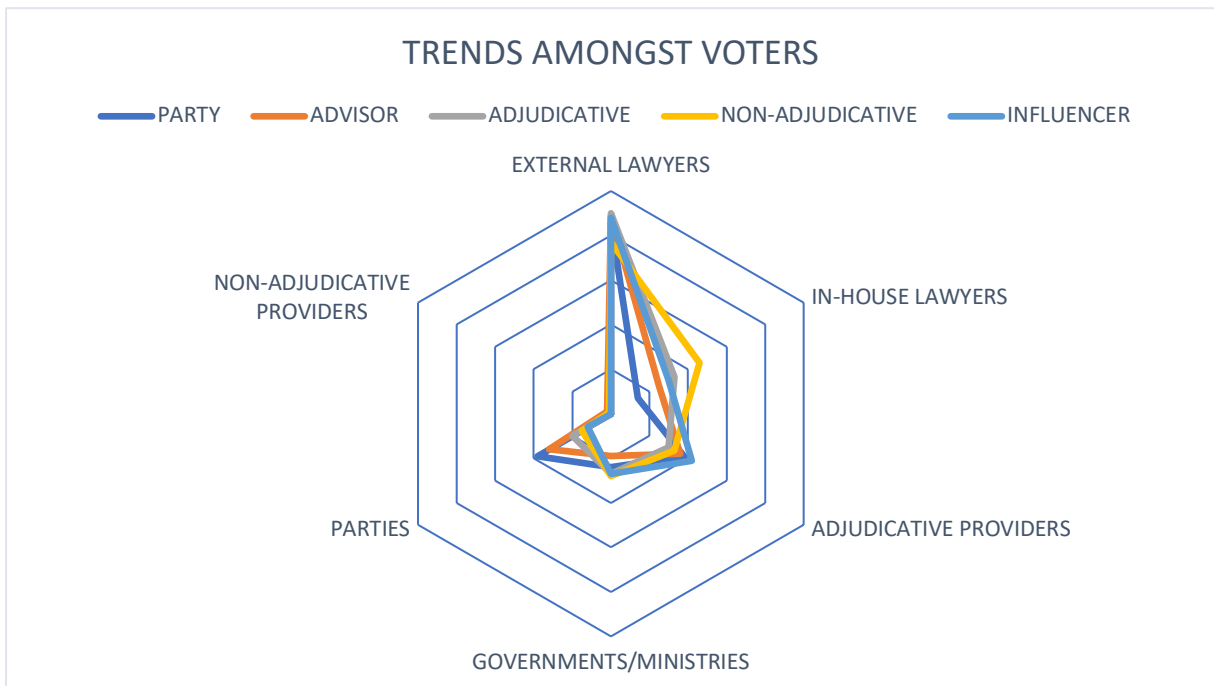


Figure 31

The stakeholders all strongly agreed that external lawyers would be the most resistant to change in commercial dispute resolution practice. Even the lawyers took this view. Conversely, no stakeholders saw Non-Adjudicative Providers as presenting any resistance to change. (Figures 30 and 31)

Question 5

Which stakeholders have the potential to be most influential in bringing about change in commercial dispute resolution practice? The results were ranked by order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' =1 point.

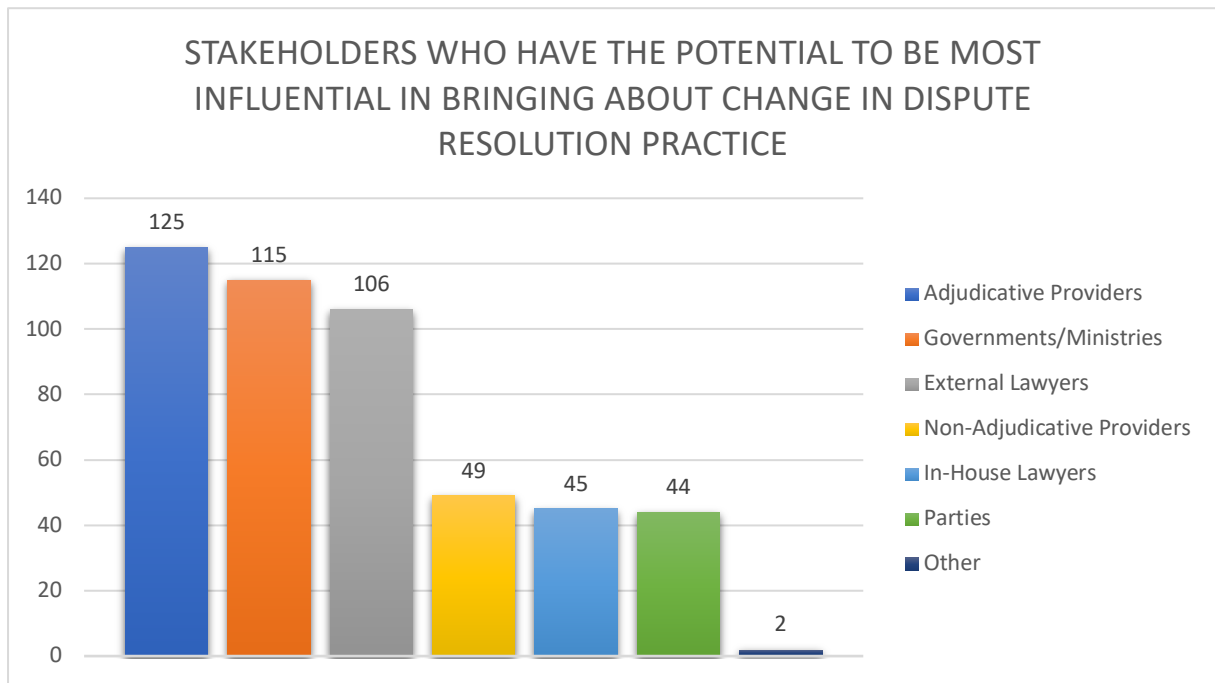


Figure 32

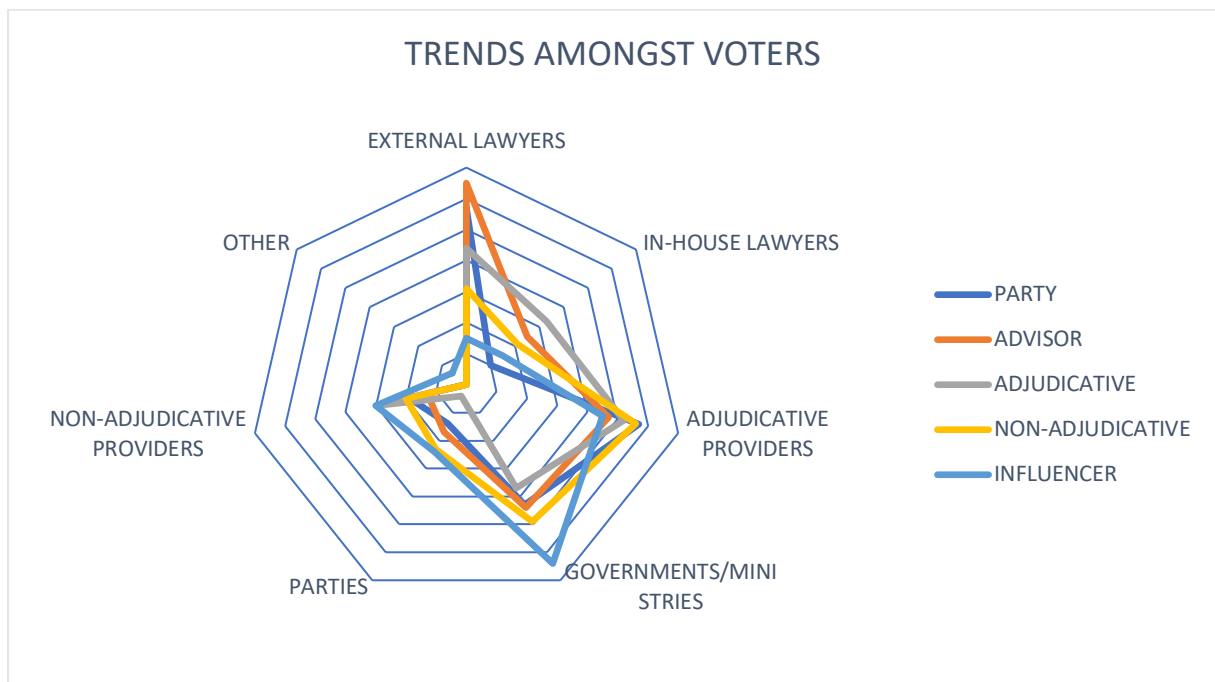


Figure 33

When deciding on who would be the most influential in bringing about change in dispute resolution practice, the stakeholders collectively placed emphasis on Adjudicative Providers, governments, ministries, and external lawyers. Conversely, Non-Adjudicative Providers, in-house lawyers and parties were generally considered to be the least influential. This was mirrored in the international results. (Figures 32 and 33)

COMPARED WITH INTERNATIONAL TRENDS

South African stakeholders ranked cost sanctions for failing to use non-adjudicative processes as a mechanism that would most improve commercial dispute resolution. International GPC results, however, indicated that stakeholders elsewhere in the world consider legislation or conventions that promote the recognition and enforcement of settlements, including those reached in mediation, would most improve commercial dispute resolution.

SESSION 4

STAKEHOLDER DEMOGRAPHICS

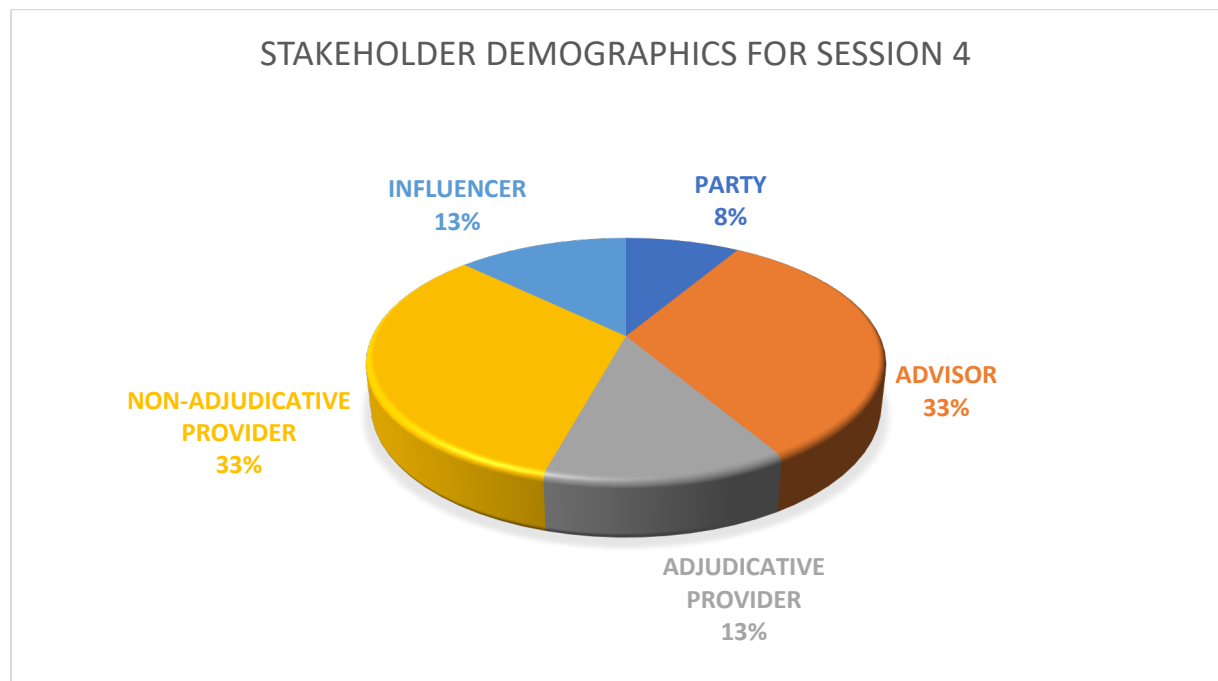


Figure 34

RESPONSES AND COMMENTARY

Question 1

Who has the greatest responsibility for taking action to promote better access to justice in commercial dispute resolution? The results were ranked by order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' =1 point.

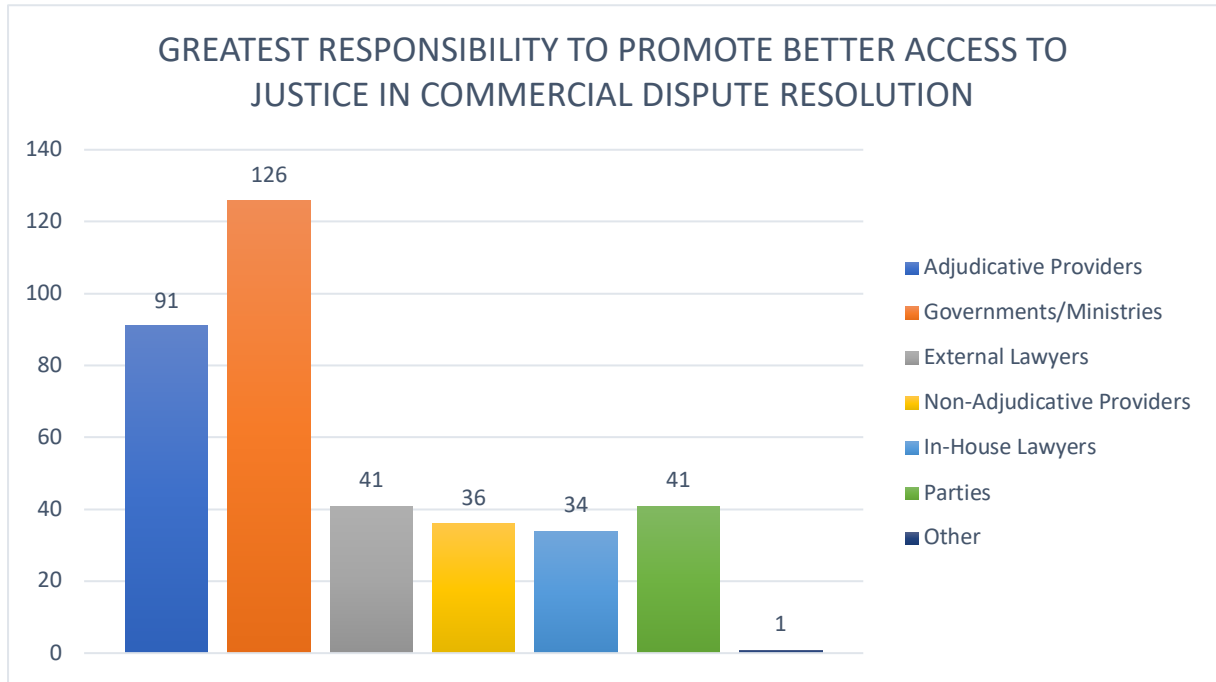


Figure 35

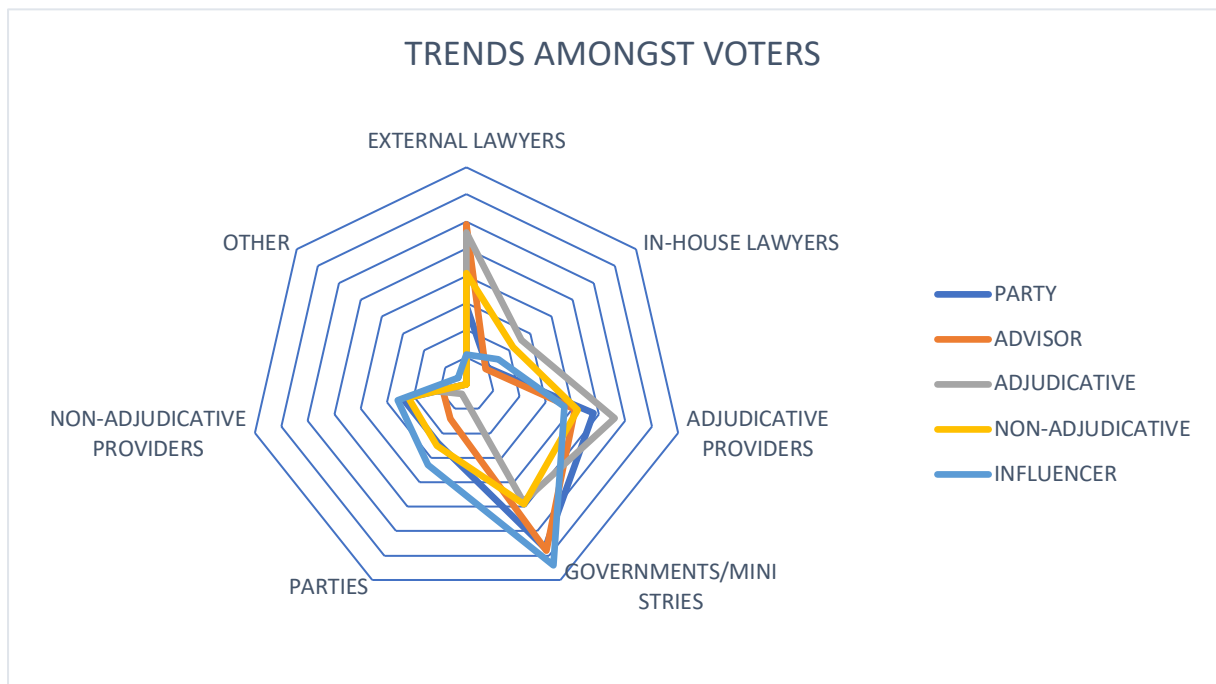


Figure 36

Generally, stakeholders considered governments and Ministries of Justice as having the greatest responsibility to promote better access to justice in commercial dispute resolution. This was followed by external lawyers, who Advisors and Adjudicative Providers considered also had a responsibility. Interestingly, Adjudicative Providers considered that they had a responsibility to promote better access to justice, perhaps indicating that judges and arbitrators felt responsible in this regard. (Figures 35 and 36)

Question 2

What is the most effective way to improve parties' understanding of their options resolving commercial disputes? The results were ranked by order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice'= 1 point.

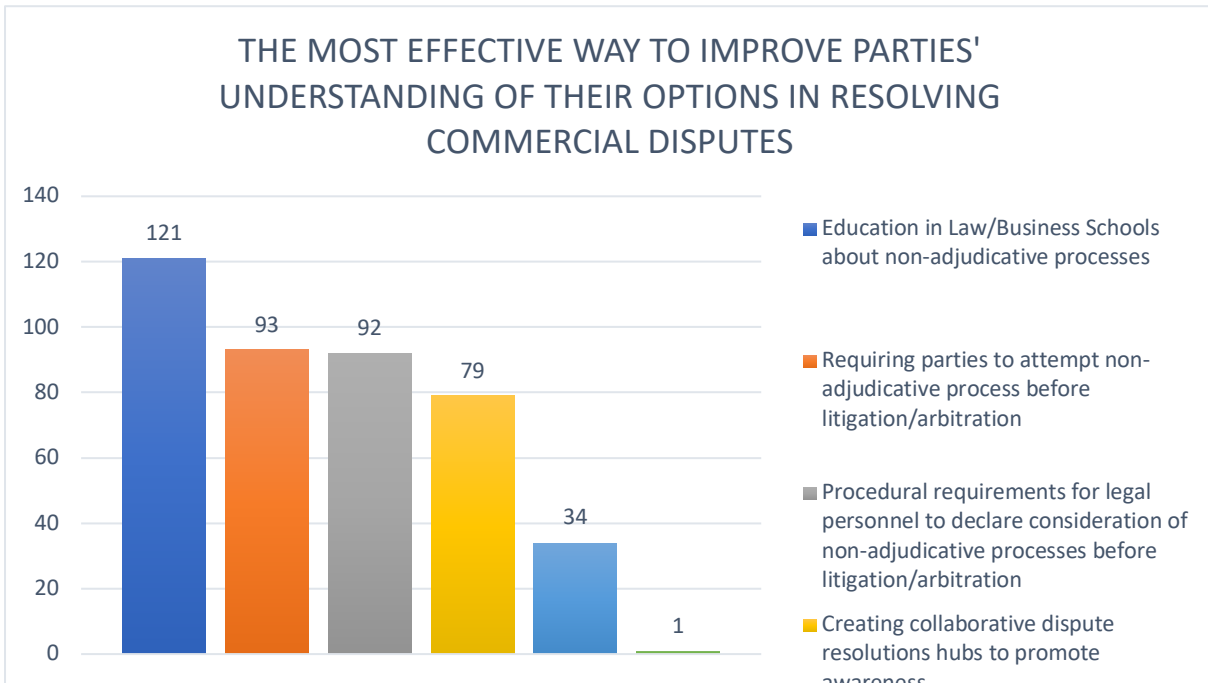


Figure 37

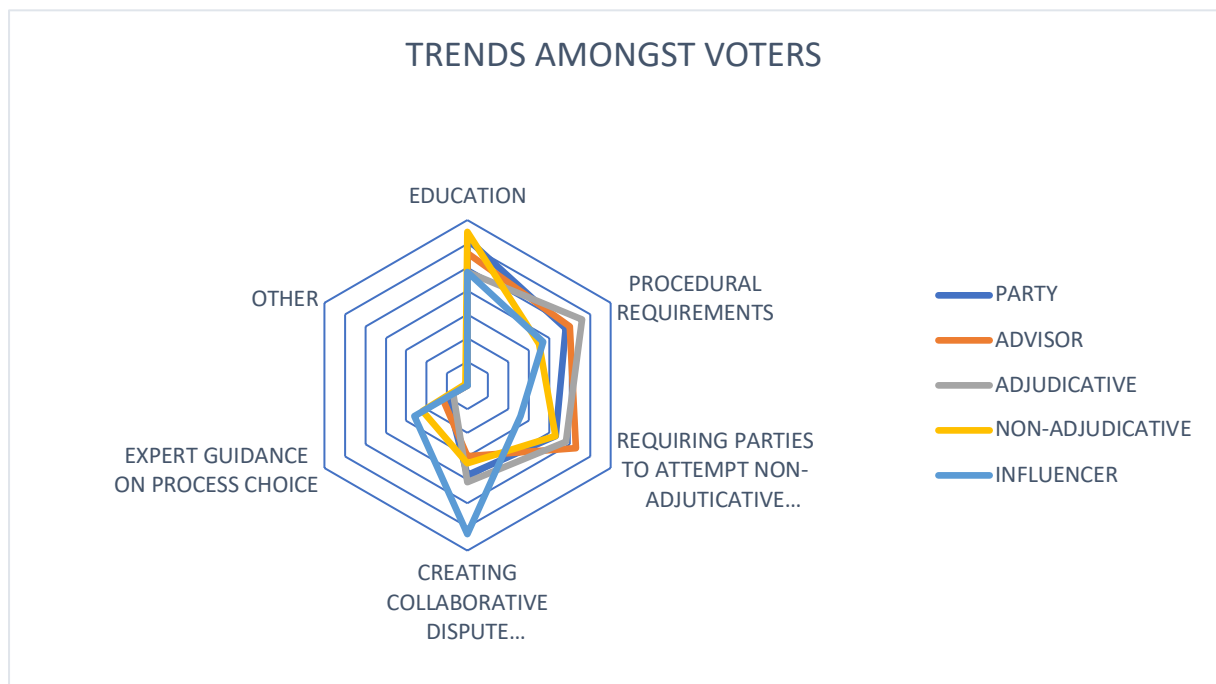


Figure 38

Educating stakeholders at law and business schools about non-adjudicative processes was generally considered the most effective way to improve parties' understanding of their options in resolving

commercial disputes. Influencers thought that creating collaborative dispute resolution hubs could be useful. A “hub” is a forum for discussion, review, development and innovation of collaborative working tools and techniques to help guide policy and practice. Apart from Influencers, most other stakeholders thought that requiring parties to attempt non-adjudicative processes before litigation arbitration would be effective. (Figures 37 and 38)

Question 3

To promote better access to justice for those involved in commercial disputes, where should policy makers, governments and administrators focus their attention? The results were ranked by order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ =1 point.

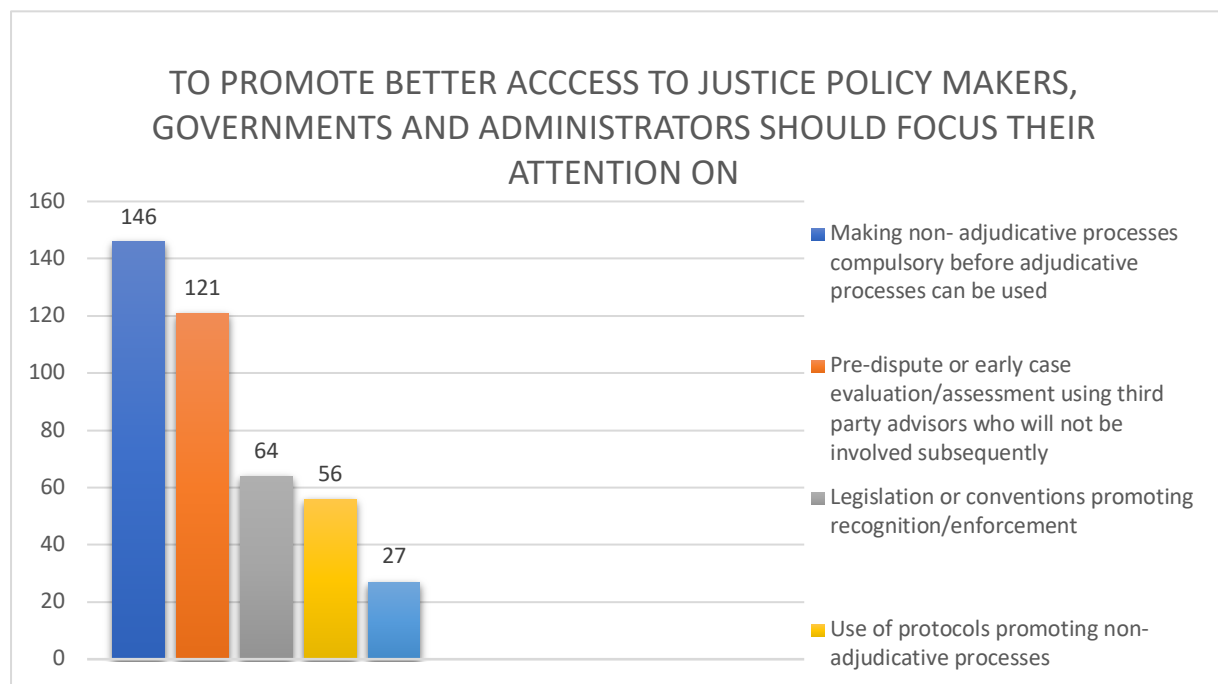


Figure 39

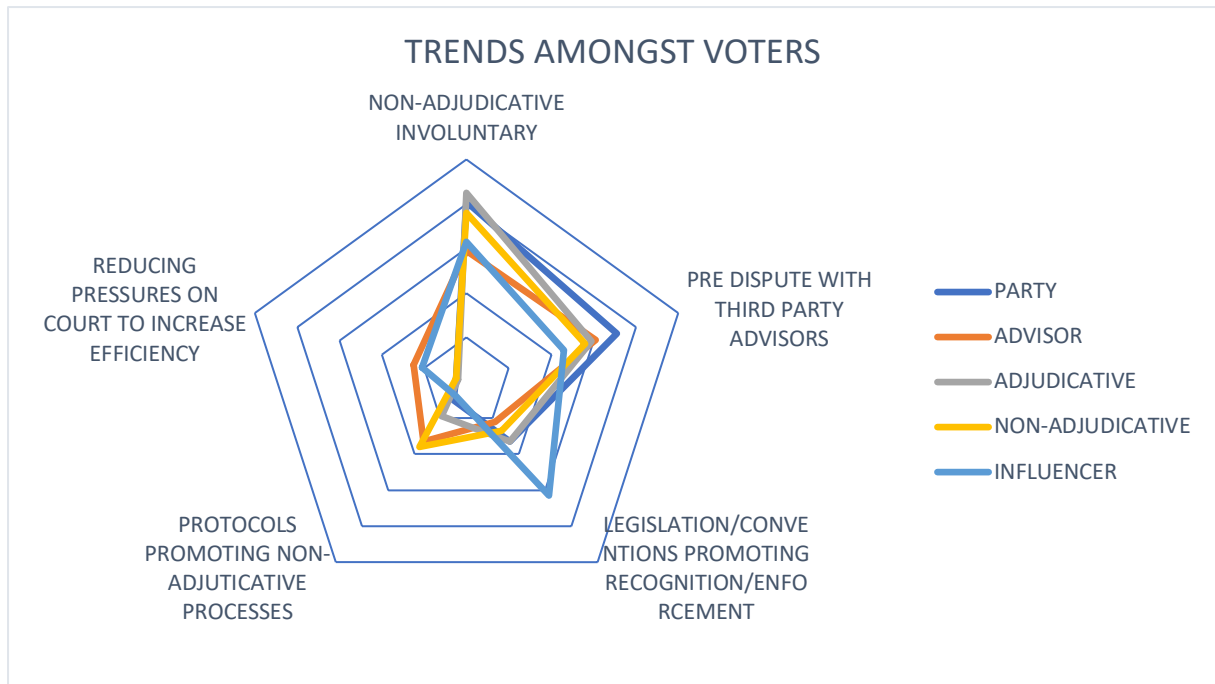


Figure 40

The stakeholders generally agreed that making non-adjudicative processes compulsory would be where policy makers, governments and administrators should focus their attention, in order to promote access to justice for those involved in commercial disputes. This action was followed by the recommendation particularly by Parties and their Advisors, that government should institute pre-dispute or early case evaluation/assessment using third party Advisors, not directly involved in the dispute resolution process. Dispute resolution providers in magistrate’s court might be examples of such Advisors. (Figures 39 and 40)

Question 4

Which of the following will have the most significant impact on future policy-making in commercial dispute resolution? The results were ranked by order of priority: ‘1st choice’= 3 points, ‘2nd choice’= 2 points, ‘3rd choice’ =1 point.

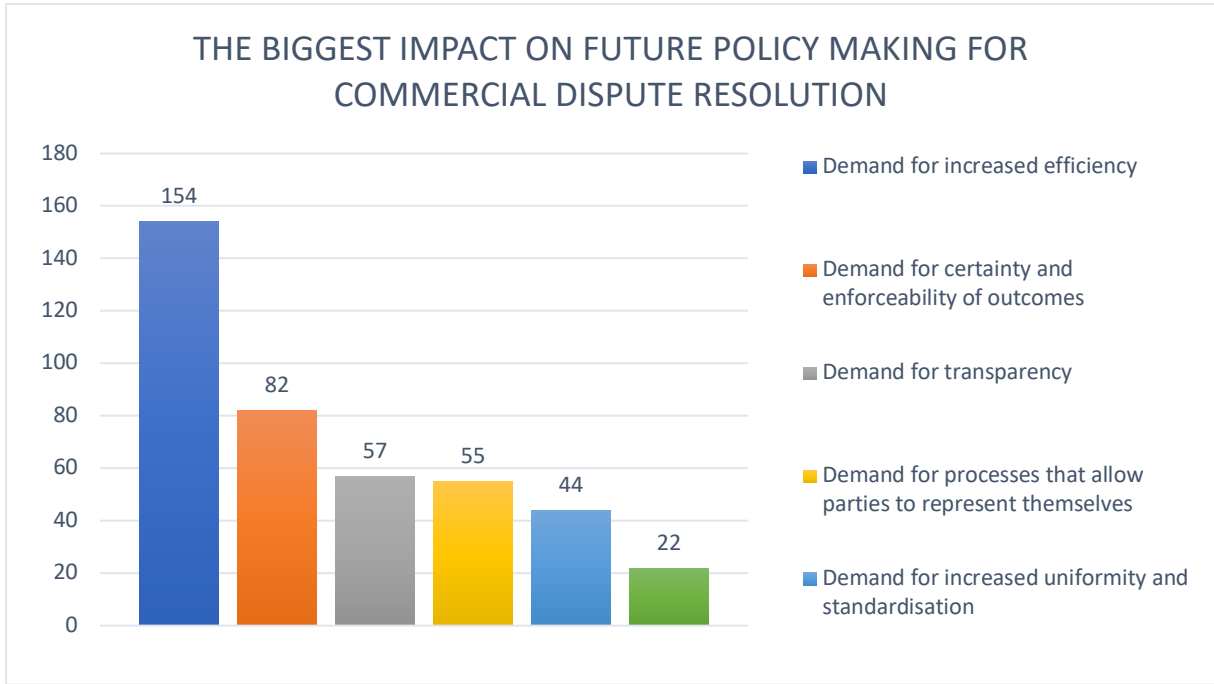


Figure 41

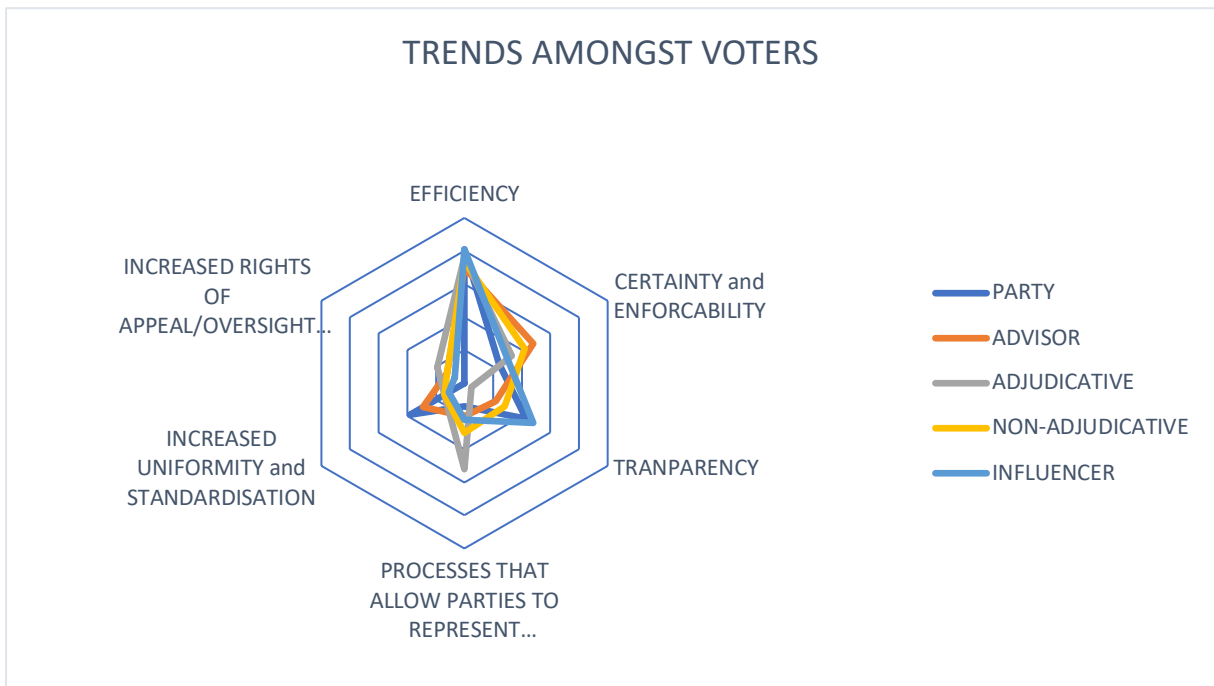


Figure 42

The demand for increased efficiency was generally considered by stakeholders to be the key driver in future policy making for commercial dispute resolution. This is no doubt an indication of the frustrations currently experienced by all stakeholders in their use of the existing dispute resolution structures and processes available to them. Interestingly, neither certainty and enforceability nor transparency, were considered priorities. Adjudicative Providers ranked processes that allow parties to represent themselves as second to efficiency, perhaps because of their experience with litigants in person. (Figures 41 and 42)

Question 5

What innovations/trends are going to have the most significant influence on the future of commercial dispute resolution? The results were ranked by order of priority: '1st choice'= 3 points, '2nd choice'= 2 points, '3rd choice' =1 point.

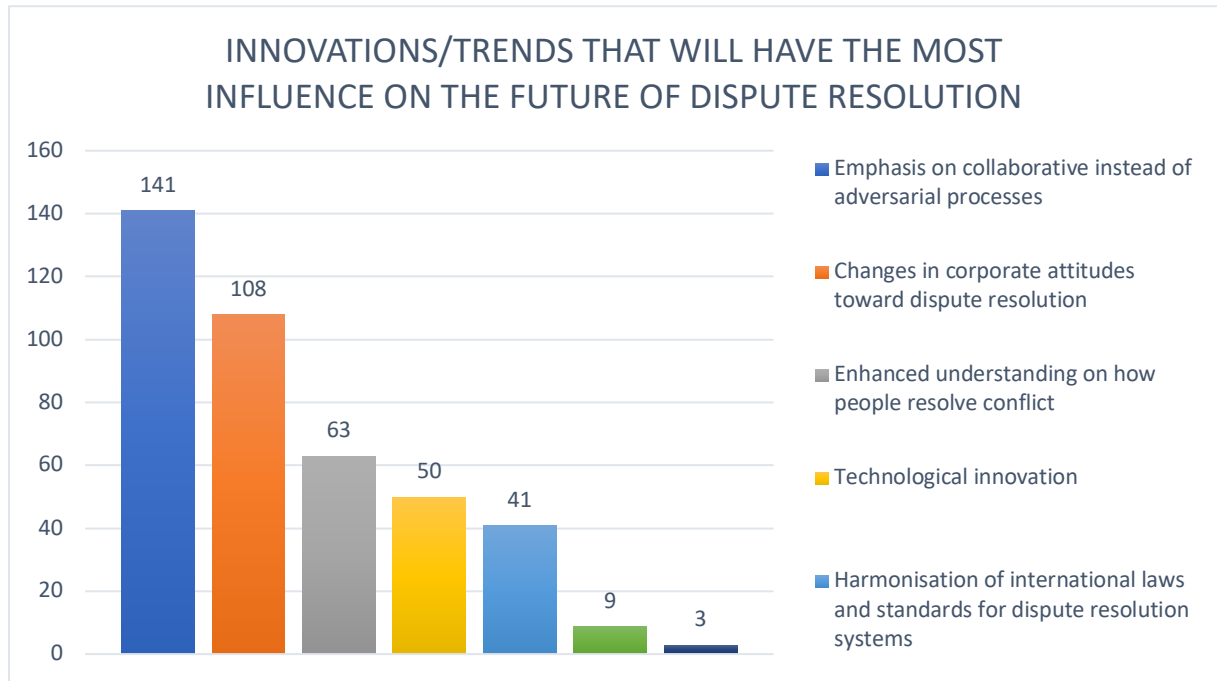


Figure 43

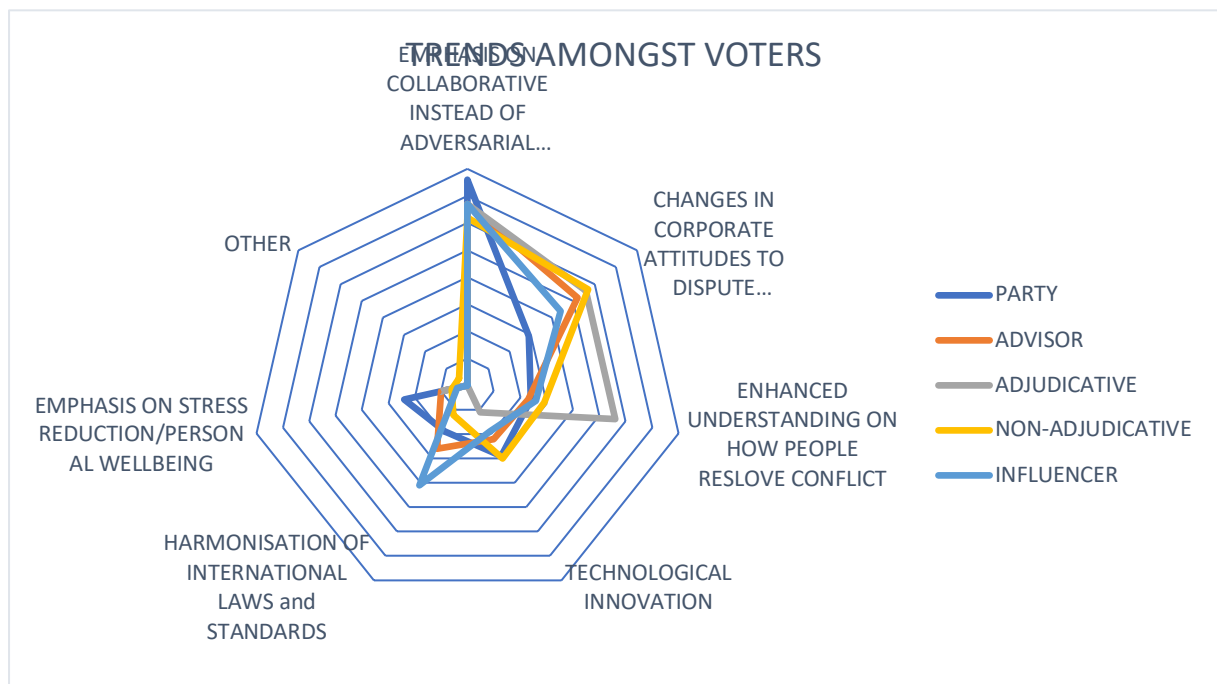


Figure 44

When ranking the innovations and trends that are going to have the most significant influence on the future of commercial dispute resolution, collectively the stakeholders placed the most emphasis on

collaborative rather than adversarial processes. With the exception of Parties, all stakeholders cited changes in corporate attitudes to dispute resolution as a factor that will influence future dispute resolution. Adjudicators believed that an enhanced understanding of how people resolve conflict would have a significant impact. (*Figures 43 and 44*)

COMPARED WITH INTERNATIONAL TRENDS

International trends indicate that the demand for increased efficiency of dispute resolution processes, including through technology, will have the most significant impact on future policy-making. South African stakeholders agreed with the efficiency aspect of this point, but placed little to no emphasis on technological innovation.

CONCLUSIONS

Although this sample of approximately 110 stakeholders in commercial dispute resolution in South Africa is relatively small, there are some general trends to learn from the data from the local conference.

1. Efficiency, time and cost effectiveness are a primary concern of stakeholders in commercial dispute resolution, and will have the most significant impact on future policy-making in commercial dispute resolution.
2. Party control over the outcome of disputes was viewed as an important benefit of mediation and conciliation.
3. Improved or restored relationships are often a goal in dispute resolution, although stakeholders indicated that parties in commercial disputes tend to value certainty over improved or restored relationships
4. Insufficient knowledge of available options for the resolution of commercial disputes is an obstacle for parties when deciding how to resolve a dispute. Lawyers, external and in-house, were most often viewed as having responsibility to ensure parties understand process options and their potential consequences. When asked which methods would be most effective in improving parties' understanding of their options for resolving commercial disputes, most participants pointed to educational programs in business or law schools or the broader business community.
5. Participants indicated that outcomes to disputes are achieved by an interplay between the rule of law, consensus/party interests, and general concepts of fairness. The most effective approaches rely on multiple processes, a combination of adjudicative and non-adjudicative processes, such as mediation and arbitration or mediation and litigation. This is perhaps a reflection of the common practice of negotiating (with or without a mediator) against the backdrop of adjudication.
6. Making non-adjudicative processes compulsory or sanctioning parties who do not avail themselves of these opportunities with costs orders, are generally considered strong levers in promoting access to justice.

7. Pre-dispute or pre-escalation processes, collaboration and conflict prevention are emerging trends in managing commercial conflict, along with combinations of adjudicative and non-adjudicative processes.
8. Government, including the Department of Justice, has a significant role to play in enhancing access to justice. Interestingly, South African stakeholders rated the role of governments and Ministries of Justice as somewhat less important than the role of Adjudicative Providers including judges and arbitrators in effecting change in commercial dispute resolution and access to justice.
9. What is clear is that all the stakeholders still consider that lawyers play an important role in commercial dispute resolution. They do, however, simultaneously hold the view that lawyers are the most significant obstacle to effective dispute resolution. So, on the one hand, lawyers should be reassured of their ongoing relevance, while on the other, they should give thought to ways in which they can respond more effectively to their clients' dispute resolution requirements. Indeed, more innovative approaches to dispute resolution will no doubt present opportunities for work for lawyers in a context where traditional legal services are increasingly costly and access to the overburdened court system increasingly difficult.

Despite the natural bias that each stakeholder had as a result of their respective roles, the data produced at the conference is relevant. It shows the general points of departure of different stakeholders in South Africa and will hopefully enable them to work together to nurture the growth and development of commercial dispute resolution. It is apparent from the data that some stakeholders risk being out of touch with the needs of the people who have the most limited access to effective dispute resolution: the poor.

A larger data set from stakeholders in South Africa would be needed to conclusively identify the barriers that inhibit the growth of appropriate dispute resolution, and to determine an action plan to overcome these barriers. Nevertheless, we aim to use these results to continue to advocate for more effective dispute resolution in South Africa and for greater access to justice for all.