

International  
Construction  
Law Association

ICLA

The background of the entire page is a photograph of the Cape Town skyline at night, with city lights reflecting in the water of a harbor. The image has a blue color overlay. The text "2025 CONSTRUCTION LAW CONFERENCE CAPE TOWN" is centered over the image in a large, white, sans-serif font.

# 2025 CONSTRUCTION LAW CONFERENCE CAPE TOWN

**REVEALING THE FOUNDATION OF  
MODERN PROJECT SUCCESS:**

*Contracts as Tools for Modernising  
Collaboration and Resolving Conflict*



A photograph of a group of people in a meeting or conference. In the foreground, a man in a dark suit and red tie is smiling and looking towards the left. Behind him, several other people are seated, some looking towards the camera and others looking away. The image has a blue tint and a dark overlay at the bottom.

# EXECUTIVE SUMMARY

# INTERNATIONAL CONSTRUCTION LAW ASSOCIATION (ICLA) POST-CONFERENCE NOTE

## *Executive Summary*

The 2025 International Construction Law Association (ICLA) Conference, held on 8–9 April at the Cape Town International Convention Centre, marked a historic first for the African continent. Bringing together 198 delegates from 10 countries — including legal practitioners, engineers, academics, construction professionals and policymakers — the event served as a significant platform for cross-border engagement on the evolving discipline of construction law.

Centred on the theme **“Revealing the Foundation of Modern Project Success: Contracts as Tools for Modernising Collaboration and Resolving Conflict”**, the conference examined the role of contracts in managing complexity, enabling collaboration and minimising disputes across diverse project environments. Through keynote addresses, technical panels and case-based discussions, the programme offered both global perspectives and regionally grounded insights.

Key topics included the application and adaptation of standard form contracts (FIDIC, NEC, GCC), proactive dispute avoidance mechanisms, digital integration in legal processes and structural procurement reform. The conference also addressed critical sectoral issues such as governance, ethics, professional development and contract literacy, with a particular focus on public sector infrastructure.

Speakers consistently underscored the need for greater alignment between contract design, project delivery and developmental imperatives. Trust-based frameworks, context-sensitive legal education and inclusive contracting practices were highlighted as essential for advancing sustainable infrastructure outcomes. **Closing reflections reaffirmed the role of construction law not merely as a legal safeguard, but as a strategic enabler of efficiency, equity and resilience in the built environment.**







## KEYNOTE ADDRESS BY DEPUTY MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE *Sihle Zikalala*

“I take this opportunity to extend my greetings to all of you who are here today. The Chairman of the International Construction Law Association, Dr Breyer. It is a great pleasure to welcome you here and the entire leadership of your association. Members of the Board who are with us here, we are grateful that you have chosen Cape Town, South Africa, to be a host of this very important engagement.

Members of Parliament who are here, Portfolio Committee members, representatives from the Ministry of Infrastructure and Housing in Zambia, Natasha Lungwe, the CEO of our own CIDB, Mr Dladla, as well as the CEO of CBE, Dr Myeza and Mr Timothy Harwin and Stephan Brill — representatives of HKA Global, who are one of the sponsors here. All panellists who are going to share with us various knowledge and information, and those who have already engaged us from yesterday, Professor Windapo of UCT and all others — we are grateful to be part of this engagement. May I start by sincerely apologising that I was supposed to be here yesterday, but due to departmental work, there was one statutory engagement I could not miss. Therefore, I sincerely apologise to the organisers, as well as to all of you.

We are meeting here in a year in which the International Construction Law Association marks a decade of its existence. We are honoured as South Africa to host this conference, which started yesterday and will proceed up until the end of the day. This gathering brings together key stakeholders to advance construction law knowledge and strengthen industry

connections. We look to it to be a marketplace of ideas that will shed light on the development in the policy space, while sharing insight on project delivery innovations. It is a conference that reminds all of us of the need for greater partnership and collaboration across national boundaries, given that construction projects are increasingly conceptualised, designed and executed by local and international partners.

Despite the blessing of the digital age and the advent of the information revolution, with the internet as an enabler, research indicates that the construction industry still faces a huge knowledge gap in the field of construction law between various local jurisdictions. In this regard, we hope that South Africa and indeed the representatives of our continent, will use this platform not only to learn from their international peers, but to share insight into the policy and legislative framework that underpins the construction industry in our continent.

As South Africa, we cannot overemphasise the value of the construction sector in addressing our national priorities, including job creation, inclusive economic growth and the delivery of critical infrastructure to our communities. We see infrastructure delivery as the bedrock and the flywheel of South Africa's economy, especially post the devastation of COVID-19, the floods that have destroyed life and livelihoods, as well as critical infrastructure in various provinces of our country. To our international guests, we wish to assure you right from the onset that South Africa is open for business and that you can also be guaranteed your returns on



investment in the South African construction and property sector.

Each and every day, our government, under the leadership of His Excellency President Cyril Ramaphosa, is working hard on ensuring policy certainty, improving the ease of doing business and simplifying the regulatory framework. Delivering the Budget Speech, the Minister of Finance identified infrastructure as a key pillar of South Africa's growth strategy, employment creation and scaling up service delivery. The budget committed more than R1 trillion in public infrastructure spending over the next three years. It focuses on three sectors: R402 billion has been allocated for transport and logistics, R219 billion for energy infrastructure and R156 billion for water and sanitation.

But further than that, Treasury has also finalised new regulations for public-private partnerships (PPPs). These regulations will be implemented from 1 June this year. The public-private partnership regulation will reduce the procedural complexities of undertaking PPPs, create capacity to support and manage PPPs, create clear rules for managing unsolicited bids and strengthen fiscal risk governance. The regulations also make provisions for national departments to establish sector-specific PPPs and the establishment of a PPP unit.

These units will drive private sector participation, creating opportunities to optimise the balance sheets of financially distressed state-owned companies. I want to dwell on this point. This means that national departments

can now establish a unit that facilitates the implementation of PPPs. And that will be easy, because it has been a stumbling block. It took from a year and a half, up to three years, to register one project. And we now aim to achieve that in a space of three months at most.

In addition, Treasury has now reconfigured the Budget Facility for Infrastructure to run multiple bid windows, not just one in a financial year, as was the case. We also wish to assure this gathering that we are confident that the Expropriation Act will pass constitutional muster. The Act was never conceived as attacking or dealing with property rights, which are protected in the Constitution. Our Constitution protects individual rights. We have a Constitution that has a Bill of Rights, and that Constitution is the aperture of everything and the final law of the country.

We are a responsible government that has never sought to deprive anyone of property, and we are keen on ensuring that more and more South Africans own property, given the long history of asset poverty, especially amongst the previously oppressed. The Expropriation Act 13 of 2024 replaces the previous Expropriation Act 63 of 1975, and it aims to align the expropriation principles with the Constitution. Democratic South Africa now has a new policy framework which clearly spells out how and where expropriation can take place and what the standards and level of compensation are.

*Ladies and Gentlemen, thank you."*



# Conference Overview

The 2025 ICLA Construction Law Conference was held on 8 and 9 April 2025 at the Cape Town International Convention Centre (CTICC). The conference marked a historic milestone as the first ICLA event ever hosted on African soil — and a first of its kind in South Africa. The event brought together a distinguished community of legal practitioners, construction industry leaders, academics and policymakers to engage in meaningful dialogue on the future of construction law.

Under the theme *“Revealing the Foundation of Modern Project Success: Contracts as Tools for Modernising Collaboration and Resolving Conflict”*, the conference featured:

Plenary sessions and technical panels exploring the use of contracts to promote alignment and reduce conflict in complex projects

Case studies on the implementation of FIDIC, NEC and bespoke contracts in African and global contexts



**Attendees explored the power of contracts in navigating project complexity, fostering cooperation and reducing disputes. The discussions were forward-looking and solutions-oriented, ranging from standard contract frameworks to modern delivery models and dispute resolution strategies.**



## About THE ICLA

Founded in 2015, the International Construction Law Association (ICLA) is a global organisation that brings together professionals involved in construction law to promote cross-border knowledge exchange, harmonisation of legal principles and a deeper understanding of international construction contracts and dispute resolution mechanisms.

The ICLA serves as a forum for dialogue and collaboration between legal and technical professionals worldwide. It facilitates learning and engagement through conferences, working groups and publications, focusing on contracts, dispute resolution and project delivery.

**The Association also maintains strong academic affiliations with leading international institutions to advance research and education in construction law, including:**

- Centre of Construction Law and Dispute Resolution, King's College London (UK)
- Peking University Law School (China)
- University of Copenhagen (Denmark)
- The British University in Dubai (UAE)
- University of Melbourne (Australia)

These partnerships support the ICLA's mission of developing a unified, globally relevant understanding of construction law across diverse legal systems.



International  
Construction  
Law Association

ICLA



## Partners & Sponsors

The success of the 2025 ICLA Construction Law Conference was made possible through the support of several strategic partners and sponsors, whose contributions ensured a dynamic and professionally enriching event.



**South African Council for the Project and Construction Management Professions (SACPCMP)** – A regulatory body championing ethical and professional standards within the built environment.



**Construction Industry Development Board (CIDB)** – An entity supporting the transformation and sustainability of South Africa's construction sector through regulatory and developmental initiatives.



**HKA Global** – A global consultancy specialising in risk mitigation and dispute resolution, serving as a Gold Sponsor of the conference.



**University of Cape Town (UCT)** – Africa's leading academic institution, supporting thought leadership and education in construction law and built environment disciplines.



**Cape Institute for Architecture (ClfA)** – Representing professional architects in the Western Cape, ClfA advocates for design excellence, sustainability and responsible spatial development. Its collaboration with the ICLA reinforced the shared importance of contract literacy and legal clarity in the successful realisation of architectural projects.



## *Conference Speakers*

The 2025 ICLA Construction Law Conference featured an esteemed line-up of speakers, representing both local and international expertise across legal, technical, regulatory and academic spheres. Speakers included:

Fabio Companie – City of Cape Town

John Bishop – ICLA Board Member

Prof Aymen Masadeh – The British University in Dubai

Tamlynn Caelers-Avis – WMN Attorneys

Prof Stefan Leupertz – Leupertz Baukonfliktmanagement, Cologne (Germany)

Timothy Harwin – HKA Global Limited

Dr Msizi Myeza – Council for the Built Environment

Stefan Brill – HKA Global Limited

Prof Abimbola Windapo – University of Cape Town

Dr Wolfgang Breyer – Chairman, International Construction Law Association

Dr Ron Watermeyer – Infrastructure Options

Mile Sofijanic – ECS Associates

Bongani Dladla – Construction Industry Development Board

Thobani Mnyandu – MNS Attorneys

Theunis van Zyl – South African Institution of Civil Engineering (SAICE)

Isaac Nkosi – South African Council for the Project and Construction Management Professions (SACPCMP)

Adv Aldridge Mark Fisher – CEO, Fisher Construction (Pty) Ltd, Cape Town

These figures reflect the diverse, cross-continental participation that characterised the conference, reinforcing its role as a global platform for engagement on construction law.



## CONSTRUCTION LAW CONFERENCE DATA

### *Highlights*

Total number  
of attendees: **198**

---

Country representation (countries  
represented by on-site attendees):

---

*Zimbabwe, South Africa, Lesotho, Eswatini  
(formerly Swaziland), Botswana, Namibia,  
Ireland, United Arab Emirates (Dubai), Germany*





## CONFERENCE SESSIONS

### *Summary*

The 2025 ICLA Construction Law Conference delivered a dynamic and thought-provoking two-day programme centred around the theme of ***“Revealing the Foundation of Modern Project Success: Contracts as Tools for Modernising Collaboration and Resolving Conflict.”***

The event attracted delegates from across the globe, including participants from Zimbabwe, South Africa, Lesotho, Zambia, Eswatini, Botswana, Namibia, Ireland, the United Arab Emirates and Germany. Attendees represented a cross-section of legal professionals, engineers, construction managers, built environment specialists, academics and policymakers.

The programme was facilitated by Zama Ngcobo, an award-winning South African-qualified construction law and dispute resolution specialist with extensive experience in local and international projects.





## DAY ONE, *Highlights*

The first day of the conference commenced with a keynote address by Dr Wolfgang Breyer, Chairman of the International Construction Law Association (ICLA). In his opening remarks, Dr Breyer articulated the ICLA's global mission to serve as a cross-border knowledge exchange platform for construction law professionals across jurisdictions.

He emphasised the organisation's role in harmonising construction law terms, addressing the legal complexities associated with large-scale infrastructure projects and optimising procurement regulations to mitigate disputes and enhance delivery.





## Plenary Session 1:

## Overview of the Construction Industry, Legal Landscape and Delivery Systems

This opening session established the thematic foundation of the conference by examining the evolving landscape of construction law and infrastructure delivery. Presentations by Prof Aymen Masadeh, Dr Ron Watermeyer and Mr Bongani Dladla offered diverse and complementary perspectives, encompassing international legal adaptation, governance frameworks and procurement reform.

### KEY INSIGHTS:

#### Contextualising International Contracts, Prof. Aymen Masadeh



Prof Masadeh stressed the need to adapt standard international contracts, such as FIDIC, to local legal systems. He highlighted how domestic courts often interpret arbitration clauses differently and warned against a one-size-fits-all approach. He also discussed the implications of public order principles, noting that in jurisdictions such as the UAE, breaches of public policy can void contracts or arbitral awards.

#### Governance and Holistic Legal Thinking, Dr. Ron Watermeyer



Dr Watermeyer advocated for a shift away from fragmented legal compliance towards integrated, governance-led project delivery. Challenging the outdated “master-servant” model in contract roles, he proposed a collaborative approach grounded in mutual expertise. Drawing on the ISO 6018 standard and the work of Martin Barnes, he stated:

*“Construction law is not only about contracts — we need to see it holistically.”*

#### Reforming South Africa's Procurement System, Mr. Bongani Dladla



Mr Dladla critiqued South Africa's compliance-heavy procurement system, which, he argued, fosters inefficiency and weak accountability. Citing Auditor-General findings that over 90% of projects audited failed to meet performance expectations, he called for a shift towards value-based procurement, risk-balanced contracts and capacity development. He also outlined CIDB's efforts to align procurement frameworks with the National Infrastructure Plan 2050 and global best practice.

### OVERALL REFLECTION

The session emphasised the need for contextualised, collaborative and governance-oriented legal frameworks in construction. Speakers collectively called for a paradigm shift from rigid compliance to strategic legal mechanisms that reflect local realities, empower professionals, and improve infrastructure outcomes.



## Session 2:

## Navigating Standard Forms of Construction Contracts Across Jurisdictions

This session featured a dynamic panel discussion facilitated by Prof Abimbola Windapo, drawing together perspectives from law, engineering and project management. The session explored the use of standard form contracts across different jurisdictions and the challenges of applying these frameworks in real-world project environments. Contributors included Fabio Companie, Tamlynn Caelers-Avis, Dr Wolfgang Breyer, Mile Sofijanic, Theunis van Zyl and Bongani Dladla.

### KEY INSIGHTS:

**Mile Sofijanic** opened the session with a critique of how contract decisions are often taken in isolation, with lawyers and procurement officers prioritising client protection at the expense of the project. He likened this to a family dynamic where everyone protects their own interests but neglects the “child” – the project. He called for early collaboration between legal, engineering and procurement teams.

**Tamlynn Caelers-Avis**, from a legal perspective, stressed the consequences of a disconnect between lawyers, engineers and clients during contract drafting. She warned that poor alignment and lack of clarity often result in disputes, noting that contracts should proactively govern risk, and not serve as reactive mechanisms once issues arise.

**Theunis van Zyl**, a contributor to the upcoming GCC 2025, underscored the need for contracts to reflect the South African context, including challenges like labour strikes. He highlighted new features in the GCC 2025, such as amicable settlement mechanisms and urged the inclusion of legal training in the development of young engineers.

**Bongani Dladla** cautioned against excessive amendments to standard contracts, which can render them legally unstable. He highlighted the need to build contract literacy among SMMEs – many of whom price incorrectly due to poor understanding of contractual obligations. He also advocated for client education in contract selection and risk alignment.

**Fabio Companie** criticised the “copy-and-paste” culture in contract drafting. He urged practitioners to adhere to established CIDB procurement frameworks and stressed that contracts must be collaboratively drafted to serve as the foundation for successful project execution.

**Dr Wolfgang Breyer** offered an international lens, explaining that many standard contracts assume ideal conditions which rarely exist. He stressed the need for more robust provisions around claim evaluation and financial consequences — areas often overlooked.





## OVERALL TAKEAWAY

The panel collectively argued that standard form contracts are only as effective as the preparation, understanding and collaboration that underpin them. The session called for a cultural shift — from fragmented, compliance-driven drafting to an integrated project mindset that values shared responsibility and clear legal foundations.

## Session 3A: | *Digital Evolution of the Construction Industry – Technology Integration in Construction Law*



**Prof Abimbola Windapo** opened this session by outlining key performance challenges in the construction industry, including low on-site productivity, persistent stakeholder conflict and inadequate regulatory compliance. She identified limited adoption of digital tools — such as Building Information Modelling (BIM), Geographic Information Systems (GIS) and Business Intelligence Applications (BIA) — as a missed opportunity, particularly in the legal and contract management dimensions of construction.

A significant issue she raised was the ongoing reliance on paper-based contracts. These are prone to human error, are difficult to update or track, and introduce substantial legal risk during execution.

To illustrate the potential of digital transformation, Prof Windapo showcased a video on emerging technologies, including AI and GIS, demonstrating how these can be applied throughout the project lifecycle.

### *Two Key Focus Areas:*

#### **CONTRACT MANAGEMENT SOFTWARE**

These tools offer automation across the contract lifecycle, improving legal accuracy, version control and execution efficiency.

#### **DIGITAL DISPUTE RESOLUTION PLATFORMS**

Popularised during the COVID-19 pandemic, these platforms provide cost-effective, remote mechanisms for addressing disputes, minimising delay and reducing legal costs.

Prof Windapo concluded by calling for a modernised legal framework that actively embraces innovation. She encouraged consultants, engineers and legal professionals to co-develop fit-for-purpose digital tools and proposed integrated academic programmes that blend legal and technological education in construction law.



## Session 3B: Integrated Dispute Avoidance Mechanisms and Mediation Techniques in Construction Projects



**Prof Stefan Leupertz** opened the session by defining project success as the achievement of a project's core objectives through the alignment of all stakeholders' actions. He emphasised that risk is significantly reduced when parties work towards the overall success of the project rather than pursuing individual interests.

Central to his presentation was the role of mediation as a proactive and constructive dispute resolution method. He noted that mediation should not be about assigning blame, but rather finding sustainable, practical solutions that serve all parties.

***"In mediation, the only way to success is looking at the world through the other party's eyes."***

Prof Leupertz argued that many disputes stem not from dramatic conflicts, but from poorly defined contracts, vague scopes of work and inadequate planning. He criticised contracts that are overloaded with clauses yet fail to provide the clarity needed for real-world execution.

### DISPUTE AVOIDANCE MECHANISMS HIGHLIGHTED:

Building collaborative project teams

Applying advanced risk and performance management tools

Using flexible and responsive planning processes

Ensuring early involvement of the contract team

Creating simple, fair and understandable contracts

He stressed that early issue identification and tiered escalation processes can prevent disputes from growing into full-blown legal conflicts. Communication, transparency and shared responsibility must be embedded from the outset.

### OVERALL REFLECTION

This session reinforced that dispute avoidance is not merely a legal function, but a cultural imperative grounded in cooperation. Prof Leupertz's message was clear: **Effective project delivery depends on a shift from adversarial mindsets to proactive, relationship-based governance. A well-aligned team, empowered by simple and clear contracts, can reduce legal conflict and improve both project performance and value delivery.**





## Plenary Session 4:

## Conflict Resolution in Construction – Real-Life Lessons from the Field

Chair: Isaac Nkosi (SACPCMP) Panellists: Stefan Brill (HKA Global), Timothy Harwin (HKA Global), Thobani Mnyandu (MNS Attorneys), John Delaney (RIMKUS)

**This session provided an in-depth exploration of construction disputes through empirical data, real-world case studies and practical reflections. While referencing international frameworks such as FIDIC and NEC, the discussion strongly emphasised the African context, where governance challenges and systemic weaknesses often heighten project risk.**

### KEY INSIGHTS AND THEMES



#### Global Patterns, African Realities

Drawing on the Crux Insights report, Stefan Brill outlined common global causes of disputes — scope changes, late design submissions and underinvestment in planning. He warned that these issues manifest more severely in Africa:

**76%**

of African projects experience time overruns (vs 66% globally)

**60%**

face cost-related claims (vs 32% globally)

He stressed that cutting early-stage design costs often leads to greater losses and identified weak oversight, cash flow challenges, incomplete designs and corruption as key regional concerns. ***“Many stakeholders try to avoid or reduce design costs... and that bites the project in the backside further on.”***

## FIDIC in the Face of Strikes



Timothy Harwin presented a South African power project case where a national strike raised contentious questions around force majeure. The result was a costly three-year delay and R250 million in awarded compensation.

***“People don’t want to decide if it was a force majeure or not... and the issue lingers over the project.”*** He recommended tailoring FIDIC contracts to include special conditions addressing foreseeable risks like labour unrest.

## Deemed Acceptance and NEC Pitfalls



Stefan Brill also highlighted the danger of NEC’s “deemed acceptance” clauses. In one case, a project’s costs escalated from R200 million to R6 billion after a project manager ignored notices and was later found to have accepted bribes. This underscored how NEC’s strengths — simplicity and speed — can become weaknesses without active and honest management.

## Time-Bar Clauses in GCC Contracts



Thobani Mnyandu discussed a railway project in which a contractor failed to comply with time-bar provisions under the 2015 General Conditions of Contract (GCC). Though some claims were accepted, others were rejected due to procedural delays. The adjudicator upheld the time-bar, illustrating how strict adherence to contract timelines is essential.

## Miscommunication and Contractual Complexity



John Delaney shared a case involving a Dublin-based office development with an ambitious gain-share contract. When the administrator became ill, no one could interpret the contract correctly due to its complexity.

***“Only two of the 12 work packages could be reviewed in the hearing due to confusion.”*** He cautioned against overly complicated contractual language and emphasised the need for shared understanding from the outset.

## OVERALL REFLECTION

The session revealed that while the causes of disputes may be global, their resolution must be localised. Whether due to poor planning, ambiguous clauses, or failed oversight, panellists stressed the importance of clarity, competence and contract literacy. Proactive contract management and contextual awareness were highlighted as critical tools for minimising risk and ensuring successful project outcomes.





---

**DAY TWO,**  
*Highlights*

---





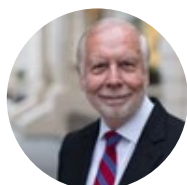
## Session 5: | **Panel Discussion – Global Perspectives on Dispute Avoidance and Resolution**

Moderator: John Bishop (ICLA Board Member) Panellists: John Bishop, Adv Aldridge Mark Fisher, Dr Msizi Myeza

**This session examined global and local approaches to dispute avoidance and resolution in construction. It focused on practical mechanisms, ethical considerations and the systemic reforms needed to ensure infrastructure project sustainability, especially in the public sector.**

### KEY INSIGHTS AND THEMES

#### Dispute Boards as Proactive Safeguards



John Bishop championed the role of Dispute Adjudication and Avoidance Boards (DAABs), particularly in large infrastructure projects. He highlighted evidence from projects such as the Channel Tunnel, where active dispute boards reduced major disputes by up to 90%.

***“Dispute boards don’t just resolve issues — they keep projects alive.”***

He emphasised the need to appoint culturally aware, multidisciplinary boards before conflict arises. He also argued for the contractual inclusion of mediation to reduce reputational risk and facilitate engagement before arbitration is necessary.

***“It’s never too late for mediation — but the earlier, the better.”***

To address delays and inefficiencies in arbitration, he cited recommendations from the GAR/LCIA, including:

**Early involvement of decision-makers**

**Sanctions for tactical delay**

**Narrowing scope by defining core issues**

He concluded with a call for localised arbitration venues, adaptive procedures and alignment between contract design and dispute strategy.

#### Dispute Resolution in South Africa



Adv Aldridge Mark Fisher analysed systemic barriers to efficient dispute resolution in South Africa, including high costs, procedural delays and inconsistent enforcement. His recommendations included:

**Clearer drafting of contracts**

**Professional development for adjudicators and mediators**





## Greater awareness and use of alternative dispute resolution (ADR) mechanisms

## Leveraging digital tools to streamline and reduce the cost of proceedings

He also noted the impact of contract choice (e.g. FIDIC vs NEC) on dispute resolution pathways.

*“Dispute resolution isn’t just about solving conflicts — it’s about ensuring project sustainability.”*

## Professional Ethics and Public Protection



Dr Msizi Myeza addressed ethical concerns in public infrastructure, including repeated restatement of consulting fees post-tender. He introduced the Council for the Built Environment’s new Ombud Office as a mechanism to address professional misconduct and protect the public interest.

*“A delay in a clinic due to unresolved disputes affects the community, not just the balance sheet.”*

He advocated for:

**Mandatory oversight by qualified practitioners**

**Empowerment of women and youth professionals**

**Ethical engineering and inclusive practice**

**Accelerated professional registration and skills development**

## AUDIENCE ENGAGEMENT

A delegate asked about cultural sensitivity in contracts and the government’s role in dispute prevention. Bishop responded by recommending culturally diverse dispute boards and policy mechanisms to promote representation.

## OVERALL REFLECTION

This session painted a comprehensive picture of dispute resolution across contexts. Preventative tools such as DAABs, contract clarity, ethical practice, and mediation have been repeatedly cited as essential for legal effectiveness and developmental impact.

*“Effective dispute resolution is not just a legal necessity — it’s a developmental imperative for sustainable infrastructure delivery.”*



## Session 6: | Global Best Practices for Collaborative Contracts

Speakers: Dr Wolfgang Breyer, Prof Stefan Leupertz, Mile Sofijanic

This session explored the future of construction contracting by challenging adversarial norms and advocating for collaborative, multi-party contract models. Drawing from global case studies and the South African context, the panellists made a compelling case that contracts should enable cooperation, not merely allocate risk.

### KEY TAKEAWAYS AND THEMES

#### Reframing Contracts: From Bilateral to Collaborative



Dr Wolfgang Breyer unpacked the structural limitations of traditional bilateral contracts. He argued that by focusing on risk transfer, many standard forms inadvertently promote conflict.

*“By signing a contract, we often pre-program disputes. Collaboration must be enabled by design, not just hoped for.”*

He highlighted the growing use of **Integrated Project Alliances (IPAs)** in Germany, particularly in public infrastructure. These models:

**Align incentives across project actors**

**Encourage joint problem-solving and value engineering**

**Promote early-stage collaboration**

**Reduce contract fragmentation and redundancy**

#### Projects Are Not Linear – Embracing Complexity



Prof Stefan Leupertz, a former judge and mediator, stressed that real construction projects do not follow linear paths.

*“You don’t manage construction with just a contract. You manage people, uncertainty and evolving ideas.”*

He proposed a dynamic systems approach: **“3 Dimensions, 2 Levels”**

**Ideational clarity: Why are we building this?**

**Productive realism: Do we have the capacity to deliver it?**

**Legal feasibility: Are the contracts and regulations aligned?**





He also stressed the need to design contracts that provide “corridors of flexibility” rather than rigid instruction sets, particularly for complex, multi-stakeholder projects.

## South Africa’s Cultural Edge in Collaboration



Mile Sofijanic grounded the discussion in South African socio-cultural values, advocating for Ubuntu-driven collaboration. He used the **Springboks’ World Cup** strategy as a metaphor for high-performing project teams:

### Shared vision

### Defined and empowered roles

### Cultural cohesion

*“If you connect with people, you are likely to succeed. If not, no contract will save you.”*

He introduced ECS’s Collaborative Project Strategies model, which includes:

### Pre-contract alignment on scope, budget and values

### Early contractor involvement (ECI)

### Joint risk identification

### Storytelling and culturally contextualised engagement

## OVERALL TAKEAWAY

The session underscored that successful construction delivery in complex environments requires more than goodwill. It demands contractual structures, cultural alignment and early-stage engagement strategies that support sustained collaboration.

*“Dispute prevention starts with alignment, not arbitration.”*





## Session 7:

## Delay and Disruption – Navigating and Dealing with Disruption in Construction Projects

Speakers: John Delaney, Timothy Harwin

This highly practical session unpacked the complex but often misunderstood concepts of delay and disruption in construction projects — two critical issues that significantly impact timelines, budgets and stakeholder relationships. The speakers drew on global standards, real-world case studies and best practice tools for analysing, mitigating and resolving delay-related claims.

### KEY TAKEAWAYS AND INSIGHTS

#### Understanding the Core Concepts



John Delaney clarified the difference between delay and disruption:

**Delay concerns missed milestones and time extensions.**

**Disruption affects productivity and efficiency, often without changing the project's completion date.**

*“Delay is when something takes longer, while disruption is when something produces less.”*

He noted that although the concepts are distinct, they often occur together, and confusion between the two can derail claims or defences.

#### Why Productivity Matters (and Is Often Overlooked)

Despite being central to project success, productivity is rarely measured or documented systematically. This gap complicates both improvement efforts and the substantiation of disruption claims. **To establish a credible claim, parties must:**

**Prove a loss in productivity**

**Demonstrate who caused it**

**Quantify the financial impact**

Delaney introduced the Measured Mile Method — a comparative analysis of “unhindered” versus “hindered” work periods — commonly accepted in international dispute forums.

**THE GOLDEN RULE: RECORDS, RECORDS, RECORDS**





## Delaney outlined six elements of quality records that are essential for delay and disruption analysis:

### *When:*

Date and time

### *Where:*

Location on site

### *What:*

Scope and activities

### *Who:*

Personnel involved

### *Why:*

Root cause of delay/disruption

### *Which:*

Impacted resources

*“Records are only useful if they contain the right information. Quality matters as much as quantity.”*

He emphasised that consistent, real-time documentation — not post-dispute recollections — is the foundation for credible claims.

## Making Delay Analysis Less of a “Dark Art”



Timothy Harwin addressed misconceptions about delay analysis being overly technical or obscure. He stressed that while modelling tools are helpful, the core determinant of success remains simple: **EVIDENCE**

Using a light-hearted analogy involving being late for work, he demonstrated:

**The difference between prospective and retrospective analysis**

**How entitlement is linked to contractual obligations**

**The importance of hindsight and foresight in apportioning risk**

*“Facts are king. Whether looking forward or backwards — if it’s not recorded, it didn’t happen.”*

Harwin also referenced the Society of Construction Law Delay and Disruption Protocol, which outlines six recognised delay analysis methods and the conditions for using them.

## OVERALL TAKEAWAY

This session presented a compelling case for improved data discipline, deeper planning and a proactive approach to productivity and project risk. As projects grow in complexity, the ability to accurately document and assess delay and disruption is no longer optional — it is vital for profitability, credibility and dispute avoidance.

*“Delays are inevitable. But disputes are not — if you’re prepared.”*



## Session 8: | Future Directions in Construction Law

Chair: Dr Wolfgang Breyer | Panellists: Prof Stefan Leupertz, Dr Ron Watermeyer, Prof Abimbola Windapo, Isaac Nkosi

**This closing panel session examined how construction law must evolve to meet future industry demands. It called for structural reform, interdisciplinary education and culturally grounded legal frameworks to support more resilient, efficient and inclusive infrastructure delivery.**

### KEY INSIGHTS AND THEMES

#### Systems Thinking and Structural Reform



Prof Stefan Leupertz advocated for systemic legal and institutional reform. He stressed the importance of designing frameworks that enable collaboration and productivity, especially as the construction industry responds to global sustainability and decarbonisation pressures.

***“We need structures that produce efficiency and enable us to meet the challenges ahead.”***

#### Beyond the Letter of the Law



Dr Wolfgang Breyer cautioned against a purely legalistic view of construction law. He highlighted the need for trust-based frameworks that empower people and foster shared responsibility.

***“It’s not about the law, but about people who know what they’re doing.”***

He suggested Ubuntu — a philosophy of mutual respect and shared humanity — as a guiding principle for modern contract design.

#### Delivering Value for Money



Dr Ron Watermeyer challenged entrenched, compliance-driven procurement systems. He proposed target-cost contracts, early contractor involvement and long-term partnership models to align delivery with developmental outcomes.

***“We must move from a hit-and-run project culture to one based on continuity and trust.”***





## Complexity and Contractual Literacy



Prof Abimbola Windapo addressed the growing complexity of modern construction projects, which are often fragmented, multi-disciplinary and fast-paced. She advocated for university-level construction law education that bridges legal and built environment disciplines.

***“Many construction professionals populate contract data without understanding its legal consequences.”***

## Institutional Support and Localisation



Isaac Nkosi stressed the importance of localising legal education and reform. He called for collaboration between the ICLA and South African professional councils, such as the SACPCMP, to embed legal awareness into mainstream construction practice.

***“Too often we copy-paste contracts that fail to reflect local realities. That’s where many of our disputes start.”***

## AUDIENCE DISCUSSION

*Topics raised by delegates included:*

The lack of intergenerational skills transfer

Contracts used punitively rather than as coordination tools

The exclusion of architects from legal reform dialogues

The potential role of AI and digital platforms in improving productivity and dispute management

The need to educate clients on selecting appropriate contract forms

## CLOSING REMARKS

Dr Breyer closed the session by reaffirming the need for values-driven, collaborative construction practices.

***“Contracts are just the rules for Ubuntu. Let’s design them with that spirit in mind.”***

He encouraged regulators, architects, students and public officials alike to play an active role in shaping the future of construction law in South Africa and globally.





# CONCLUS





## *Conclusion*

The 2025 ICLA Construction Law Conference in Cape Town brought together academics, practitioners, policymakers and industry leaders from across the globe. Through keynote addresses, case studies and technical discussions, the conference emphasised the need for context-specific, collaborative and outcome-driven legal frameworks.

Key themes included proactive dispute avoidance, digital integration, procurement reform and the transformative potential of inclusive partnerships rooted in cultural values such as Ubuntu. Across the sessions, it became clear that construction law must do more than resolve disputes — it must actively enable sustainable infrastructure delivery through clear, adaptable contracts, robust governance systems and interdisciplinary legal education.

The shared insights throughout the two-day programme reaffirmed that legal clarity, ethical conduct and trust-based collaboration are critical to success in an increasingly complex construction environment. As South Africa and the broader region face mounting infrastructure demands, this conference has laid the foundation for a more resilient, equitable and modernised approach to construction law — locally and globally.

