



INDEPENDENT MEDIATION
SERVICE OF SOUTH AFRICA

The IMSSA Review

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Introduction

Over the past 17 months, IMSSA has continued to experience growth. Companies and trade unions have used IMSSA's services more frequently. IMSSA has employed more staff. The Johannesburg office has expanded its premises and IMSSA has opened a Durban office. In particular, there has been a substantial increase in the demand for the arbitration service.

After extensive debate within its structures, IMSSA took a decision to offer its services in the field of community dispute resolution.

The mediation and arbitration panels have increased. A panel of relationship building initiative facilitators has been established. There are plans to establish a balloting panel.

These developments signal a consolidation by IMSSA of its place as the only significant alternative dispute resolution agency in the labour relations field in the country. They herald a confidence to move forward into new and challenging fields such as community dispute resolution.

The following figures reflect the extent to which IMSSA's mediation and arbitration services have been used over the past seven years.

Date	Mediations	Arbitrations
1984	39	5
1985	60	24
1986	139	73
1987	199	162
1988	313	194
1989	475	212
1990	580	344

Arbitration

Company and trade union use of arbitration increased by 62% in 1990. Increased use continues in 1991. Thirty-two new arbitrators were trained by IMSSA and placed on the arbitration panel in 1990. Once again Richard Bloch, a doyen of US Labour arbitration, assisted in the training.

Arbitration is a process in which the parties to a dispute jointly ask an independent third party to hear their respective cases and then to make an award which they undertake in advance to accept as final and binding upon them.

In the February 1990 Review, we analysed why IMSSA's arbitration service had not grown at a rate commensurate with expectations. The increase in resort to IMSSA arbitration over the past 17 months suggests that whatever difficulties existed they have now been largely overcome.

We cited, for example, ignorance of how arbitrators decide as a factor. IMSSA has now published a comprehensive Digest of its awards in a form accessible to users. Selected awards are also published in the Industrial Law Journal.



Copies of the IMSSA Arbitration Digest may be ordered from:
IMSSA ARBITRATION DIGEST
Labour Law Unit, University of Cape Town
Private Bag
7700 RONDEBOSCH

IMSSA has also conducted training courses for a number of unions and companies. The training focused on the advantages of using arbitration as well as developing skills in preparing for and presenting cases at arbitration hearings.

There is no doubt that IMSSA arbitrations are quick (average duration 1.71 days) and inexpensive (average total cost R2 085). These too are factors which, when they become known, have persuaded parties of the value of arbitration.

The vast majority of cases referred to arbitration have concerned the determination of rights disputes in the area of discipline and termination of employment. These represented some 90% of all cases heard and involved questions of individual and collective dismissal and retrenchment. Disputes over the dismissal of individuals represented more than 70% of cases heard.

Parties have however used arbitration increasingly in interest matters such as disputes over wages and conditions of employment, discrimination, bargaining units, provident fund and job grading issues. These cases represented 10% of all cases heard.

Hybrid dispute resolution processes such as med/arb, arb/med, last offer arbitration and advisory mediation have also found favour. We predict that as parties become more confident in the use of basic mediation and arbitration they will think more creatively about using these hybrids in an endeavour to fashion mechanisms appropriate to the circumstances of particular disputes.

One quarter of all arbitrations in 1990 took place in the retail sector. Most involved cases of individual dismissal. This sector was followed closely by the metal sector and then by food, mining, chemical and transport respectively. Many of the arbitrations in the transport sector took place between the recently privatised TRANSNET, and the various unions representing its employees. The use of arbitrators in this sector was mooted in the settlement through IMSSA mediation of the major transport services strike in 1990. The following figures illustrate the incidence of arbitration by sector in 1990:

1. Retail	25%
2. Metal	18%
3. Food	13%
4. Chemical	10%
5. Mining	9%
6. Transport	7%
7. Textile	4%
8. Construction	4%
9. Paper and Furniture	3%
10. Hotel, Restaurant, Clubs & Liquor	3%
11. Media	1%
12. Health and Education	1%
13. Municipal	1%
14. Other	1%
	100%



Domestic workers, health workers and public sector unions have begun to make use of IMSSA arbitration. We see the public sector as a growing source of demand for IMSSA's services.

The Transvaal continues to be the province in which most arbitrations occur. However, with the opening of an IMSSA office in Durban in November and similar offices in Port Elizabeth and Cape Town under discussion, we anticipate that arbitrations will increase in the other regions. We illustrate the number of arbitrations that took place in the different regions in 1990:

Transvaal	227
Natal	46
Western Cape	42
Eastern Cape	25
Orange Free State	4
	344

To guarantee professional standards in a growing field, the IMSSA Board has adopted a Code of Professional Responsibility setting ethical standards which will apply to all members of the IMSSA arbitration panel.

Mediation

Mediations increased twenty-five percent in 1990. With the assistance of Tony Shepherd from the UK based Advisory Conciliation and Arbitration Service (ACAS), Charles Nupen trained thirty-four new mediators who were selected for admission to the IMSSA mediation panel. These mediators are drawn from all Provinces and various professions including psychology, industrial relations, the ministry and law. In an effort to redress the racial and gender imbalances on the panels particular attention was paid to training black and women mediators.

Mediation is a voluntary process in which the services of an acceptable third party are used in a dispute as a means of helping the disputing parties to arrive at an agreed solution.

Eighty-five percent of all mediations in 1990 concerned disputes of interest, in particular disputes over wages and conditions of employment. It was a common experience in 1990 that parties came to mediation before bargaining through the issues to genuine deadlock. This trend appears to be changing in 1991. Parties appear to be using the process more judiciously and more often at the point of genuine breakdown in the negotiations.

Other conflicts of interest which came to mediation were disputes over recognition, bargaining units, discrimination, bargaining levels, parental rights and job-grading. The following Figure illustrates by percentage the issues that most commonly required mediation.



1. Wages and Conditions of Service	74%
2. Dismissals	8%
3. Conditions of Service	7%
4. Redundancy and Retrenchment	4%
5. Recognition	3%
6. Disciplinary Matters	2%
7. Grievances	1%
8. Bargaining Units/Levels	1%
	100%

Some fifteen percent of all mediations in 1990 addressed disputes of right including both individual and collective discipline, dismissal and retrenchment cases, as well as contract interpretation issues.

The food sector made more use of mediation in 1990 than any other. This sector was followed by the chemical, retail, metal, transport, mining, construction and paper sectors in that order. Mediations in the transport sector tended to involve TRANSNET, as was the case in arbitration; mediations in the paper sector tended to involve newspaper producers rather than paper pulp manufacturers. Mediations in the clothing and textile sectors took place at Industrial Council level and 1990 saw the entry of Health, Banking and Education sectors to the mediation process. Private clinics, hospitals and health workers' unions made significantly greater use in 1990 than before.

1. Food	21%
2. Chemical	17%
3. Retail	14%
4. Metal and Motor	10%
5. Transport	7%
6. Mining	6%
7. Construction	6%
8. Paper and Furniture	6%
9. Clothing and Textile	4%
10. Hotel, Restaurant, Clubs & Liquor	3%
11. Media	2%
12. Health and Education	2%
13. Farming	1%
14. Banking and Insurance	1%
	100%

Relationship Building Initiatives

IMSSA has conducted four relationship building initiatives since January 1990. These have all taken the form of relationship by objectives programmes. These RBOs have taken place in the food, mining and transport industries.

The RBOs are by definition an intensive intervention, and IMSSA expects to do relatively few each year. Three further RBOs are currently in the advanced planning stage.



Generally parties have reported an improved level of communication, trust and mutual respect in their relationship following an RBO. They report too that there is a greater understanding of each others interests and that communication at all levels in their relationship has improved.

Traditional adversarial relations characterised by frequent bouts of industrial conflict have in most cases changed and the relationship post RBO has tended to be characterised more by consensus decision-making based on greater worker participation and increased consultation.

Apprehension has been expressed in some quarters about the RBO concept. Some unions have suggested that such a programme could undermine their independence and lead to cooption.

Some companies, on the other hand, have seen the RBO as a mechanism to eradicate conflict from the workplace. Neither perspective is in our view accurate.

The RBO exercise is based on the premise that conflicting interests are inherent in the relationship between employee and employer.

How the parties manage those interests and the conflicts that inevitably result from time to time determines the relationship and how the parties interests are advanced within it.

During the period under review Charles Nupen trained facilitators to conduct these programmes from among the ranks of IMSSA mediators around the country.

IMSSA has established a relationship building initiative panel comprising mediators who are competent to lead and participate in relationship building exercises.

Balloting

IMSSA has supervised twenty-six ballots during the period under review. A balloteer training workshop was held in November 1990 and a sub-committee of the IMSSA Board has recommended that a panel of balloteers be established. A comprehensive set of guidelines for the proper conduct of ballots has been formulated and will in future provide the basis upon which IMSSA conducts its ballots.

The two most prominent examples of IMSSA balloting were strike ballots and the verification of trade union membership.

Community Mediation

Since mid 1990 IMSSA has had a limited engagement in the arena of community and political conflict resolution.

We have trained IMSSA mediators in the skills of community mediation and have conducted, with the assistance of Dick Salem, an experienced community mediator, a considerable number of negotiation and community mediation skills workshops with professional organisations like Planact and the Legal Resources Centre and with community leaders. Generally the response to this training has been extremely positive.

We have also mediated a limited number of community disputes including a dispute involving prisoners on death row, disputes with a community and workplace focus, and a schools dispute. More recently IMSSA has been requested to mediate between political organisations in one of South Africa's black communities.



We refer to our involvement in a recent peace initiative involving the ANC, the PAC, and the Inkatha Freedom Party, the Civic and Residents Associations and other groupings from Thokoza a township on the East Rand outside Johannesburg, and Phola Park, an adjacent squatter camp.

Thokoza has been the sight of perhaps the bloodiest and most intense political conflict of any community in South Africa. Literally scores of residents in Thokoza and the adjacent Phola Park have lost their lives.

In addition the Thokoza community has been locked in dispute with the provincial and local authorities regarding non-payment of arrear service charges. The central legacy of this dispute is that the community has been without electricity for several months.

Against this background IMSSA has at the request of political and civic organisations intervened in a mediatory role and has more recently chaired and facilitated a peace conference. Of interest is the role that the Alberton Industries Association played in facilitating these events, and it raises interesting questions about the role of business in addressing community and political conflict. The parties have reached agreement on a number of issues relating to the service boycott, political tolerance, the education crisis and relations between residents of Phola Park and the hostels in Thokoza.

While we recognise that initiatives of this kind are fragile and require constant monitoring and support they are nevertheless encouraging and a significant sign of hope. This is particularly so because a forum was provided where representative organisations in the community could debate out their problems and forge agreements at a grassroots level.

We believe that the Thokoza initiative could serve as a model to other communities similarly beset by conflict.

Education:

In April 1991, Karen Miedzinski commenced employment as IMSSA's education and research coordinator. Her appointment followed the adoption by the IMSSA Board of an education and resource strategy which will see a comprehensive development of all IMSSA educational initiatives involving expenditure of some R500 000.

IMSSA will hold 16 regional refresher workshops in 1991 directed at enhancing the skills of its panelists. Already this year Mark Anstey, Director of the University of Port Elizabeth Industrial Relations Unit, has conducted negotiation skills training for IMSSA mediators and John Brand has conducted workshops to enhance arbitrators skills in narrowing the issues to cut down on arbitration time.

The IMSSA National Conference, IMSSA's premier internal event, takes place over three days in June. One hundred and fifty delegates comprising the body of IMSSA panelists are expected to attend to hear leading employers and trade unionists debate the future of industrial relations in South Africa. Dr Frederik Van Zyl Slabbert and Eileen Hoffman, Special Advisor to the Deputy Director, Federal Mediation Conciliation Service USA, will deliver key note addresses. Slabbert will talk on "Managing the Transition to Democracy". Hoffman, one of the most experienced mediators in the US, will deal with new initiatives in US dispute resolution.

The programme includes a range of workshops aimed at skills development, including:



Peace Makers in Political Conflict;
Arb-Med: how it works and why;
Wage Arbitration: what criteria?
Getting Behind the Positions and Developing Options: the value of
interest-based bargaining;
The Do's and Don't's of Balloting in Plant;
A Comprehensive Guide to Expediting Arbitration: pulling it together;
Breaking the Impasse - the mediator's critical challenge.

The conference, the first in which IMSSA mediators and arbitrators will meet in one forum, promises to be an exciting event.

During 1990, IMSSA conducted several training seminars for COSATU and NACTU unions, and employers. Education directed at our users has continued in 1991.

Several large companies have contracted with IMSSA for arbitration training and a general seminar for employers was run in the Western Cape.

IMSSA conducted the mediation and arbitration training components at the COSATU Summer School in January 1991. It will offer the same components at the COSATU Winter School. In addition, IMSSA has run training seminars for several individual unions.

IMSSA user training has enormous potential for growth and will figure as a key component of its education strategy in the future.

Staff

During the period under review, Felicity Steadman, assistant to the Director, left IMSSA to have her second child. She remains on the IMSSA mediation and arbitration panels.

Bruce Robertson assumed the position of Natal Regional Director and has on his staff Sian Jones and Nandi Tyamzashe.

The Johannesburg office has boosted its staff complement with the employment of Kim Kennedy as Finance and Admin Systems Manager, Kholisa Xinindlu as receptionist, Charmaine Sequeira and Gayle Sloane in the Client Service Department, Selina Nqubuka as Admin Clerk and Housekeeper, and Helen Gorman as Junior Bookkeeper.

IMSSA Staff

Charles Nupen	Director
Dren Nupen	Manager
Kim Kennedy	Finance & Admin Systems Manager
Karen Miedzinski	Research & Education Co-ordinator
Elizabeth Storey	Secretary
Kholisa Xinindlu	Receptionist
Bontle Mpakanyane	Client Services
Gayle Sloan	Client Services
Zi Channing	Client Services
Charmaine Sequeira	Client Services
Kate Rivers	Senior Bookkeeper
Gail Forman	Bookkeeper's Assistant
Helen Gorman	Junior Bookkeeper
Selina Nqubuka	Admin Assistant & Housekeeper
Bruce Robertson	Natal Regional Director
Sian Jones	Client Service
Nandi Tyamzashe	Client Service



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Prof Clive Thompson	(alternate)
Adv Fikile Bam	Eastern Cape Panel Representative
Mr Mark Anstey	(alternate)
Mr John Radford	Natal Panel Representative
Mr Chris Albertyn	(alternate)
Prof L Douwes Dekker	Technical Expert
Dr F van Zyl Slabbert	Technical Expert
Dr Nthato Motlana	Technical Expert
Mr David Douglas	Technical Expert
Mr Charles Nupen	Director
Mr Bruce Robertson	Natal Regional Director
Ms Drene Nupen	Manager

Panel Update

Arbitrators

Transvaal

Advocate Mark Antrobus
 Professor Dion Basson
 Mr Paul Benjamin
 Mr John Brand
 Professor Martin Brassey
 Advocate Jules Browde, SC
 Professor Edwin Cameron
 Advocate Nazeer Cassim
 Professor Dennis Davis
 Mr Patrick Deale
 Ms Ingrid de Villiers
 Mr Rod Harper
 Mr Theo Heffer
 Mr Barry Jammy
 Dr David John
 Mr Steven Kemp
 Professor Adolph Landman
 Professor Peter le Roux
 Advocate Gilbert Marcus
 Advocate Jan Munnik
 Advocate Mahomed Navsa
 Mr Charles Nupen
 Professor Johan Piron
 Advocate David Pitman
 Advocate Paul Pretorius
 Advocate Elna Revelas
 Ms Kathleen Satchwell
 Advocate Ivor Schwartzmann, SC
 Ms Felicity Steadman
 Mr Jan Stemmet
 Advocate Roland Sutherland
 Advocate Karel Tip
 Advocate Wim Trengove, SC

Mediators

Transvaal

Advocate Mark Antrobus
 Advocate Graham Barlow
 Mr Paul Benjamin
 Mr John Brand
 Professor Martin Brassey
 Mr Azhar Cachalia
 Mr Phiroshaw Camay
 Mr Allan Colam
 Mr Brian Currin
 Mr Graham Damant
 Mr Nick de Villiers
 Mr David Douglas
 Ms Ruth Eastwood
 Ms Brigid Goldberg
 Ms Sara Gon
 Mr Peter Harris
 Professor Nicholas Haysom
 Mr Theo Heffer
 Advocate Reagan Jacobus
 Professor Peter le Roux
 Mr Vusi Masinga
 Ms Fiona McLachlan
 Mr Dunstan Mlambo
 Ms Nomonde Mngqibisa
 Mr Edwin Molahlehi
 Mr Thabo Molewa
 Advocate Kgomo Moroka
 Mr Deon Nel
 Mr Charles Nupen
 Ms Drene Nupen
 Professor Mark Orkin
 Ms Thandi Orleyn
 Professor Johan Piron



Transvaal cont.

Mr Tim Trollip
Mr Raymond Tucker
Mr St Elmo Wilken
Advocate Nigel Willis

Orange Free State

Mr Brian Ashmen

Natal

Mr Chris Albertyn
Mr Chris Brunton
Mr Andrew Burnett
Mr Willie Coetzee
Mr Michael Cowling
Mr Graham Giles
Mr Thabani Jali
Mr Chris James
The Hon. Mr Justice R N Leon, QC
Mr Richard Lyster
Mr Mandla Mnchunu
Advocate Chris Nicholson
Mr Martin Oosthuizen
Mr Les Owen
Mr Richard Pemberton
Advocate Maurice Pillemer
Mr Bruce Robertson
Mr Pat Stilwell
Mr Craig Tanner
Advocate Gardner van Niekerk
Mr Raymond Zondo

Eastern Cape

Mr Chris Baker
Advocate Fikile Bam
Mr Jon Bax
Mr Bashir Hoosain
Mr David Mias
Advocate Lex Mpati
Mr C T Sangoni
Mr Cecil Somyalo
Mr Adriaan van der Walt

Western Cape

Advocate Norman Arendse
Mr Lee Bozalek
Mr Roger Chennells
Ms Sarah Christie
Professor Hugh Corder
Mr Piet Faber

Transvaal cont.

Advocate David Pitman
Mr Clive Plasket
Advocate Paul Pretorius
Ms Helen Seady
The Rev Lebamang Sebidi
Ms Annette Smart
Dr Kevin Solomons
Ms Felicity Steadman
Professor Ian Steadman
Advocate Roland Sutherland
Mr Tim Trollip
Ms Nomali Tshabalala
Mr Basher Vally
Professor Attie van der Merwe
Advocate Hans van der Riet
The Rev Paul Verryin
Mr J D Verster
Mr St Elmo Wilken
Advocate Nigel Willis

Natal

Mr Chris Albertyn
Mr Chris Brunton
Ms Glynis Cocks
Mr Clive Couperthwaite
Mr Michael Cowling
Ms Lisa Dancaster
Mr Jeff Fobb
Ms Leah Gcabashe
Mr Philip Glaser
Mr Karthy Govender
Mr Thabani Jali
Mr Chris James
Mr Richard Lyster
Dr Rob McCann
Mr Mandla Mnchunu
Mr Vincent Mntambo
Mr Inthiran Moodley
Advocate Chris Nicholson
Mr Les Owen
Mr John Radford
Mr Bruce Robertson
Mr Alan Rycroft
Mr Raymond Zondo

Eastern Cape

Mr Mark Anstey
Mr Chris Baker
Advocate Fikile Bam
Mr Jon Bax
Ms Martheanne Finnemore
Mr Jonathan Goldberg
Professor John Hlophle



Western Cape cont.

Mr John Hendry
Mr Barney Jordaan
Mr Steven Kahanovitz
Mr John MacRobert
Mr John Murphy
Mr Hermann Niewoudt
Mr Stefan Raubenheimer
Advocate Merwe Scholtz
Professor Clive Thompson
Mr Neil van Zyl
Mr Bob von Witt

Namibia

Mr Peter Koep

Eastern Cape cont.

Professor Jacques Labuschagne
Ms Madeleine Loyson
Mr Reg Mason
Mr Andile Matshele
Advocate Lex Mpati
Ms Judy Parfitt
Advocate Ronnie Pillay
Professor Roux van der Merwe
Mr Adriaan van der Walt
Mr Peter Williams

Western Cape

Advocate Norman Arendse
Mr Lee Bozalek
Mr Roger Chennells
Ms Sarah Christie
Ms Andy Durbach
Mr John Henry
Professor Kate Jowell
Mr Steven Kahanovitz
Mr William Kerfoot
Advocate Joel Krige
Professor Johann Maree
Ms Shehnaz Meer
Mr Wallace Mgoqi
Mr Ian Newall
Mr Bulelani Ngcuka
Ms Nomonde Ngumane
Mr Hermann Niewoudt
Dr Kate O'Regan
Ms Mary Simons
Professor Blackie Swart
Professor Clive Thompson

RBO Panel

Mr Chris Albertyn
Advocate Fikile Bam
Mr Thabo Molewa
Mr Charles Nupen
Mr John Radford
Ms Felicity Steadman

Mr Mark Anstey
Mr John Brand
Mr Inthirin Moodley
Advocate Paul Pretorius
Mr Bruce Robertson



If you have any information that you would like to share with us and our readers or would like any further information about IMSSA's services, please contact:

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