

**PERCEPTIONS OF PERSONNEL
PRACTITIONERS IN BLOEMFONTEIN
OF THE DISPUTE RESOLUTION MECHANISMS
OF THE LABOUR RELATIONS ACT 66 OF 1995**

DISSERTATION

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Declaration

I, Boikanyo George Prince hereby declare that this study project is my own original work and that all sources have been accurately reported and acknowledged, and that this document has not previously in its entirety or in part been submitted at any university in order to obtain an academic qualification.

GEORGE PRINCE

NOVEMBER 1998

(ii)

Abstract

The workplace in South Africa has been polarised along racial lines, mainly as a result of separatist policies of the past. The resultant social, political, and economic environments created a negative organisational culture generally. This led to a lack of participation and lack of confidence between members of the communities as well as the absence of group identity. The new government has therefore had to embark on a transformation process in which the economic development of the disadvantaged black majority has become a dominant theme of the politically reconstructed South Africa. This has created perceptions that the government favours labour to the detriment of business and that the balance of power has shifted in favour of labour.

The Labour Relations Act 66 of 1995 was passed in September 1995 and became effective on 11 November 1996. One of the objectives of this Act is to provide simple dispute resolution procedures. The centrepiece of the Act is the Commission for Conciliation, Mediation and Arbitration (CCMA). The CCMA and the Labour Court are two dispute resolution institutions.

The research aimed to determine the perceptions of personnel practitioners towards the dispute resolution mechanisms of the Act. The project assessed the perceptions of personnel practitioners in Bloemfontein regarding these dispute resolution mechanisms. The specific mechanisms under the Act are conciliation and arbitration as well as the Labour Court processes.

The research also aimed to determine whether these perceptions differed on the basis of biographical variables such as race, industry, level of management as well as size of the organisation, etc.

(iii)

A non-experimental exploratory, descriptive design was used. The sample population consisted of personnel practitioners in Bloemfontein with at least 2 years' experience as labour relations practitioners. The sampling strategy was convenience sampling. A questionnaire was used to collect data from the respondents on aspects of conciliation, arbitration, the Labour Appeal Court. Descriptive statistics were used to record the perceptions of practitioners regarding the dispute resolution mechanisms.

The findings of the study indicate that perceptions of the sample population are favourable and that there are differences, though not significant, according to industries, level of management and size of organisations, but not necessarily according to race.

The study concludes with recommendations which generally focus on relationship building as a means of reducing and/or eliminating conflict in the workplace. In addition, the workplace needs to be transformed as a means of encouraging the relationship building process. Once this has been achieved, a performance evaluation programme for the CCMA should be put in place to identify any performance deficiencies and the appropriate training interventions should be selected to address the skills shortages of the appointed commissioners. In the event of these not addressing the identified problems, amendments to the Act may be considered and effected and, finally, the parties may contract out of the statutory dispute resolution institutions.

Opsomming

Die werkplek in Suid-Afrika is gepolariseer op grond van ras, hoofsaaklik as gevolg van die apartheidsbeleid van die verlede. Die gevolglike sosiale, politieke en ekonomiese omgewings het 'n negatiewe organisatoriese kultuur in die algemeen geskep. Dit het gelei tot 'n tekort aan deelname en vertroue tussen lede van die gemeenskappe sowel as 'n afwesigheid van groepsidentiteit. Die nuwe regering het dus met 'n transformasieproses begin waarin die ekonomiese ontwikkeling van die benadeelde swart meerderheid 'n dominante tema in die politieke heropbou van Suid-Afrika geword het. Dit het die persepsie geskep dat die regering georganiseerde arbeid begunstig tot die nadeel van besigheid en dat die magsbalans ten gunste van arbeid geswaai het.

Die Wet op Arbeidsverhoudinge Wet 66 van 1995 is in September 1995 goedgekeur en het op 11 November 1996 in werking getree. Een van die oogmerke van die Wet is om 'n eenvoudige geskilbeslegtingsprosedure daar te stel. Die kern van die Wet is die Kommissie vir Versoening, Mediasie en Arbitrasie (KVMA). Die KVMA en die Arbeidshof is twee geskilbeslegtingsinstellings.

Die navorsing het ten doel gehad om vas te stel wat die persepsies van personeelpraktisyns teenoor die geskilbeslegtingsmeganismes van die Wet was. Die projek het die persepsies van personeelpraktisyns in Bloemfontein rakende hierdie geskilbeslegtingsmeganismes geëvalueer. Die spesifieke meganismes wat onder die Wet van toepassing is, is versoening en arbitrasie sowel as die Arbeidshofprosesse.

Die navorsing was ook daarop gemik om vas te stel of hierdie persepsies op grond van biografiese aspekte soos ras, bedryf vlak van bestuur, sowel as grootte van die organisasie ens. verskil.

'n Nie-eksperimentele, ondersoekende, verduidelikende beskrywingsontwerp is gebruik. Die toetspopulasie het bestaan uit personeelpraktisyns in Bloemfontein wat ten minste twee jaar ondervinding as arbeidsverhoudingepraktisyns het. Die toetsstrategie was geriefstoetsing.

'n Vraelys is gebruik om inligting van die respondente oor aspekte van konsiliasie, arbitrasie, die Arbeidsverhof en die Arbeidsappélhof in te samel. Beskrywende statistiek is gebruik om die persepsies van die personeelpraktisyns aangaande die geskilbeslegtingsmeganismes aan te teken.

Die bevindings van hierdie studie het aangedui dat die persepsies van die toetspopulasie gunstig was en dat daar verskille is (alhoewel nie beduidend nie) volgens bedrywe, vlak van bestuur en grootte van organisasies, maar nie noodwendig volgens ras nie.

Die studie sluit af met aanbevelings wat in die algemeen fokus op die bou van verhoudings as 'n wyse om konflik in die werkplek te verminder en/of uit te skakel. Die werkplek moet verder getransformeer word as 'n manier om die proses van verhoudings bou aan te moedig. Sodra dit behaal is, moet 'n prestasieverbeteringsprogram vir die KVMA geïmplementeer word om prestasietekortkomings te identifiseer en toepaslike opleidingsprogramme moet geselekteer word om die opleidingsbehoefte van die aangestelde kommissarisse aan te spreek. Indien die bogenelde nie die geïdentifiseerde probleme aanspreek nie, moet wysigings aan die Wet oorweeg en ingestel word. Laastens kan die partye uitkontrakteer ten opsigte van die statutêre geskilbeslegtingsinstellings.

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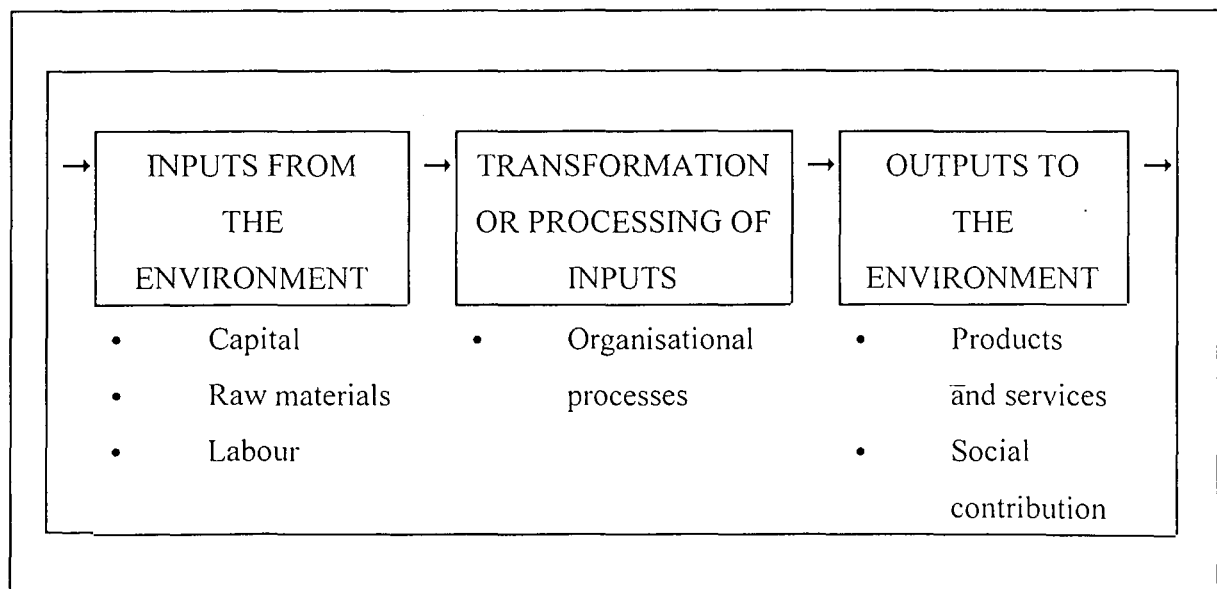
CHAPTER 1

STATEMENT OF THE PROBLEM AND AIMS OF THE STUDY

1.1 INTRODUCTION

Business organisations, as systems, are in constant interaction with their environment so as to ascertain what changes have taken place - particularly within the external environment - and align the organisation in accordance therewith. This will, amongst others, ensure that the organisation survives in the long term. Unless otherwise stated, the primary reason for the existence of organisations, according to Cronjé, Newland and Van Reenen (1988: 12), is profit. Inputs are made in the transformation process to produce goods and/or services. Amongst these inputs is labour, which needs to have a positive attitude and receive job satisfaction from the work environment, according to McCormick and Ilgen (1989: 309), so that the organisation can achieve the degree of commitment, effort and effective performance required to attain organisational as well as individual goals. This is illustrated in figure 1.1 below:

FIG. 1.1 THE BUSINESS ENTERPRISE AS A SYSTEM OF ITS ENVIRONMENT

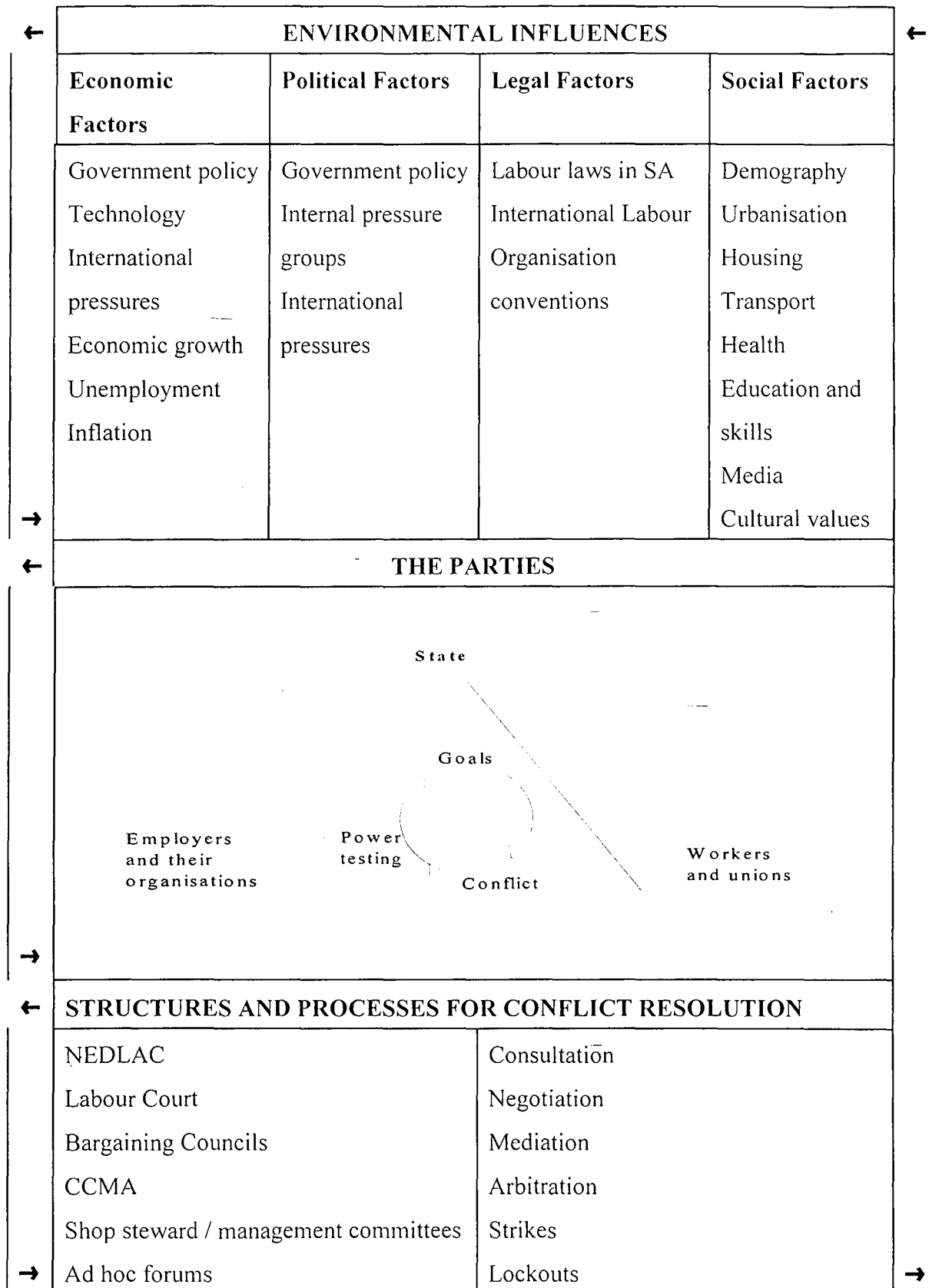


Source: Cronjé, et al (1988:26)

The Department of Labour has launched a number of initiatives to restructure legislation and institutions to achieve their objectives. Among these objectives are the improvement of the collective bargaining system, the removal of discrimination and the promotion of equity in the workplace as well as the provision of a coherent regulatory framework for all sectors of the economy. At the conference on Understanding the GEAR strategy of the Department of Labour, Pityana, Sipho Director General: Department of Labour (1997) said these initiatives are expected to contribute to overall economic efficiency and equity.

South Africa is in the process of consolidating its transition towards democracy. In this process both stabilising and destabilising forces are impacting on the transition. The government is therefore trying to execute a balancing act in the process of keeping the transition on track. The external factors which have an influence on organisations are economic, political, legal and social (Finnemore & Van der Merwe, 1992:14). From a political perspective South Africa comes from an ideology of internationally unacceptable policies and legislation and now that the country is on a reform course the pressure is on the government to redress this situation, particularly on the social and economic levels. The social and economic policies of the government are mainly dealt with within the industrial relations arena where the parties are the Government, Labour and Business. Government, on its part, is responsible for creating the framework for the establishment of structures and processes to promote orderly collective bargaining and effective dispute resolution (Finnemore & Van der Merwe, 1992 : 12). The establishment of the National Economic Development and Labour Council (NEDLAC) within the Department of Labour provided a forum where all parties to the labour relations system Business, Labour and State, as well as other stakeholders could debate and mould economic and labour policies, as well as legislation. Through this council the labour law of the country has been adapted to the new situation. This law consists of legal rules which aim to regulate individual and collective labour relationships. Other structures are the Commission for Conciliation, Mediation and Arbitration (CCMA), the Labour Court and the Labour Appeal Court. This framework is reflected in figure. 1.2.

FIG. 1.2 A FRAMEWORK OF INDUSTRIAL RELATIONS IN SOUTH AFRICA



OUTCOMES			
Social Pacts	Substantive Agreements	Recognition and Procedural Agreements	Breakdown in Relationships
Labour law	Wages	Disciplinary action	Violence
Health policy	Working conditions	Retrenchment	Mass dismissal
Economic policy	Fringe benefits	Grievance handling	Loss of union members
	Training	Strike rules	
	Productivity	Peace obligation	Plant closure

Source: Adapted from Finnemore and Van der Merwe (1992:13)

The above figure reflects the environmental influences which are a source of conflict. Within the South African context serious structural imbalances have been experienced in terms of unequal distribution of resources. This has fuelled conflict between the parties which, as reflected, use their power bases to achieve their respective goals. The state then creates structures and processes for the resolution of disputes resulting from the conflict. The outcomes of these processes are realised in the form of social pacts, substantive agreements and procedural agreements as well as breakdowns in relationships, at worst.

NEDLAC has produced the Labour Relations Act 66 of 1995 which has been promulgated by the state. The process leading to the production of this Act was not easy. It was marred by highly publicised deadlocks which reflected the adversarial battle mentality of the country's industrial relations. The deadlocks within NEDLAC and the consequent tensions within both business and labour have led to the formation of a variety of perceptions at both the individual as well as collective levels within organisations. These perceptions will be either positive or negative, according to Tubbs and Moss (1994: 38), depending on the employees, the current status of industrial relations, the application of the Act as well as the situation. At the level of the employees, perceptions are influenced by personal characteristics such as attitudes, motives, interest and past experience as well as their expectations.

Because of the fact that perceptions formed within organisations differ between labour and business as a result of their divergent interests and motives, it is not known at this stage how these differences will affect both motivation and job satisfaction, and ultimately productivity. Since the new Labour Relations Act has set the scene for heightened conflict due to different positions of labour and business, provision for the resolution of these disputes through effective and efficient mechanisms is of critical importance.

1.2 STATEMENT OF THE PROBLEM

The South African government under the National Party created fundamental errors in legislating a system based on race where the white minority dominated the black majority, both politically and economically. This was done through separatist legislation such as, among others, the Group Areas Act 41 of 1950, the Separate Amenities Act 49 of 1953 and the Population Registration Act 30 of 1950, separate education systems, and the lack of political power in government for groups other than whites. Unfortunately this has led to significant polarisation within the country's communities, both in the wider society and in the workplace. It is therefore not surprising, owing to the resultant inequitable situation with regard to social, political and economic rights of workers and because of the promulgation of the Industrial Conciliation Act of 1924, aimed at providing a legal framework for industrial relations in South Africa, that labour relations has had a history marred by hostility and resistance. This was because, according to Finnemore and Van der Merwe (1992:8), the promulgation of this Act gave rise to a strained and discriminatory form of pluralist industrial relations by particularly excluding Blacks.

As a consequence of the apartheid policies, Blacks were staying in townships without basic infrastructure, they were less educated due to an inferior education system as well as relatively reduced percapita spending of the State on black versus white children, and lacked skills to occupy managerial and/or technical positions because of their high illiteracy levels. Blacks were also not being employed in certain positions on account of statutory restrictions on their employment. The workplace was therefore the only place where Black and White could come together and hence, with time, it became the political and economic battlefield.

The political, social and economic environments within which the "black" workers and "white" management interacted, created "them" and "us" where the blacks were the "have nots" and whites the "have's." This was based on separate values and philosophies which hardened with time and ultimately resulted in negative attitudes towards each other.

The attitudes between Blacks and Whites in the South African context created a negative organisational culture and lower productivity in business circles, according to Eskom's A.A.Team (1994:53). This was evident in the unequal salary structures, lack of trust, lack of communication and participation, uncertainty, lack of confidence in each other, as well as the absence of a common group identity. Most of these are still evident today.

Looking at the history of strikes in South Africa, there is no doubt that one finds one of these factors at the root of the dispute, resulting in conflict in the workplace (Eskom A.A.Team 1994:57).

To gain political and economic equality, a two-pronged revolution was waged by the mass black political consciousness. This involved mass uprising against the state as well as a campaign against business by the trade union movement, therefore involving the three parties to industrial relations. According to Finnemore and Van der Merwe (1992: 8), the state and employers were identified as capitalist allies of the apartheid system. Collective bargaining can thus be seen as a development out of the fundamental inequality between employee (black) and employer (white). Many bloody battles were fought in South Africa to achieve political democracy, and as a result of their contributions to and/or sacrifices for "the struggle" the expectations of Blacks are high while the economic development of the disadvantaged black majority has also become a dominant theme of a politically reconstituted South Africa.

This, together with Sam Shilowa's comment in the COSATU Negotiations Bulletin (October 1995:1) that the new era represents a victory for labour, may have created perceptions (rightly or wrongly) that the new government favours labour to the detriment of business and that the balance of power has shifted in favour of labour.

This may be so because of the alliance between the governing African National Congress (ANC), the South African Communist Party (SACP) and the Confederation of South African Trade Unions (COSATU). The alliance caused strain between these organisations themselves because, as Finnemore and Van der Merwe (1992:31) rightly point out, members became concerned about the implications of these political linkages for their future. The fact of the matter, however, is that South Africa is in the process of transforming its structures and policies in an effort to rebuild the nation that has been adversely affected by the erstwhile apartheid regime.

The South African population is made up of diverse societies with different cultures. According to Van der Merwe (1997: 10), however, different societies maintain peace and order in different ways, due to the fact that certain interests and needs weigh more in one society than others which are simply not regarded as interests which should be recognised and protected by law. Examples are employment, residential areas and education, to name a few.

In addition, South African communities differ among themselves, according to the writer, as to what is the most equitable way in which society should be arranged peacefully. Those involved in the application of the law which strives for justice should also be facing problems because justice, in the view the writer, has no firm and exact meaning, especially in a multicultural society with varying perspectives and value systems. However, to ensure that there is justice in the labour arena, the Act provides mechanisms for the resolution of disputes which are accessible to employees and employers alike.

Finally, according to Van der Merwe (1997:10) notions of what is just are strongly influenced by the age and place in which people live, as well as by their religious beliefs, level of education and socio-economic milieu. It is common cause that the different cultures of South Africa have different experiences in respect of all these factors.

Perceptions of staff with regard to dispute resolution mechanisms are important as they involve emotions and risk of some degree and could have negative outcomes such as strikes, violence and mass dismissals. As a result of the win/lose situation, according to Finnemore and Van der Merwe (1992:14), further tension may even be created.

The knowledge and perceptions of personnel practitioners with regard to labour-related disputes and dispute resolution mechanisms therefore have a definite influence on the nature of advice and service given by them to line management, which ultimately impacts on the outcome.

The personnel practitioners are, however, in a staff position, say Cronjé et al (1988:102), and they provide assistance to line management in establishing sound relations and overcoming problems. The service and advice provided by them will in turn also be greatly influenced by their own perceptions of the dispute resolution mechanisms. These may be positive or negative, based on their own personal past experiences, needs and beliefs. In South Africa, the workplace experiences of Blacks and Whites are different. This is because Blacks have always occupied mainly lower positions (therefore employees) whereas Whites have generally been managers (employers). Due to the political changes as well as improvement of the qualifications of some Blacks, and Affirmative Action, a few of them have since advanced to managerial positions, particularly in the personnel management area. A key challenge to South African business, according to the Consultative Business Movement National Team (1993:56), is the following:

“Perceptions of management and employees, both black and white, have to be addressed as a prerequisite for creating relationships based on mutual trust and respect. If this matter is not addressed, then all other endeavours will remain hamstrung by past perceptions and apprehensions.”

1.3 RESEARCH QUESTIONS

Based on the researcher's experience as well as the challenge from literature referred to above, the following research questions can be asked from the abovementioned problem statement:

- (i) What are the perceptions of the sample population of personnel practitioners towards the dispute resolution mechanisms of the Labour Relations Act?
- (ii) Are there perceptual differences among different groups based on biographical variables?

1.4 AIMS OF THE STUDY

On the basis of the research questions the aims of the study were:

- (i) To determine what the perceptions of the sample population of personnel practitioners are towards the dispute resolution mechanisms of the Labour Relations Act;
- (ii) To determine whether there are perceptual differences among different groups based on biographical variables.

1.5 OVERVIEW OF THE STRUCTURE OF THE DISSERTATION

The structure of the dissertation is sequenced to lead through the steps in the research process. Chapter 1 provides a statement of the problem. In it a systems approach is explained in which labour is viewed as an input. An overview is given of the framework of industrial relations in South Africa, the problem statement, the research questions and the aims of the study.

Chapter 2 outlines the historical development of labour relations in South Africa. This is followed by a description of the background of the Labour Relations Act 66 of 1995, the institutions created by this Act as well as the dispute resolution mechanisms of the Act.

In Chapter 3, the role of perceptions in influencing individual behaviour is discussed. Aspects covered are the nature of the perceptual formation process, factors influencing perceptions, perceptions about the dispute resolution mechanisms and the influence of perceptions on behaviour.

Chapter 4 gives details of the research methodology adopted in the process. This includes the sample population, sampling data collection and data analysis.

Chapter 5 is a recording of the results and a discussion thereof.

In Chapter 6, conclusions drawn from the results are discussed and recommendations are proposed to address the problem.

CHAPTER 2

LABOUR RELATIONS IN SOUTH AFRICA

2.1 INTRODUCTION

This chapter outlines the historical development of labour relations in South Africa. The period since the discovery of diamonds in 1870 up to the Labour Relations Act 66 of 1995 (LRA) (which will be referred to as LRA or the Act in the text) will be discussed. In addition, particular aspects of importance to be covered are the new LRA structures, in the form of the Commission for Conciliation, Mediation and Arbitration (CCMA) and the new Labour Court structures, which will play an increasingly significant role in dispute resolution and enforcement of matters falling within the ambit of the Labour Ministry's jurisdiction. The specific dispute resolution mechanisms of the Act as well as the parties involved in the process of dispute resolution will also be discussed.

This will indicate how, over the years, labour relations and labour law in particular have assumed increasing importance in South Africa. This chapter will also highlight how the legislative reform process which the new government has embarked upon, affected the process of dispute resolution within the context of collective bargaining. As a result, perceptions were formed and the purpose of this study is therefore to establish what those perceptions are. To eventually understand the perceptions of people with respect to the LRA it is essential to give a brief account of the historical development of Labour Relations and the purpose of the LRA.

2.2 THE HISTORICAL DEVELOPMENT OF LABOUR RELATIONS

The South African society has been divided along racial and ethnic cleavages as well as socio-economical inequalities, both socially and in the workplace. It is for this reason that the concept of industrial relations in the country reflects a history dominated by a dualistic system of which the product is the focus of conflict amongst societies, mainly black and white.

This was systematised through the promulgation of various separatist laws and confirmed by Nel and Van Rooyen (1989:54), who indicate that racial issues have played a major role in South Africa's labour relations environment.

According to Gerber, Nel and Van Dyk (1987:357), the discovery of diamonds in the 1870's led to a need for skilled labour which was met with the importation of British and Chinese craftsmen, whilst Afrikaners and Blacks were overlooked. Many unions were formed as a result of the friction between these communities. Such unions emphasised colour and specifically excluded the Afrikaner and Blacks, according to Slabbert, Prinsloo and Backer (1994 : 2-4), because they provided unskilled labour. The government then promulgated Ordinance 17 of 1904 as well as the Industrial Disputes Prevention Act 20 of 1909 to protect white workers.

Nel and Van Rooyen (1989:58) state that an increasing number of Blacks also formed various trade unions to protect themselves, thus resulting in the Rand Rebellion of 1922 and the promulgation of the Industrial Conciliation Act 11 of 1924 by the government.

The Industrial Conciliation Act created self-governing industrial councils and conciliation boards for dispute resolution. These structures, however, also entrenched racial dualism, according to Slabbert, et al. (1994 : 2-8), by excluding Blacks from the definition of an employee and were therefore ineffective (Nel & Van Rooyen, (1989:61).

The Industrial Conciliation Act of 1924 and the Wage Act 27 of 1925 were successful in bringing about a decline in the white worker strike activity according to Slabbert et (1994 : 2-8). However, opposition from the multi-racial unions increased because they were virtually excluded from membership of any registered trade union and thereby barred from statutory collective bargaining. The Van Reenen Commission was therefore appointed to conduct an inquiry into labour legislation. According to Nel and Van Rooyen (1989:41), this was necessary because it had become obvious that Act 11 of 1924 required revision. Based on the Commission's recommendations both the Industrial Conciliation Act 36 of 1937 and the Wage Act 44 of 1937 were promulgated to repeal the previous industrial legislation.

According to Nel and Van Rooyen (1989:63), the Botha Commission recommended further separatist legislation in the forms of the Black Labour Relations Regulations Act 48 of 1953, the Industrial Conciliation Act 28 of 1956, and the Wage Act of 1957.

The Black Labour Relations Regulation Act 48 of 1953, however, prohibited strikes/lockouts by Blacks and employers respectively while the Industrial Conciliation Act 28 of 1956 excluded black trade unions and prohibited the operation of multi-racial unions. A non-racial wave of worker consciousness established itself in the industrial relations arena in reaction to the government's obvious separatist approach. This was, according to Slabbert *et al.* (2-16), due to the economic recession after the oil crisis in 1973, rising unemployment and inflation and increased urbanisation, as well as an improvement in the education of Blacks. In addition according to the Eskom A.A. Team (1994:58) the multi-national companies' pressure on government to recognise unions also brought South Africa's racial and labour policies into international focus, through the Sullivan and European Economic Community codes of employment.

As a result of the increase in industrial unrest the Black Labour Relations Regulation Act 48 of 1953 was replaced by the Black Labour Relations Amendment Act 70 of 1973. This Act facilitated the formation of regional works, co-ordinating works committees. A shortcoming of the committee system was, in the view of Slabbert *et al.* (1994 : 2-8), the fact that Blacks were still not being represented by trade unions in the industrial council system.

In 1977 the Wiehahn Commission was appointed to conduct an inquiry into labour legislation. The subsequent report endorsed the principle of voluntarism in industrial relations and, according to Bendix (1992: 285), recommended amongst others that race no longer be a consideration for the statutory recognition of trade unions. On the basis of the recommendations of the Wiehahn Commission major changes were made to the Labour Conciliation Amendment Act 94 of 1979, e.g. the inclusion of Blacks in the definition of an employee and the repeal of the Black Labour Relation Regulations Act 48 of 1953. The Industrial Conciliation Act 94 of 1979 was also repealed with the promulgation of Act 57 of 1981, which later became known as the Labour Relations Act 28 of 1956.

The Labour Relations Act 28 of 1956 was amended on a number of occasions (in 1981, 1988 and 1991) so as to improve it. After the historic election of 27 April 1994, won by the ANC, the new government, together with the other social partners, negotiated the new labour relations regulation mechanisms and the team produced the Labour Relations Act 66 of 1995 which was passed by Parliament in September 1995 and implemented with effect from 11 November 1996.

2.3 THE BACKGROUND OF THE LABOUR RELATIONS ACT 66 OF 1995

On 2 February 1990 the former State President, F. W. de Klerk, announced on national television at the opening of Parliament that the country would seek to resolve its problems through negotiation. This would result in line with expectations of a just system of government in which all its people would enjoy equal rights, treatment and opportunities constitutionally, economically and socially. This, for a country like South Africa, meant a major transformation process to fundamentally change and reshape the country's future. This historic event not only affected the political arena but had a significant impact on industrial relations. This was due to the fact that the racial inequalities experienced, particularly by Blacks, was founded in legislation.

The final arrival of political democracy in South Africa on 10 May 1994 was cherished by South Africa's black workers. They were, after all, one of the major forces that had secured its arrival. To the workers this was not the end of the struggle, but the beginning of another to ensure that the political democracy won by Blacks would serve their interests, and that the balance of power in the economy and at the workplace would be changed, thus enhancing industrial democracy in the country.

South Africa's labour law and institutions were according to COSATU's Labour Market Policy document (delivered by Lisa Seftel (1994), at a conference in 1994 on *The changing roles of unions and management*) intended to incorporate white workers into the system. black workers have had to fight to be recognised by the industrial relations dispensation. The labour laws of the country were therefore outdated and inappropriate, according to Seftel as well as Du Plessis, Fouché, Jordaan and Van Wyk (1996:207), for the present-day South Africa and hence needed a deep reform that would:

- (i) be appropriate for the new situation;
- (ii) empower workers and trade unions;
- (iii) promote tripartism (among the social partners);
- (iv) be accessible, accountable, transparent and efficient;
- (v) ensure workers' rights;
- (vi) bring South African law in line with international standards; and
- (vii) provide simple procedures for dispute resolution through arbitration and mediation.

In an effort to modernise and rationalise labour and employment legislation in the country, the Ministry of Labour, under Tito Mboweni embarked on a five-year plan which will eventually end in the amendment and/or wholesale redrafting of labour legislation. With these challenges in mind, the purpose of the Act, according to section 1, is to advance economic development, social justice, labour peace and the democratisation of the workplace by:

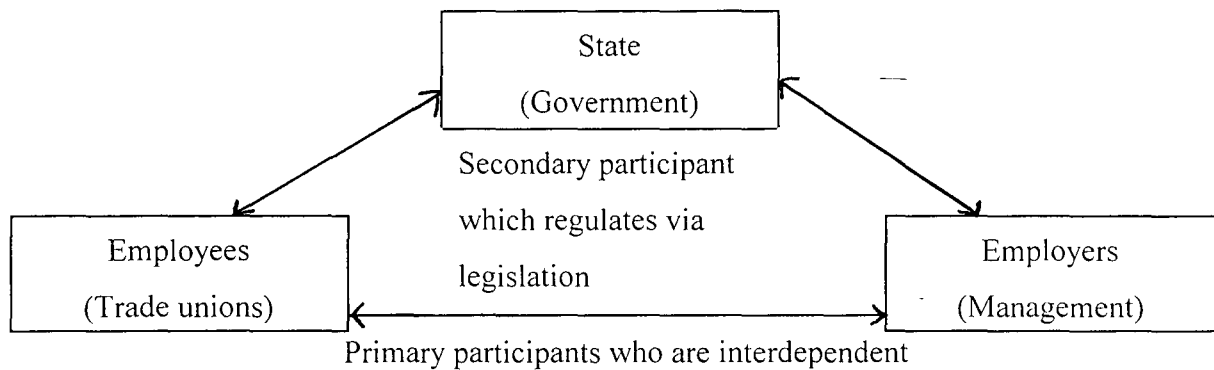
- (i) giving effect to and regulating the fundamental rights conferred by section 27 of the Constitution;
- (ii) giving effect to obligations incurred by the Republic as a member state of the International Labour Organisation (ILO);
- (iii) providing a framework within which employees and their trade unions, employers and employers' organisations can collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest, and formulate industrial policy; and
- (iv) promoting orderly collective bargaining at sectoral level, employee participation in decision-making in the workplace, and the effective resolution of labour disputes.

2.4 INSTITUTIONS AND PARTIES INVOLVED IN THE PROCESS OF DISPUTE RESOLUTION

In accordance with the definition of Van der Merwe (1997:7), law is a system of rules that regulate social interaction in society in such a way that conflict is prevented or controlled.

These rules are backed by state authority. On the basis of this definition it may be reasonably deduced that the human conduct being governed by labour law is the individual and collective labour relationships between employers, employees and the state. These parties, according to Gerber, Nel and Van Dyk (1987:318), form the tripartite relationship which is characteristic of the economic systems of democratic societies. This relationship is illustrated in figure 2.1.

FIGURE 2.1: PARTIES TO THE TRIPARTITE RELATIONSHIP



Source: Gerber, et al. (1987: 319)

As reflected in the above figure, the three parties are the state, labour and employers. The state is the secondary party responsible for the creation of the framework which regulates the relationship between the two primary participants via legislation.

Therefore, on the basis of both the definitions of law and a dispute (see below), it is clear that the parties which have an interest in the relationship are employees, employers and the state. This is primarily so because in terms of their legal relationship they all have rights and obligations towards each other which can only flourish in a situation which is healthy.

A dispute is defined by Bendix (1992:227) as a continued disagreement between employees and employers. Section 51 (1) of the Act also defines a dispute as any conflict about a matter of mutual interest between employers and employees or their representative organisations. Section 9 (l) (a) and (b) of the Act, however, provides that if a dispute arises any party to that dispute may refer such a dispute in writing to a bargaining council or the Commission for Conciliation, Mediation and Arbitration (CCMA), if no council has jurisdiction. The complete processes of dispute resolution are illustrated in figures 2.2 and 2.3 as follows:

FIGURE 2.2

**DISPUTE RESOLUTION IN TERMS OF THE LABOUR
RELATIONS ACT - MATTERS DEALT WITH
BY WAY OF ARBITRATION**

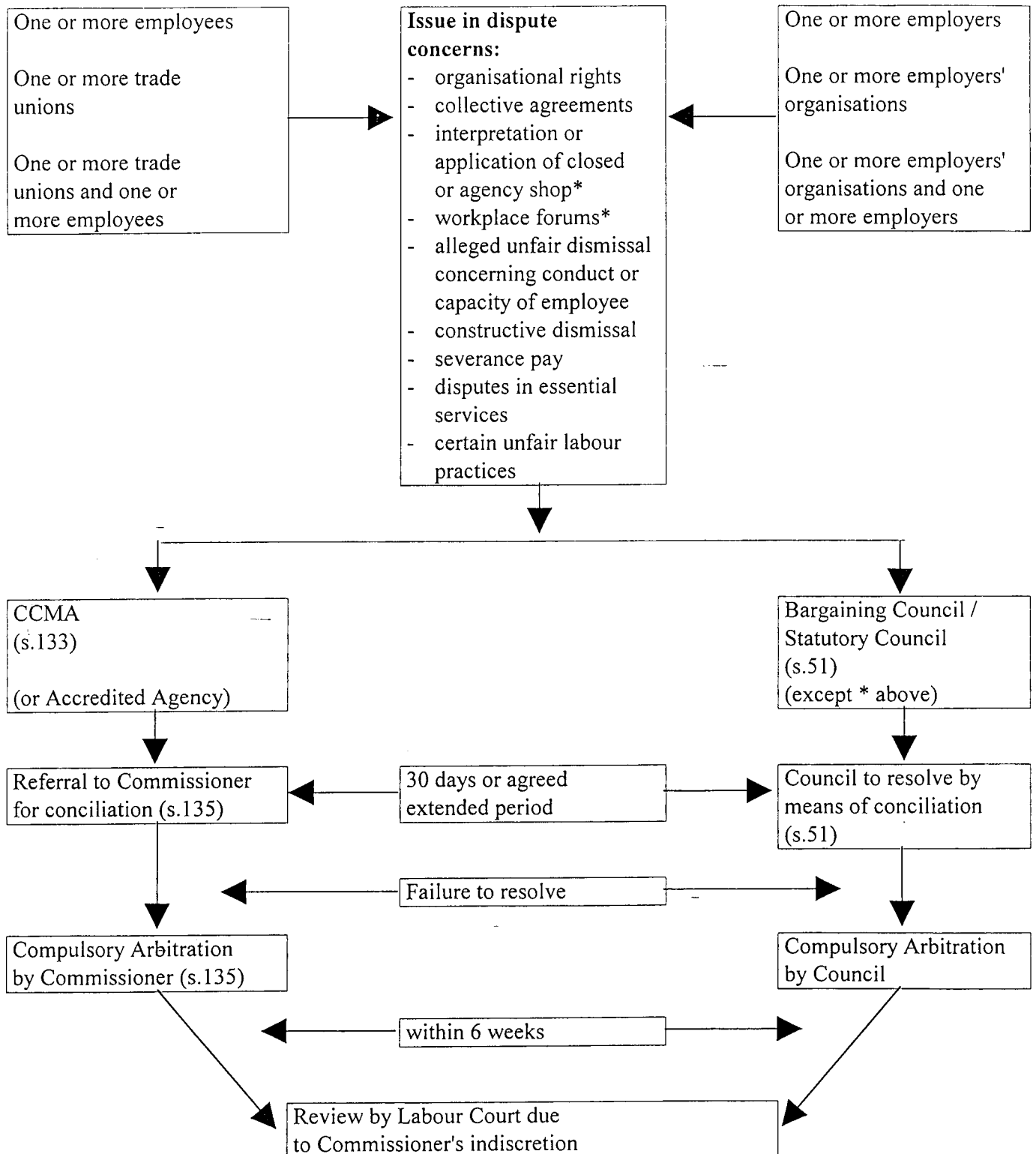


FIGURE 2.3

**DISPUTE RESOLUTION IN TERMS OF THE NEW LABOUR
RELATIONS ACT - MATTERS ULTIMATELY REFERRED
TO LABOUR COURT**

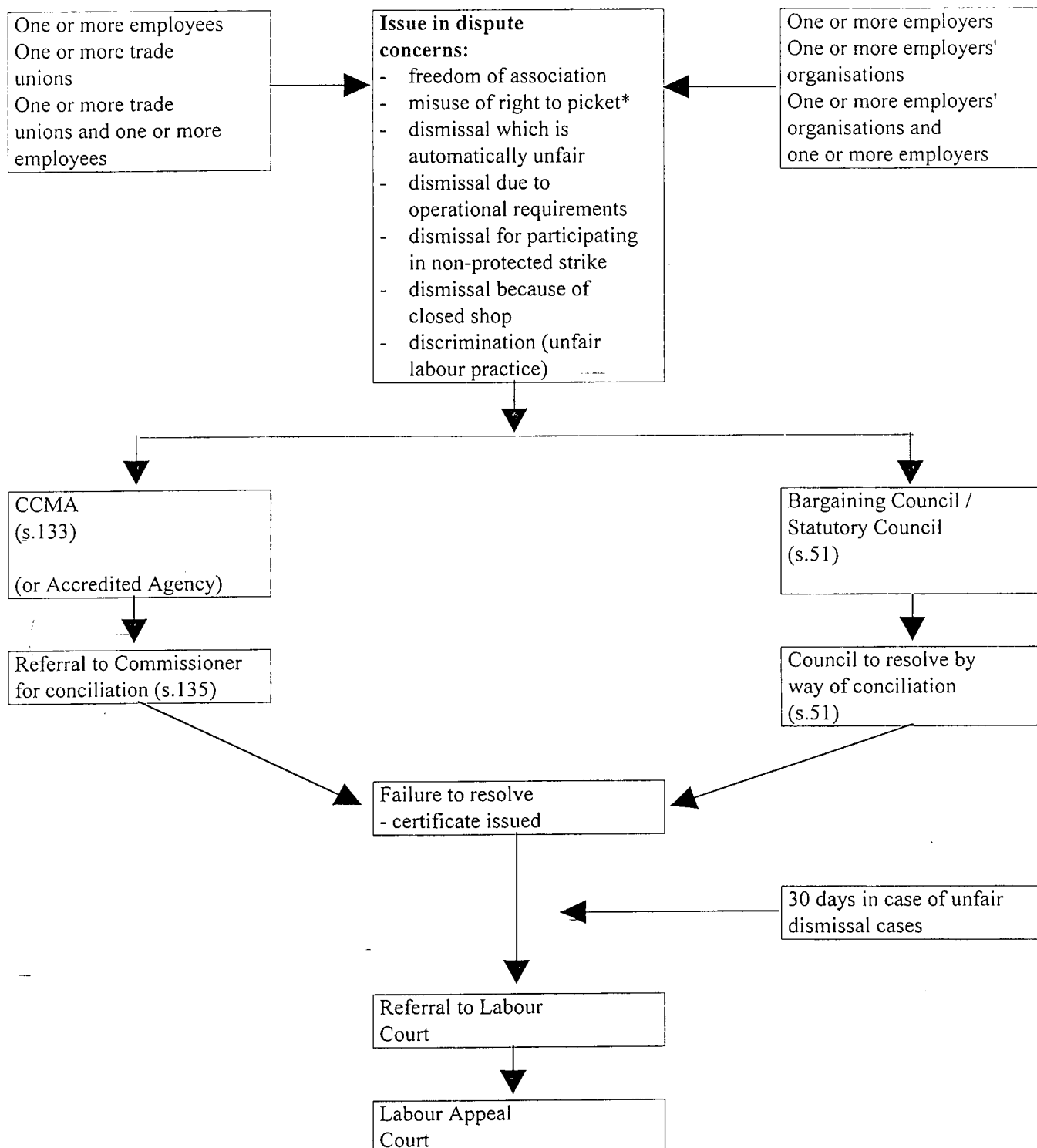


Figure 2.2 gives an overview of the dispute resolution process in terms of the Labour Relations Act. As reflected above, if a dispute arises between the parties which concerns their employment relationship it will be referred either to the CCMA or an accredited agency, in terms of section 133 of the Act, or a bargaining council, according to section 51 of the Act, within 30 days of the dispute occurring. The CCMA or bargaining council will attempt to resolve the dispute it must resolve the dispute within 30 days or such extended period as may be agreed upon between the parties. Should the CCMA or bargaining council fail to resolve the dispute, it must in both instances be referred to arbitration, according to section 136 (1) of the Act, and be resolved within 6 weeks. The arbitrator's award may be reviewed by the Labour Court.

Figure 2.3 follows the same procedure. The process of the Labour Court is, however, extended with the inclusion of the Labour Appeal Court as a review channel.

2.4.1 PARTIES INVOLVED IN BARGAINING COUNCILS

The Act provides in section 30 (I) (a) that the constitution of every bargaining council must provide for the appointment of representatives of the bargaining council, of whom half must be appointed by the trade unions that are party to the bargaining council and the other half by the employers' organisations that are party to the bargaining council, and the appointment of alternatives to the representatives.

A bargaining council is established in terms of section 27 (I) (a) and (b) when one or more registered trade unions and one or more registered employers' organisations for a sector and area adopt a constitution which satisfies the requirements of section 30 of the Act and register the bargaining council according to section 29 of the Act.

2.4.2 PARTIES INVOLVED IN THE CCMA

When a dispute has arisen within an industry where there is no bargaining council and it is a dispute of mutual interest, any party may refer the dispute in writing to the Commission in terms of section 134.

The Commission may, in terms of section 133, appoint a commissioner to attempt to resolve the dispute through conciliation and in terms of section 136 (1) to resolve it through arbitration.

In addition to the appointed commissioner, in accordance with section 134 the parties to the dispute must be:

- (a) on the one side:-
 - (i) one or more trade unions;
 - (ii) one or more employees; or
 - (iii) one or more trade unions and one or more employees; and
- (b) on the other side:
 - (i) one or more employers' organisations;
 - (ii) one or more employers; or
 - (iii) one or more employers' organisations and one or more employers.

According to section 140, however, the parties are not entitled to be represented by a legal practitioner in the arbitration proceedings unless the requirements of section 140 (a) and (b) (i) to (iv) are satisfied.

In terms of the stipulations of section 135 (4), a party to a dispute may appear in person or be represented only by a co-employee or by a member, an office-bearer or official of the specific party's trade union or employers' organisation and, if the party is a juristic person, by a director or an employee.

Representation before the Labour Court is in terms of section 161 restricted to a legal practitioner, co-employee or a member, an office-bearer or official of a party's trade union or employers' organisation and if the party is a juristic person, a director or an employee. The same parties may appear before the Labour Appeal Court (in terms of section 178).

Where a dispute remains unresolved after conciliation or where the Act requires the dispute to be resolved through arbitration, the Commission must appoint a commissioner in terms of section 136 or a senior commissioner according to section 137.

The director of the Commission may appoint a senior commissioner according to section 137 (3) after having considered:

- (i) the nature of the questions of law raised by the dispute;
- (ii) the complexity of the dispute;
- (iii) whether there are conflicting arbitration awards that are relevant to the dispute; and
- (iv) the public interest.

The rest of the parties involved in the conciliation process are the same in the arbitration. The general provisions for arbitration proceedings, however, provide in section 138 (4) for a party to be represented by a legal practitioner, co-employee or a member, office-bearer or official of that party's trade union or employers' organisation and, if the party is a juristic person, by a director or an employee.

In terms of section 152(1) (a), (b) and (c) of the Act, the Labour Court consists of a Judge President, a Deputy Judge President and as many judges as the President may consider necessary, and according to section 152(2) is constituted before a single judge.

During the proceedings of the Labour Court any party may appear in person or be represented, in terms of the stipulations of section 161, by a legal practitioner, co-employee or a member, an office-bearer or official of that party's trade union or employers' organisation and, if the party is a juristic person, by a director or employee.

According to section 168 (2), the Labour Appeal Court is constituted before any three judges whom the Judge President designates from a panel of judges contemplated in subsection 168(1). No judge may, however, sit in the hearing of an appeal against a judgment or an order given in a case which was heard before him/her, in terms of section 168(3).

2.5 THE DISPUTE RESOLUTION MECHANISMS OF THE ACT

The LRA provides dispute resolution mechanisms for those disputes the parties are not able to settle through the application of their internal participative structures.

The Act provides for the resolution of disputes concerning organisational rights (section 22), collective agreements (section 24), determinations (section 45), demarcations of sectors (section 62), interpretation and application of parts A and C to F of Chapter III of the Act (section 63), essential services (sections 73 and 74) and workplace forums (section 94).

Section 134 (1) of the Act provides that any party to a dispute about a matter of mutual interest may refer that dispute in writing to the Commission and according to section 134 (2), must satisfy the Commission that a copy of the referral has been served on all other parties to the dispute.

In this research, however, the focus was only on perceptions with regard to the Commission, Labour Court and the Labour appeal court because these are the areas which have had major changes. The bargaining councils are also excluded because the procedures adopted there will usually involve negotiation as opposed to conciliation and/or arbitration, which are the principal methods employed by the Commission. In addition the focus of the study was on conciliation and arbitration. It is however, important just to provide some background to bargaining councils.

2.5.1 BARGAINING COUNCILS

2.5.1.1 THE ESTABLISHMENT OF BARGAINING COUNCILS

Bargaining councils, established in terms of section 27 and accredited (section 52) by the Commission, have the powers according to section 28 (c) and (d) to perform dispute resolution functions arising within their registered scope of jurisdiction (section 51). Before a bargaining council can be established, the parties active in that specific industry and area must agree to its establishment and apply for registration. The procedures and requirements for the registration of a bargaining council are set out in section 29 of the Act, and the most important are:

- (i) a prescribed form properly completed;
- (ii) a copy of the constitution, and
- (iii) any other information that may assist the registrar to determine whether or not the bargaining council meets the requirements for registration.

After the prescribed procedures have been followed according to section 29(11)(b) and the registrar is satisfied with the application in terms of section 29(11)(c), he/she may register the council if he is satisfied that:

- (i) the applicant has complied with the provisions of section 29 of the Act;
- (ii) the constitution of the council complies with section 30 of the Act;
- (iii) adequate provision is made in the constitution of the bargaining council for the representation of small and medium enterprises;
- (iv) the parties to the bargaining council are sufficiently representative of the sector and area determined by NEDLAC or the Minister; and
- (v) there is no other council registered for the sector and area in respect of which the application is made.

2.5.1.2 THE POWERS AND FUNCTIONS OF BARGAINING COUNCILS

The powers and functions of a bargaining council are set out in section 28 of the Act and include the prevention and resolution of labour disputes and to perform the dispute resolution functions referred to in section 51 of the Act. In practice, a council will try to fulfill these functions between the members in accordance with the constitution of the council, according to section 51(2)(a)(i).

2.5.1.3 THE PROCEDURES ADOPTED BY THE BARGAINING COUNCIL

Section 30 of the Act states that the constitution of every bargaining council must provide for the procedure to be followed if a dispute arises between the parties to the bargaining council. The type of procedure will, in the writer's experience, vary from constitution to constitution.

In essence, however, a dispute procedure will make provision for the calling and holding of a series of meetings under the auspices of the council, where attempts will be made to settle the dispute through negotiation. The parties to the dispute will usually be present at such meetings.

It is important to note that the use of the dispute procedure of a council is, according to section 51(2)(b) and (3), not limited to the parties of the council only. Whilst such parties may be bound in terms of the constitution to follow such a procedure if a dispute arises, non-parties may also utilise this procedure

In terms of these provisions any party to a dispute who is not a party to a council, but who falls within the registered scope of the council, may refer the dispute to the council in writing.

If the subject matter of a dispute is already regulated in an agreement of the council and it binds the parties to the dispute, one will normally be able to refer the dispute to the council.

2.5.2 THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION

At the forefront of statutory dispute resolution mechanisms, in terms of the Act, is the Commission for Conciliation, Mediation and Arbitration (CCMA). This is a state-funded but independent juristic person according to section 113 of the Act, governed by a tripartite body nominated by the National Economic Development and Labour Council (NEDLAC) and appointed by the Minister. The Commission is responsible for attempting to resolve disputes specifically reserved for it arising within areas outside the scope of registered bargaining councils. In the absence of privately agreed procedures, therefore, the majority of disputes will be referred to the Commission. The Commission will attempt to resolve disputes through conciliation and mediation and in the absence of a settlement, through arbitration, in terms of section 115(1)(a) and (b).

2.5.2.1 CONCILIATION

A number of industries have no established bargaining councils to perform dispute resolution functions. The Act provides in section 51 (4) for disputes between parties who do not fall within the registered scope of a council to be referred to the Commission. The disputes which may be referred to the Commission for conciliation are those relating to recognition (section 21(6)), unfair labour practices (chapter 7), wages and other interests (section 68 and 69), and unfair dismissals (section 191).

2.5.2.2 THE APPOINTMENT OF COMMISSIONERS TO CONCILIATE

Whenever a dispute arises between the parties in any of the above areas and the issue at dispute is not regulated by a private agreement or a bargaining council agreement, an application may be lodged with the Commission in terms of section 21(4) for the establishment of a conciliation meeting by the Commission. The Commission will then appoint a commissioner in terms of section 133 to resolve the dispute through conciliation, according to section 135 (1).

Conciliation is a process where a neutral person, a commissioner, from the Commission tries to bring the parties at dispute to an agreement on their dispute. The appointed commissioner must attempt to resolve the dispute within 30 days of the date on which the Commission received the referral, in terms of section 135 (2). The parties may, however, agree to extend the period.

2.5.2.3 THE POWERS AND FUNCTIONS OF COMMISSIONERS

The functions of the Commission are set out in section 115 of the Act. In terms of this section the Commission must attempt to resolve, through conciliation, any dispute referred to it in terms of the Act. If such a dispute remains unresolved after conciliation, the Commission will arbitrate if the Act so requires so or if all the parties to the dispute consent to the arbitration, according to section 115 (b) (i) and (ii).

The Commission will fulfill these functions by appointing adequately qualified persons as commissioners, according to section 117(2)(a)(b)(c) and (d) of the Act, to perform the functions which the Act requires.

According to section 142 (1), a commissioner who has been appointed to attempt to resolve a dispute through conciliation or arbitration may:

- (a) subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute;
- (b) subpoena any person who is believed to have possession or control of any book, document or object;
- (ci) call, and if necessary subpoena, any expert to appear before the commissioner to give evidence relevant to the resolution of the dispute;
- (d) call any person present at the conciliation or arbitration proceedings or who was or could have been subpoenaed for any purpose set out in this section, to be questioned about any matter relevant to the dispute;
- (e) administer an oath or accept an affirmation from any person called to give evidence or be questioned;
- (f) after obtaining the necessary authority, enter and inspect premises and examine and demand the production of books, documents or objects relevant to the resolution of the dispute;
- (g) inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the Commission.

2.5.2.4 - THE CONCILIATION PROCESS

Once a dispute has arisen the Commission must, in terms of section 135(1), appoint a commissioner to attempt to resolve the disputes through conciliation. Such a meeting should be scheduled within 30 days from the date on which the referral was received (Section 135(2). Marais and Israelstam (The Star, 8/1/1997), explain the process of conciliation as follows:

(i) **Introduction**

The appointed commissioner introduces him-/herself to the parties and attends to representation and so-called 'housekeeping' issues.

(ii) **Process and ground rules**

An explanation of the process will then be given by the commissioner and agreement will be obtained on the ground rules. Such ground rules may include issues such as confidentiality, compromises, the effect of not reaching settlement, interruptions, as well as mutual respect between the parties.

(iii) **Opening statements**

Each party is given an opportunity to make statements relating to the background to the dispute and the issues at dispute as well as their positions on the issues at dispute.

During this stage the parties are given the opportunity to question each other in order to clarify statements made. The commissioner may also ask questions for his/her own clarity.

(iv) **Selecting the appropriate intervention**

Having established clarity on the dispute for him-/herself as well as between the parties, the commissioner will decide on the best intervention technique. The alternatives considered are mediation, relationship building, fact finding and advisory arbitration, among others.

(v) **Dispute analysis**

The commissioner and the parties develop an in-depth understanding of all the issues and the respective parties' needs and problems. This will be done either jointly or separately.

(vi) Option exploration

The problems and underlying needs of the parties are then carefully summarised. Once this has been done common ground is sought through mediation or brainstorming. The best settlement or solution is then identified.

(vii) Choosing solutions

The commissioner will then attempt to determine and achieve agreement on criteria to measure options identified in the exploration stage. Thereafter the options are evaluated against the criteria agreed upon.

(viii) Finalisation of agreement

On the basis of the common ground established the parties will then agree on a solution **or** disagree on the agreement to be signed by both parties. The commissioner will then issue a certificate form 7.12 indicating that the dispute is resolved/not resolved.

2.5.2.5 ARBITRATION

Where conciliation fails to settle a dispute or at the end of the 30-day period, the commissioner issues a certificate certifying that the dispute is unresolved in terms of section 135(5).

Either of the parties may then apply in terms of section 136(1)(b) for the matter to be resolved through arbitration. Upon receiving a valid referral, the Commission will appoint a senior commissioner to arbitrate the dispute. No regulations or procedures are prescribed under the auspices of the Commission, but the process follows the following lines:

(i) **Introduction and housekeeping**

This involves the commissioner introducing him-herself, identifying the parties and their representatives, and establishing the need for an interpreter, etc.

At this stage the commissioner will also establish whether conciliation has been exhausted, and will explain the procedure to be followed.

(ii) **Opening statements**

Both parties are then given the opportunity to make their respective statements relating to the nature of the dispute and important issues to be considered, and argue on how they see the issue.

(iii) **Checking jurisdiction**

The Act allows for disputes to be resolved through bargaining councils, the Commission, the Labour Court and the Labour Appeal Court. The commissioner must therefore ensure, through the application of stipulations of the Act, that the issue is dealt with at the appropriate level. The Act, for example, requires that dismissal on grounds of misconduct be dealt with by a bargaining council or the CCMA, where no bargaining council has jurisdiction.

Failure on the part of the CCMA to settle any dispute either through conciliation or arbitration will result in the dispute being taken to the Labour Court on review, if necessary. Any dismissal on grounds of redundancy are referred to the CCMA for conciliation, and thereafter to the Labour Court. Judgments of the Labour Court are reviewed by the Labour Appeal Court.

(iv) **Explanation of procedure**

The commissioner explains the procedure to be followed and the powers vested in him/her by section 142 of the Act, relating to the resolution of disputes during arbitration.

(v) **Clarification of issues at dispute**

At this stage the parties sift out the relevant issues. This process is called narrowing the issues for the common understanding of both parties. This involves explaining the issues, their respective positions regarding these issues, the desired settlement and, issues which are common cause as well as the presentation of evidence.

(vi) **Explanation of the rules of evidence**

The commissioner explains the importance of evidence, and what evidence is admissible and relevant.

In addition, the party who carries the onus to provide supporting evidence and documentation must be identified.

(vii) **Complainant's/Respondent's evidence is heard**

Witnesses of both parties are then

- examined by the applicant/respondent
- cross-examined by the applicant/respondent
- re-examined by the applicant/respondent.

(viii) **Closing statements**

The parties are each given an opportunity to present closing arguments relating to the evidence heard, and motivate their preferred settlements.

(ix) **The awards**

The arbitrator will then consider and prepare his/her award. This must be served on the parties within 14 days of the hearing. This period may be extended by agreement between the parties.

2.5.2.5.1 APPOINTMENT OF COMMISSIONERS TO ARBITRATE

There are two circumstances where the Act requires a dispute to be resolved through arbitration. These, according to section 136 (1), are:

- (a) where a Commissioner has issued a certificate stating that the dispute remains unresolved after conciliation; and
- (b) where any party to the dispute has requested that the dispute be resolved through arbitration.

In any of these circumstances the director of the Commission will appoint a commissioner who may be the same commissioner who attempted to resolve the dispute through conciliation. In other disputes a senior commissioner may be appointed by completing form 7.15 according to section 137, after the director considered the stipulations of section 137 (3).

Any party to the dispute may object to the same commissioner being appointed if such a commissioner was involved in the conciliation. Such an objection must be considered and another commissioner be appointed according to section 136 (4). Preference of the parties with regard to the appointed commissioner must be honoured if it is reasonably practical.

2.5.2.5.2 THE NATURE OF ARBITRATION

In terms of section 143(1) of the Act, the essential element of arbitration is the binding nature thereof. If a dispute has been referred to arbitration, the parties will be bound by the arbitrator's decision, referred to as the arbitrator's award, which may, according to section 158(1)(c), be made an order of the Labour Court.

Once a dispute has been referred for arbitration it will be unlawful to institute a strike or a lock-out in connection with the subject-matter of the dispute. This will be the case until the arbitrator's award is suspended and/or reviewed by the Labour Court in terms of section 145 (1) and (2).

It could happen in practice that conciliation fails to settle a dispute between parties. In such an event the Commission must arbitrate in terms of section 141 (1) if a party to the dispute would be entitled to refer the dispute to the Labour Court for adjudication, and instead all the parties agree to arbitration. There are also disputes specifically reserved for arbitration and some of these concern organisational rights, interpretation and application of collective agreements, interest issues in essential services, dismissals for misconduct or incapacity, severance pay, promotion, demotion, suspension and failure to reinstate or re-employ, amongst others.

Any commissioner who made an award may vary such an award under the circumstances stipulated in section 144 (a) (b) and (c). The Arbitration Act 42 of 1965 does not apply to any arbitration under the auspices of the Commission, according to section 146 of the LRA.

2.5.3 THE LABOUR COURT

2.5.3.1 ESTABLISHMENT OF THE LABOUR COURT

Section 151 of the Act provides for the establishment of a Labour Court with Supreme Court status.

The Labour Court adjudicates as a court of first instance those disputes specifically reserved for it, and may review the proceedings of the Commission. Disputes which are reserved for adjudication by the Labour Court are those concerning freedom of association, refusal to admit a party to a bargaining council, strikes/lockouts, breaches of picketing rules, protest action, automatically unfair dismissals and dismissals on grounds of operational requirements, as well as discrimination under the residual unfair labour practice definition.

2.5.3.2 POWERS OF THE LABOUR COURT

The powers of the Labour Court are stipulated in section 158. The court has, among others, the sole and exclusive jurisdiction to order or compel compliance with one or more of the provisions of the Act, may grant urgent interim relief until a final order can be made and may decide appeals in terms of section 35 of the Occupational Health and Safety Act 85 of 1993.

Except as provided by Section 158 (2), the Labour Court, according to section 157 (5), has no jurisdiction to adjudicate an unresolved dispute which the Act requires to be resolved by way of arbitration and may decline to hear any matter unless the court is satisfied that an attempt has been made to resolve the dispute by way of conciliation in terms of section 157 (4)(a). For such purposes a certificate issued in terms of section 157 (4)(b) of the Act constitute such proof. The Labour Court is also entitled to make an award as to costs, damages or compensation which it deems just and equitable in the circumstances.

2.5.3.3 THE LABOUR COURT PROCESS

According to Marais and Israelstam (The Star 15/1/97), depending on the nature of the dispute, should a bargaining council or CCMA fail to resolve any dispute, the matter could be referred to the Labour Court for adjudication. Disputes which may be referred to the Labour court after the CCMA has failed to resolve the disputes are those relating to:

- (i) freedom of association
- (ii) admission of a union to a closed shop agreement
- (iii) interdicts against industrial action
- (iv) failure to comply with provisions of the Labour Relations Act
- (v) automatically unfair dismissals
- (vi) dismissals for reasons of retrenchment or industrial action
- (vii) unfair discrimination.

The stages to be followed in referring a dispute to the Labour Court are the following:

2.5.3.3.1 Failure of conciliation

The dispute must firstly have been attempted to be resolved by the CCMA or bargaining council. If such an attempt failed, confirmation thereof is given by issuing a certificate to this effect.

2.5.3.3.2 Obtaining a case number

An application is then made by the referring party for a case number to the registrar of the Labour Court. Upon receipt of such an application the registrar provides a case number.

2.5.3.3.3 Statement of claim

The applicant party completes a form wherein a statement of claim is lodged with the registrar. A copy of the said form is also sent to the respondent. The statement of claim informs the respondent and the Labour Court of the legal issues of the case and the material facts as well as the relief sought.

2.5.3.3.4 Filing of a response

The respondent party must respond to the statement of claim within 14 court days of receipt.

2.5.3.3.5 Pre-trial conference

A pre-trial conference is then held within 14 court days from the date of the response being delivered to the applicant. The pre-trial conference aims to shorten the process by seeking agreement on:

- (i) settlement methods
- (ii) shortening proceedings
- (iii) facts in agreement and in dispute
- (iv) issues to be decided by the court
- (v) exchange of documents and the validity thereof
- (vi) acceptance of affidavits without concurrent witnesses' evidence
- (vii) getting witnesses to court
- (viii) expert evidence.

2.5.3.3.6 Delivery of minutes of pre-trial conference

The applicant party is responsible for delivering the minutes of the pre-trial conference to the registrar within 7 days of the completion of the conference.

2.5.3.4 REPRESENTATION BEFORE THE LABOUR COURT

Section 161 of the Act stipulates that a party to the proceedings before the Labour Court may appear in person or be represented by officials of trade unions or employers' organisations of which the party before the court is a member and any party to the proceedings is entitled to be represented by a legal practitioner, co-employee or by a member, an office bearer or official of that party's, trade union or employer's organisation, and if the party is a juristic person, by a director or an employee.

2.5.3.5 AWARDING COSTS

According to section 162 the Labour Court may make an order for the payment of costs according to the requirements of the law. In awarding costs the Labour Court will take into account the conduct of the parties (both prior to and during the proceedings) and in particular the failure of any party to attend, without good cause, any conciliation meeting convened.

2.5.3.6 ENFORCEMENT OF ORDERS OF THE LABOUR COURT

Any judgment or order of the Labour Court may, in terms of section 163, be served and executed as if it were a decision, judgment or order of the Supreme Court. According to section 165 the Labour Court may rescind or vary an order on the same grounds as the Commission and an appeal against any judgement of the Labour Court is heard by the Labour Appeal Court.

Any party to a dispute whose application for leave to appeal is refused may petition the Labour Appeal Court for such leave in terms of section 166.

2.5.4 THE LABOUR APPEAL COURT

The Labour Appeal Court was established, in terms of section 167, as a court of record, law and equity with inherent powers equal to that which the Appellate Division of the Supreme Court has in relation to matters under its jurisdiction.

2.5.4.1 JURISDICTION OF THE LABOUR APPEAL COURT

The court has the power to determine any appeals from the Labour Court or decide reserved questions of law in accordance with the stipulations of section 173 (1) (a) and (b).

Section 175 of the Act further empowers the Judge President to direct any matter before the Labour Court to be heard by the Labour Appeal Court as a court of first instance, thus entitling the court to make any order in terms of the Act that the Labour Court would have been entitled to make.

2.5.4.2 RULES FOR THE LABOUR APPEAL COURT

According to section 176 a Rules Board is established, in terms of section 159, to regulate the conduct of proceedings of both the Labour Court and the Labour Appeal Court. These rules, according to section 159 (3), include, but are not limited to:

- (a) the process by which proceedings are brought before the court, and the form and content of that process;

- (b) the period and process for noting appeals;
- (c) the taxation of bills of costs;
- (d) after consulting with the Minister of Finance, the fees payable and the costs and expenses allowable in respect of the service or execution of any process of the Labour Court, and the tariff of costs and expenses that may be allowed in respect of that service or execution; and
- (e) all other matters incidental to performing the functions of the court, including any matters not expressly mentioned in this subsection that are similar to matters about which the Rules Board for Courts of Law may make rules in terms of section 8 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985).

The Rules Board will according to section 159(2)(a)(b) and (c), consist of the Judge President of the Labour Court and his/her Deputy and 5 persons appointed by the Minister in consultation with NEDLAC for a period of 3 years. The persons appointed by the Minister will be an advocate, an attorney, a labour representative, an employer representative and a representative of the state.

2.5.4.3 REPRESENTATION BEFORE THE LABOUR APPEAL COURT

The Labour Appeal Court may make an order for the payment of costs, according to the requirements of the law and fairness, in terms of section 179(1). When deciding whether or not to order the payment of costs, the Labour Appeal Court, according to section 179(2)(a) and (b), may take into account:

- (a) whether the matter referred to the court should have been referred to arbitration in terms of this Act and, if so, the extra costs incurred in referring the matter to the court; and
- (b) the conduct of the parties in proceedings with or defending the matter before the court; and during the proceedings before the court.

The Labour Appeal Court may order costs against a party to the dispute or against any person who represented that party in those proceedings before the court, in terms of section 179(3).

2.5.4.4 THE LABOUR APPEAL COURT AS A FINAL COURT OF APPEAL

As required by section 183, subject to the Constitution Act 108 of 1996 and despite any other law, no appeal lies against any decision, judgment or order given by the Labour Appeal Court in respect of :

- (a) any appeal in terms of section 173 (1) (a);
- (b) its decision on any question of law in terms of section 183 (1) (b); or
- (c) any judgment or order made in terms of section 175.

2.6 CONCLUSION

Ever since the start of the political reform process in South Africa change has been seen in all spheres of social, political and economic life. This involves the transformation of existing structures into new institutions reflecting democratic values of the new South Africa. The legislative structures and the workplace were no exception. In this chapter a detailed overview of the new dispute resolution mechanisms was given to indicate these mechanisms and processes and the institutions created for this purpose. It is hoped that this overview will assist in enhancing the understanding of the new dispute resolution mechanisms. On the basis of this understanding it should be possible to form perceptions on these mechanisms which this study hopes to measure. A complete understanding of these mechanisms will help to add value to the research project - particularly the questionnaire design phase.

CHAPTER 3

THE ROLE OF PERCEPTIONS IN INFLUENCING BEHAVIOUR

3.1 INTRODUCTION

Perceptions are defined by Louw and Edwards (1993:117) as cognitive processes by which individuals receive and process information from the environment in order to give meaning to this environment. According to Robbins (1995:135) perceptions entail the process of selection, organisation and interpretation of stimuli from the environment and in this process individual senses play a very active role. This is in line with the Gestalt Psychologists' cognition theory which, according to Deaux and Wrightsman (1988:21), deals with ways in which people think about others and the social aspects of their environment.

In this chapter the nature of perceptions and the perceptual process will be discussed. In addition it is indicated that perceptions are formed against the background of factors which influence this process, as well how individual decision-making is determined by perceptions. The purpose of the study is to explore the perceptions of personnel practitioners regarding the dispute resolution mechanisms. Consequently it is essential to explore the specified role of perceptions in influencing people's behaviour.

3.2 THE NATURE OF THE PERCEPTUAL PROCESS

The above definition by Robbins (1995:135) indicates that the perceptual process consists of three distinct steps: selection, organisation and interpretation. According to Kimble (1990:79), however, the perceiver brings preconceived ideas to every interaction. People, generally, will therefore not share exactly the same perception even if exposed to the same stimuli. Where the needs and expectations of employees are not being satisfied in the workplace, negative attitudes and perceptions are formed. These may lead to anxiety, poor work performance and increased levels of labour conflict between employees and management. The perceptions of employees are based on their facts and personal experiences of things and events. This is in line with the view of Deaux and Wrightsman (1988:21) that experience influences individual perceptions of events. The perceptual process entails the following steps, according to Robbins' definition (1995:135).

3.2.1 SELECTION

At any specific point in time individuals are bombarded by a great volume of stimuli at once and it is impossible to attend to all the stimuli simultaneously. In order to solve this they have to select certain stimuli on the basis of certain external properties (external attention factors) or certain internal conditions (internal attention factors).

Due to their limited span of control it is not possible to give attention to all these. Brigham (1991:50) is of the opinion that schemes influence individual perceptions of these incoming stimuli.

As a result of the scheme, therefore, certain stimuli (important to the individual) are selected. The process of selection is influenced by external and/or internal factors. According to Robbins (1993:140) selection and interpretation are based on interest, background, experience and attitudes. Individuals then also select stimuli which, according to them, are big, intense, moving, repetitive, familiar or inconsistent with their background.

In the South African industrial relations arena Blacks and Whites had different experiences under the National Party (NP) government. These cultural backgrounds are also experiencing the present African National Congress (ANC) government differently. On the basis of the relations between the NP and employers as well as those between the ANC and SACP/COSATU certain perceptions are recorded unofficially. Blacks perceived the discriminatory laws and social policy of the NP government to favour employers (mainly white). On the other hand employees, and particularly black trade unions, expect social policy and labour laws of the ANC government to favour labour.

3.2.2 ORGANISATION

Organisation is the second phase in the perceptual formation process. Robbins (1993:143) argue that stimuli such as the respective past and present experiences are organised in terms of the different backgrounds. Factors which are involved in organisation, according to Robbins (1993), are:

3.2.2.1 **Figure-background**

In terms of this principle an occurrence or situation which is experienced will stand out against its background during the perceptual formation process, e.g. resistance to unfair labour practice or the imposition of managerial prerogative.

3.2.2.2 **Perceptual grouping**

Perceptual grouping involves the grouping of stimuli in a recognisable pattern on the basis of closing, continuity, proximity and similarity, e.g. incidents of insubordination which occur regularly will be perceived to be related to each other, even if they are not necessarily so.

3.2.2.3 **Perceptual constancy/uniformity**

Change takes place in the country on a continuous basis. Associated with this change is instability. Perceptual constancy helps to establish some stability in the face of the ever-changing environment. It therefore provides individuals with the ability to interpret a multitude of similar stimuli as constant.

3.2.2.4 **Perceptual context**

Perceptual context, according to Robbins (1993:142), is the most sophisticated form of perceptual organisation. Perceptual context puts issues into perspective by giving meaning and value to simple occurrences and situations or people in the environment.

3.2.3 **INTERPRETATION**

The final phase of the perceptual formation process occurs when specific meaning is attached to events or situations. Meaning represents an evaluation of the environment and not a prescription of factual proof.

Perceptions often differ from reality due to the different meaning people attach to events on the basis of their motivations.

The interpretation of events is also influenced, according to Robbins (1993:141), by stereotypes, halo-effect, projection and expectations on the interpersonal level, e.g. if a practitioner expects the Act to favour labour/employers this is what he/she will read in it. In addition the characteristics of the perceiver (such as knowledge and acceptance of the Act) and characteristics of the Act itself (like its status, role and qualities) will influence perceptions of it. Whether the personnel practitioners perceive the environment negatively or positively has a great influence on both their productivity and motivation because, according to Robbins (1989:105), behaviour of people is based on perceptions of reality and also the fact that their decision making is largely influenced by perceptions. The age and culture of the perceiver are important determinants of perceptions. It is therefore reasonable that black and white perceptions differed in the past and will continue to differ under the new democracy, because expectations and cultures do.

It is general knowledge that during this phase distortion occurs. The most common forms of distortion found in the social context are:

3.2.3.1 **Stereotyping**

A stereotype, in the view of Deaux and Wrightsman (1988:468), is a set of ideas associated with members of an identifiable group. It occurs when behaviour is attributed to a person or a group on the basis of characteristics of cultural background (Robbins,1993:143). Unfortunately these stereotypes distort perceptions. Although such perceptions in South Africa generally to be negative between black and white, Deaux and Wrightsman (1988:468) believe some of the information may be positive or even neutral.

3.2.3.2 **Halo-effect**

Halo-effect occurs when individuals are evaluated on the basis of one positive/negative attribute, says Westen (1996:672). The one attribute is then used to over-generalise, thus overshadowing all other attributes and distorting the perceptions.

3.2.3.3 Projections

Projection occurs when individuals ascribe their own attributes or dispositions to another, according to Robbins (1993:142). It is common to experience this when people apportion blame to others as a defence mechanism. In this regard Westen (1996:438) views Jimmy Swaggart's conscious repulsion of sexuality (particularly illicit sexuality) as apparently masking a tremendous need for it. The same may be said about black and white racial issues in the workplace. If Blacks distrust whites or vice versa, they may project their own feelings onto the other group.

3.2.3.4 Expectations

Expectations of the ANC government practising reverse discrimination may lead to perceptions of discrimination, even though this does not occur. Expectations actually form the basis of stereotyping, halo-effect and projection. As indicated by Robbins (1993:136), people see what they expect to see.

3.3 IMPORTANT ROLE PLAYERS IN THE PERCEPTUAL PROCESS

3.3.1 THE PERCEIVER

The interpretation of people is heavily influenced by personal characteristics of the individual. Personal characteristics which affect perceptions, according to Robbins (1998:83), are attitudes, motives, interest, past experience and expectations. The experience and expectations of Blacks and Whites in the South African industrial relations arena are different as a result of past legislation. This has led to differences in attitudes, motives, interests and expectations. As a result of these differences their perceptions of the legislative measures were different in the past and will be in the future.

This is due to the fact that the workforce represents a diversity of employees and cultures. In addition a so-called illegitimate white minority government, led by the National Party, was in power, therefore the black majority generally interpreted the legislative interventions of the state negatively.

Some officials of the former Department of Manpower were happy with the old conciliation and arbitration functions performed under the Labour Relations Act of 28 of 1956 whereas labour (mainly black and COSATU affiliated) argued that the processes were time-consuming and ineffective (Know your LRA, 1996.2). One of the major reasons for different perceptions was and still is the divergent attitudes (particularly between black and white) workers concerning government policy.

The motivations of individuals may exert a strong influence on their perceptions, says Robbins (1993:135). In South Africa Blacks within the "struggle" have so to speak sacrificed for the liberation of the country. For this reason they have high expectations of the new government. What they are hoping to achieve is democratisation of the workplace, protection from unfair labour practices and an improvement in the rights of workers amongst others. The employers in some cases perceive this as an invasion into what was known to be management's prerogative.

Employers invest money in their businesses for gain and would therefore like to determine what should be done and when it should be done so as to improve their profitability. Labour, on the other hand, wants to be involved in the decision-making process and improve the general working conditions, including wages. Past experiences also influence perceptions and Robbins (1993 : 136) confirms this when he indicates that people perceive those things to which they can relate: The experience of South African Blacks of job reservation and low income as well as non-participation in the decision-making processes are less noticeable because interest narrows one's focus (Robbins, 1993:136).

Robbins (1993:136) expresses the view that expectations can distort perceptions in that one sees what one expects to see. Owing to their contributions to the liberation of the country Blacks therefore expect the new ANC government to pass laws which favour them. Whites, on the other hand, also expect the laws to favour Blacks. On the basis of the two different kinds of expectations, perceptions of the laws will therefore be rightfully, so as to support these views.

3.3.2 THE TARGET

According to Robbins (1993:136), the relationship of a target to its background influences perception. In the present-day South Africa the country is led by the ANC. It is also common knowledge that the ANC is in alliance with the SACP and COSATU. Within the support base of this alliance lies the power base of the government. It is not surprising, therefore, that some high-ranking officials of COSATU, e.g. Jay Naidoo, were appointed to the cabinet. As a result of the involvement of the alliance partners in the drafting of the LRA, there is the perception that the Act is much more favourable to workers and unions than the old Act 28 of 1956. Employers, on the other hand, have also tended to express the unofficial view that the LRA is more favourable to labour as a result of the alliance relationship between ANC - COSATU - SACP. The structures for dispute resolution in previous legislation was therefore viewed against the background of the relationship between the state and white employers. This was very strong and was perceived to favour employers to the detriment of labour.

3.3.3 THE SITUATION

Elements in the surrounding environment influence perceptions, according to Robbins (1993 : 138). The South African society's perceptions have mainly been influenced by social and cultural factors which have affected the work culture Eskom A.A.Team, 1994:59). Management tend to be recruited from the better educated groups. This means that they come from the middle and upper social classes and share their views of work. The workers, on the other hand, tend to have a poorer education and come from the lower socio-economic groups, and share their own views of work. For them work is often just seen as a means to an end, a place where economic and other extrinsic rewards are seen to be all that is available. The intrinsic rewards that could be derived have not been part of their awareness.

In South Africa there is the added complication of cultural differences. The black people's traditional view of work tends to be very different from that of Whites. To the traditional Black, work satisfies subsistence needs and very little else. In the western society, work has come to be considered a virtue in itself, with emphasis on the individual's effort. Business organisations, on the other hand, have been run to a large extent by white males with Blacks relegated to the low levels.

This has contributed to an apathetic non-involvement, as well as an absence of aspirations.

In addition other perceptions of the LRA, which could also show prevailing perceptions, have been published in the media, particularly The Workplace (a weekly supplement in The Star newspaper) and these may be grouped as follows: general, efficiency, costs, conciliation and arbitration.

(i) **General**

According to Healy (The Star 10/7/1996) South Africa has a legacy of Draconian labour legislation which has caused employees much hardship. It was, therefore, not surprising that the new Department of Labour embarked on a five-year plan to transform the labour legislation immediately after having taken office. Healy, indicated, however, that the revision of the labour and employment laws has left many employers with the mistaken belief that they have very few rights in the face of increasing trade union power and influence. This could be related to the strongly perceived influence of both COSATU and the SACP in the alliance. The perception of the employers is that the new Act provides employees more protection than they have ever enjoyed in South Africa. The issue here is that the employees now have a right to be treated fairly and not be dismissed unfairly, as written in section 185 of the Act. Acceptance of this has been negative, as may be judged by Healy's comment (The Star, 10/7/1996) that it is not uncommon to hear employers say: "You can't discipline let alone dismiss anymore".

(ii) **Efficiency**

The purpose of the Act is, amongst others, the speedy resolution of disputes. If there is a dispute about the fairness of a dismissal, the dismissed employee may refer the dispute (in writing), within 30 days of the dismissal, to a council/or the Commission, according to Section 191 (a) (b). This section clearly indicates the important feature of the Act, i.e. the speedy disputes procedure of the CCMA. According to the case load of the CCMA (CCMAIL : 1997), of the 45 000 cases dealt with up to 31-10-1997 only 6% were in the Free State Province. This province has shown a 1% increase by September 1997. During the same period - 11/11/96 - 31/10/97 - the Free State recorded a settlement rate of 69%.

The case load indicates that the issues being disputed nationally are unfair dismissals 73%, unfair labour practices 12%, mutual interest disputes 6%, severance pay 2%, and others 7%.

According to Van der Merwe and Marais (The Star, 11/6/1997) the Act includes the usage of the word “may” and not “shall” in section 191. This could be used to attempt to show that the intention of the legislature is a flexible interpretation of the 30-day period. Secondly, section 191(2) states that if the employee shows good cause at any time, the council or CCMA may permit the employee to refer the dispute after the 30-day time limit has expired. Van der Merwe and Marais (The Star, 11/6/1997) argue that this section opens the door for the acceptance of late applications on “good cause” shown as it is difficult to determine what “good cause” entails.

In addition they say that, because of the degree of ignorance surrounding the Act, section 191(2) should be interpreted in a more favourable manner to the layperson employees, or condonation be granted in instances where the employee was not informed of his/her rights to initiate proceedings within a specific time period. The problem with this position is, firstly, that the employees being unaware of the 30-day period is not acceptable on the basis of the legal principle that ignorance of the law is no excuse. Furthermore, Van der Merwe and Marais indicate (The Star, 7/5/1997) that commissioners readily grant condonation for late referrals in instances where employees claim ignorance. Clearly this flexibility seemed to create the impression that the CCMA commissioners favoured labour. However, Van der Merwe and Marais (The Star, 7/5/97) are of the view that applications for condonation were later met with the attitude that ignorance of the law is no excuse.

Section 138 (7) of the Act provides that within 14 days of the conclusion of the arbitration proceedings the commissioner must issue an award and serve it on both parties. This may again be extended on good cause shown, in terms of section 138 (8). This clause, together with section 191(2), therefore is against the spirit of the Act and creates the perception that the Act favours labour above business.

However, the experience of Marais and Israelstam (The Star 11/6/1997) is that a sense of order and calm was being experienced by parties at the CCMA, and this has led to more efficient response by CCMA administrative staff, the systems for arranging conciliation and/or arbitration becoming more streamlined, and a reduction in the delay between referrals of cases and actual meetings.

Van der Merwe and Marais mention (The Star, 14/5/1997) the poor treatment they have experienced at the hands of a minority of commissioners, yet they have found most commissioners extremely courteous and professional in their role as independent conciliators.

(iii) **Costs**

The CCMA may, in terms of section 123 (a), only charge a fee for resolving disputes which are referred to them in circumstances where the Act allows the Commission or a Commissioner to charge a fee. According to section 123(2)(a) and (b) a tariff charged by the commission must be established by the governing body and such a fee must be in accordance with the established tariff. In addition the Labour Court may, according to section 158(a) (v), make an award of compensation in any circumstances contemplated in the Act 158 (a) (vii), and an order for costs.

When deciding whether or not to order for the payment of costs, the Labour Court may according to section 162 (2) (a)(b), take into account whether the matter referred to the court ought to have been referred to arbitration in terms of the Act, and may consider the conduct of the parties in proceeding with or defending the matter, as well as during the proceedings before the court.

According to both sections 162(1) and 179 the Labour Court and Labour Appeal Court respectively may make orders for the payment of costs according to the requirements of the law and fairness. Section 194 places limits on the compensation to be awarded but section 144 empowers any commissioner to vary or to rescind an arbitration award under certain circumstances. While section 194 places limits, thereby taking away any discretion, section 144 allows for flexibility.

Marais and Israelstam (The Star, 28/5/1997) are of the opinion that allowing such flexibility should be welcomed, as the bureaucratic, rigid approval of the "referee's word is final" is inappropriate. The unfortunate position, however, is that flexibility will allow for inconsistencies which Marais and Israelstam (The Star 28/5/1997) see as only a temporary hitch as was experienced in *Gouws vs Dr Herwitz*.

3.4 PERCEPTIONS ON THE DISPUTE RESOLUTION MECHANISMS

In his keynote address to a conference on *Understanding the Gear strategy of the Department of Labour* the Director General of Labour, Siphso Pityana, expressed an opinion on the old Labour Relations Act 28 (1956) and said that the inherited regulatory framework for the labour market did virtually nothing to support fast, cheap dispute resolution or ensure the efficient allocation of labour either within or between enterprises. This Act and the old labour relations system were brought to an end with the coming into effect of the new Labour Relations Act 66 of 1995 on 11 December 1996. The new Act was seen as ground-breaking legislation, holding great promise for positive co-operation among employers, labour, and government. On the occasion of the launch of the Act, according to Pityana, the Minister of Labour, Tito Mboweni, said that the new Act was worth the wait. He went on to say that "from the implementation the country will have a labour law which promotes collective bargaining, resolves disputes quickly, encourages industrial peace, and gives protection to farm workers and other vulnerable workers previously excluded from labour rights" (1997).

3.4.1 Perceptions expressed in workshops

The perceptions that follow are an indication of views on the dispute resolution functions expressed in the CCMA official newsletter the *CCMail* (of 17 October 1997), as well as the media. The CCMA held a series of country-wide workshops with the purpose of informing business and labour on a national basis about the activities of the National Economic Development and Labour Council (NEDLAC), the CCMA and the Department of Labour (Brand, 1997:2). The subsequent report categorised the perceptions of participants at the workshops under the headings listed below:

(i) Commissioners

- unethical conduct of commissioners
- ethics and whether a Code of Good Practice existed
- the parties are pressurised by commissioners to settle
- lack of training of commissioners
- lack of experience on the part of commissioners
- conflict of interest (i.e. part-timers who sometimes wear consultants' hats)
- the lack of impartiality
- no clear distinction of levels of commissioners
- commissioner capacity
- commissioner rush issues at dispute to settle as many cases as possible for economic gain, and
- low percentage of female commissioners.

(ii) Representation

- the lack of clarity, consistency in approach required by parties and consultants
- affordability of legal representation.

(iii) Date on which the dispute arose

- no clarity on whether date of dismissal is that of first disciplinary hearing or that of appeal hearing
- apparently commissioners are not consistent in determining the dates of dismissals.

(iv) Problems related to case management

- poor communication between CMO's/Associates and parties (especially in the case where CCMA does not have jurisdiction or where cases are closed - parties often not informed)
- continuous postponement of cases
- responding party not being mentioned on referral forms
- problems contacting either referring or responding party due to relocation or incomplete referral forms

- backlogs
- refusal to reschedule events
- screening of frivolous and non-jurisdictional cases
- the expiry of the 30 days allowed for referral due to CCMA delays caused unhappiness, as parties are inconvenienced by having to apply for condonation due to no fault on their part, and
- parties being frustrated due to no response from CCMA offices.

(v) **Problems with CCMA events**

- two or three hours too short to reach agreement
- non-attendance or extreme lateness by parties (and in some cases commissioners), and
- non-compliance with agreement reached during conciliation.

(vi) **Arbitration awards**

- complaints about the quality of awards, with reference to lack of logic, unacceptable levels of spelling and grammatical errors
- non-compliance and procedures to be followed subsequently (affordability)
- lateness, and
- time limits between failure of conciliation hearing and requests for arbitration are needed.

3.4.2 **Perceptions expressed in the media**

(i) **Representation**

In terms of section 135(4) a party to a dispute at conciliation may appear in person or be represented only by a co-employee or by a member, an office-bearer or official of that party's trade union or employer's organisation and, if the party is a juristic person, by a director or an employee.

According to Van der Merwe and Marais (The Star, 9/7/97), "venturing into the dispute resolution mechanisms without reliable representation could be compared to jumping off a plane without a parachute... something that should not be engaged in without consideration of the rather serious consequences". The wisdom of sections 135(4), 138(4) as well as 161 of the Act have since been challenged and a judgment is awaited, according to Healy (The Star, 9/7/97).

The above view is, according to the Healy (The Star, 9/7/1997), supported by a Labour Court case J48/97 between Marble Hall Spar/SACCAWU and 5 others where the judge said "the founding affidavit on which the applicant relied failed to address crucial issues which appeared to be at stake". Also lacking, according to the judge, was an exposition of the legal issues that arise from the material facts.

According to Marais and Israelstam (The Star, 21/5/97) the process of drafting and lodging papers correctly and appearing in court is often too strict for the lay person to handle alone. If therefore this perception is true and confirmed by a judge, it should be appreciated how a person felt in a conciliation matter (which he was forced into) with his managing director, when he commented: "I felt very intimidated and no matter what I tried, it felt as if he (the M.D) steamrollered over me. (Van der Merwe & Marais, The Star 28/5/1997). This happened, according to Healy (The Star 30/7/1997), simply because the cases were poorly presented by parties who had not been equipped with the knowledge and skills to do so effectively.

On the face of it there does not seem to be clear reasons for the exclusion of consultants and lawyers as they substantively contribute to the effective and fair resolution of disputes and their representation is aimed at the achievement of fairness at the CCMA. According to Van der Merwe and Marais (The Star, 28/5/1997) "there are simply too many legal and tactical pitfalls to negotiate, and to venture into a process which essentially entails bargaining in an unfair bargaining position could be tantamount to disaster".

This, according to them, is because cases are won/lost on evidence and argument and without the assistance of lawyers/consultants, the parties may not present their case in accordance with a consideration for the admissibility of evidence.

A legal practitioner may also represent a party to a dispute at both the Labour Court and Labour Appeal Court, in terms of sections 161 and 178 respectively.

Sections 135(4) and 138(4) clearly indicate that legal representation is not allowed during conciliation. The special provisions for arbitration in section 140(1) also stipulate that a legal practitioner is not entitled to represent parties in disputes relating to fairness. The definition of an employee who is entitled to the Act's protection and may represent a party in a dispute is wide. The Act defines an employee "as any person excluding an independent contractor who works for or assists with carrying out the business of an employer, whether or not that person is being paid for his services".

According to the Labour Court ruling in the *Medical Association of South Africa and Others vs Minister of Health and Another*, reported in The Star, 13 August 1997), the court had to determine the status of the parties and looked at factors such as whether:

- (i) the object is to render personal services or the completion of a specific job/result;
- (ii) the workers were on call for the employer or whether they do not have to be available unless the employer requires them to be;
- (iii) the workers are to be paid regardless as to whether work is available; and
- (iv) the employer has the right to control and supervise the workers or not.

In applying these factors to determine whether the workers were employees, the court therefore used the so-called Dominant Impression Test.

(ii) **Conciliation**

According to section 135(1), once a dispute is referred to the Commission a Commissioner is appointed to resolve it through conciliation within 30 days in terms of section 135(2). This period may be extended by agreement between the parties. Section 135(3) empowers the appointed commissioner to attempt to resolve the dispute through a process determined by the commissioner.

These processes may include mediation, fact finding, or advisory arbitration.

Marais and Israelstam (The Star, 8/1/1997) have indicated in the Star (8/1/97) that their early experiences with the CCMA are that the administrative staff are dealing with the referrals effectively, timeously and professionally.

The intention of the Act is to resolve disputes quickly and less expensively than previously. For this reason the stipulation of 30 days to refer and another 30 days to resolve the dispute was legislated in section 135(2). Marais and Israelstam (The Star, 8/1/97) are of the view that the process of conciliation is relatively simple and straightforward, and could be completed within one day. In addition their perception is also that the process is handled in a practical and non-legislative manner. This also makes the process less costly for the parties. As regards the 30-day period to resolve disputes. Healy (The Star, 23/4/1997) commented that the CCMA is already overburdened, and unavailable to commence dispute resolution within the time-frames allocated in the Act. This is mainly due to present workload, and an unprecedented number of disputes being referred to the CCMA or bargaining councils according to the article. Another reason for the backlog, according to Healy (The Star, 23/4/1997), is the prevention of disputing parties from deciding who will represent them at dispute meetings. This, argues to Healy, is nonsensical and contributes to conciliation meetings becoming more protracted than they need to be.

(iii) **Arbitration**

After attempts by a commissioner to settle a dispute through conciliation fails, the commissioner issues a certificate to the effect that the dispute remains unresolved.

Parties would then refer the dispute to arbitration by completing a referral form from the CCMA. Marais and Israelstam (The Star, 15/1/1997) indicate that although various forms are used, the process is not a bureaucratic one as these are relatively simple to complete. In addition they have also expressed satisfaction with the CCMA who, according to them, have been helpful in timeously processing referrals and in scheduling meetings. As far as the process of arbitration is concerned the arbitrators generally follow broad guidelines.

Marais and Israelstam (The Star, 7/5/1997) indicate that arbitrators have been recruited from a variety of backgrounds and therefore may introduce their own individual personalities, styles, and approaches.

According to section 136(2) a commissioner appointed in terms of section 136(1) may be the same one who attempted to resolve the dispute at conciliation. Section 136(3), however, entitles any party to object to the same commissioner being involved in both arbitration and conciliation. Van der Merwe and Marais (The Star, 2/7/1997) express the opinion that the cornerstone of successful arbitration is an objective and fair arbitrator. If, therefore, the Commission receives an objection, another commissioner is appointed to resolve the dispute. Whereas the guidelines followed in the process of arbitration are not new, the appointment of a commissioner to take this responsibility is new. This has had the effect of producing some inconsistent awards and more specifically in respect of compensation. According to the Act, an arbitration award has to be given within 14 days. In addition section 194(1) and (2) sets the minimum compensation to be awarded for unfair dismissals on a procedural and substantive basis respectively. In accordance with these stipulations, arbitrators have no power to make awards lower than those stipulated. According to Marais and Israelstam (The Star, 28/5/1997), however, arbitrators have deviated from this inexplicably..

(iv) **Labour Court**

Disputes which occur are, according to section 134, referred to the CCMA or a bargaining council for conciliation in terms of section 150 of the Act.

Should conciliation fail, one of the options is to refer the matter to the Labour Court, depending on the nature of the dispute. Disputes which may be referred to the Labour Court after conciliation has failed, include those relating to:

- (i) freedom of association;
- (ii) organisational rights;
- (iii) interdicts against industrial action;
- (iv) exercising picketing rights;
- (v) failure to comply with provisions of the Act;
- (vi) automatically unfair dismissals;
- (vii) dismissals for reasons of retrenchments or industrial action; or
- (viii) unfair discrimination.

Marais and Israelstam (The Star, 14/5/1997) express the opinion that the speed with which a case number is obtained from the registrar is serving to expedite the process substantially.

The next step in the process of referring a dispute to the Labour Court is to lodge a statement of claim. Marais and Israelstam (The Star, 14/5/1997) believe that the simplicity of the procedural requirements to do this makes the dispute resolution system more acceptable.

The process leading to the Labour Court includes a conference which the parties must have within 14 days from the date of delivery of the response to the claim. The applicant is then required to deliver minutes of the conference to the registrar within 7 days of the completion of the conference.

According to Marais and Israelstam (The Star, 14/5/1997), in practice the 7-day period is too short, as the minutes have to be typed, scrutinized and reviewed by both parties, amended, retyped and then signed by both.

3.5 THE INFLUENCE OF PERCEPTIONS ON BEHAVIOUR

McCormic and Ilgen (1989:14) are of the opinion that behaviour is a function of the individual, social and task conditions. Whenever employees have a negative perception with regard to any of these conditions, it is to be expected that their behaviour will be negatively affected. If, however, the perceptions are positive, their behaviour will also be positive.

Management in organisations are responsible for creating the appropriate conditions in order to achieve organisational objectives. Personnel practitioners, in particular, are usually responsible for the development and maintenance of systems which promote healthy relations and minimise conflict, so that the internal environment supports the achievements of both individual as well as organisational goals. Individuals, however, generally act on their interpretations of reality. Robbins (1989:105) says perceptions are critically determinant of behaviour.

What employees perceive in their work situation will influence their productivity, according to Robbins (1989:105), as this is much more important than challenging work, or successful and efficient organisational structures.

Individuals think and reason before they act (Robbins 1989:106). It is therefore important, particularly for personal practitioners, to understand how people make decisions as this will be helpful to explain and predict behaviour. Employees are inundated with information on which they form perceptions. If the perceptions are negative this will influence the decision-making and ultimately their behaviour negatively.

3.6 CONCLUSION

Perceptions and decision making are important determinants of individual behaviour. They both are very complex concepts to understand although the overt behaviour is noticed frequently in everyday life.

This chapter indicated how information may be chosen and used on the basis of generalisations to confirm beliefs. In addition the influence of the individual, the situation and the target on perceptual formation was emphasised.

Finally, the influence of perceptions in decision-making was discussed. This in turn will lead to behaviour on the part of individuals.

On the basis of the understanding of this process against the background of the South African situation it will then be possible to comprehend how the communities of the country have developed. This will help to understand the different variables which shape people's behaviour.

Once there is appreciation for this, development interventions may be formed with a view to improving relations.

The literature study referred to in this chapter formed the basis on which the perceptions of personnel practitioners were assessed.

CHAPTER 4

RESEARCH DESIGN AND METHODOLOGY

4.1 INTRODUCTION

Research is seen by Leedy (1993:17) as a cyclical process consisting of logical developmental steps leading to the solution of the research problem. Whether or not a researcher succeeds in accomplishing the task will depend on the resolution of the problem, the data as well as the data collection methods used.

In this chapter focus will be placed on the respective steps of the research process. More specifically these involve the research design, the population, selection of the respondents, the data collection, the measurement instrument, data analysis as well as the hypothesis.

4.2 THE RESEARCH DESIGN

A non-experimental, exploratory, descriptive design was used. This type of approach, according to Christensen (1994:45), attempts to provide an accurate description of a particular situation. In addition the descriptive approach identifies variables that exist in a situation and at times describes the relationship that exists (Christensen, 1994:456).

The purpose of the descriptive approach is to observe, describe and explore aspects of a situation. The researcher further determined whether presenting the problem differed in terms of cultural background, academic qualifications, sex, marital status or industry, for instance. Although investigations of these relations might stimulate speculation about causality, the descriptive function delivers only information about the presence of association among factors. It does not determine causal connections, because these may be totally unwarranted.

Thus in the example given we learn that cultural background, educational qualifications, sex, etc. are related in a particular setting, but it is not known if cultural background was a cause or consequence.

4.3 POPULATION

4.3.1 CHOICE OF THE AREA

The questionnaire was distributed to businesses in Bloemfontein. Bloemfontein is the capital of the Free State province, one of the nine (9) provinces (regions) of the newly reconstructed South Africa. The city is made up of a central business district, industrial area and residential areas of which some are predominantly black, white or coloured.

All the areas in the city were included in the investigation. The questionnaire was distributed on business premises after presentations where required, and each personnel practitioner had an equal chance of being selected irrespective of where he/she resided.

4.3.2 SELECTION OF THE RESPONDENTS

Attention was focussed on personnel practitioners in the study. This was based on the assumption that personnel practitioners (as generalists or specialists), are usually responsible for the development and maintenance of healthy employee relations through the use of effective dispute resolution strategies. The population consisted of all practitioners within the Bloemfontein area with at least 2 years' experience as labour relations managers, up to a minimum of 100. The sample consisted of the total population of personnel practitioners employed by businesses that are registered with the Transitional Local Council and the District Councils of Bloemfontein, i.e. snowball sampling.

4.4 DATA COLLECTION

The personnel practitioners were randomly selected and demographic variables such as age, sex, cultural background and experience were used to group the sample population.

To realise the aims of the study the survey technique was used to collect data from respondents who completed questionnaires. The questions were based on the dispute resolution mechanisms of the Act, viz. conciliation, arbitration, the Labour Court and the Labour Appeal Court and included general questions on the Act. The questionnaire was structured. Both close-ended and open-ended questions were used.

The questionnaires were initially distributed on the occasion of the local branch meeting of the Institute of People Management (IPM). At this meeting the researcher was introduced to the gathering and an indication of the area of study was given. All the delegates were encouraged to co-operate with the requests of the researcher. The researcher then made a presentation to the gathering on the basis of the research proposal. At the end of the presentation the delegates were requested to take questionnaires and complete these, to be collected by the researcher at the delegates' workplace. Some questionnaires were returned by post.

Some employers were also visited and their personnel practitioners requested to complete the questionnaires. Where required, presentations were given. Practitioners generally telephoned back whenever the questionnaires were ready for collection, although a great deal of follow-up had to be done.

The following important factors were emphasised during presentations:

- (i) Anonymity would be maintained.
- (ii) The respondents should not thwart the structure of the questions.
- (iii) Respondents should record normative rather than informative, spontaneous answers.
- (iv) Respondents should complete the questionnaires themselves.
- (v) All the questions should be answered.

4.5 THE MEASUREMENT INSTRUMENT

4.5.1 THE NATURE AND COMPOSITION OF THE QUESTIONNAIRE

According to Loubser and Gilmour (1991:4) it is important to establish three parameters before a questionnaire can be developed. Firstly, state the problem; secondly, define the problem and, lastly, choose the best means of collecting the required data. On the basis of these parameters the researcher was able to determine the content structure and vocabulary of the questionnaire. In addition, other design issues considered were the length of the questionnaire and question order or sequence. For the specific survey the length was not a problem, as Neuman (1997:245) indicates that for educated respondents and the nature of the topic using a 15-page questionnaire may be possible.

As far as the sequence of the questions was concerned, a funnel sequence Neuman (1997: 246) was used. This sequence asks more general questions rather than specific ones.

The principles on which the design of the questionnaire was based was to avoid confusion, keep the respondent's perspective in mind, and give a valid and reliable measure. In addition, the design phase, according to Neuman (1997:233), should avoid the following pitfalls:

- (i) jargon, slang and abbreviations;
- (ii) ambiguity, confusion and vagueness;
- (iii) emotional language and prestige bias;
- (iv) double-barrelled questions;
- (v) leading questions;
- (vi) asking questions beyond the respondent's capabilities;
- (vii) false premises;
- (viii) asking about future intentions;
- (ix) double negatives; and
- (x) overlapping or unbalanced response categories.

In order to avoid the abovementioned pitfalls, the researcher designed a structured questionnaire which was:

- (i) fairly standard;
- (ii) simple to understand;
- (iii) easy to complete;
- (iv) accessible to quick and reliable data capture; and
- (v) ready for objective analysis and interpretation.

The questionnaire (Annexure A) consisted of sections A, B, C, D, each with close-ended questions and section E with open-ended questions, on each of the mechanisms.

The sections consisted of:

- A = Biographical information on the respondents
- B = General questions on the Labour Relations Act
- C = General questions on the dispute resolution mechanisms
- D = Specific questions on the dispute resolution mechanisms
- E = Open-ended questions on the dispute resolution mechanisms.

Close-ended questions are generally used due to the following advantages, according to Neuman (1997:241):

- (i) They are easier and quicker for respondents to answer.
- (ii) The answers of different respondents are easier to compare.
- (iii) Answers are easier to code and analyse statistically.
- (iv) The response choices can clarify question meaning for respondents.
- (v) Respondents are more likely to answer about sensitive topics.
- (vi) There are fewer irrelevant or confused answers to questions.
- (vii) Less articulate or less literate respondents are not at a disadvantage.
- (viii) Replication is easier.

According to Neuman (1997:241) the advantages of open-ended questions are the following:

- (i) They permit an unlimited number of possible answers.

- (ii) Respondents can answer in detail and can qualify and clarify responses.
- (iii) Unanticipated findings can be discovered.
- (iv) They permit adequate answers to complex issues.
- (v) They permit creativity, self-expression, and richness of detail.
- (vii) They reveal a respondent's logic, the thinking process, and frame of reference.

The response categories in the questionnaire were in the form of statements in the positive and negative concerned with the general components of the Labour Relations Act as well as each of the statutory dispute resolution mechanisms of the Act. Respondents had to react to each of the statements by making a cross in blocks numbered 1 - 4, depending on how they perceive the statements.

The blocks were alongside each statement and numbered. The numbers in the blocks had the following interpretations:

- 4 - strongly agree
- 3 - generally agree
- 2 - generally disagree
- 1 - strongly disagree.

4.5.2 THE VALIDITY OF THE QUESTIONNAIRE

The questionnaire was found to satisfy the requirements of content validity. This was determined by developing a short list of questions from each of the mechanisms. The questions were mixed up indiscriminately and identified experts on the subject of labour relations and/or labour law were then asked to match each of the questions with a specific mechanism. This was achieved with great success of 100% .

4.5.3 THE RELIABILITY OF THE QUESTIONNAIRE

The reliability of the items was determined with the use of Cronbach's coefficient Alpha through the use of a standard computer programme.

The coefficient Alpha, according to Huysamen (1983:31), indicates the internal consistency of the items and is based on an extension of the KR-20/KR-21 formula which may be used when the test items have more than two responses. The coefficient was 0.83.

4.6 DATA ANALYSIS

Descriptive statistics, in particular pie diagrams, were used to reflect the perceptions of practitioners regarding the various dispute resolution mechanisms. The different groups of personnel practitioners were selected by virtue of specific biographical variables, e.g. age, sex, cultural background, experience, marital status, residential background, qualifications, economic sector, number of employees in organisation, management level, experience in personnel management and in labour relations. The differences regarding responses to the perceptions on the dispute resolution mechanisms amongst the respective groups would be determined by means of multivariate analysis through the use of the Statistical Package for Social Sciences (SPSS) programme.

For the analysis of the data, the SPSS software programme was used. This programme is designed to aid data analysis by providing methods ranging from simple data display and the description of this data to advanced statistical techniques.

4.7 CONCLUSION

This chapter outlined the important principles of research methodology and design. These are important to the research process because if properly implemented, they will ensure that the research objectives are achieved. More specifically: following the correct scientific process will also ensure that an objective record of observations and conclusions is reached. The research will therefore present an accurate and undistorted picture.

CHAPTER 5

RESULTS OF THE STUDY AND DISCUSSION OF FINDINGS

5.1 INTRODUCTION

This chapter outlines the responses of the sample population. The study aimed at measuring their perceptions with regard to the dispute resolution mechanisms of the Act. Use was made of descriptive statistics to reflect the perceptions and inferential statistics to reflect differences in perceptions. Statistics are, however, only an aid for bringing out a complex situation and should therefore be seen as only providing qualitative approximations because figures have no emotional value (Bembridge, 1984:39).

The questionnaire to which the sample population responded was divided into five (5) sections under which the findings with regard to the respective sections will be discussed.

5.2 BIOGRAPHICAL / DEMOGRAPHIC INFORMATION OR CHARACTERISTICS OF THE RESPONDENTS

5.2.1 CULTURAL BACKGROUND

The respondents belonged to the four (4) significant cultural backgrounds constituting the South African society. It needs to be mentioned that the groups may be subdivided into smaller ethnic groups. The sample was only asked to indicate the cultural background and not the ethnicity. Figure 5.1 reflects the cultural backgrounds of the sample population.

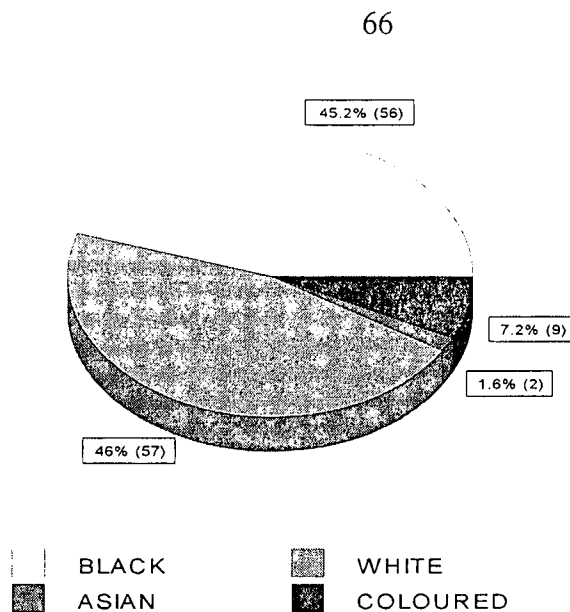


FIGURE 5.1 : CULTURAL BACKGROUND OF THE SAMPLE POPULATION
(N=124)

The black and white groups were the largest with 56 (45.2%) and 57 (46%) respectively. The Employment Equity Act 55 of 1998 defines black people as a generic term meaning Africans, Coloureds and Indians. In this study Blacks will, therefore, have the same meaning particularly due to the small sample size of the Coloureds and Indians. Another reason for their inclusion is their relatively small size in the sample. As a result the cultural groups may be read as Blacks 67 (54%) and Whites 57 (46%) respectively.

5.2.2 MARITAL STATUS

Figure 5.2 shows the marital status of the respondents.

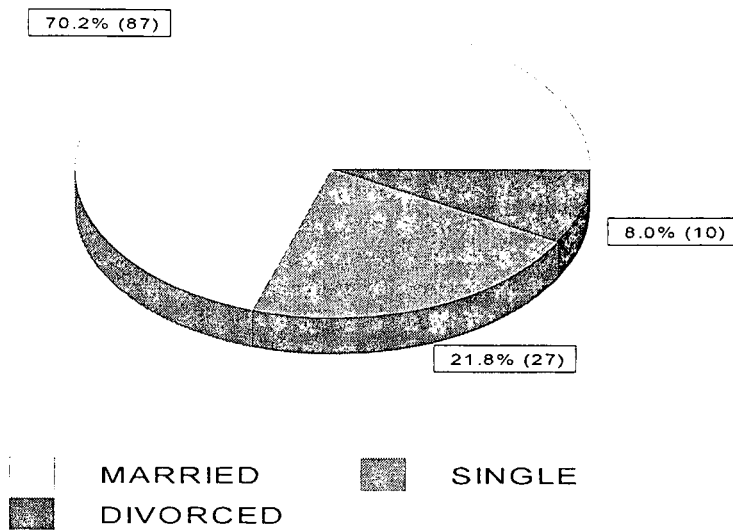


FIGURE 5.2 : THE MARITAL STATUS OF SAMPLE POPULATION (N=124)

According to figure 5.2, the majority of the respondents (70.2%) were married and 8% were divorced. There is a general but unofficial belief that marriage brings stability in life. This may be due to the additional responsibilities of having children, a house and credit facilities. The respondents were, however, not required to indicate how long they had been married as this was not the purpose of the study.

5.2.3 THE AGE GROUPS

Age is believed to be one of the most important factors which determine individual needs and the way people think and behave. Although chronological age may have an impairing effect on physical abilities, according to Bembridge (1984:131), research studies have indicated little or no mental deterioration at least up to age 60.

Williams (1986:165), on the other hand, points out that it can generally be expected that age is a factor which will have an influence on attitude and cultural change.

Williams (1986:165) further indicates that research has shown that younger persons generally accept change and innovations more readily than those who, with age, tend to become conservative and resist the adoption of innovations. Figure 5.3 shows the age groups of the respondents.

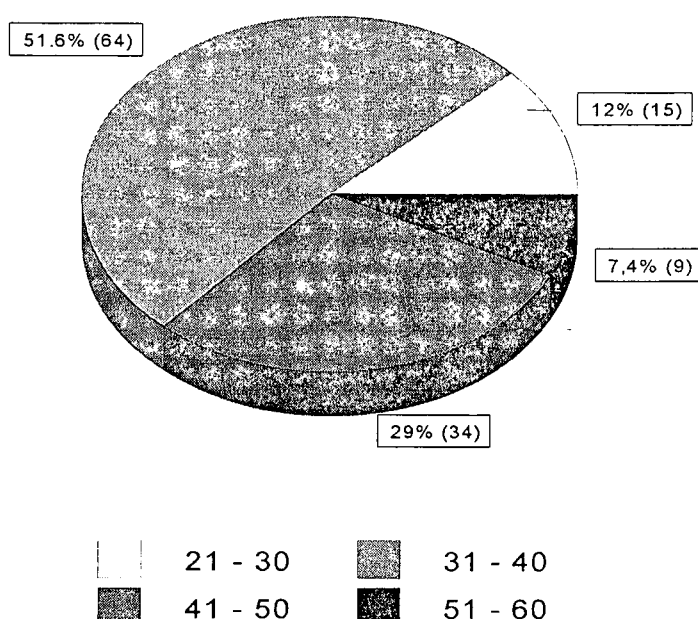


FIGURE 5.3 : THE AGE GROUPS OF THE SAMPLE POPULATION (N=124)

According to Figure 5.3, the age structure of the respondents indicates that the majority (51.6%) was between the ages 31 - 40 years, followed by ages 41 - 50 at 29.0%. This correlates with the married and divorced respondents. According to the figure, there were few respondents in the age groups 21 - 30 and even less in the 51 and older group. There is no apparent reason for this as it was not specifically attempted by the study. However, it may be due to the fact practitioners with experience of both general personnel as well as industrial relations were targeted.

5.2.4 GENDER

According to Robbins (1993:95), there are no consistent male/female differences in problem-solving ability, analytical skills, competitive drive, motivation, sociability or learning ability. Robbins (1993:95) further indicates that psychological studies have found women to be more willing to conform to authority. If anything, women should be more positive than men with regard to the dispute resolution mechanisms, based on Robbins' psychological studies (1993:95).

The gender of the respondents is reflected in Figure 5.4.

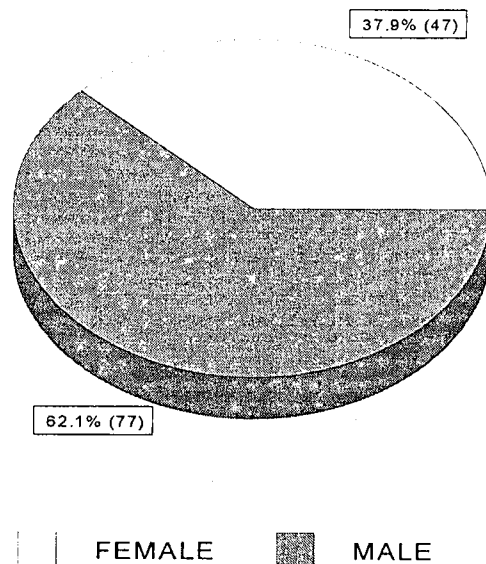
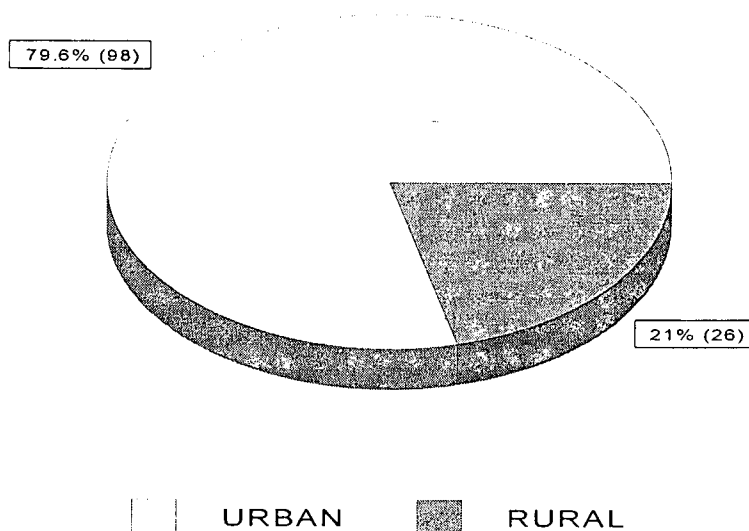


FIGURE 5.4 : THE GENDER OF THE SAMPLE POPULATION (N=124)

According to Figure 5.4, the majority of respondents were male (62.1%) and 37.9% female. This is a fair representation given that women have traditionally been had child-caring and secondary breadwinner roles, says Robbins (1993:95). This is, however, changing and more and more women are now entering the workforce.

5.2.5 RESIDENTIAL BACKGROUND

In the view of Robbins (1993:135), perception is a process of organising and interpreting sensory impressions in order to give meaning to the environment. It is a fact that the environments in rural and urban areas are miles apart and as a result contributes to different personality types and perceptions. The residential background of the respondents is reflected in Figure 5.5.



**FIGURE 5.5 : THE RESIDENTIAL BACKGROUND OF THE SAMPLE
POPULATION (N=124)**

As reflected by Figure 5.5, by far the majority of the respondents come from an urban background.

5.2.6 EDUCATIONAL QUALIFICATIONS

According to Williams (1986:182), education is the most effective tool for monitoring responses to general questions.

It can generate potent forces which are helpful in the transformation of a traditional society. Education, training and manpower development can be regarded as prime factors which are essential for the development of a nation, according to Williams (1986:182). Figure 5.6 shows the academic qualifications of the respondents.

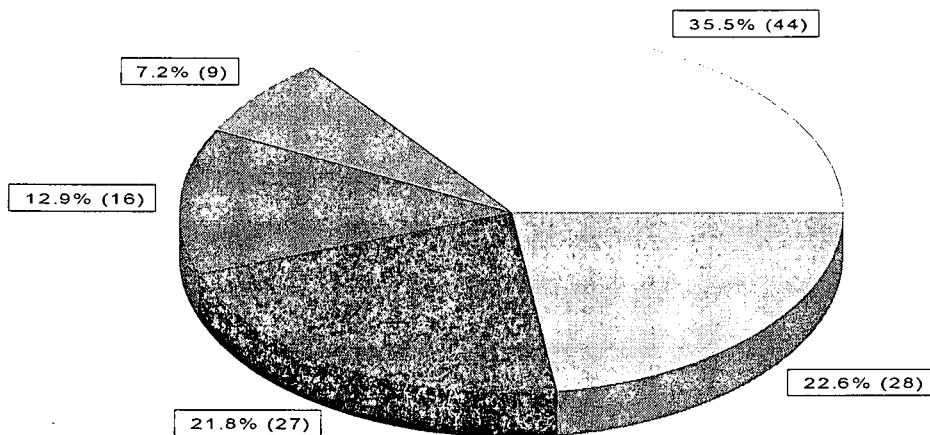


FIGURE 5.6 : THE ACADEMIC QUALIFICATIONS OF THE SAMPLE POPULATION (N=124)

The categories of qualifications used ranged from matric to a Master's degree. In general there was an above-average level of academic qualifications throughout the respondents. The majority of respondents (35.5%) had only a Bachelor's degree while 22.6% had an Honours degree and 21.8% had matric plus a 3-year diploma. The lowest level of qualifications of the respondents was matric (12.9%) and the highest a Master's degree (7.2%).

5.2.7 ECONOMIC SECTORS

According to Kroon (1990:67), the economic environment influences management decision-making. The nature of the workplace is also directly related to the economic sector, and this affects the level of experience of and exposure to industrial relations issues, and ultimately perceptions. The economic sectors of the respondents are reflected in Figure 5.7.

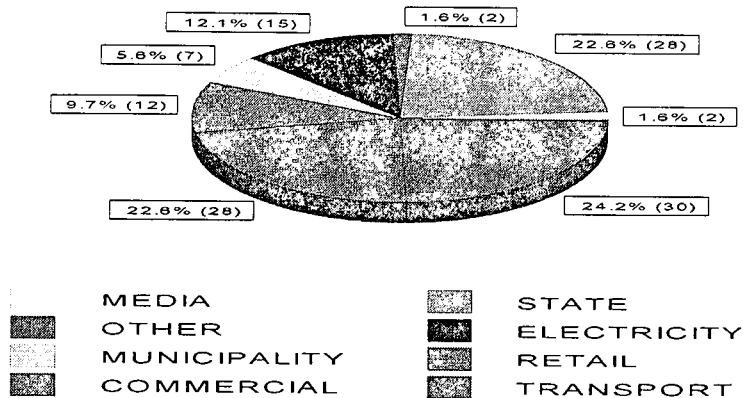


FIGURE 5.7 : THE ECONOMIC SECTORS OF THE SAMPLE POPULATION
(N = 124)

The greatest percentage of the respondents (24.2%) were employees in the Transport sector followed by Commercial Manufacturing and the State, both at 22.6%. These are followed by the Electricity Supply industry (12.1%) and the Retail sector at 9.7%. The Municipality was represented by 5.6%, followed by a small percentage of 1.6% from both the Media and other sectors. "Others" in the sample include sectors such as developmental non-governmental organisations, e.g the Mangaung Community Development Organisation.

5.2.8 NUMBER OF EMPLOYEES IN ORGANISATIONS

Just as the economic sector affects decision-making (Kroon, 1990:67) and perceptions, so does the number of employees (Kroon, 1990:71). Figure 5.8 shows the number of employees in the organisations for which the respondents worked.

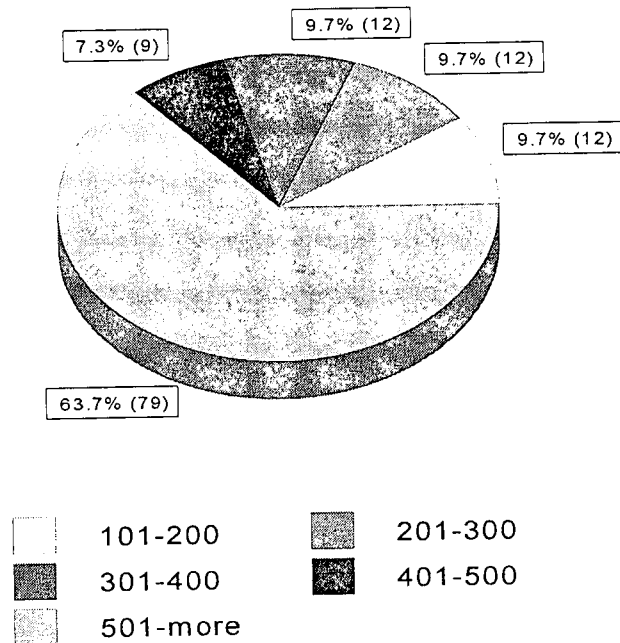
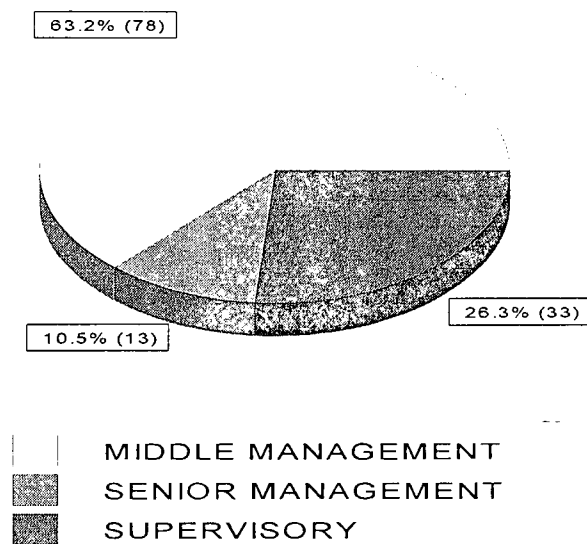


FIGURE 5.8 : THE NUMBER OF EMPLOYEES IN ORGANISATIONS OF THE SAMPLE POPULATION (N=124)

The figure shows that the majority of the respondents (63.7%) were employed in organisations with 500 and more employees. All the other groups of employees within the ranges 101 - 200, 201 - 300 and 301 - 400 were equally represented at 9.7% while only 7.3% of respondents were employed by organisations with 401 - 500 employees. No respondents were employed in organisations employing between 1 - 100 employees as these were not regarded as significant enough and were therefore excluded from the sample.

5.2.9 MANAGEMENT LEVEL

The researcher has experienced in practice that the involvement in dispute resolution differs according to the level of management. The higher the level, the less involved one tends to be in the effective resolution of disputes at the operational level. Figure 5.9 shows the management levels at which the respondents were employed.

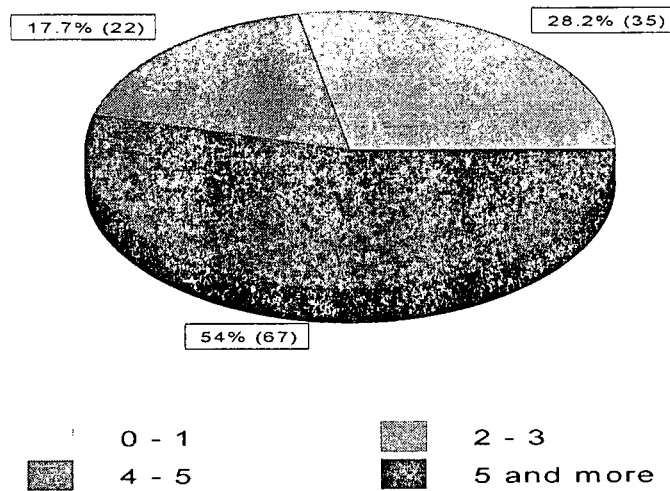


**FIGURE 5.9 : THE MANAGEMENT LEVEL OF THE SAMPLE POPULATION
(N=124)**

According to Figure 5.9, the majority of the respondents (63%) were in middle management with 26.5% in a supervisory capacity, and a further 10.5% in senior management.

5.2.10 YEARS OF EXPERIENCE IN PERSONNEL MANAGEMENT

Personnel management is a dynamic field as it seeks to optimise the utilisation of human resources who are dynamic and complex themselves. The greater the experience, the better the practitioner will be in terms of satisfying the needs of both the organisation and employees. The years of experience of the respondents are shown in Figure 5.10.



**FIGURE 5.10 : THE YEARS OF EXPERIENCE IN PERSONNEL MANAGEMENT
OF THE SAMPLE POPULATION (N=124)**

Figure 5.10 indicates that the largest category of respondents (54.0%) had 5 and more years of experience in personnel management, followed numerically by 2 - 3 and 4 - 5 years' experience with 28.2% and 17.7% respectively. No respondents had 0 - 1 years of experience as these were excluded from the study.

5.2.11 YEARS OF EXPERIENCE IN LABOUR RELATIONS

The general practice is for practitioners to start their careers as generalist human resources / personnel practitioners. In later years they specialise in any of the areas of administration, training, recruitment and selection or industrial / labour relations. Based on this practice it may reasonably be assumed that labour relations practitioners have had some experience as generalist personnel practitioners. There are, however, exceptions who start as specialists from the onset. Figure 5.11 below shows the years of experience the respondents had in labour relations.

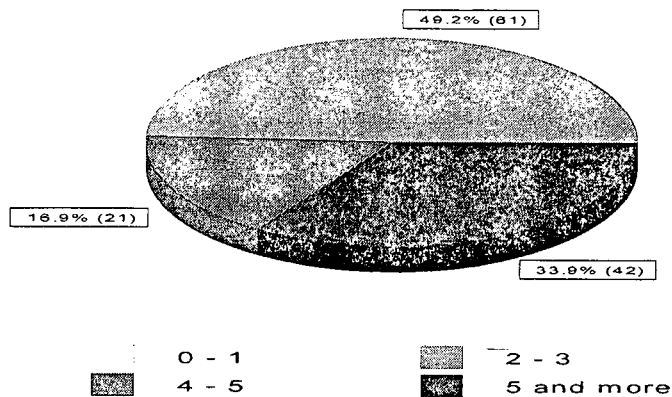


FIGURE 5.11 : THE YEARS OF EXPERIENCE IN LABOUR RELATIONS OF THE SAMPLE POPULATION (N=124)

According to figure 5.11, 49.2% of the respondents had 2 - 3 years' experience in labour relations while 33.9% had 5 and more years of experience. The category of 4 - 5 years' experience was represented by 16.9% of the respondents. Once again the category of 0 - 1 years of experience was not part of the sample.

5.3 GENERAL PERCEPTIONS OF THE LABOUR RELATIONS ACT 66 OF 1995

The new African National Congress-led government has outlined the Reconstruction and Development Programme (RDP) as the main thrust of its economic policies and vision for restructuring and transforming the South African economy. In giving effect to the intentions of the RDP, the Department of Labour has since embarked on specific policies needed to create an enabling environment for the realisation of the goals of the RDP. One of these is the Labour Relations Act 55 of 1996. According to Sipho Pityana (1997), the Director General of the Department of Labour, controversy has surrounded the policies of the Department. Particular concerns have also been raised by the social partners (notably organised business) in the NEDLAC chambers.

These were highly publicised and the result was a mixed but generally encouraging response to the arrival and implementation of the Act on 11 November 1996. The responses to the questions on the perceptions of personnel practitioners are shown in Table 5.1.

**TABLE 5.1 : PERSONNEL PRACTITIONERS' GENERAL PERCEPTIONS OF THE
LABOUR RELATIONS ACT 55 OF 1996**

SUMMARY OF RESPONSES TO SECTION B GENERAL

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
1. The establishment of the Commission for Conciliation, Mediation and Arbitration (CCMA) for the purposes of dispute resolution is acceptable.	4	3.5	3	2.5	61	49	56	45	124	100
2. The process of resolving disputes through the CCMA is credible.	4	3	23	19	72	58	25	20	124	100
3. The process of dispute resolution in terms of the New Act is simple.	9	7	18	14	74	60	23	19	124	100
4. The process of dispute resolution in terms of the Act is time-consuming.	21	17	40	32	54	44	9	7	124	100

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
5. Information sharing is not critical in dispute resolution.	62	50	38	31	21	17	3	2	124	100
6. White employees will openly communicate / share information with commissioners.	15	12	43	35	40	32	26	21	124	100
7. Commissioners must be entitled to subpoena people who may be able to give information concerning a dispute.	9	7	19	16	56	45	40	32	124	100
8. Cultural differences will influence the extent to which black employees communicate with white commissioners.	10	8	28	22	33	27	53	43	124	100
9. Historical black/white problems will influence the commissioners' judgement in the process of dispute resolution.	13	10	28	23	35	28	48	39	124	100

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
10. Whites will have confidence in the merits and ability of Blacks appointed as commissioners.	27	22	37	30	51	41	9	7	124	100
11. The commissioners will be able to develop the dispute parties' trust for dispute resolution.	5	4	21	17	88	71	10	8	124	100
12. The dispute resolution mechanisms favour employees more than management.	16	13	32	26	56	45	20	16	124	100
13. The commissioners will be prejudiced in favour of labour.	10	8	38	31	57	46	19	15	124	100
14. The fact that the Commission's services are free of charge will negatively affect the quality of service.	30	24	43	35	46	37	5	4	124	100
15. The commissioners have too much power in the process of dispute resolution.	9	7	52	42	28	23	35	28	124	100

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
16. I am generally not happy with the New Labour Relations Act.	42	34	63	51	6	5	13	10	124	100
17. The technical language of the Act is simple.	10	8	27	22	57	46	30	24	124	100
18. I trust the ability of black commissioners to resolve disputes.	5	4	33	27	47	38	39	31	124	100
19. I will make use of the CCMA establishment for the purposes of dispute resolution.	4	3	18	15	66	53	36	29	124	100
20. I will contract privately for the purposes of dispute resolution.	18	14	48	39	38	31	20	16	124	100

Table 5.1 above reflects the responses to section B (General perceptions of the Labour Relations Act 66 of 1995). According to this table, 94% of the respondents find the establishment of the CCMA acceptable (item 1). In addition, 78% of the respondents find the CCMA a credible institution, as reflected in item 2. Item 3 reflects that 79% of the respondents find the Act simple while only 51% believe that the process of dispute resolution is time-consuming. The majority of respondents (81%) have indicated that information sharing is critical in the process of dispute resolution (item 5). Of the respondents 47% have, however, indicated (item 6) that white employees will not communicate openly or share information with commissioners. In terms of the powers of commissioners to subpoena, 23% of the respondents disagree that commissioners must be entitled to subpoena people to give information (item 7).

Whereas 30% of the respondents disagree (in item 8) that cultural differences will influence the process of communication between black employees and white commissioners, the respondents are generally in agreement (item 9) that historical black/white problems will influence commissioners' judgement and (in item 10) 52% indicate that Whites will not have confidence in the merits and ability of black commissioners.

In items 12 and 13 the responses indicate that 61% of the respondents agree that the dispute resolution mechanisms favour employees and (in item 13) another 61% believe that the commissioners will be prejudiced in favour of labour. These perceptions could be linked to the role played by expectations in the perceptual process, as discussed under 3.2.3.4 and 3.3.1 in chapter 3. The views of these respondents also appear to correspond with the perceptions of employees as recorded in the media (see chapter 3, paragraph 3.3.3 (i)) that the Act favours employees.

In item 16 there does seem to be reflected a general acceptance of the Act by 85% of the respondents but 30% (in item 17) disagree that the language of the Act is simple.

The ability of black commissioners is apparently generally accepted, as reflected by only a 31% disagreement in item 18.

The utilisation of the CCMA is acceptable to the practitioners, with only 18% (in item 19) indicating that they will not make use of the CCMA, but 53% of the respondents have indicated in item 20 that they will contract privately for the purposes of dispute resolution.

Based on the above responses it does appear that although the establishment of the CCMA is acceptable to 94% of the respondents, 15% of them are not happy with the new Act (item 16) and 53% of them would rather contract privately. When the new government took over and Tito Mboweni later launched the new Act, it was meant to provide, according to the Know your LRA (November 1996:3), dispute resolution procedures that are quicker, more effective and cheaper than those of the old Labour Relations Act.

According to the same issue of know your LRA (November 1996:4), the institutions for dispute resolution under the Labour Relations Act 28 of 1956 were Conciliation boards, the Industrial Court and a Labour Appeal court. As stated in Know your LRA (November 1996:4), the procedures set up by these institutions were lengthy, complex, ineffective, costly and overly technical.

The implications are therefore that the procedures provided for in the new Act and the supporting institutions implement the process with the spirit with which these are meant and prove themselves to the public at large.

As reflected by the above results, there does seem to be agreement (in item 3) that the new processes are simple and that the language of the Act (item 17) is simple but whether or not the process is time-consuming is not very clear, as 49% (item 4) of the respondents disagree that it is time-consuming.

The Act provides in section 191 for a dispute to be referred to the CCMA within 30 days. The CCMA must resolve the matter within 30 days or any extended period agreed upon between the parties, according to 135(2), when conciliation has failed.

In the researcher's personal experience, however, many disputes are referred late to the CCMA, while others take a longer time than provided and condonations are granted without the opposing parties' consent. This is also borne out by the experience of Van der Merwe and Marais (The Star, 7/5/1997), although, as indicated in chapter 3, Marais and Israelstam (The Star 11/06/1997) have reported an increase in efficiency.

According to section 135(3)(b) a commissioner may attempt to resolve a dispute through a fact-finding exercise, amongst others. This could involve information sharing. Judging from the responses to item 5 it does appear that 81% of the respondents agree that information sharing is critical. However, as reflected by responses to items 8,9,10 and 11, cultural differences, historical black/white problems, ability and underlying trust do seem to be problems.

This is consistent with Robbins' view (1993:140) that attitudes, motives, interests, past experience and expectations will affect perceptions. Although information sharing is important, unless these issues are resolved this will not occur and therefore dispute resolution will not be effective.

As discussed in chapter 3, perceptions are strongly affected by the personal characteristics of individuals (Robbins, 1998:83) and as a result of South Africa's history, Whites and Blacks are still experiencing divisions that make open frank, cross-cultural communication and trust across traditional barriers difficult. In their responses to these items the respondents could be projecting their own feelings in this regard (see 3.2.3.3).

It does, however, generally appear from the responses to section B reflected in Table 5.1 that the personnel practitioners are positive with regards to the Labour Relations Act and as a result it may on the basis thereof be accepted that they will support and identify with the aims thereof.

5.4 GENERAL PERCEPTIONS ON THE MECHANISMS FOR DISPUTE RESOLUTION

An attempt was made to obtain the general perceptions of the respondents concerning the dispute resolution mechanisms. In this section different general response categories of the processes were put together for the respondents. Areas covered were the procedures chosen, ability of commissioners, conduct of the parties, willingness of the parties, as well as the powers of commissioners, to mention a few. The responses are reflected in Table 5.2 below.

TABLE 5.2 : SUMMARY OF RESPONSES TO SECTION C
(GENERAL PERCEPTIONS ON THE MECHANISMS)

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
1. The parties in dispute will be willing to allow the commissioners the opportunity to develop an understanding of their issues in arbitration.	1	1	11	9	75	60	37	30	124	100
2. Procedures chosen by commissioners in the arbitration process will resolve disputes quickly.	3	2	13	11	97	78	11	9	124	100
3. Black commissioners will be able to adequately investigate and understand the causes of conflict in order to arbitrate.	4	3	26	21	44	36	50	40	124	100
4. Commissioners will be able to find practical solutions in the process of arbitration.	7	6	14	11	82	66	21	17	124	100

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
5. The conduct of the parties during arbitration should be considered when awarding costs.	12	10	19	15	77	62	16	13	124	100
6. White employees will openly share information with black commissioners during arbitration.	15	12	41	33	58	47	10	8	124	100
7. Whites will have confidence in the abilities and merits of Blacks appointed as commissioners to arbitrate	26	21	36	29	52	42	10	8	124	100
8. Blacks will freely accept white commissioners in the process of arbitration.	20	16	33	27	62	50	9	7	124	100
9. I have confidence in the arbitration process of the Act.	0	0	12	10	62	50	50	40	124	100
10. The process of arbitration is complex.	43	35	56	45	18	14	7	6	124	100

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
11. The Black commissioners will be prejudiced in favour of labour during arbitration.	6	5	30	24	45	36	43	35	124	100
12. Commissioners will not be adequately qualified and trained to arbitrate.	17	4	68	55	30	24	9	7	124	100
13. Appointed commissioners should determine the procedure to arbitrate disputes between parties.	11	9	9	7	91	73	13	11	124	100
14. Commissioners have too little power in the arbitration process.	50	40	46	37	23	19	5	4	124	100
15. Disputing parties should not use legal representatives in the arbitration process.	54	44	19	15	22	18	29	23	124	100
16. I am happy with the arbitration process of the New Labour Relations Act.	3	2	6	5	68	55	47	38	124	100

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
17. The parties in dispute will not be willing to allow the commissioners the opportunity to develop an understanding of their issues in conciliation.	17	14	90	72	12	10	5	4	124	100
18. Procedures chosen by commissioners in the conciliation process will resolve disputes quickly.	4	3	24	19	63	51	33	27	124	100
19. Black commissioners will be unable to investigate and understand the causes of conflict to conciliate.	46	37	42	34	29	23	7	6	124	100
20. Commissioners will not be able to find practical solutions in the process of conciliation.	52	42	52	42	15	12	5	4	124	100
21. The fact that conciliation is offered free of charge will negatively affect the quality of service.	11	9	84	68	24	19	5	4	124	100

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
22. White employees will not openly share information with Black commissioners during conciliation.	11	9	89	72	22	18	2	1	124	100
23. Whites will have confidence in the abilities and merits of Blacks appointed as commissioners to conciliate.	6	5	46	37	68	55	4	3	124	100
24. The needs of employers will be addressed by the conciliation process.	7	6	40	32	69	56	8	6	124	100
25. The process of conciliation is time-consuming.	33	27	43	35	41	33	7	5	124	100
26. Commissioners will be adequately qualified and trained to conciliate.	8	7	24	19	63	51	29	23	124	100
27. Appointed commissioners should determine the procedure to conciliate disputes between parties.	8	6	29	23	54	44	33	27	124	100

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
28. Commissioners have too much power in the conciliation process.	28	23	67	54	24	19	5	4	124	100
29. Disputing parties should use legal representatives in the conciliation process.	43	35	25	20	33	27	23	18	124	100
30. I am unhappy with the conciliation process of the New Labour Relations Act.	26	21	54	44	19	15	25	20	124	100
31. The conduct of the parties prior to and during the Labour Court proceedings should be considered when awarding costs.	16	13	17	14	49	39	42	34	124	100
32. The powers of the Labour Court should exceed those of the provincial division of the High Court.	43	35	37	30	24	19	20	16	124	100
33. I have confidence in the Labour Court to deal with labour disputes effectively.	8	7	4	3	60	48	52	42	124	100

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
34. The process of resolving disputes through the Labour Court is complex.	7	6	76	61	39	31	2	2	124	10
35. The process of resolving disputes through the Labour Court is time-consuming.	8	7	61	49	45	36	10	8	124	10
36. Judges of the Labour Court will be prejudiced in favour of labour.	20	16	74	60	22	18	8	6	124	10
37. Judges of the Labour Court will be unqualified and not trained to resolve labour disputes.	50	40	57	46	12	10	5	4	124	10
38. Judges will be able to understand the employer's problems.	3	3	9	7	61	49	51	41	124	10
39. A separate court such as the Labour Court is unnecessary.	66	53	43	35	10	8	5	4	124	10

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
40. Labour Court judges are not familiar with labour issues.	38	31	48	39	21	17	17	13	124	100
41. The legal costs of the Labour Court will make the court inaccessible.	17	14	30	24	42	34	35	28	124	100
42. Disputing parties will understand the Labour Court procedures.	10	8	49	40	57	46	8	6	124	100
43. The process of constituting the Labour Court is appropriate.	6	5	7	6	96	77	15	12	124	100
44. The Labour Court has too much power.	10	8	83	67	26	21	5	4	124	100
45. I am generally happy using the Labour Court to resolve disputes	5	4	18	14	68	55	33	27	124	100
46. The conduct of the parties prior to and during the Labour Appeal Court proceedings should not be considered when awarding costs.	36	29	34	27	37	30	17	14	124	100

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
47. The powers of the Labour Appeal Court should exceed those of the provincial division of the Supreme Court.	34	27	27	22	52	42	11	9	124	100
48. I do not have confidence in the Labour Appeal Court to deal with labour disputes effectively.	36	29	59	48	20	16	9	7	124	100
49. The process of resolving disputes through the Labour Appeal Court is simple.	7	6	55	44	55	44	7	6	124	100
50. The process of resolving disputes through the Labour Appeal Court is time-consuming.	26	21	49	39	42	34	7	6	124	100
51. Judges of the Labour Appeal Court will be prejudiced in favour of labour.	19	15	60	49	35	28	10	8	124	100

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
54. A separate court such as the Labour Appeal Court is unnecessary.	51	41	58	47	11	9	4	3	124	100
55. The Labour Appeal Court judges are familiar with labour issues.	2	1	6	5	85	69	31	25	124	100
56. The legal costs of the Labour Appeal Court will not make the court inaccessible.	36	29	43	35	33	26	12	10	124	100
57. Disputing parties will not understand the Labour Appeal Court procedures.	12	10	62	50	42	34	8	6	124	100
58. The process of constituting the Labour Appeal Court is appropriate.	5	4	17	14	88	71	14	11	124	100
59. The Labour Appeal Court has too much power.	18	15	60	48	38	31	8	6	124	100

The above Table 5.2 is a recording of the responses to general questions on the mechanisms for dispute resolution provided in the Act. The mechanisms which were specifically asked to be commented on are conciliation, arbitration, the Labour Court and the Labour Appeal Court.

Table 5.2 the arbitration process covered items 1-16. It is reflected (in item 16) that 93% of the respondents are happy with the arbitration process and (in item 1) that 90% of the respondents will allow the commissioners the opportunity to understand the issues at dispute. Another 90% have indicated (in item 9) that they have confidence in the arbitration process. In item 4 it is also reflected that 83% of the respondents are satisfied that commissioners will be able to find practical solutions in the arbitration process, while 80% have indicated in item 10 that the process is simple. In addition 69% of the respondents to item 12 have indicated that commissioners will be adequately qualified and trained to arbitrate. The perceptions expressed with regard to the arbitration process were generally more favourable than would have been expected on the basis of perceptions published in the CCMail as well as the media (see chapter 3 paragraph 3.4). This is obviously an area where perceptions would differ as a result of the personal experiences of respondents with the process.

On the interrelations scene the perceptions have tended to indicate a smaller range than on the process itself.

In item 6, for example, it is reflected that 45% of the respondents have indicated that white employees will not openly share information with black commissioners, with only 55% of the respondents in agreement with the statement. Although 84% of the respondents have shown (in item 13) confidence in the commissioners appointed to determine the process, item 7 indicates that only 50% of the respondents agree that Whites will have confidence in the abilities and merits of black commissioners and another 57% indicated (in item 8) that black and white commissioners will freely communicate with each other. With regard to divisions and lack of cross-cultural communication that still exist among Blacks and Whites, these perceptions could indicate that respondents are projecting their own feelings onto others (see 3.2.3.3.). In sharp contrast to this, item 3 reflects that 76% of the respondents agree that black commissioners will be able to adequately investigate and understand the causes of conflict in order to arbitrate. According to item 11, there is also support shown for black commissioners where only 29% of the respondents believe that black commissioners will be prejudiced in favour of labour.

The respondents have shown a 77% support for powers of commissioners during arbitration in item 14 as well as a 59% support for legal representation in item 15. The conciliation process is covered by items 17 to 30 in section C of the questionnaire. In this section there is also broad acceptance of the conciliation process as indicated by a 65% to 35% in item 30. The respondents have also indicated that (item 27 and 28) they are happy that commissioners have adequate power to determine the process of conciliation with 71% and 77% respectively. Other areas in which support is reflected are the willingness of respondents to involve commissioners 86% (item 17), and satisfaction with the ability of commissioners 71% (item 19) and 84% (in item 20), as well as information sharing (item 18) in item 22 and finally 74% with the qualifications of the commissioners in item 26.

Of the respondents 38% have shown (in item 24) that the processes will not address the needs of employers although 62% have tended to disagree (item 25) that the process is time-consuming. In sharp contrast, 78% of the respondents have indicated (in item 18) that the conciliation process is quick. The present stipulation in the Act provides for a 30-day period for a dispute to be referred and another 30 days within which to resolve the dispute.

In item 29 the respondents have indicated a 55% acceptance of the exclusion of legal representation in the conciliation process. This is a reflection of the spirit of acceptance of the Act to reduce legal costs and adopt a non-legalistic approach to dispute resolution. The 45% support for legal representation, however, indicates views that have also been expressed in the media (see 3.4) that legal representation could contribute to the effective and fair resolution of disputes.

The Labour Court and Labour Appeal Court are generally accepted favourably by the respondents. This is reflected by a 90% confidence shown (in item 33), 75% acceptance of the powers of the Labour Court (item 44), the qualifications of the judges (item 37), their abilities to understand employers' problems (item 38) as well as the necessity of the courts (items 39 and 54). There is generally real concern indicated (in item 41) that the legal costs will make the Labour Court and the Labour Appeal Court inaccessible. This is indicated by 62% of the respondents in item 41 and 64% in item 56 respectively.

The following response categories (items 16, 30 and 45) respectively attempted to establish whether the respondents are:

- 16. happy with the arbitration process of the LRA.
- 30. unhappy with the conciliation process of the LRA.
- 45. generally happy using the Labour Court to resolve disputes.

Responses were that 92% of the respondents agree with item 16, while 64% disagree with item 30 and 81% agree with item 45. Based on these responses it does seem that the general perceptions are positive.

5.5 PERCEPTIONS OF SPECIFIC MECHANISMS OF THE ACT

This section dealt with response categories specific to the dispute resolution mechanisms, namely, conciliation, arbitration and the Labour Court.

Table 5.3 shows the responses to these categories.

**TABLE 5.3: SUMMARY OF RESPONSES TO SECTION D
(SPECIFIC TO MECHANISMS)**

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
1. The Commission must give reasons for an award.	3	2	22	18	31	25	68	55	124	100
2. Commissioners must order for costs against officials or representatives acting in a frivolous manner.	1	1	27	22	36	29	60	48	124	100
3. The parties to a dispute must consent to legal representation in dismissals relating to conduct or capacity.	24	19	17	14	38	31	45	36	124	100
4. A commissioner must charge a fee where employers dismissed an employee unfairly.	10	8	39	32	51	41	24	19	124	100

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
5. Commissioners must be able to subpoena people who may be able to give information concerning a dispute.	5	4	20	16	47	38	52	42	124	100
6. The director of the Commission must be empowered to give authority to commissioners to inspect or seize documents related to a dispute.	8	7	15	12	44	36	57	46	124	100
7. A monetary award should carry interest similar to that of a judgment or debt.	6	5	26	21	66	53	26	21	124	100
8. Disputes must only be arbitrated once they remain unresolved after conciliation	6	4.8	9	7.2	68	55	41	33	124	100
9. The same commissioner who conciliated a dispute may arbitrate.	42	34	33	27	35	28	14	11	124	100

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
10. Parties to a dispute may request a preferred commissioner to arbitrate.	24	19	21	17	37	30	42	34	124	100
11. The director of the Commission should not be empowered to refuse an application for a preferred commissioner.	26	21	27	22	39	32	32	26	124	100
12. An arbitration award by a commissioner should be final and binding on the parties.	12	10	15	12	40	32	57	46	124	100
13. Commissioners should be empowered to vary or rescind the awards on their own.	23	19	27	22	31	25	43	35	124	100
14. Arbitration awards should all be reviewed by the Labour Court.	11	9	44	36	13	11	56	45	124	100

STATEMENTS	Strongly Disagree		Generally Disagree		Generally Agree		Strongly Agree		Total	
	N	%	N	%	N	%	N	%	N	%
15. The Commission must appoint and determine the terms of reference, in conciliation, without the parties' consent.	40	32	26	21	28	23	30	24	124	100
16. Thirty days for the commissioner to resolve disputes is too long.	35	28	65	52	12	10	12	10	124	100
17. The commissioner should determine the process to resolve the dispute.	16	13	12	10	69	55	27	22	124	100
18. Parties should have legal representatives during arbitration.	17	14	18	14	53	43	36	29	124	100
19. It is necessary to issue a certificate indicating that a dispute has been resolved.	9	7	11	9	43	35	61	49	124	100
20. If parties are engaged in essential services they should consent to the appointment and terms of reference of a commissioner.	2	2	18	14	56	45	48	39	124	100

The above Table 5.3 reflects the responses of the sample population to section D of the questionnaire. Section D dealt with questions specific to the mechanisms, which are conciliation, arbitration and the Labour Court.

As reflected in items 1 and 2 of Table 5.3, 80% of the respondents have indicated that the Commission must give reasons for an award after arbitration. In addition the majority of the respondents, 77% , also agree that the commissioners must order for costs against officials acting in a frivolous manner (item 2). With regard to consent (item 3), 67% of the respondents have indicated that the parties to a dispute must consent to legal representation. In item 5 the respondents have indicated an 80% support for commissioners to subpoena people to give information concerning a dispute. In addition 82% of the respondents have (in item 6) supported the statement that the Commission be empowered to give authority to commissioners to inspect or seize documents related to a dispute.

Most respondents (74%) have supported the stipulation that a monetary award should carry interest similar to that of a judgment or debt, in item 7.

In item 8 there is general acceptance (88%) that disputes must only be arbitrated once they remain unresolved after conciliation. However, 61% of the respondents do not agree (in item 9) that the same commissioner who conciliated may arbitrate.

The majority of the respondents (64%), however, also agree (in item 10) that the parties themselves may request a preferred commissioner to arbitrate and (in item 11) 57% believe that the director of the Commission should not be empowered to refuse such requests.

In item 12 most respondents (78%) are happy that the arbitrator's award be final and binding on the parties. However, (in item 13 and 14) 60% and 56% of the respondents respectively have indicated commissioners should be empowered to vary the awards on their own and that these should be reviewed by the Labour Court.

Only 47% of the respondents have supported the statement (item 15) that the Commission must appoint and determine the terms of reference, in conciliation, without the parties' consent.

According to item 16, the majority of the respondents (80%) have disagreed that 30 days to resolve a dispute is too long.

The respondents (in item 17) have shown that there is 77% support for the commissioner to determine the process to resolve a dispute.

In item 18, 84% of the respondents have indicated that parties should have legal representative during arbitration.

There is also 72% support shown in item 19 for the Commission to issue a certificate indicating that a dispute has been resolved.

In item 20 the respondents have also indicated 84% support for the parties to consent to the appointment and terms of reference of a commissioner, if they are engaged in essential services.

From the results of items 1 and 2 it is clear that there is support for the specific stipulations of the Act, viz sections 138(7)(a) and 138(10). With regard to item 3, however, section 138(4) provides that a party to a dispute may be represented by a legal practitioner.

Despite section 138(4), section 140 provides that if the dispute being arbitrated is about the fairness of a dismissal and a party has agreed that the reason for the dismissal relates to the employee's conduct or capacity, then the parties are not entitled to be represented by a legal practitioner unless the stipulations of section 140(1)(a) and (b) are satisfied.

The effect of this is that if the dispute arbitrated is not about fairness of a dismissal or capacity, the parties may not consent to legal representation and this may make them uncomfortable, judging by their responses.

According to section 140(2) of the Act, where a dismissal is procedurally unfair a commissioner may charge the employer an arbitration fee. As reflected in item 4 of the table above, 60% of the respondents agree with this stipulation. It may therefore be expected that there will be full co-operation with this requirement, as indicated by the support.

Table 5.3 indicates that 80% of the respondents have shown (in item 5) support for the power of the commissioner to subpoena people who may be able to give information concerning a dispute, as required by section 142(1)(a).

In addition to this, 82% of the respondents agree (in item 6) that the director of the Commission be empowered to give authority to commissioners to inspect or seize documents related to a dispute. As a result of this positive reflection, there should not be any negative comebacks on giving effect to this clause.

Item 7 in Table 5.3 indicates that 74% of the respondents agree that a monetary award should carry interest similar to that of a judgment debt.

According to section 133(2), if a dispute remains unresolved after conciliation, the stipulation of section 133(2)(a) and (b) must be complied with. In terms of section 136(1) the Commission may also appoint a commissioner to arbitrate any dispute if the dispute is unresolved and any party to the dispute requests that the dispute be resolved through arbitration.

It is, however, interesting to note that although 64% of the respondents (in item 10) agree that parties to a dispute may request a preferred commissioner to arbitrate, there is 61% disagreement, in item 9, that the same commissioner who conciliated a dispute may arbitrate.

The result indicates that the parties want absolutely unbiased commissioners, which is confirmed by a 58% agreement in item 11 that the director of the Commission should not be empowered to refuse an application for a preferred commissioner. The implications of these responses could be that once the commissioners have proved themselves, a lot of requests may be made for specific commissioners. This may lead to overload of some while others idle, which could have a negative impact on the objective of timeously resolving disputes.

In terms of section 143(1) an arbitration award issued by a commissioner is final and binding on the parties and there is 78% support from the respondents in item 12 for this position. In item 13, however, 60% of the respondents agree that commissioners should be empowered to vary or rescind the awards erroneously sought or made, where there is ambiguity or where these are granted as a result of a mistake common to the parties to the proceedings.

According to section 145(1), any party to a dispute may apply to the Labour Court to review an award and such court may set aside the award if, according to section 145(1), there is a defect. There is an indication from Table 5.3, in item 14, that 56% of the respondents agree that all awards be reviewed by the Labour Court. Although there is acceptance that arbitration awards be final there does seem to be conflicting views in this regard. The implication is that any party to a dispute which has been arbitrated by the Commission may allege a defect in the proceedings, particularly since no duty to prove this is placed on the party who makes the allegation.

According to section 135(6)(a) (i) and (ii) of the Act, if a dispute about a matter of mutual interest has been referred to the Commission and the parties to the dispute are engaged in essential services, the parties may consent, within 7 days of the date of the Commission receiving the referral, to the appointment of a specific commissioner and to the terms of reference.

In terms of section 135(6)(b) of the Act, should the parties fail to consent to either the appointment of the commissioner or the terms of reference, the Commission must make the appointment and determine these. Judging by the responses to item 15, the stipulations of particularly section 135(6)(b) are not acceptable to the respondents. This is reflected by 53% of the respondents indicating that they disagree with the statement. This could therefore mean lengthy battles should parties not be in agreement with either the appointment of a specific commissioner or the terms of reference.

In item 16 a majority (80%) of the respondents disagree that 30 days to resolve a dispute is too long. This is an indication that the 30-day period within which a dispute must be resolved at conciliation, according to section 135(2) of the Act, is acceptable to the parties. This will in this respect meet the requirements of one of the main principles of the Act, which, according to Know your LRA (November 1996:4), is to prevent lengthy and wasteful delays of the system. One conspicuous omission of the Act, however, is the observation, by the researcher, that no time period is given in the Act in terms of which any unresolved dispute may be referred to arbitration. This may therefore be done after a long time and defeat the objectives of the Act.

Section 135(3) of the Act provides that an appointed commissioner must determine a process to attempt to resolve the dispute referred to the Commission. According to the responses to item 17, the majority of the respondents (77%) are in agreement with the stipulation of the Act. It could therefore reasonably be expected that the parties will co-operate with the appointed commissioners and support the processes chosen.

Section 138(4) of the Act provides for representation by, amongst others, a legal practitioner. The responses to item 18 indicate that 72% of the respondents are in agreement with this specific stipulation. The researcher has, through experience, noticed more and more requests being put to commissioners to permit legal representation during conciliation as well. Another observation by the researcher is the exclusion of consultants during both conciliation and arbitration. What may therefore be expected is that parties may in due course demonstrate more support for representation by either consultants or legal practitioners during conciliation or

arbitration. Once again this will generally not be consistent with the principles of the Act, mentioned earlier.

According to section 135(5)(a), a commissioner must issue a certificate stating whether or not a dispute has been resolved, either at the end of the 30-day period or any extended period agreed upon between the parties. As reflected in item 19 of Table 5.3 above, 84% of the respondents agree that it is necessary to issue such a certificate. This is not a new practice as it has been done under the Labour Relations Act 28 of 1956. This therefore means that the parties will accept the Commission's involvement in this regard.

The Act requires in section 133 (i) and (ii) that a standard pattern of conciliation followed by arbitration be followed in attempts of the CCMA to resolve disputes. Section 135(2) requires that the dispute be referred to the CCMA within 30 days or any extended period agreed to between the parties.

The Act in its present form, however, empowers commissioners to attempt to resolve disputes through legalistic compromise rather than operational and strategic dispute resolution. The reason for this is the fact that commissioners are scheduled from a panel to resolve disputes. In most cases the commissioners do not have experience in the industry at all. As a result of their lack of an understanding of operational matters in the industry, therefore, their aim becomes a legalistic compromise rather than operational co-operation. It will therefore firstly become important for personnel practitioners in their respective industries to use pro-active initiatives to steer co-operation in the process. In addition, the CCMA could possibly also divide commissioners according to specific industries to deal with all disputes within those industries on the same basis as bargaining councils. This will, if complemented with training, create the necessary understanding of the respective industries.

According to section 135 (3) (a) (b) and (c), a commissioner has the power to mediate, do a fact-finding exercise and make appropriate recommendations. Based on the contents of sections 135 and 142 of the Act, a commissioner is empowered to exercise pressure on the parties through the implications of his / her power to make recommendations. This has the

potential to result in negative perceptions and consequences for the process of dispute resolution as well as negative perceptions of the role of the commissioners.

In addition the parties may not, in terms of section 135 (4), have legal representation. The implication of this is that the responsibility is on the commissioner to display absolute integrity and act in good faith so as to ensure that none of the parties is either misinformed or misled. The Act, however, does not have the capacity to prevent parties from seeking legal advice during proceedings. This possibility could even be extended by parties appointing attorneys and/or consultants as office-bearers or directors etc. and then there would be no way in which they could be prevented from participating. On the contrary, since legal advice is a basic right, many requests for adjournments could be received by the CCMA for the purposes of commitments with legal representatives. This is bound to defeat the object of speedy and cheap dispute resolution in due course. There is also evidence that many consultants are forming employers' organisations under the Act and will therefore be able to act for members of such organisations.

As far as the Labour Court is concerned, it is established in terms of section 151 (1) as a superior court (section 151 (2)) and as a court of record (section 151 (3)). As a superior court the Labour Court may seem to be subject to the same limitations as the High Court. If this is so then this court will be subject to the *stare decisis* rule which will therefore create some legal certainty in respect to labour problems and dispute resolution in general as opposed to previous legislation. The most important function of the Labour Court is its power to grant all remedies with reference to labour disputes under its jurisdiction and more specifically, to order compliance with any provisions of the LRA according to section 158 (1) (b) of the Act.

According to section 162 the Labour Court may order for the payment of costs according to the requirements of the law and fairness. The basis of such an order should be that the litigation is frivolous or vexatious. This could have the effect of scaring off many possible lay litigators.

The final dispute resolution mechanism is the Labour Appeal Court. This court has the power to hear further evidence. This is a significant innovation whose sitting may be justified by sufficient public importance and urgency. This court is to be seen as being in keeping with the aim of speedy resolution of disputes and could be used very economically.

5.6 OPEN-ENDED RESPONSE CATEGORY

An open-ended section was allowed for any suggestions and comments. This was introduced to solicit comments on any aspects of the Act, particularly the dispute resolution mechanisms, which may not have been specifically provided for. A summary of the responses is given below. This section consisted of 9 questions. Out of the 124 respondents, 32 responded to this section as indicated below. Although only 32 of the respondents did respond to this section, not all the questions were answered in all the cases. As a result all the responses were recorded as is.

QUESTION 1: HOW CAN COMMISSIONERS GET INFORMATION FROM PARTIES IN DISPUTE? BY -

- questioning parties in interviews (f = 10)
- prior perusal of documents, (f = 3)
- parties being encouraged to co-operate (f = 2)
- interviewing all the parties (f = 4)
- prior separate hearings (f = 1)
- being objective (f = 2)
- developing questioning skills (f = 3)
- providing documents before meeting (f = 3)
- compulsion (f = 2)
- building track record of non-racialism (f = 4)
- having a right to subpoena (f = 2)
- having discussion before conciliation. (f = 2)

Out of the 12 responses to the question on how the commissioners can get information from the parties in dispute, it becomes clear that there are concerns. The above responses reflect these as interviewing skills of the commissioners, the preparations that the commissioners have to make, co-operation from the parties, and separate meetings with the parties as well as objectivity which may be influenced by cultural background.

These concerns would appear to correlate with the perceptions of difficulties there may be in respect of information sharing as reflected in responses to items 8, 9, 10 and 11 in Table 5.1, as well as perceptions of lack of training, experience and impartiality on the part of commissioners expressed in the *CCMail* (see 3.4).

QUESTION 2: HOW CAN COMMISSIONERS DEVELOP TRUST ACROSS THE COLOUR LINE? BY -

- aligning themselves with the different parties (f = 1)
- being representative (f = 1)
- ensuring unbiased awards (f = 3)
- being non-partisan (f = 2)
- rendering quality service (f = 1)
- being fair / just / impartial (f = 12)
- being practical (f = 1)
- adopting an objective intellectual approach (f = 2)
- justifying decisions / referring to case law (f = 1)
- giving consistent awards (f = 2)
- creating positive impression through demonstrating competence (f = 3)
- dealing with disputes regardless of colour and (f = 1)
- acting in good faith. (f = 1)

Question 2 attempted to solicit responses from respondents on how commissioners can develop trust across the colour line. The responses above reflect that, amongst others, commissioners need to be practical and consistent in dealing with disputes.

Other responses indicate that the commissioners should not align themselves with any of the parties and should demonstrate their competence by adopting an objective intellectual approach and dealing with the disputes regardless of colour. This, according to the responses above, will improve the quality of service and reflect good faith on the part of commissioners, as well as satisfy the requirement of being fair, which is reflected above as a concern with a frequency of 12.

- As has been pointed out in the discussion on the perceptual process in chapter 3, black and white perceptions differ as a result of divergent social experiences, cultural factors and expectations. The responses seem to indicate that respondents would wish to see commissioners as being able to overcome the traditional confines of group identification (whether black/white or labour/employer) and act fairly towards all.

QUESTION 3: HOW CAN EMPLOYEES' EXPECTATIONS REGARDING THE DISPUTE RESOLUTION PROCESS BE MODERATED? BY -

- not taking sides (f = 1)
- explicitly being told of the purpose of the process before and during the process (f = 2)
- giving fair awards (f = 4)
- collectively being involved in designing the resolution mechanisms (f = 2)
- being transparent (f = 1)
- providing regular feedback nationally (f = 2)
- communication, questionnaires and interviews or suggestions (f = 1)
- being objective (f = 1)
- consulting before adjudicating (f = 1)
- appointing trained staff with labour law / legal qualifications (f = 11)
- being fair (f = 4)
- sharing of information (f = 3)
- training (f = 6)
- pledging neutrality. (f = 1)

This question relates to how employees' expectations regarding the dispute resolution process can be moderated. The responses indicate that some of the answers to this question are objectivity on the part of the commissioners, communication, transparency, participation in designing mechanisms and training. These responses reflect the need for training and proper selection of commissioners. The high expectations employees have of the new LRA were discussed in chapter 3 (see 3.3.1), with reference to the expectation that the new government will pass laws to favour them. At the same time, employers (and Whites in general) also expect the labour legislation to favour Blacks, as has been discussed. In the interest of a dispute resolution process that is fair to both parties it is necessary that these expectations be moderated. The respondents' indication of the need for training and proper selection of commissioners also appears to be supported in the literature by the perceptions of defects in this regard as referred to in 3.3.3 and 3.4.

QUESTION 4: GIVE ANY SUGGESTIONS AS TO HOW THE EFFICIENCY OF THE CCMA CAN BE GUARANTEED. BY -

- providing time constraints to all dispute resolution mechanisms (f = 1)
- giving independence (f = 1)
- appointing NEDLAC to control the CCMA on a strict basis (f = 2)
- subjecting CCMA decisions to review (f = 1)
- providing continuous and objective feedback (f = 3)
- appointing more commissioners (f = 3)
- making reference to authority (f = 1)
- appointing qualified commissioners (f = 6)
- being realistic (f = 1)
- giving fair and consistent judgements (f = 1)
- evaluating commissioners' performance (f = 1)
- referring to previous cases (f = 1)
- adhering to rules (f = 2)

It is important for a structure such as the CCMA to be efficient in dealing with disputes. This means delivering in accordance with the expectations of both employees and employers and according to the time-frames reflected in the Act. According to the responses, this may be achieved by adhering to the Act, being fair and consistent, appointing the right numbers of qualified commissioners, providing continuous feedback and subjecting the CCMA decisions and awards to review.

The literature study in chapter 3 shows that there are perceptions of concerns regarding the unequal quality of commissioners, inconsistencies, poor communication, and lack of impartiality, among others. The suggestions by the respondents could contribute to the efficiency of the operation of the CCMA as well as to the trust parties will have in it.

QUESTION 5: HOW WILL THE FACT THAT THE COMMISSION WILL START OPERATING WITHOUT A HISTORY AFFECT ITS OPERATIONS? THEY -

- will experience the same dilemma as the Industrial Court (f = 2)
- will experience inconsistencies (f = 2)
- will not have precedents (f = 6)
- will have to win trust first and this could lead to success (f = 1)
- will find it good, as too many issues are blamed on history (f = 3)
- will stifle creativity because of history (f = 1)
- will experience minimal effect (f = 2)
- will find it an excellent start for objectivity (f = 2)
- will have teething problems (f = 1)
- will receive credibility (f = 3)
- will affect their credibility negatively.. (f = 3)

The CCMA is a new structure in the labour relations arena but the processes such as conciliation and arbitration are not. Some respondents have indicated that as a result of the concept being new the credibility of the CCMA will be negatively affected while others believe it is a good thing, as most problems are blamed on history.

Some of the respondents have indicated that this is an opportunity for the CCMA to win the trust of the public.

The implications of this are that the CCMA will have a great opportunity of enforcing its authority and thereby establishing itself with the public as a credible authority, by being professional in all respects.

QUESTION 6: WHAT IS YOUR OPINION ABOUT THE FACT THAT THE SERVICES OF THE CCMA ARE OFFERED FREE OF CHARGE?

- It will accommodate all, including the poor. (f = 10)
- This will make it more accessible. (f = 5)
- Cases must be screened for control purposes. (f = 1)
- It is a positive thing. (f = 6)
- Petty issues will be brought to the CCMA. (f = 3)
- Excellent litigation is experienced as the quality of the CCMA is poor. (f = 1)
- Over-utilisation may result. (f = 3)

The services of the CCMA are generally free of charge. This is viewed positively in some cases while others view it negatively. Some of the respondents have indicated that this will accommodate all, including the poor, and at the other extreme it is reflected as being a factor which could lead to over-utilisation, where petty issues are referred.

Experience and exposure to the CCMA indicate that just about every dismissal is being referred to the CCMA. This is a factor which has been seen to have contributed directly to the high case load of the CCMA, particularly in Gauteng. In view of the expectations of employees and the new experience of protection of employee rights that especially black employees had not enjoyed before (as discussed in chapter 3), it is understandable that the CCMA is being over-utilised.

QUESTION 7: HOW COULD THE QUALITY OF SERVICE OFFERED BY THE CCMA BE IMPROVED? BY -

- working on public opinion (f = 1)
- being consultative (f = 1)
- appointing more commissioners (f = 2)
- appointing all races and providing for all language groups (f = 1)
- training, testing and controlled by NEDLAC (f = 3)
- regular assessments (f = 3)
- being fair (f = 1)
- publishing procedures for employees and employers (f = 1)
- quality time and experience (f = 3)
- training commissioners (f = 6)
- appointing legally qualified commissioners (f = 1)
- constantly evaluating performance (f = 2)
- appointing competent staff (f = 3)
- giving commissioners time to practise on more cases. (f = 1)

On the question of strategies to improve the quality of service provided by the CCMA, the responses cover a wide range. The responses above indicate that training of commissioners appointed, the appointment of competent commissioners, constant evaluation of commissioners, appointment of commissioners of all races, as well as practice are the areas that should be addressed to influence service levels positively.

The appointment of competent commissioners is an important area. However, finance could be a problem as the people most competent are employed in the private sector and their salaries are apparently very high. The salaries of the commissioners are, however, reported to be better than those received by officials in the old Department of Manpower and the Industrial Court.

QUESTION 8: HOW DOES THE IMPOSITION OF A SOLUTION CONTRIBUTE TO THE RESOLUTION OF DISPUTES? BY -

- discouraging win / lose situations (f = 3)
- encouraging two-way communication from all parties (f = 1)
- positive contribution (f = 2)
- accepting that it may be the best after all else has failed (f = 3)
- forcing acceptability (f = 3)
- objectivity — (f = 1)
- being justifiable (f = 1)
- promoting fair labour practices (f = 1)
- encouraging training. (f = 1)

In question 8 the respondents were asked to comment on how the imposition of a solution could contribute to the resolution of disputes. The responses to the question reflect a mixed bag of opinions. Some of the respondents have indicated that it discourages win/lose situations and encourages two-way communication, and therefore see it as making a positive contribution. Others indicate that it forces acceptability while it also promotes fair labour practices if it is justifiable. Finally, it is indicated that this will encourage training of the commissioners.

Generally it looks as if this is acceptable to the respondents. The major issue of concern to them does, however, seem to be training once again. If therefore the CCMA invests heavily in the training of the commissioners, as it is believed they do, then the concern could be addressed.

QUESTION 9: HOW CAN EACH OF THE MECHANISMS FOR DISPUTE RESOLUTION BE IMPROVED? BY -

- investigating matters at dispute (f = 1)
- being unbiased (f = 1)
- showing interest (f = 1)

- considering previous decisions (f = 1)
- allowing more time (f = 4)
- allowing consultants and legal representatives (f = 2)
- restricting legal representation to the Labour Appeal Court only (f = 3)
- establishing communication forums (f = 1)
- building trust between parties and commissioners (f = 7)
- allowing the parties flexibility (f = 2)
- giving consistent awards at each stage of resolution. (f = 1)

Question 9 invited opinions from the respondents on how the dispute resolution mechanisms could be improved. Their responses are recorded above and reflect the areas of improvement to be fairness, interests of the commissioners, time, communication, trust, flexibility and consistency. Another area seems to be the representation by consultants and/or legal practitioners. Some of the respondents indicate that it should be allowed whereas on the other hand it is also indicated that this should be restricted to the Labour Appeal Court only.

The above responses reflect again the lack of trust in the commissioners on the one hand and a lack of confidence in the respondents to deal with issues. This is an important area which could be addressed by business organisations also subjecting their practitioners to the same training that the commissioners go through, but the costs could be high. The investment will, however, be worthwhile.

Based on all the responses to the response categories of the various questioning, the comments may be ranked in order of frequencies as follows:

- being fair/just/impartial (f = 12)
- appointing trained staff with labour law/legal qualifications (f = 11)
- questioning parties in interviews (f = 10)
- building trust between parties and commissioners (f = 7)
- training may be moderate expectations (f = 6)
- appointing qualified commissioners (f = 6)
- will not have precedents (f = 6)

- offering services free of charge is a positive thing (f = 6)
- training of commissioners can improve the services of the CCMA (f = 6)

Most of the other comments had frequencies of 3, 2 or 1 and may therefore not be significant, given the number of respondents i.e. 32 who responded to this section.

It is clear from the above frequencies that fairness, qualifications, trust, training and cross-examination skills appear to be the most important issues of concern to the respondents. This would appear to be in keeping with perceptions of commissioners' behaviours and skills as reflected in the media perceptions discussed in chapter 3.

5.7 PERCEPTUAL DIFFERENCES AMONGST DIFFERENT GROUPS BASED ON BIOGRAPHICAL VARIABLES

In order to address adequately the aims of the study a discussion, which is descriptive in nature, is presented with regard to the biographical information of the respondents. The biographical information against which the respondents were compared were cultural background, marital status, age, sex / gender, residential background, academic qualifications, economic sector, number of employees in organisation, management level in organisation, years of experience in personnel management and years of experience in labour relations. The questionnaire, on the other hand, consisted of the following sections:

- | | | |
|---|---|--|
| A | = | Biographical information of the respondents |
| B | = | General questions on the Labour Relations Act |
| C | = | General perceptions on the dispute resolution mechanisms |
| D | = | Specific questions on the dispute resolution mechanisms |
| E | = | Open-ended questions regarding the Labour Relations Act |

In order to establish the perceptions of personnel practitioners with regard to the dispute resolution mechanisms of the Act, each of sections B, C and D were matched against each of the variables in section A, which could have had an influence on perceptions.

These differences on the basis of biographical variables were computed through the use of multivariate analysis by means of the SPSS programme. In line with the aims of the study the results were as follows: -

5.7.1 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT CULTURAL BACKGROUNDS WITH REGARD TO THE DIFFERENT ISSUES OF THE LABOUR RELATIONS ACT

These results are reflected in Tables 5.4 - 5.6 below:

Table 5.4 THE PERCEPTUAL DIFFERENCES OF THE PERSONNEL PRACTITIONERS OF DIFFERENT CULTURAL BACKGROUNDS REGARDING THE GENERAL ISSUES OF THE LABOUR RELATIONS ACT

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	1	.0002	.0002	.0000	.9984
Within Groups	122	5290.7337	43.3667		
TOTAL	123	5290.7339			

* P < 0,05

** P < 0,01

Table 5.5 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT CULTURAL BACKGROUNDS REGARDING GENERAL ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	1	314.2513	314.2513	4.4795	.0363*
Within Groups	122	8558.6761	70.1531		
TOTAL	123	8872.9274			

* P < 0,05

** P < 0,01

Table 5.6 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT CULTURAL BACKGROUNDS REGARDING SPECIFIC ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	1	224.6016	224.6016	4.1835	.0430*
Within Groups	121	6496.1463	53.6872		
TOTAL	122	6720.7480			

* P < 0,05

** P < 0,01

The above data reflects the analysis of cultural backgrounds of the sample population against the respective sections B, C and D. It is evident that there are no significant differences in the perceptions of personnel practitioners with regard to general questions on the Act (B), general questions on the dispute resolution mechanisms and specific processes of dispute resolution on the basis of their cultural backgrounds. This could possibly be as a result of the fact that businesses in the country, including Bloemfontein, have over time spent a lot on developing and establishing cultural synergy within the workplace. Another reason could be the fact that there was wide consultation between the social partners in the process of producing the Labour Relations Act.

5.7.2 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT MARITAL STATUS REGARDING THE ISSUES OF THE LABOUR RELATIONS ACT

These differences are reflected in Tables 5.7 - 5.9 below:

Table 5.7 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT MARITAL STATUS REGARDING THE GENERAL ISSUES OF THE LABOUR RELATIONS ACT

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	2	241.9314	120.9657	2.8991	.0589
Within Groups	121	5048.8024	41.7256		
TOTAL	123	5290.7339			

* $P < 0,05$

** $P < 0,01$

Table 5.8 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT MARITAL STATUS REGARDING THE GENERAL ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	2	846.6844	423.3422	6.3821	.0023**
Within Groups	121	8026.2430	66.3326		
TOTAL	123	8872.9274			

* $P < 0,05$

** $P < 0,01$

Table 5.9 THE PERCEPTUAL DIFFERENCES OF THE PERSONNEL PRACTITIONERS OF DIFFERENT MARITAL STATUS REGARDING SPECIFIC ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	2	490.1488	245.0744	4.7201	.0106**
Within Groups	120	6230.5991	51.9217		
TOTAL	122	6720.7480			

* $P < 0,05$

** $P < 0,01$

The variance analysis for section B (general issues on the Act) indicates that with a P value of 0.0589 there are no two groups that are significantly different at the 0.050 level.

In section C (general issues on the dispute resolution mechanisms) the P-value is 0.0023 and the mean for the groups 1, 2 and 3 respectively are 156.7000, 147.4368 and 146.4815. According to the values reflected above, there is a significant difference in the perceptions between group 1 (married) and group 3 (divorced) as well as between group 1 (married) and group 2 (single). According to the arithmetic means, the married group ($x = 156.7000$) displays the most positive perceptions which the divorced group ($x = 146.4815$) displays the least positive perceptions.

In the analysis of the sum of D by marital status the arithmetic means of the groups are 64.2000, 56.9535 and 56.7407 for groups 1, 2 and 3 respectively. Based on the Pvalues there does seem to be a significant difference in the perceptions of the personnel practitioners with regard to the specific dispute resolution mechanisms, on the basis of marital status. There also seems to be a significant difference ($P < 0,05$) in the perceptions of married practitioners and divorced practitioners and also between the married practitioners and single practitioners.

There is an indication from the above that there is support for the view that the responsibilities assumed by people who are married give a different perspective to life than in the case of a single person. There does not, however, seem to be any indication that the perceptions of divorced persons are necessarily similar to those of married people as a result of some exposure to married life.

5.7.3 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT AGE GROUPS REGARDING THE GENERAL ISSUES OF THE LABOUR RELATIONS ACT

These differences are reflected in Tables 5.10 - 5.12 below:

Table 5.10 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT AGE GROUPS REGARDING THE LABOUR RELATIONS ACT

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	3	332.8356	110.9452	2.6853	.0497*
Within Groups	120	4957.8983	41.3158		
TOTAL	123	5290.7339			

* $P < 0,05$

** $P < 0,01$

Table 5.11 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT AGE GROUPS REGARDING THE GENERAL ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	3	97.3966	32.4655	.4439	.7220
Within Groups	120	8775.5308	73.1294		
TOTAL	123	8872.9274			

* P < 0,05

** P < 0,01

Table 5.12 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT AGE GROUPS REGARDING SPECIFIC ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	3	207.8758	69.2919	1.2661	.2892
Within Groups	119	6512.8722	54.7300		
TOTAL	122	6720.7480			

* P < 0,05

** P < 0,01

The variance analysis above reflects a P- value of 0.0497 for the analysis of section B (general issues on the Act) by age group. Based on this it may be concluded the two groups are significantly different at the 0.050 level in the analysis of sections B, C and D by age group.

5.7.4 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT GENDER (SEX) REGARDING THE ISSUES OF THE LABOUR RELATIONS ACT

These differences are reflected in tables 5.13 - 5.15 below:

Table 5.13 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT GENDER (SEX) REGARDING THE GENERAL ISSUES OF THE LABOUR RELATIONS ACT

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	1	.0508	.0508	.0012	.9728
Within Groups	122	5290.6831	43.3663		
TOTAL	123	5290.7339			

* P < 0,05

** P < 0,01

Table 5.14 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT GENDER (SEX) REGARDING GENERAL ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	1	21.6503	21.6503	.2984	.5859
Within Groups	122	8851.2771	72.5515		
TOTAL	123	8872.9274			

* P < 0,05

** P < 0,01

Table 5.15 **THE PERCEPTUAL DIFFERENCES OF PERSONNEL
PRACTITIONERS OF DIFFERENT GENDER (SEX) REGARDING
SPECIFIC ISSUES OF THE DISPUTE RESOLUTION MECHANISMS**

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	1	4.0602	4.0602	.0731	.7873
Within Groups	121	6716.6877	55.5098		
TOTAL	122	6720.7480			

* P < 0,05

** P < 0,01

The analysis of sections B, C and D above reflects P values of .9728, .5859 and .7873 respectively. It may therefore be concluded that there are no two groups that are significantly different at the level of 0.050. This could be attributed to the changing roles of women from housewives to career centred.

5.7.5 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT RESIDENTIAL BACKGROUNDS REGARDING THE ISSUES OF THE LABOUR RELATIONS ACT

These differences are reflected in Tables 5.16 - 5.18 below:

Table 5.16 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT RESIDENTIAL BACKGROUNDS REGARDING GENERAL ISSUES OF THE LABOUR RELATIONS ACT

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	1	55.6719	55.6719	1.2974	.2569
Within Groups	122	5235.0620	42.9103		
TOTAL	123	5290.7339			

* P < 0,05

** P < 0,01

Table 5.17 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT RESIDENTIAL BACKGROUNDS REGARDING GENERAL ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	1	64.3772	64.3772	.8916	.3469
Within Groups	122	8808.5502	72.2012		
TOTAL	123	8872.9274			

* P < 0,05

** P < 0,01

Table 5.18 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT RESIDENTIAL BACKGROUNDS REGARDING SPECIFIC ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	1	70.8174	70.8174	1.2886	.2586
Within Groups	121	6649.9306	54.9581		
TOTAL	122	6720.7480			

* P < 0,05

** P < 0,01

The analysis above indicates that there are no significant differences in the perceptions of personnel practitioners in the sections B, C and D based on their residential backgrounds.

5.7.6 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT EDUCATIONAL QUALIFICATIONS REGARDING ISSUES OF THE LABOUR RELATIONS ACT

These differences are reflected in Tables 5.19 - 5.21 below:

Table 5.19 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT EDUCATIONAL QUALIFICATIONS REGARDING GENERAL ISSUES OF THE LABOUR RELATIONS ACT

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	3	141.5202	47.1734	1.0994	.3523
Within Groups	120	5149.2136	42.9101		
TOTAL	123	5290.7339			

* P < 0,05

** P < 0,01

Table 5.20 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT EDUCATIONAL QUALIFICATIONS REGARDING GENERAL ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	3	88.7896	29.5965	.4043	.7502
Within Groups	120	8784.1378	72.2011		
TOTAL	123	8872.9274			

* P < 0,05

** P < 0,01

Table 5.21 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT EDUCATIONAL QUALIFICATIONS REGARDING SPECIFIC ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	3	431.4868	143.8289	2.7214	0.475
Within Groups	119	6289.2612	52.8509		
TOTAL	122	6720.7480			

* P < 0,05

** P < 0,01

The analysis of variances above reflects the P values of .3523, .7502 and .0475. Therefore no two groups are significantly different at the level of 0.050 on the basis of qualifications.

5.7.7 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT ECONOMIC SECTORS REGARDING ISSUES OF THE LABOUR RELATIONS ACT

These differences are reflected in Tables 5.22 - 5.24 below:

Table 5.22 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT ECONOMIC SECTORS REGARDING GENERAL ISSUES OF THE LABOUR RELATIONS ACT

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	4	199.0165	49.7541	1.1407	.3414
Within Groups	108	4710.7357	43.6179		
TOTAL	112	4909.7522			

* P < 0,05

** P < 0,01

Table 5.23 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITTOONERS OF DIFFERENT ECONOMIC SECTORS REGARDING GENERAL ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	4	1006.9034	251.7259	3.7698	.0066**
Within Groups	108	7211.6452	66.7745		
TOTAL	112	8218.5487			

* P < 0,05

** P < 0,01

Table 5.24 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT ECONOMIC SECTORS REGARDING SPECIFIC ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	4	904.6349	226.1587	4.5323	.0020**
Within Groups	107	5339.2847	49.8999		
TOTAL	111	6243.9796			

* P < 0,05

** P < 0,01

The P value for the analysis of section B by economic sector reflects that no two groups are significantly different at the 0.050 level. The variance analysis of both sections C and D reflects P values of .0066 and .0020 respectively. The arithmetic means indicate that the Retail group is the most positive while the Commercial is the least. The differences in the perceptions of the personnel practitioners in the Transport sector (group 3) from those of the Commercial sector (group 5) are indicative of the influence of the militancy of the unions (such as Transport and General Workers Union and SARHWU) which has been experienced in the past by the researcher. The same cannot be said about the differences in the perceptions of personnel practitioners in the Retail and Commercial sectors who also have the one union in the sector, viz. The South African Commercial Catering and Allied Workers Union (SACCAWU), although SACCAWU is also perceived, by the writer, to be militant. Another reason for the differences in the perceptions of personnel practitioners in the Commercial and Retail sectors as against those in the Transport sector could be the fact that the Retail and Commercial sectors may be more customer service orientated and have invested more in training, with the result that this has influenced the workforce and personnel practitioners into a more conciliatory mode.

5.7.8 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT SIZES OF ORGANISATIONS REGARDING ISSUES OF THE LABOUR RELATIONS ACT

These differences are reflected in Tables 5.25 - 5.27 below:

Table 5.25 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT SIZES OF ORGANISATIONS REGARDING GENERAL ISSUES OF THE LABOUR RELATIONS ACT

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	3	455.5345	151.8448	3.7685	.0126*
Within Groups	120	4835.1994	40.2933		
TOTAL	123	5290.7339			

* P < 0,05

** P < 0,01

Table 5.26 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT SIZES OF ORGANISATIONS REGARDING GENERAL ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	3	542.66054	180.8868	2.6057	.0549
Within Groups	120	8330.2669	69.4189		
TOTAL	123	8872.9274			

* P < 0,05

** P < 0,01

Table 5.27 **THE PERCEPTUAL DIFFERENCES OF PERSONNEL
PRACTITIONERS OF DIFFERENT SIZES OF ORGANISATIONS
REGARDING SPECIFIC ISSUES OF THE DISPUTE RESOLUTION
MECHANISMS**

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	3	698.3047	232.7682	4.5994	.0044**
Within Groups	119	6022.4432	50.6088		
TOTAL	122	6720.7480			

* P < 0,05

** P < 0,01

The P values of the analysis of section B (general issues on the Act) and C (general issues on the mechanisms) indicate that no two groups are significantly different at the level of 0.050, on the basis of the number of employees in the organisation. By virtue of the arithmetic means it seems the smaller the organisation, the more positive the perceptions of the personnel practitioners. In section D with a P value of .0044 the analysis reflects that there is a significant difference in the perceptions of practitioners at the 0.050 level between practitioners in group 3 and group 4, viz. those employing employees between 201-300 and 301-400. This could probably be related to number of disputes as a function of the size of the organisation. This could, however, not explain the similarity of perceptions in organisations with 401-500 as well as 501 and more employees.

5.7.9 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT LEVELS OF MANAGEMENT REGARDING ISSUES OF THE LABOUR RELATIONS ACT

These differences are reflected in Tables 5.28 - 5.30 below:

Table 5.28 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT LEVELS OF MANAGEMENT REGARDING GENERAL ISSUES OF THE LABOUR RELATIONS ACT

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	2	381.2886	190.6443	4.6987	.0108*
Within Groups	121	4909.4452	40.5739		
TOTAL	123	5290.7339			

* P < 0,05

** P < 0,01

Table 5.29 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT LEVELS OF MANAGEMENT REGARDING GENERAL ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	2	103.08244	51.5412	.7111	.4931
Within Groups	121	8769.8450	72.4781		
TOTAL	123	8872.9274			

* P < 0,05

** P < 0,01

Table 5.30 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT LEVELS OF MANAGEMENT REGARDING SPECIFIC ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	2	530.5022	265.2511	5.1420	.0072**
Within Groups	120	6190.2458	51.5854		
TOTAL	122	6720.7480			

* P < 0,05

** P < 0,01

The P values of sections B and C are .0108 and .4931, indicating that no two groups are significantly different at the 0.050 level in these sections.

In section D the P value is .0072 and the means reflect that groups 2 and 3 (middle management and supervisors) have significantly different perceptions at the 0.050 level.

In the absence of any evidence to the contrary, these differences may be ascribed to the respective operational levels of the respondents. Middle management does tend to be further away from the operations than supervisors. Based on the arithmetic means of the respective groups, it seems that the higher the level of management the more positive the perceptions are regarding the general and specific issues of the dispute resolution mechanisms.

5.7.10 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT YEARS OF EXPERIENCE IN PERSONNEL MANAGEMENT REGARDING ISSUES OF THE LABOUR RELATIONS ACT

These differences are reflected in Tables 5.31 - 5.33 below:

Table 5.31 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT YEARS OF EXPERIENCE IN PERSONNEL MANAGEMENT REGARDING GENERAL ISSUES OF THE LABOUR RELATIONS ACT

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	2	22.2536	11.1263	.2555	.7749
Within Groups	121	5263.4802	43.5412		
TOTAL	123	5290.7339			

* P < 0,05

** P < 0,01

Table 5.32 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT YEARS OF EXPERIENCE IN PERSONNEL MANAGEMENT REGARDING GENERAL ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	2	95.2429	47.6215	.6565	.5205
Within Groups	121	8777.6845	72.5428		
TOTAL	123	8872.9274			

* P < 0,05

** P < 0,01

Table 5.33 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT YEARS OF EXPERIENCE IN PERSONNEL MANAGEMENT REGARDING SPECIFIC ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	2	1110.0229	555.0114	11.8704	.0000**
Within Groups	120	5610.7251	46.7560		
TOTAL	122	6720.7480			

* P < 0,05

** P < 0,01

The analysis reflects P values of .7749, .5205 and .000 for sections B, C and D respectively. In section D there seem to be differences in the perceptions of group 1 (2-3 years' experience) and group 2 and 3 (4-5 as well as 5 and more years' experience). On the basis of the arithmetic means it appears that group 1 ($x = 62.1429$) is the most positive whereas group 3 ($x = 55.1970$) is the least positive. This could be as a result of the fact that group 1 managers are operational managers and have more to do with the Act than senior management.

In practice, the more experienced managers are, the more they are involved in strategic issues as apposed to operational issues like dispute resolution. This may be the reason for the conceptual development of individuals and hence the differences in perceptions.

5.7.11 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT YEARS OF EXPERIENCE IN LABOUR RELATIONS REGARDING ISSUES OF THE LABOUR RELATIONS ACT

These differences are reflected in Tables 5.34 - 5.36 below:

Table 5.34 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT YEARS OF EXPERIENCE IN LABOUR RELATIONS REGARDING GENERAL ISSUES OF THE LABOUR RELATIONS ACT

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	2	7.7206	3.8603	.0884	.9154
Within Groups	121	5283.0133	43.6613		
TOTAL	123	5290.7339			

* P < 0,05

** P < 0,01

Table 5.35 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT YEARS OF EXPERIENCE IN LABOUR RELATIONS REGARDING GENERAL ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	2	243.9450	121.9725	1.7104	.1851
Within Groups	121	8628.9824	71.3139		
TOTAL	123	8872.9274			

* P < 0,05

** P < 0,01

Table 5.36 THE PERCEPTUAL DIFFERENCES OF PERSONNEL PRACTITIONERS OF DIFFERENT YEARS OF EXPERIENCE IN LABOUR RELATIONS REGARDING SPECIFIC ISSUES OF THE DISPUTE RESOLUTION MECHANISMS

SOURCE	D.F.	SUM OF SQUARES	MEAN SQUARES	F RATIO	P PROB.
Between Groups	2	278.7253	139.3627	2.5960	.0788
Within Groups	120	6442.0226	53.6835		
TOTAL	122	6720.7480			

* P < 0,05

** P < 0,01

The P values for sections B, C and D are .9154, .1851 and .0788. On the basis of these it may therefore, be said that no two groups are significantly different at the 0.050 level.

The Star of 3 June 1998 had in its *Workplace* an article entitled "Dissatisfaction with labour dispute resolution process". In this article Ivan Israelstam indicated that a large number of readers of this supplement feel that all is not well with the statutory dispute resolution system. According to the report, some of the reasons for the dissatisfaction with the administration of the CCMA are that

- (i) the CCMA takes too long to set dates for cases to be heard;
- (ii) case managers give different dates and times to different parties to attend hearings;
- (iii) the appointed commissioners are not being notified of their appointments;
- (iv) commissioners fail to stick to the stipulated 14-day time period to give arbitration awards;
- (v) CCMA staff are not hired for their skills and affirmative action is not being implemented correctly.

It is the contention of the researcher that the above concerns are symptoms of the pressure being exerted on the CCMA party by employee parties taking each and every dismissal to the CCMA. It has to be borne in mind that the CCMA was actually meant to service the small employers but is presently being abused. Given the existing case load, it is important to guard against any further abuse as this could finally lead to a situation where all the concerns experienced in the old dispute resolution procedures are repeated. Clearly this defeats the objectives of the Labour Relations Act 66 of 1995. The failure to make use of and exhaust internally agreed dispute resolution mechanisms before resorting to the CCMA seems to be indicative of the wider problem of a lack of trust and constructive management/labour relations in South African workplaces. Much that could be resolved among parties through agreed internal procedures tends to land up at the CCMA because employee parties either do not have faith and trust in internal procedures or these are not being effectively utilised, or they may not even exist.

The concerns expressed in Ivan Israelstam's article is a generalisation and it may not necessarily reflect the position in the Bloemfontein area. Having said this, some of the problems may also be experienced in Bloemfontein, although to a lesser extent.

Generally speaking, however, there does not seem to be great support for the services of the CCMA, particularly from an administrative point of view.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

6.1 INTRODUCTION

The purpose of the study was to determine if there are differences in the perceptions of personnel practitioners with regard to the dispute resolution mechanisms of the LRA.

This chapter attempts to bring together the most important aspects of the findings of the study, and discusses the implications for future areas of improvement concerning dispute resolution. The central findings in the study are those relating to perceptions with regard to the Labour Relations Act in general and the dispute resolution mechanisms specifically.

6.2 CONCLUSIONS

The following general conclusions can be drawn from the study:

- 6.2.1 A high proportion of the respondents were positive towards the Act and the dispute resolution mechanisms of the Act: 97% for arbitration, 82% for the Labour Court and 80% for conciliation. It was also indicated by respondents that 53% of them would rather contract privately and not make use of the dispute resolution procedures of the Act. Contributory factors to this view could be the concerns about administrative efficiency of the CCMA or perceptions that the Act (and the way it is implemented) favours employees. A challenge would seem to be for employers and employees, through the establishment of a consultative organisational culture, to achieve a common understanding of the Act as an instrument that could adequately serve the interests of both parties.

This process would be part of achieving workplace democracy and reconciliation across traditional divisions to ensure business success in the changed macro-environment.

Despite the generally positive perceptions towards the Act and the dispute resolution mechanisms, there are concerns about the administrative efficiency of the CCMA.

- 6.2.2 There are no significant differences in the perceptions of black and white personnel practitioners. This was a surprising finding, in view of expectations to the contrary raised by the literature study, and also rather encouraging. It would seem to indicate that in their shared profession, characterised by similar working conditions and training backgrounds, personnel practitioners have overcome the traditionally divergent views that could be the result of cultural background and historical white/black divisions. The extent to which this is true for the management/union relations is questionable and this remains an area for improvement.
- 6.2.3 There are differences in the perceptions of the different levels of personnel practitioners. Middle management and supervisors tend to have significantly different perceptions, owing perhaps to the fact that senior management is more removed from operations.
- 6.2.4 There are differences in the perceptions of personnel practitioners with regard to the specific mechanisms on the basis of the size of the organisation.
- 6.2.5 There are differences in the perceptions of personnel practitioners within different industries.
- 6.2.6 The role of the commissioners does seem to be important. The practitioners in the sample have, however, indicated their desire for objectivity, training of commissioners, communications skills improvement and disregard for colour or race in the process of dispute resolution.

- 6.2.7 There is a need for training of personnel practitioners to effectively make use of the dispute resolution mechanisms by being able to present the company's case in an expert fashion.
- 6.2.8 A lack of constructive management/labour relations and black/white relations in workplaces seems to contribute to the case load of the CCMA, pointing to the need for strategies for the transformation of organisational culture so as to support mutually agreed internal dispute resolution mechanisms by employer as well as employee parties.

The overall conclusion which may be drawn from the study is that there are no differences in the frames of reference of black and white perceptions with regard to the dispute resolution mechanisms of the Act. There are, however, other factors independent of politics which affect perceptions of personnel practitioners with regard to the dispute resolution mechanisms of the Act. Some of the factors have been indicated in the results of this study, such as level within the organisation, size of the organisation and years of experience. It is also important to recognise the role that unions should play in the process of dispute resolution. Finally, it is not possible to determine the contribution made by positive perceptions towards dispute resolution mechanisms and their effectiveness unless a comparative study is done between two or more organisations.

6.3 RECOMMENDATIONS

South Africa became a fledging democracy on 27 April 1994. Following this miraculous political transformation, it is therefore necessary to make determined strides to establish a culture of democracy in conjunction with the economic and social transformation. The challenge of changing to democracy at the political, social and economic levels has implications for everyone. South African organisations will have to find a balance between progressive industrial relations and flexible labour practices needed for international competition.

6.3.1 RELATIONSHIP BUILDING

Good relationships between employees and management as well as amongst the respective parties are important for the achievement of the objectives of both the organisation and the employees. Both parties therefore must establish a relationship with each other individually and collectively so as to be integrated. This will promote sound labour relations, including differences based on levels and size of organisation, which lead to improved performance and efficiency.

6.3.2 PERFORMANCE IMPROVEMENT PROGRAMME FOR CCMA

The success of the CCMA is largely dependent on the abilities and performance of its commissioners. A particularly important application of performance appraisals is in providing feedback to employees. The management of the CCMA and business organisations therefore should develop a system of evaluating the performance. This should be done by employer representatives who visit the CCMA and the management for the purposes of representing their respective employers and/or industries in the process of either conciliation or arbitration. This feedback is then channelled in formal one-to-one sessions to the individual commissioners.

6.3.3 TRAINING

One of the major concerns expressed throughout the study is that the commissioners of the CCMA must be competent. Competent in the researcher's sense would mean both formal and technical qualifications. Section 117(1) of the Act stipulates that commissioners appointed should be "adequately qualified" persons. What "adequately qualified" is, however, is not known and therefore subject to different interpretations. There is, for example, no specific stipulation that commissioners be legally qualified, and/or have a human resources or labour related qualification. What is experienced is that the appointments made come from the ranks of lawyers, academics, human resources and industrial relations practitioners, union officials and/or officials of bargaining councils.

The same can also be said about personnel practitioners. While it does seem from section 117(1) of the Act that qualification and training will be essential to the success of the CCMA, such qualification and training must be equally essential in the appointment of personnel practitioners. This is so because in the case of both commissioners and bargaining councils and/or private agencies, section 127(1) of the Act requires accreditation to perform (a) dispute resolution through conciliation and (b) arbitrations. While the personnel practitioners also perform the same functions, no similar requirements are placed on them. This discrepancy may lead to differences in their perceptions of the processes of conciliation and/or arbitration because their knowledge or skills bases differ.

For effectiveness in the process of dispute resolution, adequate levels of human resources should be available to perform this function. In the Bloemfontein area, for example, there does not seem to be sufficient labour relations specialists skilled in dispute resolution. This signifies a great skills shortage. Against this background it is recommended that the Private Dispute Resolution Agencies or the Independent Mediation Services of South Africa (IMSSA) be used for the purposes of both dispute resolution and internal training by organisations.

The training of personnel practitioners and commissioners should in particular be focused on conciliation and arbitration, including cross-examination skills, as follows:

6.3.3.1 CONCILIATION

The purpose of conciliation is to attempt to settle disputes on settlement terms acceptable to both parties; to share information which will enable both parties to assess the strengths of their respective cases; to weaken the opposing party's perception of their case and to enhance the relationship between the parties.

In order to achieve this, company representatives such as personnel practitioners should therefore be able to articulate the company position to the commissioner as explicitly as possible. This is done by training them to write an OPENING STATEMENT which indicates:

- (i) what the dispute relates to
- (ii) whether the company has rules regulating the issue at dispute and what this rule is
- (iii) whether the rule was known to the employee
- (iv) whether the rule was breached
- (v) whether the sanction is appropriate
- (vi) the sanction sought from the commissioner.

It is the contention of the researcher that the inclusion of answers to these questions should provide any commissioner with a clear picture of the issue at dispute and he/she may therefore rule in their favour. On many occasions it is possible that a commissioner does not get a clear understanding of the issue at dispute and is forced to ask probing questions. This could then create perceptions of bias, rightly or wrongly. It is very important for employer representatives, such as personnel practitioners, to master this skill because the onus rests on the company to prove the fairness of its actions.

After the opposing party has given their version of the dispute the personnel practitioner is then allowed the opportunity to question for the sake of clarity. Once this has been done the conciliation process is closed by a presentation of CLOSING ARGUMENTS. Just as the opening statement is important, so is the closing argument. In the closing argument the personnel practitioner should identify and indicate weaknesses in the opposition's case based on the facts presented. In addition, the argument should discredit the other party on the basis of rules and case law and clearly indicate to the commissioner why, on the basis of the facts, the company's sanction should be upheld, based on substantive and procedural fairness.

6.3.3.2 ARBITRATION

Once a dispute referred to the CCMA is not resolved and the dispute relates to dismissals for misconduct or incapacity, the CCMA must arbitrate the dispute. The stages of arbitration preparations should, according to Brand (1997 : 103), comprise of:

- (i) Gathering information
 - * interviewing
 - * document gathering
- (ii) Strategising
 - * deciding on the conceptual approach
 - * anticipating the other side's case
 - * choosing witnesses
- (iii) Final preparation
 - * preparing a checklist
 - * preparing witnesses
 - * preparing opening and closing statements.

These stages should form an integral part of the training of personnel practitioners. It is an important intervention to eliminate differences in terms of levels of management as well as different industries.

6.3.4 PRIVATE DISPUTE RESOLUTION (CONTRACTING OUT)

The Act permits the parties to agree in a collective agreement to have disputes resolved in accordance with their own procedure. It is therefore recommended that where the parties can, they agree on any private agency (e.g. IMSSA) or a panel of appropriately qualified people to service their needs. These panellists should then develop dispute resolution procedures which should be agreed to between the parties. Such a collective agreement will then override the Act. According to section 23 of the Act, the private dispute resolution will apply to the parties to the collective agreement and their members but not to non-union members, unless individually agreed to with them. It is therefore recommended that private agreements be entered into individually with all employees who are not members of the recognised union. A private dispute resolution agreement may therefore provide for the resolution of disputes on matters which, in terms of the Act, would have been subject to the jurisdiction of the CCMA and in respect of which parties would have been entitled to resort to industrial action, as indicated as part of the private dispute resolution agreement.

If such a collective agreement specifically excludes, or can be interpreted to exclude, the jurisdiction of the CCMA, then the parties bound by such an agreement will not be able to refer any matter to the CCMA but will have to respect their own private dispute resolution procedure. If the collective agreement designates dispute resolution by a non-statutory dispute resolution agency other than the CCMA, then the Arbitration Act will apply.

A private dispute resolution procedure should provide for terms of reference for conciliation and arbitration, setting out the disputed issues, the powers of those responsible to resolve disputes and such other matters as the parties may wish to agree upon. The parties should also agree upon the panellists or agency to be appointed or the manner of appointing them.

The advantages of a private dispute resolution procedure are:

- (i) The parties are not bound by the time periods prescribed in the Act and may therefore agree upon a much expedited procedure. Subject to the availability of the panellists, disputes such as those which relate to unfair dismissals may be resolved much quicker than is the case at the moment with the CCMA.
- (ii) The parties jointly decide upon a panel of conciliators or arbitrators and thereby select those in which they have faith. The parties may also remove panellists from or add to the panel as and when they wish.
- (iii) The panellists become familiar with the employer's (company) values, procedures, systems and operations and there should therefore be more consistency than in the event of commissioners being allocated at random by the CCMA.
- (iv) A private dispute resolution procedure will allow the parties much more flexibility in designing conciliation and arbitration procedures. They may, for example, permit or deny legal representation, and arbitration may immediately follow conciliation, thus saving time.

6.3.5 TRANSFORMATION OF THE WORKPLACE

Lately transformation has become an overused word in the so-called new South Africa. However, in management circles this word will continue to be used, because an authoritarian style of management is still the main style all over the world since authority and power accompany managerial positions. In South Africa authority and power have even been coupled with ethnicity, resulting in spiralling conflict, retaliation, win-lose outcomes and a tremendous power struggle between (white) business and (black) labour. The leadership style has resulted in much hostility and aggression between the parties. Given the negative outcomes of autocratic leadership, it does seem that the answer to South Africa's labour problems partly lies in a more democratic leadership style in order to address the differences in perceptions at different levels and sizes of organisations.

(i) Democratisation

Trade unions have long called for greater democracy in the workplace and they have defined this largely in terms of the workers being given equal say in running the business. Management in the South Africa of old has always totally opposed this, yet if the conflict endemic to the management-employee relationship is to be resolved, there is a need to become more democratic.

Democracy in the workplace implies a change in style on the part of leaders. This struggle for greater democracy is not always recognised for what it is. Management, is inclined to interpret the conflict as arising from political motives on the part of unions. Political factors most certainly have played and still play a role in some of the conflict, but managers also fail to recognise the role played by the management style in causing industrial strife through the way they treat their employees.

The high incidence of conflict in the history of the country suggests that management has not been managing labour relations properly. It is suggested that business becomes more democratic, and the achievement of this lies squarely in the hands of management.

Personnel practitioners, particularly, may influence this by developing policies and practices which do not require stifling authority, but which, at the same time, do not result in loss of control. Such policies and practices should be fair, consistent and equitable on the one hand and promote effective interpersonal interaction at the interface level, on the other.

(ii) Culture change

Personnel practitioners as change agents should re-create the culture of organisations. They should create organisations which are open-minded enough to recognise the need for change well in advance and to accept this as normal. If this is supported with an appropriate strategy for change, the organisation could develop the ability to adjust to or implement changes to systems and people. Such an organisation will also have the capacity to accept people who are different. This could play an important role in developing sound relations, particularly with diverse cultural groups.

The South African workplace is in a constant change mode. Management therefore has to deal with various challenges in this regard and is required to deal with each situation appropriately. A democratic management team will develop the capability to handle ambiguity and paradox prevalent in the workplace.

Personnel practitioners should develop an organisational culture which is open to the views of others. Such an open mind will not have problems listening to and understanding differing points of view as it will be realised that there is a need to actively seek and accommodate different ideas. Management will develop enough confidence to know that they will not be influenced by ideologies and philosophies different to their own which will impose self-censorship upon them.

A democratic management culture will be open to negotiation and consultation. As a result of their involvement in the decision-making process, employees will feel that their views count and that they are important as stakeholders. This will have a positive impact on relations, and employees will realise that the organisation sees people as people and is not influenced by race or gender.

6.3.6 AMENDMENTS TO THE LABOUR RELATIONS ACT OF 1995

When the Act was drafted it was with the purpose of cheap, speedy and effective resolution of disputes. The experience of both the CCMA commissioners as well as employer representatives is, however, that the process is made difficult by, amongst others, contradictions. The LRA is an improvement on its predecessor but it does have its weaknesses too and unfortunately these cause a great deal of uncertainty and resultant perceptions of inefficiencies and bias.. In order to overcome these problems it is suggested that the following amendments be made to the Act:

(i) Functions of the Commission

According to section 115(1)(a) and (b) of the Act, the Commission must attempt to resolve disputes through conciliation or arbitration. In addition, section 135(3) empowers the commissioners to determine a process to resolve disputes. The processes determined by commissioners may therefore vary and cause confusion. It is hence recommended that an amendment be considered for the CCMA to determine rules which should be published. These rules should determine how commissioners are to deal with conciliation and arbitration processes. This should then provide clarity to all parties in terms of what to expect in the process of dispute resolution.

(ii) Arbitration referrals

The Act presently has no time limit during which parties may refer a dispute to arbitration or to the Labour Court. This has the potential of defeating the objective of a speedy resolution of disputes. An amendment to this effect will therefore impose a much welcome control mechanism on the dispute resolution process.

In the meantime employer and employee parties will have to deal with the processes with caution as the present omission from the Act will continue to perpetuate and aggravate the existing levels of uncertainty.

6.4 CONCLUSION

This chapter presented general conclusions drawn from the study and provided recommendations for areas of improvement of the industrial relations situation with specific reference to relationship building, training for personnel practitioners in conciliation and arbitration, and transformation of the workplace. It is suggested that such organisational transformation and enhanced skills on the part of personnel practitioners would also enable them to make more effective use of the dispute resolution processes provided for in the LRA.

It was attempted to indicate possible measures which could be adopted to build and improve relations in the workplace. If adopted, these could give all interested parties confidence in handling industrial relation situations and skills in handling complaints, corrective action and conflict, which would have long-term, lasting effects. Overall improved relations will give personnel practitioners ownership of industrial relations.

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**THE PERCEPTIONS OF PERSONNEL PRACTITIONERS IN
BLOEMFONTEIN ON THE DISPUTE RESOLUTION
MECHANISMS OF THE LABOUR RELATIONS ACT 66 OF 1995**

INSTRUCTIONS

Thank you for being willing to take part in this very important project.

Please read every statement carefully before you respond to it. There are no right or wrong responses. The intention is to record your perceptions on the different mechanisms of the Labour Relations Act 66 of 1995. Please give your honest opinion as only then can we really try to make recommendations to employers to improve your situation.

Please note that you have been selected to complete the questionnaire because you are a personnel/ labour relations practitioner, but your name or surname will appear nowhere on the questionnaire.

All the responses you submit in the questionnaire are considered confidential only.

Please make sure that you respond to all the statements by crossing the block that represents your perceptions.

Once analysed, the results will be presented to the local IPM branch as well as any other interested parties, who participated in the survey.

Thank you very much for your co-operation.

RESEARCH QUESTIONNAIRE

SECTION A: BIOGRAPHICAL INFORMATION

The following section includes response categories which provide biographical information. Please mark the appropriate block with an X.

1. Cultural background

- White
- Black
- Asian
- Coloured

--

2. Marital status

- Divorced
- Married
- Single

--

3. Age group

- 20 - 30
- 31 - 40
- 41 - 50
- 51 - older

--

4. Sex

- Male
- Female

--

5. Residential background

- Urban
- Rural

--

6. **Academic qualifications**

Matric

Matric + 3 years diploma

Bachelors degree

Honours degree

Masters degree

Doctorate degree

☐

7. **Economic sector/industry**

Retail

State

Transport

Media

Commercial

Electricity supply

Municipality

Other

Specify:.....

☐

8. **Number of employees in organisation**

1 - 100

101 - 200

201 - 300

301 - 400

401 - 500

501 and more

☐

9. **Your management level in organisation**

Senior management

Middle management

Supervisory level

☐

10 **Years of experience in Personnel Management**

0 - 1

2 - 3

4 - 5

5 and more

--

11 **Years of experience in Labour Relations**

0 - 1

2 - 3

4 - 5

5 and more

--

SECTION B: GENERAL

Read the following statements and mark the block which best describes your perception.

The blocks are numbered and have the following interpretations:

- 4 = strongly agree
- 3 = generally agree
- 2 = generally disagree
- 1 = strongly disagree

1. The establishment of the Commission for Conciliation, Mediation and Arbitration (CCMA) for the purposes of dispute resolution is acceptable

1	2	3	4
---	---	---	---

--

2. The process of resolving disputes through the CCMA is credible

1	2	3	4
---	---	---	---

--

3. The process of dispute resolution in terms of the New Act is simple

1	2	3	4
---	---	---	---

--

4. The process of dispute resolution in terms of the Act is time consuming

1	2	3	4
---	---	---	---

--

5.. Information sharing is not critical in dispute resolution

1	2	3	4
---	---	---	---

--

6. White employees will openly communicate/share information with commissioners.

1	2	3	4
---	---	---	---

--

7. Commissioners must be entitled to subpoena people who may be able to give information concerning a dispute

1	2	3	4
---	---	---	---

--

8. Cultural differences will influence the extent to which Black employees communicate with White commissioners.

1	2	3	4
---	---	---	---

--

9. Historical Black/White problems will influence the commissioners' judgement in the process of dispute resolution

1	2	3	4
---	---	---	---

--

10 Whites will have confidence in the merits and ability of Blacks appointed as commissioners.

1	2	3	4
---	---	---	---

--

11 The commissioners will be able to develop the disputes parties' trust for dispute resolution.

1	2	3	4
---	---	---	---

--

12 The dispute resolution mechanisms favour employees more than management.

1	2	3	4
---	---	---	---

--

13 The commissioners will be prejudiced in favour of labour

1	2	3	4
---	---	---	---

--

14 The fact that the commission's services are free of charge will negatively affect the quality of service.

1	2	3	4
---	---	---	---

--

15 The commissioners have too much power in the process of dispute resolution

1	2	3	4
---	---	---	---

--

16 I am generally not happy with the New Labour Relations Act

1	2	3	4
---	---	---	---

--

17 The technical language of the Act is simple

1	2	3	4
---	---	---	---

--

18 I trust the ability of Black commissioners to resolve disputes

1	2	3	4
---	---	---	---

--

19 I will make use of the CCMA establishment for the purposes of dispute resolution

1	2	3	4
---	---	---	---

--

20 I will contract privately for the purpose of dispute resolution.

1	2	3	4
---	---	---	---

--

SECTION C: GENERAL ON THE MECHANISMS

Kindly read the statements prior to responding.

The statements refer to your perceptions on the mechanisms for dispute resolution.

Next to each statement are four blocks. Respond to each by crossing the block that represents your perception. The blocks are numbered and have the following interpretations:

- 4 = strongly agree
- 3 = generally agree
- 2 = generally disagree
- 1 = strongly disagree

- | | | | | | | | | |
|----|---|---|---|---|---|---|---|--|
| 1. | The parties in dispute will be willing to allow the commissioners the opportunity to develop an understanding of their issues in arbitration. | <table border="1"><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table> | 1 | 2 | 3 | 4 | <table border="1"><tr><td> </td></tr></table> | |
| 1 | 2 | 3 | 4 | | | | | |
| | | | | | | | | |
| 2. | Procedures chosen by commissioners in the arbitration process will resolve disputes quickly. | <table border="1"><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table> | 1 | 2 | 3 | 4 | <table border="1"><tr><td> </td></tr></table> | |
| 1 | 2 | 3 | 4 | | | | | |
| | | | | | | | | |
| 3. | Black commissioners will be able to adequately investigate and understand the causes of conflict in order to arbitrate. | <table border="1"><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table> | 1 | 2 | 3 | 4 | <table border="1"><tr><td> </td></tr></table> | |
| 1 | 2 | 3 | 4 | | | | | |
| | | | | | | | | |
| 4. | Commissioners will be able to find practical solutions in the process of arbitration. | <table border="1"><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table> | 1 | 2 | 3 | 4 | <table border="1"><tr><td> </td></tr></table> | |
| 1 | 2 | 3 | 4 | | | | | |
| | | | | | | | | |
| 5. | The conduct of the parties during arbitration should be considered when awarding costs.. | <table border="1"><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table> | 1 | 2 | 3 | 4 | <table border="1"><tr><td> </td></tr></table> | |
| 1 | 2 | 3 | 4 | | | | | |
| | | | | | | | | |
| 6. | White employees will openly share information with Black commissioners during arbitration. | <table border="1"><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table> | 1 | 2 | 3 | 4 | <table border="1"><tr><td> </td></tr></table> | |
| 1 | 2 | 3 | 4 | | | | | |
| | | | | | | | | |
| 7. | Whites will have confidence in the abilities and merits of Blacks appointed as commissioners to arbitrate. | <table border="1"><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table> | 1 | 2 | 3 | 4 | <table border="1"><tr><td> </td></tr></table> | |
| 1 | 2 | 3 | 4 | | | | | |
| | | | | | | | | |
| 8. | Blacks will freely accept White commissioners in the process of arbitration. | <table border="1"><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table> | 1 | 2 | 3 | 4 | <table border="1"><tr><td> </td></tr></table> | |
| 1 | 2 | 3 | 4 | | | | | |
| | | | | | | | | |

9	I have confidence in the arbitration process of the Act.	1	2	3	4	<input type="checkbox"/>
10	The process of arbitration is complex.	1	2	3	4	<input type="checkbox"/>
11	The Black commissioners will be prejudiced in favour of labour during the arbitration.	1	2	3	4	<input type="checkbox"/>
12	Commissioners will not be adequately qualified and trained to arbitrate.	1	2	3	4	<input type="checkbox"/>
13	Appointed commissioners should determine the procedure to arbitrate disputes between parties.	1	2	3	4	<input type="checkbox"/>
14	Commissioners have too little power in the arbitration process.	1	2	3	4	<input type="checkbox"/>
15	Disputing parties should not use legal representatives in the arbitration process.	1	2	3	4	<input type="checkbox"/>
16	I am happy with the arbitration process of the New Labour Relations Act.	1	2	3	4	<input type="checkbox"/>
17	The parties in dispute will not be willing to allow the commissioners the opportunity to develop an understanding of their issues in conciliation.	1	2	3	4	<input type="checkbox"/>
18	Procedures chosen by commissioners in the conciliation process will resolve disputes quickly.	1	2	3	4	<input type="checkbox"/>
19	Black commissioners will be unable to investigate and understand the causes of conflict enough to conciliate.	1	2	3	4	<input type="checkbox"/>
20	Commissioners will not be able to find practical solutions in the process of conciliation.	1	2	3	4	<input type="checkbox"/>
21	The fact that conciliation is offered free of charge will negatively affect the quality of service.	1	2	3	4	<input type="checkbox"/>
22	White employees will not openly share information with Black commissioners during conciliation.	1	2	3	4	<input type="checkbox"/>

23	Whites will have confidence in the abilities and merits of Blacks appointed as commissioners to conciliate.	1	2	3	4	
24	The needs of employers will be addressed by the conciliation process.	1	2	3	4	
25	The process of conciliation is time consuming.	1	2	3	4	
26	Commissioners will be adequately qualified and trained to conciliate.	1	2	3	4	
27	Appointed commissioners should determine the procedure to conciliate disputes between parties.	1	2	3	4	
28	Commissioners have too much power in the conciliation process.	1	2	3	4	
29	Disputing parties should use legal representatives in the conciliation process.	1	2	3	4	
30	I am unhappy with the conciliation process of the New Labour Relations Act.	1	2	3	4	
31	The conduct of the parties prior to and during the labour court proceedings should be considered when awarding costs.	1	2	3	4	
32	The powers of the labour court should exceed those of the provincial division of the supreme court.	1	2	3	4	
33	I have confidence in the labour court to deal with labour disputes effectively.	1	2	3	4	
34	The process of resolving disputes through the labour court is complex.	1	2	3	4	
35	The process of resolving disputes through the labour court is time consuming.	1	2	3	4	
36	Judges of the labour court will be prejudiced in favour of labour.	1	2	3	4	

37	Judges of the labour court will be unqualified and not trained to resolve labour disputes.	1	2	3	4	
38	Judges will be able to understand the employer's problems.	1	2	3	4	
39	A separate court such as the labour court is unnecessary.	1	2	3	4	
40	Labour court judges are not familiar with labour issues.	1	2	3	4	
41	The legal costs of the labour court will make the court inaccessible	1	2	3	4	
42	Disputing parties will understand the labour court procedures.	1	2	3	4	
43	The process of constituting the labour court is appropriate.	1	2	3	4	
44	The labour court has too much power	1	2	3	4	
45	I am generally happy using the labour court to resolve disputes.	1	2	3	4	
46	The conduct of the parties prior to and during the labour appeal court proceedings should not be considered when awarding costs.	1	2	3	4	
47	The powers of the labour appeal court should exceed those of the provincial division of the supreme court	1	2	3	4	
48	I do not have confidence in the labour appeal court to deal with labour disputes effectively.	1	2	3	4	
49	The process of resolving disputes through the labour appeal court is simple.	1	2	3	4	
50	The process of resolving disputes through the labour appeal court is time consuming	1	2	3	4	
51	Judges of the labour appeal court will be prejudiced in favour of labour	1	2	3	4	

52	Judges of the labour appeal court will be adequately qualified and trained to resolve disputes.	<table><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table>	1	2	3	4	<table><tr><td></td></tr></table>	
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53	Judges will be able to understand the employers' problems.	<table><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table>	1	2	3	4	<table><tr><td></td></tr></table>	
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54	A separate court such as the labour appeal court is unnecessary.	<table><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table>	1	2	3	4	<table><tr><td></td></tr></table>	
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55	The labour appeal court judges are familiar with labour issues.	<table><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table>	1	2	3	4	<table><tr><td></td></tr></table>	
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56	The legal costs of the labour appeal court will not make the court inaccessible.	<table><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table>	1	2	3	4	<table><tr><td></td></tr></table>	
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57	Disputing parties will not understand the labour appeal court procedures.	<table><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table>	1	2	3	4	<table><tr><td></td></tr></table>	
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58	The process of constituting the labour appeal court is appropriate.	<table><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table>	1	2	3	4	<table><tr><td></td></tr></table>	
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59	The labour appeal court has too much power.	<table><tr><td>1</td><td>2</td><td>3</td><td>4</td></tr></table>	1	2	3	4	<table><tr><td></td></tr></table>	
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SECTION D: SPECIFIC TO MECHANISMS

1. A commissioner must give reasons for an award.	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 30px; text-align: center;">1</td> <td style="width: 25px; height: 30px; text-align: center;">2</td> <td style="width: 25px; height: 30px; text-align: center;">3</td> <td style="width: 25px; height: 30px; text-align: center;">4</td> </tr> </table>	1	2	3	4	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 30px; height: 30px;"></td> </tr> </table>	
1	2	3	4				
2. Commissioners must order for costs against officials or representatives acting in a frivolous manner.	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 30px; text-align: center;">1</td> <td style="width: 25px; height: 30px; text-align: center;">2</td> <td style="width: 25px; height: 30px; text-align: center;">3</td> <td style="width: 25px; height: 30px; text-align: center;">4</td> </tr> </table>	1	2	3	4	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 30px; height: 30px;"></td> </tr> </table>	
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3. The parties to a dispute must consent to legal representation in dismissals relating to conduct or capacity.	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 30px; text-align: center;">1</td> <td style="width: 25px; height: 30px; text-align: center;">2</td> <td style="width: 25px; height: 30px; text-align: center;">3</td> <td style="width: 25px; height: 30px; text-align: center;">4</td> </tr> </table>	1	2	3	4	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 30px; height: 30px;"></td> </tr> </table>	
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4. A commissioner must charge a fee where employers dismissed an employee unfairly.	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 30px; text-align: center;">1</td> <td style="width: 25px; height: 30px; text-align: center;">2</td> <td style="width: 25px; height: 30px; text-align: center;">3</td> <td style="width: 25px; height: 30px; text-align: center;">4</td> </tr> </table>	1	2	3	4	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 30px; height: 30px;"></td> </tr> </table>	
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5. Commissioners must be able to subpoena people who may be able to give information concerning a dispute.	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 30px; text-align: center;">1</td> <td style="width: 25px; height: 30px; text-align: center;">2</td> <td style="width: 25px; height: 30px; text-align: center;">3</td> <td style="width: 25px; height: 30px; text-align: center;">4</td> </tr> </table>	1	2	3	4	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 30px; height: 30px;"></td> </tr> </table>	
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6. The director of the commission must be empowered to give authority to commissioners to inspect or seize documents related to a dispute.	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 30px; text-align: center;">1</td> <td style="width: 25px; height: 30px; text-align: center;">2</td> <td style="width: 25px; height: 30px; text-align: center;">3</td> <td style="width: 25px; height: 30px; text-align: center;">4</td> </tr> </table>	1	2	3	4	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 30px; height: 30px;"></td> </tr> </table>	
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7. A monetary award should carry interest similar to that of a judgement of debt.	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 30px; text-align: center;">1</td> <td style="width: 25px; height: 30px; text-align: center;">2</td> <td style="width: 25px; height: 30px; text-align: center;">3</td> <td style="width: 25px; height: 30px; text-align: center;">4</td> </tr> </table>	1	2	3	4	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 30px; height: 30px;"></td> </tr> </table>	
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8. Disputes must only be arbitrated once they remain unresolved after conciliation.	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 30px; text-align: center;">1</td> <td style="width: 25px; height: 30px; text-align: center;">2</td> <td style="width: 25px; height: 30px; text-align: center;">3</td> <td style="width: 25px; height: 30px; text-align: center;">4</td> </tr> </table>	1	2	3	4	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 30px; height: 30px;"></td> </tr> </table>	
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9. The same commissioner who conciliated a dispute may arbitrate.	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 30px; text-align: center;">1</td> <td style="width: 25px; height: 30px; text-align: center;">2</td> <td style="width: 25px; height: 30px; text-align: center;">3</td> <td style="width: 25px; height: 30px; text-align: center;">4</td> </tr> </table>	1	2	3	4	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 30px; height: 30px;"></td> </tr> </table>	
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10. Parties to a dispute may request a preferred commissioner to arbitrate.	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 30px; text-align: center;">1</td> <td style="width: 25px; height: 30px; text-align: center;">2</td> <td style="width: 25px; height: 30px; text-align: center;">3</td> <td style="width: 25px; height: 30px; text-align: center;">4</td> </tr> </table>	1	2	3	4	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 30px; height: 30px;"></td> </tr> </table>	
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11. The director of the commission should not be empowered to refuse an application for a preferred commissioner.	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 30px; text-align: center;">1</td> <td style="width: 25px; height: 30px; text-align: center;">2</td> <td style="width: 25px; height: 30px; text-align: center;">3</td> <td style="width: 25px; height: 30px; text-align: center;">4</td> </tr> </table>	1	2	3	4	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 30px; height: 30px;"></td> </tr> </table>	
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12. An arbitration award by a commissioner should be final and binding on the parties.	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 30px; text-align: center;">1</td> <td style="width: 25px; height: 30px; text-align: center;">2</td> <td style="width: 25px; height: 30px; text-align: center;">3</td> <td style="width: 25px; height: 30px; text-align: center;">4</td> </tr> </table>	1	2	3	4	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 30px; height: 30px;"></td> </tr> </table>	
1	2	3	4				

13	Commissioners should be empowered to vary or rescind the awards on the parties	1	2	3	4	
14	Arbitration awards should all be reviewed by the labour court.	1	2	3	4	
15	The commission must appoint and determine the terms of reference, in conciliation, without the parties' consent.	1	2	3	4	
16	Thirty days for the commissioner to resolve disputes is too long.	1	2	3	4	
17	The commissioner should determine the process to resolve the dispute	1	2	3	4	
18	Parties should have legal representatives during arbitration	1	2	3	4	
19	It is necessary to issue a certificate indicating that a dispute has been resolved	1	2	3	4	
20	If parties are engaged in essential services they should consent to the appointment and terms of reference of a commissioner.	1	2	3	4	

SECTION E: OPEN-ENDED QUESTIONS

1. How can commissioners get information from parties in dispute?

2. How can commissioners develop trust across the colour line?

3. How can employees' expectations regarding the dispute resolution process be moderated?

4. Give any suggestion as to how the efficiency of the CCMA can be guaranteed.

5. How will the fact that the commission will start operating without a history affect its operations?

6. What is your opinion about the fact that the services of the CCMA are offered free of charge?

7. How could the quality of service offered by the CCMA be improved?

8. How does the imposition of a resolution contribute to the resolution of disputes?

9. How can each of the following mechanisms for dispute resolution be improved:

Conciliation:

Arbitration:

Labour Court:

Labour Appeal Court:

THANK YOU FOR YOUR CO-OPERATION