The Commission for Conciliation and Mediation

A Manual on its Functional Structures

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President
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Ministry of Labour, Industrial Relations and Employment
A Manual on
Functional Structures
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Forward

I have the pleasure in writing a forward on the manual written on the functional structures of the Commission for Conciliation and Mediation.

As we stand at the beginning of significant new developments in employment relations and labour law in Mauritius with the advent of Employment Relations Act, a manual on the functional structures of the Commission for Conciliation and Mediation is written at a most propitious time. The manual is intended to provide any labour law practitioner, Human Resources Manager, representative of workers and management, and negotiators a valuable guidance, and a feel for the dynamics of the new Employment Relations Act 2008. Any reader seeking to understand, comply and benefit from the new dispensation will find the manual a practical guide to useful application in resolving disputes.

I wish to congratulate Professor V. P. Torul, the President, Commission for Conciliation and Mediation for his laudable initiative to write a manual on the functional structures of the Commission for Conciliation and Mediation presenting the essence of the thrust and purpose of conciliation and mediation as strategies for effective dispute resolution at the workplace. I commend him for his legal and intellectual input, and rising to the challenge of interpreting authoritatively the provisions of the Act on dispute resolution.

Let the manual be a document of reference and enhance the Employment Relations Act in its objectives to build productive employment relationships.

With my best wishes

[Signature]

Honorable J. F. Chaumière
Minister of Labour, Industrial Relations & Employment

Date: 6 April 2009
Preface

The Employment Relations Act marks an important change in the Mauritian statutory industrial relations system. It has established the Commission for Conciliation and Mediation under Section 87 thereby replacing the Industrial Relations Commission. One of the objectives of the Act is to empower the Commission to promote more orderly collective bargaining and provide a proactive and expeditious dispute resolution system. A manual, therefore, on the functional structures of the Commission is presently deemed to be expedient and necessary to explain the core dispute resolution functions of the Commission. Since most of the provisions of the Act relating to the working mechanisms of the Commission still remain untested, the manual provides a thoroughgoing commentary in the form of four articles namely:


These articles lay down detailed guidelines and explanation for any practitioner or stakeholder or other social partners to ensure that a genuine attempt at conciliation and mediation have taken place before disputes is proceeded to arbitration, adjudication or industrial action.

The Commission engages itself to create an environment of peace and harmony at the workplace where employers and employees, and trade unions will be able to regulate their own relations and resolve their disputes expeditiously and in an effective manner.

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President
Commission for Conciliation & Mediation

Date: 6 April 2009
The Commission for Conciliation and Mediation: An Alternative Dispute Resolution Mechanism (ADR)

The Commission for Conciliation and Mediation (the Commission) is established under Section 87 of the Employment Relations Act 2008 (Act No. 32 of 2008) thereby replacing the Industrial Relations Commission (IRC) which was established under Section 41 of the repealed Industrial Relations Act 1973.

The foremost function of the Commission will not only be to preserve the conciliating functions of the Industrial Relations Commission but will also have to provide mediation services for the resolution of disputes.

Section 88 (2) of the Employment Relations Act provides that the Commission shall-
(a) provide a conciliation or mediation service on any labour dispute referred to it under this Act;
(b) investigation into any labour dispute reported to it;
(c) enquire into and report on any question referred to it under Section 89; and
(d) Provide a conciliation or mediation service for the assistance of workers, trade union and employers.

The most important change introduced into the new system by the Employment Relations Act is the principle that it is the parties and not the state that should bear the primary obligation to resolve their disputes in accordance with their collective agreements.

The Act provides:

Management shall establish, with the trade unions of workers concerned arrangements under which individual workers can raise grievances and have them settled fairly and promptly. There shall be a formal procedure, except in very small enterprises where there is a close personal contact between the employer and his workers (Paragraph 131, Fourth Schedule).

Where trade unions are recognized, management shall establish with them a procedure for settling collective disputes. (Paragraph 132, Fourth Schedule).

If the parties fail to reach an agreement after meaningful negotiations have taken place within the period not exceeding 90 days or such longer period agreed in writing between the parties (Sections 64 (2)) and (64 (3)), then the dispute may be reported to the President of the Commission by or on behalf of any party to the dispute (Section 64 (1)).

By setting up such a procedure, the Act has given prominence to alternative dispute resolution (ADR) methods as an alternative to adjudication or litigation. The Commission may use the conciliation and/or mediation processes in a simple and a non technical way with a view to resolving disputes by overcoming lengthy delays inherent in Industrial Court procedures at the expense of cost effectiveness. The state has therefore, through the Employment Relations Act created an important legal framework by which employers, trade unions and employees will be assisted through conciliation and mediation techniques to regulate their own relations and resolve their disputes.
It is important to note that the goal of the Act is not to replace court adjudication or adversarial litigation for the sake of doing it, but to provide through the Commission a broader range of mechanisms and processes to supplement formal litigation, and assist parties to resolve industrial disputes creatively and effectively. The Act thus expects the Commission to go beyond the conventional methods of resolving disputes and set up pro-active measures to create a conflict free workplace environment.

The modern notion that one should get is not to look upon the Commission only as an alternative dispute resolution mechanism but also to use it as a legal forum where "appropriate dispute resolution" techniques which are best suited, are used in conflicts or disputes.

The Act has empowered the Commission to address the shift in the meaning of the acronym (ADR) by selecting and designing processes that are best suited to a particular dispute and the parties to the dispute. The Commission will have to consider the relative advantages and disadvantages of the traditional procedures of the dispute resolution methods, and together with the parties create a variation which will increase the opportunities and chances of successful settlement. This is a significant development which will form part of the rationale for the changes introduced by the Employment Relations Act.

The general goals of the Commission as an "alternative dispute resolution mechanism" and an "appropriate dispute resolution" mechanism will be to

- Facilitate access to justice;
- provide more effective dispute resolution strategies;
- relieve court congestion;
- prevent undue cost and delay; and
- enhance community involvement in the dispute resolution process.

The greatest challenge of the Commission will be above all to make the 'labour' community trust and rely on its new vision, mission and conciliation/mediation structures. It has to deliver on stated policy goals by creating industrial peace and averting unnecessary labour disputes by fostering workplace co-operation and worker participation.
The Commission for Conciliation and Mediation: The Meaning of Labour Disputes

Section 64 (1) of the Employment Relations Act provides:

Subject to Section 63 and subsections (2) and (3), any labour dispute, whether existing or apprehended, may be reported to the President of the Commission by or on behalf of any party to the dispute.

But what is a ‘labour dispute’ for the purposes of the Employment Relations Act?

The ‘Interpretation’ of Part I of the Act gives the meaning of a labour dispute as

(a) “a dispute between a worker, or a recognized trade union of workers, or a joint negotiating panel, and an employer which relates wholly or mainly to wages, terms and conditions of employment, promotion, allocation of work between workers and groups of workers, reinstatement or suspension of employment of a worker;

But a Labour dispute

(b) does not, notwithstanding any other enactment, include a dispute by a worker made as a result of the exercise by him of an option to be governed by the recommendations made in a report of the Pay Research Bureau in relation to remuneration or allowances of any kind.

The Provisions (a) and (b) encapsulate a broad range of disputes that could be determined by several institutions, including the Commission for Conciliation & Mediation under the Act. The Act, however, does not provide a specific definition to the expression ‘labour dispute’. Generally there is an agreement both among academics and the Courts that a precise definition of a ‘labour dispute’ is not easy to formulate. A preferred definition must be very wide so as to encompass all the different categories of labour disputes which have become part of the legal parlance in the labour law context. Therefore, a precise definition is not easy to give because of the wide variety of labour disputes. In my opinion a labour dispute may mean in the general sense, any issue that is contentious and which brings a conflictual relationship between an employer and an employee and/or a recognized trade union. This broad definition captures fairly the abounding list of cases that have come for conciliation, mediation and adjudication. But the Act, without leaving it to speculations and doubts, has provided a list of disputes that are commonly found to exist in the workplace environment. In one way or another, the list does encompass the entire sphere of labour disputes. However labour dispute, according to the Act, will be that which relates to

- wholly or mainly to wages;
- terms and conditions of employment;
- promotion;
- allocation of work between workers and groups of workers; and
- reinstatement or suspension of employment of a worker.
These disputes can be classified as individual or collective disputes, and disputes of right or disputes of interests. Generally, individual disputes means a single employee is involved, and collective dispute refers to a group of employees, for example, a trade union. However, individual labour disputes are also cases where a number of workers do not share common interest, or where workers have to base their claims on their individual contracts of employment. It may also be that a dispute that starts off by an individual can, due to common conditions and interests of workers of similar status, become a collective dispute. An example of this can be a situation where a single woman is complaining of sex discrimination or an employee is claiming to be entitled to a bonus, these can cause other employees in similar circumstances to be drawn into the dispute thus making it collective.

In provision 136 Part IX of the Fourth Schedule, the Act has specified that disputes are broadly of two kinds

(a) disputes of rights (i.e as to legal rights), which relate to application of existing collective agreements or contracts of employment; and
(b) disputes of interest (i.e economic disputes) which relate to claims by workers or proposals by management about terms and conditions of employment.

For any party to a labour dispute, it is important to understand the way a contract of employment, and its terms and conditions of service are interpreted.

Rights disputes are of a legal nature having to do with the application or interpretation of rights laid down in the Act, contracts of employment, and/or collective bargaining agreements. For example some of the rights disputes arising from the Act are

(i) Right of workers to freedom of Association (Section 29);
(ii) Protection of trade union of workers against acts of interference (Section 30);
(iii) Protection against discrimination and victimization (Section 31);
(iv) Rights of employers (Section 32);
(v) Protection of trade union of employers against acts of interference (Section 33);
(vi) Access to workplace (Section 40);
(vii) Access to information (Section 41);
(viii) Time off facilities (Section 42);
(ix) Right to strike and recourse to lock out (Section 76);
(x) Unfair labour practices (Section 54)

Without some law or regulations being part of the subject of dispute, the dispute may be classified as involving interests. Interest disputes usually arise out of lack of agreement between employers and employees on the question of wages or working conditions, such as

- transfers
- promotion
- attendance bonus
- performance bonus
- duty rosters
- increments
- Social and recreational facilities
But the battle of interpretation between a dispute of right and dispute of interest is an unending process. It is commonly viewed that rights disputes relate to the prevailing laws, whereas the interest dispute relate to collective agreements. This definition of interest disputes seems to suggest that a collective agreement could be viewed as just a private agreement between the parties, and this does not have the force of law. This view is open to question since Section 56 of the Act states:—

A collective agreement shall bind —

(a) the parties to the agreement; and

(b) all the workers in the bargaining unit to which the agreement applies.

Thus once the parties have drawn in writing a collective agreement and have signed it (Section 55 (1)) it becomes a binding contract that is enforceable. By so doing the Act is trying to inculcate a culture of defining voluntarily by the parties the parameters of terms and conditions of employment that will eventually be less contentious and thus minimise the number of disputes.

It can be observed finally that the Act has by implication and connotative meaning defined a labour dispute as all material issues affecting the mutual interest of both employers and employees. This definition must be construed widely to include all matters arising in the employment context. Such a liberal and flexible interpretation will give the parties better leverage and enhance the object of the Act, namely to bring all employment related disputes within the ambit of the statutory dispute resolution system.
The Commission for Conciliation and Mediation:
Referral of Disputes

The Employment Relations Act 2008 has established the Commission for Conciliation and Mediation under section 87 as an alternative dispute resolution mechanism with a view to giving speedier and easier accessibility to justice with limited costs. With this objective, the Act recognises and encourages any alternative dispute resolution technique or non-judicial methods to resolve effectively labour disputes at the level of the Commission.

The Act has drawn clear guidelines to indicate parties to a labour dispute the way to proceed with the referral of their cases to the Commission.

The Act provides that any labour dispute, whether existing or apprehended, may be reported to the President of the Commission by or on behalf of any party to the dispute: (Section 64 (1)).

Any party referring the labour dispute to the Commission for Conciliation or Mediation will be required to complete a relatively simple referral form which would indicate

(a) the parties to the dispute;
(b) the party by whom, or on whose behalf, the report is made;
(c) every issue giving rise to the dispute; and
(d) a brief indication regarding the period of negotiations and the reasons why the dispute has remained unresolved. (Section 64 (6)).

Before a copy of the report of the labour dispute is served by or on behalf of the party, the President of the Commission may accept or reject the report based on select criteria provided in Section 65.

According to Section 65, parties should fully understand and answer the following questions before reporting a dispute:

(a) Does the dispute fall under the ambit of a labour dispute as provided in the Act?
(b) Is the party entitled to be a party to the labour dispute?
(c) Does the report contain sufficient particulars giving rise to the labour dispute?
(d) Has the party complied to the dispute procedures in the Act or as provided for in a procedure agreement?
(e) Does the dispute relate to a collective agreement which is in force?
(f) Does the dispute relate to any issue within the exclusive jurisdiction of the Industrial Court?

The President of the Commission may reject only that part of a dispute which is not a labour dispute, and may also strike out the name of such person who is not entitled to be a party to the dispute from the report of the dispute. (Section 65 (2) (a) and (b)). Such a rejection is to be communicated in writing within 7 days by the President. (Section 65 (3)).
Further elaboration is required to understand the implications of each of the questions set above (a) – (f).

(a) Parties should understand that a labour dispute means issues that are specifically related to:–
- Wholly or mainly to wages;
- Terms and conditions of employment;
- Promotion;
- Allocation of work between workers and groups of workers;
- Reinstatement or suspension of employment of a worker;

(b) Parties who should be entitled to be a party to the labour dispute.

Three parties, in an employment relationship, are usually entitled to be a party to the labour dispute. They are the employer, the employee/workers and the trade union.

According to the Act, an employer means a person, an enterprise, the State, a statutory corporation, a body of persons employing a workers, or a group of employers or a trade union of employers.

Since it is only employees/workers who are entitled to relief in terms of the Act, the question is who is an employee/worker. According to the Act an employee/worker means “a person who has entered into or who works under a contract of employment, or a contract of apprenticeship with an employer, other than a contract of apprenticeship regulated under the Industrial and Vocational Training Act, whether by way of casual work, manual labour, clerical work or otherwise and however remunerated”. The Act further provides that a worker includes a former worker and a person who has accepted an offer of employment.

The third party to a labour dispute may be a trade union which according to the Act means an association of persons, whether registered or not, having as one of its objects the regulation of the employment relations between workers and employers. An important point to be noted here is that the Act does not recognize only an association of persons which is registered but also an association of persons which is not registered as having the status of a trade union. The common point shared between the two associations is that both associations should have one of their objects the regulation of employment relations between workers and employees.

The Act also gives status of a trade union to federation and a confederation.

(c) The report should contain sufficient particulars giving rise to the labour dispute.

Section 64 (6) of the Act requires every report to specify:
- The parties to the dispute;
- The party to whom, or on whose behalf, the report is made;
- Every issue giving rise to the dispute; and
- A brief indication regarding the period of negotiations and the reasons why the dispute has remained unsolved.
(d) Parties have to comply with the dispute procedures set out in the Act or as provided for in the procedure agreement.

Provision 135 of Part IX of the Fourth Schedule on Grievance and Dispute procedures outlines the dispute procedures to be followed in case of an individual grievance. It states that the procedural agreement shall be in writing and provides that—

• the worker should first discuss the problem with his immediate supervisor;
• he should then discuss with management accompanied by his workplace representative, if he so wishes and
• if he is not satisfied with the outcome, he has a right of appeal.

In the case of the procedures for settling collective disputes, the Act has stated in provision 138 of the Fourth Schedule that

• Workplace representatives should raise the issue in dispute with the management at the level where the dispute is directly concerned.
• Then, if settlement fails, the matter should be referred to a higher level in the establishment.
• If the matter is still unsettled, it should be then taken to a higher level within the establishment.

Finally, before considering resort to any industrial action, parties should make use of the conciliation service provided by the Commission (Provision 139).

(e) The dispute should not be related to a collective agreement which is in force.

The President of the Commission may reject a report of a labour dispute if the dispute is related to a collective agreement that has been reached between a recognized trade union, a group of recognized trade union, a joint negotiating panel and an employer (Section 55). Such an agreement is deemed to be binding on all parties to the agreement, and all workers in the bargaining unit to which the agreement applies (Section 56).

Therefore, if parties have already agreed to regulate their relationships through a collective agreement which according to provisions 108, 109, 110 and 111 of the Fourth Schedule cover:

• terms and conditions of employment;
• wages or salaries, overtime rates; bonus piece rates;
• hours of work;
• leave entitlement and pay;
• techniques for determining levels of performance and job grading;
• procedures for handling redundancy and temporary layoffs;
• deduction of trade union dues by management;
• procedures for settling disputes;
• maintenance of fair and stable pay structures

then the disputes on these issues would be automatically irrelevant for the commission to engage in a conciliation and mediation process.

(f) Parties should note that the President of the Commission may reject a report of a labour dispute if the dispute relates to any issue which is within the exclusive jurisdiction of the Industrial Court.
The Commission for Conciliation and Mediation:
Dispute Resolution Proceedings

The main function of the Commission for Conciliation and Mediation is to provide conciliation, mediation and advisory services for promoting the improvement of industrial relations in the workplace. The Commission is extensively regulated by some of the guiding principles stated in Section 97 of the Act which relates to:

- the need to promote decent work and decent living;
- the principles of natural justice;
- the interests of persons immediately concerned and the Community as a whole;
- the need to increase the rate of economic growth and to protect employment and to provide greater employment opportunities;
- the need to establish and maintain reasonable differentials in rewards between different categories of skills and levels of responsibility; and
- the principles and best practices of good employment relations.

After the President of the Commission has determined that the dispute is a labour dispute and falls within the set criteria provided in 65 (1) of the Act, the Commission may, with a view to promoting a settlement of the dispute

(a) make proposals to the parties for the settlement of the dispute;
(b) conciliate the parties;
(c) mediate and make recommendations to the parties; or
(d) make such investigations as he thinks fit (Section 69).

The above process falls within the functions of the Commission as provided in sections 88 (2) of the enabling Act. It states the Commission shall

(a) provide a conciliation or mediation service on any labour dispute referred to it under the Act;
(b) investigate into any labour dispute reported to it;
(c) enquire into and report on any question referred to it under section 89. (According to this section, the Minister may refer to the Commission any question relating to employment relations generally or to employment relations in any particular industry, and the Commission shall enquire into and report upon any question so referred);
(d) provide a conciliation or mediation service for the assistance of workers, trade unions and employers.

The Act specifically provides conciliation or mediation as primary methods of dispute resolution. However, though silent on other dispute resolution methods, the role of the Commission is to design or select the most appropriate and effective process in relation to a particular dispute and in relation to the other parties thereto. These methods may include:

- informal discussion and problem solving:

This may require parties to be willing to communicate and perhaps compromise. If this method can be successful, it would be the most preferable method.
Negotiation:
This is a more structural and planned process. It envisages a bargaining relationship between the parties who have a perceived or actual dispute. This is a voluntary and temporary strategy designed to enable the parties to exchange data and other resources and to resolve some of the issues such as what form their relationship could take in the future or the procedure with which the problems should be solved.

Facilitation
The Commission will here assist the parties in their communication about the dispute. The object is to bring the parties to some kind of meeting or process.

The above underlying processes in conflict resolution are not detached from what the Act has empowered the Commission to do. These techniques form an important part of the conciliation process which are the most favoured methods for dispute settlement. The term conciliation includes a range of processes that are designed to bring about consensus through negotiations and to enable parties to a dispute to reach their own agreement. In this instance the Commission has not been empowered to impose its recommendations.

In the discharge of its duties, the Commission shall aim to help employees/unions and employers to settle their differences by agreement. What is required here is that the parties and their representatives should adopt a proper frame of mind and give their best good faith effort to resolve the dispute by agreement. Eventually both parties should emerge as being satisfied, enabling them to have a recommitment in their extended relationship.

The Act has given an extended meaning to the term conciliation by empowering the Commission to investigate into any labour dispute (Section 88 (2) (b)), enquire into and report (Section 88 (2) (c)), and advise a party to a labour dispute (Section 88 (3) (a)). These functions give the Commission wider powers not only to facilitate discussion, but also to engage in intensive process of fact finding which can be described as being a neutral party attempting to establish facts relevant to the dispute, explore each area of conflict with the parties, hear or call on evidence, and advise the parties to find settlement on terms recommended, (as long as the recommendation is not binding on the parties).

The Act has affirmatively declared in one of its objects its determination to consolidate the law relating to labour disputes. This vision is clearly spelt out in harnessing the Commission with more innovative techniques, and enhancing its capacity to do beyond the conciliation process. Unlike where the Industrial Relations Commission under the Industrial Relations Act had only power to conciliate, the Commission for Conciliation and Mediation under the present Act, is empowered to conduct mediation exercise for settling disputes. Where exigencies would require for instance, when, and to the extent that the parties feel that they are unable to negotiate a settlement to the dispute, the Commission may shift from conciliation to mediation in which case the Commission as a third party will engage itself in a structural negotiation process by making proposals, suggestions and recommendations upon which the parties may base their agreements. Although the Commission will perform a more active facilitative role, the decision making power regarding the dispute will still remain with the parties.

The Commission can, therefore, use either conciliation or mediation technique to conduct its proceedings and in a manner it deems appropriate in order to determine any matter before it fairly and promptly, and may deal with the substantive merits of such matters with a minimum of legal formalities (Provision 15, Part IV of the Second Schedule). By this provision, the Commission has not only been given substantive powers to deal fairly with the merit of the case, but also to adopt procedural fairness in all its proceedings, which is in strict compliance with the rules of natural justice.
Procedures during the sittings of the Commission

1. The Act provides that the jurisdiction of the Commission shall be exercised by a division of the Commission which shall be presided over by either the President or the Vice President, and which shall consist of three other members namely a representative from workers’ organisation, a representative from employers’ organisation and an independent member. (Provision 8 (2) and (3), Part II of the Second Schedule)

2. The Act gives discretionary powers to the President or the Vice President to either
   
   (a) dismiss the matter;
   
   (b) continue with the proceedings in the absence of the party; or
   
   (c) adjourn the proceedings to a later date,

   if a party fails to appear in person or to be represented at a conciliation or a mediation proceedings.

3. Law of Evidence is not applicable to the proceedings of the Commission

3.1 The Commission shall not be bound by the law of evidence (Provision 20 (1) Part IV of the Second Schedule).

3.2 However, for the purposes of dealing with any matter before the Commission, it may, by order, require any person.
   
   (a) to furnish, in writing or otherwise such particulars in relation to any matter as may be required;
   
   (b) to attend before it and to give evidence an oath or otherwise, or
   
   (c) to attend before it and produce any document. (Paragraph 20 (3) Second Schedule).

3.3 The order may include a requirement as to the date on which or the time within which the order is to be complied with (Paragraph 4, Second Schedule).

3.4 If any person who, without lawful excuse, fails to obey the order shall commit an offence. (Paragraph 6, Second Schedule).

3.5 If any person who, being required by the order to furnish information, makes a statement or furnishes any information which he knows or has reasonable cause to believe, to be false or misleading in a material particular shall commit an offence. (Paragraph 7, Second Schedule).

3.6 If any person, at any sitting of the Commission
   
   - refuses to answer any question to the best of his ability;
   
   - insults any member thereof;
   
   - wilfully interrupts the proceedings or misbehaves in any other manner; or
   
   - commits any contempt of the Commission, shall commit an offence (Paragraph 25, of the Second Schedule).

Representation

4. In any conciliation or mediation proceedings at the Commission, a party to a labour dispute may, in case of a worker, be assisted by a co-worker or by an officer of the trade union of workers or in the case of management, by a representative of management or by such other persons at the discretion of the Commission. (Paragraph 18 (1) Second Schedule).
The Act makes it clear that during conciliation and mediation proceedings a party to the dispute may only be represented by a co-worker or by an official of a trade union in case of a worker, and a management representative in the case of management. The Act does not mention legal representation.

Unlike a court of law where the parties adopt an adversarial approach to a dispute which requires them to prepare and present a well defined case before the presiding official whose task it is to decide such dispute, the Commission is prescribed to observe minimum legal technicalities in its conciliation and mediation processes. Without specifically excluding the right to legal representation, the Act confers discretionary powers on the Commission to allow representation "by such other persons at the discretion of the Commission". This provision of the legislation has technicalities which are left to the wisdom of the Commission to decide as to who could be "such other persons." Perhaps the Commission may have to look at the merit of each case, its legal technicalities, parties' level of awareness and competency to deal with labour law related matters etc. However, the main issue is that whoever that "such other persons be" he should be able to assist the Commission in resolving the dispute rather than taking an adversarial approach which is quite contrary to the conciliation and mediation processes. Such a stand by the Commission would be considered as very crucial since it has to complete its proceedings within 30 days from the date of receipt of the labour dispute (Section 69 (3)). Another essential point that the parties will have to consider is that since the Commission has to respect the 30 days time frame, the representatives should have a clear mandate and authority and power delegated to them by the parties in dispute so as to make a fair and a prompt decision.

5. Conclusion of proceedings
5.1 The Commission shall complete its proceedings within 30 days from the date of receipt of the labour dispute (Section 69 (3)).
5.2 The Commission may extend the period of 30 days where the circumstances so require at the request of the parties to the labour dispute (Section 69 (4)).
5.3 Where an agreement has been reached following conciliation and mediation the agreement shall
   (a) be recorded in writing;
   (b) be signed by the parties;
   (c) be registered with the Supervising Officer of the Ministry and the Tribunal; and
   (d) have the effect of a collective agreement (Section 69 (2)).
5.4 Where no agreement has been reached after 30 days or after the expiry of such extended period, the Commission shall
   (a) within 7 days submit a report to that effect for the parties to the dispute;
   (b) advise the parties to refer the labour dispute to voluntary arbitration.
5.5 Where no agreement is reached in the case of a labour dispute reported by an individual worker, the Commission may within 7 days, with the consent of the worker, refer the labour dispute to the Tribunal for arbitration (Section 6 or (7)).

6. Disclosure of information
The Act does not authorize any publication relating to order, award, report, recommendation or other statement made by the Commission, or any information disclosed during the course of proceedings by any party or witness in proceedings before the Commission, and in respect of which the party or the witness has made a request during the proceedings that the information be withheld from publication, shall not be published or disclosed to any person not concerned in or present in those proceedings, except with the consent of the party or witness (Paragraph 22 (1) Second Schedule). Any person in breach of this provision shall commit an offence (Paragraph 22 (2) Second Schedule).
ANNEXURE A

INTERPRETATION

EMPLOYMENT RELATIONS ACT
Interpretation

“bargaining agent” means any trade union, or where there is a joint negotiating panel, such joint negotiating panel having negotiating rights to bargain collectively on behalf of the workers in a bargaining unit;

“bargaining unit” means workers or classes of workers, whether or not employed by the same employer, on whose behalf a collective agreement may be made;

“check-off agreement” means an agreement between an employer and a trade union for union fees to be deducted from the wages of a worker by the employer and paid to the trade union;

“civil service union” means a trade union of workers membership of which is confined to public officers;

“collective agreement” means an agreement which relates to terms and conditions of employment, made between a recognised trade union of workers or a joint negotiating panel and an employer;

“collective bargaining” means negotiations relating to terms and conditions of employment or to the subject-matter of a procedure agreement;

“Commission” means the Commission for Conciliation and Mediation deemed to have been established under section 87 or the Rodrigues Commission for Conciliation and Mediation under section 99, as the case may be;

“employer” includes a person, an enterprise, the State, a statutory corporation, a body of persons employing a worker, or a group of employers or a trade union of employers;

“enterprise” includes a unit of production;

“joint negotiating panel” means the representatives of 2 or more trade unions of workers having negotiating rights;

“labour dispute:—

(a) means a dispute between a worker, or a recognised trade union of workers, or a joint negotiating panel, and an employer which relates wholly or mainly to wages, terms and conditions of employment, promotion, allocation of work between workers and groups of workers, reinstatement or suspension of employment or a worker;

(b) does not, notwithstanding any other enactment, include dispute by a worker made as a result of the exercise by him of an option to be governed by the recommendation made in a report of the Pay Research Bureau in relation to remuneration or allowances of any kind;

“lock-out”means any action taken by an employer, whether or not in contemplation or furtherance of a labour dispute and whether or not the employer is a party to a dispute which consists in-

(a) the exclusion of a group of workers from a place of employment;

(b) the suspension of work in a place of employment; or

(c) the collective, simultaneous or otherwise connected termination or suspension of employment of a group of workers;

“negotiating rights” means the right to participate in collective bargaining;
“negotiator” means a person appointed under section 14(2);

“president” means the president of a trade union and includes any officer who acts or purports to act as the president of the trade union;

“procedure agreement” means an agreement which relates to—

(a) machinery for negotiation with regard to, or for, the settlement of terms and conditions of employment;
(b) negotiating rights;
(c) facilities for officers in relation to trade union activities;
(d) the establishment of a minimum service as specified in section 81;
(e) procedures relating to disciplinary matters; or
(f) procedures relating to grievances of individual workers;

“recognition” means the recognition of a trade union of workers, or a joint negotiating panel, by an employer for the purpose of collective bargaining.

“sole bargaining agent” means a trade union of workers or a joint negotiating panel which has exclusive negotiating rights in respect of a bargaining unit;

“strike” means any action taken by a group of workers whether or not in furtherance of a labour dispute, and whether or not they are parties to the dispute, which consists in—

(a) a concerted stoppage of work; or
(b) a concerted course of conduct, including going slow or working to rule, which is carried on—
   (i) with the intention of preventing, reducing or otherwise interfering with the production or distribution of goods, or the provision of services; and
   (ii) in the case of some or all the workers involved, in breach of their obligations to their employer or in disregard of the normal arrangements between them and their employer.

“trade union”—

(a) means an association of persons, whether registered or not, having as one of its objects the regulation of employment relations between workers and employers;

(b) includes a federation or a confederation, except in relation to sections 5(1)(e) and (f), 7(1)(c) and (e), 13, 16(1) and (2), 29, 32(1) and (3) and 43 to 50;

“worker”—

(a) means a person who has entered into or who work under a contract of employment, or a contract of apprenticeship with an employer, other than a contract of apprenticeship regulated under the Industrial and Vocational Training Act, whether by way of casual work, manual labour, clerical work or otherwise however remunerated;

(b) includes—
   (i) a former worker;
   (ii) a person who has accepted and offer of employment
ANNEXURE B

RELEVANT PROVISIONS OF EMPLOYMENT RELATIONS ACT

ON THE

COMMISSION FOR CONCILIATION AND MEDIATION
87. Establishment of Commission

(1) The Industrial Relations Commission established under section 41 of the repeal Industrial Relations Act is deemed to have been established under this Act and is renamed as the Commission for Conciliation and Mediation.

(2) The Commission shall be reconstituted and shall consist of:
   
   (a) a President;
   
   (b) a Vice-President; and

   (c) not more than 6 other members who shall be appointed by the Minister for such period as he may determine after consultation with the most representative organisations of workers and employers; and

   (d) not more than 2 independent members who shall be appointed by the Minister for such period as he may determine.

   (e) the President and the Vice-President shall be appointed by the Minister on such terms and for such period as he may determine.

(3) Part II, and, where appropriate, Part IV of the Second Schedule shall apply to the Commission and its members.

88. Functions of Commission

(1) The Commission shall have such functions as are specified in this Act or as may be prescribed.

(2) Without prejudice to the generality of subsection (1), the Commission shall –
   
   (a) provide a conciliation or mediation service on any labour dispute referred to it under this Act;

   (b) investigate into any labour dispute reported to it;

   (c) enquire into and report on any question referred to it under section 89; and

   (d) provide a conciliation or mediation service for the assistance of workers, trade unions and employers.

(3) The Commission may –

   (a) advise a party to a labour dispute on procedures to be followed in accordance with this Act;

   (b) publish guidelines in relation to any matter dealt with in this Act; and

   (c) conduct research into matters relevant to its functions and publish reports on such research.

(4) The Commission may provide workers, trade unions, group of trade unions, joint negotiating panels or employers with advice relating to the primary objects of this Act, which includes –

   (a) establishing collective bargaining structures;

   (b) creating deadlock-breaking mechanisms;
(c) designing, establishing and functioning of workplace councils;
(d) preventing and resolving disputes and grievances;
(e) setting up of disciplinary procedures;
(f) addressing industrial relations issues relating to the restructuring of organisations.

97. **Principles to be applied by Tribunal, Commission and Board**

The Tribunal, the Commission or the Board may, in the exercise of their functions in relation to a matter before them under this Act have regard, *inter alia*, to —

(a) the interests of the persons immediately concerned and the community as a whole;
(b) the need to promote decent work and decent living;
(c) the need to promote gender equality and to fix wages on the basis of job content;
(d) the principles of natural justice;
(e) the need for Mauritius to maintain a favourable balance of trade and balance of payments;
(f) the need to ensure the continued ability of the Government to finance development programmes and recurrent expenditure in the public sector;
(g) the need to increase the rate of economic growth and to protect employment and to provide greater employment opportunities;
(h) the need to preserve and promote the competitive position of local products in overseas market;
(i) the capacity to pay of enterprises;
(j) the need to develop schemes for payment by results and, as far as possible, to relate increased remuneration to increased labour productivity;
(k) the need to prevent gains in the wages of workers from being adversely affected by price increases;
(l) the need to establish and maintain reasonable differentials in rewards between different categories of skills and levels of responsibility;
(m) the need to maintain a fair relation between the incomes of different sectors in the community; and
(n) the principles and best practices of good employment relations.

**PART V — COLLECTIVE BARGAINING**

**Sub-Part A — Code of Practice**

35. **Promotion of good employment relations**

(1) The Code of Practice set out in the Fourth Schedule shall —

(a) provide practical guidance for the promotion of good employment relations;
(b) provide practical guidance for the grant of negotiating rights; and
(c) assist employers and trade unions to bargain effectively.

(2) A failure on the part of any person to observe any provision of the Code of Practice shall not of itself render that person liable to proceedings of any kind.
(3) In any proceedings under this Act, any provision of the Code of Practice which appears to the Commission to be relevant to any question arising in the proceedings shall be taken into account for the purposes of determining that question.

SECOND SCHEDULE (PART II)
COMMISSION FOR CONCILIATION AND MEDIATION
ORGANISATION AND SITTINGS OF THE COMMISSION

8. (1) The Commission may sit—
    (a) in one or more divisions as may be necessary;
    (b) at any time and at any place in Mauritius.

(2) The jurisdiction of the Commission shall be exercised by a division of the Commission.

(3) Every division of the Commission shall—
    (a) be presided over by the President or Vice-President; and
    (b) consist of the presiding member and 3 other members, namely a representative from workers' organisation, a representative from employers' organisation and an independent member.

SECOND SCHEDULE (PART IV)
POWERS OF COMMISSION

25. At any sitting the Commission any person who—
    (a) subject to paragraph 20(2), refuses to answer any question to the best of his ability;
    (b) insults any member thereof;
    (a) willfully interrupts the proceedings or misbehaves in any other manner; or
    (d) commits any contempt of the Commission.

shall commit an offence.

PART VI – LABOUR DISPUTES AND DISPUTE SETTLEMENT PROCEDURES
Sub-Part A – Labour Disputes

64. Reporting of labour disputes

(1) Subject to section 63 and subsections (2) and (3), any dispute labour dispute, whether existing or apprehended, may be reported to the President of the Commission by or on behalf of any party to the dispute.

(2) No dispute referred to in subsection (1) shall be reported, except after meaningful negotiations have taken place between the parties and a stage of deadlock has been reached.

(3) The period of negotiations shall not exceed 90 days from the start of negotiations or such longer period agreed in writing between the parties.

(4) During the period when negotiations are being held between parties as specified in subsections (2) and (3), any party may seek the assistance of the conciliation service provided by the Supervising Officer under section 68 with a view to conciliating the parties.
(5) Any request for assistance under subsection (4) shall be made not later than 20 days before the expiry of the period of 90 days or such longer period agreed between the parties as specified in subsection (3).

(6) Every report of a dispute shall be in writing and shall specify—
(a) the parties to the dispute;
(b) the party by whom, or on whose behalf, the report is made;
(c) every issue giving rise to the dispute; and
(d) a brief indication regarding the period of negotiations and the reasons why the dispute has remained unresolved.

(7) Where a labour dispute is reported to the Commission, a copy of the report of the dispute shall be served by or on behalf of the party making the report upon every other party to the dispute.

65. Rejection of labour disputes

(1) The President of the Commission may reject a report of a labour dispute made under section 64 where he is of the opinion that—
(a) the dispute is not a labour dispute;
(b) the report is made by or on behalf of a party who is not entitled to be a party to the labour dispute;
(c) the report does not contain sufficient particulars of the issues giving rise to the labour dispute;
(d) the party reporting the dispute has failed to comply with the dispute procedures specified in this Act or provided for in a procedure agreement;
(e) the dispute relates to a collective agreement which is in force, except where there has been a substantial change in circumstances; or
(f) the dispute relates to any issue within the exclusive jurisdiction of the Industrial Court.

(2) Notwithstanding subsection (1), the President of the Commission may—
(a) reject only that part of a dispute which is not a labour dispute;
(b) in the case of a labour dispute which includes a party which is not entitled to be a party to the labour dispute, strike out the name of such party from the report of the dispute.

66. Appeal to Tribunal

(1) Any party aggrieved by a rejection of the dispute under section 65 may, within 21 days of the date of the notice under section 65(3), appeal against the rejection to the Tribunal and the Tribunal shall, on hearing the appeal, confirm or revoke the decision of the President of the Commission.

(2) The Tribunal shall make an order under subsection (1) within 60 days of receipt of the application of the appeal.
67. Limitation on report of labour disputes

Where a labour dispute is reported to the President of the Commission under section 64, no party to the dispute may report—

(a) any other labour dispute between the same parties within a period of 6 months immediately following the date on which the original report was made;

a labour dispute on the same issue between the same parties within a period of 24 months following the date of the determination of the dispute.

PROCEEDINGS OF COMMISSION

15. The Commission may conduct its proceedings in a manner it deems appropriate in order to determine any matter before it fairly and promptly and may deal with the substantial merits of such matter with a minimum of legal formalities.

16. A member of the Commission who has a direct or indirect interest in any matter, which is the subject of proceedings before it, shall not take part in those proceedings.

17. The Commission may appoint committees from amongst its members to examine and report on any matter connected with its functions under this Act.

18. (1) In any conciliation or mediation proceedings at the Commission, a party to a labour dispute may, in the case of a worker, be assisted by a co-worker or by an officer of the trade union of workers or in the case of management, by a representative of management or by such other persons at the discretion of the Commission.

(2) In any proceedings before the Tribunal, a party to a dispute may be assisted or represented by a law practitioner or an officer of his trade union or by such other persons at the discretion of the Tribunal.

19. Where a party fails to appear in person or to be represented at a conciliation, mediation or arbitration proceedings, the President or Vice-President—

(b) may dismiss the matter;

(b) continue with the proceedings in the absence of that party; or

(c) adjourn the proceedings to a later date.

20. (1) The Commission shall not be bound by the law of evidence in force in Mauritius.

(2) Where any witness objects to answering any question or to producing any relevant document on the ground that it will tend to incriminate him or on any other grounds which he can lawfully raise in civil or criminal proceedings, he shall not be required to answer the question or to produce the document, and shall not be liable to any penalty for refusing to do so.

(3) For the purpose of dealing with any matter before it, the Commission may, by order, require any person—

(a) to furnish, in writing or otherwise, such particulars in relation to any matter as may be required;
(b) to attend before it and to give evidence on oath or otherwise; or
(c) to attend before it and produce any document.

(4) Any order made under subparagraph (3) may include a requirement as to the date on which or the time within which the order is to be complied with.

(5) Any order purporting to be signed by or under the authority of the President or Vice-President of the Commission, shall be presumed, until the contrary is proved, to have been given by the Commission as the case may be.

(6) Any person who, without lawful excuse, fails to obey an order given under subparagraph (3) shall commit an offence.

(7) Any person who, being required by an order made under subparagraph (3) to furnish information, makes a statement or furnishes any information which he knows, or has reasonable cause to believe, to be false or misleading in a material particular shall commit an offence.

(8) Any witness who is required to attend before the Commission shall be entitled to the fees or allowances prescribed in the Witnesses’ Attendance Allowances Act for witnesses in civil cases.

21. The President or Vice-President of the of the Commission shall not be called upon to give evidence relating to proceedings held before them in any other proceedings.

22. (1) There shall not be included in any publication relating to any order, award, report, recommendation or other statement made or authorised by the Commission, or by the Minister, any information disclosed during the course of proceedings under this Act by any party or witness in proceedings before the Commission which was made known to the Commission or only by the disclosure, and in respect of which the party or witness has made a request during the proceedings that the information be withheld from publication, and no person concerned in or present at any proceedings of the Commission shall publish or disclose the information to any person not concerned in or present at those proceedings, except with the consent of the party or witness.

(2) Any person who publishes or discloses any information in breach of subparagraph (1) shall commit an offence.

(3) Subparagraphs (1) and (2) shall be without prejudice to the power of the Commission to take such other steps as they may consider necessary or desirable to safeguard national or industrial secrets or other information appearing the Commission to be deserving of confidential treatment.

23. Subject to any other enactment, it shall be at the discretion of the Commission to admit or exclude the public or representatives of the press from any of their proceedings.

24. (1) In relation to proceedings before the Commission—

(a) where the public or representatives of the press are excluded, no report or summary of the proceedings shall be published; and

(b) where the public or representatives of the press are permitted to be present, a fair and accurate report or summary of the proceedings may be published.
(2) Until the order, award, report or other result of the proceedings has been published in accordance with this Act, no comments shall be published in respect of the proceedings or any evidence adduced in the course of those proceedings.

(3) Any person who, before any award, order or other result of any proceedings before the Commission has been published in accordance with this Act, publishes—
   
   (a) the terms of the order, award or report of other result; or
   
   (b) any comment on the proceedings or any evidence adduced thereat, shall commit an offence.

69. Conciliation and Mediation

(1) Where a labour dispute has been reported to the President of the Commission under section 64, and the report has not been rejected by the President of the Commission under section 65 or where it has been rejected, the rejection has been revoked on an appeal to the Tribunal under section 66, the Commission may, with a view to promoting a settlement of the dispute—
   
   (a) make proposals to the parties for the settlement of the dispute;
   
   (b) conciliate the parties;
   
   (c) mediate and make recommendations to the parties; or
   
   (d) make such investigation as he thinks fit.

(2) Where an agreement has been reached following conciliation or mediation under subsection (1), the agreement shall—
   
   (a) be recorded in writing;
   
   (b) be signed by the parties;
   
   (c) be registered with the Supervising Officer of the Ministry and the Tribunal; and
   
   (d) have the effect of a collective agreement as specified in sections 55 and 56.

(3) The Commission shall complete its proceedings within 30 days of the date of receipt of the labour dispute under section 64.

(4) The Commission may extend the period specified in subsection (3), where the circumstances so require, at the request of the parties to the labour dispute.

(5) Where no agreement is reached after 30 days of the date of the receipt of the labour dispute under section 64 or after the expiry of such extended period as agreed under subsection (4), the Commission shall—
   
   (a) within 7 days submit a report to that effect to the parties to the dispute; and
   
   (b) advise the parties to refer the labour dispute for voluntary arbitration under section 63.

(6) Subject to subsection (7) and sections 76 to 79 where the parties decline to refer the labour dispute for voluntary arbitration, the party having reported the labour dispute may have recourse to strike or lock-out, as the case may be, within 45 days of the submission of the report by the President of the Commission under subsection 5(a).
(7) Where no agreement is reached in the case of a labour dispute reported by an individual worker, the Commission may, within 7 days, with the consent of the worker, refer the labour dispute to the Tribunal for arbitration.

89. Reference by Minister

(1) The Minister may refer to the Commission any question relating to employment relations generally or to employment relations in any particular industry, and the Commission shall enquire into and report upon any question so referred.

(2) The report of the Commission on any question referred to it under subsection (1) may be published in such manner as the Minister may, after consultation with the Commission, determine.

108. Transitional provisions

(8) Any application, complaint or appeal made under the repealed Act before the commencement of this Act shall be dealt with in accordance with this Act.

(9) Any industrial dispute reported under the repealed Act shall —

(a) where the Minister has not yet considered the dispute, be taken to be a labour dispute under this Act and be referred to the President of the Commission under section 64;

(b) where it has been rejected by the Minister, be deemed to have been rejected by the President of the Commission under this Act, and the parties may lodge an appeal to the Tribunal under section 66 of this Act, and the dispute shall be dealt with as if it were a labour dispute made under this Act;

(c) where the dispute has not been rejected, be dealt with by the Commission under section 69 of this Act;

(d) where the Minister has made proposals or recommendations to the parties, or referred the parties or the disputes to the Industrial Relations Commission under the repealed Act, the dispute shall be dealt with by the Commission under section 69 of this Act.

(11) Any investigation, inquiry or other proceedings pending immediately before the commencement of this Act before the Industrial Relations Commission and the Civil Service Industrial Relations Commission shall be dealt with by the Commission in accordance with this Act.

(12) For the smooth transition from the repealed enactment to the operation of this Act, the delay of 30 days mentioned in section 69(3) and (5) of this Act shall be 90 days instead of 30 days.

(14) Any application relating to a claim for negotiating rights pending before the Commission immediately before the commencement of this Act shall be transferred to the Tribunal to be dealt with under section 38 as if it were an application made under that section, and the Tribunal shall notwithstanding section 38(4), determine the application within 90 days of the commencement of this Act, unless the Tribunal, for exceptional circumstances, extends the delay.