



CCMA ANNUAL LABOUR CONFERENCE 2024

14 -15 MARCH 2024
ONLINE



THEME:

*THE IMPACT OF LABOUR MARKET DYNAMICS,
TECHNOLOGY AND POLICY ON SOCIAL JUSTICE*



PLENARY 4 B

THE USE OF TECHNOLOGY IN DISPUTE RESOLUTION

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PRESENTATION OUTLINE



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1. Background

2. Technology & Dispute Prevention and Resolution

3. Benefits

4. Challenges

5. Conclusion

BACKGROUND

- Since 1970s, Government agencies under pressure to modernise their services by investing in technological infrastructure and skills relating to ICT;
- Emergence of “e-government” - the use of technology to enhance access to and delivery of government services to benefit citizens;
- The conceptual foundation was the “New Public Management” requiring flexible models of operations;
- ICT provided channel for public sector service delivery like in the private sector.

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BACKGROUND

- 2015 ILO Global survey into the use of information and communication technologies in national labour administration systems;
- Labour dispute prevention and resolution was the least computerised labour administration function;
- ❑ 26 % of respondents reported using a specialized computer-based toolkit;
- ❑ Majority used technology for analysis of information; location of mediations; online learning; best practice guides; confidential advice and information on employment rights;
- ❑ Insufficient ICT skills and limited resources to upgrade the technological infrastructure.

ONLINE ALTERNATIVE DISPUTE RESOLUTION

- Emerged in the 1990s originally as a response to disputes arising from e-commerce;
- OARD platforms support dispute resolution processes with technologically based solutions;
- Key drivers were:
 - Affordable access to justice (cost);
 - Removal of barriers due to:
 - ☐ Geographical isolation;
 - ☐ Mobility impairment;
 - ☐ Language difficulties;
 - ☐ Sight or hearing impairment;
 - ☐ Lack of confidence in face- to -face communication;
 - ☐ Location in different countries or cultures.

ONLINE ALTERNATIVE DISPUTE RESOLUTION

- **Dispute prevention function**

- Provision of information –

- ☐ Straightforward guide to the law and advice as to where to obtain further assistance;
- ☐ Posting of information relevant to a variety of problems;

- **Dispute resolution function**

- Use of “expert system” which collects facts from users through interview style questions and produce answers based on decision – tree analysis;
- Use of “blind bidding” system which obtains information from disputants on how they rank or value issues, combines their preferred outcomes, and suggests solutions.

ONLINE ALTERNATIVE DISPUTE RESOLUTION

Online Dispute Design Considerations

1. Convenience

- User friendly – design, content, navigation, and functionality;
- Taking into account varying levels of education and financial resources;
- Simplicity and accuracy of language in communicating information and eliciting responses;
- Digital divide – does the target audience of the technical solution have latest device;
- Balancing of convenience with security as disputants will be providing personal information.

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ONLINE ALTERNATIVE DISPUTE RESOLUTION

Online Dispute Design Considerations

2. Expertise

- Adequate modelling of relevant legal principles;
- Ability to adduce from the user the facts that the law considers relevant to determine the outcome;
- Addition of tools that address emotions, preferences, and ability to resolve problems in interest-based disputes.

3. Impartiality

- Technology must provide users with trust and confidence of being impartial;
- Software design should not be viewed as favouring certain preferences or values;
- ❑ Accreditation by an impartial body to ensure impartiality of the system.

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ONLINE ALTERNATIVE DISPUTE RESOLUTION

Online Dispute Design Considerations

4. Fairness

- Opportunity for exercise of natural justice and procedural fairness;

5. Cost

- Technology should be speedy at a low cost;
- Sources of funding should not create existence or perceptions of bias in the design.



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- ILO rapid assessment survey: The response of labour dispute resolution mechanisms to the COVID19 pandemic, 2021
- 68 % (102 institutions) of respondents already had technological improvements for remote services;
- Obstacles encountered by other institutions:
 - Absence of technological infrastructure;
 - Absence of technological tools;
 - Lack of resources / public investment;
 - Lack of initiative of social partners & government.
- 29 % were able to conduct virtual hearings without physical presence of disputants.

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- United States Labour and Employment Relations Association Congress, 2021 : The Future of Workplace Dispute Resolution;
- Practitioners agreed that online services were already available but accelerated by the COVID 19 pandemic;
- Use of technology in workplace dispute resolution “was there to stay”:
 - Increase in accessibility:
 - ❑ Reach by workplaces in remote areas;
 - ❑ Participation by more people;
 - ❑ Cost effectiveness;
 - Ease of dealing with remote witnesses and disputants;
 - Paperless hearings [electronic submission of documents];
 - Efficient [invention of more platforms];

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- More points *in limine* as opposed to raising issues during evidence;
 - Evaluation of a dispute to assess its merit and enable better preparation;
 - Pre-hearing sessions which saved time that would be used during hearing;
- Witnesses and disputants were comfortable with the use of technology if trained well before the hearing;



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Challenges

- Loss of opportunity offered by in-person hearings to assess possibility of settlement;
- Conduct of witnesses (disappearances, manipulation of evidence due to background coaching, etc);
- Fatigue;
- Use of technology as a delaying tactic;
- Being both a mediator and an IT expert.



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Australia Fair Work Commission

- During 2020/21 financial year, 70% of the hearings and conferences were wholly online compared to 30% in 2018/19;
- Stakeholder consultation on online proceedings to assess:
 - Attributes that might impact person's capacity to effectively participate;
 - Impact on procedural fairness;
 - Perceptions on the Commission's processes;
 - Impact of public access to online proceedings;
 - Benefits and 'negatives';
 - Interacting with witnesses;

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- Use of interpreters and impact on the conduct of proceedings; and
- Access to documents.

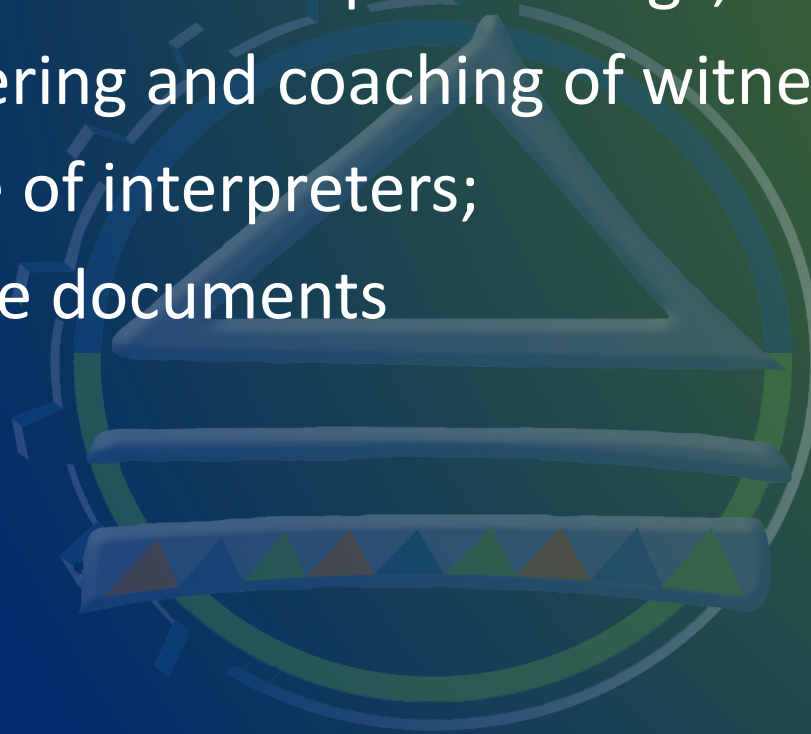
Online Proceedings Framework, 2023

- Circumstances to be considered by Commissioner to decide whether to use online or in-persons hearings;
- Default circumstances requiring online hearings;
 - Urgent applications and short matters;
 - No dispute of facts;
 - Concerns about physical attendance – bullying, harassments; migrants, indigenous people;

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- Procedures and rules for online proceedings;
- Prohibition of interfering and coaching of witnesses;
- Guideline on the use of interpreters;
- Access to large online documents



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Conclusions

- Use of technology in dispute resolution will certainly continue in the future;
- It has its advantages and disadvantages;
- Issues to be considered:
 - Accountability, regulation and guidelines for actions, behaviours and roles of 3rd party “neutrals”;
 - Legal standing of online agreements;
 - Loss of party control and autonomy;
 - ODR design concerns - How to make sure that technology meets the needs of the users and not that of commercial interests.

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THANK YOU

ngiyathokoza!

ro livhuwa!

dankie! **ke a leboga!**

enkosi!

inkomu!

thank you!

udo livhuwa!

ke a leboga!

ngiyabonga!

siyabonqa!