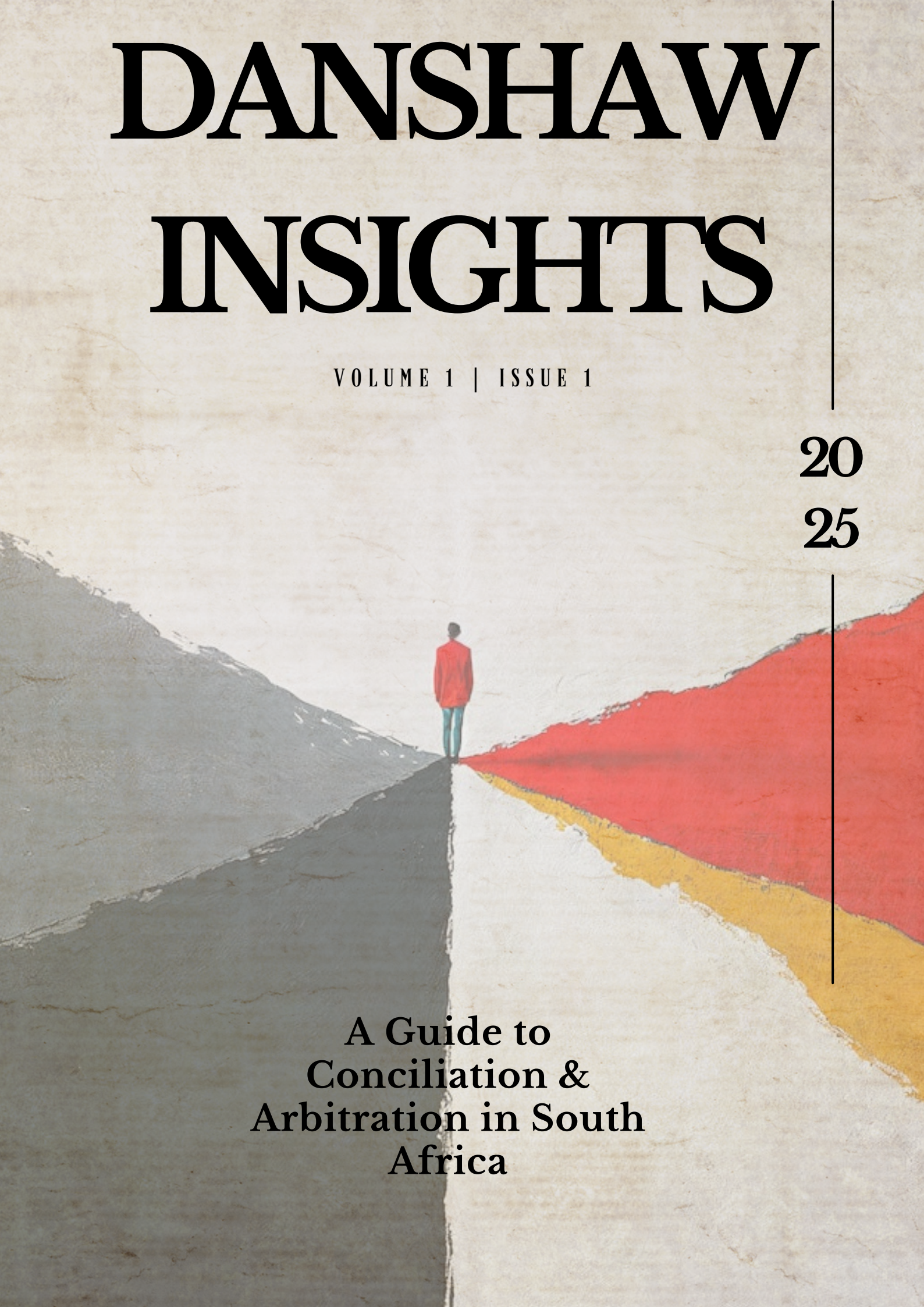


DANSHAW INSIGHTS

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A Guide to
Conciliation &
Arbitration in South
Africa

NAVIGATING WORKPLACE DISPUTES:

A GUIDE TO CONCILIATION & ARBITRATION IN SOUTH AFRICA

Based on our Think Tank Friday session of last week (4 July 2025)



Welcome to this concise guide on Conciliation and Arbitration, two fundamental processes for resolving workplace disputes in South Africa. This e-book consolidates essential knowledge, drawing from our recent Think Tank Friday content and insights gleaned from our team's quiz responses. The aim is to ensure a clear and shared understanding of these critical industrial relations processes and mechanisms.

Understanding these processes is vital for any professional navigating the complexities of the South African labour landscape.

This guide will clarify the distinctions, highlight key aspects, and look at our collective knowledge.

Bases of Comparison

1. Purpose/Goal:

- Conciliation: To assist parties in reaching a mutually agreed-upon settlement. The goal is to facilitate an agreement.
- Arbitration: To hear evidence and arguments from both parties and for the arbitrator to make a final, legally binding decision (award) to resolve the dispute. The goal is adjudication.

2. Formality of Process:

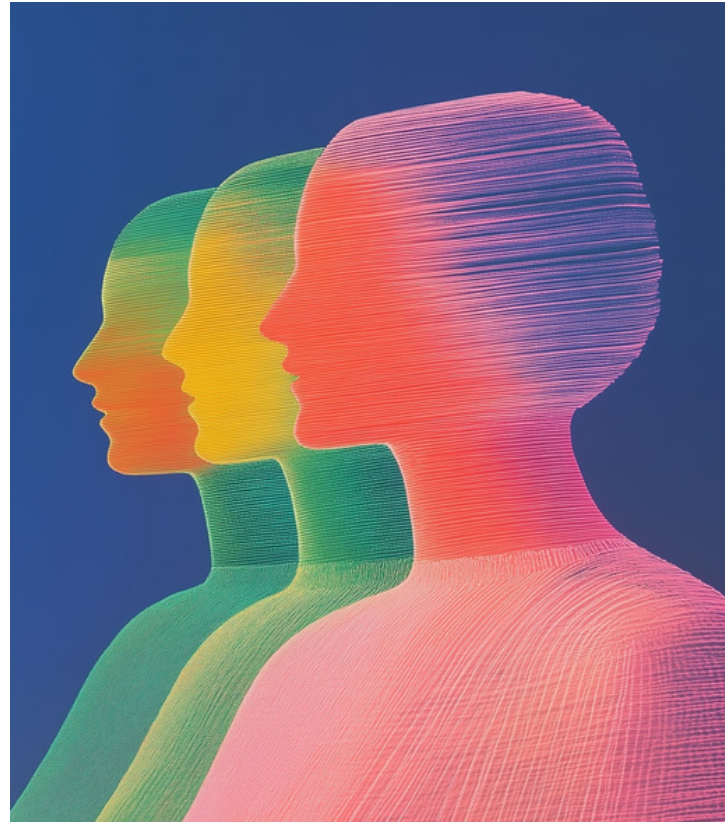
- Conciliation: Informal, flexible, and non-legalistic. Discussions are "off the record" and "without prejudice" (cannot be used as evidence in subsequent proceedings).
- Arbitration: More formal and quasi-judicial. Evidence is presented under oath or affirmation, witnesses can be called and cross-examined, and proceedings are typically recorded.

3. Role of the Commissioner/Third Party:

- Conciliation: The conciliator is a facilitator and mediator. They guide discussions, explore options, and may offer advisory opinions, but they do not impose a decision. They are impartial.
- Arbitration: The arbitrator is an adjudicator. They act like a judge, listening to evidence and argument, applying legal principles, and making a definitive ruling. They are impartial but decide the outcome.

4. Nature of Outcome:

- Conciliation: The outcome is a voluntary settlement agreement, drafted and signed by the parties with the conciliator's assistance. If no agreement is reached, a certificate of non-resolution is issued.
- Arbitration: The outcome is a legally binding arbitration award, issued by the arbitrator. This award is final unless challenged and set aside by the Labour Court on specific review grounds.

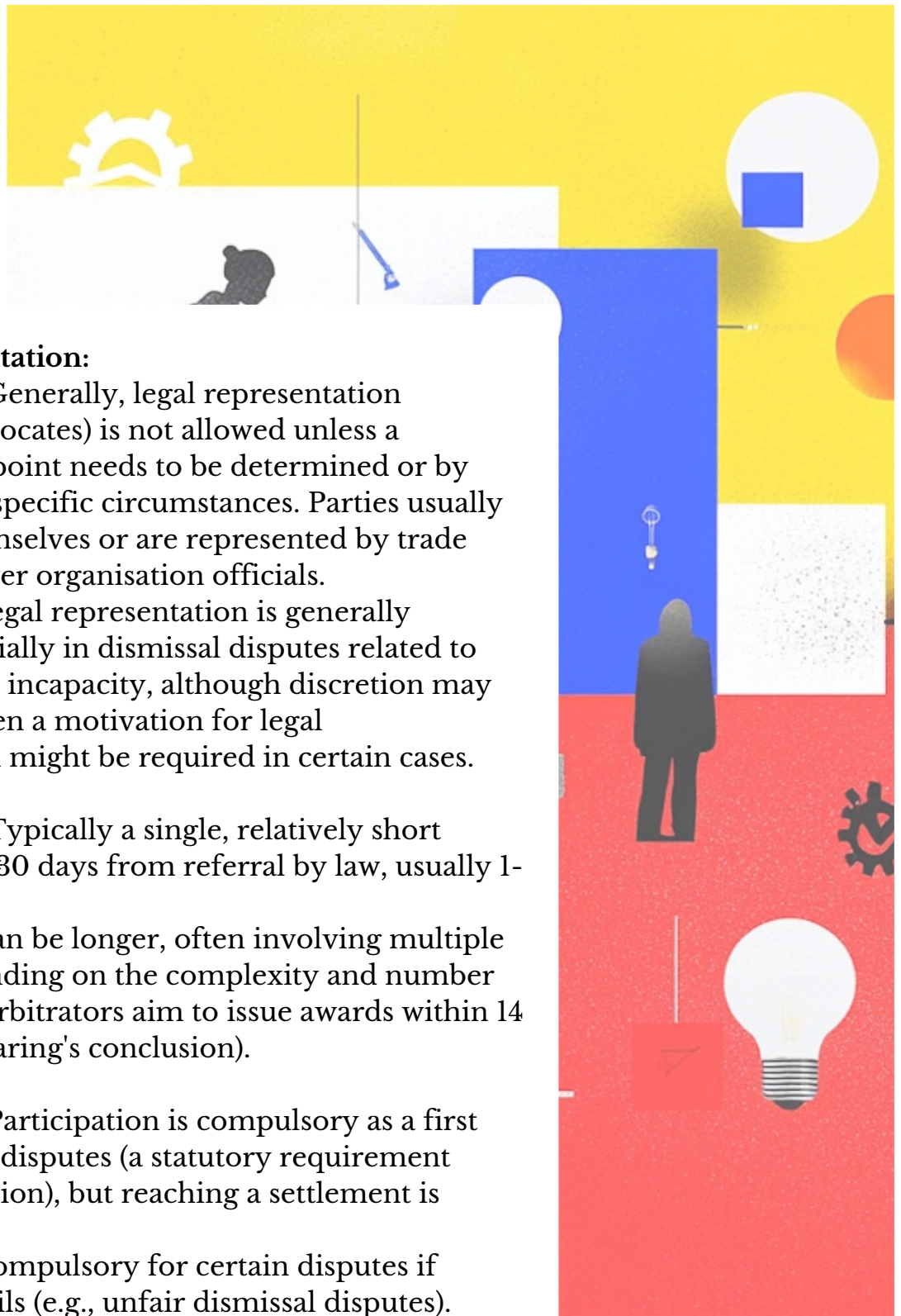


5. Binding Nature:

- Conciliation: A signed settlement agreement is legally binding. If no agreement, the process itself is not binding in terms of a resolution being imposed.
- Arbitration: The arbitration award is legally binding on both parties. Failure to comply with an award can lead to its certification and enforcement through the courts.

6. Presentation of Evidence:

- Conciliation: Parties "tell their story," and documents can be discussed, but formal evidence (under oath/affirmation) is generally not led.
- Arbitration: Formal presentation of evidence, including witness testimony under oath or affirmation, and formal submission of documents as exhibits.



7. Legal Representation:

- Conciliation: Generally, legal representation (attorneys/advocates) is not allowed unless a jurisdictional point needs to be determined or by agreement in specific circumstances. Parties usually represent themselves or are represented by trade union/employer organisation officials.
- Arbitration: Legal representation is generally allowed, especially in dismissal disputes related to misconduct or incapacity, although discretion may apply, and often a motivation for legal representation might be required in certain cases.

8. Timeframe:

- Conciliation: Typically a single, relatively short session (often 30 days from referral by law, usually 1-2 hours).
- Arbitration: Can be longer, often involving multiple sessions depending on the complexity and number of witnesses (arbitrators aim to issue awards within 14 days of the hearing's conclusion).

9. Voluntariness:

- Conciliation: Participation is compulsory as a first step for many disputes (a statutory requirement before arbitration), but reaching a settlement is voluntary.
- Arbitration: Compulsory for certain disputes if conciliation fails (e.g., unfair dismissal disputes). Parties cannot refuse to attend once the matter is referred for arbitration.

Con-Arb Process:

- Conciliation/Arbitration (Con-Arb): A hybrid process where conciliation and arbitration are scheduled for the same day. If conciliation fails, arbitration immediately follows. This is compulsory for certain disputes (e.g., dismissals for probationary employees, unfair labour practices relating to probation). This streamlines the process but requires parties to be prepared for arbitration from the outset.

SUMMARY

In South African industrial relations, the Labour Relations Act (LRA) and the Commission for Conciliation, Mediation and Arbitration (CCMA) provide structured processes for resolving workplace disputes. Two primary mechanisms are conciliation and arbitration, each with distinct characteristics and purposes.

Conciliation is an informal process where a neutral third party (the conciliator) helps the disputing parties (employer and employee) try to reach a mutually acceptable agreement. The conciliator facilitates communication, explores settlement options, and helps the parties find common ground. No binding decision is made by the conciliator. If an agreement is reached, it is formalised in a signed settlement. If not, a certificate of outcome is issued, and the matter may proceed to arbitration.

Arbitration is a more formal, quasi-judicial process. Here, a neutral third party (the arbitrator) hears evidence and arguments from both sides, then makes a final and legally binding decision called an arbitration award. This process is typically used when conciliation does not resolve the dispute, particularly in cases like unfair dismissals or unfair labour practices.

Key differences between conciliation and arbitration include their purpose, formality, the role of the third party, the binding nature of outcomes, and the process for presenting evidence.



Our recent quiz provided valuable insights into the team's understanding of conciliation and arbitration. Overall, the results were positive, demonstrating a strong grasp of the fundamental concepts.

Overall Performance & Key Takeaways:

- **Strong Foundation:** The team showed a solid understanding of the primary purpose and outcomes of both conciliation and arbitration.
- **Clarity on Roles:** Most were clear on the distinct roles of the conciliator as a facilitator and the arbitrator as an adjudicator.
- **Areas for Refinement:** Some nuances regarding the "without prejudice" rule, the nature of conciliation participation, and specific Con-Arb requirements can be further clarified.

The quiz results affirm that our team has a solid foundation in understanding the critical distinctions between conciliation and arbitration in South African industrial relations. This knowledge is paramount for effectively advising clients and navigating the dispute resolution landscape.

Well done Danshaw Team!

Till next time.





Created by Michelle Mostert
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