status as senior counsel might give him an unfair advantage over his junior colleagues, but the ruling was that he could not do so. However, he was appointed senior counsel in 1989 and continued in practice until he was elevated to this Bench on 1 August 1996.

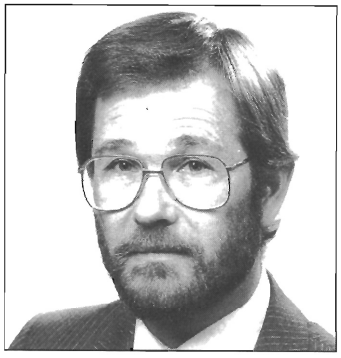
In his long career as an advocate Phil Meskin aquired a reputation not only as an expert in company law and insolvency but as a man of absolute honesty and integrity. If he submitted that his application papers were in order, that could be accepted as something akin to an SABS stamp of approval. He was meticulous to a fault, and never failed to apprise the court of possible obstacles to granting any order which he sought. Indeed, one was tempted at times to say "Unless you can restrain me, Mr Meskin, I am going to grant your order."

Philip's expertise in company law and insolvency is reflected in the leading textbooks of which he was the editor or author. He assisted the late Edgar Henochsberg with the second edition of *Henochsberg on the Companies Act*, was assistant editor of the third edition, and the editor of the fourth and fifth editions. He was co-ordinating or consulting editor of volumes 1-13 of the *South African Encyclopaedia of Forms and Precedents*, he made substantial contributions to Joubert's *Law of South Africa*, and he was author of *Insolvency Law and its Operation in Winding-Up*. His latest work was *Henochsberg on the Close Corporations Act* which was published earlier this year. I had the privilege of writing the foreword to that work and took the opportunity to refer then to his extraordinary ability to detect problems of interpretation and other pitfalls which the rest of us tend to overlook.

When Philip was appointed a judge last year he was delighted. He had for many years looked up to and revered the judicial arm of government and was proud to become a member of it. He took to the job like a duck to water, and he embarked upon his judicial duties with a degree of enthusiasm that was most refreshing. He soon proved to be an industrious, conscientious and competent judge and he obviously enjoyed the work. Paddy tells me that his sixteen months on the Bench was the happiest period of his life.

It is not only his family and judicial colleagues who mourn the passing of Philip Meskin. He gave unstintingly of his time and talents to various organisations. He wrote, produced and acted in some twenty-five theatrical plays or sketches for various charities of all races and creeds. Above all, he will be sorely missed by the Durban Progressive Jewish Congregation. He was a member of its council from 1977 to the day he died, and its president from 1984 to 1986. He was an executive member of the Council of Natal Jewry in 1980 and 1981, and vice-president from 1985 to 1987. He was a devout Jew who served his Maker and his people well.

We miss Philip Meskin as a dear friend and colleague who will be difficult to replace. We extend our deepest sympathy to his widow and children.



Roland Sutherland SC

AFSA enters the labour dispute resolution market place

Roland Sutherland SC of the Johannesburg Bar; chairman of the Arbitration Foundation of South Africa's Labour Panel of Arbitrators and Mediators.

IN the wake of the successful launch of the commercial arbitration service in mid 1996, and the recent launch of the banking arbitration service, AFSA will offer in early 1998 to the litigating public a further service, namely the Labour Relations Dispute Resolution Service.

The legislative programme of the State is giving a new shape and a broader scope for constructive resolution of traditional labour-management conflict.

AFSA, whose vision it is to offer the most comprehensive range of dispute resolution services in South Africa, will now contribute another pillar to the private labour relations dispute resolution tradition.

Expertise

There is a substantial pool of labour relations expertise available to AFSA which has hitherto not been marketed. The advent of the AFSA labour relations service will put this expertise at the disposal of business, trade unions, local authorities and other public sector employers, and individual employees.

In designing the system a policy has been pursued of creating ready made and easy to recognise dispute resolution models to cater for the various traditional categories of labour relations disputes. A number of forums have been established each composed of experienced independent practitioners who will be available to intervene in labour disputes in terms of the latest models of expedited arbitration and of consensus building.

Executive Employment Forum

For example, one of the specialist forums is the *Executive Employment Forum*. It is recognised that there is a dynamic peculiar to the senior managerial echelon in any business and that appropriate specialist skills are required to respond to the demands of that market. Persons who are able to manage and control that dynamic and

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of children (sub-rule (16)(a)). The purpose of the summary is "to facilitate clarification of the issues, clarification of the evidence in regard thereto and meaningful negotiations for the settlement of such issues" (sub-rule (16)(b)).

The issue relating to witness summaries is undoubtedly the most radical innovation introduced by the new rule, yet it is something which has become an established feature of civil litigation in most common-law jurisdictions (Erasmus *op cit* 29). The main purpose of the rule is to remove the element of surprise from trial litigation – the so-called method of "litigation-by-ambush". The rationale is simply that if parties are entitled to be fully informed before trial as to all the documents in the possession of their opponents and as to all the expert witnesses whom they intend calling, together with the content of that evidence, there can be no logical reason why they should not, likewise, be informed of the evidence which their opponents intend adducing on every issue.

Early settlement

To sum up so far: the new rule seeks to achieve an in-depth review of the case and to plan the further conduct of the case at an early stage of the litigation – within two months after the *entry date*. It is hoped that this may lead to early settlement of many cases. At the same time, it also seeks to encourage early preparation for trial. Furthermore, it involves the judge at an early stage of the process. It enables the judge to decide *mero motu* to call a *directions hearing* where the parties have not complied fully with their obligations. It also enables the parties to compel compliance with directions in an inexpensive, informal and speedy manner through the medium of *default notices* and *default hearings*, which will do away with the anachronism of formal substantive (often opposed) applications to compel compliance with the rules.

A further important innovation is the fact that a trial date will not be allocated by the registrar until such time as a *compliance certificate* has been filed. Sub-rule (13)(a) requires that this certificate be filed not later than 10 days after the *compliance date* and that it must be in accordance with the new Form 24. Upon the filing of this certificate the registrar "shall forthwith allocate a date for trial and shall set the matter down for a *final conference* to be presided over by a judge" (sub-rule (14)(a)). The incentive to parties to complete their preparation as early as possible is immediately apparent. No longer will the diligent litigant have to languish in the queue behind all the unprepared litigants who may be *prior in tempore*; he or she can immediately jump to the head of the queue by making sure that his or her preparation is complete.

The flipside of the coin is equally simple and logical: cases which are not ready for trial will not be allowed to congest the trial roll; instead, they will be sidelined to the 'not ready list', where they will receive intensive care until they are ready to re-enter the mainstream (sub-rule (15)).

No doubt the new rule will require a significant change in the traditional ethos of litigation, change which will not always be universally welcomed in the profession or the judiciary, for that matter. No doubt it will present its fair share of teething problems. The architects of the new rule recognise this and they are realistic enough to regard the new rule not as the final step in the process of differential case management, but merely the next step.

AFSA enters the labour dispute resolution market

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have insight into the ethos of the board room will be accredited to the *Executive Employment Forum*. At present there are three forms of intervention:

- Firstly, a traditional expedited arbitration format which will deal with *ex post facto* disputes when an executive has been subjected to discipline.
- Secondly, a form of early intervention in terms whereof a neutral person conducts a fact-finding investigation into allegations against the executive whose position is being challenged, and submits a recommendation to the chief executive officer.
- Thirdly, a hybrid adjudicative-consensus building model in terms whereof a neutral person serves as the chairman of a three-person panel, the other two persons being appointed respectively by the management and the aggrieved executive.The panel will conduct fact-finding and adjudicative functions, and also pursue consensus-building objectives.

Other forums

The other forums which have been established include the *Employment Discipline Forum* which is intended to cater for dismissal cases for misconduct and incapacity, the *Employment Retrenchment Forum*, which will deal with the whole range of disputes relating to retrenchment from whether or not an economic rationale exists to whether or not consultation was fully exhausted, the *Employment Equity Forum*, which will deal with the controversial area of affirmative action, residual unfair labour practices, and related issues, and the *Collective Bargaining Arbitration Forum* which will offer models of wage arbitration, interest arbitration generally, and strike regulation in the form of a strike umpire during the course of the strike and a mechanism for resolving disputes concerning the conduct of individuals in the course of a strike. It is envisaged that appeals from these forums will be available when desired by the disputants to the *Labour Relations Arbitration Appeal Tribunal*. In addition to these forums there will also be established a *Dispute Resolution Systems Design Commission* and an *Employment Relationships Development Commission*.

Appeals

The advent of the Labour Relations Arbitration Appeal Tribunal, in particular, will introduce a dimension into private labour relations dispute resolution which has hitherto been absent. It has been recognised that there is frequently a desire, even in expedited arbitration, for an opportunity to have the decision of the single arbitrator revisited by a more senior tribunal. The Labour Relations Arbitration Appeal Tribunal will serve precisely that objective. It will be composed of the leading labour lawyers in the country who will be selected for their experience and acumen. Jeremy Gauntlett SC, a distinguished labour lawyer, is to become president of the tribunal.

The official launch of the labour relations service took place on 31 March 1998.