

5. ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution is part of the core business of the Commission as mandated by the Environmental Management Act, 2000. During the 2006 calendar year the Commission continued to enjoy great success in the implementation of its Mediation programme through the use of several strategies. While the strategies in terms of alternative dispute resolution have been reviewed as part of the process of preparing the Commission's Strategic Plan 2007 – 2010, during the year 2006 the court continued to implement the relevant strategies outlined hereunder:

5.1 Encouraging the use of Alternative Dispute Resolution, in particular the mediation process, by utilizing the services of Members of the Commission to conduct such sessions

The court continues to pursue its mandate under section 84(3) of the EM Act, 2000 by encouraging the use, where appropriate, of alternative dispute resolution as a means of resolving matters brought before the court. Granted the nature of the matters litigated before the court, mediation remained the preferred alternative dispute resolution process of the Commission during 2006. As set out in the Environmental Commission Rules of Practice and Procedure, 2001 the Commission on its own initiative or at the request of the parties may at any time before or during the proceedings schedule a mediation session, the purpose of which is to attempt to resolve as many issues (whether substantive or procedural) as possible. While mediation is part of the proceedings before the Commission, it is not a part of the hearing, and information disclosed during the mediation cannot be referred to in a hearing before the Commission if the mediation fails.

Upon the successful conclusion of the mediation the parties have the option of having the matter disposed of either by:

- The Appellant, Applicant or Complainant as appropriate seeking leave to withdraw the matter;
- The Respondent making an application that the matter be allowed; or
- The Parties applying to the court for an Order by Consent in terms of an agreement arrived at between the parties.

In the latter case the court, in considering the application, will be guided by relevant principles of law.

The Commission continues to achieve a high rate of success in employing mediation to resolve substantive matters or to narrow the issues for litigation. Of the seven (7) matters filed in 2006 all were the subject of mediation or negotiation. Of these, two (2) were resolved through the entering of Orders by Consent within the period while as at December 31, 2006 mediation was ongoing in three (3) remaining matters. While mediation results in fewer matters being decided through litigation, the Commission continues to regard its record with respect to mediation as evidence of it successfully fulfilling its mandate under section 84(3) of the EM Act, 2000.

5.2 Training Members of the Commission and Commission staff to mediate matters brought before the Commission which are amenable to settlement

Both the Chairman and Deputy Chairman have undergone specialized training in Alternative Dispute Resolution with an emphasis on mediation while all other Members of the court and the Registrar have received training in mediation. Such training having been completed in previous years no new training in this area was undertaken in 2006.

5.3 Continuously reviewing the Commission's Rules, procedures and documents

In 2006 the court, with the assistance of a consultant, commenced the review of the Environmental Commission Rules of Practice and Procedure, 2001. This process relied on and was a result of the

experience of the court over the first six years of its existence, including experience implementing alternative dispute resolution processes. The new Rules, which at December 31, 2006 were 90% complete seek to embrace the consensus amongst court stakeholders that, in particular, the mediation services of the Commission should be made available to potential litigants even before matters are filed with the Commission. The Commission views this as consistent with its mandate under section 84(3) of the EM Act, 2000 to “encourage and promote dispute resolution, being any mechanism for resolving disputes other than by way of litigation.”

In 2007 the Commission plans to complete the development of guidelines for mediators which exercise was commenced in 2004 but was suspended pending the review of the Rules of Practice and Procedure which will inform the development of such guidelines.

5.4 Increasing public awareness about environmental law and issues of environmental management, particularly within the legal fraternity, industry and the public sector.

In implementing its public awareness initiatives the court seeks to inform the public about all the services available from the court including alternative dispute resolution. This is also in furtherance of the court’s mandate under section 84(3) of the EM Act, 2000. In this regard in 2006 the Commission completed the translation of its informational material into Spanish including its Guide to Mediation at the Environmental Commission. The Commission also had its informational DVD reproduced in Spanish as well. These and other materials, providing a quick guide to the services of the Commission, have been widely circulated and are available to the public at the Commission’s offices and on its website.