



The better way to litigate...

ADR AND CIVIL LITIGATION – A GUYANA PERSPECTIVE

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Outline of Presentation

ADR AND CIVIL LITIGATION – A GUYANA PERSPECTIVE



Topic – Focus on MEDIATION AS IT OPERATES IN CIVIL COURT MATTERS INCLUDING FAMILY COURT

- Introduction - Definitions - Mediation, ADR, Arbitration
- Current practices
- Guyana experience
- Challenges
- Possible solutions
- Trends

Definition of Mediation and Mediator

"Mediation is the skill of a Mediator who is a person trained to act in a neutral role to assist parties with disputes to communicate with each other by listening and sharing ideas and to generate options in the mediation process conducted in private with the goal of the parties connecting and finding their own solutions to resolve conflicts peacefully and making the world a better place". 2019 -

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The Mediation Model

- Mediator introduces the process – signing of Mediation Protocol
- Problem identified by parties
- Mediator summarises and identifies issues
- Mediator generates and evaluates alternatives – move fixed positions to interests of parties and power imbalance - Caucus
- Settlement
- Agreement in writing

Alternative Dispute Resolution

Definitions of ADR and Arbitration

- Alternative Dispute Resolution (ADR) is a term used to describe a number of options outside the traditional litigation process in Courts. ADR includes, Mediation, Arbitration, Negotiation, Adjudication, Settlement Conference, Facilitation and Conflict Resolution.
- ARBITRATION is one of the ADR methods to court litigation for consenting parties to resolve disputes by one or more Arbitrators who decide the case resulting in a final award.

Alternative Dispute Resolution

Main differences between Mediation and Arbitration

- In Court Mediation, the parties participate in the process and with the assistance of a neutral facilitator referred to as a Mediator, make their own decisions which result in a consent Order of Court. The Mediator does not make any decisions and does not provide legal advice. If the parties cannot resolve the disputes, the matter goes back to court for adjudication.
- Arbitration is the process where the Arbitrator hears the case and makes a decision based on the evidence and applicable law; the decision is intended to be final and binding but may be challenged on certain grounds, including jurisdiction and failure to follow established rules.

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Current practices

- Mediator Centre
- Guyana Laws relating to ADR-Mediation
- Guyana Family Court

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Mediator Centre of Guyana

- Staff – Mediation Director and Assistant
- Purpose – Manage cases which are referred to mediation by Judges and arrange for Mediators to conduct the mediation
- Mediator chosen from list of Mediators certified by court –agreed to by lawyers
- List includes Lawyers and other professionals
- Mediation – in person or online by Zoom protocol

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- 2003 to 2024, over 1500 mediations were conducted
- Success rate under 30%
- Mediation agreement = Consent Order of Court
- Benefit – no Appeal likely
- WIN WIN situation

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Guyana Laws relating to ADR-Mediation

- **The Alternative Dispute Resolution Act Cap. 7:05**

Section 4 – The Court may, by order, refer a matter, other than criminal proceedings, for mediation, if the court considers the circumstances appropriate and whether or not parties to the proceedings consent to the referral.

- **Civil Procedure Rules 2016 Part 26**

The parties and Judges of the High Court may order Mediation.

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Guyana Laws relating to ADR-Mediation

- Arbitration Act 2024
- Provides for international and domestic arbitration

sections 18 and 19 provides for appointing a Mediator to hear dispute pursuant to an Arbitration Agreement. By consent, the dispute may be heard firstly by mediation and if not successful, by arbitration

Policy and goal of Guyana – to make Guyana an international hub for Arbitration.

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Guyana Laws relating to ADR-Mediation

- Family High Court
- The Family (Proceedings and Procedure) Rules 2016.
The Court can encourage the parties to use mediation, Rules 13.1(c) and 15.5
- Specialised Family Mediators – lawyers, probation officers, etc
 - Divorce
 - Arrangements for dependent children including Custody
 - Maintenance of children
 - Division of Matrimonial Property

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GUYANA EXPERIENCE

- Court connected matters
 - Some matters resolved at first session
 - Others – adjournment culture
 - Cause of delay – lawyers and parties
 - Permits other parties by consent to attend and participate
-
- Fees – in practice, Mediators paid for the first session by Supreme Court. Additional sessions paid by parties equally.

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The GUYANA EXPERIENCE

- Parties see each other and work out their own solutions
- Business relationships resumed with apology, less hostility
- Family relationships improved - acknowledgement
- Confidential process
- Without prejudice to legal proceedings

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The GUYANA EXPERIENCE

- Purpose of Mediation
- To resolve matters quickly, efficiently, more cost effective
- Mediation is in an informal setting
- Reduces court backlog of cases
- Enhances civil justice system

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CHALLENGES ?

- Lawyers & clients may show up late
- Several mediations are done by less senior lawyers from law firms
- Lawyers chosen over non lawyers
- Some Lawyers gave unreasonable hope to clients
- Unrealistic expectations from clients – fixed or unreasonable positions
- Some parties just want Court to decide matter
- Lack of effective sanctions
- Settlement rate

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POSSIBLE SOLUTIONS

- Sensitisation of process and benefits of Mediation
- ADR course for Law students
- Judges and Lawyers to encourage litigants to utilise mediation and do more referrals
- Members of public – advertisements, social media publicity
- Court to appoint more Mediators
- Training – Mediators
- ADR clauses in Agreements – can include mediation, arbitration or both
- Co-mediation – opportunity to non lawyers and new mediators

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TRENDS

- Court connected Mediation has been established in Guyana by Judiciary
- Case - *Guyana Teachers' Union v Attorney General of Guyana*
2024-HC-DEM-CIV-FDA-229 – successful end to lengthy strike by teachers to the benefit of school children.
- Huge discovery and production of oil – fast growing economy
- New focus on Arbitration by Government – new Act, training
- International contracts contain Arbitration clauses

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TRENDS

- **Recent case of recognition and enforcement of foreign arbitral award**
- Conocophillips Gulf of Paria BV v Corporation Venezolana Del Petroleo SA and Petroleos De Venezuela SA
2023-HC-DEM-CIV-FDA-814
- **Issue** — whether the permitted defence of public policy as a refusal to make a monetary payment, raised by the Government of Guyana, a non party in an arbitral award against 2 private Venezuela companies was valid: the defence referred to the Sovereign immunity and national security threat to Guyana based on the ongoing claim and acts by Venezuela of two thirds of Guyana, the pending ICJ case, the injunction granted to preserve the status quo and an agreement between the 2 Presidents to refrain from any act that may escalate the conflict.

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- Ruling of the High Court of Guyana – Guyana liable to pay.
- There is no written decision
- An appeal is pending.

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TRENDS – in sum

- Mediation – connected to Court, Guyana lawyers – Parties decide
- Arbitration – business - by contractual agreement – avoids Guyana Judiciary – foreign Arbitrators to settle dispute.
- Quote *“An ounce of mediation is worth a pound of arbitration and a ton of litigation!” - Joseph Grynbaum*

THANK YOU!