

Mediation...



**Inauguration of
The Mediation Division
Of
The Supreme Court of Mauritius**

Welcome Address

by

Honourable Chief Justice Y K J Yeung Sik Yuen, GOSK

- **Honourable Navinchandra Ramgoolam, Prime Minister of Mauritius**
- **Mr Omari Issa, Chief Executive Officer of the Investment Climate Facility for Africa**
- **His Worship, The Lord Mayor of the Municipal Council of Port Louis**
- **Honourable Attorney-General**
- **Honourable Senior Puisne Judge and Honourable Judges**
- **Learned Solicitor-General and Learned Director of Public Prosecutions**
- **Presidents of the Mauritius Bar Association and of the Mauritius Law Society**
- **Ladies and Gentlemen**

For those of you who did not check your watch or your diary, today is 13 June 2011. It is not a Friday! Finding common dates is familiar Court routine. I did not choose the date for the official launching of this Mediation Centre which is a division of the Supreme Court. The Honourable Prime Minister and Mr Issa chose the common date for this event. But, coincidence would have it that it marks the 4th anniversary of my swearing-in as Chief Justice of Mauritius.

Every *bonus pater familias* would like to leave a legacy: for a Chief Justice, it is one or two things he makes during his term of office. If I were to express a preference for the number of things that have been done, the setting up of the Mediation Division of the Supreme Court during my term of office as Chief Justice would be my first choice. Today's event is in fact the story of a dream come true.

The first time.....

The first time I heard of mediation within the judicial system was in my days as Master and Registrar of the Supreme Court. The then Chief Justice, late Sir Cassam Moollan had been impressed by what he saw in China during a visit to the Judiciary of that country. If your neighbour has stolen your chicken or smashed your TV set in rage, why do we send him to jail if he can be compelled instead to repair the harm done and compensate you, the victim. Why not mediate the terms of a settlement even if the background to the complaint is more akin to a criminal offence? What serves the community best? Sending the offender to jail or giving him the opportunity to atone for the wrong he has committed in a manner which is closest to the prejudice suffered? I hope I do not trigger a social, philosophical or legal debate on crime and punishment on the one side, and crime and compensation on the other. But, the background I have just related serves as a set piece for sending me back to my dream of many years ago when I set out on my quest for more meaningful mechanisms for resolving disputes. Are there not ways and means for identifying disputes which may best be resolved by means otherwise than by the traditional conventional Court trial system. If such disputes can be identified, what could be the best alternative system or systems which can be put in place to resolve such disputes?

Even in our legal system which has been influenced by major civilizations of East and West, there has always been and there still is the traditional *ad hoc* mechanism whereby the Magistrate receives members of the public in Chambers and tries to sort out their differences which can be as diverse as matrimonial disputes, divergences between landlord and tenant, land encroachment or health nuisance caused by a neighbour.

A good number of those disputes.....

A good number of those disputes having the potential of becoming full-blown Court claims are often nipped in the bud by the timely good advice and pro-active intervention of the experienced Magistrate who often succeeds to diffuse pent-up feelings.

In Mauritius, a number of disputes – usually family and commercial disputes – are resolved by arbitration and private mediation which are outside the traditional Court trial system. These will undoubtedly continue to exist because they may be the best suited systems to resolve the disputes in hand. Celerity in the dispute resolution or the confidentiality of the matters in dispute are usually factors which weigh in favour of such Alternate Dispute Resolution mechanisms.

We will recall that in December 2010, Mauritius hosted a high profile international conference with the participation of the major international institutions involved with international arbitration.

The purpose of that conference was to launch Mauritius as the regional hub for international arbitration. That conference was followed by another successful one organised by the Supreme Court in conjunction with the World Jurist Association in April 2011 on the theme “*International Arbitration and ADR – The Impact on the Rule of Law.*”

But let us come back to Mediation, if we may!

The mediation system.....

The mediation system we have introduced in Mauritius is rather unique since it is one which has been custom-made for our needs. It is a “*Médiation à la Mauricienne*” which is governed by our Mediation Rules published in September 2010. These Rules have had the merit of enlarged discussions with the main stakeholders before they were drafted with refined skill and later adopted with general consensus.

Colleagues and members of the legal profession will recall that, before the Mediation Division started operating in January this year, we proceeded along the line that the Judiciary and the professions should become part of the change with the change we were bringing to the system. For that reason, we ensured that successive quality training sessions were duly provided, in turn to the judges, the barristers and the attorneys. In this regard, we had the good fortune of securing the help of two distinguished Benchers of the Honourable Society of the Middle Temple, Mr Philip Bartle QC and Sir Vivian Ramsey, Judge. I am happy to say that these two English gentlemen were able to convert the most recalcitrant agnostics and non-believers into clear adepts, if not disciples, of judicial mediation!! I seize this opportunity to express my public appreciation to these two stalwart friends of the Mauritian Judiciary, to the Honourable Society of the Middle Temple, to the Bar Council and the Law Society, to the Chairman and Members of the Rules Committee and the Judges and staff of the Mediation Division for their dedication and cooperation in making the Mediation Division fully operative barely a few months after its launch. In March this year, we have had an interesting talk by Mrs Béatrice Brenneur, a renowned French Judge who graciously shared her vast experience as Mediator of the Council of Europe with our Magistrates and Judges.

But the short experience.....

But, the short experience of our Mediation Division which only started operating with effect from 10 January this year, has already shown that there are cases which are eminently better suited for mediation than for a full-blown public trial. That statement to some may appear to be a “*vérité de La Palice*” but there are reports of cases where the parties tread into the Mediation arena at daggers drawn but leave the Conference Room of the Mediation Division relieved and “*requinqués*”. Such are the assuaging powers of our Mediation Judges!!

I have every reason to believe that with the introduction of mediation as a mechanism for dispute resolution within the Judicial System, at no extra cost to the litigants, we have enhanced the horizon of our justice system to provide quality justice to the citizens of this country to a very appreciable degree and in whatever scenario a dispute happens to arise.

The official launching of the Mediation Centre is taking place in the presence of the Honourable Prime Minister whose personal commitment to legal and judicial reform started in the mid-nineties with the Mackay Commission. We also have the distinguished presence of Mr Omari Issa, Chief Executive Officer of the Investment Climate Facility for Africa [ICF] which has provided guidance and financial support in the setting up of the Mediation Division. The ICF and the Government of Mauritius are also partners in providing the Judiciary with the Electronic Filing System [*E-Judiciary*], which is scheduled to become operational at the Supreme Court in September this year.

We are thankful to the ICF.....

We are thankful to the ICF and to Government for engaging in the enhancement and capacity-building of the Judiciary and I may avail myself of this opportunity to gently remind ourselves that the setting up of the E-Judiciary of the Supreme Court is but the first phase of our development in that area and that there is a second phase which would cover the District and Intermediate Courts.

The main aim of the E-Judiciary system is to permit the electronic filing of Court processes from a distance by members of the legal profession without the need for them or their clerks actually coming to Court. It provides an elaborate but faster means of putting a case in shape and its main target is to have the case fixed and disposed of at a faster pace. The-run-of-the-mill type of commercial cases is expected to be disposed of within a hundred days from the filing of the claim. All the technical aspects of the E-Judiciary system are being looked into by Crimson Logic, the Singaporean firm which has successfully set up the electronic filing system of the Singaporean Judiciary. The Mauritius Network Services is the main contractor. This is a great opportunity for Mauritius to prove to investors that we are responsive to their needs by accelerating commercial claims so that neither they nor their funds are tied up needlessly.

I shall not say more on the E-Judiciary project today save and except to add that it will surely help Mauritius progress in strengthening its repute as a good place to do business.

Today, we officially inaugurate.....

Today, we officially inaugurate the Mediation Division after its soft launching in January. I believe time will show that it is a significant jewel in the crown of the Judiciary and that it is **the** process which will render to the Judiciary its “*Titre de Noblesse*”.

Ladies and Gentlemen, I wish the Mediation Division of the Supreme Court all the success it deserves.

Y K J Yeung Sik Yuen
Chief Justice
Supreme Court of Mauritius
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