

**COURT-ANNEXED MEDIATION:
AN INTERROGATION OF THE
NEW CIVIL LITIGATION CULTURE
IN TRINIDAD AND TOBAGO**

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ACKNOWLEDGEMENTS

Firstly, thanks to God for allowing us this opportunity and achievement. Many thanks to the Honourable Mr. Justice Vasheist V. Kokaram and Honourable Mr. Justice Andre Des Vignes for their valuable input on Court-Annexed Mediation. We are also grateful to the attorneys and certified mediators who participated in this research.

ABSTRACT

This study focused on the perceptions, successes and challenges of Court-Annexed Mediation (herein after referred to as “CAM”) with the goal of determining how this Alternative Dispute Resolution (hereinafter referred to as “ADR”) process can successfully provide the answer to the existing challenges of the judicial system in Trinidad and Tobago. In essence this research investigated the “propriety of Court-Annexed Mediation” to deliver accessible, secure, fair, convenient and cost effective justice. A critical component of this paper is the perception of judges, attorneys, mediators and disputants towards CAM which is viewed through different lens to garner an insight and understanding of its development. This paper therefore, emphasized a holistic approach in assessing the impact of CAM as a reliable and accessible conflict resolution instrument to safeguard human dignity and promote true justice.

Keywords: court-annexed mediation, Trinidad and Tobago, perceptions, successes, challenges.

INTRODUCTION

Court-Annexed Mediation is defined in the *Mediation Act of Trinidad and Tobago No. 8 of 2004* (hereinafter referred to as “MATT”) as “any mediation process conducted under the auspices of the Court”.¹ It is an early intervention strategy whereby a judge refers a case to mediation to aid in its resolution. The catalyst for using this ADR process in the civil litigation landscape in Trinidad and Tobago, was primarily the plethora of civil matters engaging the High Court. The concept of Court-Annexed Mediation can be found in the Civil Proceedings Rules of Trinidad and Tobago 1998, as amended, (hereinafter referred to as “CPR”) and has been codified in Section 14 of the MATT². It is intended that CAM be introduced into the mainstream of the case management process of the civil justice system in 2017.

Trinidad and Tobago is a twin island nation in the Caribbean, situated between 10° 2' and 11° 12' N latitude and 60° 30' and 61° 56' W Longitude. It is approximately 11 kilometers off the North Eastern coast of Venezuela and 130 kilometers south of the island of Grenada. The twin island independent state covers an area of approximately 5,128 square kilometers (1980 square miles) and has a population of 1,328,019 based on the 2011 Population and Housing Census.

Trinidad and Tobago is a cosmopolitan nation comprising East Indians (35.43%), Africans (34.2%), ‘Douglas’ that is East Indian and African mixed (7.66%), Chinese (0.3%), Portuguese (0.06%) and other ethnicities.³ The twin island comprises several religious groupings namely Roman Catholics, Anglicans, Pentecostals, Evangelists, Seventh Day Adventists, Jehovah’s Witnesses, Moravians, Hindus,

1. Parliament of Trinidad and Tobago, *The Mediation Act, 2004*, online: Parliament of Trinidad and Tobago <<http://www.ttparliament.org/legislations/a2004-08.pdf>> at 157-161.

2. *Ibid.* at 161.

3. Central Statistical Office, *Trinidad and Tobago 2011 Population and Housing Census Demographic Report*, online: <http://www.tt.undp.org/content/dam/trinidad_tobago/docs/DemocraticGovernance/Publications/TandT_Demographic_Report_2011.pdf> at 15.

Muslims, Baptists and Rastafarians among others. It is this melting pot of ethnicities and religious beliefs that can be a progenitor of various forms of conflict. As such, engendering a culture of mediation in Trinidad and Tobago, as a form of alternative dispute resolution, is imperative.

The implementation of this ADR process was therefore, given impetus due to the receptivity amongst litigants and attorneys as demonstrated in the Court-Annexed Mediation Pilot Projects in 2010 and 2013 (hereinafter referred to as "CAMPPs"). In the CAMPP in 2010, 60 commercial cases were referred to mediation. This project yielded a success rate of 65% and a customer satisfaction rating of 95%. Inspired and motivated by its success, the Judiciary of Trinidad and Tobago in 2013 developed an expanded ADR Pilot Project whereby the Judiciary randomly referred 200 cases to CAM.⁴

In a speech, the Honourable Mr. Chief Justice Ivor Archie, on the occasion of the opening of the 2014-2015 Law Term, indicated that a total of 56% of the matters completed were settled outright and 11% were partially settled. Also, ninety-eight percent (98%) of the participants reported that they would try mediation again.⁵

I. PROBLEMS TO BE ADDRESSED

According to *ADR: Principles and Practice* (Brown and Marriott, 1993) the term "Court-Attached" Mediation (also referred to as "court-annexed", "court-related" or "court linked" mediation) usually describes the process whereby the court incorporates mediation as part of its procedural system and/or makes the arrangements for the appointment of a mediator and/or provides its premises for the process of mediation.⁶ Prior, to the CPR there were numerous problems with the civil justice system namely; it was too slow in bringing matters to a conclusion and this in turn prevented access to justice. It was too expensive in that the costs of representation often exceeded the value of the claim. The sys-

4. The Judiciary of Trinidad and Tobago, *ADR Project Background*, online: Judiciary of Trinidad and Tobago <http://www.ttlawcourts.org/alternative_dispute_resolution_pilot/about.php>.

5. The Judiciary of the Republic of Trinidad and Tobago, *Address by Honourable Chief Justice, Mr. Justice Ivor Archie O.R.T.T on the Occasion of the Opening of the 2014-2015 Law Term* (September 16, 2014), online: Judiciary of Trinidad and Tobago <<http://www.ttlawcourts.org/index.php/newsroom-69/speeches/4965-address-by-the-honourable-the-chief-justice-mr-justice-ivor-archie-o-r-t-t-on-the-occasion-of-the-opening-of-the-2014-2015-law-term>>.

6. Henry Brown & Arthur Marriott, *ADR Principles and Practice* (London: Sweet and Maxwell Limited, 2011) at 299-310.

tem was too unequal in that there was a lack of equality between the wealthy litigant and the litigant with little or no financial means. Additionally, it was too protracted and uncertain in that it was difficult to forecast how long a matter would last and how much it would cost the parties. It was too adversarial and there were no in-built mechanisms to foster settlement at an early stage of the proceedings. It was too incomprehensible and complex to the average litigant. Finally, it was too *ad hoc* in that it allowed the pace of litigation to be controlled by the parties and their attorneys.

These problems can be addressed by formally introducing a permanent and extended group of dispute resolution options which will be offered to litigants when a matter is filed at the court rather than undergoing the long and tedious process of litigation. Observations of several regional and international jurisdictions have proven that Court-Annexed Mediation increases access to justice, supports and complements court reform, reduces backlogs within the court system, decreases delays, manages case-loads and streamlines procedures to promote case disposition.⁷

II. METHODOLOGY

This particular study was undertaken to determine the perceptions, successes and challenges of Court-Annexed Mediation within the Civil Justice System of Trinidad and Tobago. The population that the study targeted comprised of mediators, attorneys, judges and the participants of the Court-Annexed Mediation Pilot Project 2013. The intention of the study was to administer questionnaires to the aforementioned groups of participants whereby analysis and conclusions can be made. To gather the necessary information, it was agreed that questionnaires be the appropriate tool to use to compile the primary information from these participants for the CAMPP 2013. When the researchers however sought to gain access to the participants, access was denied, as it was alleged that confidentiality of the participants must not be circumvented.

Seventy-five questionnaires using a stratified random sample model were distributed to attorneys at law (*see Appendix A*). The purpose was to capture information from a particular subgroup in this case attorneys. The questionnaire was designed to collect data based on the experience of attorneys. Selecting attorneys based on their years of practice identified key components such as awareness of Court-

7. Trinidad and Tobago Chamber of Industry and Commerce, *Court-Annexed Pilot Project 2013*, online: Trinidad and Tobago Chamber of Industry and Commerce <<http://chamber.org.tt/articles/court-annexed-mediation-pilot-project-2013/>>.