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**\*ALTERNATIVE DISPUTE RESOLUTION (ADR) AND MEDIATION IN GUYANA**

***What is ADR?***

Alternative Dispute Resolution (ADR) is a term used to describe a number of options outside the traditional litigation process in Courts. ADR includes negotiation, mediation, arbitration, adjudication, settlement conference, good offices and facilitation.

***What is Mediation?***

Mediation is one of the Alternative Dispute Resolution options that takes into account the interests and needs of the parties.

It is a process in which parties to a dispute agree to appoint a mediator and to actively participate in good faith in the mediation process in order to arrive at a consensual resolution of the matters between them.

Mediation is about a mediator effectively assisting communication between the parties to the dispute. While the mediators control the process, it is the clients or parties who control the outcome.

***Who is a Mediator?***

A Mediator is a person who has received training in the mediation process.

A Mediator is a person who acts as an independent neutral third party and is selected by the parties to a dispute to facilitate and assist them in attempting to reach a voluntary settlement of the disputes.

The Mediator does not provide legal advice or representation and does not make any decisions. Instead, the Mediator works with the parties to assist them to find a solution, satisfactory to them, to the dispute between them. The parties are encouraged to seek independent legal advice, and where a voluntary settlement is achieved, it only becomes binding when the parties sign a settlement agreement

There are many Mediators in Guyana. They include Attorneys-at-Law, Accountants, Probation Officers, Surveyors, persons from the Medical and Nursing professions, Engineers, Sociologists and other professional persons.

## ***Benefits of Mediation***

### **➤ Improvement of Administration of Justice**

Mediation was formally introduced in Guyana in 2003 in an attempt to improve the administration of justice by reducing the huge backlog of Court cases and the lengthy delays in the hearing and conclusion of court matters.

### **➤ Mediation is cheaper**

The advantage of Mediation is that at present the services of Mediators in relation to court connected cases are free. However, it is expected that since mediation does not incur the cost relating to court procedures, it will be less expensive than litigation.

### **➤ Mediation saves time**

Mediation can also be productive by bringing quicker closure to a dispute. It avoids the continuity of litigation by way of appeals.

➤ **Mediation is fair and neutral**

Mediation is efficient and fair. It provides an opportunity for parties to tell their story, to express their feelings, to clarify misunderstandings, perceptions, assumptions and to discover new information. It gives the parties control over how their dispute will be resolved.

➤ **Mediation is informal**

The Mediation process is usually conducted in an informal and private setting. It does not involve the formalities of a court room where the litigants may have to give sworn evidence and be subjected to cross examination. There are no fixed rules for the conduct of the mediation process unlike the Court room where the Court is usually confined to observing certain rules of practice and procedure.

Mediation can be conducted with or without lawyers for the parties. Where lawyers are involved, they can play an important role.

➤ **Mediation empowers parties to create their own solutions**

Mediation allows the parties to develop creative solutions to all issues important to them and not just the underlying legal dispute. The Court only considers the legal issues.

➤ **Mediation avoids uncertainty of judicial decision**

Mediation eliminates the uncertainty of the decision by a Judge or Court.

➤ **Mediation preserves relationships**

Mediation also provides an opportunity to preserve rather than destroy personal, professional and business relationships.

➤ **Mediation agreements have high compliance rate**

Since people are more satisfied with solutions that have been mutually and voluntarily agreed to by them than those imposed by a judge or other third party, they tend to comply with the terms and conditions of the Agreement.

➤ **Mediation is confidential**

Mediation is confidential and without prejudice and all statements and offers made during the mediation process are inadmissible for any purposes in any legal or other proceedings. This promotes communication and settlement discussion.

➤ **Mediation eliminates costs**

A successful Mediation eliminates the award of costs which usually flow for the successful party against the unsuccessful party.

➤ **Mediation is a WIN WIN situation**

In a successful Mediation, everyone wins. In Court, there could be a win-lose situation or often, after a court case, nobody is happy.

➤ **Mediation eliminates judge shopping**

Lastly, but certainly not the least, Mediation offers an alternative to the new practice of 'judge shopping'. It relieves legal practitioners from the hardship, stress and other considerations which have led to the development of this concept.

## **Mediation in Guyana**

### ***Mediation Centre***

A Mediation Centre has been established within the compound of the High Courts at Georgetown, Guyana and it is headed by the Mediation Director Mr. Colin Chichester.

As at April 2008, approximately 447 court cases were referred to the Mediation Centre. 84 mediations were successfully completed or settled before actual mediation.

### ***Voluntary or Mandatory?***

Mediation is presently a voluntary process. The Mediator as well as the parties can terminate the mediation meeting at any time.

However, there are plans to introduce it formally in the Rules of Court of Guyana and make it mandatory at a certain stage. *(Editor's note – CPR 2016 Part 26 introduced Mediation and gave the power to the Court to order mediations.)*

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