Foreword on the Court-Annexed Mediation Project

by Chief Justice Sir Marston Gibson K.A.

For some time now, I have stated my intention to make mediation a central plank in my attempt not only to fight the civil backlog to the ground but also to ensure that the backlog did not return. It would represent a paradigm shift in the way we do business.

But what is mediation? **CW Moore** in ***The Mediation Process*** (2nd Edn. Jossey-Bass, 1996) at p. 20, has noted that "mediation has a long and varied history in almost all cultures of the world. Jewish, Christian, Islamic, Hindu, Buddhist, Confucian and many indigenous cultures all have extensive and effective traditions of mediation practice." **Professor Albert Fiadjoe**, formerly Professor of Law at the University of the West Indies, Cave Hill Campus, in his book ***Alternative Dispute Resolution: A Developing World Perspective*** (Routledge-Cavendish 2004) states, at pp. 58-59:

> Simply defined, mediation is a consensual process in which a neutral third party helps others to negotiate a solution to a problem. The mediator has no authority to make binding decisions for the disputants. What the mediator does is to use certain procedures, techniques and skills to help the disputants arrive at a resolution of their dispute by agreement without adjudication. . .A mediation normally occurs when the parties come to the realisation that they cannot resolve their dispute on their own and that they need the help of third party intervention.
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> This neutral party, called a mediator, is essentially a *facilitator* only. . .
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> It is important to underscore the fact that the mediator's duty goes beyond what facilitation may, at first glance, suggest. It is the mediator's duty to assist the parties to examine their mutual interests and promote a lasting relationship. Indeed the fact that the mediator lacks decision making authority makes it attractive to disputants, who retain ultimate control of the outcome as the decision makers.

The Supreme Court and the Magistrates' Courts of Barbados have launched the Court-Annexed Mediation Pilot Project under the banner "Accelerated Justice for the Litigant." Our Roster of Mediators, nine in number, have received the requisite training in mediation techniques and what Professor Fiadjoe calls the "fundamental principles and cores skills associated with being a mediator" such as neutrality; facilitation of disputes; consensual resolution; maximisation of interests; provision of a secure environment; the offer of confidentiality; inability to offer independent advice; empowerment of the parties; and maintenance of relationships. During their training, the Mediators have demonstrated such skills both in the Supreme Court and Magistrates' Courts to reach desirable outcomes. This is a visionary process and a small beginning.

The Pilot Project has two objectives – first, to reduce and, ultimately, to eliminate the current backlog in civil cases in both the Supreme and Magistrates' Courts; and secondly, to put in place a dispute resolution technique which will ensure that the backlog of cases does not return, at least, not in the unmanageable form it now takes.

At the end of the project, we will be able to assess the settlement rate which our mediators have been able to achieve; what other resources we need to deploy against the backlog and get an idea of how long it will take to eliminate it entirely.

I wish to mention two salient aspects of the Supreme Court and Magistrates' Courts Practice Directions regarding the choice of a mediator. The first is that the selection of a mediator must be mutually agreed to by all parties. The second important point in the Practice Directions is that, where it appears that one or more mediators is or are being "overly selected" with the consequence that a backlog in having the mediations heard may develop, the discretion is conferred upon the Mediation Coordinator to select another mediator or mediators from the Roster and assign the case(s) to him/her. There would be no point to the Mediation Project if, by allowing one or more 'popular' mediators to be selected too often, the backlog is shifted from the Judiciary to the Project with the consequential failure to dispose of cases within a reasonable time.

Moreover, our ***Supreme Court (Civil Procedure) Rules 2008*** ("***CPR***") which expressly refer to alternative dispute resolution, and particularly mediation, in ***Rules 2.3*** and ***25.1(2)(c)*** are predicated on the idea that the

courts cannot hear and determine every case which is filed, since we would never emerge from beneath the civil backlog.

Our mediators look forward to assisting litigants to end their disputes by facilitating discussion and negotiation.

May the efforts of both litigants and mediators enjoy every success!