



# Intellectual Property Disputes: Settlement by Mediation in the Caribbean Region

**IP Mediation Webinar  
29-30 March 2023**

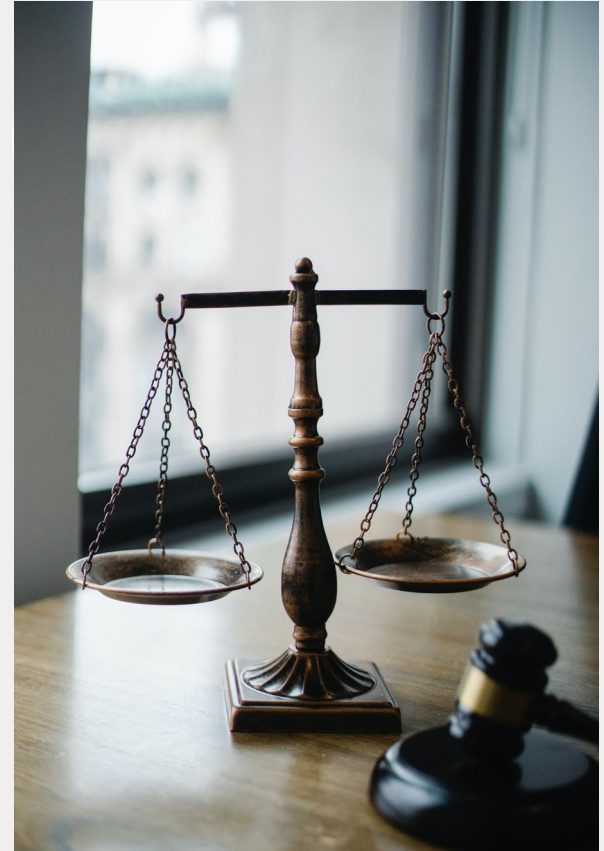
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**Presentation By:**  
**Hon Mr Justice Winston Anderson**  
**Judge of the Caribbean Court of Justice**  
**Chairman of the CCJ Academy for Law**

# INTRODUCTION

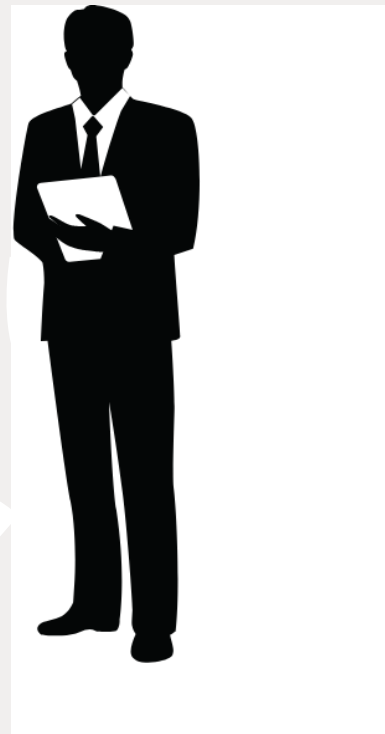
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- Alternative Dispute Resolution
- Mediation
- Limited use of mediation compared to litigation
- Enabling environment
- Constraining factors



## Recent Summaries of CARICOM Intellectual Property Judgments for WIPO LEX data base (2022)

Country	Judgments	Selected Judgments	Use of Mediation
Antigua & Barbuda	6	5	0
The Bahamas	16	15	0
Barbados	11	7	0
Belize	3	3	0
Dominica	1	1	0
Grenada	1	1	0
Guyana	3	3	0
St. Lucia	2	2	0
St. Kitts and Nevis	2	2	0
Trinidad and Tobago	35	32	0
TOTAL	80	74	0



# ENABLING ENVIRONMENT

- Substantive Intellectual Property legislation
  - Copyright Tribunal
- Rules of Court
- Revised Treaty & Rules of Court



# ENABLING ENVIRONMENT (1) THE

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## ■ OECS

- *Rule 4.1 of Practice Direction No. 7 of 2020 of the Eastern Caribbean Supreme Court (“ECSC”) Civil Procedure Rules 2000*. Mediation possible before or after litigation proceedings have commenced or on the court’s own motion, subject to the agreement of the parties.
- *Simon Abraham v Oliver Walsh (DOMHCV2008/0453)*  
private nuisance – court ordered mediation – agreement – full settlement - compliance issues – refusal to revert to original claim
- *Nicholas Lansiquot v Ignatius Leon (SLUHCV2002/0379)*  
valuation of improvements to land – mediated settlement – only vitiated for fraud, coercion, bad faith, mistake, or “exceptional circumstances...”

# ENABLING ENVIRONMENT (2) JAMAICA

- *Rule 74.3 (2) & (3) of the Supreme Court of Jamaica Civil Procedure Rules 2002* Mediation commenced by **mandatory** court referral in respect of active civil jurisdiction cases which are not included within stated exceptions.
- ***Cordell Green v Kingsley Stewart* [2014] JMSC Civ. 26**  
defamation – mandatory mediation – agreement on “counsels briefs” – court order not sought or made – dispute – returned to case management
- ***Allen v Guardian Life, etc.* [2020] JMCC Comm 26**  
dispense with automatic referral – “good and sufficient reason” – cases involving professional misconduct – *locus standi*

# ENABLING ENVIRONMENT (3) BELIZE

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- *Rule 73.3 and Rule 73.4 of the Supreme Court of Belize Civil Procedure (Amendment) Rules 2013*
  - a) nature of dispute
  - b) relationship between the parties
  - c) willingness of the parties
  - d) opportunities for joint gains
  - e) other criteria considered relevant by Judge



# ENABLING ENVIRONMENT (4) GUYANA

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- *Rule 26.01 (1) – (2) (3) of the Supreme Court of Guyana Civil Procedure Rules 2016*
  - a) possible benefits
  - b) how far apart and how firm are the parties in their positions
  - c) costs of mediation relative to the value of claim
  - d) public policy matters inappropriate for mediation
  - e) other criteria considered relevant





# ENABLING ENVIRONMENT (5) TRINIDAD AND TOBAGO

- Parties required to consider resolution of their matter by ADR. This ought to be clearly expressed in the Pre-Action Letters exchanged by the parties: *4.3 (f) & 4.6 (e) of the Pre-Action Protocols, Civil Proceedings Rules 1998 (As Amended)*.
- *Attorney General of Trinidad v Tobago House of Assembly et al* Claim No. CV 2021-04513. Appropriate sanction for non-compliance with PAP is usually an award of costs.
- *Singh v Public Service Commission* [2019] UKPC 18. Failure of PSC to comply with PAP led PC to reverse CoA's decision not to award costs to appellant.
- *Mediation Act (2004) of Trinidad and Tobago, Sect 14 (1)*. Provides for commencement for mediation on referral of judge in litigation proceedings.
- MOU Between WIPO and Trinidad and Tobago on Mediation of IP disputes (2018)

# ENABLING ENVIRONMENT (6) AGENCIES

## IP ADR Agencies in the Commonwealth Caribbean



1. Arbitration and Mediation Court of the Caribbean Inc. (Barbados)

2. Jamaica International Arbitration Center

3. Caribbean Institute for Conflict Resolution (Trinidad and Tobago)

4. Conflict Resolution and Mediation Center of Trinidad and Tobago



5. WIPO Arbitration and Mediation Center via the Trinidad and Tobago Intellectual Property Office

# ENABLING ENVIRONMENT (7): REVISED TREATY OF CHAGUARAMAS & CCJ

- RTC, Article 66: Protection of Intellectual Property Rights
- RTC, Article 223: Member States to encourage and facilitate ADR of private commercial disputes
- OJ Rules of the CCJ encourage the use of ADR including mediation
- Part 8.1 (u) allows court to “refer any specific issue to mediation”
- *Marsha Lee Cooke v Barbados* 25.February 2021
- “IT IS ORDERED THAT:  
The proceedings be stayed on the terms agreed by the parties and contained in a confidential Settlement Agreement submitted to and sealed by the Court.

# IP MEDIATED SETTLEMENT: CONSTRAINTS?

1. Culture and tradition
2. Criminal law aspects
3. Cross border dimension
4. The relatively small pool of Mediators
5. Sensitization and awareness





# Thank you!

