



THE J.D. JURIST DICIT

Editor: Barrie R.N. Attzs

J.D. NEWS

CONGRATULATIONS

Marcelle Ferdinand, Partner, has been appointed Managing Partner, effective December 12, 2013.

Donna-Marie Johnson, Corporate and Commercial Attorney, has been admitted to the Partnership, effective January 1, 2014.

OFFICE CLOSURE

J.D.'s Office will be closed for the Holidays from December 24 to 27th, 2013.

Appropriate Dispute Resolution – The Way Forward

There can be no doubt that the Supreme Court (and the Magistracy) is faced with the daunting task of managing and adjudicating on the numerous matters filed each year. In 2013 it is anticipated that in excess of 5,000 new civil cases will be filed adding to the thousands of cases, some of which were filed more than five years ago and are currently awaiting trial. With a cadre of 30 first instance High Court judges, each hearing and determining 4 cases per month, a total of 1,320 cases (i.e. $30 \times 4 = 120 \times 11 = 1,320$) may be dealt with in the High Court each year. At very best, speculating that 1,500 cases can be disposed of in a year, which leaves 3,500 to be added to the backlog year after year.

The workload of the judiciary is such that even after a case is tried it may take two or more years for judgment to be delivered and/or for the judge to provide his or her reasons in writing. This situation is quite unacceptable not only to nationals of T&T, but is an obvious deterrent to foreign investors contemplating doing business in our jurisdiction.



The introduction of new rules of court, the Civil Proceedings Rules (CPR) and Pre-Action Protocols, which came into effect in September 2005, were in part designed to modernize and expedite the management and hearing of civil disputes, but attorneys and litigants are challenged by having to prepare their cases at a very early stage thus incurring significant up-front legal costs.

The overriding objective of the CPR is *“to enable the court to deal with cases justly including –*

- (a) ensuring that the parties are on an equal footing;*
- (b) saving expense;*
- (c) dealing with cases in ways which are proportionate to –*
 - (i) the amount of money involved;*
 - (ii) the importance of the case;*
 - (iii) the complexity of the issues; and*
 - (iv) the financial position of each party;*
- (d) ensuring that it is dealt with expeditiously; and*
- (e) allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases.”*

Rule 25.1 of the CPR, which deals with case management, provides that *“the court must further the overriding objective by actively managing cases which may include –*

- (a) identifying the issues at an early stage;*
- (b)*
- (c) encouraging the parties to use the most appropriate form of dispute resolution including, in particular, mediation, if the court considers that appropriate and facilitating their use of such procedures*

ABOUT J.D. Sellier + Co.

J.D.Sellier+Co. was founded by Jean-Baptiste Denis Sellier who was admitted to practice as a Solicitor and Conveyancer in Trinidad and Tobago in 1882. He practiced on his own until 1916 when he invited his colleague and friend George Cecil Pantin to join him in a partnership.

Today, J.D.Sellier+Co. has expanded to approximately 20 attorneys-at-law and 77 employees and offers its clients quality legal services. Our clients include industrial, commercial and financial enterprises, domestic and foreign, public and private, ranging in size and complexity from small single location business enterprises to large diverse, multinational corporations.

Our firm is a general practice law firm divided into four areas of civil practice, namely: Corporate + Commercial (including banking + finance; energy + regulated industries; probate; estate planning + administration; mergers + acquisitions; tax), Real Estate, Intellectual Property, and Litigation + Dispute Resolution (including admiralty + shipping).

Contact Us

J.D. Sellier + Co.
129-131 Abercromby St
Port-of-Spain
868-623-4283/7
info@jdsellier.com
www.jdsellier.com

LITIGATION AND DISPUTE RESOLUTION

The firm's litigation and dispute resolution practice group manages a substantial civil litigation portfolio which includes public law, admiralty, banking, mortgage and foreclosure actions, wrongful dismissal, workmen's compensation and medical negligence. Its non-commercial litigation portfolio comprises contentious probate matters, personal injuries claims, defamation and a family practice that includes divorce and custody proceedings, property settlement and maintenance applications.

The firm's litigation attorneys-at-law have also undergone extensive training in arbitration and mediation to further develop their skills to enable them to resolve their clients' differences and disputes without recourse to the Court.

The practice group is headed by Marcelle Ferdinand, an attorney-at-law with more than 30 years experience in litigation. She is ably supported by a team of highly qualified and dedicated associates and a complement of well-trained, committed support staff who work assiduously to ensure the efficient delivery of services to the firm's clients in a timely manner.

- (d) *encouraging the parties to cooperate with each other in the conduct of proceedings*
- (e) *actively encouraging and assisting parties to settle the whole or part of their case on terms that are fair to each party.*"

The CPR provide for the parties and their attorneys to attend a "case management conference" within 4 to 8 weeks of the filing of the defence. Rule 27.8 of the CPR expressly provides that the court may adjourn the case to enable negotiations or "ADR" (defined as alternative dispute resolution) proceedings to be pursued.

In 2010 and again 2013 the judiciary has sponsored ADR pilot projects. The mediation track of the latter project is operated by the Dispute Resolution Centre (the DRC) whose office is located in the Chamber of Industry & Commerce Building in Westmoorings. It involves 200 civil cases to be mediated by one or more members of a panel of approved mediators certified by the Mediation Board and approved by the judiciary. Up to November 08, 2013 the DRC had completed 65 mediations of which 39 cases were settled amicably and a further 8 resulted in partial settlement. Under the 2013 pilot project the DRC boasts of a current settlement rate in excess of 70%. As at the said date 100% of the parties and their attorneys expressed satisfaction with the mediation they attended and reported that they would use mediation again.

The problems faced by the judiciary also include a lack of sufficient judges, inadequate infrastructure, plant, equipment and human resources. All things considered, it is near impossible for the judiciary to provide an efficient and effective service to satisfy the ever increasing demand for dispute resolution.

“Mediation” is defined in the Mediation Act, No. 8 of 2004 to mean “*a process in which a Mediator facilitates and encourages communication and negotiation between the mediation parties, and seeks to assist the mediation parties in arriving at a voluntary agreement*”. Compared with the length of time that it takes to bring a case to trial (in many cases more than 2 years) there is no reason why parties cannot arrange for a dispute to be referred to mediation and for a date for a mediation session to be fixed within 30 to 60 days. It is not therefore surprising that there is talk of making ADR an integral part of the judicial process (court annexed ADR) such that disputants will be compelled (except for good reason) to try to settle their differences by mediation prior to commencing court action. Indeed parties entering into contractual arrangements would be well advised to incorporate appropriate dispute resolution clauses (in particular mediation and arbitration clauses) into their agreements*. In comparison to the limited number of judges, there are more than 280 Certified Mediators in Trinidad and Tobago who are anxious to facilitate the amicable win-win resolution of the differences that exist between the parties to a dispute.

*Sample ADR clauses can easily be made available upon request.

[The views expressed in this article are the views of the author only and are for the benefit of the clients and associates of J.D. Sellier + Co. generally; they are not intended to be legal advice and clients are encouraged to consult with their professional advisors for advice concerning specific matters.]

ABOUT THE AUTHOR



Dennis Gurley, S.C., MCI Arb (Certified Mediator and Arbitrator), practiced as a solicitor in England following his admission to practice in 1976. He joined the firm in September 1977 and practiced civil litigation. In 1997, Dennis became a member of the firm’s corporate and commercial team. His breadth of experience therefore spans both litigation and corporate and commercial law. Dennis advises on a wide range of matters, including acquisitions, joint ventures, company incorporation, corporate governance, banking, commercial litigation, estate planning and administration, pension schemes and tax appeals.

Apart from practicing as an attorney-at-law, Dennis is a director of several companies including President’s Award Foundation, Trinidad and Tobago Unit Trust Corporation, Dispute Resolution Centre, and FirstCaribbean International Bank (Trinidad and Tobago) Limited.