
Third Session Fifth Parliament Republic of Trinidad
and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 13 of 1998

[L.S.]

AN ACT to provide for community mediation as an
alternative to litigation for certain summary
offences and civil matters.

[Assented to July 24, 1998]

ENACTED by the Parliament of Trinidad and Tobago as ^{Enactment}
follows:—

1. This Act may be cited as the ^{Short title} Community
Mediation Act, 1998.

Interpretation

2. In this Act—

unless the context otherwise requires “Court” means a summary court established under the Summary Courts Act;

Chap. 4:20

“mediator” means a person having adequate knowledge of, and experience in mediation and approved by the Minister to be a mediator by Notice published in the *Gazette*;

“mediation centre” means a place designated under section 16;

“mediation order” means an order made under section 8(1);

“Minister” means the Minister to whom responsibility for community mediation is assigned.

PART I

MEDIATION IN CRIMINAL MATTERS

Eligibility for mediation in criminal matters Schedule 1

3. A person who is charged for the first time with an offence listed in Schedule 1 and who has not been convicted of any other offence is eligible for mediation.

Parties to be informed of right to apply for mediation

4. A Court, trying an offence alleged to have been committed by a person who is eligible for mediation, shall inform the defendant and the *de facto* complainant that they may, jointly or separately, apply to the Court for mediation.

Adjournment pending mediation

5. (1) Where a person who is eligible to apply for mediation indicates to the Court that he intends to apply for mediation, the Court may adjourn the hearing of the complaint in order to allow him sufficient time to make his application.

(2) Where—

(a) the person referred to in subsection (1) fails to apply for mediation before the date to which the hearing is adjourned under subsection (1); or

(b) his application for mediation is refused,

the Court may proceed with the hearing of the complaint.

(3) No inference of guilt shall be drawn from the fact that the defendant applied, or indicated his intention to apply for mediation.

6. (1) An application for mediation shall be made in duplicate and accompanied by an affidavit in the forms set out in Schedule 2. Application for mediation Schedule 2

(2) Upon submission of an application, the Clerk of the Court shall, in the appropriate place on the application form, acknowledge receipt thereof and shall return the copy to the applicant and retain the original.

7. (1) A Court shall not approve an application for mediation unless— Restrictions on approval of application

(a) it is satisfied that the complaint is in respect of a matter listed under the First Schedule;

(b) it obtains a report from a probation officer about the defendant and his circumstances and after considering the report and, if it thinks necessary, hearing the probation officer, it is satisfied that the defendant is a suitable person for mediation;

(c) the defendant and the *de facto* complainant agree—

(i) to the determination of the complaint by mediation; and

(ii) to waive their rights to initiate any further legal proceedings in respect of the matter complained of if the complaint is determined by mediation,

and sign as having so agreed in the appropriate place on the application form; and

(d) the defendant and the *de facto* complainant agree on the person who is to be appointed as a mediator of the complaint and that person also consents to being so appointed in the prescribed form.

(2) In determining whether a mediation order should be made, the Director of Public Prosecutions or any police officer conducting the prosecution of the complaint shall be entitled to be heard by the Court.

Mediation order

8. (1) Where the Court approves an application for mediation, the Court shall make an order—

(a) appointing the person referred to in section 7(1)(d) as mediator of the complaint;

(b) referring the complaint to the mediator for mediation; and

(c) subject to section 10(3), suspending its hearing of the complaint.

(2) Before making a mediation order, the Court shall explain to the defendant, clearly and precisely—

(a) the purpose and effect of the order and in particular the requirements of the order referred to in section 9;

(b) the consequences which may follow under section 10, if he fails to comply with any of those requirements; and

(c) that the Court has under section 11, the power to review the order on the application of the defendant, the complainant, the probation officer or the mediator.

and where the defendant objects to the making of the order, the Court shall not make the order but shall commence the hearing of the complaint.

(3) A Court making a mediation order shall furnish four copies of the order to a probation officer assigned to the Court and he shall retain a copy and give a copy to the defendant, the complainant and the mediator.

9. (1) A mediation order shall—

Effect of mediation
order

- (a) subject to section 11(a), have effect for such period not exceeding twelve months from the date of the order as may be specified therein;
- (b) require the defendant to submit during that period to the supervision of a probation officer assigned to the Court;
- (c) contain such provisions as the court considers necessary for securing the supervision of the defendant; and
- (d) contain such additional conditions as to residence and other matters as the Court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the defendant and his participation in the process of mediation.

(2) A defendant in respect of whom a mediation order is in force shall attend such mediation centre at such time as he is required by the mediator to attend in order to participate in the process of mediation, and on any such occasion, the defendant or the *de facto* complainant may be accompanied by an attorney-at-law.

(3) The process of mediation may, with the mutual consent of the parties thereto, require the defendant to do one or any combination of the following:

- (a) community service;
- (b) work for the *de facto* complainant;

- (c) participate in an educational or rehabilitative programme;
- (d) compensate the *de facto* complainant in an amount not exceeding five thousand dollars or such greater amount as the Minister may fix by Order subject to negative resolution of Parliament.

(4) A defendant's obligations under subsections (2) and (3) shall, so far as practicable, be such as to avoid any conflict with his religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.

Breach of mediation order

10. (1) Where, at any time while a mediation order is in force in respect of a defendant, the court is of the view that the defendant has failed to comply with any of the requirements imposed on him pursuant to section 9, including any failure to do satisfactorily anything specified in section 9(3), the court may issue a summons requiring the defendant to appear before the court at the time specified therein.

(2) Where a defendant fails to comply with a summons issued under subsection (1), the court may issue a warrant for his arrest directing that he be brought before the court.

(3) Where it is proved to the satisfaction of the court that a defendant has, without reasonable excuse, failed to comply with any of the requirements imposed on him pursuant to section 9, including any failure to do satisfactorily anything specified in section 9(3), the court may revoke the mediation order and resume hearing of the complaint.

Review of mediation order

11. Where a mediation order is in force in respect of a defendant and, on the application of the defendant, the complainant, the probation officer or the mediator,

it appears to the court that it would be in the interest of justice to do so having regard to the circumstances which have arisen since the order was made, the Court may—

- (a) with the consent of the parties, extend the duration of the order for a period not exceeding three months at a time; or
- (b) revoke the order and commence the hearing of the complaint which was suspended by the order.

12. (1) Where the probation officer under whose ^{Determination of complaint} supervision the defendant is placed, is satisfied that the defendant has complied with the requirements imposed on him pursuant to section 9, the probation officer shall submit a report to that effect to the mediator.

(2) Upon receiving a report under subsection (1), the mediator shall issue a certificate of completion in the form set out in Schedule 3 and shall forward the certificate ^{Schedule 3} and the report to the court which may then record that the complaint has been determined by mediation.

(3) Where the Court records that a complaint is determined by mediation, neither the defendant nor the *de facto* complainant may initiate any legal proceedings in any court of law in respect of the matter so determined.

13. The following information is inadmissible as ^{Inadmissibility of evidence} evidence in a Court in respect of any matter that was subject to mediation:

- (a) the Report made by the Mediator to the Court;
- (b) any incriminating statement made by the defendant or any other person who is involved in the mediation process.

PART II

MEDIATION IN CIVIL MATTERS

14. (1) A person may apply for mediation in respect ^{Eligibility for mediation in civil matters} of the following civil matters:

- (a) matters falling for determination by a court under section 8 of the Petty Civil Courts Act; ^{Chap. 4:21.}

Chap. 45:51

(b) applications for ancillary relief following the grant of a *decree nisi* of divorce or a decree of judicial separation;

(c) applications falling for determination by a Court under the Matrimonial Proceedings and Property Act for the custody, education, supervision and maintenance of children;

Chap. 46:08

(d) applications for the maintenance of and access to children and maintenance of a spouse or dependant under the Family Law (Guardianship of Minors, Domicile and Maintenance) Act.

(2) In respect of any of the matters referred to in subsection (1)—

(a) either party may seek to have the matter mediated directly with a mediator agreed to by both parties; and

(b) where the mediation process fails and proceedings are instituted in respect of those matters, the Court may make an Order in accordance with subsection (4).

(3) Where the parties opt for mediation under subsection (2), the Court shall adjourn for the parties to agree on a mediator and on the adjourned date the Court shall make an Order—

(a) appointing the mediator agreed to by both parties;

(b) referring any matter to the mediator for mediation;

(c) suspending its hearing of the matter.

(4) The Minister may by Order prescribe any other matters that may be subject to mediation in accordance with this Act.

15. (1) In respect of civil matters to which section 14(3) applies, upon completion of the mediation process, the mediator shall issue a certificate of completion in the form set out in Schedule 3 and shall forward the certificate and the report to the Court which shall then record that the matter has been determined.

(2) Where the mediation process fails, the mediator shall issue a notice in the form set out in Schedule 3, to the Court which shall thereupon record that the mediation process was unsuccessful and shall fix a date for concluding the matter.

PART III

MISCELLANEOUS

16. (1) For the purposes of this Act, the Minister may, by Order, designate any premises or part thereof, as a community mediation centre which shall be available for mediation in criminal or civil matters.

(2) The Mediator shall have the power to—

- (a) co-opt with the agreement of the parties, persons from the community in which the Mediation Centre is located, who may have expertise or the type of influence required for the particular mediation process; and
- (b) request the support of any social groups, groups, community organisations or non-governmental organisations where such support is required for the success of the mediation process.

17. The Minister may make regulations for the carrying out of the objects of this Act and, without limiting the generality of the foregoing may make regulations prescribing—

- (a) the method of accreditation and the qualification requirement for the Mediator in each particular case;

(b) the ethical standards to be observed by the Mediator in the performance of his duties;

(c) the remuneration of Mediators;

(d) such other matters as may be required by this Act to be prescribed.

Immunity from suit

18. (1) No legal proceeding may be commenced against the Mediator or any person or official involved in mediation proceedings for any act or omission done or omitted to be done in the course of the performance of their duties.

(2) The Mediator or any other person involved in the process of mediation shall not be called as a witness to give evidence of any matter which occurred during the mediation process.

Confidentiality

19. (1) The Mediator and every person concerned with the administration of Mediation Centres or the mediation process, shall not disclose the content of any matter or information received during the mediation process subject to the mediator's obligation to the Court under this Act.

(2) It shall be an offence for any person in the service of the Mediation Centre to disclose to any person who is not in the service of such Centre any information or matter which may come to his knowledge in the course of discharging his duties under this Act.

(3) Any person who commits the offence under subsection (2) is liable on summary conviction to a fine of five thousand dollars and to imprisonment for one year.

20. (1) This Act shall come into effect on a date to be fixed by Proclamation published in the *Gazette*.

Commencement and
transitional
provisions

(2) On the coming into force of this Act, notwithstanding the fact that a complaint was already laid in respect of any matter listed in the First Schedule, or proceedings were already instituted in respect of matters listed in section 14(1), the parties to any criminal or civil matter to which this Act refers shall be eligible for mediation in accordance with this Act.

SCHEDULE 1

(Section 3)

OFFENCES WHICH MAY BE REFERRED TO THE MEDIATION CENTRE FOR RESOLUTION BY CONSENT FROM THE SUMMARY COURT

1. Offences under the Summary Offences Act, Chap. 11:02—

- (a) assault and battery contrary to section 4;
- (b) assault contrary to section 5(1),
- (c) aggravated assault contrary to section 5(2);
- (d) damaging property contrary to section 25;
- (e) being found on, entering or leaving cultivated lands without lawful cause or excuse contrary to section 41(1);
- (f) being in an enclosed place for an unlawful purpose contrary to section 46(d);
- (g) using violent or obscene language or disturbing the peace contrary to section 49.

2. Unlawful and malicious damage to property contrary to section 45 of the Malicious Damage Act, Chap. 11:06, where the damage does not exceed two thousand dollars.

SCHEDULE 2

(Section 6)

FORM 1

COMMUNITY MEDIATION ACT, 1998

Application for Mediation

(In Duplicate)

REPUBLIC OF TRINIDAD AND TOBAGO

No.

IN THE MATTER OF

A.B.

Complainant

V

C.D.

Defendant

To: the Clerk of the Magistrates' Court

I/We C.D. of
(Name) (Address)

hereby apply for mediation in the following proceedings:

.....
.....
.....
(here insert a brief account of the nature of the proceedings)

I send herewith the following papers:

(List and send statements of witnesses, letters and papers relating to the matter, and if court proceedings have begun, all court papers in the applicant's possession). I attach hereto an affidavit in support of my application.

.....
Applicant

We, the parties to this complaint agree—

- (a) to the determination of the complaint by mediation; and
- (b) to waive our rights to initiate any further legal proceedings in respect of the matter complained of in this complaint if the complaint is determined by mediation.

.....
De Facto Complainant

.....
Defendant

I acknowledge receipt of this application this day of, 199

.....
Clerk of the
..... Magistrates' Court

FORM 2

(Section 6)

AFFIDAVIT

REPUBLIC OF TRINIDAD AND TOBAGO

No.

IN THE MATTER OF

A.B. Complainant

V

C.D. Defendant

I, of in the island of
(Name) (Address)

Trinidad/Tobago, make oath and say as follows:

1. That I am the person named in the application hereto annexed.
2. That the statements contained therein are, to the best of my knowledge and belief true and correct.

Sworn to at
 this day of
 } Applicant

Before me,

.....
Commissioner of Affidavits

SCHEDULE 3

[Section 12(2)]

[Section 15(1)]

FORM 1

REPUBLIC OF TRINIDAD AND TOBAGO

COMMUNITY MEDIATION ACT, 1998

CERTIFICATE OF COMPLETION

No.

IN THE MATTER OF

A.B.

Complainant

V

C.D.

Defendant

I,, having been appointed mediator of the above-mentioned complaint, hereby certify that the defendant, has satisfactorily complied with the requirements imposed on him pursuant to section 9 of the Community Mediation Act, 1998.

.....
Mediator

FORM 2

[Section 15(1)]

REPUBLIC OF TRINIDAD AND TOBAGO

COMMUNITY MEDIATION ACT, 1998

NOTICE OF NON-COMPLETION

No.

IN THE MATTER OF

A.B.

Complainant

V

C.D.

Defendant

I,, having been appointed mediator of the above-mentioned complaint, hereby give notice that the complainant and the defendant have not been able to satisfactorily determine the complaint by mediation.

.....
Mediator

Passed in the House of Representatives this 29th day of May, 1998.

D. DOLLY

Acting Clerk of the House

Passed in the Senate this 7th day of July, 1998.

N. COX

Clerk of the Senate

Senate amendments agreed to by the House of Representatives this 10th day of July, 1998.

D. DOLLY

Acting Clerk of the House