A very good morning to you and a warm welcome to this the very first mediation refresher training program by MSI or mediation services international made possible by the Jurist project.

It gives me great pleasure to be standing before such a distinguished audience today to share with you all one of my passions ...it is also a humbling experience for me to be engaged with a noteworthy team of professionals, each of whom share the same passion as I do.

As you know the legal profession in the U.K. Is divided between barristers and solicitors. Simply put, Barristers are the advocates, the drafters of pleadings and such like, the lawyers best able to argue points of law and elaborate facts before the court only meeting the clients for the first time at court or indeed in conference prior to a hearing; whereas the solicitors are the lawyers behind the scenes who meet and interact with the clients and do all the hard day to day work of case preparation and briefing counsel etc ..

When I started off practising law some 30 years ago, it was on my very first day at court as a Barrister in pupillage that I unwittingly discovered the power of being what can be described as a Settlor.

Indeed I remember well rushing up to my first appearance before the County Court all ready to take on the fight of robustly arguing my clients case. However, when I got there and as is customary you get an opportunity to interact with your opposing counsel, after about ten minutes or so into such interaction I found an opportunity to settle the matter without even going into court. Instead of waiting around at the courts door waiting to be heard, myself and opposing counsel trashed out terms of agreement that was mutually beneficial to each of our clients and we settled with a consent order. I walked away from that experience feeling pleased and with a sense of accomplishment and wonderment.

I wondered why this case was not settled before ... clearly it was capable of being settled .. why it had to be at the last moment ? Why all the time was wasted not to mention costs. What did the parties really want ? How was this not achievable beforehand? Where was there wriggle room ? Who prevented this? All these questions and more came to mind.

And as I continued with my thoughts to my dismay when I returned to my chambers and informed my instructing solicitors that the matter had been settled not surprisingly I was not received warmly!

This pattern continued for about six months and even my Pupil Master was beginning to show that he did not share in my excitement and exuberance to resolve matters at the appointed hearing whatever it may be .. instead I should be seeking adjournments and making life difficult for the other side . It soon became evident that I was not going to be a rainmaker !!

It was a long and hard decision for me to leave the Bar but I did so and then re qualified as a solicitor because this allowed me direct access to the clients at the beginning of the case, not the end. I could hear first hand what the clients wanted; I could manage their expectations at an early stage and most importantly I could try my very best to achieve a cost effective and sometimes practical solution to their problems. This has been the ethos of my practice for the last 30 years.

I therefore fully understand the words of Mahatma Gandhi when he said after 20 years of being a lawyer:

"My joy was boundless. I had learnt the true practice of law. I had learnt to find out the better side of human nature and enter men’s

hearts. I realised that the true function of a lawyer was to unite parties riven asunder…"

This morning I have been tasked with giving a brief overview of mediation internationally. I shall use my best endeavours to do so.

Historically mediation is one of the oldest forms of peaceful dispute resolution. It is a procedure designed to resolve disputes through agreement, that is through the mutual consent of the parties. Although it is frequently confused with arbitration, it is fundamentally different.

In arbitration, the neutral, reaches a decision based upon evidence presented by the parties. In mediation, it is the parties that reach an agreement, facilitated by the neutral who helps them along in their discussion in a clear objective and impartial manner.

A successful mediation is therefore dependent upon two inter-related factors;

1. The willingness of the parties to resolve their dispute and
2. The skill of the mediator in guiding the parties to the point where agreement is possible

One of the most skilled mediators - in India as a matter of fact - has said that there exists a point in every dispute where the parties can reach agreement; it is the duty of the mediator to help the parties find that point.

The existence of parties acting in good faith to resolve their differences however, will significantly assist even the best mediators in achieving their objectives .

The combination of a talented mediator and motivated parties will generally result in resolution of even the most difficult disputes.

So where are we with mediation today in a global world with less borders ? Has this age old peaceful dispute resolution tool taken root in our legal Systems? And if so, how effective is it?

As we look around increasingly we find that Mediation forms an integral part of the dispute resolution framework of several jurisdictions. In fact, there are studies that indicate that mediation has played a fundamental part of improving civil justice dispensation and refining dispute resolution. Countries have adopted mediation either through statutory codification, or through usage, or both. Different models to introduce mediation into mainstream legal practice have been adopted and implemented.

Studies of various jurisdictions show that mediation has found popularity due to several reasons, the primary ones being: alarming docket issues and prolonged time and costs of adjudicatory processes, where mediation has played a pivotal role in clearing dockets and reducing case loads. The Studies also show that mediation has made an important contribution to the economic benefit and refining process of the justice system.

U.K. and Europe

In the early 1990s when Mediation first started talking root in the UK it was against a background of ignorance, scepticism and concerns about lost fees. Lawyers were reluctant to concede their fees by choosing a process that could be over in a day rather than six months.

The ignorance and scepticism was tackled partly by education and awareness -raising and the issue of fee concerns were taken on board by the more enlightened lawyers who saw that any profession must live or die by the ability to offer genuine service to clients and

this alongside competitive service offered by other professionals, would drive the legal market towards eventual adoption of mediation.

There was also two key factors that played an important part in the advancement of mediation. The first of these was the recognition of mediation as a “new” professional tool especially when corporate clients identified with the mediation message and told their legal advisers that they expected them to embrace the mediation approach. Unless these advisers were not willing or did not show knowledge of the process and demonstrate an ability to work with it, the corporate clients would not retain them.

The second key factor that urged the use of mediation in the UK was senior judicial support. This began with practice directions which highlighted Alternative Dispute Resolution as an expected part of client discussions with litigators, then moved with more robust directions in the Commercial court and then finally into formal integration in litigation procedure with the Civil Procedure Rules in 1998 and subsequent case law particularly around cost sanctions and mediation refusal.

This judicial endorsement and intervention has been a key element in progress to a position where the legal profession at large now takes ADR seriously.

Over the last 12 years or so in the United Kingdom, clients themselves have paid more attention to their cases especially with the rising costs of litigation and court fees. They are also not as trusting of their professional advisers as they used to be. With the internet at their fingertips and information a key stroke away, the lay clients are becoming increasingly aware of ADR and have demonstrated a positive approach to embracing it.

In England and Wales, the incredibly high cost of litigation and the inability to recover all your costs from the other side even if you win, is amongst one of the many reasons that litigants make use of the mediation tool, so much so that mediation is now seen as an invaluable tool in the litigator's tool box.

While this has been the case in the UK, up until 2011 Europe still had some antipathy towards ADR. The general reluctance by continental European jurisdictions to use any kind of alternative dispute resolution process has meant that cross-border disputes have often had to be resolved outside the courtroom, where practical matters such as foreign procedure, language and legal culture can often put UK litigants on the back foot.

European Mediation Directive

On 13 June 2008, EU Directive 2008/52/EC on certain aspects of civil and commercial matters (the Directive) came into force. This was part of a pan-European initiative to "facilitate access to ADR and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings"

The Directive provides only for voluntary mediation. However, it says clearly that member states can make the use of mediation mandatory and impose penalties in the event of m default. They can also extend the use of mediation to domestic disputes.

USA

Although widely known for its propensity for litigation, the USA has one of the world's most advanced and successful systems for settlement of disputes outside the formal legal system through

mechanisms of mediation and arbitration. More extensive use of this system internationally and by other countries can dramatically enhance the speed and quality of social justice globally. Usage within the USA varies widely from state to state.

Mediation in the USA is not generally regulated on the federal level. Each state can regulate & often local jurisdictions within the state prescribe their own rules.

There is no obligation to mediate unless the parties have bound themselves in contract to do so. However, some jurisdictions today are requiring mediation in certain type of family disputes in particular.

The United States is a signatory to several international treaties that refer to mediation. Perhaps the most recognised is the United Nations Commission on International Trade Law (UNCITRAL). United States mediation law, however, is not based on any treaty. The mediation laws in the United States have evolved over time at the state and local level, and attempts at uniformity developed in the late 1980s.

Most federal and state courts in the United States now use mediation programmes to help the parties settle their disputes. Indeed, mediation is the primary ADR process in federal, state and local courts. A court mediation programme may be based in the court, or involve referrals by the court to outside ADR programmes run by bar associations, non-profit groups, other local courts or private ADR providers.

In some courts ADR is mandatory. Mandatory mediation programmes in the courts often depend on the amount in controversy in the dispute, with lower amounts in controversy,

whether consumer of commercial in nature, often subject to mandatory mediation.

Canada

When we look at what is the state of mediation in Canada we find that The law is still developing. Five provinces have introduced legislation to facilitate the use of mediation in litigation proceedings:

1. Ontario compels mediation in certain circumstances. Section 24.1 of the Ontario Rules of Civil Procedure compels mandatory mediation for certain actions in specified municipal jurisdictions.
2. Nova Scotia has passed the Commercial Mediation Act which is meant to facilitate the use of mediation to resolve commercial disputes. The Act does not compel mediation, though, and applies only when the parties agree to engage in mediation. The Nova Scotia Act is also expressly based on the UNCITRAL Model Law on International Commercial Conciliation.
3. The British Columbia Notice to Mediate Regulations compel mediation in some cases where one party has delivered a notice to mediate.

4. The Saskatchewan Queen's Bench Act compels mediation in civil proceedings before the Court of Queen's Bench.

5.The Alberta Provincial Court, Civil Division has Mediation Rules that permit the court to refer an action to mediation at any time after a dispute note is filed.

China & Hong Kong

Between 1982 and 2004, the use of judicial mediation to settle civil disputes declined sharply from 70 per cent to 30 per cent. The ruling

Communist Party signalled a partial return of judicial mediation, as it considered social stability indispensable for economic reforms .

In 2005, the Supreme People's Court prioritized mediation yet again under the new direction of "mediate cases that could be mediated, adjudicate cases that should be adjudicated, combine mediation with adjudication, conclude cases and terminate disputes concurrently.

Singapore

Singapore is considered one of the most developed users of mediation in South East Asia.

Much like India where community mediation by headmen (akin to heads of village panchayats in India) of villages who would facilitate dispute resolution in the late nineteenth and early twentieth centuries as the advent of mediation in Singapore. Notably the recognition that mediation is a dispute resolution tool is owed to the law makers, the government and the judiciary who assisted in the success of the Court Mediation Centres, now known as the Primary Dispute Resolution Center (PDRCs) or which has now been renamed to the State Courts Centre for Dispute Resolution or SDRC. These centres were attached to the subordinate courts in 1994 and its success encouraged the government to promote private mediation thereby establishing the Singapore Mediation Centre in 1997 to handle complex civil/commercial disputes.

Mediation in Singapore has remained largely uncodified. SDRC are based on court referrals and the mediators are bound by a code of ethics. A mediated settlement agreement is given the sanction of a decree.

The use of Alternative Dispute Resolution in the Caribbean is as yet in a fledgling state and there is little information about it in most parts of the region, except for Jamaica which has a considerably developed ADR scheme which focuses on mediation, and there is substantial ignorance about what constitutes Alternative Dispute Resolution. While Jamaica's Dispute Resolution Foundation has made significant strides in the promotion of peace and reconciliation in various communities as well as in providing useful support to its Justice system, the example has not resounded strongly across the region.

Caribbean Justice systems and seekers of justice remain strongly entrenched in the adversarial, combative methods of resolving matters, even with all the attendant difficulties and disappointments which often accompany litigation.

It is therefore pleasing to note that impetus has gathered and Guyana's judiciary has now positively embraced mediation as set out in the CPR Rules of Guyana. This is both positive and encouraging to the other regions but there is still a lot of work to be done and this forum here is the first step towards advancement, as Ms Gloria Johnson Richards jurist project director just highlighted!

Mediation is a valuable dispute resolution tool because the means of reaching an agreement can be as varied as the disputes that need to be resolved.

Mediation procedures can be tailored to a variety of factors: the personality of the mediator; the nature of the dispute; the time or resources available; and the antagonism between the parties. The procedure can thus minimize contentiousness, cost, and resources.

If it is unsuccessful, the parties can always resort to the courts or other means of dispute resolution. In short, mediation is a valuable weapon against delay, cost, and injustice.

It is hoped that the refresher mediation training offered by Mediations Services International will tick all the boxes for the mediators in attendance and will be a good reminder for us all that the better way to litigate is to mediate.