



PARLIAMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO

SENATE PAPER NO.

PARL: NO. 14/3/18

**SENATE
[2003-2004 SESSION]**

**REPORT
OF
THE SPECIAL SELECT COMMITTEE
OF
THE SENATE
APPOINTED TO CONSIDER AND REPORT
ON
A BILL ENTITLED
“AN ACT TO PROVIDE FOR MEDIATION IN TRINIDAD AND
TOBAGO”**

Ordered by the Senate to be printed

REPORT

ESTABLISHMENT OF COMMITTEE

1. At a Sitting of the Senate held on Tuesday December 02, 2003, a Special Select Committee of the Senate comprising five Members was appointed to consider and report on a Bill entitled, "An Act to provide for Mediation in Trinidad and Tobago" and to report back to the Senate by Tuesday December 16, 2003.

2. Your Committee comprises five members of whom three constitute a quorum inclusive of the Chairman. Members appointed to the Committee were:

Mr. John Jeremie	-	Chairman
Ms. Christine Kangaloo	-	Member
Mr. Mustapha Abdul Hamid	-	Member
Mrs. Carolyn Seepersad-Bachan	-	Member
Ms. Dana Seetahal	-	Member

POWER

3. Your Committee is empowered to consider the Bill which was referred to it but could not discuss the general merits and principles of the Bill only its details. Your Committee has the power to make such amendments as the Committee thinks fit provided that the amendments are relevant to the subject matter of the Bill.

MEETING

4. Your Committee held four meetings on the following dates:

Thursday December 04, 2003

Tuesday December 09, 2003

Friday December 12, 2003

Monday December 15, 2003

5. Your Committee had the power to send for persons, papers and words. In this regard, your Committee sought technical advice on some issues which needed some clarification. Those persons invited were:

<i>Ms. Clair Blake</i>	-	<i>Chief Parliamentary Counsel</i>
<i>Ms. Stephanie Daly</i>	-	<i>Representative of Law Association</i>
<i>Mrs. Deborah Mendez-Bowen</i>	-	<i>Lecturer, Hugh Wooding Law School</i>

FINDINGS

6.1 In keeping with the mandate given to this Committee by the Senate, your Committee hereby submits its findings. Your Committee examined the Bill clause by clause. Based on the consideration of the Bill, the Committee identified the following key concerns on the major issues which the Bill should address.

6.2 Concerns were raised concerning the Mediation Board's ability to sue and be sued. It was suggested that some time in the future, matters will arise which may cause some controversy and which could result in the Board being sued. It was, therefore, suggested that the Board should be given some legal status in law to deal with this concern. The Committee therefore, recommends an amendment to this effect.

6.3 Members were of the opinion that "Confidential Information" is critical and forms a substantial part of the whole process of mediation. As a result, it should be deleted from the definition section of the Bill and inserted in the operational section of the Bill.

6.4 Clause 15 of the Bill gives the Minister power to make regulations for "Community Mediation". However, the Committee felt that the provision as presented in the bill was not clear enough about the role of "Community Mediation". Members agreed that the provision should be strengthened without going beyond the remit of the Committee.

6.5 Questions were raised with respect to (1) the definition of "Mediation Agencies" and (2) why the Bodies under clause 9 were deemed to be approved mediation agencies. The Committee was informed that Agencies providing mediation services must meet certain criteria and be registered by the Board. It was also explained that the Bodies identified in clause 9 were granted that status within the Bill because such august bodies should not be required to apply to the Board.

6.6 Your Committee examined the Bill and proposes that several clauses of the Bill should be amended to reflect the issues raised during its deliberations.

RECOMMENDATIONS

7.1 Your Committee recommends that the Bill entitled, "An Act to provide for Mediation in Trinidad and Tobago", be accepted by the Senate subject to the amendments at the Appendix.

7.2 Your Committee also recommends that the package of penal reform measures which, it is anticipated, will provide for mediation in criminal matters, be brought before the Parliament as soon as possible.

APPENDIX

LIST OF AMENDMENTS RECOMMENDED BY THE SPECIAL SELECT COMMITTEE APPOINTED BY THE SENATE TO CONSIDER AND REPORT ON A BILL ENTITLED, *“THE MEDIATION (NO. 2) BILL, 2003”*

First Column Clause	Second Column Extent of Amendments
2	(i) In the definition of “Certification and Accreditation Regulations”, delete all the words appearing after the word “Schedules”. (ii) In the definition of code of ethics “delete all the words appearing after the word ‘Schedule’. (iii) Delete the definition of “Confidential Information” and insert at the beginning of Part III of the Bill. (iv) In the definition of ‘Disciplinary Regulations” delete all the words appearing after the word “Schedule”. (v) Insert after the definition of “Mediation” a definition of “Mediation Agency” as follows: ““Mediation Agency” means a body which supplies mediation services to the public and maintains a roster of certified mediators.”
3	Delete and substitute the following: “There is hereby established a body corporate to be known as the Mediation Board of Trinidad and Tobago hereinafter referred to as “the Mediation Board”.
4(i) (c)	Delete the word “two” and substitute the word “four”.
5	(i) In the subclause 5(2) insert a new paragraph (c) as follows: “to approve applicants for registration in accordance with Section 7 and to revoke any such registration where the requirements for registration are no longer met; and” (ii) Renumber paragraph (c), as paragraph “(d)” .
7	Add the words “or the Fourth Schedule” immediately after the words “Third Schedule” in sub-clauses (1) and (2).

**First Column
Clause**

**Second Column
Extent of Amendments**

8 (1)

Insert a “,” after the word “programme” in line six.

8 (2)

- (i) In line three, substitute the word “contains” for the word “contained”.
- (ii) Add after the word “register” the words “of approved mediation training programmes”.

10

Insert a new clause 10 as follows:

“Confidential information” means any information expressly intended by the source not to be disclosed, or which is otherwise obtained under circumstances that would create a reasonable expectation on behalf of the source that the information shall not be disclosed and includes-

- (a) Communication, oral or written, made in the mediation process, including any memoranda, notes or work-product of the mediator, mediation party or non-party participants;**
- (b) an oral or written statement made or which occurs during mediation or for purposes of considering, conducting, participating, initiating continuing or reconvening mediation or retaining a mediator; and**
- (c) any other information expressly intended by the source not to be disclosed, or obtained under circumstances that would create a measurable expectation on behalf of the source that the information shall not be disclosed;”**

Renumber the subsequent clauses 10,11, 12, 13, 14, 15 as 11,12, 13, 14, 15, 16

11 (2) (c)
(Renumbered)

- A. (i) Insert the word “or” at the end of the paragraph.

11(2)(d)
(Renumbered)

- (ii) Delete the word “or” appearing at the end.

11 (3)

- B. Insert “quotation marks” before and after the word “offence” in line one.

12 (3)
(Renumbered)

Delete the word “The” at the commencement thereof and substitute the words “Subject to subsection 11(2) the” .

**First Column
Clause**

**Second Column
Extent of Amendments**

14 (1)
(Renumbered)

Insert the words “other than a criminal matter” immediately after the word “matter” in the first line.

15
(Renumbered)

Delete the headings

“PART V”

“RULES, REGULATIONS AND REPEAL”

16
New clause

A. Delete and insert immediately after renumbered Clause 15 the following new Part V as follows:

“PART V

COMMUNITY MEDIATION

Regulations **(16) The Minister may make Regulations governing Community Mediation including-**

(a) the delineation of communities for the purposes of the Act;

(b) the procedure for community Mediation as a result of self referral or voluntary access.

(c) the use of certified mediators and mediation centers.”

B. Renumber subsequent clauses 16, 17, 18 as 17, 18, 19.

Heading

Insert a new heading immediately above clause 17 as renumbered as follows:

“PART VI

REGULATIONS AND REPEAL”

17
(Renumbered)

A. Delete subclause (1) and the word “(2)” appearing immediately before the words “The Mediation Board” in line one.

B. Insert the words “with the approval of the Attorney General and subject to affirmative resolution of Parliament,” immediately after the word “may”

18
(Renumbered)

A. Delete the word “(1) at the commencement of the section”;

B. Delete the word “Proceedings” occurring after the word “Disciplinary” in line one;

C. Delete the words “this section” and substitute the words “section “17” in the penultimate line;

**First Column
Clause****Second Column
Extend of Amendments**

	D. Delete subsection (2)
First Schedule 4(5)	Insert the word “parties” after the word “mediation” in line two.
Second Schedule	Delete the word “Proceedings” from the heading.
Third Schedule	A. Insert the word “Training” before the word “Certification”; in the title to this Schedule. B. Delete the word “Training” in the heading to Part I of the said Schedule. C. In Part III, add the words “Regulations” after the word “Programmes” to the heading of the Part.

December 15, 2003

ACKNOWLEDGEMENTS

The Committee expresses its gratitude to Ms. Claire Blake, Ms. Stephanie Daly and Mrs. Deborah Mendez-Bowen for their guidance, advice and assistance.

The Committee also expresses thanks to Ms. Dawn Dolly and Mrs. Shaarda Maharaj who served as Secretary and Assistant Secretary.

Thank you

December 15, 2003

SIGNATURES:

JOHN JEREMIE

CHRISTINE KANGALOO

MUSTAPHA ABDUL HAMID

DANA SEETAHAL

CAROLYN SEEPERSAD-BACHAN

**MINUTES OF THE FIRST MEETING OF THE SELECT COMMITTEE APPOINTED BY THE
SENATE TO CONSIDER AND REPORT ON A BILL ENTITLED,
“THE MEDIATION (NO. 2) BILL, 2003” HELD IN COMMITTEE ROOM NO. 4
RED HOUSE, PORT OF SPAIN ON THURSDAY DECEMBER 04, 2003**

PRESENT

Mr. John Jeremie	-	Chairman
Mr. Mustapha Abdul-Hamid	-	Member
Mrs. Christine Kangaloo	-	Member
Mrs Carolyn Seepersad-Bachan	-	Member
Miss Dana Seetahal	-	Member
Ms. Dawn Dolly	-	Secretary
Mrs. Shaarda Maharaj	-	Assistant Secretary

INTRODUCTION

- 1.1 The Chairman called the meeting to order at 2.26 p.m. and apologised for his lateness which was due to an emergency.

DETERMINATION OF A QUORUM

- 2.1 The Committee agreed to the Chairman’s proposal of a quorum of three Members inclusive of the Chairman.
- 2.2 Accordingly, the quorum was established as three Members inclusive of the Chairman.

TERMS OF REFERENCE

- 3.1 The Chairman pointed out the Terms and Reference of the Committee. He also drew Members’ attention to Standing Orders 52 (1) and (2) of the Senate, which states inter alia that, “ a Committee shall not discuss the general merits and principles of the Bill, but only its details.”

OTHER BUSINESS

- 4.1 The Chairman invited Members to give suggestions on the manner in which the Committee should proceed with its work. The Committee agreed to the following:
- ❖ Representatives from the Office of the Chief Parliamentary Counsel will be invited to the meetings of the Committee. Their role will be of a consultative nature.
 - ❖ The decision on whether other technical/ experts advise will be required was deferred.
 - ❖ The Committee will examine the Bill clause by clause.

REQUESTS

- 5.1 The Secretary was requested to forward to all Members for the next meeting:
- ❖ Act No. 13 of 1998 and Act No. 45 of 2000; and
 - ❖ The Section on “Mediation” from the “Final Report of the Cabinet appointed Task Force on Prison Reform and Transformation”.

ADJOURNMENT

- 6.1 The Chairman thanked Members for attending and adjourned the Meeting to Tuesday December 09, 2003 at 9.00 a.m.
- 6.2 The meeting was adjourned at 2.48 p.m.

CHAIRMAN

SECRETARY

December 05, 2003

**MINUTES OF THE SECOND MEETING OF THE SELECT COMMITTEE APPOINTED BY THE
SENATE TO CONSIDER AND REPORT ON A BILL ENTITLED,
“THE MEDIATION (NO. 2) BILL, 2003”, HELD IN COMMITTEE ROOM NO.4
RED HOUSE, PORT OF SPAIN ON TUESDAY DECEMBER 09 2003**

PRESENT

Mr. John Jeremie	-	Chairman
Ms. Christine Kangaloo	-	Member
Mr. Mustapha Abdul Hamid	-	Member
Mrs Carolyn Seepersad-Bachan	-	Member
Ms Dana Seetahal	-	Member
Ms. Claire Blake	-	Chief Parliamentary Counsel
Ms. Dawn Dolly	-	Secretary
Mrs. Shaarda Maharaj	-	Assistant Secretary

1.1 At 9.24 a.m., the Chairman called the meeting to order and proffered an excuse for his lateness. Special welcome was given to Ms. Claire Blake, Chief Parliamentary Counsel.

CONFIRMATION OF MINUTES

2.1 The motion for the adoption of the minutes as amended was moved by Ms. Seetahal and seconded by Ms. Kangaloo. The amendment made was:

In paragraph 5.1, insert third Item to read, “*Research explaining the terms of reference of select committee*”.

2.3 Accordingly, the Minutes of the First Meeting were adopted.

MATTERS ARISING FROM MINUTES

3.1 Ms. Seetahal pointed out that pages 42, 44 and 46 were missing from the Extract taken from “*The Final Report of the Cabinet appointed Task Force on Prison Reform and Transformation*”. The Clerk apologised and subsequently provided the missing pages.

3.2 Ms. Kangaloo inquired about the research, which was to be provided by the Secretary explaining the terms of reference of select committees. The Committee discussed the implications of Standing Order 52 (1) and (2). The Chairman reiterated the point that the Committee does not have the power to discuss the general merit and principles of the Bill, but only the details.

3.3. The Chairman acknowledged the presence of Ms. Claire Blake, Chief Parliamentary Counsel who was attending at the request of the Committee.

CONSIDERATION OF THE BILL

4.1 The Chairman invited Members to consider the Bill and proposed that they proceeded clauses by clause with the examination. All agreed.

4.2 After lengthy and careful deliberations, the Committee considered eleven (11) clauses of the Bill. The Committee agreed that clauses: **1, 3 and 6 need no amending.**

4.3 The Committee proposed amendments to clauses **2, 4, 5, 7, 8, 9, 10 and 11.**

4.4. The amendments were detailed as:

First Column

Clause

2

Second Column

Extent of Amendments

- (i) In the definition of “*Certification and Accreditation Regulations*”, delete all the words appearing after the word “*Schedule*”.
- (ii) In the definition of “*Code of Ethics*” delete all the words appearing after the word “*Schedule*”.
- (iii) The definition of “*Confidential information*” is to be deleted and inserted at the beginning of Part III of the Bill.

It was suggested that “Confidential Information”, as stated in the Bill, is based upon substantial law and play a critical role in the legislation. It is not merely an explanatory note and, therefore, should be part of the operational section of the Bill.

Ms Blake was requested to report back to the Committee as to whether the words, “*Confidential Information*” was mentioned in Part I or II of the Bill, before making a final decision.

- (iv) In the definition of “*Disciplinary Regulations*” delete all the words, appearing after the word “*Schedule*”.

4 (1) (c)

Delete the word “two” and substitute the word “four”.

5

- (i) In subclause 5 (1), insert a new paragraph “e” as follows:
“to register...”
- (ii) In subclause 5 (“) insert a new paragraph “d” as follows:
“to approve the register...”

Ms. Blake was requested to do the appropriate draft”.

First Column

Clause

7

Second Column

Extent of Amendments

Add the words “*or the Fourth Schedule*”. immediately after the words “*Third Schedule*”.

- 8 (1) Insert a “*comma*” after the word “*programme*” on line six.
- (8) (2) (i) In line three, substitute the word “*contains*” for the word “*contained*”.
- (ii) Add after the word “*register*” the words “*of approved mediation training programmes in a Part reserved for such programmes*”.
- 9 An Amendment was not proposed at that time. However, the clause is to be amended bearing in mind the following issues:
- (i) The term “*Mediation Agencies*” should be better defined
- (ii) The definition must be consistent with the intention of the clause
- (iii) Whether the intention is to include the whole Judiciary or a specific department within the Judiciary. Caution should be paid to the separation of powers doctrine.
- (iv) Whether the bodies mentioned in the clause were deemed to have automatic approval as mediation agencies.
- Ms. Blake undertook to do the necessary drafting.
- 10 (i) Insert a new subclause (1). This clause should define “*Confidential Information*”.
- 10 (3) (c) re-numbered B. (ii) Insert the word “*or*” at the end of the paragraph.
- 10 (3) (d) (i) re-numbered (iii) Delete the word “*or*” appearing at the end.
- 10 (4) re-numbered C. Insert “*quotation marks*” before and after the word “*offence*” in line one.
- 11 The Committee will seek clarification on whether the intention is to have the “*certified mediator*” immune from giving evidence as a witness on information gained during the mediation process.

ISSUES RAISED

5.1. Arising out of the discussions some issues were raised, which the Committee felt, were important and relevant to the Bill. However, conclusions on the issues were deferred, pending clarification from the advisers. These issues were:

- a) Questions were asked as to whether:

- (i) *The Board should be given some legal status in law*
- (ii) *The Board can sue and can be sued*
- (iii) *The Board could be sued as a corporate body*

b) The role of “community mediation” within the ambit of the Bill was unclear. The legislation is based upon court annexed mediation whilst “Community Mediation” is based upon state sponsored mediation involving communities without any court intervention whatsoever.

5.2 Minister Hamid explained the whole concept governing Community Mediation. However, it was felt that the provisions made in the Bill (definition and section 15[1]) were inadequate. It was agreed that advice should be sought from the technical persons on how best to strengthen those provisions without going beyond the remit of the Committee.

5.3 The matters which should be borne in mind when drafting the amendments are:

- (i) *Referrals by the Minister*
- (ii) *Self referrals (walk in)*
- (iii) *Educational programmes in furtherance of conflict resolution*

5.4 Ms. Blake was requested to draft the necessary amendments to reflect that position.

REQUESTS

6.1 The Committee agreed that they needed some technical assistance to clarify some issues. They, therefore, requested the Secretary to invite Ms. Stephanie Daly and Mrs. Deborah Mendez-Bowen to the next meeting of the Committee.

ADJOURNMENT

7.1 The adjournment was taken at 12:03 p.m. after the Chairman thanked all Members and Mrs. Blake for attending the Meeting.

7.2 The meeting was adjourned to Friday December 12, 2003 at 1:30 p.m.

CHAIRMAN

SECRETARY

**MINUTES OF THE THIRD MEETING OF THE SELECT COMMITTEE APPOINTED BY
THE SENATE TO CONSIDER AND REPORT ON A BILL ENTITLED,
“THE MEDIATION (NO. 2) BILL, 2003”, HELD IN COMMITTEE ROOM NO.4
RED HOUSE, PORT OF SPAIN ON FRIDAY DECEMBER 12 2003**

PRESENT

Mr. John Jeremie	-	Chairman
Ms. Christine Kangaloo	-	Member
Mr. Mustapha Abdul Hamid	-	Member
Mrs Carolyn Seepersad-Bachan	-	Member
Ms Dana Seetahal	-	Member
Ms. Claire Blake	-	Chief Parliamentary Counsel
Ms. Dawn Dolly	-	Secretary
Mrs. Shaarda Maharaj	-	Assistant Secretary

INTRODUCTION

1.1 At 1.47 p.m. the Meeting was called to order at 2:47. The Chairman welcomed all Members of the Committee. He also welcomed and thanked the advisors for responding to the Committee’s request to assist the Members in their deliberations.

CONFIRMATION OF MINUTES

2.1 The Chairman proposed a deferral of the Confirmation of the Minutes of the Second Meeting and suggested that the Committee proceed to the consideration of the Bill in order to properly utilize the knowledge of the advisors present.

MATTERS ARISING FROM THE MINUTES

3.1 The definition of “Confidential Information” was revisited. The Chief Parliamentary Counsel informed the Members that the term “Confidential Information” was not used in the Bill and therefore the definition could be inserted at the beginning of Part III of the Bill.

3.2 The issue of the Mediation Board’s ability to sue and be sued was also considered. Ms. Daly advised the Committee that the Board should be Incorporated in order to safe guard against such occurrences.

3.3 Clause 5 of the Bill was revisited, it was agreed that new Clause 5 (c) should read, “to approve applicants in accordance with Section 7”.

3.4 Clause 9 of the Bill was also reviewed. Ms. Mendez-Bowen informed the Committee that the list of bodies mentioned at Clause 9 was consistent to bodies that would have an established Roster of Mediators.

3.5 Clause 11

3.6 Paragraph 51 (a) and (b)

CONSIDERATION OF THE BILL (Continuation)

4.1 Section 12 of the Bill was approved without amendments.

4.2 Section 13(1) was amended as follows; insert immediately after the word “matter” the words “other than a criminal matter”.

4.3 The four schedules of the Bill were also reviewed and the following amendments were made:

- ❖ First Schedule: 4(5) Insert the word “parties” after the word “mediation” in line two.
- ❖ Second Schedule: Delete the word “Proceedings” from the heading.
- ❖ Third Schedule:
 - (i) Insert the word “Training” before the word “Certification”: in the title to this Schedule.
 - (ii) Delete the word “Training” in the heading to Part I of the said Schedule.
 - (iii) In Part III, add the word “Regulations” after the word “Programmes” to the heading to this Part.

4.4 The Chairman thanked the advisors for their valuable contributions and gave them a minute to leave before resuming the business of the Committee.

CONFIRMATION OF MINUTES

5.1 The chairman revisited the confirmation of the minutes

DECISIONS TAKEN AT MEETING

6.1 A Draft Report will be prepared for consideration by the Committee.

6.2 Amendments to the Draft Report will be made immediately in order ensure that all for the Members sign the Final Report.

6.3 The Chairman also drew Members attention to S.O 74, which addresses the issue of premature publication of Evidence.

6.4 The meeting was adjourned to Monday December 15, 2003 at 2.00 p.m.

ADJOURNMENT

7.1 The Chairman thanked Members for attending the Meeting. The meeting was accordingly adjourned to Monday December 15, 2003 at 2.00 p.m.

CHAIRMAN

SECRETARY

December 15, 2003