

LEADR in India – January 1998

by Sue Duncombe, LEADR Training Consultant

Objectives

LEADR was supported in this initiative by a grant from the Australia-India Council ("AIC"). The objectives of LEADR and the AIC were to:

- introduce mediation and conciliation as alternative dispute resolution procedures in the Indian legal, government and professional communities;
- train a group of professionals who will in turn be able to provide mediation and conciliation services throughout India;
- support the development of professional associations in India which are aimed at providing excellence in the provision of mediation and conciliation services
- promote awareness of mediation and conciliation in the community and private sectors;
- promote and foster a relationship between Australia and India to facilitate the on-going exchange of ideas and information in the legal profession and ADR specifically.

General overview

In terms of meeting each of the above objectives there is no doubt that the project was a resounding success. The level of acceptance and enthusiasm is clearly demonstrated by the report at the conclusion of the Mumbai workshop that the Chief Justice of the High Court, upon the recommendation of one of the judges who had attended the workshops, had expressed a wish that all judges of the High Court in India be trained in mediation and conciliation. In addition, five participants in the New Delhi workshop expressed a wish to form a chapter of LEADR and to continue their association with LEADR on an informal and formal basis. Negotiations between LEADR and these interested parties are continuing. However, the Australian High Commissioner, Mr Rob Laurie, expressed his support for the concept.

What did we do?

LEADR conducted three workshops, one 4-day mediation workshop in New Delhi from 20-23 January 1998, another 4-day mediation workshop in Mumbai (Bombay) from 27-30 January 1998 and a one-day introduction to mediation workshop in Calcutta on Saturday 31 January 1998. The workshop in New Delhi was opened by The Hon. Justice A.A. Anand of the Supreme Court of India and the Australian

High Commissioner, Mr Rob Laurie. Mr K.K. Modi, the President of FICCI, (Federation of Indian Chambers of Commerce Incorporated) welcomed the official party.

During his speech, Justice Anand commended the course and the philosophy behind it. He stated that delay was eroding the confidence of the people in the legal institutions. Urgent solutions were required. Many civil claimants were left without a civil remedy. He referred to mediation as part of the CDR processes (Consensual Dispute Resolution) and stated that it was designed to provide a broader range of DR procedures beyond "win/lose". His speech demonstrated a good understanding of the philosophy behind mediation. He referred to the Indian legal profession as suffering from "appeal-itis" and endorsed the use of mediation as a good alternative.

Mr Rob Laurie then spoke and welcomed the LEADR team. He acknowledged the support of the Australia India Council in bringing LEADR to India. He referred to the goal of establishing institutional links and bilateral exchange of information, including the possible mutual exchange of mediation panel members.

There were 44 people in the workshop, with representatives from government, the law, industry and commerce. The participants were an impressive group and friendships have been made between the Australian trainers and coaches and those attending the workshop. From the beginning the workshop went well. The live demonstration was conducted by Joanna Kalowski, Sue Duncombe and Pat McIntyre with the assistance of Micheline Dewdney and Alan Ogg who volunteered their services throughout the whole of the day. This provided a very strong beginning and set the tone for the whole workshop. On the final day we were joined by the rest of the Australian mediators. In all the team consisted of:

Greg Burnett, solicitor and mediator, Canberra
Nicoletta Ciffollili, solicitor and mediator, Perth
Micheline Dewdney, mediator, Sydney
Sue Duncombe, mediator and director of LEADR, Sydney
David Francis, solicitor and mediator, Sydney

Robert Hemphill, solicitor and mediator, Sydney

Joanna Kalowski, mediator, Sydney

Pat McIntyre, barrister and mediator, Darwin

John McDermott, solicitor and mediator, Sydney

Alan Ogg, architect and mediator, Sydney.

In addition, my son James Ogg acted as course assistant and photographer in both New Delhi and Mumbai. We were also joined by Mel Francis, wife of David Francis.

On day two of the course Mr S.R. Grover, a senior arbitrator and legal practitioner, spoke to the group at the end of the day. He stressed the need for arbitration and mediation. He reinforced the need for a process which eliminated the "victor/vanquished" mentality of litigation.

He threw out a challenge to the legal profession to be responsive to their clients' needs and interests, not only their legal interests. He identified barriers to the success of mediation in India, including the appearance of weakness, the lack of expertise of mediators and conciliators and finally, attorneys fixed in the adversarial approach.

On the final day of the course the coaches were very impressive. It was fabulous to see so many committed people who had paid their own way to be part of this initiative. We had agreed to provide up to 10 coaches and trainers on the final day, and in the end we had 9 people involved. This would have been very manageable had the course numbers remained at 30. However, with 45 people requiring coaching on the final day it was a very stressful experience for each of us. Most coaches were required to assist with at least two groups, which reduced the effectiveness of the coaching model. However, everyone kept up their spirits and the course evaluations from the participants reflect the value of the contribution of the coaches to the training program.

The Australian contingent (absent Robert Hemphill who had commitments in Sydney) then travelled to Agra and Jaipur on the major sight-seeing part of the trip. The splendour of the Taj Mahal was almost

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eclipsed by the wonder of Fatehpur Sikri at 6am on a freezing morning, no shoes on the marble and stone floors, with the sun gradually rising! It was fabulous.

We arrived in Mumbai on Monday 26 January, with the workshop commencing the next day. 51 people enrolled for the course and they all had to fit into a room which was designed as a meeting room for about 30. The toilets in the building did not flush. There was no soap or toilet paper provided to us. However, spirits were high once again and the workshop was very well received by the judges, lawyers, accountants, engineers and other professionals who had joined us for this second workshop. Once again the coaches made an impressive contribution on Friday 30 January. This time we had to contend with 17 groups of mediators between 9 coaches, which was reduced to 7 in the afternoon when Joanna and I had to leave to travel to Calcutta the next day.

Calcutta was planned as a one-day workshop. In the end we were involved for a much shorter presentation due to threatened airline strikes and a political rally in the centre of Calcutta on that day. We were, of course, teaching at a venue in the centre of Calcutta!

Despite the hassles, the introduction to mediation that we were able to provide was well received. We did not conduct formal evaluations, but we know informally from discussions at the 10 minute break at 12 noon, that the participants were interested in and excited by the presentations. One person in the group said that he would like us to come back to train all of the accountants in Calcutta! Another person asked me to stay on to assist in the resolution of a family dispute in which he was involved.

The comments made by the participants demonstrate the success of this venture:

- *What a wonderful experience to have been associated with the LEADR team. I wish it was much longer to at least continue to be associated.*
- *I would like all of our Australian friends to be with us again - both as people and teachers. We need to learn the techniques you have so well adopted. Also, a cross-cultural interaction opens our hidden self more.*
- *This course leaves an impression on the balancing mind of a man that there is much to learn about the system as a*

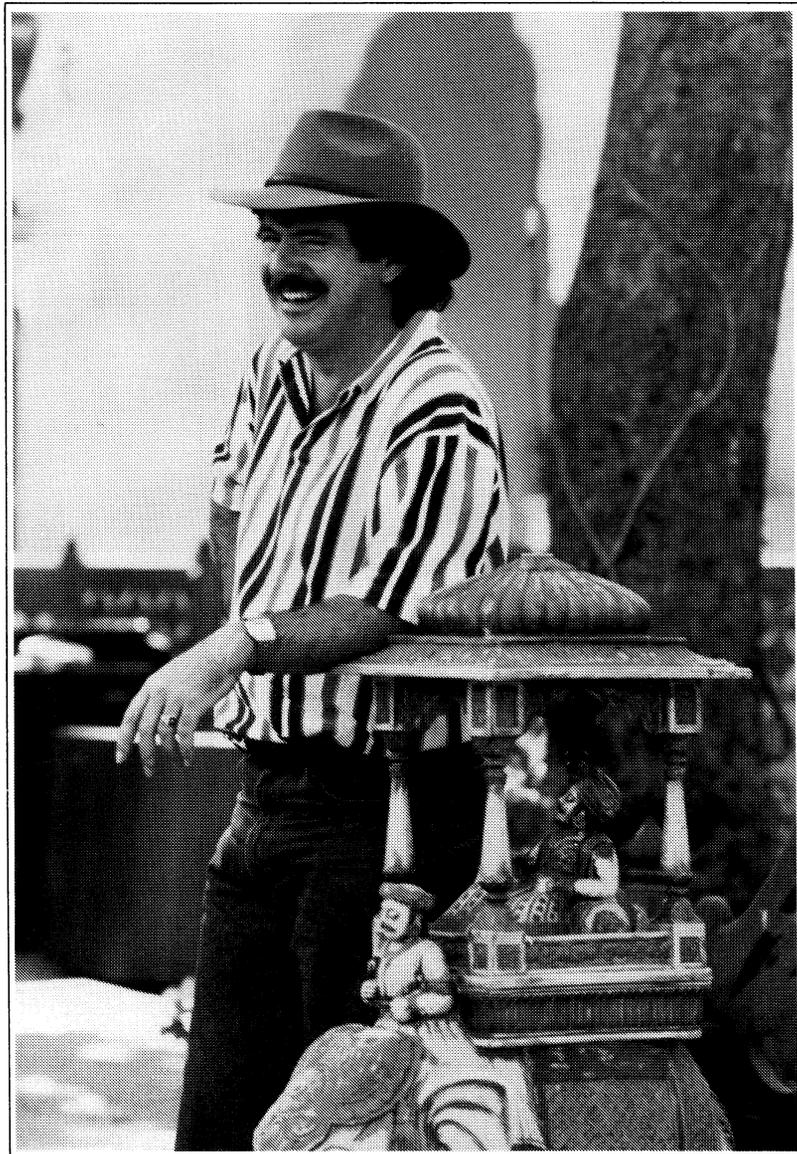
whole. One can see and was able to compare the judicial systems prevalent in India and Australia. Unfortunately the Indian mind has become very very litigious resulting in larger unresolved disputes piling up day by day. Such courses and mediation principles will help inculcate the feeling to resolve the disputes without much heart-burning and involved expenses.

- *This programme must be given to all advocates and judges and administrators. It is a unique and par excellent programme.*

Thanks to everyone involved in this successful venture, including the Australia-

India Council and in particular John Powys and Jim Kennan QC; the Australian High Commission in India and in particular Mr Rob Laurie, Asha Das and Manisha Awasthi; and the LEADR team and in particular Sue Thaler, Michele West, Alison Border and Donna Harb.

LEADR owes an enormous debt of gratitude to the coaches and trainers involved in this initiative. Thanks to each of you for your support, resourcefulness, assistance, dedication, good humour and acceptance of difficulties. I know that we will each have very fond memories of the experience (once our illnesses have been cured)!



Darwin barrister and mediator - Pat McIntyre - member of the LEADR team in India