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Exporting ADR

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Sue Duncombe and Sue Thaler

In early 1998 LEADR conducted three mediation workshops in India, one four-day mediation workshop in New Delhi, another four-day mediation workshop in Mumbai (Bombay) and a one-day introduction to mediation workshop in Calcutta. 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.

The workshop in New Delhi was opened by The Hon Justice AA Anand of the Supreme Court of India and the Australian High Commissioner, Mr Rob Laurie. Mr KK Modi, the President of the Federation of Indian Chambers of Commerce Incorporated, welcomed the official party.

Justice Anand commended the course and the philosophy behind it. He stated that delay was eroding the confidence of the people in Indian legal institutions. Urgent solutions were required. Many civil claimants were left without a civil remedy. He referred to mediation as part of the Consensual Dispute

Resolution processes and stated that it was designed to provide a broader range of dispute resolution procedures beyond 'win/lose'. 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. 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. On the final day we were joined by the rest of the Australian mediators: Greg Burnett, Canberra; Nicoletta Cifollilli, Perth; David Francis, Sydney; Robert Hemphill, Sydney and John McDermott, Sydney.

On day two of the course Mr SR Grover, a senior arbitrator and legal practitioner 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.

We arrived in Mumbai on Monday

26 January, with the workshop commencing the next day. Fifty-one people enrolled for the course and they all had to fit into a room which was designed as a meeting room for about 30. 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.

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. 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 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! The following 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 programme must be given to all advocates and judges and administrators. It is a unique and par excellent programme'.

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. ●

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