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## Enforcing contracts quickly, with help from the neighbors

ANTHONY FORD AND OLIVER LORENZ

Anthony Ford, a lawyer with more than 30 years of experience in New Zealand, had just been named Tonga's chief justice in September 2006 when the minister of justice told him that the cabinet was not happy with Tonga's low ease of *Doing Business* in *Doing Business 2007*. The efficiency of contract enforcement was especially poor, where Tonga ranked 126 of 175 countries. The minister asked Ford what could be done.

His answer? Bring technology to litigation. Computerization cut the average time to enforce contracts from 510 days to 350 by October 2007, making Tonga the world's top reformer in contract enforcement. In just over a year the reform struck close to 100% of dormant cases, placed all others on a strict timetable, introduced mediation, and increased the jurisdiction of the Magistrates' Court.

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### Computerization, computer staff, and computer training

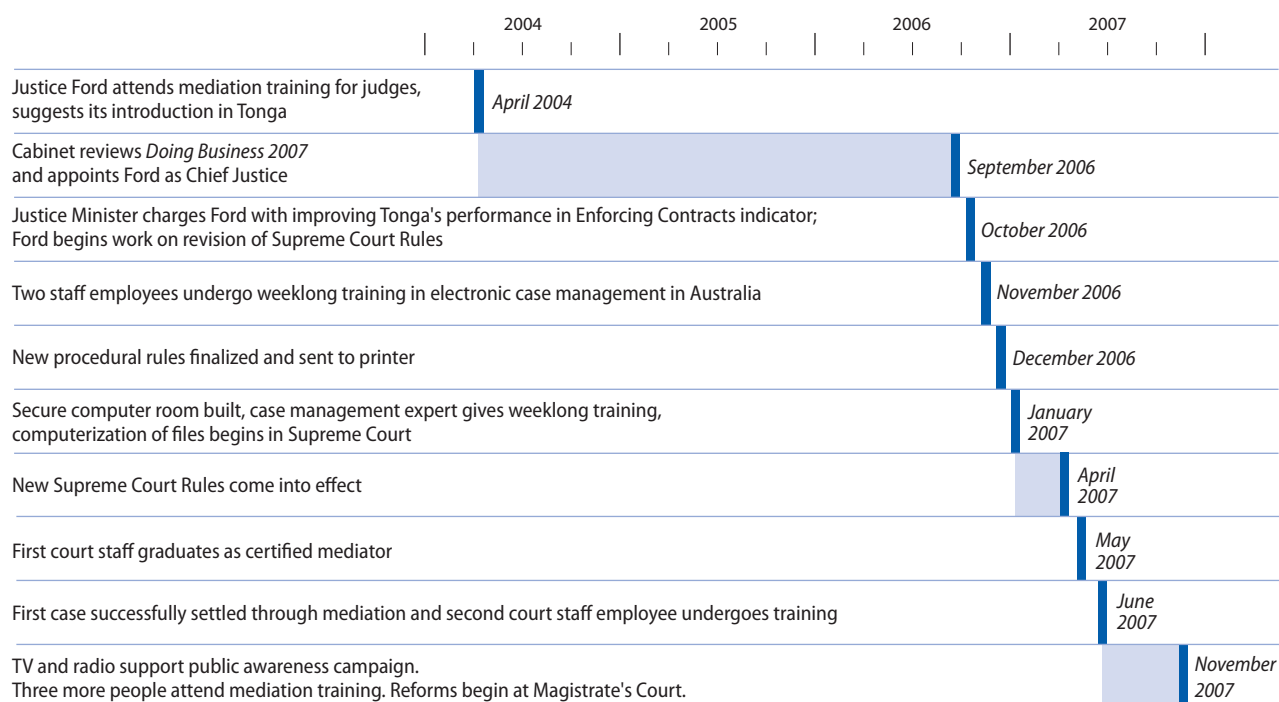
It was clear to Ford that inadequate technology was hampering commercial litigation. At the Supreme Court, the country's highest civil jurisdiction, computers were not available to staff until 2002. And because the staff were not taught to use the computers, they continued to compile court records manually even in 2006. Meanwhile, talks were under way with the Federal Court of Australia about introducing electronic case management to reduce the backlog of hundreds of cases. In 2007, computerizing the court filing system became a priority. The chief justice contacted the Federal Court in Sydney, putting electronic case management on the fast track.

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### Seeking the motivated

When the court began computerizing old files at the beginning of 2007, the chief justice selected 2 court staff to travel to Australia for a week-long course in case management. Neither had a traditional background in information technology. Sione Taione had been a court interpreter, recently appointed the deputy registrar. But Ford noticed his good understanding of computers and his enthusiasm for computerized case management. The other staff member, word processor operator Loma Lausii, had never been outside Tonga. The novelty only motivated her further. Both selections proved inspired. Sione quickly became an expert on computers and their capabilities for case management. Loma led the team, working overtime to digitize old files.

FIGURE 1

**Timeline of court reform in Tonga**Source: *Doing Business* database.**Security for computers, comfort for staff**

After rioting in November 2006 the court saw the need for a secure computer room. Finding the funds that time of year was cumbersome, but Australia agreed to cover the expenses. The work began in January 2007. The room and the adjacent office were air conditioned and fitted with new computers, a printer, and furniture. An expert from the Federal Court of Australia gave on-the-spot training—critical follow-up.

Staff in the computer room enjoyed an air-conditioned workplace. But others did not. Because of tight funding, the chief justice paid personally to install an air-conditioning unit for the general office. Of the gift, Ford says, “in the overall scheme of things this may have only been a small gesture, but it resulted in a highly spirited workforce.”

**Weeding out dormant files**

Computerization meant that all case files had to be examined. While systematically reviewing every document in the court's files, staff discovered several hundred dormant cases. The new Supreme Court rules, in force since April 2007, provided that such cases could be struck down, but only after giving the plaintiff

28 days notice. It was obvious from the sheer number of files that giving notice would be time consuming. And in many cases such notices would serve no purpose because the file indicated that litigation would not go forward.

So, the chief justice decided to strike all cases where no action had been taken for 2 years. He instructed that proceedings be reinstated if the plaintiff complained about the 28-day notice. In the end, 518 actions were struck, with only 10 reinstated on a plaintiff's request.

With only current files in the electronic system, the Supreme Court can track all cases so that none becomes inactive. By administrative order, the registrar must refer to the chief justice any civil litigation file inactive for 3 months. Unless further steps in the proceedings occur within 28 days, the action is struck.

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### Setting time limits

The computerized case management system, based on the Australian Federal Court's, uses an off-the-shelf spreadsheet program to store case information, including the complete timeline. Long delays are detected automatically. This allows the judge to remain on top of the docket without becoming mired in the details of case administration.

Computers also allow performance measurement. The Sydney District Court—which ranks 11 in the *Doing Business* indicator for contract enforcement—sets the goal of disposing of 98% of its civil cases within 18 months. After discussions with court staff, Ford set the goal of disposing of 90% within 2 years, taking into account the backlog of cases. So far, it has proved feasible.

The court strove for efficiency in other aspects of justice. For example, consistently informing the public of relevant decisions through the local newspapers often discourages similar cases, alleviating the burden on the court. To kick-start the mechanism, the chief justice slashed a prohibitive copying fee for court decisions to be paid by journalists and ordered that copies of all decisions with public relevance be sent to the press. The computer system has already been further refined—for example, by gathering data on juvenile offenders, of interest to UNICEF.

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### Mediation—successfully implemented

When Ford redrafted the Supreme Court rules at the end of 2006, he included a provision for mediation—virtually unheard of in Tonga. Resistance from the Law Society was thus anticipated. The society president favored striking alternative dispute resolution from the text. But making mediation, initially at the

judge's discretion, contingent on both parties' consent ultimately accommodated his concerns.

The new rules came into effect on 12 April 2007. To encourage parties to consent, nothing said in mediation can be used in a later trial should mediation fail. The mediators may report to the judge only the progress and the outcome. Order 45 also states that reference to mediation is neither justification to stay proceedings nor cause to delay the trial preparation.

To reassure the parties, the rules require that mediation be exercised only by trained or sufficiently experienced persons. Tonga had no formally recognized mediators. With assistance from the Federal Court of Australia, the deputy registrar went to Sydney, where he completed a week of training in a mediation program. Later, the registrar traveled to Wellington, New Zealand, for similar training. Because the court's registrars are respected members of Tongan society, they are suited for the task.

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### Talk about it

Tonga publicized the benefits of mediation during its inaugural Law Week, a week-long conference in November 2007 rallying judges from Pacific island jurisdictions. On opening day a public awareness workshop was held on mediation. The chief justice spoke on a radio show, to the press, and on television, and the public awareness campaign was also broadcast over the radio. The World Bank Group provided the funding. The Federal Court of Australia helped produce a mock mediation DVD in Tongan, screened nightly on Tongan television during Law Week. About 100 copies of the DVD went out, 1 to every village committee and church committee. According to Ford, the DVD had a tremendous impact in getting the mediation message to the public.

Mediation usage continues to grow, freeing court resources. Most litigants now consent, and 8 in 10 reach settlements out of court. Recognition of the success came from the Tongan government, the country's largest litigator, which agreed to be a party to alternative dispute resolution in December 2007, after initially opposing it. The World Bank Group has funded more mediators to be trained and accredited, and plans to undertake further awareness training with Tonga's Law Society and Magistrates, so that court-referred mediation is fully functional. The Supreme Court is exploring a dedicated building for mediation.

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**All staff on board**

Ford notes the importance of staff support when introducing a new system, especially when the reformer comes from a different country.

From the outset, court staff was excited about the new case management program and the heightened efficiency around the office. Once, the head office of the Ministry of Justice even complained that staff was working until 9 pm on some nights, not taking paid overtime. Ford instructed staff to work regular workweek hours but immediately noted that they responded by working on Saturdays.

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**Next in line—the Magistrates' Court**

At the end of 2006 Tonga increased the jurisdiction of the Magistrates' Court for civil cases from 1,000 to 10,000 pa'anga, or roughly \$5,000. The number of cases now eligible for the less formalized and faster Magistrates' Court is substantial, alleviating the burden on the higher jurisdiction. And the measure builds judicial capacity. Magistrates must now have better command of the law, dealing with disputes with 10 times the value at stake. The parliament, initially hesitant, agreed only in exchange for professionalizing judicial education at the lower court. In November 2007 work began to extend the Supreme Court's case management system to the Magistrates' Court and discussions are underway amongst Magistrates to consider making mediation available at the lower court.

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**The right time for reform**

The reform comes with the courts as busy as ever, with about 500 additional criminal cases coming through the system after the November 2006 riots. The reformed procedures enabled the courts to handle the huge influx with diligence. Once this unexpected case load clears, the court should make further inroads on the time to enforce contract claims. The Tongan judicial system is becoming recognized as one of the most efficient in the Pacific islands. Neighboring islands recently expressed interest in the case management system, and the registrar may travel there to pass on the knowledge. Meanwhile, the chief justice has requested a survey of user satisfaction, repeated every 3 years if possible, to gauge progress.