ANNUAL BREAKFAST MEETING OFFICE OF THE FINANCIAL SERVICES OMBUDSMAN

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Humanizing Institutions in the Financial Services - Why mediate?

The Honourable Mr. Justice Vasheist Kokaram

Chairman, Mediation Board of Trinidad and Tobago

Introduction

1. It is a privilege to have been invited to speak at this Annual Breakfast Meeting to promote the positive impact mediation can have in the financial services sector. Some of you have already been to judicial settlement conferences or mediations. Some may have ventured into my settlement conferencing room. Many of you are converts to mediation and many are yet to be convinced. Why should we mediate? What's so great about settling a claim? Where is the economics in such a model that I should pay out to any Claimant who sits at my doorstep and plays the violin to pluck at the heartstring of the capitalist (if it exists). In this our Hobbesian world, which is "nasty, brutish and short", what would ever compel me to ask the question how do you feel? Rather than what is your case? Or worse yet to know that I am right and armed with the tools of TunZu's "Art of War" and Machiavelli's "The Prince", I must deny myself the victory cry after a full blown trial and instead go into a private mediator sanctum and discuss emotions and think about the risks if I am wrong?

2. What then should motivate us to go to mediation and settle than to bludgeon my opponent on their heads with my book of rights?

3. So here is a clip of Kramer in the famous comedy series "Seinfeld". He was burnt by a cup of Java coffee and his lawyer who has sued the coffee company is now about to meet the directors of the coffee company and their insurance agent to discuss a settlement. Let's see how that goes. (See you tube clip Kramer and Java coffee settlement www.youtube.com/watch?v=gORMNmZgE3E).

4. Was money important for Kramer? Kramer placed more value in having a future need satisfied over past injuries or wrongs. It demonstrates the type of thinking outside the box and the idea that claims can be settled in non-monetary terms which addresses needs and underlying causes of disputes. Professor Hazel Genn so famously said of mediation some years ago at the Hamlyn Lectures "**Mediation is just about settlement not about just settlement"**. I wonder whether mediation is not about settlement at all. Settlement at times connotes some aspect of giving up, of accepting something inferior. An obsession on settlement can send the wrong signal that mediation is about the sacrifice of rights rather than a thoughtful working out and satisfaction of interests which underlie rights. I prefer to call mediation

"Peace talks" and what you call settlement is really a "Peace Deal". You did not settle. You made peace. You devised a working plan for your future. A peace plan which addresses relationships, motives, interests, the present reality of the respective parties, bringing parties to a common understanding. For the Java Company they saved face and won a loyal customer. For Kramer he feels like the king of the world. It is a conversation of empowerment whereby parties become self-aware of their own responsibilities and their ability to resolve their dispute on just terms. It is a process where indeed the fundamental rights of individuals their dignity and respect, their sense of being and worth are preserved. It is social justice in action. If an agreement is achieved, the parties version of a peace plan is obtained then all the better. If not it was important that a conversation was engaged.

5. The thesis of this morning's presentation of humanizing our institutions is to demonstrate not only the economic value of mediation but its social and therapeutic value, second to demonstrate the Court's changing attitudes towards mediation and finally to demonstrate the increasing importance of dispute intervenors and mediation agencies such as the Ombudsman's office in the new landscape of peaceful interventions.

The Economic and Therapeutic Value of Mediation

6. First I turn to the economic and therapeutic value of mediation. One of my early experiences of the magic of mediation was while I was an advocate. The hired gun in my former legal practice. Our firm was engaged in a legal battle over the winding up of a pension plan, the litigation was endless and drawn out. As one piece of litigation was over there was a second. Then more parties started joining in. Months became years. We attended a mediation and in two sessions and with hard negotiating the matter was resolved. My clients and the opponents were still employees of the same company. They still shared a past and present relationship. Yes it was a big payout but it was over. The hemorrhaging of the company ended. There were satisfied employees. There was closure and there was no end of salutations for the manner in which that mediation allowed the parties to get closer together finally there was peace. There were handshakes when before there were fist shakes.

7. I recall many instances as an attorney sitting as a mediator in settling disputes we were able to work with disputants to work out creative solutions to solve debt claims such as working out barter arrangements and in one case a simply apology. These intangible values are priceless in negotiating peace deals.

8. The adversarial system of justice does not have as its central goal of itself the promotion of peace. Its focus is on the protection of rights which should result in peace. It's a system designed to resolve a dispute on a model that is argumentative and combative and not collaborative or consensus building. It encourages the pursuit of self-interests at the expense of collective interests. It pays little significance to the fact that to exist we co-exist and rights that may be pursued through the lens of the individualist can in many cases damage the very society we are trying to build. The pursuit of million dollar investments in a company that has fallen on hard times pays little regard for the noble objectives for which the loans were initially advanced. The pursuit of unrealistic claims in damages serves only to prolong an unnecessary fight. The adversarial environment of the collapse of financial institutions focuses on who is wrong rather than what can we do to rebuild. In an adversarial climate our social needs are conditioned on positioning, leveraging, rhetoric and individualism. Any notion of relationship building or let alone collaboration is a misnomer. Peace may be the by-product of adversarial justice but adversarial justice serves, in most cases, to exacerbate the underlying drivers of disputes than heal them.

9. In his book "**Life without Lawyers**" Phillip Howard commented about the justice system that "Litigants for years live under a dark cloud of hyperbole and accusation. Plaintiffs sue for the moon almost every time and why not the leverage is enormous like putting a legal gun to someone's ribs. Lawyers for guilty defendants can do the same thing, making up whatever arguments will postpone the day of reckoning…legal and administrative expenses consumed is 54 percent of the total cost. It would be hard to design a more inefficient compensation system..."

10. In contrast, mediation reframes the conversation and places peace as the prime focus of the discussion with the affixing of rights its by-product. An investor trying to recover its investment loaned to a promoter of a huge carnival fete in litigation spanning 18 months went to mediation. The promoter was also, it was discovered in the mediation, the owner of a radio station. So much were the parties focused on

bringing an end to the dispute a creative solution of paying back a portion of the debt through free air time advertisements of the investor's services was part of their peace plan.

11. Many years later as a Judge frequently conducting judicial mediations I am convinced that it is a superior form of justice and peacemaking. So much so I do not see mediation as an alternative but mediation and the skills of mediation are quite an appropriate part of any dispute resolution process. We view ourselves now not as judges but as expert problem solvers. Spending the majority of time in resolving disputes especially in judicial settlement conferencing the judicial activity of judges is now engaged in a wide plethora of conflict resolution skills from negotiation, mediation, arbitration, dialogue, problem solving. In a judicial settlement conference the Claimant was badly damaged in a vehicular accident. He suffered contusions to the brain, multiple lacerations. He is confined to a wheel chair, could barely talk and his head is bent to one side. His mother commenced the claim for him and I insisted that the wheel chair bound victim attend the conference. There we were the victim bound to the wheel chair on one side. His mother's hand on his own. His sister behind him with a rag wiping his mouth occasionally and on the other side his lawyer and the other lawyers and the insurance representative engage with me over loss of future earnings. Multiplier and multiplicand. We are all experts here in working that out. After 20 minutes of wrangling over figures whether he would be able to work or be promoted or have a better job, whether he would be married, have a family all affecting his future. We were poles apart. I asked the mother what do you think. She quietly looked up and said "You can give me a million dollars. You can give me 1 cent. You can never give me back my son." I let those words sink in to all of us in that room. Emotionally the dynamics in that room changed not about money but about people their hopes their dreams their loss. The case settled within 10 minutes of that intervention.

12. Our justice system which spews out a monetary sum very seldom represents any form of human comfort to the grieving victim or mother or to their family. Money in these cases diminishes the value of the human spirit and monetizes an invaluable and unquantifiable human resource of Dignity. In this sense there is disconnect between the adversarial judicial system, law and equity and the deeper realities of the human condition. In law there is no dispute of the eminently salutary rules of

Cornilliac v St. Louis (1965) 7 WIR 491 and the principles of compensation. The law of tort justifies the payment of money as a "solace" for a wrong. But how do we explain that to widows and children whose futures are converted into damages. The law has given them "damages". I think they know they are already damaged. Or the mother who no longer can get pregnant because of a botched surgery. Mediation addresses deeper layered issues that lie under the surface of the legal disputes as presented. For insurance companies when your insureds are faced with such huge malpractice claims what is the victim's sense of justice? Money? Or dignity? What is the doctor's sense of justice? Communicating they did everything they could have done? Reputations?

13. In a negligence malpractice claim I had cause to comment that after all the years of wrangling there was no apology. I am not speaking about an admission that I was wrong. But an expression of regret. And not a Trini apology "Ok you want me to say sorry." But a genuine note of contrition and acknowledgment of the dignity of the person grieving. I made the note that:

> "The medical profession should recognise the human element in these types of cases and to a large extent grieving victims and families simply want an explanation, information and acknowledgement of human error, an apology. To this extent some jurisdictions notably some states in the United States and Canada have implemented "Apology legislation". Such legislation enables medical professionals and hospital authorities to say "sorry" without the apology being used as evidence of wrongdoing. It recognises that apology is a part of meaningful disclosure and consistent with the principles of honesty and transparency that are integral to a system of shared accountability. It underscores how important apology and disclosure are in addressing medical errors. Such legislation can go a long way to the settlement of medical claims. At the very least it can focus minds on the need to provide sincere expressions of regret and remorse satisfying an emotional need of affected parties if not at least serving as a reminder of the fallibility of humans."[1]

14. There is no greater sense of satisfaction when I see social justice in action in the mediation room. Indeed the unmeritorious claims are even withdrawn after an

[1] Paragraph 174 of **Karen Tesheira v Gulf View Medical Centre Limited and Crisen Jendra Roopchand** CV2009-02051.

apology is given or an acknowledgement of self-worth. But those emotions, those drivers of any dispute must be addressed and can only be addressed in the mediation room. What is a negligence claim but reframed as valuing your responsibilities? What is a debt collection claim but let us respect each other's limitations and resources? What is a corporate oppression claim but a desire to ensure we are treated fairly?

15. For me the mediation argument goes way beyond any notion of reducing the backlog of cases, such peace deals are about humanizing our institutions and freeing ourselves to make real and practical decisions which either makes economic sense or has a greater therapeutic value to our overall society.

16. Having set up then what I think are the values of mediation as a peace making mechanism allow me to examine briefly some empirical data. Let me share some macro-economic figures of peace. The Institute of Economics and Peace has developed a correlation between economics and developing a peaceful environment. It thus rationalized a peace index as gauging a country's ability to be more resilient and flexible to change in peaceful non-conflict settings. On the Global Peace 2016 Trinidad ranks 84 in the world out of 163 as a peaceful country rising from 97 in 2015. In the Positive Peace Index Report 2016, Trinidad and Tobago was ranked 50 out of 162 nations. In the Positive Peace report, it was noted that "Positive Peace must be strong in all domains to provide resilience and support high levels of internal peace." Positive peace facilitates progress, makes it easier for businesses to sell, entrepreneurs and scientists to innovate, individuals to produce and governments to effectively regulate. Positive peace can also ensure better economic outcomes, better levels of gender equality and environmental performance. It was highlighted that "The economic impact of violence on the global economy in 2015 was $13.6 trillion in purchasing power parity (PPP) terms. This figure represents 13.3 per cent of the world's economic activity (gross world product) or $1,876 for every person in the world. To put this in perspective, it is approximately 11 times the size of global foreign direct investment."

17. In our litigious climate the wider picture is that of "Would our resources be better spent not in organized warfare but in conditions of peace?" For business in a non-litigious atmosphere monies can be diverted to more profits, to more production, to more benefits for staff. In an adversarial climate our impulse is to fight, to send the

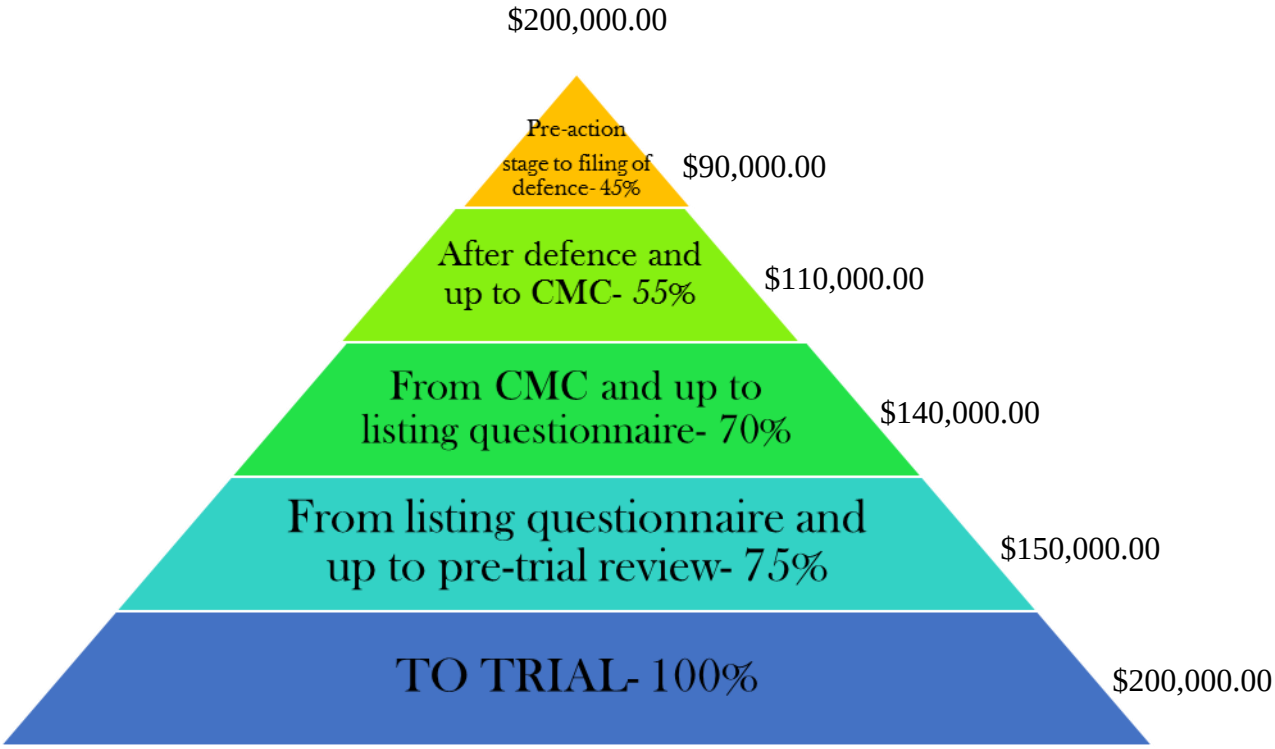
lawyer letter to "See you in court" or "To take your rig and go!" But how would our resources be better spent if there were mechanisms to peacefully resolve disputes and which mechanisms serve to engender collaboration, voice and consensus and not divisiveness, individualism and oppression.

18. At the micro level this case for such peace processes in our systems is borne out. The Honourable Chief Justice Ivor Archie, who is a certified mediator, pioneered two highly successful court annexed mediation projects in 2010 and 2014. In 2014 260 cases were sent to mediation and judicial settlement conferencing. There was almost 70% settlement rate in mediation. Ninety Eight percent (98%) of the parties indicated they were satisfied and will try mediation again. One hundred percent (100%) of the attorneys were satisfied and will try the process again. It shows there was a value in relationship building. Venting, moving forward, dealing with a dispute in an informal atmosphere and non-adversarial atmosphere. As one party commented on his evaluation form "Mediation Rocks!"

19. Notably, the highest percentages of settlements were achieved in running down actions and commercial actions of 79% and 70% respectively. In debt collection there was settlement rate of 71% …thousands of dollars to millions of dollars settled in an average of 5 hours. There was a huge value being placed by people being able to be heard, to be given a voice, for the system for persons to be sympathetic to their concerns. A multi-million dollar oppression case was settled in 2 sessions. It was a family company, the directors were at war since the passing of the main shareholder their father. There is no dollar value to be placed on the treatment of human emotions.

20. The Honourable Chief Justice Ivor Archie expressed the view that "Since the inception of the Court Annexed Mediation Pilot Project in 2011, and having reviewed the reports on that project with a settlement rate of 60 per cent, and a customer satisfaction rating of 95 per cent, the question in my mind has been, not whether mediation should form part of our judicial system, but rather and quite simply, why was it not done a long time ago." Lord Ward commented in a Court of Appeal judgment **Egan v Motor Services (Bath) Ltd** [2007] ADR.L.R. 10/18 that mediation "is not a sign of weakness... It is the hallmark of commonsense."

21. Is there an economic argument for peace? Let me take a commonsense approach. Let us take a claim be it commercial claim, personal injury, debt collection, it is for a modest sum of $200,000.00. Here are your cost exposures in the civil litigation process under the prescribed costs regime of the CPR.



22. If you had an economic choice at what stage would you prefer to end your dispute?

23. (Dollar auction).

24. I have frequently explained to attorneys your role (as peacemaker) is to devise three (3) concurrent plans for your client. Yes your trial plan, yes your pre-emptive remedy plan but most importantly your settlement plan. What are your best offers, your BATNAs and WATNAs. Have you prepared your negotiations and how to get the best deal in resolving this dispute without escalating costs and the opportunity costs lost over prolonged disputes?

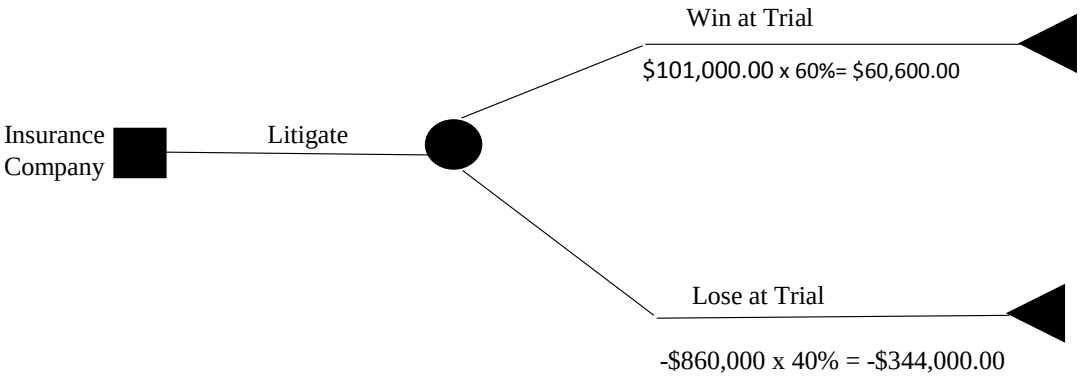
25. Here is a decision tree and its analysis. I usually engage with parties in personal injury claims when we are stuck. Let's take a risk assessment. There is a claim for property damage and personal injuries of $1million:

Prescribed Costs on 1 million dollars = $109,000.00
Attorney fees- $200,000.00

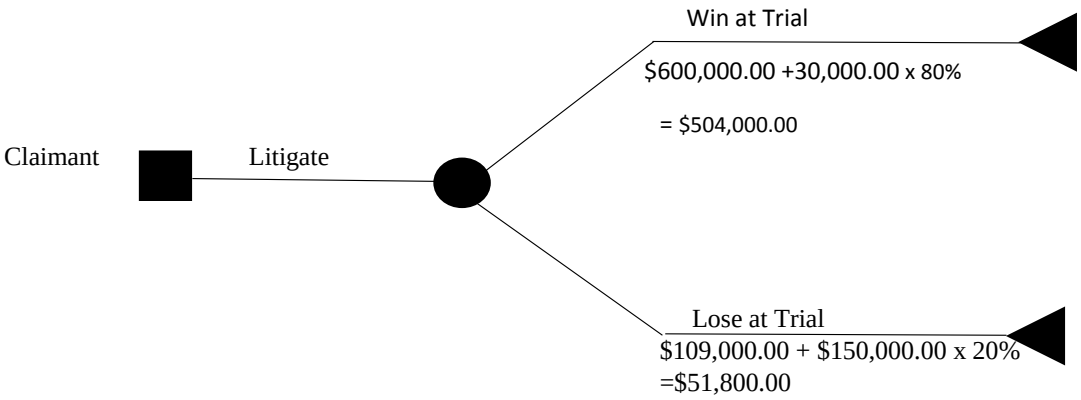
DECISION TREE FOR CLAIM OF 1 MILLION DOLLARS IN A PERSONAL INJURY CLAIM

Prescribed Costs on 1 million dollars = $109,000.00

Attorney fees- $200,000.00



Good Offer- Win at Trial- Loss at Trial
$60,600- $344,000= -$283,400.00



Good Offer- Win at Trial- Loss at Trial
$504,000- $51,800= $452,200.00

26. You are all business men by nature you know about cutting deals, working figures, negotiating. Why is that skill lost when the lawyers have entered into the picture? In 2015 and 2016 in running down actions between 55% to 66% of those actions were being disposed of at trial. A stage where I have shown you is where you are exposed to the greatest risk in time and money. If that is the picture where on

average there are 5,000 cases filed in the High Court (I'm not even counting the petty civil court where the limit has increased to $50,000.00 claims) with an average of 1,300 being defended you cannot hope for 1,300 trials. That is not an economical system of justice. That is not a humane system. Let's do the math, it makes no sense to try every case.

The judicial attitude to mediation

27. Throughout the Caribbean the Judiciary since 1994 has been advocating a mediate first philosophy. Since 2010 the Judiciary has been on an aggressive campaign to change the adversarial and litigious culture. One of the key change agents is the Judge. As I explained we no longer see our role as ushering you meekly to a trial or sitting a silent sphinx to supervise the mass casualty that is the litigation. Our duty is to resolve cases justly, that is economically, proportionally and fairly. Under the CPR the case managing Judge's role is to encourage parties to use the most appropriate means to resolve conflict. Critically we have built up an ethos of encouraging parties to mediate and to attend judicial settlement conferencing as I have demonstrated because of, in my view, its greater social value.

28. Allow me to make it absolutely clear any party that rushes to our courts without exploring mediation or a suitable resolution mechanism without good cause do so at their peril. Part 66 and 26 of the CPR empowers the Court to sanction any party that unreasonably refuses to explore an ADR mechanisms or follow pre-action protocols by imposing a cost order regardless if that party has won its case. The Court can as I threatened to do in a claim some months ago strike out the claim for non-compliance with the pre-action protocols.

29. You have heard much in the public domain about Pre-Action protocols. "My lawyer will issue you a pre-action letter see you in Court". That is sadly misleading, erroneous and contrary to the express protocols and their spirit. A pre-action letter is not a routine letter as some box ticking exercise that you must issue as a step before filing a claim. Properly construed it is an advisory of a claim and an invitation to meet and treat. It in fact represents the ***3 building blocks of best practice in civil litigation in fulfilling*** three (3) major objectives in the change in the culture of civil litigation. These are:

(i) Encouraging the exchange of early and full information about the prospective legal claim;

(ii) Enabling parties to avoid litigation by agreeing a settlement of the claim before the commencement of proceedings; and

(iii) To support the efficient management of proceedings under the CPR where litigation cannot be avoided.[2]

30. These objectives are birthed from the aims outlined by Mr. Greenslade where he stated that one of the aims of the pre-action protocols was to ensure early and sufficient notification of potential claims.[3] The pre-action protocols aim to enable parties to settle their disputes without the need to start proceedings and in the event that proceedings cannot be avoided, to support the efficient management of the matter by the Court.[4] In a word, the pre-action protocols support a system of dispute resolution, either narrowing the issues for resolution or resolving the claim in its entirety. By the time you then come to your first appointment in court the parties will be better apprised of the relative risks and be able to make a more informed decision of the most appropriate means of resolving the claim.

31. In **The Organisation of Small Contractors v The Ministry of Works and Transport** CIV APP. CA P 251 & P 252/2016, Mendonca JA In his oral decision, he stated:

> "The rules regulate how you come to court and what are the protocols to do so. And the pre-action protocol is clear; it's that you should first issue this letter, unless the circumstances do not allow you to do that, so as to prevent the matter, if possible, coming to court at all, and that you follow that protocol. They exist together and I think that is clear by looking at it."[5]

32. It amazes me to see how many litigants and lawyers are unprepared at their first appointment at the CMC room. I conducted a survey by issuing questionnaires to parties before they came to the first case management conference. 30% had joint meetings to discuss the case or held negotiations. Only 59% exchanged

[2] Paragraph 1.4 of the Pre-action Protocols.
[3] Judicial Sector Reform Project: Review of Civil Procedure by Dick Greenslade, Chapter 6, page 45.
[4] Blackstone Civil Practice 2015, Chapter 8, paragraph 8.2, page 130.
[5] The Organisation of Small Contractors v The Ministry of Works and Transport CIV APP. CA P 251 & P 252/2016, page 4.

documentation. A staggering 5% had an idea of the quantum of damages. 95% of the clients (claimants and defendants) are therefore coming to Court having absolutely no idea of their risk, their exposure, their liability or their entitlement in damages! We would not pay $45.00 unless we know that we are getting the loaded box KFC special deal. Why invest even $450.00 without an appreciation of cost and risks? It demonstrates to me the high emotionalism associated with disputes.

33. The trend of judicial authority is towards imposing sanctions on the unreasonable party that fails to explore ADR or acts unreasonably. I shall share some examples: If the successful party has deliberately exaggerated the claim and failed to initiate ADR[6]. It reminds me of a claim which was settled for a paltry $40,000.00 a running down action. But the claim was for 1.5million. The defendant driver had hit a pedestrian and from my reading they had no case but the defendant faced with such an inflated sum claimed by the claimant defended the claim by saying that the accident was not the driver's fault and pleaded agony of the moment. What was the agony "a spider crawled up my arm" I called it the "Incy Wincy spider case." I asked him to describe the spider but there was silence perhaps it was too small to remember. But the fact is that matter was dragged on until eventually settled at trial. What a waste of resources. If the parties had realistically met and dealt with other emotional issues underlying that dispute the outcome would have been positively different.

34. Other instances where the Courts have sanctioned parties for not giving mediation its due significance: Agreeing to mediate when it is very late in the litigation: **Nigel Witham Ltd v Smith and another** [2008] EWHC 12 (TCC). Rejecting ADR before the hearing of an appeal. Where parties agree to mediate and then withdraw from mediation the day it was due to take place. **Leicester Circuits Ltd v Coates Brothers plc** [2003] EWCA Civ 333.

35. Another indicator of how strongly we feel about this peace process is that our CPR would soon be amended to make it mandatory that you mediate after you have filed your defence save in certain circumstances. The concept would be that the litigant will be given 2 bites of the ADR cherry- mediation at an early stage and then if the

[6] **Painting v University of Oxford** 2005 EWCA Civ 161.

matter does not settle you get another opportunity for an evaluative styled mediation before the settlement conference Judge.

36. The statistics already reveal that about 70% of the cases can settle in mediation and later of those cases a further 30% can be settled at JSC. In RDAs alone in 2015 there were 508 matters filed. Four hundred (400) could be settled before the CMC and later a further 60 at JSC reducing your trials from 142 as it now stands to less than 100. It is indeed a case of the vanishing trial.

37. In Jamaica they have operated on an automated mediation scheme since 1998 the only difference is that they have not implemented the scone layer of JSC which we propose.

The Financial Services Ombudsman's Office – An Expert Dispute Resolver

38. What does all this mean for the judicial system and the claims that you will meet on your desk tomorrow or this afternoon. In a mediation we believe that opportunities are endless, that a path to peace calls upon us to be creative and solution oriented. Permit me to end by examining the important role of the Ombudsman's Office and the prospect of humanising your own institutions in the dealing of disputes.

39. The Ombudsman's office is by nature a mediator. You have all agreed to bring to the Ombudsman certain levels of disputes for settlement. I am happy to learn that the Ombudsman's staff have equipped themselves with mediation skills. More importantly they have the requisite skills and knowledge in the industry, they live breathe and sleep financial services issues, they are experts in the area and specialised dispute resolvers in finance services disputes in the financial sector.

40. As I have indicated earlier the strong economic and social value in mediation. The judicial authority which robustly encourages mediation. Naturally, before any claim in the financial services is filed an intervention by the Ombudsman's office should be your first step. At present the system is voluntary. Having said that, there is a huge moral authority of having such a system established under the auspices of the Central Bank and it even presses home the point that you are all wedded in a relationship with the Central Bank and with one another. In many instances claims are really disputes between financial service providers with their clients creating the factual backdrop to bring them to the table.

41. What if it is not voluntary? What if it was mandatory with a process to opt out? The Judiciary will soon be telling you, you must mediate before taking another step in Court. So if you are rushing to Court press your pause button. Rethink your strategy. Utilize the experts in your field to help you get to **Yes**.

42. How do the matters settle by the Judges engaged in judicial settlement and active case management? We talk to the parties. We discuss risks. We examine interests. We examine options. The normal skills of any mediator, we employ active listening skills, we empathise. The Judge has huge moral authority. What is the difference with the Ombudsman's office? What greater moral authority can you have than someone from your own industry one who by your own agreement is "well respected within the community? Of impeccable integrity with good negotiating and diplomatic skills, with a professional degree in business, law, accounting or finance. Fifteen years (15) years' experience in the financial services sector. Previous experience in dispute resolution. Characteristics that fit and proper criteria as defined in the Financial Institution Act". With the greatest respect you flatter us Judges who may not possess half of those qualifications. Judges become experts with experience. You already have your own expert.

43. In **O' Hara v ACC Bank PLC** [2011] IEHC 367 Charleston J in delivering his decision on the liability of the bank to the client who had borrowed money and invested substantial sums in a financial product marketed by the bank claimed the solid world bond. The interest payments by the bank significantly outstripped the return on the bank's bonds. The matter was settled by the Ombudsman and Charleston J struck out the claim that the client subsequently brought in the High Court on the ground that the matter had already been resolved or (issue estoppel). Although it was determined under the UK's own particular legislative scheme, importantly the Court observed that. "It is obvious that the office of the Ombudsman is different from an ordinary court… The office has established an informal expeditious and independent mechanism for the resolution of complaints. He is not engaged in resolving a contract law dispute in the manner in which the court would engage in the issues… he resolves disputes using criteria which would not usually be used by the Court... he can make orders which a Court would not normally make such as directing the financial services provider to change its practices in the future… remedies in compensation, rectification, the changing of a practice

providing reason or explanations for behaviour… provide remedies wider than those exercisable by a court".

44. There is an extremely strong case therefore for the financial services community to look to its leading dispute resolver to craft useful and utilitarian solutions to resolve disputes and prevent them from spiralling out of control leading to escalating conflict and diverting your precious resources in this guava season towards corporate realignment and adjustment necessary in these times.

45. Do not be surprised if you bring a claim in my court and I send you to the Ombudsman's office. This is in fact permissible under Part 26 of the CPR.

46. If from an economic and humanistic perspective it is desirable that we obtain an early intervention you have two (2) options. First establish a mediation unit of your own in your companies to deal with consumer complaint and claims. There is no limit to what claims can be resolved. Indeed in mass casualty claims faced by insurance companies in the wake of 9/11 and Katrina, mediation type schemes were established to work with consumers to settle the majority of their claims.

47. The second option is to ensure you have a robust Ombudsman's office well-staffed with personnel trained in mediation to handle your claims. I see no difficulty in the Ombudsman's office handling personal injury claims. What is needed and vital to that process is the sharing of information, medical reports and assessment of injuries.

48. The Ombudsman's office can be used by the judiciary as an Early Neutral Evaluator (ENE). I have long advocated this among the legal profession, get a neutral opinion of your risk and likely exposure in most cases it will be just the reality check that your client needs.

49. The techniques deployed by the Ombudsman's office I am told is not usually face to face. But there is no impediment to this. A full range of negotiating skills are in play, shuttle mediation, caucusing and arbitration, binding and non-binding evaluations.

50. The Ombudsman's office can introduce ODR online mediation and negotiate settlement from your offices via skype or face time.

51. To preserve the integrity of the process I urge certification under the Mediation Act and explore suitable amendments under the Central Bank Act and your Terms of Reference to make mediation at the Ombudsman's Office mandatory.

Conclusion

52. When as bankers and insurance companies we say we "put customers first" or "here's to life" or "where people are people" or "Serving people, trust, integrity and quality" we need to find ways of humanising our systems and deal justly with claims. It is indeed a reframing of our reality to purge the adversarial system of that combativeness and to foster a new process of collaboration and information exchange.

53. What we saw in the Commission of Enquiry into the collapse of insurance companies and financial services were simply stories of human tragedy. An adversarial system of Commission of Enquiry that serves to ascribe blame is ill suited to a process of dialogue, expression and consensus building. What do you do when an 80 year old pensioner who had been investing all his savings in the HCU. His health was deteriorating. His grandson one of 12 got news of the HCU collapse but tried to hide the information from his ailing grandfather fearful that it might even make him worse. He tried to get money to help his grandfather get medical treatment but there were no funds. He took all his money from FCB and put it into HCU because of rates. But when the news broke his grandfather went to HCU himself to hear a different story from the officers. He has lost everything. He got a stroke 3 days later and died. What is our human response? "They looking for risky rates it good for them, that's their loss."

54. Yes they have taken risks. But don't we all take risks. The driver takes a risk in overtaking. The pedestrian takes risk in crossing the road. The business partner takes a risk in entering business with another. The investor takes a risk in lending his investment. Life is about risks and life is about the risks we have in the relationships we have built or found ourselves in with one another. The relationships which we have aligned ourselves with, our clients, with each other. The Central Bank and Financial Services Ombudsman's Office are governed by social principles of care, of fairness and of respect.

55. When we open our next running down action, or next oppression case, or next mortgage action, I am not asking you to forget the bottom line, or the red line of businesses but as I have demonstrated we can ill afford as a society, as a small nation, to foster a climate of adversarialism, of hostility in the management of disputes. We are much better off working with one another, collaborating and developing our own peace plans whatever they may be, the rights and boundaries of action will follow. As Judges have tried to humanise the face of justice I ask you as well to humanise your own institutions with mediation and mediation type interventions and I am sure you will ask not why mediation but "Why Not!"

May 25th 2017