

# CFMS (cont)

- A necessary consequence of a well managed CFMS enables the Court to assign cases according to specialization or expertise and appropriate processes and better utilization of limited judicial resources and time.
- ADR with its special features and advantages offers a very useful case management tool and where adopted it plays a critical role in determining whether a case should be resolved judicially or by some other means, e.g., mediation.



"The use of ADR has come to the forefront in the recent years... often less expensive, speedier, and more efficient than trial... something that the courts should encourage litigants to do. When the court is acting as an objective third party, the parties are apt to take suggestions seriously. It is essential, therefore, that the court pay attention to this issue during the pretrial process. Rather than reminding the parties that ADR is available, the court should focus on identifying the issues, claims and cases that may be resolved by ADR."

( Justice Clifford Wallace – Senior US Circuit Judge and Chief Justice Emeritus, Senior Adviser for Judicial Administration to The Asia Pacific Foundation Conference of Chief Justices of Asia and the Pacific – Sept. 1999)

# ADR as CFMS Tool

Most of the cases that get into the court system are capable of settlement by the parties themselves or through the assistance of an impartial third party.

“The Courts are there only to help determine or resolve disputes the parties themselves can not resolve using the best of their endeavors. The Courts should be reserved for those matters that can not be resolved by the parties themselves. They should not be used for every dispute there is.”

*(Beecraft No. 20 Ltd v. Dr. Pok & The State (05/04/01) N2125 endorsed in effect by the Supreme Court in POSF v. Sailas Imanakuan (09/11/01) SC677)*

In reality parties instead of showing good faith and endeavoring to resolve their own disputes, they continue to maintain their respective positions.

Court annexed ADR enables the parties to reach settlement without the need for a trial or waiting for a decision from the court and or failing settlement, help narrow down the issues for adjudication.

ADR as part of the CFMS enables the parties to disclose the basis of their claims or defence thereto and make a critical assessment of its possible success or failure with the prompting of the judge or the CFMS manager.

The settlement of more cases through ADR enables the Court to appropriately allocate time and give quality consideration and arrive at a just result or decision in matters where a court decision is required and or necessary.

# Cases Not Suitable for ADR

- Mediation is not appropriate in every case. Generally it may not be appropriate in the following situations without limiting the list:
  - A definitive or authoritative judicial resolution of a matter is required for precedent purposes;
  - Where there is a need for public sanction in cases for example there is a violation of a statute or regulation;
  - A party either by himself or through a lawyer is not able to negotiate;
  - History of violence as in family settings unless there are appropriate security measures in place;
  - Important Constitutional issues; and
  - At this stage Criminal Cases.

# Imperative to Change (cont)

- PNG has now come to acknowledge and accept what Chief Justice Wallace said to the Chief Justices of Asia and the Pacific.
- As was pointed out earlier today the Supreme Court (the highest Court in the land) has made authoritative statements for ADR, the latest of which was in *National Capital District Commission v. Yama Security Services Pty Limited (06/06/03) SC707*. Speaking in general terms for all of the courts the Supreme Court said:

“Indeed notions of negotiation, mediation and compromise of disputes is a long-standing traditional custom in all traditional societies in this country and our courts should be able to tap into this valuable custom and develop ADR procedures which are appropriate to our own circumstances.”

# Judicial Leadership Needed

- Court annexed ADR is a new concept in PNG, which the Higher Judiciary is embracing as part of its case management tool.
- Hence it is necessary for the Court to take the leadership because:
  - Most disputants and their lawyers may not know about mediation or ADR unless the Court tells them.
  - We have a number of Acts of Parliament providing for mediation which have failed for a number of reasons and the Judiciary which is addressing some of those problems need to ensure that the process is well established and that it can deliver expedited, efficient and effective resolution of disputes.
  - Not many parties and their lawyers are making real and genuine efforts in good faith to resolving their disputes through negotiations, mediations or other alternatives so the Court's leadership until ADR has taken its rightful place in our country is necessary.
- Courts are gatekeepers

# How does ADR assist business, Commerce and Industry?

- Safe time and costs;
- Safeguard against risks
- Protect business interest
- Build and maintain business relationships
- Enable business to become better negotiators
- Enable businesses to work cooperatively and still make profit
- Enable business owners to spend more time on matters that will further the interest of the business and avoid wastage of time and management energy and resources on conflicts
- Enable business to consider all options on their merit before final decision.



# Conflicts are here to stay

Conflicts are here to stay but it is about finding smarter ways of dealing with them so that the kind of time and resources applied to deal with conflicts can be minimized and freed up for further improvements to ones business for greater returns

I wish you all Happy Mediation/ ADR