

# THE ADMINISTRATION OF CIVIL JUSTICE BILL: AN ATTEMPT TO ELIMINATE THE BOTTLENECKS & DELAYS IN CIVIL JUSTICE DELIVERY

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# A NEW CULTURE – EXPECTATIONS OF JUDGES LAWYERS AND PARTIES

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- Cultural transformation
- The overarching purpose (s. 5(1))
- Obsession with technical rules
- Eliminate or reduce instance of frivolous suits filed for strategic reasons
- Focus on the substance rather than the form
- Parties must establish prejudicial effect of any non-compliance

# CASE MANAGEMENT, SCHEDULING AND THE PARALLEL TRACKS

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- Hearing track
- Applications track
- ADR track

# STRENGTHENING THE PROCESS FOR WEEDING OUT FRIVOLOUS CASES

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- Encourage our courts to make better use of their powers to weed out frivolous cases *in limine*
- We may need to eliminate existing disincentives to the exercise of this power

# THE PROCEDURAL CAUTIONS

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- Enforcement of deadlines in the procedural timetable will be strict (s.50)
- Imposes discipline on both the Bar and the Bench
- Will give rise to contempt proceedings / disciplinary proceedings or both



# THE ABOLITION OF STAY OF PROCEEDINGS PENDING INTERLOCUTORY APPEALS

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- A favourite weapon in the arsenal of tactical litigators
- Stay pending interlocutory appeals to be eliminated except in two narrowly defined instances:
  - Sections 4 and 5 of the Arbitration and Conciliation Act
  - Pre-existing agreement to litigate before the courts of a different country

# THE ABOLITION OF STAY OF PROCEEDINGS PENDING INTERLOCUTORY APPEALS

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Protection:

- Participation in proceedings does not amount to waiver
- Losing party can apply directly to Court of Appeal for stay of execution of final substantive decision of the High Court (“special circumstance”)
- No enforcement until Court of Appeal decides application for stay of execution

# TAKING COSTS MORE SERIOUSLY

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- The absence of a proper jurisprudence on costs is the greatest contributor to frivolous litigation
- Full indemnity basis
- Costs to be claimed and supported with justification
- Taxation of costs to become the norm



# REFORM OF EX-PARTE INJUNCTIONS: MINIMISING CORRUPTION AND MANIPULATION / USING ADR TO RESOLVE APPLICATIONS FOR PRESERVATIVE ORDERS – THE INTERIM REMEDIES REFERENCE

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- *Mischief:*
  - Departure from first principles, motivated by corruption and incompetence
  - Corruption and incompetence drive the proliferation of frivolous cases
  - Corruption and incompetence promote unjust and inequitable outcomes and defeat equality – (deserving cases are declined, undeserving cases are rewarded)
  - Ex-parte orders kept in force as such for inordinately lengthy periods
  - “Zero-sum game” approach

# REFORM OF EX-PARTE INJUNCTIONS: MINIMISING CORRUPTION AND MANIPULATION / USING ADR TO RESOLVE APPLICATIONS FOR PRESERVATIVE ORDERS – THE INTERIM REMEDIES REFERENCE

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- *Solutions:*
- Legislate the first principles – make them clear and mandatory
- Examples:
  - Deserving cases should be rewarded, and undeserving cases should be declined (s.58(1)(a) and (b))
  - Definition of “deserving” cases
    - Irreparable harm (s. 58(1)(c)(iii))
    - No Self induced urgency (s.58(1)(c)(i) and (ii))
    - Full disclosure and no misrepresentation (s. 58(1)(e)(f) and (g))

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- *Solutions*
  - Provisions for making duration of *ex-parte* order short (s. 58(4) to 10))
  - Replace “zero-sum game” approach with “win-win” approach (the Interim Remedies Reference – s.59)

# USING TECHNOLOGY TO ACHIEVE SPEEDY AND EFFICIENT JUSTICE – FILING, SERVICE, RECORDING AND TRANSCRIBING

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- **Technology**
- *Mischief:*
  - Delays – filing, service, recording and transcribing, court space and time
  - COVID-19 pandemic – almost complete shut down of courts



# USING TECHNOLOGY TO ACHIEVE SPEEDY AND EFFICIENT JUSTICE – FILING, SERVICE, RECORDING AND TRANSCRIBING

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- *Solutions:*
  - On-line Dispute Resolution
    - Informational web pages
    - On-line applications/appending case files (Part 4)
    - Electronic template forms online
    - Costs calculator for court fees
    - Tracking proceedings



# USING TECHNOLOGY TO ACHIEVE SPEEDY AND EFFICIENT JUSTICE – FILING, SERVICE, RECORDING AND TRANSCRIBING

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- *Solutions:*
  - On-line Dispute Resolution
    - E-service (Part 4)
    - Making legal submissions online
    - Online interaction between court and parties
    - Electronic recording and transcribing (Part 9)
    - Receiving decisions online

# COLLABORATING WITH THE PRIVATE SECTOR TO DRIVE EFFICIENCY – OUTSOURCING AND CONCESSIONING

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- **Public/Private Collaboration – Outsourcing and Concessioning**
- Three models, depending on each jurisdiction, and resourcing
  - Full court service
  - Outsourcing
  - Concessioning
- Also, opportunity for purely private initiatives – virtual hearing centres

# FAST-TRACK INTERLOCUTORY APPEALS

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- **Fast-Track Appeals**
- *Mischief:*
  - The importance of certain types of proceedings
  - The Anton-Pillar and Mareva examples
- *Solutions:*
  - The provisions on fast-track appeals (Part I I)



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Thank  
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