

Extracts from speech by Turlough O’Sullivan to the Mediator’s Institute of Ireland at the ‘Mediation Works’ Symposium [Royal Hospital, Kilmainham, Tuesday, 27 May 2008]

‘People generally don’t like solutions that are handed down from others. It is almost impossible to please everybody. Yet a mediated solution has a much better chance of doing that. And equally importantly of preserving relationships hereafter’.

Summary of key points

Mediation is not an end in itself but it has a major role to play

It is there to serve the country. We are trying to attract foreign investment to create more jobs for our young people. Our image and reputation in the international investment community matters a great deal in this context.

It does not help our reputation that we have damaging disputes, especially in essential services like public transport, air traffic controllers, energy supply, health services etc.

To sell ourselves better as a modern economy suitable for foreign companies to invest, we need to become more sophisticated at dispute resolution. The old systems have served us reasonably well but we need to modernise further. Disputes are eventually settled so parties need to understand that and take action sooner than later to resolve issues.

Thankfully the highly adversarial days of the seventies are behind us but regrettably our dispute resolution systems have not kept pace. We need certainty especially in essential services. But we need it too in the private sector. As the world becomes a smaller place, investors have many options open to them. They will not be attracted to locations that are noted more for adversarialism and disruption. Rather will they be inclined to invest in locations where the factors of production are favourable but particularly if these locations are enlightened in their policies and can assure continuity of service and maturity in dispute resolution processes and procedures.

Introduction and management of change

Investors understand that flexibility and change are the lifeblood of organisations. Hence it is critical that management and employees work together to ensure that technology and change are accepted as part and parcel of normal operations. There is much progress to report in this connection in Ireland since the seventies, especially due to the influence of the US multinational companies. These companies have introduced modern HR practices that have given employees more options than would normally be available to them in a typical traditional unionised environment.

Specialist staff are available to advise and support employees who run into difficulties thus presenting them with more attractive options than having to join trade unions and have the resolution of their issues considered outside the company environment.

The benefits of Mediation

It is much preferable that employees can have their issues examined within the company environment. Once issues cease to be handled in-house all sorts of complications arise. Regrettably, trade unions see such issues as an opportunity to advance union policy rather than simply resolve a dispute between two parties. Union representatives see issues in terms of their value in other companies and what precedent they can establish. Mediation simply deals with the issues on their merits and has no other agenda.

Mediators concentrate on maintaining and improving relationships. This is a crucial element in that parties have to continue working together and thus the relationship matters. Settlement formulas need to have regard for such realities, especially when it concerns executives, directors, and people operating at senior level in organisations.

It is appropriate to acknowledge that both the LRC and the Labour Court have engaged in mediation style dispute resolution from time to time. It is not easy for these organisations to do so because they operate largely in a traditional adversarial environment where trade unions play a key role.

The independent mediator is able to adopt a very different approach, tailoring strategy to meet the particular needs of each organisation and its employees.

Even in the courts of law, it is now evident that mediation has an important role to play. The dispute involving the broadcaster Pat Kenny and his elderly neighbours is a case in point. The judge proposed that the parties in this case attend mediation to resolve their dispute. Such a development gives mediation important status and demonstrates its unique value.

Mediation has established an important role in marriage breakdown and it is now common for couples to engage the services of a mediator before embarking on divorce or separation. Mediation has a very high success rate both in saving marriages and in assisting couples to part on agreed and amicable terms without incurring excessive legal or emotional costs.

The court system is adversarial in its nature. That means that parties are automatically placed in positions where they must hire lawyers and play by the rules set by others. In mediation however, the rules can be agreed between the parties, thus giving them unique control over their own realities.

The court system is also expensive. Parties are faced with very considerable legal expenses. In mediation the expenses are but a fraction of what parties incur in the formal legal system.

Of more importance is the fact that mediation has a very high success rate in resolving disputes. Parties to a dispute have usually been in a relationship for a long time. Whether they are a married couple or partners in a work relationship, it is inevitable that they have been together and have had much success working together. It is not unusual for partners, in whatever capacity, to experience difficulties in their relationship. In most cases it is the

preferred option to find a resolution. That is very difficult if the dispute ends up the subject of union/management negotiations or a courtroom drama.

Publicity is another important consideration in dispute resolution. Often, cases before the LRC or the Labour Court end up in the public media in one way or another. This is an additional stress on the parties and can cause very serious difficulties. Apart from the impact on our national reputation there are also implications for the individual company and the employees involved in the dispute. Where mediation is invoked, the expense is relatively low and the knock-on publicity non-existent. This ensures that parties can keep their dispute under the radar and don't have to worry about publicity and speculation. This clearly makes it much easier for the parties to resume a normal working relationship.

In the national industrial relations environment it has been possible to put in place mechanisms that mirror the mediation process. Chief among these has been the NIB or National Implementation Body. The NIB was established as part of the national partnership process. It has been a central plank of the success of partnership in resolving very many difficult and high-profile disputes without these either causing major disruption to the public or attracting major media interest.

Ownership of the solution to a dispute is probably one of the most significant advantages of mediation. When two parties have a direct input into the settlement of their dispute it stands to reason that they will be more committed to the outcome and more likely to want to make it work.

Mediation in the workplace

Workplaces have changed dramatically in recent years. Trade union density has declined and employees have become more educated and confident in their own ability. Employees are also less likely to want to have their issues considered as part of a collective action. More likely they will want to have their issues dealt with on an individual basis. They want discretion, privacy and confidentiality. They do not wish to share their issues with the workforce as previous generations once did.

Modern employers are supportive of this philosophy and are prepared to invest in processes that ensure that employees are comfortable in having their issues addressed.

Mediation, Alternative Dispute Resolution (ADR) systems including in-house ombudsman services are now growing in importance and use. Employers and employees both value fast and responsive dispute resolution arrangements that do not drag on interminably and that deliver just and equitable solutions.

People do not want to see their dispute in the media. Nor do they want to see other employees having an influence on how their particular issue is resolved. They want a solution that they can influence rather than one imposed by an external body that may have a vested interest in the outcome. Mediation is the answer for very many such issues. It is competent, discreet, private, and confidential and it will most likely deliver an outcome that is just and sustainable.