

'Mediaiton Works' Symposium

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Panel Discussion 2: Mediation Works – in Civil Communities

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Thanks very much Aine. It occurred to me when Lucy was talking about the plumber, I heard a story on the radio one day about this chap...he needed a plumber too and the plumber came out and there was a bit of a leak I think. And he fixed the leak anyway, it took about a half an hour. So he was delighted anyway...he was a doctor actually, the man. And he said to the plumber how much do I owe you? So the plumber said, €400 please, you know. So he said that...what...outrageous...for half an hour...I am a doctor like and I wouldn't get anything like that you know. So the plumber said, yes, why do you think I gave it up? [laughter] So anyway, there you are. There was a case on the Irish Times yesterday, a legal case, kind of interesting. And you know the way the Irish Times reports these law cases from time to time. But this one was ...it just caught my eye because it had to do with somebody who lost a case. It was kind of related to unfair dismissals but it was a procedural case that was lost. But in any event it turned out that it was a lady who worked as a kind of a senior legal assistant in a solicitors office ..pretty...a medium size kind of solicitors office. But anyway it transpired that they had a row over something to do with work it appeared over how things were done or whatever. And this lady had worked in the place for I think it was about 11 years, you know. So...you know, things had obviously been fine in...in the place up to then. So they had a row. And as they say one word led to another. And the upshot of it was the...the man in charge of the practice ended up giving her her walking papers. And she was challenging this in the court. Now she was challenging this on a procedural point to do with fair procedure. And the judge ruled against her because essentially he said that the fair procedure hadn't yet been exercised. Although it appeared to him that she had been very unfairly treated. But he reserved costs and said, well, you know, when the whole thing works through come back and we will fix all of this up. However, it struck me that ...this was a...this was a kind of a human tragedy in a way. Because this person obviously fitted in very well with the practice. It explained that she had come in as a junior secretarial person and had moved up through the ranks, was obviously fairly valued. But something went wrong. There was a bust up and people said things that they shouldn't have said. And now she was finished, and she went to law and she is now definitely finished. Whatever else happens she will be never working back in that practice again. And however it works out for her financially it

just seems to me to be a terrible human tragedy and actually a loss for the practice itself. And one feels that if there had been any way of conciliating that dispute between the...the two people it would have been a good thing. Now I would say that if she had been a member of a trade union, the trade union would have intervened on her behalf, would have recognised what is going down here, would have known that this will end in tears if it is pushed to extremes, would have advised her candidly about her chances of a successful court action, would not have said you have a great case and subsequently told her at the door of the court that well it depends on how things go what judge we get. And all in all the thing might have been settled in a way that everybody would have pulled in their horns and you know things would have gone back to normal again. But unfortunately this doesn't always happen. And even if it were...if it were necessary, I mean there are the services of the State that could be invoked in a situation like that to provide a kind of a conciliation or mediation of that dispute. So the importance in human terms is absolutely enormous, that disputes in relationships don't go to the extreme where it is not possible to sort of get them back again. I remember telling Turlough a story a couple of years ago that my son was trawling through the various websites that there are around town and given the work I do and the view that the Trotskyist community of Dublin have of me he plugged into a couple of these. And he found a...a thing on it saying that, if that fella had been around at the time of Jesus Christ he would have done a deal with Pontius Pilot. And I had to candidly admit that actually that charge sticks. It is absolutely true. Because that is what we do...we do deals. And if it had have happened at that stage I know the local union official would have gone into Pontius Pilot and said, don't listen to this man, he is emotionally sort of...you know, drained. He has gone through a very bad time, doesn't believe this king thing at all, you know, basically we can sort it out. Anyway...but that's...that's...that's the business of ...of mediation. And really to be honest all my working life though has been in the context of trade disputes actually rather than, you know, the type of thing that a lot of you are interested in, family mediation services or not. It is a kind of a different area. Now we were asked, I think, Turlough and myself, to speak about this in the context of the social partnership structure. And Lucy has gone into that in some considerable detail. I think it's necessary though to say, you know, what social partnership is and what it is not. And most of you will be aware that it was something which was agreed upon just over 20 years ago now in 1987, in particular economic circumstances in this country when things were extremely bad. And really that...those circumstances I think became a sort of a catalyst for doing things a different way, which if you were to try to do it today you wouldn't be able to put that project together again quite frankly. If social partnership ever collapses in this country it won't be possible to put it back together again. Because you need the catalyst of difficult circumstances. And it

itself was derived from the European model which Jacques Delors brought in of social dialogue. And I have always felt myself that it was rather a pity that we called it social partnership. And the reason is that partnership implies a relationship basically of equality which to be truthful about it doesn't in fact exist between capital and labour. That is the fact of the matter. It is an unequal relationship. And it would have been better I think if we just simply called it social engagement or social dialogue or something like that. It would have been more accurate. Because when you speak of something as social partnership people have an expectation of it which actually within our system of industrial relations it is in a way not capable of delivering. But because the word has become so much ingrained in the lexicon of words to describe things in the country today and in Europe generally it would be impossible to change. So I always just advise people to be realistic about what can or cannot be achieved by it. In my own working life I have been involved in the trade union movement on and off actually for about 30 years now in different jobs. And at one stage I worked in the ESB and I had experience of ESB Industrial Council. I had subsequently experience of the Conciliation and Arbitration Scheme of the public service, of the Labour Court, of the Labour Relations Commission, and more recently since I became General Secretary of Congress with Turlough working directly with the Secretary General of the Government in the National Implementation Body, which is a body which kind of troubleshoots the whole social partnership model, doesn't actually solve substantive disputes itself but finds ways for parties of disputes to find a procedural route by which they can actually deal with their...with their problems. The term conciliation is generally associated with the Labour Relations Commission. But really that is more or less to all intents and purposes I think the way things work the same as mediation. And the LRC is ...has a fantastic record as the Labour Court here as well of solving disputes. And as has been ...as has been mentioned we have a very low level of industrial disputes overall in the country. But it's a rough enough business the solving of industrial disputes. I would say one...a good thing to speak of ...of the work of the National Implementation Body, if it didn't do its job properly there would be a good chance that you wouldn't have Aine Lalor here this morning. Because she would have been out on a picket line defending her pension scheme in RTE. But happily in a recent dispute we were able to get to a position where that issue was...although dispute was threatened...was referred to the Labour Court. There is currently a dispute in Cork as you know...now...of which we have not been involved...but the Labour Relations Commission is trying to solve this morning. But that would be quite interesting...I don't know what your ideas or what...how these things happen because the...the...the person responsible for it in the Labour Relations Commission is a man called Tom Pomfrett who is very very experienced. But it won't be pretty when they meet. There will be a

lot of blood around. It won't be nicey nicey win:win situation. That won't apply. Tom Pomfrett will take the head off both parties and he will point out to them that there are so many thousands of customers who haven't got a service. And he will not let I suspect either of the parties out of the room until he has an agreement. So there is a lot of differences between the win:win concept of mediation as applies in family disputes and the sort of more professional adversarial model which applies in industrial relations. I think philosophically there are three approaches to this. One is the Unitarist view which says that there is a common interest on all matters between employers and workers that they can work out in a win:win situation. The other is the Marxist view which is that there are no common interests whatsoever, that the whole purpose of capital is to exploit workers and there are no accommodations possible. And the third not surprisingly is the one which generally is the one which informs what we do, which is the pluralist model, which says that there are some legitimate interests between business and workers and there are areas where their...their interests do not coincide. But a process of distributive bargaining manages to get around these difficulties. Now people also at times invoke game theory to explain this. The...I think Lucy actually touched on it in her presentation there. The concept you often...most often see is the prisoner's dilemma, the idea if you know a certain proposition is accepted by both parties you get a positive solution. If both parties take opposite lines on it they ultimately get a very negative dispute on it. Now this is a ...a theme of economics principally...actually. And in the way I have described it that you will know that I didn't actually understand it very fully. But game...the game theory is extensively used in economics. Less so...it does tend to in theory inform some of the work of mediation. Let me just make a few personal observations as well about how these things work. I think first of all you cannot settle any dispute or problem unless people actually want to. There is a stage when people want to settle and are ready to settle. And it's a waste of time trying to do it in...in advance of that. It is also necessary to find out what is the real story in any situation as distinct from the facts which are presented to you. Because if you delve down you will find the real story is very often quite different, as are the real objectives of any of the parties. They may ostensibly say their objective is one thing but in reality it may be another. I remember when I worked in the communications section in the Post Office we used to have many disputes about different things. But they always boiled down to overtime, right. So that...you gradually found that out after a while. When I went in to work there first of all I remember people used to...I...I found out that disputes tended to happen at long weekends like next weekend, bank holiday weekend. And I used to find that I spent my whole time working over the weekend with the LRC or whoever it would be to try to resolve the dispute. And then by Monday it will get resolved, because people would be in a mind to resolve it. But then they

would do a deal to actually clear all the backlog of mail in the following days. So it would be a net win:win situation for them. They would have the weekend off and they wouldn't lose any money. But Turlough...he used to be the troubleshooter for IBEC at the time. And we used to work on these...and it eventually dawned on me, there is something strange...wrong here in this formula. We are working these long weekends and the fellas we are working for are at home enjoying themselves and they are sort of fix things up next week. So I got wise to that anyway and found that there are...there are other ways to do it. Truth is another thing. Truth is the first casualty of war. And that's where Aine has a...a critical role. I mean everybody comes...everybody whose dispute comes on to Morning Ireland in the morning, they explain the thing. And you would be listening to them and you are saying, oh, what's this...this doesn't match up at all. These appear to be two gangs of totally reasonable people, you know. But how come they are sort of killing one another. So usually anyway the point is that the media actually plays a big role in ...in...in industrial disputes and in setting the environment. And when people are in...in a mediation process, in the LRC or the Labour Court or anywhere else they might be, they are there with one eye on how this will play out in the media subsequently or in positioning themselves to take a position subsequently. And both sides do it, and that's the reality of it. Trust again, Lucy spoke a good bit about that. And it gives a very interesting dimension to it. It is a valuable commodity to have I think. I would describe it slightly different than the way ...Lucy said, you don't need necessarily full trust and all that. In...in our line of business, take myself and Turlough for instance, we have trust between us. It is the kind of honour between thieves type of trust actually that we have right. Because we have to have. I mean that's it...it's a professional kind of thing. So we have to sort of make sure that...you know, that I have a problem today, he will have a problem tomorrow. You kind of have to make sure that people deal with one another in a very professional kind of way. The last point I would make is that the best person in this business that I ever came across was Con Murphy. He used to be Rights Commissioner, Chairman of the ESB Industrial Council years ago. And I see my old friend Denis Blanche down there would ...would remember him...Denis from ESB Industrial Council as well. Con was fairly innovative in how he solved problems. He had a huge amount of business. He...anybody who ever visited him in his office, you know, the whole sort of walls of the office were stacked with files of different cases he had handled or was handling. And he used to travel the country in order to...to solve them. And he was very much a larger than life figure. But I remember one particular case, very interesting how creative he was. He had a problem presented to him of a situation where a company restructured, right. And it had say 10 people in a particular area of work. They were all supervisors actually. And when the restructuring was done anyway

there were still 10 positions there. But the way the company went about it was, they wanted to get the best talent for these 10 positions from...throughout the organisation. So they advertised them widely. But the expectation of the ...the incumbents was of course that they would get the...the jobs. So that worked fine for 9 of the 10. But one didn't. There was one outsider brought in. So the...the last person was left kind of swinging. They had no job. They were in a company which was completely viable and so on. There was no difficulty in terms of its commercial situation. So the question was how to resolve this problem while maintaining the dignity of this person. And bear in mind he was a front line manager and he had a certain standing and all the rest of it. So Con decided that he would take a solution from the church. And it occurred to him...and he declared that you often see the church ...it makes Bishops but it never actually sends them to their diocese. That you find that so and so....so and so is the titular Bishop of Mombasa. So what he did with this particular chap was, he said, well you can be the titular supervisor of Ballydehob and that will be grand and everything worked out. And so every...honour was preserved and everything worked out. So the point I am really making I guess is, that it's the type of area where I think you need a great deal of sensitivity and a great deal of experience and a great deal of cunning in many ways to know what is the right way to get around problems. Because dealing with the human condition I assure you is a difficult thing indeed. [applause]