

'Mediaiton Works' Symposium

*Royal Hospital, Kilmainham
Tuesday, 27 May 2008*

Panel Discussion 2: Mediation Works – in Civil Communities

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And thank you very much indeed, Aine, and good morning ladies and gentlemen. It's very clear that Karen's plumber was either a Pole or non-union. Sorry, David. David and I obviously are very fortunate to find ourselves here this morning in the midst of so many mediators. Because as you know he and I are involved in a fairly major dispute at the moment. It could take months...and let's hope it can be solved. But let me say at this stage that I am very happy to give David the skin of my orange. I think it was a very good analogy. The zest should do...should...should be very good for him and I will hold on to the juice for the...for the employers. I suppose getting back to the business in hand, mediation and...and the...all the rest of it. I think we have to see it in context and we have to acknowledge that it's not there for itself. You know, it isn't the end. It...It is a means to an end. And clearly in my view the context for it has to be the success of Ireland Inc. And Ireland Inc. has been extremely successful as we know. There have been great changes in our country. But at the end of the day despite advances in technology and all the rest of it, we have more than 2 million people at work today. 15 years ago we had about a million. So far more people and obviously QED far more potential for conflict and...and so on. And really if mediation has a role it is to keep the wheels turning, to keep the ...the trains on the track, if I might be so unsubtle in the context of what is happening in Cork at the moment. Clearly despite what we have seen in Cork over the last six days, Ireland is a more sophisticated place. It is a different place from the 60s and the 70s and the...and the 80s when we spent most of our time fighting among ourselves in the best Irish traditions without realising that the enemy was outside the factory walls. So things are more sophisticated. But of course human nature being what it is, disputes will continue to happen and we will need means of resolving them. Lucy talked about innovation and change. And I suppose in the context of the success of Ireland Inc. innovation and change has to be the key issue. And it is something that we...we talk about a lot. It is something that we have included in our national programmes right since the beginning. But sadly we still have pretty major problems with getting change implemented in Ireland and...and I suppose Cork is...is a particularly awful example. And ...and you would have to say to yourself, you know, there are agreements in place. Clearly it is possible to have a...a dispute about the interpretation of an agreement. But is the right

answer that everybody downs tools and we have tens of thousands of citizens who pay their taxes so grossly and grievously inconvenienced? Is it right that something like that should happen, and bring the reputation of Ireland into disrepute internationally? And you know in that context you have to say to yourself, surely something could be in place to deal with this. And I suppose it brings up the issue of essential services and the...the...the contention that I have had for a very long time, that we should have in place procedures and mechanisms to ...to make sure we don't have disputes in essential services. And we should have arrangements which will punish management if management are wrong. But at the end of the day the...the wheels should keep turning, the work should get done and there should be some mechanism there, whether it is mediation of one kind or another or a combination of...of things. Surely to God in a sophisticated, grown up, adult country in the 21st century we should be able to ensure that we have that. The most recent one I can remember was the Aviation Authority dispute with the air traffic controllers. Surely it's not too much to expect that, you know, our whole reputation, that our air traffic would continue to function whatever the dispute might be. And similarly in the health service you have...you have got ambulances, you have got emergency services of one kind or another. Surely to God there should be something in place to make sure that those wheels keep turning. Mediation is not new. There are many mediators in this room. It isit is one option clearly in trying to solve disputes between people in all sorts of contexts. It has been a feature of industrial relations in one way or another for decades. And David talked about Con Murphy, the...the first and most famous of the Rights Commissioners I suppose and how he operated. The Conciliation Service in the LRC, they do a fair bit of mediation. Even the Labour Court itself, which is a court of...or is meant to be a court of final decision, often mediates before it gets to the point where it can say to parties, look this is what we think you should do. So it's...you know, working with parties to try and get an agreement between them. And a very interesting recent example of how mediation can actually work was the famous Pat Kenny land dispute when they were hammer and tongs at it in the courts when the judge very sensibly suggested to them that they might engage in mediation. And I think that's a case study that is extraordinarily valuable to us right across the spectrum of dispute resolution. And it's...you know, you have to ask yourself, who did the judge best serve in this circumstance? Did she serve the Charltons? Did she serve Pat Kenny? Did she serve both of them? And it's...it's an excellent case study and well worth thinking about. And many lessons to be learned from it which are applicable right across the board. Clearly the face saving that came out of it is a feature of disputes in every context and for one or other of them to have lost in that high profile scenario would clearly have been bad news for them. So mediation saved them that. Cost saving on further legal

expenses clearly wouldn't have been insignificant. Time saving and...and I suppose in a year's time what will the public remember of that dispute. They certainly won't remember that one or the other crushed the...the opponent. So clearly there are big advantages in mediation. It is low key. It is low profile. There is little or no publicity, which is extremely important. I think mediators of every kind should keep out of the public medium because as soon as you are in the public medium then the detail of what you are trying to fix becomes public property and people have a view about it and you simply interfere and get in the way of...of having a solution that...that will fit the circumstances. Clearly mediators must have credibility and the respect of the parties. The parties having a major input into the process clearly gives ownership to it, makes the eventual solution a better solution, rather than as Karen talked about at the very start, where the judge decides well one or other is going to have the orange. Clearly if the parties can come out of there with face saved and ownership then it's their solution and that's a better solution. 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...a much better chance of doing that. And equally importantly of preserving relationships hereafter. Because that is really what it's about. You know, David talked about the partnership and whether it's an equal or an unequal relationship. We could go into that...we could have another symposium on that that might last quite a long time. But what is important is that relationships are preserved, whether it is in a marriage counselling situation or whether it's in a business dispute, a commercial dispute, between the owners of Liverpool Football Club or whatever it might. It's...it's...it's important that the relationships survive. Why is it...why is it becoming more popular? And I think it is becoming more popular. The world has become more individual. The world is not the collective world it was in the 60s and the 70s and the 80s. People are...are much more conscious of their individuality, of their role in the world. They...they are...you know, everybody doesn't want to be a member of a union because if you are and the union is involved in it, everybody knows the detail, everybody knows the settlement and there is pressure put on people because of that particular membership to accept this or not to accept that. So privacy is preserved in mediation. The issue is being treated in a unique way, unique to the individual. Every situation as we know is different. The circumstances are different. There are more working relationship type disputes now between supervisors and individuals in the work place, bullying, harassment and all of that. So ...and there is more and more non-union companies. So I think there is certainly more scope in that new scenario for people who have credibility qualifications experience in mediation, people who are clearly independent, who have no baggage or who have no agenda. And I think there...there ...there is a strong future for it. And I think it can

help Ireland Inc. substantially. The State machinery has done an exceptional job I think for Ireland, both the Labour Court and the Labour Relations Commission. And they continue to do that job for the country. And I think that they will have a role for...for some time to come. But I think there is also a role for people who...who are outside of that official State apparatus for a whole raft of reasons. But mediation is not a panacea. I think we have to remember that. And...and there has to be a context, there has to be an agreement, a policy or a practice in which the...the mediation can come in and try to bring parties together. It's not something that is done in a vacuum. And...and there are times when mediation is probably not the right course of action. For example, where a course is clear and swift action is needed, i.e. CIE and Cork and I...you know, I just ask the question, where people have not only loaded the gun but fired the gun in a....in a dispute between two parties is it right that while they are still doing that that somebody should be involved trying to settle the dispute. Should they not be back doing normal work? I just ask the question. Clearly if there is a...a scenario where somebody is involved in a very clear breach of the rules in a....in a scenario in a factory...a dangerous situation or whatever, then mediation is not the answer to that. There has to be something else there. Where there are frivolous accusations which are often the case against a manager, let's say, or indeed against an employee, again I think that sort of situation is not necessarily the one for mediation. Clearly where...a scenario where there is no obvious room for manoeuvre some other mechanism is ...is needed, or where an agreement needs to be interpreted one way or the other that is not in my view a...a role for mediation. But I think it will become more popular. I think it has a major role to play. I don't think we are going to be going back to collectivism in the old fashioned meaning of the term. The...the reality is that more and more disputes are more and more local, they are more individual. Solutions need to be developed between real parties, i.e. the parties in the actual dispute rather than people representing them, who have vested interests, who have a particular agenda and so on. And I think modern people want to have more say in...in...in how their life is structured and ordered. And I think mediation can facilitate that. And quite clearly the...the....the key ingredients in that needless to say are trust, respect and confidentiality. Thank you very much. [applause]