



Review of the Administration of Civil Justice

Submission of the Chartered Institute of Arbitrators, Ireland Branch

Encouraging alternative methods of dispute resolution

The Chartered Institute of Arbitrators is an international organisation with over 15,000 members across 133 countries and provides education and training for mediators, arbitrators and adjudicators and acts as a global hub for practitioners, policy makers, academics and those in business, supporting the global promotion, facilitation and development of all ADR methods and is a not for profit organisation.

Relevant Considerations:

The 2016 statistics from the Courts Service indicate that between the District Court, Circuit Court, High Court, Court of Appeal and Supreme Court there were **235,949** incoming cases and that **123,093** of these cases were cases where one party was suing another party, (over 50%). Alternative Dispute Resolution (ADR) would substantially reduce this number. ADR primarily consists of mediation, arbitration, adjudication and expert determination as methods to resolving disputes. For the purposes of this submission, the primary focus will be on mediation.

The Mediation Act 2017 came into operation on the 1st January 2018 and put mediation on a legal footing. The Act supports mediation as a confidential, cost effective, time-efficient process in which parties in a dispute resolve their difficulties with the assistance of an independent, experienced, trained mediator. Legal requirements are imposed on mediators and protections are put in place for the parties. Before commencing civil legal proceedings, a party is now obliged to consider mediation instead of court proceedings with a legal requirement on solicitors/barristers to explain the process and benefits of mediation. Parties already in litigation can pause the legal process and go to mediation with the assistance of the Courts.

Part 4 of the Mediation Act sets out the role of the Courts in mediation and makes it clear that a court may on the application of a party or indeed of its own volition invite the parties in court proceedings to consider mediation. A significant feature of this part of the Act relates to legal costs in that the Courts are now permitted to have regard to any unreasonable refusal or failure by a party to attend a Part 4 mediation.

Part 3 of the Act imposes obligations on solicitors and barristers including the obligation to advise the client to consider mediation as a means of attempting to resolve the dispute and provide information in respect of mediation services including the names and addresses of persons who provide such services.

The longer a case goes on the more entrenched the parties become and the more the issue of costs becomes an impediment to settlement and compromise.

Accordingly, with the foregoing in mind it is suggested that the Administration of Justice would benefit from:

1. That court rules be amended to require that all parties to proceedings are informed of the alternatives to court including ADR and mediation.
2. That all originating summonses and motions confirm that the said rule has been complied with and that information providing alternatives to going to court have been provided to the claimant/plaintiff.
3. That all defences would contain a similar confirmation that the said rule has been complied with by the respondent/defendant.
4. That greater use be made of early case management and case progression at which mediation and ADR would be suggested and discussed.
5. That clear and concise information on mediation and ADR would be provided on the Courts Service website.
6. That statistics would be included in the Courts Service Annual Report of the numbers availing of mediation and ADR
7. That a separate unit would be set up within the Courts Service to promote and develop the use of mediation and ADR at all levels (District Court, Circuit Court, High Court, Court of Appeal and Supreme Court).

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