

Kluwer Mediation Blog

New Year, New Initiatives

Sabine Walsh (Sabine Walsh Mediation) · Wednesday, February 5th, 2014

Despite half the country being under water, the first few weeks of 2014 have brought with them some new developments in mediation and related areas. While not all of these developments are welcome, one gets a sense that the need for change in many areas, including the legal system, is being acknowledged and acted upon and that the country is generally turning itself around and steering into slightly less choppy waters, even if this is not being reflected in the weather...

One less happy development, for mediators anyway, is the further, unexplained and frankly unexplainable delay in publication of the final draft of the Mediation Bill 2012, a piece of legislation which is expected to make significant changes to dispute resolution in Ireland. Published in 2012, the draft Scheme of the Bill underwent an extensive consultative and review process (see my previous posts) and look poised to come before the houses of the Oireachtas (parliament) very early in 2014. As recently as 10 December 2013, when questioned about the publication date for the Bill, the Minister for Justice Alan Shatter responded that he intended to publish the bill “early next year” (2014) and further responded to the Deputy who raised the question that “On this issue the Deputy is preaching to the converted. I should make a declaration of interest, in that I am a qualified mediator.”

<http://www.kildarestreet.com/debates/?id=2013-12-10a.56>

Yet since then, the bill has appeared in the “B” list on the legislative programme as being due “for publication late 2014”. This is a very disappointing development as the mediation community was given to understand that drafting, based on the consultative process of 2012, was at an advanced stage. It would also seem somewhat foolish as one of the requirements of the Troika who albeit have now moved on, was to implement mediation legislation so as to reduce the state’s legal costs. The Minister is due to speak at the launch of a mediation publication later this week, so it will be interesting to see what questions will be asked at that and how he might respond. And so we must continue to wait.

In the meantime, however, the courts continue to take matters into their own hands and, faced with constantly diminishing resources but increasingly long lists and large numbers of unrepresented litigants, particularly in the family law sector, try to divert as many cases into mediation as possible. This can take the form of the judge suggesting or recommending mediation, or agreeing to stay proceedings to facilitate mediation. The Courts Service, the administrative agency for the courts, has recognised however that diverting such cases into alternative processes before they reach court is desirable. In a joint initiative with the Office of the Ombudsman for Children, an independent statutory body responsible for promoting and monitoring the rights and welfare of children, they this week launched two short information videos for parents and their children who

are experiencing separation. The video for parents focuses on explaining the options and emphasising the fact that court is not the only route for parents to go down, while the video for children and young people gives guidance on how to manage the upheaval of a separation and transmits very clearly the message that the children are not at fault.

It is important to note that one of the driving factors behind this initiative was the significant number of complaints received by the Ombudsman's Office relating the court proceedings affecting children. Both videos make reference also to options for bringing children's voices into whichever process parents choose.

These two short films are engaging, well produced and informative. The welcome given to them by the President of the District Court Rosemary Horgan who, along with the Ombudsman Emily Logan, formally launched them, together with the large attendance at the launch by members of the judiciary, the legal and mediation professions, and very importantly the media, is an indicator of the fact that a "one size fits all" approach to family dispute resolution is a thing of the past. The films can be viewed at <http://youtu.be/LkAlPrfaT2E> and <http://youtu.be/LkYXqggg9Xc> and are well worth watching.

Not unrelated to the area of family conflict, in November 2013 a new pilot scheme for homeowners whose mortgages are in arrears was announced. Under this scheme, an independent body, the Irish Mortgage Holders Organisation, acts as mediator between homeowners and one of the country's largest banks, AIB Group. The results of the first two months of this scheme, due, at present to run for six months, were announced yesterday. During the past two months, AIB reported having sent 1,011 "activation packs" containing information and the details of the IMHO to borrowers. 440 of these responded and, to date, it is reported that 123 "long-term sustainable solutions" have been agreed between the borrowers and the bank, with the assistance of the IMHO. Described as "groundbreaking" when it was announced last November, the IMHO is now in talks with a number of other banks, including one sub-prime lender, to expand the scheme.

<http://www.irishtimes.com/business/sectors/financial-services/aib-agrees-120-mortgage-deals-including-write-down-1.1676937>

One of the more interesting aspects of this scheme is that an external and independent agency is acting as mediator in this scheme, not an agent of the bank as in some other processes, erroneously referred to as mediation. Of interest are also the range of solutions being reached, ranging from write-off of the remaining debt, to arrangements for sale of the properties, to negotiated repayment schedules. Most importantly, the scheme is being funded at least in part, by the bank in question, which must represent a significant saving for the bank itself as against incurring the legal fees that lengthy and often (for the bank) fruitless foreclosure proceedings might incur. AIB itself has "conceded" that previous mortgage resolution mechanisms were unsuccessful but this one is working. Let's hope other banks follow suit.

So, 2014 looks like it might just show a small glimmer of hope for the recession weary Irish, and for those promoting mediation, even if, as always, the work is being done at ground level leaving the policy makers limping along behind. But maybe it is at ground level that the most impact is also made, so we shall continue into Spring (which officially started here on 1st February) with optimism. Now, if only it would stop raining...

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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