

Kluwer Mediation Blog

A Year (Roughly) in the Life of a Family Mediation Practice

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As Ireland again, or still, struggles with its socio-political identity, its legal and moral values, and the role of the Catholic church in all of this, it seems like only yesterday the debate raged about the constitutional referendum which, in 1996, introduced divorce and, with it, the right to remarry into Irish law. In the almost 17 years which have passed since, Irish society has continued to change, as have the complexities of relationship breakdown and its aftermath. The people and issues I work with every day in my family mediation practice are, I imagine, different, at least in some ways, to those that my colleagues dealt with 20 or 30 years ago.

Reflecting on this led me to look through the cases I have had over the past year or so in an effort to – rather unscientifically – identify what sort of issues I and, based on supervision and group discussions, my colleagues, are working with at present.

A few disclaimers to start with – the following musings are based on a look through the cases I have had in my Irish family mediation practice over the past year or so – it does not include cross-border work, or indeed the other mediation work I do. Nor is it based on a robust statistical analysis, but more on general patterns that I have noticed, and what issues stick out most for me. It should also be borne in mind that the trends I am flagging relate only to the people that are coming to me for family mediation and are not therefore representative of trends relating to marriage breakdown overall.

So, who are these people? What parts of the population are choosing to try to work out their separation through a (private) mediation service? You will note that I use the term marriage breakdown quite a bit. This is not entirely unintentional as the vast majority of my clients are or were married and are dealing with the consequences of the legal end of marriage. The enactment of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 has changed the law in relation to non-marital partnerships, but as yet I have barely seen any cases to which the legislation applies, perhaps as a result of the qualifying periods which couples are subject to before the provisions of the Act apply to them. Out of every 10 cases, only 2 or 3 would relate to the breakdown of a relationship where the parties weren't married. I have yet to mediate a case between a same sex couple. It is interesting in this context that, according to the Census of 2011, the percentage of people getting married increased by 9% between 2006 and 2001. The rate of marriage breakdown, however, also increased by 22.3% in the same period. (Source: Census 2011, available at www.cso.ie)

The ages of couples I see varies. The majority would be in the 35-45 age group, with school aged

children, and the next biggest group would be in the 55-65 age group, with grown up children. The Census attributes two-thirds of the increase in separation and divorce to this latter age group, which is in keeping with what I have seen in my practice over the years. The peak age for divorce in Ireland at present is, according to the Census, 48. While, compared to the rest of Europe, Ireland is still quite a homogenous society, the number of non-nationals I see has increased also, mainly European and American, with the majority from Eastern Europe.

One interesting trend which I identified in my practice very early on and which has continued in this past year is that in the vast majority of the cases the woman has initiated the separation. I have since learned from colleagues that this trend is not unique to my practice but in fact well recognised. I will not even attempt to suggest reasons for this, that is best left to psychologist and sociologists, but it is something that I spend a lot of time working with, in terms of assisting the (usually) man in coming to terms with the fact that his wife/partner has ended the relationship and what this means for the future. I should point out, though, that even in cases where the woman has ended the relationship it is just as likely to be the man who initiates the mediation process.

The most notable change in my practice over the past few years related to the issues that couples are dealing with. Ranging above all others are the difficulties trying to divide properties which are the subject of borrowings. As a rough guestimate, I'd say for every hour I spend working on parenting plans and other child related issues, my clients and I spend three hours trying to work on dividing heavily encumbered assets, mainly the family home. A few of the many consequences of the property crash and banking crisis in Ireland are that many properties have devalued dramatically, are not selling at all in many parts of the country, and are in negative equity in some instances. On top of this, banks are reluctant to lend, and to let one party out of a mortgage, particularly if it is in arrears, making it impossible for couples to actually divide an asset. Many banks will only act on foot of a court order for sale or buyout of a share of a house, further reducing the options available at mediation.

To give an example of just one case – in this instance, the family home, a 4 bedroomed detached house, was the only asset the parties had, bar a few small bank accounts. Two different valuers put different values on the house, one at €75,000, the other at €150,000. The mortgage stood at €98,000. It was agreed that the wife would buy the husband out of the property, but at what price? One valuation had the property in negative equity, the other envisaged the wife paying about €26,000 to buy out his share. Several sessions of argument, and the appointment of yet another, independent valuer resulted in a valuation of €120,000. A sum for the buyout was agreed but this was subject to the bank consenting to re-mortgage the house in the wife's sole name, to include some of the amount necessary for the buyout. The wife was told a decision on this would take a minimum of 2 months. We are still waiting...

Many couples are therefore finding themselves tied into debts and properties long after they have decided to separate, increasing the potential for dispute and making it difficult for anyone to move on. On top of this, the strain of having to pay a large mortgage for a house that can't be sold, plus rent for the other spouses property, and two households in general, can push families into poverty they have never experienced before. It is cases such as these that keep mediators like me awake at night...

One more positive trend I have identified comes in relation to the source of referrals. While in the past, the majority of referrals came to me from parties themselves, or via word of mouth. In the past year, however, more than ever before have come from lawyers. That may of course be due to a

general increase in my local profile or, as the cynics might say, due to the circumstances outlined above, there is no money in family law anymore, but I like to think it is because, as also evidenced by my other mediation work, lawyers are becoming less averse to mediation and are embracing it as a realistic and viable alternative for clients. Irish lawyers have always had a duty to advise clients on the possibility of mediation, but this duty seems, finally, to be translating into action. Long may it last!

It will be interesting to see how the next few years develop. Will I be seeing the same kinds of clients? Will there be more evidence of increasing diversity in Irish society? Will we ever get out of the mess of the property and banking crisis? And most importantly, will the work keep coming in? I hope so! What is it like in your countries, fellow family mediators? I'd be interested to know!


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