

Draft Mediation Bill Published

The inexorable march of Mediation becoming an integral part of all Civil Proceedings was greatly accelerated with the publication of the draft **MEDIATION AND CONCILIATION**

BILL, 2010 yesterday, 16th November 2010. The Bill was published with the Law Reform Commission report entitled “Alternative Dispute Resolution: Mediation and Conciliation”.



A comprehensive analysis of both the Report and the Bill will be published by Mediate Ireland in due course and will be provided at our upcoming Introductory Training courses in Advocacy.

The preamble to the Bill says that it is

- to facilitate the settlement of Civil and Commercial matters
- to set out the principles applicable to Mediation and Conciliation in general...
- to set out specific arrangements for Mediation and Conciliation in connection with particular disputes
- to provide for a statutory code of conduct for Mediators and Conciliators and for training issues....., and
- to give effect to EU Directive No 2008/52/EC



Mediation is defined as “a facilitative and confidential structured process in which the parties attempt by themselves, on a voluntary basis, to reach a mutually acceptable agreement to resolve their

dispute with the assistance of an independent third party, called a Mediator.

Conciliation means such a process in which the independent third party, called a Conciliator, actively assists the parties to reach, on a voluntary basis, a mutually acceptable agreement.

The Bill provides for specific exclusions from Mediation for (a) employment disputes already in being under Labour Relations Commission or Labour Court processes, (b) the avoidance of mandatory constitutional or statutory and (c) that it is not intended to replace existing ADR processes provided for in other enactments. However, this latter exception is subject to the proviso that such existing processes may be appropriately adapted by the Bill.

The Bill then sets out provisions in relation to;

- The role of the Mediator, Conciliator and other participants
- Need for speed in completion of the process
- Confidentiality & Specific Privilege
- Financial Cost
- Enforceability of the Mediated Agreement
- Suspension of Limitation Periods
- The role of the Courts
- “Staying” of Court Proceeding to enable Mediation
- Powers of the Court
- Court Costs
- Costs in the event of a party refusing to mediate
- Solicitor’s duty to advise a client “A solicitor....shall....advise the person to consider mediation and conciliation.....”
- Mediation & Conciliation Certificates
- Report to Court of Mediator or Conciliator.

Family Law.

There are specific provisions for Family Law and S. 117 Claims under which parties “shall..... attend an information session on family law dispute resolution processes, including mediation and conciliation”.



In Family Law disputes a mediator is obliged to advise a party to consider seeking independent legal advice and to consider seeking independent advice whether legal or otherwise. Readers of our Newsletters and publications will know that Mediate Ireland have always

forcibly promoted the attendance of legal advisers and representatives in such cases.

There are specific provisions in relation to Domestic Violence Act matters and situations of perceived risk to parties and further provisions in relation to children, representation of children and enforceability.

Personal Injury.

S. 15 of the Civil Liability and Courts Act, 2004 under which a Court “on the request of any party” may direct parties to try to settle at a Mediation Conference is being extended to say that the Court may also do it “upon its own initiative”.

There is also provision for “early neutral evaluation” in P.I claims whereunder the “early neutral evaluator” will provide an evaluation to the parties as to the likely outcome of the proceedings.

We expect this to have far reaching implications.

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Mediate Ireland brings people together to resolve their disputes, QUICKLY, COST EFFECTIVELY, and CONFIDENTIALLY, because people want to move on with their lives.

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- Separation / Divorce
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- Parenting Plans (Child Custody And Visitation)
- Eldercare Issues (Living Wills)
- Family Businesses
- Farm / Land Related Disputes
- Adult Sibling Conflicts
- Disputes Between Parents And Adult Children

Workplace / Employment Disputes

- Wrongful Termination
- Discrimination
- Harassment / Bullying

- Grievances

Community / Local Government

- Public Bodies
- Environmental / Local Authority
- Local Community / Neighbour Disputes
- Property
- Landlord / Tenant / Rent / Leasing / Rent Reviews
- Management Companies / Homeowners
- Building Construction
- Builders / Sub Contractors / Homeowners Disputes

Commercial / Civil

- Commercial Disputes Between Companies
- Contracts Of Any Kind

- Partnership / Shareholder Disputes
- Debt Recovery / Creditor Disputes
- Loan / Bank Settlements

Medical

- Medical Malpractice
- Personal Injury

Sports Disputes

- Eligibility Rules
- Selection Criteria
- Contractual / Commercial Disputes