

Acting **WITH THE** **ALTERNATIVE**

InBUSINESS catches up with Bill Holohan, Senior Partner of Holohan Law and Chair of CI Arb Ireland, to discuss the benefits of alternative dispute resolutions (ADR) and the potential implications for Ireland of the Mediation Act 2017.

For some time now, Bill Holohan has been swearing by the benefits of alternative dispute resolutions (ADR). Describing himself as a “repentant lawyer who, having worshipped in the satanic church of litigation for over 20 years, converted to the one true church of mediation”, Holohan is currently serving as the elected chairman of CI Arb Ireland. This, the Irish branch of the Chartered Institute of Arbitrators, is a professional membership organisation representing the interests of alternative dispute practitioners worldwide.

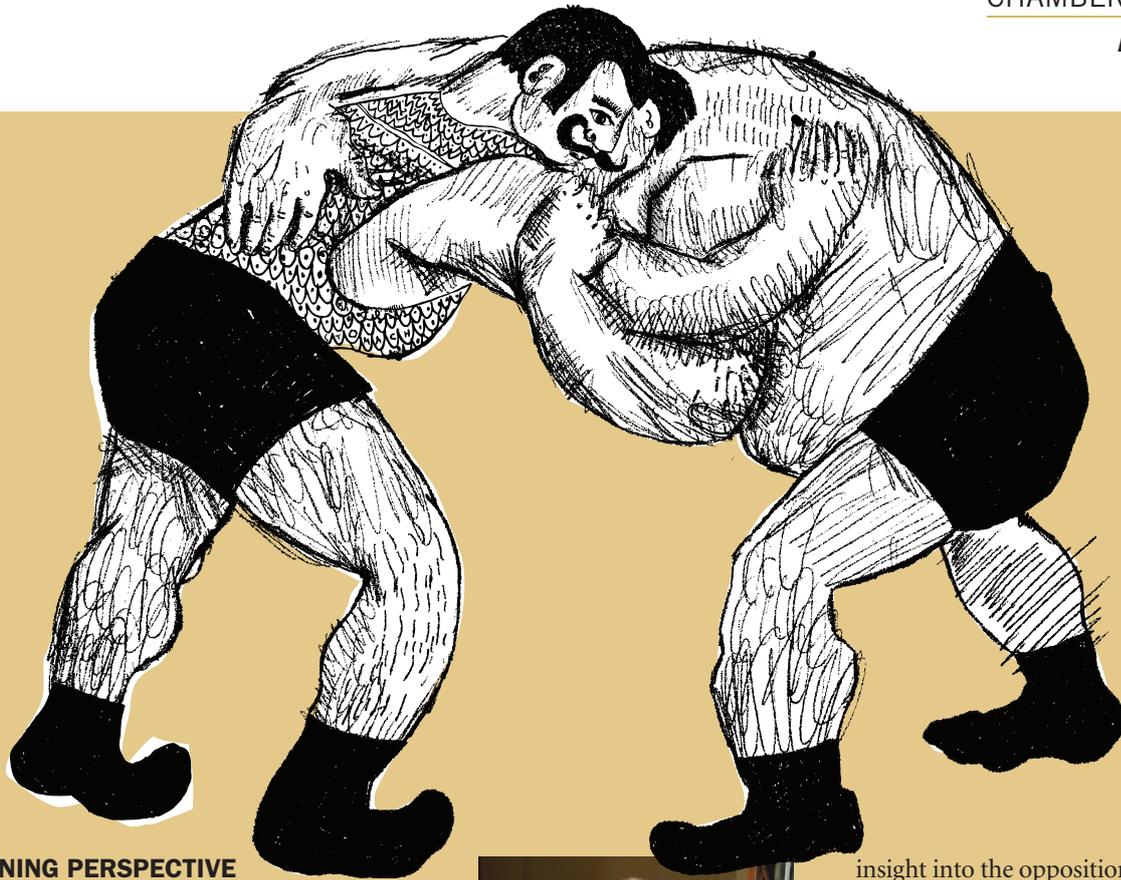
Holohan, who is the senior partner of Holohan Law and is also a company director or secretary of some 20 companies, considers disputes from both a solicitor’s point of view and a businessman’s, and from both perspectives deems ADR to be far more desirable a course of action than litigation. In explaining his reasons why, Holohan traces litigation back to its rather basic roots and, in doing so, emphasises its inherently adversarial nature.

“Litigation is a legacy of the old right of trial by battle, which was only abolished in 1820,” he says. “Back then you sent out the biggest, boldest person you could find to try to beat the ‘proverbial’ out

of the other side. The more refined version for gentlemen was that you headed out with your pistol and you had a duel at dawn. The theory was that God would be on the side of whoever was right. Nowadays, the modern version of that is you get the most expensive, bad-ass barrister you can find to go into court to try to beat up the other side. It’s a very destructive process, because you’re trying to knock down the other side all the time and put the best gloss on your own case.”

Litigation pits one party in a dispute against the other in extremely stark terms, and leaves very little room for compromise. Methods of ADR though – for example mediation, arbitration, conciliation and others – can prove to be a much smoother and cheaper process, with benefits for all parties involved. Taking mediation as an example of ADR, Holohan explains how, even if a dispute is not resolved in its entirety throughout the course of the mediation, the range of problems can at least be narrowed down.

“Even in cases not necessarily resolved, it can narrow the issues,” he says. “You might go into a mediation with five or six different issues being thrown up, and they might resolve all but one of them, so it narrows the scope of what’s at issue that will reduce the ultimate costs that are involved in the process. Sometimes, once you have managed to resolve the bulk of them, later the last one will fall into place, because it’s no longer as significant [an issue] as it was at the outset.”



GAINING PERSPECTIVE

In illustrating the benefits to mediation and other forms of ADR, Holohan cites Stephen R. Covey, author of the business and self-help book *The 7 Habits of Highly Effective People*. He describes a passage in which the author seeks to impress the importance of empathy and perspective upon his readers, giving a rather striking example.

“[Covey] talks about changing the paradigm, changing perspectives,” explains Holohan. “The example he gives is of a guy who gets on a commuter train with his kids. The kids are running riot, to the point that a hub of passengers get annoyed, and one barks at the guy, ‘Would you ever control your kids, they’re out of control?’ The guy looks up and says, ‘I’m sorry, we’ve just come from the hospital, my wife is dying, and I don’t know how to tell them.’ Suddenly there’s a changed perspective; it’s no longer this irresponsible parent letting his kids run riot, but rather a man dealing with a terrible situation. It goes from condemnation to sympathy, all because there’s an understanding of what the situation is. Now, this is a bit of a dramatic example, but that’s what Stephen Covey uses to illustrate the point – the benefit of full understanding.”

Mediation and other forms of ADR allow for understanding by opening up a dialogue between disputing parties. There is less pressure and expense involved than if the dispute were to take place within the confines of a courtroom, and the ability to gain an



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insight into the opposition’s point of view can allow for compromises that otherwise would not have been impossible.

Such are the potential benefits to mediation that they have been recognised at a statutory level, with the recent implementation of the Mediation Act 2017. The Act, passed by both houses of the Oireachtas on September 26th 2017, places new obligations on litigants to consider

alternative dispute resolution methods, ensuring that legal advisers must advise their clients to explore alternatives to litigation.

The Act can be seen as a big step within an Irish context in its attempts to move away from courtrooms wherever possible, ultimately reducing legal costs, speeding up the resolution of disputes and reducing the stress and acrimony of court proceedings. It is hoped that the Act will relieve the pressure on the courts and alleviate the backlog of cases currently before Irish courts.

“We’re ahead of the curve in the sense of a statutory basis for mediation,” concludes Holohan. “The UK doesn’t have a mediation act, for example. But at a European level, there is a big move towards mediation and ADR directive. It is gaining traction, and it is going to become the preferred option.”