SUBMISSION TO THE REVIEW GROUP ON OF THE ADMINISTRATION OF CIVIL JUSTICE

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"ENCOURAGING ALTERNATIVE METHODS OF DISPUTE RESOLUTION"

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INTRODUCTION

1) We welcome the establishment of the Review of the Administration of Civil Justice and have no doubt that the work of the review committee will result in the development of a civil litigation system which is more efficient, effective, and responsive to litigant needs. In response to the call for submissions, we submit the following discussion of how the civil justice system can encourage the use of alternative methods of dispute resolution in Irish courts.

2) We are an Associate Professor of Law in the Sutherland School of law (University College Dublin) and a PhD candidate in the Sutherland School of Law. For many years, Brian Hutchinson has been a prominent legal scholar on Alternative Dispute Resolution and Online Dispute Resolution in Europe. He has taught and published widely in Ireland and abroad. In addition, he is a co-editor of the Irish Jurist and the International Journal of Online Dispute Resolution. Aonghus Cheevers has spent the past four years examining and analysing the use of mediation in Ireland. More particularly, his research examines the influence of procedural justice concepts in client, mediator, and lawyer evaluations of mediation.

3) This submission is divided into four parts. Part one discusses the place of alternative procedures within the civil litigation system. This section also calls for a return to the idea of a multi-door courthouse. To ensure that the civil litigation process makes the best use of all the alternatives that are available, the section also calls for a wider review of civil litigation and alternative processes in Ireland. The second part of the submission details how such an evaluation might be undertaken. In particular, it highlights that settlement rates are only on part of any evaluation and that effective evaluation is an on-going process.

4) Part three discusses some findings from the four-year research project, already discussed, which examined mediation in Ireland. This research shows that mediation can be an effective dispute resolution process which attends to the procedural needs of litigants. The research also shows that litigant education, both before and during mediation, helps to ensure that litigants buy into the mediation process. At the same time, however, the research also shows that some litigants are not receiving the legal education which they require. The final part of the submission discusses the recently enacted Mediation Act. In particular, the submission addresses two issues which the legislation leaves

unaddressed. These are, firstly, the need to define what constitutes unreasonable behaviour following a section 16 invitation to consider mediation and, secondly, the need for greater clarity around mediator reporting requirements following such an invitation.

A RENEWED MULTI-DOOR COURTHOUSE

5) Worries about ineffective, inefficient, and unresponsive courts are not new. In the United States, such concerns have long been a feature of discussions of the civil litigation system.[1] In the 1970s, stakeholders both inside and outside courts identified the need to reform court proceedings. The Chief Justice at the time Warren Burger highlighted how minor disputes were being lost in the court system.[2] In England & Wales, a similar impetus has seen the Civil Procedure Rules being amended since the 1990s. This process has led to the development and testing of an Online Solutions Court to resolve some smaller value claims.[3]

6) The need to make US courts more effective was highlighted by presenters at the 1976 National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice.[4] Harvard Law professor Frank Sander discussed a court in which litigants would be provided with a variety of procedural choices. In this system, a litigant's procedural choices would be informed by a range of factors including the nature of the dispute, the relationship between the parties, the amount in dispute, and the costs associated with resolving the dispute.[5] In this

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1 Jerod S Auerbach, Justice Without Law? (Oxford University Press 1983), 95.

2 'Burger Assails Legal Smugness, Formalism' (1977) 63(7) American Bar Association Journal 917.

3 For a better discussion see: Masood Ahmed, 'A Critical View of Stage 1 of the Inline Court' (2017) 36(1) Civil Justice Quarterly 12; John Sorabji, 'The online solutions court - a multi-door courthouse for the 21st century' (2017) 36(1) Civil Justice Quarterly 86.

4 Pound Conference, National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (national Centre for State Courts 1976). Available at <https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/1245/> accessed 21 June 2018.

5 Frank E A Sander, Varieties of Dispute Processing'- Address Delivered at the national Conference on the Causes of Popular Dissatisfaction with the Administration of Justice. (1976) 70 Federal

mediation would play a role, but other alternatives such as arbitration, case screening, fact-finding, and ombudsmen services would also be important.[6]

7) Although Stander's ideas have influenced the development and use of alternative processes in courts, the effect of his ideas has also been, somewhat, limited. In many jurisdictions, the idea of a so-called multi-door courthouse has given way to systems which rely on a limited range of processes. In the US, for instance, Bingham noted how, '… most courts have asserted control over dispute system design for cases that come within their jurisdiction.'[7] Such a situation sees courts, rather than litigants themselves, making procedural choices.

8) Thankfully in Ireland, this does not appear to be happening. The recent enactment of the Mediation Act 2017 and the attendant amendment of the Rules of Superior Court Order 56A envisage mediation and other processes playing a role in the resolution of civil disputes. Courts can adjourn proceedings so that the parties can attempt mediation or another ADR process.[8] This is a welcome development and should help to ensure that litigants have the freedom to choose the process that suits their dispute. Nevertheless, it also raises further questions. Firstly, which other processes can be used? Secondly, which process should be used in which cases?

9) The amended RSC Order 56A defines "another ADR process" as, 'conciliation or such other dispute resolution process as may be approved by the Court, but does not include mediation and arbitration.'[9] What the definition leaves unclear, however, is what other processes might be approved by a court. Many forms of alternatives exist. Early Neutral Evaluation may help to define the issues between litigants. Such a process could also help to narrow the issues between parties after those issues are identified. A med-arb process, in which the litigants try to mediate their dispute, but end with a ruling, might also be an effective approach in some cases. Although the amended rule leaves open the option of these and other procedures being employed, it does not make clear when they will be

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Rule Decisions 79, 131. See also: Lind J Finkelstein, 'The Evolution of a Multi-Door Courthouse' (1988) 37(3) Catholic University Law Review 577.

6 Sander (n 5).

7 Lisa Bingham, 'Why Suppose - Let's Find Out: A Public Policy Research Program on Dispute Resolution' (2002) Journal on Dispute Resolution 101, 126.

8 RSC Order 56A, r 3; r 10(1).

9 RSC Order 56A, r 1.

available. To clarify the issues, the courts service should issue a list of the different procedures that are available and likely to be approved under the rules.

10) To aid the effective use of these procedures, the review committee could consider undertaking a wider examination of how civil disputing operates. This review could examine how disputes progress through the civil litigation system and the different factors that influence the resolution, or non–resolution, of disputes inside and outside a courtroom. An examination of a court-connected mediation program in Cobb County in Georgia showed that many factors affected settlement rates. These included the complexity of the case, the timing of the mediation process (before or after discovery for instance), the attitude of judges towards mediation, the work of legal advisors, the administrative efforts of the program coordinators, and the selection of different mediators.[10]

11) The research showed that settlement rates could be predicted by the complexity and subject matter of the dispute, the prior settlement statistics of the mediators and attorneys, 'and difficulty of scheduling the mediation.'[11] Undertaking a review of civil litigation in Ireland could help to identify the factors which influence settlement in this jurisdiction. Analysing this data in line with demographic and case-level data (discussed in more detail in the next section) could help to develop a fuller picture of the effectiveness of the various alternative procedures which are available in different social and disputing settings.

AN ON-GOING AND FOCUSED EVALUATION OF ALTERNATIVES

12) The use of alternative processes to resolve dispute inside and outside courts appear to offer many advantages. Such processes can offer a more expeditious and less costly means to resolve disputes. For courts, alternatives processes can help to ease the burden placed on courts and allow judges to focus on those cases that most need their attention. At the moment, however, these advantages are based on anecdotal evidence, at least in an Irish setting. If mediation, and

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10 Barry Edwards, 'Renovating the Multi-Door Courthouse: Designing Trial Court Dispute Resolution Systems to improve Results and Control Costs' (2013_ 18 Harvard negotiation Law Review 281, 295-303

11 Edwards (n 10), 305.

other alternatives, are to be used more regularly in civil litigation, the effectiveness of these processes will have to be measured.

13) How to measure effectiveness, though, is an important question. An analysis of evaluations collected by the Family Mediation Service carried out by one of the authors showed a mediation process that could help litigants to resolve their dispute. In other evaluations of mediation programs, conducted in Ireland and in other jurisdictions, mediation was shown in a similar light.[12] In some of these surveys, however, mediation and other alternatives were evaluated by mostly focusing on their impact on courts, rather than their impact on litigants.[13] This looked at how the use of mediation, or other alternatives, affected court workloads, case timings, and the costs associated with resolving disputes, rather than considering what alternative procedures provided for the people using them.

14) Such metrics, focusing on courts, are an important part of the evaluation of alternatives processes. They are not, however, the only metric which should be measured. The FMS evaluations showed that litigant judgments were complex. The effectiveness of the mediation process was highlighted. Some clients also pointed to costs savings being a feature of mediation, although costs were not as frequently highlighted as was expected. Much more prevalent were references to procedural justice concepts such as voice, dignity and respect, and control (most notably over the outcome of the process). The importance of these findings, for a wider examination of how alternative processes can be used in the Irish civil litigation system, is that it should affect how the evaluation of such processes is undertaken.

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12 See for instance: Jessica Pearson, 'An Evaluation of Alternatives to Court Adjudication' (1982) The Justice System Journal 420; James S Kakalik, Terence Dunworth, Laural A Hill, Daniel McCaffrey, Marian Oshiro, Nicholas M Pace, Mary E Vaiana, An Evaluation of Mediation and Early Neutral Evaluation Under the Civil Justice Reform Act (Rand Corporation 1996) hereinafter Rand Report; Robert G Hann, Cari Barr, Lee Axon, Susan Binnie and Fred Zemans, Evaluation of the Ontario Mandatory Mediation Program (Rule 24.1) Report- The First 23 Months (Queens Printer, 2001); Lisa Webley, Pamela Abrams and Sylvie Bacquet, Evaluation of the Birmingham Court-Based Civil (Non-Family) Mediation Scheme: Final Report (University of Westminster 2006), 22.

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1349874> accessed 29 December 2017; Hazel Genn, Paul Fenn, Marc Mason, Andrew Lane, Nadia Bechai, Lauren Gray, Dev Vencappa, Twisting Arms: Court Referred and Court Linked Mediation Under Judicial Pressure (Ministry of Justice Research Series 1/07 2007).

13 Rand Report (n 12).

15) The evaluation of mediation and other alternatives needs to be properly designed. This design should take account of three different factors. Firstly, the effect of alternative procedures on the courts and the operation of the courts should be assessed. Secondly, the effectiveness of mediation or other alternative procedures needs to be measured. This could, perhaps, be accomplished by simply measuring settlement rates (something which the FMS already does). Limiting an evaluation to settlement rates, however, risks hindering the long-term effectiveness of the evaluation process. If settlement rates were measured alongside case characteristics then a better picture of when mediation and other procedures are used, and when they are successful could be developed.

16) In addition to settlement rates and case characteristics, any evaluation of mediation or other alternatives should also pay attention to how litigants judge procedures. This might look at how changes in procedures and procedural characteristics influence litigant evaluations. It would also help to develop a fuller picture of how the people using alternative processes evaluate them. This wider understanding could be used to design better education materials to appeal to more litigants.

17) When they assessed their experience in the FMS, many clients positively evaluated the service. Often, this positive evaluation pointed to mediators and a mediation service that was friendly, helpful, kind, and patient, while also being professional.[14] The importance of these elements of the process was reinforced by their regular use in the evaluations. These elements of the process also helped to enhance the respect and dignity that clients felt in the process.[15] Mediation was useful, therefore, both because it allowed people to resolve their dispute, but also because it helped to support them while they were going through a stressful time. This analysis shows that an evaluation of mediation, and arguably

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[14] For instance: 'The mediator, [Mediation service employee name omitted], was both professional and impartial and showed empathy towards us and our situations throughout the process. The secretary was always courteous + friendly.' Ath-11482 (Short evaluation, 2012, Male); 'I am extremely grateful to the Family Mediation Service and to [Mediation service employee name omitted] She dealt with our case extremely patiently, in a completely professional non-judgmental manner. We were both completely at ease with her + she was instrumental in our reaching agreement at mediation. I can't thank her + service enough.' 11670Wx (Short evaluation, 2014, Female) Other comment on sheet.

[15] For instance: 'It was very respectful + fair process allowing me to air my views + needs and assisting me to reach consensus at a very fraught time. I managed to come to an agreement that I am satisfied with + to come to it through a process I felt as fair + thorough. I felt heard + understood + mediators' clarity + patience was very supportive.' Bla-1592 (Short evaluation, 2013, Female). Q2. Did you find the Mediation process useful to you? (Yes) In what way(s) did you find it useful?.

other alternative processes, needs to focus on more than simply settlement rates.

18) The evaluation of alternative procedures also needs to be an on-going process. A current difficulty in Ireland is the lack of any meaningful statistics related to alternative processes inside and outside courts. This needs to change. Without such information, the claims made on behalf of alternative processes will continue to be anecdotally based. A belief that such processes save time and money, work effectively, and provide clients with something extra, is one thing. Facts and figures which support such claims are more useful. It is important that any procedural changes which provide for the increased use of mediation, and other alternatives, therefore, are evaluated on an on-going basis.

19) In an earlier examination of court-connected mediation, in the United States, Lande stressed the need for effective education around mediation processes.[16] He recommended that education be a two-way process between mediation program designers and mediation stakeholders. In addition to educating parties about mediation, then, mediation program designers also needed to listen to stakeholders to ensure that their interests and needs were met in any program.[17] Ireland has the opportunity to develop and implement such a two-way process. Doing so will help to make alternative processes more effective, more efficient, and more responsive to litigant needs.

20) In many jurisdictions, discussions of how to encourage litigants to use alternative processes often focus on sticks rather than carrots. Ireland is no different, parties can be punished if they unreasonably refuse to attempt or consider using mediation.[18]Although such an approach might work, punishment might also be counter-productive. Although people may choose to use mediation, based on a fear of what might happen if they don't, mediation may still not be as effective as it can be. The comments of clients and professionals in the research discussed in this submission show that the effectiveness of mediation is dependent on client engagement. Scaring people into a process is probably not the best way to encourage engagement. Focusing on what mediation can offer and building trust in the process would appear to be a better approach. The development of a two-

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16 John Lande, 'Using Dispute System Design Methods to Promote Good-faith Participation in Court-Connected Mediation Programs' (2002-2003) 50 UCLA LR 69, 127.

17 ibid.

18 Mediation Act, s 16.

way evaluation and education process could help to identify what procedural and case characteristics help to encourage litigants to use alternatives processes.

21) Procedural changes could also help to encourage engagement. Instead of punishing parties for a refusal to consider or attempt mediation, or another alternative, perhaps parties might be offered a reduction of court fees, if they attempt mediation or another process. If such procedures were offered at a reduced fee, or free of charge, more litigants might also be encouraged to use them to resolve their disputes. The Mediation Act 2017, already goes some way towards this by legislating for mediation information sessions in certain disputes. The statute, however, also raises two questions which need to be addressed.

ALTERNATIVES IN COURT PROCEEDINGS- REMAINING QUESTIONS

22) The Mediation Act is a welcome addition to the statute book in Ireland. Even with an overall statute regulating the use of mediation inside and outside courts, however, questions remain about how mediation, and other alternatives, will fit within the civil litigation process. In particular, two issues need to be addressed. Firstly, what amounts to unreasonable behaviour in a mediation setting and, secondly, how will the mediator reporting obligations contained in the new legislation operate?

23) As things currently stand, an unreasonable refusal to attempt or consider using mediation can be punished following a section 16 invitation.[19] Under the revised RSC Order 56A an unreasonable failure or refusal to participate in another ADR process can also be punished. [20] The question of what constitutes unreasonableness remains unclear, however. Although the Superior Courts have considered the matter in a range of cases, no clear bright line rule exists regarding when alternative processes should be used.[21] This is unhelpful for

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19 Mediation Act 2017, ss 16, 21.

20 RSC Order 99, r 1B.

21 Atlantic Shellfish v The County Council of Cork [2015] IEHC 570; Atlantic Shellfish v The County Council of Cork [2015] IECA 283; Grant v Minister for Communication, Marine and Natural Resources [2016] IEHC 328; Danske Bank v S.C. [2018] IECA 117. See also, Aonghus Cheevers,

litigants and their advisors. Voluntarism is an important – even defining – element of mediation. Worries about protecting voluntarism, however, need to be weighed against other public policy goals – most notably encouraging litigants to make use of alternatives procedures.

24) Mandatory mediation has been used in other jurisdictions, even if only for a limited range of cases. In a recent review of the civil justice system in Northern Ireland, a mandatory process for claims under £5000 was recommended.[22] In that jurisdiction, the review committee noted that, 'small claims are a natural area for consideration of mediation as a more proportionate means of dispute resolution.'[23] In this jurisdiction, the District Court small claims procedure already operates in an effective and in an expeditious manner. Owing to this, mediation may not be needed in this instance. The committee, however, could consider whether a pilot mandatory mediation scheme could be extended to other disputes.

25) Were this to happen, however, serious consideration should be given to how such a system would be funded. Although mediation can be a more cost-effective alternative to litigation, it can still be a costly undertaking, particularly if it does not end in a resolution of the dispute. Already, mediations conducted by the FMS are free for users of the service. If a mandatory scheme was introduced for a limited range of disputes, the costs associated could be funded in a similar fashion.

26) Such a pilot system could also be undertaken in line with reforms using technologies. We note the recent comment of the Chief Justice who highlighted that, 'There is undoubtedly great potential for exploiting I.T. in making much more effective use of court personnel and making life easier for litigants who have interaction with the courts.'[24] The pilot of paperless litigation in the

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'Voluntarism and the Need for a Civil Justice Reform Process in Ireland' (2018) 37(1) Civil Justice Quarterly 173; Garret Sammon, 'Mediation in Ireland: Policy Problems' (2017) 57 Irish Jurist 175.

22 Review Group of Civil and Family Justice in Northern Ireland, *Review Group's Report on Civil Justice* (Office of the Lord Chief Justice 2017), 127.

23 ibid.

24 Clarke CJ, *Statement of the Chief Justice for the New Legal Year 2017* (03/10/2017) Available at

Supreme Court is a welcome development.[25] Were a similar approach adopted throughout the court system it could help to make proceedings more efficient and less costly. The use of technology in courts, however, could be much broader. In England & Wales, the Online Solutions Court is, in many ways, the most far-reaching example of how technology can be used in civil dispute resolution. The same system is also a good example of how alternative processes can be made an integral part of a dispute resolution process, in courts. As of yet, nothing so far-reaching has been developed in Ireland. Nevertheless, Ireland should pay particular attention to how the system in England & Wales operates, with a view to, perhaps, implementing a similar system in the future.

27) When the Mediation Act 2017 was introduced the mediator reporting obligations contained in the draft legislation looked like they would impact the confidentiality of the mediation process and the neutrality of mediators.[26] Thankfully, the final version of the legislation, as enacted, changed these obligations so that mediators will not be required to judge the bona fides of the parties before them. This change should help to protect the voluntarism, self-empowerment, and party autonomy which are important parts of the mediation process. Instead of evaluating the parties the mediator will merely report on the outcome of the mediation. Courts and judges will be asked to rule on the manner of a litigant's engagement with the process and any, 'unreasonable refusal or failure by a party to the proceedings to consider using mediation…'[27]

28) Nevertheless, the form of the mediator's report still remains slightly unclear. Based on RSC Order 56A, a report will take the form of an affidavit filed by the mediator. After this, however, questions remain. The legislation states that if mediation does not occur, the report will contain, 'a statement of the reasons why it did not take place.'[28] If a party fails to attend a mediation session, or if a party fails to engage when in a session, will this need to be stated? If it is, how will this affect voluntarism, confidentiality, and the mediator's neutrality? If

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<http://www.courts.ie/Courts.ie/Library3.nsf/pagecurrent/B137A31686073CA5802581A800536B5E?opendocument> accessed 22 June 2018.

25 Muireann Granville, 'Paperless Litigation Piloted in Ireland's Supreme Court' (LK Shields Litigation and Dispute Resolution 2016).

26 Mediation Act 2017 (as initiated 9 February 2017), s 17.

27 Mediation Act 2017, s 21(a).

28 Mediation Act 2017, s 17(1).

litigants are punished after the filing of such a report, will this encourage people to attempt mediation or will it hinder the more widespread use of the process?

29) In other jurisdictions, reporting obligations are also a feature of mediation rules. The manner in which these rules are implemented, however, offers guidance that Ireland might follow. In Ontario, for example, the required forms for that jurisdiction's mandatory mediation program are provided online and are easily downloadable.[29] Providing such a standard form, with limited responses should help to streamline and regularise the mediator reporting obligations in the recently enacted legislation.[30] This might also help to develop public trust in mediation and other processes. Another way to accomplish this is through effective education. The next section of this submission will discuss the findings from the review of mediation, already discussed, which showed that education before and during a mediation process, was important in ensuring party "buy-in".

EDUCATION IN MEDIATION AND OTHER ALTERNATIVES AND LEGAL ADVICE

30) Between 2006 and 2015, the Family Mediation Service (FMS) collected a total of 1147 evaluations from clients who used mediation. Clients identified a process in which they could reach an agreement on the issues between them. In addition, they also discussed a process in which procedural justice concepts such as voice (the ability to say how they felt about the dispute), neutrality, and control influenced their evaluations of the process. Throughout the evaluations, these and other procedural justice concepts influenced client judgments.

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29 Ontario Court Services, *Rules of Civil Procedure Forms*. Available at: <http://ontariocourtforms.on.ca/en/rules-of-civil-procedure-forms/> accessed 21 June 2018.

30 Limited in this regard might see three options being available: (i) mediation tried (no agreement), (ii) mediation tried (agreement), (iii) mediation not suitable. Such a form would not require the mediator to discuss party conduct. On the Ontario forms, the choices available are phrased differently and leave more space for 'good-faith' judgments. A certificate of non-compliance (Form 24.1D) is completed when the parties fail to attend mediation. Such a document is also completed if a party fails to provide the mediator with a statement of the issues or a copy of the pleadings.

31) The analysis also showed that mediators assume distinct and connected roles within the mediation process. At times, they were identified as acting as a neutral. In this role, they refereed the discussions between the parties and remained impartial. On other occasions, they helped the parties to assess their own ideas. This involved questioning party assumptions and reality-testing client ideas. At other times, the mediator acted as a calmer. In this role, they calmed the discussions and allow the parties to focus on the issues that they needed to resolve. Finally, as the 'repeat-player' within the mediation setting, they act as an educator.[31]

32) As educators, the mediators helped the clients in different ways. Firstly, clients discuss mediators who helped them to consider the wider impacts of their dispute. In a family setting, this often related to children and how they were affected by the dispute. Secondly, the clients identified mediators, and a mediation process, which helped them to understand what was required of the parties within the mediation process itself. On some occasions, this understanding moved outside the mediation process to the legal system more broadly. This legal educator role, however, was questioned at times. A female client, who attended mediation in Castlebar was asked how mediation could have been made more useful. In answer, she noted that the process would have been more useful, 'If the mediator would have had a better knowledge of the legalities of separation.'[32]

33) The identification of mediators as legal educators is, in some ways, welcome. Mediation, by its nature, is less formal and less adversarial than litigation. Attempting to resolve a dispute in such a process can help to attend to the legal and non-legal aspects of any dispute. In addition, it can allow for a settlement in a less fractious environment. Nevertheless, the fact that clients in the FMS identify mediators as performing a legal education role is not ideal. Traditionally, legal education was the remit of lawyers. What the FMS analysis shows is that this role is being performed by other people, at least in some instances.

34) Although mediators appear to be educating litigants about how they might resolve their dispute, about mediation, and about the wider legal process, the evaluations do not show a process in which legal advice is no longer needed. To

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31 Marc Calanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change' (1974) 9(1) Law & Society Review 95.

32 Cas-10879 (Short evaluation, 2011, Female). Did you find the Mediation process useful to you? (Yes) How do you think it could have been made more useful?

ensure that all litigants have access to the advice they require, the availability of legal aid in civil cases should be reviewed. At the very least, work should be undertaken to investigate how legal advice could be provided to litigants who are using mediation and other alternatives. As the numbers of Litigants in Person increases, the burden placed on courts continues to grow. Helping such litigants to more effectively choose the correct process to resolve their dispute, and advising them within those processes, may ease the burden placed on courts.

35) Another important finding of the research was that litigants needed to "buy-into" the mediation process. Without the requisite engagement, mediation was unlikely to be effective. The need for party "buy-in" was stressed by the clients who used mediation and by professional respondents (mediators and lawyers). This suggests that mediation should be viewed as a process, with a beginning (pre-mediation meetings, advice, and preparation for mediation), a middle (the mediation process itself), and an end (review and evaluation of the process). Within such a process, lawyers, mediators, mediation providers, and a wider group of legal stakeholders all have a role to play. Organisations like the FMS already provide litigants with information about mediation and provide mediation services. Other community and public organisations, such as Citizen's Advice and FLAC could play a role in educating litigants about mediation and what mediation can provide.

36) Other alternatives procedures also need to be viewed in this way. Were this to happen, lawyers will need to do more than simply describe the various procedures which are available and the advantages that they might provide. Instead, lawyers will need to educate their clients about what a procedure entails before it begins. In some ways, this calls for a re-examination of what the lawyers' role entails. Instead of simply advising their client about the legal aspects of their dispute, lawyers will act as disputing guides helping their clients to choose the most appropriate dispute resolution processes based on the circumstances of the case.

37) Alternatives can help both the courts and litigants. To make the best use of all the alternatives that are available, however, they should be viewed as offering more than simply a mechanism to control costs, quicken resolution, and reduce the burden placed on the court system. Evaluating the civil litigation process using a range of factors – as called for in this submission – could help to identify which processes are appropriate in particular cases. Undertaking such an on-going evaluation will help Ireland to develop a more effective, efficient, and less costly system of civil dispute resolution in which a range of procedures are available. Importantly, however, litigant needs will be considered throughout.