



National  
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**The Role of ADR as a Means of Resolving Workplace Disputes in Small  
and Medium Enterprises in Ireland.**

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## **Abstract**

This research study examines the role of Alternative Dispute Resolution in resolving workplace disputes in the SME sector of Ireland. It reviews the current status of ADR in Ireland in comparison to its worldwide counterparts.

An analysis of the knowledge and frequency of the use of ADR in SMEs is investigated using both qualitative and quantitative research.

The conclusion, based on research and analysis, reviews the current status of ADR in SMEs in Ireland and recommendations for further research are posed.

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*'Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often a real loser - in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.* (Lincoln 1850)

## Chapter 1- Introduction

### Background

In an article issued in relation to Alternative Dispute Resolution, The Irish Business and Employers' Confederation stated – '*Alternative dispute resolution is an umbrella term covering a range of initiatives that are introduced by organisations to modernise or strengthen workplace conflict management arrangements*' (Doherty, Teague and Naughton 2008)

In this current economic climate, the number of disputes being processed by the courts in Ireland has increased. This may be due to a number of issues, including increased frustration from employers or employees in relation to economic circumstances, increased competition and change in conditions of employment. Over the years, increased legislation including the Organisation of Working Time Act 1997, Safety Health and Welfare at Work Act 1989, and Equal Status Act 2000, has set challenging goals for employers (Schutte 2003)

Another contributing factor may be the increased number of multinational companies entering Ireland and who have chosen, in so far as possible, not to recognise trade unions or enter into the current employment dispute resolution process, unless required by law to do so. A commonly known example of this situation is Ryanair, an organisation which chooses not to recognise unions and is regularly associated with industrial conflict (O'Sullivan and



Gunnigle 2009) The company implements the minimum policies and procedures required under legislation

Even with such policies and procedures, some employment disputes are not resolved until they reach the courts. In this regard, many managers believe that, 'by recognising trade unions and exceeding the minimum level of legislative requirements, managerial prerogatives are curbed' (Fox 1966)

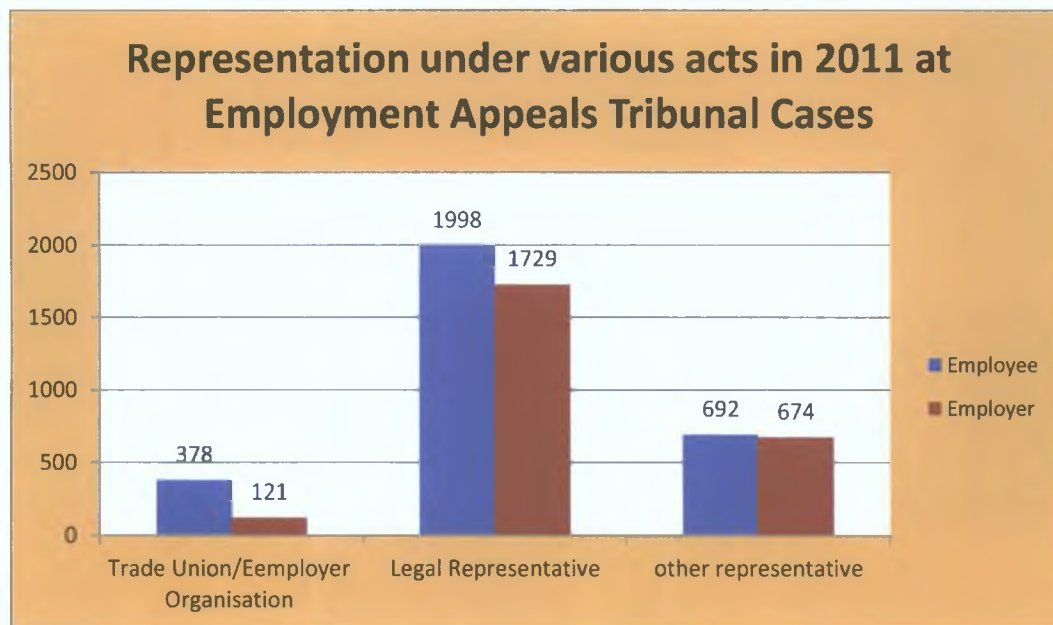
Workplace conflict is inevitable. Conflict can be defined as a disagreement in which the party involved receives a threat to their needs, interest or concerns (Doherty et al 2008). Such conflict can be simple and straightforward, but it can also be very complex. There is nothing certain about the resolution of workplace conflict, whether through the courts or by ADR. Conflict can occur for many different reasons, and can often result from involved parties having different interests (Doherty et al 2008)

Employment disputes can result in a loss of time, money and effort, not only on the part of both aggrieved parties, but also on the part of the State in providing judicial and administrative staff in the various courts and tribunals. *'The 'rush-to-the-courtroom' syndrome that has been characteristic of Americans appear to the author to have been adopted by our Irish brethren, and both the Oireachtas and the Irish courts might benefit from studying how ADR has given courts in the U S A some much-needed and welcome relief'* (Daugherty Rasnic 2004, p 182)

While the engagement of legal representatives in dealing with resolution of workplace

conflict through traditional methods is not essential, it has become the norm.

The graph below shows a graph distributed from the Employment Appeals Tribunal. It analyses representation levels in EAT cases in 2011.



**Figure 1.** Representation under various acts in 2011 at Employment Appeals Tribunal Cases. Source: (*The Employment Appeals Tribunal 2011*).

Counsel may also be engaged for tribunal hearings. Legal fees are not regulated, and so the cost of bringing and defending a claim can be quite expensive – it is not unheard of that the legal fees may be higher than the award.

According to Richard Bruton, Minister for Jobs Enterprise and Innovation *‘The system is*

*now so complex that even many practitioners are unsure about available avenues for adjudication. For many employers and employees the system is too complex and onerous, takes too long to navigate and costs too much'* (Department of Jobs Enterprise and Innovation 2012a)

In his address at the opening of the High Level Conference on the Resolution of Individual Employment Rights Disputes at the School of Law, University College Dublin, Minister Bruton acknowledged that there is need for major reform of workplace conflict and dispute resolution in Ireland. He cited a number of reasons which included

*'Users of the State's employment enforcement/redress machinery face a bewildering array of options when seeking to initiate a claim*

- *Around 30 different pieces of employment law and many more Statutory Instruments*
- *Five redress/enforcement bodies*
- *At least six websites, including his own Department's*
- *Upwards of 35 different forms*
- *A range of different time limits within which to pursue their claim*
- *A waiting time of anything up to 80 weeks, depending on which route is taken'*  
(Department of Jobs Enterprise and Innovation 2012a)

This was the position up to the end of December 2011. It is clear from the Minister's address that the current workplace dispute resolution system in Ireland needed major reform, and also that the Government are committed to implementing this reform.

'The capacity to resolve workplace disputes effectively contributes to the quality of the working environment and has significant impact on organisational performance in terms of reducing days lost, enhancing productivity and improving management-employee relations' (Doherty et al 2008)

## **Chapter 2. Definitions**

**ADR** 'Alternative dispute resolution is an umbrella term covering a range of initiatives that are introduced by organisations to modernise or strengthen workplace conflict management arrangements' (Doherty, Teague and Naughton 2008)

**EAT** Employment Appeals Tribunal – 'The Employment Appeals Tribunal is an independent body bound to act judicially and was set up to provide a fair, inexpensive and informal means for individuals to seek remedies for alleged infringements of their statutory rights' (Employment Appeals Tribunal 2012)

**IBEC** the Irish Business and Employers' Confederation, 'is the national voice of business and employers and is the umbrella body for Ireland's leading sector groups and associations IBEC represents the interests of business in Ireland and provides a wide range of direct services to its 7,500 members, which range from the very small to the largest enterprises, employing over 70% of the private sector workforce in Ireland' (IBEC 2012a)

**ISME** 'the Irish Small & Medium Enterprises Association is the independent organisation for the Irish small & medium business sector, with in excess of 8,750 members nationwide' (Irish Small and Medium Enterprises Association 2012)

**LC** 'Labour Court -The Labour Court was established to provide a free, comprehensive service for the resolution of disputes regarding industrial relations, equality, organisation of working time, national minimum wage, part-time work, fixed-term work, safety, health and welfare at work, information and consultation matters

The Labour Court is not a court of law It operates as an industrial relations tribunal, hearing both sides in a case and then issuing a recommendation (or determination/decision/order, depending of the type of case) setting out its opinion on the dispute and the terms on which it should be settled

The Labour Court is a court of last resort cases should only be referred to the Court when all other efforts to resolve a dispute have failed' (The Labour Court 2001)

**LRC** Labour Relations Commission – 'The Commission carries out this mission by providing the following specific services

- an industrial relations Conciliation Service
- industrial relations Advisory, Training and Research Services
- a Rights Commissioner Service
- a Workplace Mediation Service

- assistance to Joint Labour Committees and Joint Industrial Councils in the exercise of their functions

The LRC undertakes other activities of a developmental nature relating to the improvement of industrial relations practices including

- the review and monitoring of developments in the area of industrial relations
- the preparation, in consultation with the social partners, of codes of practice relevant to industrial relations
- industrial relations research and publications
- organisation of seminars/conferences on industrial relations/human resource management issues

#### Legal Status

The Labour Relations Commission was established on 21 January, 1991 under section 24 of the Industrial Relations Act, 1990' (Labour Relations Commission 2012b)

**Mediation** 'A process of negotiation, but structured and influenced by the intervention of a neutral third party who seeks to assist the parties to reach an agreement that is acceptable to them' (Mackie, Miles and Marsh 1995, p 9)

**MNC or MNE** ‘Multinational enterprise or multinational company is defined as an enterprise that engages in direct foreign investment and owns or in some way controls the value added activities in more than one country’ (Dunning and Lundan 2008, p 3)

**NERA** ‘Economic Consulting ([www.nera.com](http://www.nera.com)) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges’ (National Economic Research Associates 1996)

**RC** Rights Commissioner – ‘Rights Commissioners operate as a service of the Labour Relations Commission and are independent in their functions. They investigate disputes, grievances and claims that individuals or small groups of workers refer under specific legislation and issue the findings of their investigations in the form of either decisions or non-binding recommendations, depending on the legislation under which a case is referred’ (The Labour Relations Commission 2012a )

**SFA** ‘The Small Firms Association (SFA) is the national organisation exclusively representing the needs of small enterprises (i.e. those employing less than 50 employees) in Ireland. The SFA is funded directly through subscription fees from its 8,000 member companies. As a full social partner, it directly meets government at the table and interacts with key decision-makers at all levels to ensure that the economic environment is conducive to small business establishment and development’ (SFA 2012)



**SIPTU** ‘The Services, Industrial, Professional and Technical Union (SIPTU) represents over 200,000 workers from virtually every category of employment across almost every sector of the Irish economy SIPTU provides the expertise, experience and back-up services necessary to assist workers in their dealings with employers, government and industrial relations institutions’ (Services Industrial Professional and Technical Union 2012)

**SME** – Small and Medium Enterprises- ‘a small Enterprise is defined as an enterprise that has fewer than 50 employees and has either an annual turnover and/or an annual Balance Sheet total not exceeding €10m

A Medium Sized Enterprise is defined as an enterprise that has between 50 employees and 249 employees and has either an annual turnover not exceeding €50m or an annual Balance Sheet total not exceeding €43m’ (Enterprise Ireland 2012)

## **Chapter 3 Aims, Objectives and Research Questions**

### **Aims**

The aim of this case study is to analyse the knowledge and frequency of use of Alternative Dispute Resolution in managing conflict in the workplace of SMEs

### **Research objectives**

- 1 To identify and discuss traditional dispute remedies compared with ADR in resolving workplace conflict in SMEs in Ireland
- 2 To discuss ADR in Ireland compared to worldwide ADR
- 3 To investigate the developments in ADR and its knowledge and use in SMEs in Ireland over the past decade

### **Research Questions**

- 1 What is ADR and how has it developed worldwide and in Ireland as a method of dispute resolution?
- 2 What is the current status of ADR in the resolution of Irish workplace disputes in SMEs?
- 3 Is ADR perceived by SMEs to be an effective alternative to traditional dispute resolution?
- 4 What are the perceived benefits of ADR in SMEs?

## **Chapter 4 Research Methodology**

Against the background of ADR in Ireland outlined in the literature review, the research questions were developed upon finding a gap in the literature dealing with workplace ADR in Ireland. It is evident that considerable research has been conducted into the use of ADR in resolving workplace conflict in Ireland. However, it primarily focused on MNC's and large organisations. Therefore, it has been decided to focus this research on the role of ADR in the SME sector in Ireland.

This chapter will outline the research tools and procedures engaged in order to complete this study. The researcher will also explain the rationale behind the choice of approach applied.

The purpose of research methodology is to discuss the method of the research chosen, the rationale and the implications involved. In essence, it is to support, identify and quantify the findings of the research.

Saunders describes research as something that people undertake in order to find out things in a systematic way (Saunders et al 2009, p 5).

### *Research philosophy*

The research philosophy adopted will underpin the research strategy. The researcher has chosen the strategy on the basis of whether or not it would answer the research aims, objectives and research questions. A pragmatic approach has been taken for this research as both quantitative and qualitative methods are used.

According to Saunders et al (2009) a pragmatist approach is the research philosophy that employs the thinking of both positivist and the phenomenologist. It applies a practical approach integrating different perspectives to help collect and interpret data.

### *Research Approach*

Bryman and Bell (2007) outline the two approaches which must be considered when conducting research, the first being a deductive approach and second being an inductive approach. A deductive approach is taken when researchers develops a theory, hypothesises and designs a research strategy to test that hypothesis. Whereas an inductive approach is the opposite to deductive, beginning with specific observations and moving to broader generalisations and theories (Bryman and Bell 2007, p.14).

**Deductive approach:** theory → observations/findings

**Inductive approach:** observations/findings → theory

*Figure 2. Inductive and Deductive approaches. Source: (Bryman and Bell 2007, p.14).*

They go on to compare a deductive approach to a waterfall and an inductive approach to climbing a hill. However, a number of academia suggests a mix method approach is best, by combining both methods to suit the research (Bell 2010, Bryman and Bell 2007, Saunders et al 2009). For the purpose of this research a multi method approach is used, thereby adopting both an inductive (quantitative) approach as well as deductive

(qualitative) approach

### Secondary research

As outlined by Domegan and Fleming (2007), secondary data is considered as information which already exists through published sources. A common research error is conducting primary research before thoroughly exhausting secondary sources (Domegan and Fleming 2007, pp 80-81)

### *Literature Review*

Hart (1998) states the purpose of a literature review is to 'provide a clear and balanced picture of current leading concepts, theories and data relevant to the topic or matter that is the subject of study' (Hart 1998, p 172)

A literature review will be researched on the chosen topic, investigating the developments of ADR in resolving workplace disputes. Furthermore, it examines the current status of ADR in SMEs in Ireland. However, it must be noted that, due to ADR being a relatively recent phenomenon and a growing rather than an established area of the selected target market, there is an absence of a wide range of literature and research on this subject.

Documentary analysis will be undertaken by reviewing and citing previous cases, journals, documents and literature published regarding resolution of workplace conflict which has set the groundwork to this study.

By combining relevant information the literature review includes

- Traditional dispute resolutions

- The rise of alternative dispute resolution
- ADR worldwide
- ADR in Ireland
- 2012 developments
- SMEs in Ireland

### Primary Research

#### *Data Collection*

Bell (2010) acknowledges that the means of selection of the data collection will depend on the type of information being sought (Bell 2010, p 101) There are a number of data collection methods to consider when undertaking research These include surveys, case studies, interviews, observations or experiments In undertaking the research for this study, both qualitative and quantitative methods were chosen, the difference being that quantitative research is structured, logical, measured and wide, while qualitative research is more intuitive, subjective and deep This implies that some subjects are best investigated using quantitative whilst in others, qualitative approaches will yield better results In some cases both methods can be used (Bouma and Atkinson 1995, p 208) The researcher deemed it essential to use both methods of data collection

#### *Triangulation*

Jonker and Pennink (2010) explain that 'triangulation is used for the application of two or more methods on the same research problem in order to increase the reliability of the

|

results' (Jonker and Pennink 2010, p 160) This ensures that the data being collected is verified by another method of data collection The data collected from the questionnaire and the semi structures interviews along with elements available through secondary data are compared in order to support the validity of the findings in this research

### **Limitations**

#### *Generalizability*

Certain limitations of this research instrument were also foreseen by the researcher As this is a small scale study, caution must be used in extrapolation to the wider Irish experience However, because of the dearth of the current Irish data in this field, this research, nevertheless has value as an initial examination of a heretofore under researched area

#### *Validity*

According to Eugene F Collins Solicitors in Dublin the confidential nature of ADR makes any statistical information unavailable (Daugherty Rasnic 2004, p 188) It is impossible to check the honesty of the answers given in a questionnaire Furthermore it is also important to foresee that some questionnaires may not be completed fully by the responding individuals

#### *Bias*

Special attention must also be paid to interview bias The tone and manner in which a question is asked may cause the question to be perceived to be bias This may also be the case for interviewee answering the questions as their answer may be perceived to be

different to the interviewer. For this reason the researcher tried to remain without bias or emotions when conducting the interview.

### *Ethics*

Throughout the study, the researcher endeavoured to remain ethical. For confidentiality purposes, respondent's names or identity were not disclosed. The transcript of interviews was approved by the individual interviewees before being included.

## **Research Instruments and Design**

### *Questionnaire*

*'A well-constructed questionnaire is reliable and valid data if the related phases of the research have also been well executed'* (Hair, Wolfinger-Celsi, Mooney, Samouel and Page 2011, p 249)

In order to ascertain the correct information for this research it has been decided to conduct questionnaires to evaluate the level of knowledge and frequency of use of ADR in SMEs in Ireland. Questionnaires are best when information is taken directly from people about their belief, knowledge and what they think (Fink 2000, p 11). To design a suitable questionnaire, the researcher reviewed previous questionnaires developed in the field of study which were related, but not specific, to the study. The information was then correlated and a questionnaire was developed.

The questionnaire was distributed by hand to relevant organisations, as it was hoped that



distributing the questionnaires by hand would result in a higher level and quality of response. Although it may appear that the use of questionnaires lends itself to a quantitative research strategy, the researcher has made a conscious effort to also include open-ended questions which allow for responses that are not generalisable but give an insider perspective (Bouma and Atkinson 1995, p. 64)

### *Questionnaire Design*

The questionnaire was distributed to 100 SME organisations that completed hard copy which were subject to statistical and interpretative analysis. The response rate was 39%.

In order to obtain the most relevant information, the respondent requested to complete the questionnaire was the person who oversees management of the personnel in the organisation. Both open and closed questions were used in the questionnaire with the hope of gaining a better insight into the given field, by analysing the reasoning behind their views. At the same time, dates and specific information was generated by closed questions.

The questionnaire examined

- Organisation profile
- employment cases brought against the respondents and resolved by traditional methods
- the knowledge and use of ADR by the respondents

*Pilot Study*

In order to verify the questionnaire will be effective, a pilot study was carried out. The researcher found that following distribution of a pilot of 10 questionnaires via email, a poor response rate was received. It was then decided to administer the survey face to face. Bell (2010) stresses the importance of piloting the questionnaire to determine how long it takes to complete, the clarity of the questionnaire and the usability of data provided by respondents.

Questionnaire Pilot questions included

- 1 How long did it take you to complete?
- 2 Were the instructions clear?
- 3 Were any of the questions unclear or ambiguous? If so, which ones and why?
- 4 Did you object to answering any of the questions?
- 5 In your opinion, has any major topic been omitted?
- 6 Was the layout of the questionnaire clear?
- 7 Any additional comments?

(Bell 1999, p 128)

The questionnaire was then revised in accordance with feedback given by piloting. It was decided to break down the questionnaire into three sections, general, litigation and ADR. It was also decided to add some extra options to a number of multiple choice questions.

Definitions and a brief introduction were included at the head of the questionnaire in order to ensure the respondents would share a common understanding of the area. In total, the questionnaire consisted of 27 questions. The format of the questionnaire is included appendix (i).

### **Interviews**

In addition, it was decided to conduct qualitative research by conducting case study interviews with relevant parties involved with ADR in the workplace to assess their views. It is believed that the chosen parties have an interest in the study. Interviews will focus on participants involved in the resolution of workplace disputes.

Willig (2001) stresses the importance of careful case selection, citing Bromley who argues that if cases are to be useful they have to be 'restricted in scope and sharply focused' (Willig 2001, p. 75). Through the use of contacts, determination and good fortune a number of appropriate contacts were made.

Interviews took place after the questionnaires were completed as the interview questions were based on the result of the answers to the questionnaire.

### **Profile of interviewees**

#### **Case Study 1**

**Interviewee Profile** Chairman of Chartered Institute of Arbitrators, Mediator/Investigator, CEO of private company, in practice for 20 years

#### **Case Study 2**

**Interviewee Profile** Industrial Relations/Human Resources Executive with IBEC, in practice for 13 years

#### **Case Study 3**

**Interviewee Profile** President of Mediators' Institute of Ireland Mediator, non-practising Solicitor and Principal of Private Mediation Service in practice for 9 years

#### **Case Study 4**

**Interviewee Profile** Mediator, with previous experience in primary education and social work, Owner/Manager of a private company, dealing with coaching, mediation, conflict resolution and prevention, over 30 years' experience, in private practice since 2006

### Case Study 5

**Interviewee Profile** Industrial Relations Organiser, employed by SIPTU, in current role since October 2010

### Case Study 6

**Interviewee Profile** Profession - Barrister, self employed, in practice since 2000

Interviews reflect the views and experience of the interviewees and are not necessarily reflective of organisational policy. While no names are mentioned, all interviewees have been apprised of the case study content and have given full permission for inclusion of their views and comments in this research.

Depending on the data required, interviews can be designed as structured, semi structured or unstructured. Semi structured phone interviews were selected as in this instance the researcher deemed it necessary in order to lead the selected interviewee in the right direction but at the same time obtain the information relevant to the research. In order to inform the interviewee of the contents of the interview, a guide of relevant information was sent before the interview was conducted.

The semi structured phone interviews were conducted with a key person from selected backgrounds and examine the following

- General organisation profile

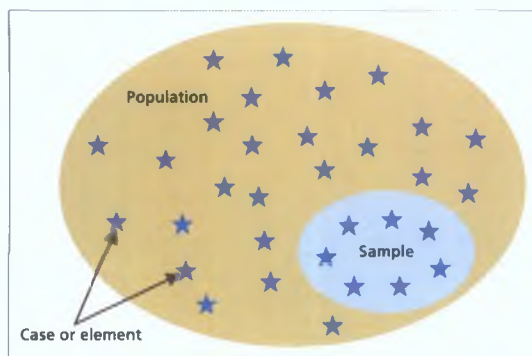
- Litigation
- ADR experience
- Benefits and disadvantages of ADR

Phone interviews also assured the selected interviewee of confidentiality. The approach taken was one of semi structured respondent interviews with a mixture of open and closed questions asked. Open questions were mostly used in the questionnaire with the hope of gaining a deeper insight into the given field by analysing the reasoning behind the views expressed.

As timing was an issue in conducting the questionnaire together with confidentiality issues, no recordings were made although contemporaneous notes were taken due to the sensitive nature of the subject. Following the interviews, transcripts were sent to all respondents for approval prior to including in this study.

## Sampling

Sampling is a 'process which can be defined as a set of target respondents selected from a larger population for the purpose of a survey' (Singh 2007, p.88). Choosing a sample for the questionnaire was time consuming as there is no one comprehensive data base of SMEs in Ireland. The population of the study consists of SME organisations currently operating in Ireland. The researcher identified clusters (groups, portals or organisations), obtained names of organisations within these clusters, and then sampled within them (Singh 2007, pp.105-108).



*Figure 3. Sampling Study Source: Saunders et al. (2009)*

In choosing interviewees, purposive or judgemental sampling was used as it enables the researcher to use their judgment in selecting cases that will best enable them to answer their research questions and to meet their objectives (Saunders 2009). Therefore, in order to make a decision on whom to interview, it was important to consider what organisation or agencies have experience in dealing with ADR.

It would seem reasonable to conclude that the chosen interviewees are suitable to interview in order to meet the research objectives.

## **Chapter 5 Developments in ADR – a review of the Literature**

In this chapter the researcher will examine ADR in light of the research questions posed in this study and will examine the following areas

- Traditional dispute resolution
- The rise of Alternative Dispute Resolution
- ADR developments in 2012
- SME's in Ireland

However, it must be noted that due to ADR being a recent phenomenon and a growing rather than an established area within SME's, there is an absence of a wide range of literature and research on this selected area. Conclusions will then be drawn based on the literature findings.



### Traditional dispute resolution

From commencement of the Industrial Revolution, when the employee had literally no rights, to the present day, employment rights in Ireland have seen major developments. There are now a wide range of laws, institutions and mechanisms to assist both employee and employer in resolving workplace conflict.

Traditionally, in Ireland workplace disputes have been dealt with, at local level through Industrial Relations mechanism, with recourse through the Courts.

The Labour Court is an independent body which was established under the Industrial Relations Act 1946. The Labour Court is not a court of law, but it has become more logistic. This Court acts as a tribunal hearing both sides and making a non-binding recommendation under the Industrial Relations Acts 1946-2001. However, in some instances it may be binding - for example, employment equality, pensions, and decisions under the Organisation of Working Time Act 1997 (Wallace, Gunnigle & McMahon 2004, pp 113-115).

The Labour Relations Commission was established under Section 24 of the Industrial Relations Act 1990, and was established with the purpose of promoting good industrial relations. Its function is to promote development and improve industrial relations policies, procedures and practices through the provision of appropriate timely and effective service to all participants. One of its functions is to draft codes of practice in consultation with

employers and other relevant bodies. The LRC offers a range of services to employers, trade unions and employees, including a conciliation service which uses mediation.

The Equality Tribunal was established in 1999 under its former legal name the Office of the Director of Equality Investigations. It operates under the aegis of the Department of Justice, Equality and Law Reform as an independent statutory body. Its function is to investigate/mediate complaints of unlawful discrimination under Employment Equality legislation. In 2001, the Tribunal began offering mediation as an alternative mechanism to investigation for resolving disputes. This Mediation Service is staffed by Equality Mediation Officers who also work as Equality Officers.

The Employment Appeals Tribunal (EAT) is an independent quasi-judicial body. Teague & Thomas 2008 describes this statutory body's function '*to adjudicate on disputes relating to individual employment rights. The EAT is committed to providing an accessible, speedy, fair and informal forum for individuals to seek remedies for alleged infringement of their statutory employment rights*' (Teague & Thomas 2008, p. 137).

However, while these bodies have served their purpose in the past and indeed, will continue to do so in the immediate future, the volume of disputes referred to these bodies has been questioned and has been the subject of criticism in recent times. Furthermore, as highlighted by Minister Bruton in his address in University College Dublin, a prospective claimant may have to trawl through 30 different pieces of employment law, 35 different forms, five redress/enforcement bodies, and at least six websites before successfully filing a claim for redress (Department of Jobs Enterprise and Innovation 2012a).

Schutte (2003) outlines a number of disadvantages of traditional legal solutions to employment disputes *'high cost, high degree of formality, long processing time can attract unwanted publicity, solutions are bounded, there are winners and losers parties are compelled to attend, use of legal language'* (Schutte 2003, p 4)

Greater competition, the erosion of traditional support systems, the recession which has gripped the Irish economy over the past 5 years, and a society more prone to litigation has led to an increase in claims (Labour Relations Commission 2010) According to the 2010 Annual Report of the Labour Court the following were the numbers of Employment Disputes referrals in 2010 Labour Court 1,452, Labour Relations Commission 1,193, Rights Commission 15,671, Employment Appeals Tribunal 8,778, making a total of 27,094 The total number for 2006 was 13,527 (The Labour Court 2011) According to the 2010 Annual Report of the Employment Appeals Tribunal the average waiting period to have a claim heard was 58 weeks in Dublin, and was 55 weeks in provincial areas at year end (Employment Appeals Tribunal 2011)

It may be argued that the effective implementation of ADR processes may decrease the pressure on institutions such as the LRC and the Labour Court According to McCaughey 2004 *'Ireland now is statistically the most litigious country in Europe and she is now second only to the USA worldwide with having the greatest number of lawyers per capita'* (McCaughey 2004, p 12)

### The Rise of Alternative Dispute Resolution

The development of ADR in the Western World can be traced back to the ancient Greeks. As Athenian courts became overcrowded, the city-state introduced the position of a public arbitrator around 400 B C (Barrett and Barrett 2004)

The concept of modern Alternative Dispute Resolution was first developed in America. ADR is described by The US Federal Administrative Dispute Resolution Act 1995 as 'alternative means of dispute resolution' meaning any procedure that is used to resolve issues in controversy including, but not limited to conciliation, mediation, facilitation, fact finding, mini-trials, arbitration and use of ombudsmen, or a combination thereof (Price 2007, p 608). However, according to Teague (2005) ADR is not an entirely new concept as it overlaps with established dispute resolution methods such as arbitration and conciliation (Teague, 2005)

ADR has also been related to as an umbrella term for new dispute resolution initiatives used by organisations. Some of these initiatives are controversial as they are seen to undercut the justice system, promote non-union employment relations, and weaken statutory-based employment rights (Teague, 2005, Lipsky et al, 2003). Roche & Teague (2012) assessed the growing importance of ADR stating 'in text books ADR is normally defined as a range of procedures that serve as alternatives to litigation through the courts for the resolution of disputes' (Roche & Teague 2012a, p 531)

ADR offers a solution to the problem of access to justice faced by citizens in many countries due to three factors

- 1 the volume of disputes brought before courts is increasing,
- 2 the proceedings are becoming more lengthy and
- 3 Costs incurred by such proceedings are increasing (The Law Reform Commission 2010)

In comparison to the traditional conflict management systems, in particular, grievance and disciplinary procedures, ADR has more of an interest-based focus, where the outcome or result should be a win-win situation that is, the issue is resolved, rather than one side winning and the other side losing (Schutte 2003)

Conflict resolution should be as near as possible to its origin. In other words, the dispute should be dealt with as fast as possible. However, as already stated in this research, at present a delay of up to 80 weeks can be incurred if using the traditional methods (Teague, cited in Dobbins 2010). According to Teague more needs to be done at organisational level to solve disputes and grievances as close as possible to the point of origin. Therefore it should be incorporated in the grievance procedure (Dobbins 2010)

ADR methods of workplace dispute resolution appear to be handled more speedily than through the Labour Relation Commission, the Employment Appeals Tribunal or the Labour Court. ADR is also seen as a more flexible approach than the traditional methods, and is not

as adversarial

Companies which have a high human resources commitment are more likely to have a greater commitment to ADR. In contrast, firms with low human resources commitment tend to stick with more traditional models of dispute resolution. It is also apparent that larger organisations are more inclined to change and embrace ADR, rather than SMEs. The reason for this may be lack of knowledge, and also that it is seen as a costly exercise, but may also be that the management of the SMEs have no conflict management experience, and only deal with problems when they arise, with no forward planning (Kerr 2011)

ADR can be utilised in both unionised and non-union organisations. Some academics believe the use of ADR may influence the decline in unionisation, as ADR promotes more co-operation or collaboration which is moving away from the traditional low trust paradigm (Purcell 2010). Through studies carried out, Roche & Teague noted that organisations are inclined to opt for ADR rather than allowing union input. ADR can be on an individual or collective basis (Purcell 2010). However, according to Roche & Teague (2012) organisations tend to focus on individual resolution rather than collective (Roche & Teague 2012a, p. 452). This can lead to a perception of “divide and conquer”

According to Kaminski (1999) the new forms of collective bargaining involving unions in partnership agreements and associated problems solving and interest based partnership techniques comes under the auspices of ADR. The significant difference between unionised and non-unionised organisations on conflict management is that the former

normally use collective procedures while the latter normally use procedures that focus on the individual employee (Teague and Doherty 2011)

Although there are a wide variety of ADR techniques, they all share ‘the similar property of engaging the expertise of a third party neutral to help produce a settlement to a dispute’ (Teague, 2005, p 7) However, as outlined by Dobbins (2010) there are a number of in house ADR mechanisms such as ombudsman, in-house mediation, peer review, management review boards, and negotiation Some companies, for example, Eircom, train mediators through accredited mediation training This process has resulted in less resort to formal external dispute resolution The mediation process is also recognised by the Eircom Trade Union as a first port of call in dispute resolution (Doherty et al 2008)

While there are a number of methods of ADR, the most common appears to be mediation, arbitration and conciliation Mediation is described as ‘a process of negotiation, but structured and influenced by the intervention of a neutral third party who sees to assist the parties to reach an agreement that is acceptable to them’ (Mackle, Miles and Marsh 1995, p 9) It is a process in which an impartial and independent third party facilitates communication and negotiation and promotes voluntary decision making by the parties to a dispute to assist them to reach a mutually acceptable solution (The Mediators’ Institute of Ireland 2012) Mediation appears to be the most common form of ADR in Ireland, through recommendations from the EAT, and also the option to avail of private service Regulations surrounding the qualifications of mediators are limited in Ireland Many mediators are

experts in their own field and have a vast amount of experience. Education in the role of mediation has increased greatly over the past number of years through recognition of the need for expertise. The Mediators' Institute of Ireland have a list of recommended Training Organisations including the Institute of Public Administration who provide Mediation for all Public Sector Staff.

Current research indicates that organisations differ over the use of internal or external mediators. Baruch, Bush and Folger (1994) contend that complex cases are unsuitable for internal mediation and that external mediation can eliminate the risk of sensitive cases being mishandled. Schutte (2003) contends that internal mediators may find it difficult to separate the confidentiality of the case from normal office life (Schutte 2003). However, according to Crawley and Graham (2002) organisations have different needs which will suggest different models.

Conciliation is a process similar to mediation whereby the conciliator seeks to facilitate a settlement between the parties (Chartered Institute of Arbitrators 2012). Conciliation is a voluntary process and is an effective means of facilitating the resolution of disputes. In Ireland, conciliation is rarely availed of except in respect of construction industry disputes. Under the industry's defined procedures for conciliation, the conciliator is obliged to issue a recommendation for the resolution of the dispute if the parties fail to reach settlement (Chartered Institute of Arbitrators 2012).



As outlined by Bunni (1997) arbitration is one of the oldest forms of ADR and its use in Ireland has been traced back to the Brehon Laws (Bunni 1997, p 373) It is a process whereby parties agree to refer disputes between them for resolution to an independent third party known as the arbitrator An arbitrator can be a final resort where an employment dispute is proving difficult to resolve The arbitrator works to rules agreed between the parties or, if no such rules are agreed, as laid down by the Arbitration Acts The arbitrator is usually an expert in the subject matter of the dispute A major advantage is that it is a confidential and private process (Chartered Institute of Arbitrators 2012) In Ireland arbitration has been governed by the Arbitration Acts 1954-1998 The area of arbitration has had a number of developments in the past number of years, most noted The Arbitration Act 2010 which came into effect on 8 June 2010, and the establishment of The Irish Arbitration Association The Act provides a structural legal framework for both domestic and international arbitrations

The process of arbitration has many advantages over litigation or other forms of adjudication and dispute resolution in appropriate cases

- *Flexibility*

The arbitrator is typically chosen by the parties or nominated by a trusted third party

- *Specialist Knowledge*

The arbitrator will usually have specialist knowledge of the field of activity

- *Efficiency*

The parties can decide on the location, language and to a great extent, the timing of the hearing to facilitate the parties and their witnesses

- *Informality*

The process is less formal than court

- *Certainty*

The arbitral award is binding and enforceable

- *Finality*

The arbitral award is final and cannot be appealed

- *Speed*

Expedition results in cost savings

- *Privacy*

Arbitral awards are private and do not become binding precedents

(Chartered Institute of Arbitrators, 2012)

### Outcomes of ADR

According to Roche & Teague (2012) the use of ADR in workplace conflict management has been associated by employers with high productivity and low conflict related costs

They also noted high commitment, low absenteeism and low staff turnover (Roche, Teague P 2012a p452)

Schutte (2003) notes a number of favourable outcomes for both the employer and employee. He notes that it is confidential and does not take place in the public eye. As ADR is in the interest of both parties, it is more likely that it will lead to a more sustained settlement and the agreement will be honoured (Schutte 2003, p. 29).

On the other hand, employees see ADR as producing high procedural justice, more workplace satisfaction, and greater capacity to resolve issues. Being unable to settle work grievances and employees' issues fairly and efficiently may be costly in terms of damaging employee morale (Teague and Roche 2011, p. 8).

### ADR World Wide

In 2005 the Australian Government brought in radical changes to the employment laws Anthony Forsyth (2012) stated that the changes were not very well accepted, and it is said that the changes were responsible for bringing down the government (Forsyth 2012)

America is seen as the birthplace of ADR Alex Colvin (2012) suggests that the traditional New Deal industrial relations system has more or less broken down and is being replaced by an individual employment rights scheme He further says that old rules are being replaced by a “new web of rules” anchored in ADR practice but concludes that while the developments in ADR is welcome, *‘ADR is not sufficiently widespread or integrated to be considered a new “web of rules to govern employment relationship in the USA’* (Colvin 2012)

While Japan is known to have hard Human Resource Management practices, not much is known about workplace disputes John Benson of University of South Australia states that traditional methods of workplace conflict resolution have come under pressure over the past 20 years, while the use of ADR has been increasing (Benson 2012)

ADR in New Zealand was researched by Ian McAndrew of Otago University, who describes ADR innovations He states that non-binding ADR processes are used in collective bargaining negotiations, and other processes are packaged or bundled together For example - mediation and arbitration used side by side (known as med-arb) can be used to assist in collective bargaining (McAndrew 2012)

### ADR in Ireland

Schutte (2003) claims 'the effects of the Celtic tiger has left scratch marks on the Irish Workplace' (Schutte 2003, p 3) ADR is yet to be defused throughout Ireland In Ireland ADR is voluntary in nature and is not legally binding, but due to the cost and duration of litigation, the use of ADR has evolved considerably over the past decade However, use of ADR in Ireland is currently focused more on collective ADR rather than individual (Roche and Teague 2012d) This differs from the US trend, and may be due to Ireland having a higher union density than the US It also may be a case of resistance to change, both employers and employees sticking to what they know best, or "if it's not broke, don't fix it" The use of ADR in Ireland should be encouraged and much more should be done to promote it at an SME level But encouragement and promotion is not always sufficient For ADR to be really effective as an alternative to the traditional methods of workplace dispute resolution, it is also necessary for ADR to be embraced by employees It is not enough to develop conflict resolution systems, it is necessary to investigate what the system is about, the reasoning behind it and the benefits All participants in the workplace should be encouraged to learn about the benefits of ADR, rather than associating ADR with conflict "If you say conflict, people will think conflict" (Rafferty 2012)

Lipskey, Seeber and Fincher (2003) describe a "sea of changes" in the US in the past number of decades – highlighting the following

- 1 Dissatisfaction with conventional approaches to dispute resolution
- 2 Long-term decline in the labour movement

3 Deregulation

4 Competition

5 Globalisation

The selected factors may also apply to the developments of ADR in Ireland in the past number of years (Lipskey, Seeber and Fincher 2003)

### 2012 Developments

In 2011, when Richard Bruton took up the post of Minister for Jobs, Enterprise and Innovation, he saw the need to reform the State's workplace relations structures and procedures. He gave a commitment to implement reform and the first step of reform began in January 2012 with the introduction of a new single entry portal called "The Workplace Relations Commission."

In a paper entitled "Blueprint to Deliver a World-Class Relations Service", Mr Bruton gave details of the problems with the current systems when he took up his post, the changes which had begun, and the further reform which is to come.

The Workplace Relations Commission now provides a single entry point for employment rights and industrial relations information. All first instance complaints are now directed to this service. Thirty forms of complaint previously used have been dropped and one single document is now in use.

Minister Bruton elaborated on his plans to continue implementing the major reforms, which will see a two tier structure, replacing the current five bodies which up to now deal with

employment rights and complaints. It is intended to wind down the LRC, NERA, the EAT and the Equality Tribunal which will be subsumed into the Workplace Relations Commission. The appeal function of the EAT will be incorporated into to a reformed Labour Court.

The Workplace Relations Commission will also have a number of other roles, including -

- Advisory and information service – full information for both employer and employee, and assistance to build and maintain a good working relationship. This service will also assist both sides to avoid or resolve disputes as early as possible. It will encourage consultation, openness, and compliance with procedures.
- Registration Service – registering and managing the entire complaints process.
- Conciliation and Early Resolution Service – this will be offered in certain cases where complaints are lodged, and can be requested by either party to a complaint and will be voluntary. An agreement reached between the parties will be binding on both parties and enforceable through the civil courts. If agreement cannot be reached, the case will be referred back for progression to the next stage.

The legislation to achieve this major reform is covered in Workplace Relations (Law Reform) Bill 2012, which is due to be enacted in Autumn 2012.

In his paper, Minister Bruton requested feedback or submissions on the Blueprint. While agreeing in principle to the complete overhaul of the system, a number of organisations,

including IBEC, Equality & Rights Alliance (a coalition of 71 civil society groups (including trade unions) academics and individual activists (Equality and Rights Alliance 2012) , and Northside and Ballymun Community Law Centres, have made submissions, requesting re-consideration, amendment or clarification on numerous points

It appears that while progress and development in reform is considerable, it is not without its faults, and more work will be needed before the legislation is finally passed

Northside and Ballymun Community Law Centres point out in their Submissions that while the Workplace Relations Service offers information and advice, this “will not extend to the merits or otherwise of individual complaints or cases” They also state that “Labour Law is complex and streamlining the procedures may assist but will not lessen the complexity of the legal issues to be decided”, and “Worthwhile resolution must be based on just solutions and in order to have justice, the parties have to be advised as to the law, their rights and entitlements Cases that are half or partially settled, will only return to trouble the parties and often the whole enterprise” (Northside Community Law Centre and Ballymun Community Law Centre 2012)

It is not clear from the Blueprint how cases will be selected for Early Resolution Service Only time will tell what the uptake will be on the request for this service or the acceptance of parties if selected

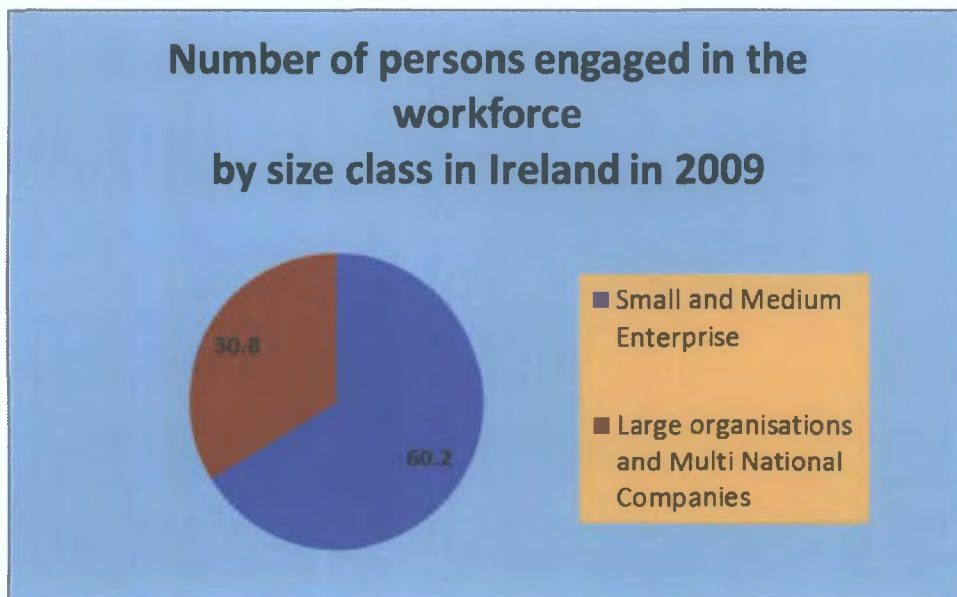
Will this reform have an impact on the role of Alternative Dispute Resolution in resolving workplace conflict? It is most likely that it will have a big impact Just how much the



impact will be remains to be seen in the coming months and years when all the legislative changes are enacted.

### Small and Medium Enterprises

According to the Department of Jobs Enterprise and Innovation there are 230,000 SME's in Ireland which employ over 655,000 people, more than half the private sector workforce, and contribute €10 billion to the Exchequer each year (Department of Jobs Enterprise and Innovation 2012c). SMEs account for 72 per cent of private sector employment outside of construction and agriculture, with 63 per cent working in indigenous SMEs (Lawless, McCann and McIndoe-Calder 2012).



*Figure 4. Number of persons engaged in the workforce by size class in Ireland. Source: (Central Statistics Office 2012)*

SME's in Ireland make up the largest volume of employment in Ireland

In an article of 23<sup>rd</sup> April 2012, the Assistant Director of the SFA, Avine McNally stated 'the volume of rules and regulations regarding employment remains a significant problem for small business. There are over 40 pieces of primary legislation relating to employment matters, that must be dealt with, irrespective of whether the company employees 1 or 1000 staff. Employment Law really has become a minefield for small business' (SFA 2012)

An employment survey was carried out by the SFA in the first quarter of 2012, in the Republic of Ireland, the findings of which showed that 77% of small businesses do not have a dedicated HR resource to assist them in dealing with employment law. The survey also showed that while a large number of firms comply with some of the employment legislation, there are also many which are in breach of various regulations. McNally went on to explain that being on the wrong side of just one piece of legislation could have a major impact on a small firm.

Teague (2005) described the increasing number of people working in small firms as a growing challenge. He noted that many small firms lack specialised human resource management skills, making it difficult to manage employment relationships and keep up to date with the ever-changing legislation and regulations. Teague looked at the increased number of cases involving individuals which had been handled by the Rights Commissioner, many of which involved small firms. He suggested that this is evidence, albeit circumstantial, to suggest that small firms are not complying fully with employment laws. He stated that employer organisations are trying to address the matter by delivering

training organisations and workshops to inform small firm owners of their legal responsibilities and increase their capabilities to manage people in the workplace. Teague also suggested imaginative use of multi-media technology to inform employees and employers of their rights, perhaps by issuing a package or CD to first time employers with employment law fact sheets. A further suggestion was that the LRC and other advisory bodies should liaise with trade and professional associations to develop innovative alternative dispute resolution procedures for their sectors.

ISME encourages the use of ADR by their members, running or arranging talks dealing with resolving disputes by way of ADR. IBEC also encourage the use of ADR to resolve workplace conflict, and indeed, published a hand book entitled "Essential Guide to Alternative Dispute Resolution: Innovative approaches to problem solving and dispute resolution". Latreille et al (2012) states while the subject of mediation and its benefits is becoming more known in British employment, it is not used very much. A study of small and medium sized enterprises by the Advisory Conciliation and Arbitration Service (ACAS) showed that 64% had heard of mediation in relation to resolving workplace disputes, but just 7% had used it (Johnston 2008, cited in Latreille, Buscha and Conte 2012, p. 590-602). The survey also revealed that those with experience of mediation were positive about the process, and almost 25% of those without experience would consider mediation to resolve workplace conflict. In 2003 ACAS led a pilot programme involving giving advice and mediation to small firms, free of charge with very positive outcome. The participants were largely positive and while some expressed doubt about using mediation again because of the cost issue, the parties who unexpectedly succeeded in their cases were

less hesitant about paying Latreille et al (2012) state that arguably the single most important inhibiting factor in electing for mediation to resolve workplace conflict is that of cost (Latreille et al 2012)

In an attempt to build upon and expand research this area the next chapter will examine the experience of Irish SME Organisations and Practitioners in using ADR in SMEs in Ireland

## Chapter 6: Research Results

In this chapter, the researcher aims to present the data which has been gathered through the primary research carried out in the form of questionnaires and interviews. Tables and charts will be displayed where necessary.

The layout of this chapter will be as follows:

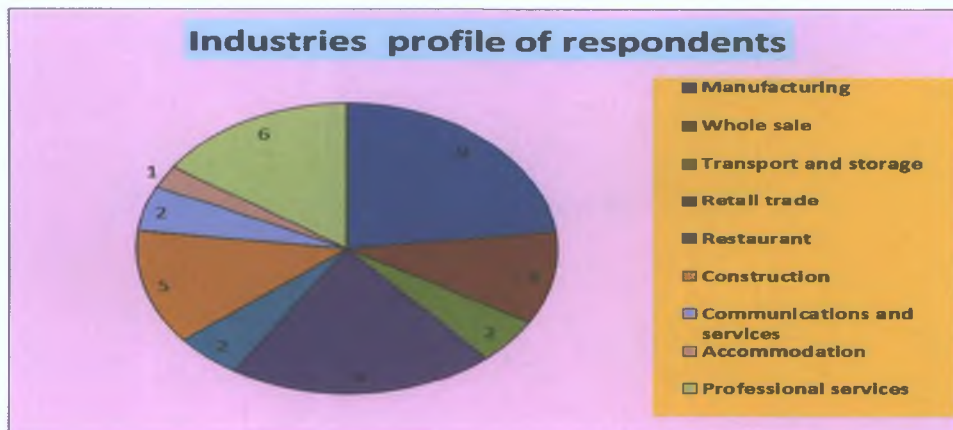
- Questionnaire findings will be presented
- Interview findings will be highlighted
- Limitations of the findings will be outlined

### Questionnaire findings

100 survey questionnaires were distributed. The response rate was 39%.

The findings were as follows:

The area of industry of the 39 respondents is shown in the pie chart below



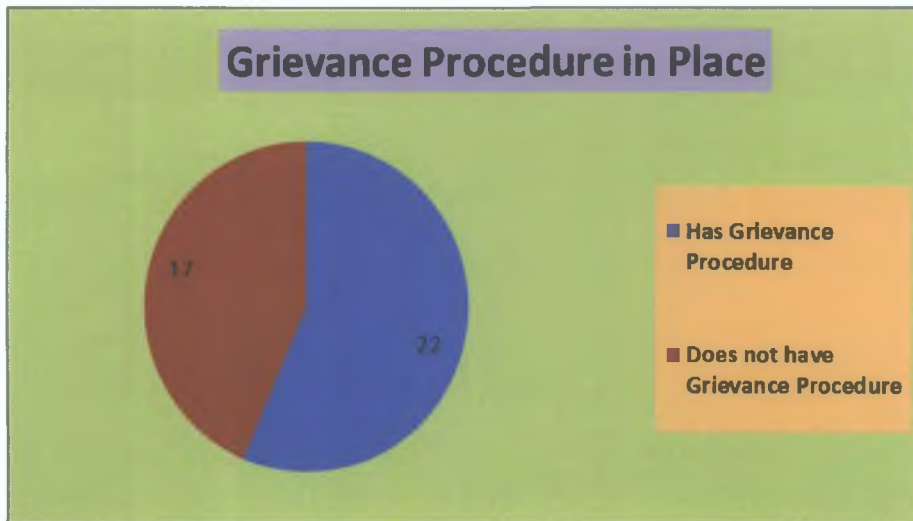
*Table 1. Industries profile of respondents*

The respondent organisation age profile ranged from established in 1937 to establish in 2009.

The organisations varied in size from 2 employees to 250 employees, with satisfactory variety between.

Out of 39 respondents - 7 have some percentage of employees belong to a union - the three of which contained the highest percentage were established in 1937 (80%) and 1974 (75%) and 1981 (25%). 14 organisations belong to an employer organisation and the remaining 25 do not.

Only 22 respondents have a grievance procedure in place.



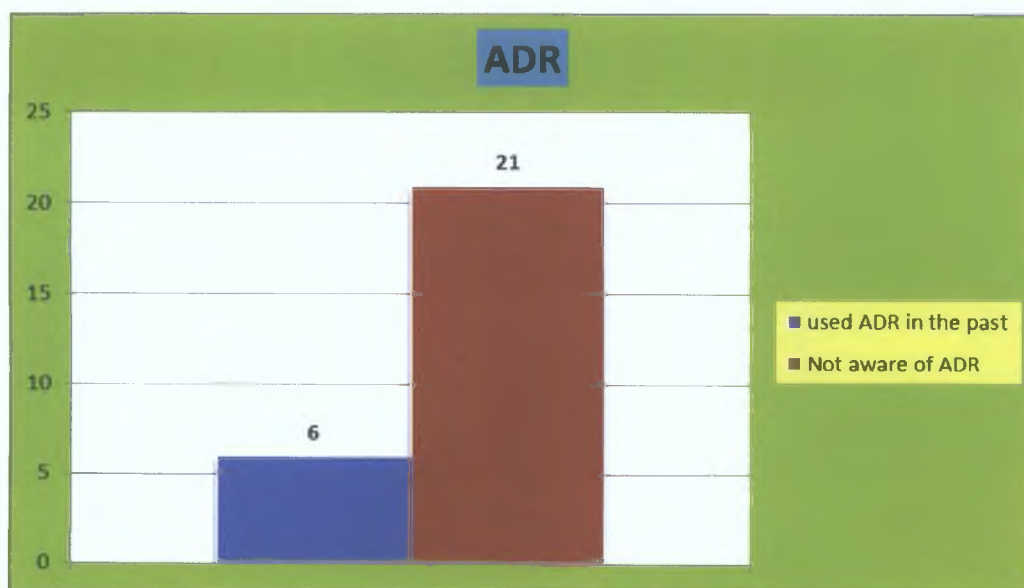
*Table 2. Grievance procedure in place in responding organisations*

Of the respondents surveyed, 13 organisations dealt with employee claims within the past 6 years. Seven respondents had one claim against them, five respondents had between 2 and

4 claims and one respondent (the largest company) had eight or more. The time scale for resolving the claims varied between less than 6 months to 18-24 months. The claims were brought to the Labour Court, the EAT and the Rights Commissioner. The main areas of claim were redundancy and unfair dismissal.

### ADR

21 respondents said they were not aware of ADR, while only 6 out of the 39 respondents said they have used ADR in resolving workplace conflict. Of the 6 respondents who have used ADR, all 6 have used mediation, while one also stated they have used conciliation. All 6 had a positive experience, some elaborating to say that it opened communication, helped both sides to engage and resulted in satisfactory results for both sides. The majority of the respondents who were aware of ADR were members of an employer organisation.



*Table 3. ADR awareness in responding organisations*

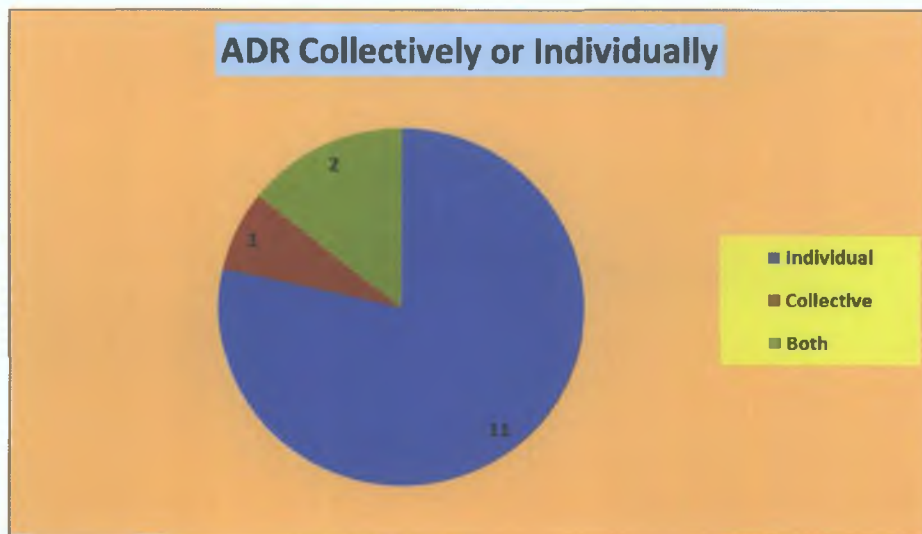
When asked if they have used ADR or are aware of ADR what did they consider the benefits over conventional methods the respondents answers were as follows:

| Avoids bad publicity | Less confrontational | Quicker process | More cost effective |
|----------------------|----------------------|-----------------|---------------------|
| 8                    | 19                   | 13              | 7                   |

*Table 4. Benefits of ADR over conventional methods in responding organisations*

In relation to the disadvantages of ADR in resolving workplace conflict, 8 respondents recorded answers which included: non-binding outcomes, internal unrest, time factor and finally 5 respondents said it was too costly.

When asked do they believe ADR works best collectively or with an individual the following data was gathered:



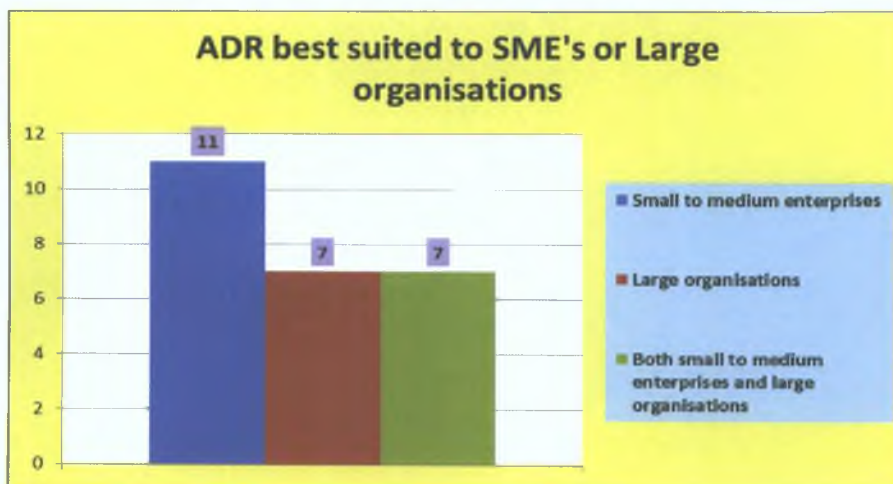
*Table 5. Does ADR work best collectively or individually*



Expanding on their answers, respondents said individually was less intimidating and easier to explain, while one respondent in favour of collective ADR said issues can be addressed without singling out one person. However, two other respondents said against collective ADR, that there were too many agendas and the employer may lose power over the discussion.

When asked would they consider ADR as a first resort or last resort, out of the 36 respondents who answered the question 17 said they would consider it as a first resort and 9 said they would consider it as a last resort. Among the reasons for their answer the respondents who would choose ADR as a first resort cited the following as their reason: to resolve the issue as soon as possible; to not let the issue fester; avoid high cost, and don't want the hassle of litigation.

When asked if ADR is best suited to large organisations or small to medium enterprises, out of 25 who answered the following response was noted:

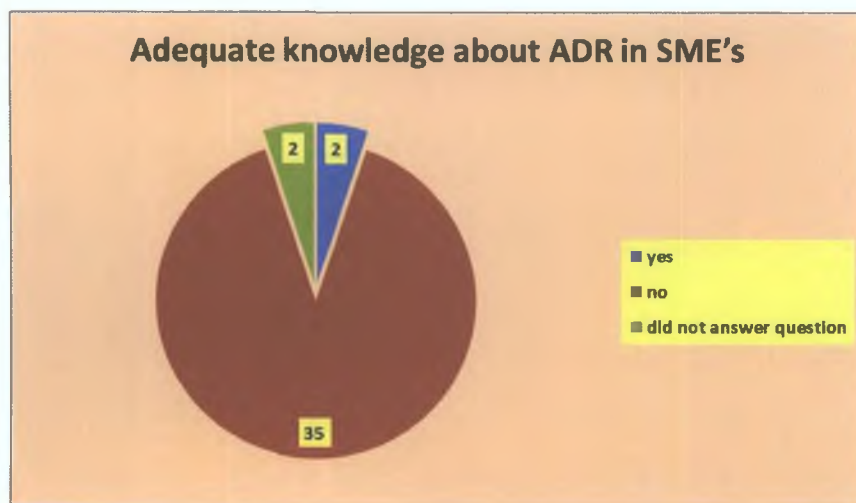


*Table 6 - Is ADR best suited to SME's or large organisations*

When asked about the reason why it was more suited to the small to medium organisations answers included, easier, trust in small companies, more cost effective, one to one is better. Whereas, when asked about the reason why ADR is more suited to large organisations respondents recorded; easier for employees to move on in larger companies. And finally, respondents who choose both small to medium organisations and large organisations said it did not make a difference about the size of the company, a dispute is a dispute.

When asked if they had not used ADR in the past would they consider it in the future, 6 respondents had already used it, 24 respondents replied yes, 3 replied no and 6 did not answer the question.

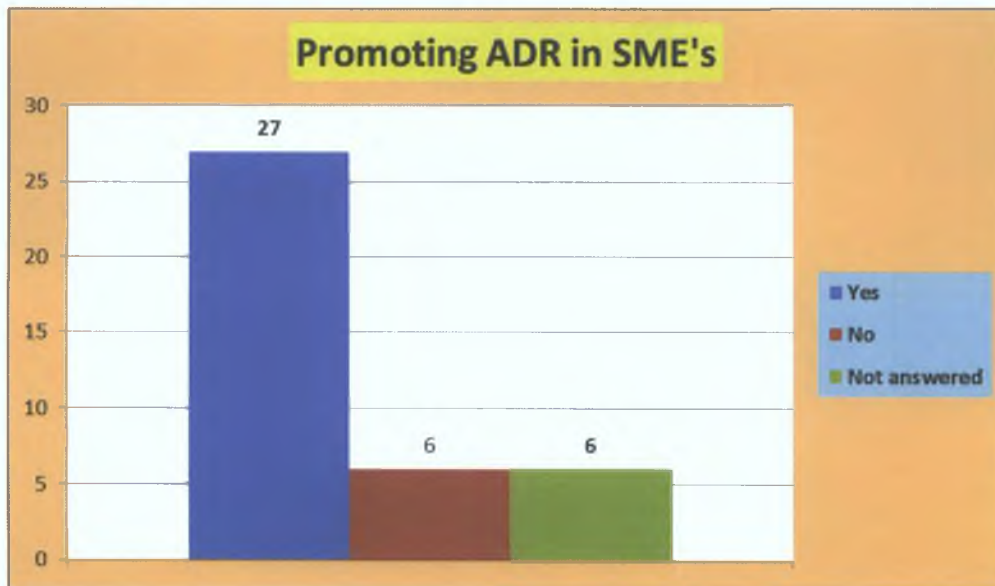
In response to the question are employees of SME's willing to take part and participate in the ADR process 25 respondents answered yes, while 8 said no and the remainder did not answer. The respondents were asked if they felt that there is adequate knowledge about ADR in SME's. The results are highlighted below:



*Table 7 - Is there adequate knowledge about ADR in SME's*

The respondents were asked did they believe ADR should be a part of HR practice in SME's. Out of a total of 32 who answered the question 29 respondents believe it should be a part of HR practice, with the remainder of 3 believing it should not be a part of HR practice.

When asked if they would promote the use of ADR as a means of dealing with workplace conflict in SME's the following responses were recorded.



*Table 8 - Promote the use of ADR as a means of dealing with workplace conflict in SME's*

The respondents, who answered yes, gave the following reasons for their answer: address issue before it becomes dispute; quicker process; process internally before it becomes external; less confrontational; less hostile; continue good relationships, cost effective. Respondents who answered no said: there is more education needed; difficult to move

forward in SME's, no need for ADR as they have a good grievance procedure, and finally, everybody knows each other

On the question of whether the respondents would appoint an outside mediator or arbitrator, or appoint a peer or manager to oversee, of those who answered, 11 respondents chose outside mediator or arbitrator, citing reasons such as less involved with personnel, no bias, fairer, and more objective. On the other hand, 11 respondents chose to appoint a peer or manager, recording the following reasons: resolve internally first and cost issues

19 respondents stated that they would consider paying for private mediation to resolve disputes, 11 would not consider, and the remainder did not answer

27 respondents think that the existence of a single entry point or umbrella organisation could improve access to ADR and of those 2 think the role of such entry point or organisation should be limited to providing information, while 25 think they should also deal with disputes. 4 respondents would not agree with the single entry point, and the remainder did not answer

## **Interview findings**

### **Case Study 1**

**Interviewee Profile**, Chairman of Chartered Institute of Arbitrators, Mediator/Investigator, CEO of private company, in practice for 20 years

### **Litigation**

On the subject of involvement in employment claims, the interviewee was involved in 2 to 4 claims, which took between 6 and 12 months to resolve, the cases involved related to unfair dismissal, redundancy, harassment or bullying, and were ultimately resolved by recourse to Labour Court and / or Rights Commissioner

### **ADR**

The interviewee has been a participant in ADR in SMEs, and has experience in mediation, arbitration and conciliation. He considers the benefits of ADR in SMEs over conventional methods as more cost effective, less confrontational, quicker process, and avoids bad publicity, whereas he is of the opinion that the lack of knowledge by the parties is a disadvantage. His view of ADR is positive, explaining that its use can be built and transform relationships.

The interviewee believes ADR works both collectively and one to one, depending on situations and circumstances. He would consider ADR as a first resort, stating that connecting with conflict at an early stage works best. In his opinion ADR works equally well in large organisations and SMEs, if planned well. He is also of the opinion that

employees are willing to take part in the ADR process, but there is not adequate knowledge of the ADR process in SMEs

He does not think he has a role in promoting ADR in SMEs, commenting that it is a different role, being the provider and the sales person in a conflict. He would recommend an outside mediator or arbitrator to oversee the resolution process, stating that outsiders are best placed to alter the service. He would consider paying for private mediation, and believes ADR should be part of HR practice in SMEs.

He does not believe the existence of a single entry point could improve access to ADR, and the role of that body should be limited to providing advice.

## **Case Study 2**

**Interviewee Profile** Industrial Relations/Human Resources Executive with IBEC, in practice for 13 years

### **Litigation**

On the subject of involvement in employment claims, the interviewee has been involved in numerous employment related claims, on a weekly basis, the duration of which varies from less to 6 months to over 24 months. She has been involved in cases related to unfair dismissal, working time, redundancy, pay, holidays, harassment/bullying, which have been referred to the Labour Court, Employment Appeals Tribunal, Rights Commissioner

### **ADR**

The interviewee has been a participant in ADR in SMEs. She has experience in mediation, and conciliation. She considers the benefits of ADR in SMEs over conventional methods as more cost effective, less confrontational, and avoids bad publicity. She is of the view that ADR provides a safe private environment that is solution focused rather than the parties focusing on who is responsible for any shortcomings, and it enables the parties to take control of the situation and to ultimately shape the outcome of a resolution. She states that the organisation usually engage private Mediators in individual disputes and this can be costly for SMEs, and also ADR is a fluid process and therefore timelines can be difficult to gauge.

She has a positive view of ADR and believes it works well both collectively and one-to-one. She would consider ADR in SMEs as a second option, stating that direct settlement should always be attempted in the first instance, and the last resort would be referral to a third party. On the question of whether it is more suited to large organisations or SMEs, she is of the opinion that the size of the organisation is less relevant, rather it is the substance of the dispute which will determine the appropriateness of mediation or ADR.

She is of the opinion that employees are willing to take part in the ADR process, but there is not adequate knowledge of the ADR process in SMEs.

She feels the organisation (IBEC) does have a role to play in promoting ADR in SMEs, and states that they do this quite a lot over the course of their work, either encouraging organisations to resolve the matter direct or to look at ADR.

She would recommend an outside Mediator or Arbitrator to oversee the resolution process, as there are organisations and Trade Unions who prefer to use private/outside mediation where the dispute is of a sensitive nature or where there is a history of success of using this method in the past. She also states that some organisations do not wish to engage State industrial relations machinery such as conciliation and will opt to go to an independent Mediator.



She would consider paying for private mediation, and believes ADR should be part of HR practice in SMEs

Finally, she comments

ADR has relevance for all organisations dealing with conflict situations. When companies contact IBEC concerning disputes mediation (either individual or collective) the routes of either a direct resolution or some form of mediated approach such as conciliation is always discussed with them. Such routes enable companies to exercise a certain level of control in shaping the outcome of a dispute. Once matters escalate to a third party such as the EAT or Labour Court for example, that level of control is lost.

The establishment of a single point of entry for all third party referrals through the introduction of the online Workplace Relations claim form is relatively new in Irish Industrial Relations. An early resolution mechanism has been established through the appointment of Case Resolution Officers to contact parties where a claim has been referred. The introduction of this new element of ADR is welcome and its effectiveness will be the subject of much debate in the future.

### Case Study 3

#### **Interviewee Profile** President of Mediators' Institute of Ireland

Mediator, Non-Practising Solicitor, Principal of private mediation service, in practice for 9 years

#### **Litigation**

On the subject of involvement in employment claims

No involvement, except as Mediator

#### **ADR**

The interviewee has been a participant in ADR in SMEs, She has experience in mediation She considers the benefits of ADR in SMEs over conventional methods as More cost effective, quicker process, and avoids bad publicity She is of the view that ADR can help to retain the relationship between parties, and that it makes management more aware of its uses and therefore more likely to use it next time round She also considers confidentiality for the parties and the organisation a benefit On disadvantages, she states that while these are exceptional cases, it can be perceived as a recidivist's charter for a "bully" who offends, resolves the dispute under the confidentiality and then continues same behaviours with different parties, so it would be essential that HR monitor the claims made

She has a positive view of ADR, stating that most parties give positive feedback On the question of ADR working best collectively or individually, the interviewee states that it depends on the circumstances She explains "Some disputes are one to one disputes and

others may involve more parties – multi party disputes are more complicated to mediate than one to one, but mediation is equally effective in both types. It takes more skill and patience to mediate with more than two parties. Also, frequently multiparty disputes have legal advisors attending the mediation session, so you may have a room filled with people which changes the dynamics. However, the elements of mediation are the same and the outcomes just as successful to the parties”

She considers ADR in SME work place conflict should be a first resort, so that the matter can be dealt with by the parties before they and their colleagues become too entrenched, which makes it more difficult for them to settle. Also, it cuts down time for employees and management to be distracted by the dispute

She is of the opinion that ADR is suited to both large organisations and SMEs, that employees of SMEs are willing to participate in the ADR process, but there is not adequate knowledge of ADR in SMEs

The interviewee believes she has a role to play in promoting ADR in SMEs – she is President of the Mediators’ Institute of Ireland. She would recommend the use of an outside Mediator, as there can be suspicion of internal Mediators, and they can be seen as having a conflict of interest. They may not get enough cases to keep up their skills. They may have difficulty separating their confidential role as a Mediator and their role as an employee. She

considers organisations should pay for private mediation, and that ADR should be part of HR practice in SMEs

The interviewee thinks that the existence of a single entry point or umbrella organisation, such as a professional body like the Mediators' Institute of Ireland, could improve access to ADR. She believes they should provide information about mediation, set the standards of qualifying and on-going mediation education, act as registrars of Mediators and present information on Mediators in an objective way to the public, deal with complaints against Mediators and regulate those against whom a complaint is founded.

#### **Case Study 4**

**Interviewee Profile** Mediator, with previous experience in primary education and social work, Owner/Manager of a private company, dealing with coaching, mediation, conflict resolution and prevention, over 30 years' experience, in private practice since 2006

#### **Litigation**

On the subject of involvement in employment claims

The interviewee is involved in cases acting as Mediator. The cases mainly related to harassment /bullying and a breakdown of working relationships. She stated that while a few complainants leave the organisation, most will remain in the workplace.

#### **ADR**

The interviewee views the benefits of ADR as being more cost effective, less confrontational, quicker process and avoids bad publicity.

She sees the main benefits for SMEs as being more cost effective and less confrontational. She also feels ADR would avoid attrition. She does not see a disadvantage to ADR but she could imagine SMEs think it is a waste of time as they would not see the benefits, as it is time consuming and may not be cost effective immediately.

Asked if she has a positive or negative view of ADR, the interviewee suggests we should be careful about what is positive and what is negative. She sees ADR as a better alternative to traditional methods. She also believes ADR both collectively and individually can be

positive, but the success depends on the parties involved. However, with collective ADR, care must be taken to avoid power imbalance.

The interviewee believes that early resolution to workplace conflict should be a first resort, parties should endeavour to resolve conflict as early as possible. In this way, parties are more empowered themselves. The longer it goes on, the more likelihood of the need for third party intervention. She believes ADR is appropriate to large organisations and SMEs alike. She also believes the process of ADR is a continuum of where the person is empowered to make their own decision whether this is through training people to resolve their own conflict or having a third party involved to help facilitate the parties to resolve the conflict.

The interviewee believes employees may be willing to take part in the ADR process, provided the benefits are clearly explained to them, for example, that the process empowers them to have direct input in any decisions reached. However, she does not think there is sufficient knowledge of ADR in the SME sector. She feels she has a role to play in promoting ADR in SMEs, as her profession is Mediator and Conflict Coach.

She believes that the ideal option is to have in-house people trained to resolve conflict, as well using external third parties in some situations e.g. with senior staff. In terms of the burden of cost of hiring external Mediators /Third Party Neutrals, it should be viewed like other professional services such as solicitor or an independent investigator.

Finally, she believes ADR should be an important part of HR practice in SMEs, and should be promoted by all relevant agencies involved in this sector.

## **Case Study 5**

**Interviewee Profile** Industrial Relations Organiser, employed by SIPTU, in current role since October 2010

### **Litigation**

The interviewee has been involved in numerous cases, on a weekly basis. The interviewee stated that in general length of time for resolution depends on the type of case and the part of the country where the complaint is to be heard. Rights Commissioner takes about 2 months, and may then be referred to the EAT. In general, the whole process may take up to 2 years. However, the process has been quicker since February/March 2012. Cases can be brought to the Labour Court, EAT or Rights Commissioner.

### **ADR**

The interviewee has experience in mediation, arbitration and conciliation, through the LRC and independent bodies. He believes there is no difference between the services provided by the LRC compared to independent bodies. He thinks ADR is helpful at a stage where both parties can agree, and ADR can be a positive influence. He believes benefits of ADR to be cost effective, less confrontational, quicker process and avoids bad publicity. ADR is critical at SME level as they may not have a great background of employment rights and obligations. He does not think there are any disadvantages of using ADR, the only possible disadvantage would be if ADR is offered and then declined by either party.

The interviewee does not think there is a difference between working collectively or with an individual. HR feels the benefits are spread across the board when it is in a group. However, it can be more difficult to nail a final agreement or recommendation in a group. The main aim is to resolve the differences fairly and come to a compromise.

He would consider ADR as a first resort, but stressed that in-house face to face conflict resolution would be an obvious option first step. He believes ADR is appropriate to both large and small organisations, but it is easier for large organisations, as they generally have an in-house HR department. However, he states it can be useful to SMEs as they generally do not have a HR department and the expertise required to deal with workplace conflict resolution.

The interviewee believes that employees are willing to take part in ADR, once it is explained fully to them and they understand the process. An organisation must continue to work with the employee and the matter "has to be sold" to them. He feels he certainly has a role to play in promoting ADR. However, he feels that, as a Union Representative, a typical response he might receive would be that the organisation does not want to deal with a Union. It is part of his job to encourage the use of ADR. He believes that while an outside Mediator or Arbitrator may be the best, it depends on the organisation and circumstances, as sometimes internal HR may be required in order to get "buy-in". He also thinks that ADR should be part of the HR practice in SMEs.



The interviewee has dealt with the LRC on many issues, and believes they are properly skilled. He thinks that the LRC may be a good access point for obtaining all information about independent bodies, state bodies, and procedures required to assist in solving disputes outside of the courtroom.

Finally, he is of the opinion that early dispute resolution is best, and believes that the new Workplace Resolution Service has speeded up the process of resolving claims.

## **Case Study 6**

**Interviewee Profile** Profession - Barrister, self-employed, in practice since 2000

### **Litigation**

The interviewee is based in Dublin and Employment Law is one of her specialised areas. She has been involved in about 2,000 cases in the past 12 years. The duration of the cases ranged from less than 6 months to 2 years depending on the case. All types of claims were dealt with, through the Labour Court, Employment Appeals Tribunal and the Rights Commissioner.

### **ADR**

As to the advantages of ADR, the Interviewee is of the opinion that it can be more cost effective, less confrontational and avoiding bad publicity, although it is not necessarily a quicker process. She says the additional advantage is that it can deal with situations where people want hurt recognised, rather than financial compensation, and allows a situation whereby parties can resolve issues and work again together.

On the other hand, she states that the disadvantages are that it cannot deal with entrenched problems where there is real bitterness between the parties or where one or both of the parties is not interested in ADR or in not acting in good faith. She is also of the opinion that it does not work well where the issues are primarily financial as companies don't tend to want to pay out money unless they have to.

Having used ADR, her view of ADR is both positive and negative, depending on the issue. She states that where ADR is imposed when the issue is not suitable, it is simply a waste of time for all parties.

She believes ADR should be seen as a first resort, as it is best used when the problem is small and issues have not become entrenched. She does not think it makes any difference whether the organisation is large or small. It may be more expensive than litigation by the time experts in ADR are hired, whereas the employer and employee simply have to turn up at the employment tribunals, and do not have to bring a solicitor or barrister if they do not want to. For that reason ADR might be a barrier for small firms.

She states that it depends on the employee whether or not they are willing to take part in the ADR process, and she is unaware as to the knowledge of ADR in SMEs in Ireland.

She would not promote the use of ADR, as she is hired to find the best solution to a legal difficulty for the parties before her, rather than to promote or advocate any particular course of action.

She would recommend engaging an outside mediator or arbitrator as, for the best outcome, a trained professional is always the best as they are not carrying any internal baggage, and also the soft skills for ADR to work are extremely important, such as listening, empathy etc. Anyone internal may simply be seen as taking sides.

Finally, the interviewee commented that ADR is one of a range of tools to solve a problem and can be very effective. However, in some situations it will not work at all. It should be looked at as part of an entire package of remedies.

## **Chapter 7: Summary and Analysis**

Having highlighted the findings in chapter 6, in this chapter the researcher will discuss in detail the key findings which have emerged. They will then be examined in light of the research questions posed in this study. Finally, the researcher will highlight recommendations which have emerged. In chapter 8 conclusions will then be drawn based on the study.

According to the LRC, greater competition, the erosion of traditional support systems, the recession which has gripped Ireland and a society more prone to litigation has led to an increase in claims (The Law Reform Commission 2010). As discussed in the literature review, Minister Bruton's address at University College Dublin went into considerable detail of the difficulties a party encountered when processing a claim through the state employment bodies. These difficulties are also evident in the results of the interviews and questionnaire undertaken, which show that traditional dispute resolution has proven to be a very long drawn out, complex and contentious process.

According to Teague (2005) conflict resolution should be as near as possible to its origin and before the problem becomes entrenched. This is also the view of the interviewees who took part in this case study. Comments from interviewees included "don't let it fester", and "nip it in the bud".

Teague also notes that more needs to be done at organisational level to solve disputes. It follows then that ADR should be part of the grievance procedure of all organisations.

However, it must be noted that 17 respondents to the questionnaire did not have a grievance procedure in place

As highlighted in the literature review, a study of small and medium firms carried out in Britain by the Advisory Conciliation and Arbitration Service (ACAS) showed that while 64% of those studied had heard of mediation, only 7% had used it. However, it also showed that those with experience of mediation were positive about the process. The results from the questionnaires reveal the same findings, with very few respondents having experience in using ADR.

Kerr (2011) also notes that ADR is not as common in SME's as in MNC's, noting lack of knowledge, cost and no experience in conflict management as reasons. This situation may be due to high commitment practices in place in MNCs. It is noted in the responses to the questionnaires that the larger companies have ADR practices in place, whereas SME's tend to have more informal employment relation practices. The SIPTU interviewee commented that as SMEs do not have HR practices in place, he believes ADR is more critical in these small & medium organisations. The responses also revealed that the longest established organisations had the highest percentage of unionised workforce. As Roche & Teague (2012a) noted, ADR appears to be influencing the decline in unionisation, with organisations opting for ADR rather than allowing union input.

As noted in the literature review and as displayed in the interviews and questionnaires undertaken for this research, there is a consensus between academia, interviewees and respondents that ADR should be considered as a first resort in conflict resolution process.

Many noted internal informal processes should be exhausted first. It was, however, noted that should it be necessary to initiate mediation, the majority would opt for outside mediation, citing impartiality and confidentiality as reasons. The legal representative interviewee expanded on this point, suggesting that the outside person should be a trained professional in order to achieve the best outcome.

Roche and Teague (2012b) claim organisations tend to focus on individual conflict as opposed to organisational conflict, SME's agree with this statement, however those who were interviewed said it can be just as effective in both circumstances. From reviewing the interviews and questionnaire it appears that the general consensus is that ADR works equally well in SMEs and in large organisations.

It must be noted that while the findings of this research reveal a positive attitude to ADR in SMEs, there were also negative views from questionnaire respondents and interviewees, citing disadvantages including cost of ADR, non-binding outcome, bitterness, and problems implementing agreement if one party decides to renege.

While the implementation of the Workplace Relations Service earlier this year has already seen major changes in the employment claims and appeals procedure, only time will tell how beneficial this will be. The SIPTU Interviewee, however, commented that the time scale for dealing with certain claims had decreased. It should be noted that no other questionnaire respondent or interviewee commented on this new process.

### **Relationship of Findings to Research Questions**

**Research Question 1** What is ADR and how has it developed worldwide and in Ireland as a method of dispute resolution?

This research question has been answered in the literature review. It shows the relatively widespread diffusion of ADR practices that was found to be taking place in American workplaces is not happening in Ireland. This may be due to the use of conventional conflict management practices, union involvement, the extensive use of the court and state bodies as a means of resolution of workplace conflict and finally the fear of change.

**Research Question 2** What is the current status of ADR in the resolution of Irish workplace disputes in SMEs?

It is clear from the literature review and the research for this study that ADR has been recognised by the Government and all social partners as a method of resolving workplace conflict. However, the literature review and the research also reveal that the knowledge of ADR in the SME sector is sparse.

**Research Question 3** IS ADR perceived by SMEs to be an effective alternative to traditional dispute resolution?

From the research undertaken for this study, it is noted that where SMEs are aware of ADR, it is perceived to be an effective alternative to traditional dispute resolution.

**Research Question 4** What are the perceived benefits of ADR in SMEs?

The interviewees for this study noted a number of benefits, including less confrontational, quicker process, and retaining good relationship. This is confirmed by the literature review, where for example Schutte (2003) states that ADR has an interest based focus, and the outcome should be a win-win situation.



## **Recommendations**

As the use of ADR in Ireland is a relatively recent phenomenon, and a growing rather than established area, there is an absence of a wide range of literature on the subject, particularly in relation to the SME sector. As a result of this study, having carried out research and conducted data analysis, this researcher suggests the following recommendations:

In an attempt to improve the lack of training and awareness of ADR in SMEs in Ireland, employer organisations, trade union bodies, and ADR professionals should be encouraged to promote and educate employers and employees in the SME sector on the uses and benefits of ADR in resolving workplace conflict. This is examined.

A pilot programme similar to that undertaken by ACAS should be considered.

The Government should continue with its reform of employment law in Ireland, and while doing so, should also encourage and promote the use of ADR on a voluntary basis.

Further studies should be carried out on this topic, particularly when the impact of the recent employment law changes has been reviewed.

## **Chapter 8 Conclusion**

The outcome of the research for this thesis demonstrates that the role of Alternative Dispute Resolution in small and medium enterprises, primarily mediation, is becoming a vital resource in resolving workplace conflict, particularly over the past decade - partly due to more stringent legislation, as well as the fall of the “Celtic tiger” - as more and more employees highlight grievances in the workplace but are not willing to spend the time, effort or expense in litigation and are not in a position to change employment

However, there is a need to change the views of the SME sector, both employer and employee alike to ADR. The ADR system should be viewed as pro-active rather than reactive. The law is only as strong as the will to pursue it. In the same way, ADR will only succeed if there is a willingness on the part of those concerned in workplace conflict to use it as the preferred means of resolution. The effective implementation of ADR processes decreases the pressure on institutions such as the LRC and the Labour Court.

It has been acknowledged by professionals and by the Irish Government that reform of workplace resolution is urgently needed. While new legislation has been implemented by the Irish Government and indeed the law is due to be enacted in autumn 2012, it has been found through this study that the knowledge of ADR in SME's is minimal. It remains to be seen, how far the Government will go in this reform or in what timescale. It is too early to assess the impact of the recent changes in this field.

Considering the small-scale nature of this study, the findings merit further, more detailed research in this field, in the way in which disputes are resolved in the SME sector in Ireland. In particular, a large-scale investigation of employers' and employees' perceptions about the role of ADR should be carried out, together with observational research on the impact which ADR has on the SME sector.

It seems reasonable to conclude that there has been an uptake in ADR in Ireland, however the knowledge and benefits of ADR have not yet been diffused throughout the SME sector.

## **Bibliography**

Barrett, J T and Barrett J P (2004) *A History of Alternative Dispute Resolution the story of a political, cultural and social movement* San Francisco Jossey Bass Published in affiliation with The Association for Conflict Resolution

Baruch Bush, R A and Folger J P (1994) *The Promise of Mediation* San Francisco Jossey Bass Publishers

Bell, J (1999) *Doing Your Research Project a guide for first-time researchers in education and social science* Philadelphia Open University Press

Bell, J (2010) *Doing Your Research Project A guide for first- time researchers in education, health and social science* 5<sup>th</sup> ed England McGraw-Hill Open University Press

Benson, J (2004) *A History of Alternative Dispute Resolution- The story of a Political Cultural and Social Movement* San Francisco Wiley & Sons Inc

Benson, J (2012) 'International trends and developments in alternative dispute resolution Alternative dispute resolution in Japan the rise of individualism' *The International Journal of Human Resource Management*, 23 (3), pp 511-527

Bouma, G.D., and Atkinson G.B.J. (1995) *A Handbook of Social Science Research*.  
Buckingham: Oxford.

Bryman, A. & Bell, E. (2007) *Business Research Methods*. 2<sup>nd</sup> ed., New York: Oxford  
University Press.

Bunni, N. G. (1997) *The FIDIC form of contract*. 2<sup>nd</sup> ed. England: Blackwell.

Central Statistics Office (2012) *Business in Ireland 2009*. Dublin: Stationery Office.

[Internet] Available from:

<http://www.cso.ie/en/media/csoie/releasespublications/documents/services/2009/businessinireland2009.pdf> [Accessed 20 May 2012].

Chartered Institute of Arbitrators (2012) [Internet] Available from:

<http://www.arbitration.ie> [Accessed 20 November 2011].

Colvin, A. (2012) 'Special Issue: International trends and developments in alternative  
dispute resolution. American workplace dispute resolution in the individual rights era'. *The  
International Journal of Human Resource Management*, 23 (3), pp. 459-475.

Crawley, J. and Graham, K. (2002) *Mediation for Managers: Resolving Conflict and  
Rebuilding Relationships at Work*. London: Nicholas Brealey Publishing.

Daugherty Rasnic, C. (2004) 'Alternative Dispute Resolution Rather than Litigation? A look at current Irish and American Laws'. *Judicial Studies Institute Journal*, 4 (2), pp. 182-198. [Internet] Available from:

[http://www.jsijournal.ie/html/Volume%204%20No.%202/4%5B2%5D\\_Daugherty%20Rasnic\\_Alternative%20Dispute%20Resolution%20Rather%20than%20Litigation.pdf](http://www.jsijournal.ie/html/Volume%204%20No.%202/4%5B2%5D_Daugherty%20Rasnic_Alternative%20Dispute%20Resolution%20Rather%20than%20Litigation.pdf)

[Accessed 4 February 2011].

Department of Jobs Enterprise and Innovation (2012a) 'Bruton publishes proposals for single structure to replace five employment rights bodies'. [Internet] Available from:

<http://www.djei.ie/press/2011/20110815.htm> [Accessed 5 February 2012].

Department of Jobs, Enterprise and Innovation (2012b) *Blueprint to Deliver a World-Class workplace relations service*. [Internet] Available from:

<http://www.workplacerelations.ie/en/media/Blueprint%20for%20a%20World%20Class%20Workplace%20Relations%20Service%20April%202012.pdf> [Accessed 31 April 2012].

Department of Jobs Enterprise and Innovation (2012c) *NSAI launches online portal for Ireland's 230,000 SMEs*. [Internet] Available from:

<http://www.djei.ie/press/2012/20120313a.htm> [Accessed 27 August 2012].

Dobbins, T. (2010) '*Ireland: Individual disputes at the workplace - alternative disputes resolution*'. European Industrial Relations Observatory on-line, [Internet] Available: <http://www.eurofound.europa.eu/eiro/studies/tn0910039s/ie0910039q.htm> [Accessed 20 November 2011].

Doherty, L., Teague, P. and Naughton, M. (2008) *Human Resources Best Practice Series: The essential Guide to Alternative Dispute Resolution*. Dublin; IBEC.

Domegan, C. and Fleming, D. (2007) *Marketing Research in Ireland, Theory & Practice*. 3<sup>rd</sup> ed. Dublin: Gill & MacMillan.

Dunning, J. and Lundan, S. M. (2008) *Multinational Enterprises and the Global Economy*. Cheltenham, Gloucestershire, U.K: Edward Elgar Publishing Limited.

Employment Appeals Tribunal (2012) *About Us, Overview*. [Internet] Available from: [http://www.eatribunal.ie/en/intro/about\\_overview.aspx](http://www.eatribunal.ie/en/intro/about_overview.aspx) [Accessed 12 February 2012].

Employment Appeals Tribunal (2011) *2010 Annual Report of The Employment Appeals Tribunal*. Dublin: The Employment Appeals Tribunal.

Enterprise Ireland (2012) [Internet] Available from: <http://www.enterprise-ireland.com/en/about-us/our-clients/sme-definition.html> [Accessed 03 June 2012].

Equality and Rights Alliance (2012) '*Response to the Blueprint to Deliver A World-Class Workplace Relations Service April 2012*'. [Internet] In: Equality and Rights Alliance.

Available from:

<http://www.eracampaign.org/uploads/ERA%20response%20to%20Minister%20Brutons%20%20Blueprint%20April2012.pdf> [Accessed 19 July 2012].

Fink, A. (2009) *How to conduct surveys: A step by step guide, 4th ed.* London: Sage.

Forsyth, A. (2012) 'Special Issue: International trends and developments in alternative dispute resolution. Workplace conflict resolution in Australia: the dominance of the public dispute resolution framework and the limited role of ADR'. *The International Journal of Human Resource Management*, 23 (3), pp. 476-494.

Fox, A. (1966) *Royal Commission on Trade Unions and Employers: Associations Research Papers, 3 Industrial Sociology and Industrial Relations.* London: HMSO.

Hahn, D., Roche, W.K. and Teague, P. (2010) *Managing Workplace Conflict in Ireland.* Dublin: Government Publications.



Hair, J., Wolfinburger-Celsi, M., Mooney, A., Samouel, P. and Page, M. (2011) *Essentials of Business Research Methods* 2<sup>nd</sup> Edition. New York: M.E. Sharpe Inc.

Hart, C. (1998) *Doing a Literature Review*. London: Sage Publications.

IBEC (2012a) [Internet] Available from:

[http://www.ibec.ie/IBEC/IBEC.nsf/vPages/About\\_Us~about-us?OpenDocument](http://www.ibec.ie/IBEC/IBEC.nsf/vPages/About_Us~about-us?OpenDocument) [Accessed 12 June 2012].

IBEC (2012b) 'IBEC rejects call for change to collective bargaining rights'. [Internet]

Available from:

<http://www.ibec.ie/IBEC/Press/PressPublicationsDocLib3.nsf/2ACF8686274C6708802575F20030C085/22DA798337AEB60B80257A020039A6F3> [Accessed 28 March 2012].

Irish Small and Medium Enterprises Association (2012) [Internet] Available from:

<http://www.isme.ie/aboutus-page.html> [Accessed 30 May 2012].

Jonher, J. and Pennink, B. (2010) *The essence of Research Methodology: A concise Guide for Master and PHD Students in Management Science*. New York: Springer.

Kerr, A. (2011) 'Reform of the state's employment rights and Industrial Relations Systems and Procedures', letter to Eamonn Gallagher, [Internet] Available from:

[http://www.djei.ie/publications/employment/2011/streamlining\\_consultations2011/kerr\\_ant\\_hony.pdf](http://www.djei.ie/publications/employment/2011/streamlining_consultations2011/kerr_ant_hony.pdf) [Accessed 4 February 2012].

Labour Relation Commission (2010) *Strategic Plan 2011 – 2013: Building Better Employment Relations in a Recessionary Period*. n.p.: Labour Relations Commission.

Labour Relations Commission (2012a) [Internet] Available from:

<http://www.lrc.ie/document/Introduction-to-the-Rights-Commission/4/744.htm> [Accessed 15 June 2012].

Labour Relations Commission (2012b) *Missions and Functions of the Labour Relations Commission*. [Internet] Available from: <http://www.lrc.ie/document/Missions-and-Functions/6/223.htm> [Accessed 26 May 2012].

Latreille, P.L., Buscha, F. and Conte, A. (2012) 'Are you experienced? SME use of and attitudes towards workplace mediation'. *The International Journal of Human Resource Management*, 23 (3), pp. 590-606. [Internet] Available from: <http://dx.doi.org/10.1080/09585192.2012.641082> [Accessed 12 July 2012].

Lawless, M., McCann, F. and McIndoe-Calder, T. (2012) *SMEs in Ireland: Stylised Facts from the Real Economy and Credit Market*. Quarterly Bulletin 02 April, 2012, pp. 99-123. [Internet] Available from:

<http://www.financialregulator.ie/publications/Documents/SMEs%20in%20Ireland%20Stylised%20facts%20from%20the%20real%20economy%20and%20credit%20market.pdf>

[Accessed 10 May 2012].

Lincon, A. (1850) *Abraham Lincoln's Notes for a Law Lecture*. [Internet] Available from: <http://showcase.netins.net/web/creative/lincoln/speeches/lawlect.htm> [Accessed 4 February 2012].

Lipskey, D. B., Seeber, R. L. and Fincher, R. (2003) *Emergency Systems for Managing Workplace Conflict: Lessons from American Corporations for Managers and Dispute Resolution Professionals*. San Francisco: Jossey Bass Publishers.

Mackie, K., Miles, D., and Marsh, W. (1995) *Commercial Dispute Resolution: An ADR Practice Guide*. London: Butterworths.

McAndrew, I. (2012) 'Special Issue: International trends and developments in alternative dispute resolution. Collective bargaining interventions: contemporary New Zealand experiments'. *The International Journal of Human Resource Management*, 23 (3), pp. 495-510.

McCaughey, G. (2004) 'Time Running Out on Injury Fraud' *The Irish Independent*, Dublin, 31 May 2004, p. 12 at col. 1-5.

National Economic Research Associates (1996) *About NERVA*. [Internet] Available from:  
<http://www.nera.com/56.htm> [Accessed 23 April 2012].

Northside Community Law Centre and Ballymun Community Law Centre (2012)  
*Submission in response to the Blueprint to Deliver a World-Class Workplace Relations  
Service, Northside Community Law Centre and Ballymun Community Law Centre.*

[Internet] Available from:

[http://www.nclc.ie/publications/SubmissiobyNCLCandBCLCreBlueprinttodeliverWorld-  
ClassWorkplaceRelationsService%281%29.pdf](http://www.nclc.ie/publications/SubmissiobyNCLCandBCLCreBlueprinttodeliverWorld-ClassWorkplaceRelationsService%281%29.pdf) [Accessed 17 May 2012].

O'Sullivan, M. and Gunnigle (2009) 'Bearing All the Hallmarks of Oppression': Union  
Avoidance in Europe's Largest Low-cost Airline. *Labor Studies Journal*, 34 (2), pp. 252-  
270.

Podro, S. and Stuff, R. (2005) Acas Policy Discussion Papers: Making more of Alternative  
Dispute Resolution. [Internet] In: Acas Available from:

<http://www.acas.org.uk/CHttpHandler.ashx?id=177&p=0> [Accessed 11 January 2012].

Price, A. (2007) *Human Resource Management in a Business context*. 3<sup>rd</sup> ed. London:  
Cengage Learning.

Purcell (2010) *Individual Disputes at the Workplace: Alternative Dispute Resolution*.  
Dublin: European Foundation for the Improvement of Living and Working Conditions.

Rafferty M. pers. comm. (2012) National College of Ireland.

Roche W. K. and Teague, P. (2012a) 'The Growing Importance of Workplace ADR'. *The International Journal of Human Resource Management*, 23 (3), pp. 447-458. [Internet]  
Available from: <http://dx.doi.org/10.1080/09585192.2012.6410> [Accessed 04 June 2012].

Roche, W. K. and Teague, P. (2012b) 'Do Conflict Management systems Matter?'. *Human Resource Management*, 51 (2), pp. 231-258.

Roche, W. K. and Teague, P. (2012c) 'Line Managers and the Management of Workplace Conflict: Evidence from Ireland'. *Human Resource Management Journal*, 22 (3), pp. 235–251.

Roche, W.K. and Teague, P. (2012d) 'Human resource management and ADR practices in Ireland'. *The International Journal of Human Resource Management*, 23 (3), pp. 528-549.  
[Internet] Available from: <http://dx.doi.org/10.1080/09585192.2012.641083> [Accessed 31 January 2012].

Roche, W. K. and Teague, P. (2011) 'Firms and Innovative Conflict Management Systems in Ireland'. *British Journal of Industrial Relations*, 39 (3), pp. 436 – 459.

Saunders, M., Lewis, P. and Thornhill, A. (2009) *Research Methods for Business Students*. 5<sup>th</sup> ed. Harlow UK: Prentice Hall.

Singh, K. (2007) *Quantitative Social Research Methods*. London: Sage

Schütte, B. (2003) *Fixing the Fighting: A Guide to using Mediation in Settling Disputed and Resolving Conflict in the Workplace*. Cork: Oak Tree Press.

Services Industrial Professional and Technical Union (2012) [Internet] Available from: <http://www.siptu.ie/aboutsiptu/> [Accessed 17 May 2012].

SFA (2012) [Internet] Available from: [http://www.sfa.ie/Sectors/SFA/SFA.nsf/vPages/About the SFA~who-are-the-sfa?OpenDocument](http://www.sfa.ie/Sectors/SFA/SFA.nsf/vPages/About%20the%20SFA~who-are-the-sfa?OpenDocument) [Accessed 27 May 2012].

Teague, P. (2005) Towards Flexible Workplace Governance: employment rights, dispute resolution and social partnership in the Irish Republic. *Studies in Public Policy*, 18, pp. 1-322.

Teague, P. and Doherty, L. (2011) 'Conflict management systems in subsidiaries of non-union multinational organisations located in the Republic of Ireland'. *The International Journal of Human Resource Management*. 22 (1) pp. 57-71. [Internet] Available from: <http://dx.doi.org/10.1080/09585192.2011.538968> [Accessed 10 March 2012].

Teague, P. and Thomas, D. (2008) *Employment Dispute Resolution and Standard Setting in the Republic Of Ireland: Labour Relation Commission*. Cork: Oak Tree Press.

The Labour Court (2001) About Us. [Internet] Available from: <http://www.labourcourt.ie/labour/labour.nsf/lookuppagelink/HomeAboutUs> [Accessed 06 June 2012].

The Labour Court (2011) *2010 Annual Report, The Labour Court*. Dublin: The Labour Court.

The Law Reform Commission (2010) *Alternative dispute resolution, mediation and conciliation*. [Internet] Available from: [http://www.lawreform.ie/\\_fileupload/Reports/r98ADR.pdf](http://www.lawreform.ie/_fileupload/Reports/r98ADR.pdf) [Accessed 20 November 2011].

The Mediators Institute of Ireland (2012) [Internet] Available from: <http://www.themii.ie/index.jsp> [Accessed 19 November 2011].

Wallace, J , Gunnigle, P and McMahon, G (2004) *Industrial Relations in Ireland* 3<sup>rd</sup> ed  
Dublin Gill and Macmillan

Willig, C (2001) *Introducing Qualitative Research in Psychology Adventures in Theory  
and Method* London Open University



**Appendix (i)****The use of ADR as a means of resolving workplace disputes in Small and Medium Enterprises in Ireland.****QUESTIONNAIRE**

The purpose of this questionnaire is to determine the knowledge of and frequency of use of ADR (Alternative Dispute Resolution) as a means of dealing with Conflict in the workplace of SME's, as opposed to using the traditional methods.

Traditional Methods of resolution may include Employment Appeals Tribunal, Labour Court, and Rights Commissioner.

According to the 2010 Annual Report of the Labour Court a total of 27,094 Employment Disputes were referred to State Institutions in 2010. The total number for 2006 was 13,527. According to the 2010 Annual Report of the Employment Appeals Tribunal the average waiting period to have a claim heard was 58 weeks in Dublin, and was 55 weeks in provincial areas at year's end. This period increased further in 2011.

Alternative Dispute Resolution encompasses various methods such as: mediation, arbitration, conciliation.

SMEs (Small and Medium Enterprises) can be divided into three categories, micro (employees <10), small (employees <50) and medium (employees <250). For the purpose of this research we will focus on SMEs, defined as all firms with less than 250 employees in both services and industry.

Public service agencies are named in this research. Companies and individual contributors are not named. Interviewees are not named.

**GENERAL**

1. To which of the following industries does your workplace belong:

- |                                   |                          |                            |                          |
|-----------------------------------|--------------------------|----------------------------|--------------------------|
| • manufacturing                   | <input type="checkbox"/> | accommodation, restaurants | <input type="checkbox"/> |
| • communication services          | <input type="checkbox"/> | administration             | <input type="checkbox"/> |
| • electricity, gas & water supply | <input type="checkbox"/> | finance and insurance      | <input type="checkbox"/> |
| • construction                    | <input type="checkbox"/> | wholesale trade            | <input type="checkbox"/> |
| • retail trade                    | <input type="checkbox"/> | professional services      | <input type="checkbox"/> |
| • education                       | <input type="checkbox"/> | cultural & recreational    | <input type="checkbox"/> |
| • health and community services   | <input type="checkbox"/> | transport & storage        | <input type="checkbox"/> |

2. In what year was your organisation established?

3. How many employees are there in your organisation?

4. What percentage of your workforce belongs to a union?

5. Do you belong to an employer association? Yes  No

6. Do you have a grievance procedure in place within your organisation? Yes  No

**LITIGATION**

7. In the past 6 years, has any employee brought a Legal claim against you/your organisation for any employment related issue? YES :  NO :  ( If no, please go to Q12)

8. If yes, how many times?

- Once
- 2 to 4 times
- 4-6 times
- 6-8 times
- 8 or more times

9. If yes, what was the duration of the case(s) (if more than one case, please specify each case)?

- Less than 6 months
- 6 to 12 months
- 12 to 18 months
- 18-24 months
- Over 24 months
- Ongoing

10. Which of the following areas was the case(s) related to:

- Unfair dismissal
- Working time
- Redundancy
- Pay
- Holiday
- Harassment/bullying
- Other (please specify)

11. By what manner was the claim (s) attempted to resolved:

- Labour court
- Employment appeals tribunal
- Rights commissioner
- ADR( Please specify)

**ADR**

12. Are you aware of ADR? Yes  No

13. Have you used any form of ADR in your organisation to resolve workplace disputes?

Yes  No  ( If no, please go to Q15)

14. If yes, which method have you used:

- Mediation,
- Arbitration
- Conciliation
- Other ( please specify)

15. If you have used ADR, **OR** if you are aware of ADR what do you consider the benefits of ADR in SME's over the conventional methods:

- More cost effective
- Less confrontational
- Quicker process
- Avoids bad publicity
- Other ( please specify)

16. What do consider the disadvantages of using ADR in SME's?

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17. If you have used ADR has your experience been:

- a. Positive
- b. Negative

Please explain your answer -

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18. Do you believe ADR works best collectively (in a group) or with an individual?

Please explain your answer

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19. In solving workplace conflict within SME's , would you consider ADR as:

- a. First resort?
- b. Last resort?

Why?

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20. In your opinion do you feel that ADR is more appropriate and suited to:

- A. Large organisations
- B. Small to medium enterprises

Why?

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21. If you have not used ADR in the past would you consider using it in the future?

Yes  No  Not applicable

22. In your opinion, are employees of SME's willing to take part and participate in the ADR process? Yes  No

23. Do you feel there is adequate knowledge about ADR in SME's? Yes  No

24. Do you believe ADR should be part of HR Practices in SME's? Yes  No

25. Would you promote the use of ADR in your organisation as a means of dealing with workplace conflict in SME's? yes  no

Why?

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Would you consider paying for private mediation? Yes  No

26. If so, would you engage an outside mediator or arbitrator or appoint a peer/ manager to oversee the resolution process?

a. An outsider mediator/ arbitrator

b. Peer/ manager

For what reason?

---

Would you consider paying for private mediation? Yes  No

27. Do you think that the existence of a "single entry point or umbrella organisation" could improve access to ADR?

a. yes -A single entry point

b. No

**28** Should their role be limited to providing information or should they also deal with disputes?

- a Limited to provide information
- b Also deal with disputes

**29** Have you any other comments or views on ADR you would like to add?

**Appendix (ii)****The use of ADR as a means of resolving workplace disputes in Small and Medium Enterprises in Ireland.****INTERVIEW**

The purpose of this Interview is to assess the views of parties involved in ADR (Alternative Dispute Resolution) as a means of dealing with Conflict in the workplace of SME's, as opposed to using the traditional methods.

Traditional Methods of resolution may include Employment Appeals Tribunal, Labour Court, and Rights Commissioner.

Alternative Dispute Resolution encompasses various methods such as: mediation, arbitration, conciliation.

SMEs (Small and Medium Enterprises) can be divided into three categories, micro (employees <10), small (employees <50) and medium (employees <250). For the purpose of this research we will focus on SMEs, defined as all firms with less than 250 employees in both services and industry.

Public service agencies are named in this research. Companies and individual contributors are not named. Interviewees are not named.

Prior to submission of the research the interviewees will be advised of the contents of the interview replies and may make any amendments if they wish.

When the final content is agreed, permission will be sought to include their comments and views in this research.

The questions attached are a guideline structure for the interview. Please expand on any question where you feel is necessary.

**GENERAL**

1. What is your profession?
2. What organisation do you work for?
3. What position do you hold in the organisation?
4. Is it public or private?
5. How long have you been in practice?
6. In the past 6 years, have you been a party involved in a claim?
7. If yes, how many times?
8. What was the approximate duration of the case(s)?

- 9** In which area were the case(s) taken?
- 10** By what manner was the claim(s) resolved/ attempted to be resolved?
- 11** What form of ADR do you have experience participating?
- 12** What do you consider the benefits of ADR in SME's over the conventional methods
- 13** What do consider the disadvantages of using ADR in SME's?
- 14** In your opinion are participants' views been positive or negative?
- 15** Do you believe ADR works best collectively (in a group) or with an individual?
- 16** In solving workplace conflict within SME's, would you consider ADR as a first resort or last resort?
- 17** In your opinion do you feel that ADR is more appropriate and suited to large organisations or small to medium enterprises?
- 18** In your opinion, are employees of SME willing to take part and participate in the ADR process?
- 19** Do you feel there is adequate knowledge about ADR in SME's?
- 20** Do you feel you have a role to play in promoting the use of ADR in SME's as a means of dealing with workplace conflict?
- 21** Would you recommend engaging an outside mediator or arbitrator or appointing a peer/ manager to oversee the resolution process?      Would you recommend paying for private mediation?
- 22** Do you believe ADR should be part of HR Practices in SME's?
- 23** Do you think that the existence of a "single entry point or umbrella organisation" could improve access to ADR? If yes, should their role be limited to providing information or should they also deal with disputes?
- 24** Have you any other comments or views on ADR you would like to add?