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To Mediate or Not to Mediate: A Critical

Assessment of the Viability of Mediation as a Tool

to Solve

Workplace Bullying

To Mediate or Not to Mediate: A Critical

Assessment of the Viability of Mediation as a Tool

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Workplace Bullying

by

DANIELLE MAIA DA SILVA

A dissertation presented to the

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ABSTRACT

A modern crisis, workplace bullying damages the emotional well-being of individuals and costs employers millions in lost productivity. There is an existing question as to whether mediation should be used to solve workplace bullying disputes.

The primary aims and objectives of this research study are to evaluate mediation's effectiveness in resolving workplace bullying disputes, comment on whether mediation should be used at all in the workplace bullying context, and make subsequent recommendations to employers, workplace bullying victims, and society in general.

To achieve these aims and objectives, this study utilizes a qualitative research approach focused on a combination of survey questionnaires. Distributed to the population at-large, the survey captures the population's general feelings and perceptions toward mediation in the context of workplace bullying.

The results of the survey demonstrated that there is a higher rate of workplace bullying in Ireland than expected. In principle, most victims are willing to negotiate face-to-face with a workplace bully but feel that they would be at a disadvantage—or in a vulnerable position. In addition, a majority of workers would prefer mediation to litigation as a dispute resolution mechanism, citing the overall hassle, time, and expense of litigation. Finally, the survey results revealed a lack of corporate promotion of anti-bullying policies and the lack of employers building an anti-bullying culture.

The main conclusion from this research project is that mediation has an important role to play in resolving workplace bullying disputes. However, corporations must promote an anti-bullying culture more vigorously to prevent workplace bullying. The application of mediation should operate on a "sliding-scale" mechanism: Mediation should be used to resolve workplace bullying disputes where

there is not severe abuse or potential for further abuse. Mediation should apply to more moderate workplace bullying cases. Overall, this mechanism, as well as more strict corporate policies, would reduce and resolve workplace bullying.

Chapter 1 - Introduction

This section defines workplace bullying as a concept, presents vital workplace bullying statistics that will be referenced throughout the project, and gives the primary reasons that workplace bullying is a social and corporate crisis.

What is Workplace Bullying?

A modern social and corporate crisis, workplace bullying threatens individuals and employers daily. Workplace bullying can be defined in many different ways that range from a more general concept of bullying to a more specific concept of the phenomenon (Piotrowski, 2012).

For example, according to one source, bullying in the workplace is "a persistent pattern of mistreatment from others in the workplace that causes either physical or emotional harm" (Rayner, 2005).

According to another source, the Health and Safety Authority, workplace bullying is: "repeated inappropriate behavior, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work" (Health and Safety Authority 2019).

Finally, according to the NCBI, "workplace bullying is defined as the repetitive and systematic engagement of interpersonally abusive behaviors that negatively affect both the targeted individual and the work organization" (Sansone and Sansone 2015).

Some sources include more apparently minor actions within the definition of workplace bullying. In other words, workplace bullying is not necessarily restricted to the common conception of bullying that includes physical violence or workplace aggression. The Irish National Anti Bullying Research and Resource Centre includes within the definition of workplace bullying the following examples (National Anti Bullying Research and Resource Center 2019):

-"Aggressive behavior by a manager, supervisor, colleague or client."

-"Repeated verbal harassment, abusive language, personal insults, name-calling."

-"Persistent unfair criticism."

-"Persistent teasing, horseplay, uncomplimentary remarks, or offensive behavior."

-"Rumour mongering, maligning, or ridicule either direct or behind people's backs."

-"The delegation of duties and responsibilities in an unfair and inequitable manner."

These competing definitions and conceptions of workplace bullying will come into play later—they are extremely important in the discussion of workplace bullying resolution. This is because while some practical examples of conduct in the workplace might fall under a broader definition of workplace bullying, the conduct might not fall under the *legal* definition of workplace bullying. For purposes of this project, the *legal* definition of workplace bullying refers to the definition used by Citizens Information and the Health and Safety Authority—repeated inappropriate behavior that undermines the right to dignity at work. However, the practical definition of workplace bullying is anything that the victim considers to be bullying. In other words, the legal system might not be targeting forms of bullying that are occurring in the workplace.

Workplace bullying is a widespread phenomenon. According to recent statistics, 13% of U.S. employees are currently being bullied, and 49% of U.S. workers have previously been affected by bullying in the workplace. And, according to a study focusing on the U.K., nearly a third of people have been bullied at work. According to YouGov and TUC (TUC, 2015):

Most workplace bullying victims are women (34%) as opposed to men (23%);

- Managers are responsible for the bullying in most cases of workplace bullying, constituting 72% of cases;

- A common response to workplace bullying is for the victim to leave their job, which happens in 36% of cases;

- Almost one of every three people experiences workplace bullying at some time (29%); a

- Employees between the ages of 40-59 are the most commonly affected age group, counting for 23% of those bullied.

The workplace bullying statistics for Ireland are particularly concerning. A study conducted in 2005 examined the workplace bullying issue and concluded that workplace bullying is a serious issue in Ireland (Expert Advisory Gorup on Workplace Bullying, 2005). The report concluded that workplace bullying is a growing problem in Ireland, citing "increased numbers of complaints, higher levels of workplace stress, greater frustration with a lack of formal channels for resolving such complaints and an increased burden on all parties to resolve disputes" (Expert Advisory Gorup on Workplace Bullying 2005). The study called the current measures targeting workplace bullying "insufficient" and recommended swift and strong action from employers and the government to address the issue (Expert Advisory Group on Workplace Bullying 2005).

Then, in 2014, *TheJournal.ie*, a popular source for Irish news, published an article titled "Irish workplaces among the worst in Europe for bullying" (Hennessy, 2014). The article cites a workplace bullying study conducted by The European Foundation for the Improvement of Living and Working Conditions, which found that 6% of Irish workers responding that they have experienced bullying in the workplace. In terms of European countries, this ranks Ireland seventh on the list of countries with the most workplace bullying (Hennessy, 2014).

The takeaway from these statistics is that workplace bullying is indeed widespread. Many workers all over the world experience workplace bullying, and the numbers are particularly alarming for Ireland.

Why is Workplace Bullying a Serious Issue? There are two noteworthy reasons, among others, that

workplace bullying constitutes a social and corporate crisis: the psychological impact on the individual, and the financial impact on the employer. Workplace bullying undoubtedly significantly damages and harms the emotional well-being of victims while simultaneously costing employers millions in lost productivity, lost wages, legal fees, settlements, and so on. As the definition specifically includes, every worker in Ireland (and everywhere) should have the right to dignity and respect in the workplace.

The preceding statistics, figures, and psychological and financial costs demonstrate the importance of reducing workplace bullying. As such, this project's research question is: *Can mediation, a popular form of alternative dispute resolution, effectively resolve workplace bullying disputes and in turn reduce the amount of workplace bullying that takes place in corporate environments?*

Therefore, this project's aim is to provide an overall assessment of the benefits, drawbacks, and costs of mediation, as well as to comment on the general effectiveness of mediation to resolve and manage workplace bullying disputes. The objective is to formulate a clear, direct conclusion as to whether mediation can and should be used as a valuable tool to manage workplace bullying disputes, and provide specific recommendations for corporations, victims, and society as to how this can be done. There are two schools of thought relevant to this dissertation: Many critics and experts claim that mediation is not appropriate for the resolution of workplace bullying disputes, while many other researchers suggest that mediation should be used for this purpose. Hopefully, this research project will be able to provide specific recommendations for corporations and victims that can be implemented and followed to result in an overall reduction in workplace bullying.

So far, the background of workplace bullying and major statistics have been discussed, as well as the project's aims, objectives, and research question. From here, the dissertation will proceed in the following format:

Chapter Two—Chapter two will state the aims and objectives of the dissertation in more detail,

emphasizing what will be explained and proved throughout the project.

Chapter Three—Chapter three will review the literature relevant to workplace bullying, including current theories, arguments, debates, and research.

Chapter Four—Chapter four discusses the research strategy and methodology utilized to reach the final conclusion. The qualitative research approach utilized for this dissertation is justified and outlined, and the structures of the survey questionnaire —the main data collection tools—are presented.

Chapter Five—Chapter five includes the presentation of the data as well as a corresponding analysis of the findings.

Chapter Six—Chapter six expands on the data presentation and discusses the overall results of the study. The significance of the findings is also discussed and analyzed in accordance with the big-picture and overall question.

Chapter Seven—Chapter seven concludes the study and summarizes the final conclusions and major takeaways from the research project.

Lastly, final reflections, discussions, and musings will be included.

Scope and Limitations of Research

Research studies cannot always be perfect. Time, sample size, and the inability to obtain certain information often limit research studies. One limitation of this study was the difficulty in procuring specific information from expert mediators and employers regarding workplace bullying experiences. When designing this study, the expert opinions from mediators were included in the research method to provide valuable insight into mediation's effectiveness in the workplace bullying context. However, because of the sensitive nature of the topic, the mediators, employers, and victims who were contacted were not willing to answer specific questions. As such, the importance of in-depth interviews with this research project was reduced.

This research study contributes to the existing body of literature on workplace bullying. First, this project weighs in on the split between those who believe mediation is a good solution to workplace bullying disputes and those who believe mediation is *not* a good solution. Adding perspective, evidence, and analysis of this ongoing debate is the study's main contribution, as it contributes a reasoned, detailed evaluation of mediation's effectiveness in handling workplace bullying disputes. Secondarily, this study contributes to the wider body of literature that focuses on overall methods of reducing workplace bullying, providing a comparative analysis of mediation advantages as a dispute resolution form. Third, this study comments on the overall role of mediation in the context of eradicating workplace bullying and proposes a mechanism that corporations could implement to reduce workplace bullying.

Chapter 2 - Aim and Objectives

The main objective of this research project is to comprehensively evaluate mediation's effectiveness in resolving workplace bullying disputes and propose a solution and recommendation to employers, victims, and society that resolves and reduces bullying in the workplace.

The purpose of this objective is to prove or disprove the following hypotheses: Mediation is somewhat effective in resolving workplace bullying disputes and should at least be available to employee victims as a resolution mechanism. Further, from a societal perspective, an approach to managing and preventing workplace bullying should emphasize using mediation as the best option, in combination with legislation, policy, and other forms of dispute resolution (such as litigation, arbitration, and unmediated negotiation). In other words, mediation should be a focal point of a larger scheme whose mechanics work together to combat workplace bullying.

This main objective includes many primary and subsidiary objectives, which are explained below.

One primary objective is to comment on the mediation's overall role in the context of resolving workplace bullying. In other words, this project will make recommendations as to whether (and how) mediation should be applied to workplace bullying disputes at all.

Another primary objective is to explore the advantages and disadvantages of using mediation as a tool to resolve workplace bullying disputes in comparison with other forms of dispute resolution, such as arbitration, unmediated negotiation, and litigation.

The subsidiary objectives throughout this project are specified and bolded below:

This project aims to provide differing opinions, conceptions, and definitions surrounding the concept of workplace bullying. There are many different formulations of the definition of workplace bullying, which results in an imperfect legal scheme targeting workplace bullying.

This project aims to quantify the economic impact of workplace bullying. Understanding the impact

of workplace bullying on corporations and the economy will factor into the evaluation of mediation's necessity.

This project aims to analyze the health impact of workplace bullying. An understanding of how workplace bullying impacts the health of individuals and the broader workforce plays into the equation of mediation's effectiveness.

This project aims to contribute to the ongoing debate regarding the appropriateness of using mediation to solve workplace bullying disputes. Some commentators believe that mediation is not appropriate to solve workplace bullying disputes, while other commentators believe mediation should be used.

This project aims to exhaustively map the existing scheme of legislation and case law related to workplace bullying in Ireland. By comprehensively providing the legal standard for workplace bullying, it will become clear why workplace bullying still exists in modern society, which is important to the analysis of whether mediation can contribute.

This project aims to measure the working population's willingness to solve workplace bullying disputes through mediation. This is ultimately the crux of the issue that determines mediation's effectiveness: whether the parties to the mediation willingly agree to work together to reach a mutually beneficial solution. This largely depends on the victim's willingness to directly work with the employer and/or bully.

This project aims to document the thoughts, opinions, and experiences of mediators and employers who have special insight into workplace bullying. Acquiring the opinions of mediators and employers through in-depth interviews adds depth to the study and contributes to the analysis of mediation's overall effectiveness.

Finally, this project aims to link the objectives explained above together to formulate a conclusion regarding the role of mediation in resolving workplace bullying disputes. Each factor and objective listed above somehow contributes to the question of whether mediation should be employed in corporate settings to resolve workplace bullying.

Chapter 3 - Review of the Literature

Workplace bullying is a topic that has been studied in-depth. Researchers and academics have produced a deep body of literature examining the social and financial cost of workplace bullying, as well as measures to prevent the problem in the future. However, these sources have produced a narrower, smaller body of literature, specifically evaluating and assessing the usefulness of mediation in resolving and preventing workplace bullying. Therefore, this literature review presents some of the most critical pieces of literature on workplace bullying in general, then narrows its focus to comprehensively cover the existing literature on mediation and bullying in the workplace. In addition, the literature review includes all topics, theories, concepts, models, debates, and research that are substantially relevant to the assessment of mediation's overall effectiveness in resolving workplace bullying disputes. Each of these topics is crucial to the context and analysis of mediation as a workplace bullying resolution tool. The literature review is broken down into the following concepts, and a justification for their inclusion in the literature review is briefly explained:

Economics of Workplace Bullying: The economic cost of workplace bullying to the economy and to corporations should be considered to evaluate the potential cost-savings of mediation in the context of this overall analysis.

Health Impact of Workplace Bullying: The health and psychological impact of workplace bullying on individuals is a necessary factor in the evaluation of mediation's effectiveness in resolving workplace bullying. This is because successful mediation depends on the ability of the parties to engage the other side in a mutually beneficial discussion.

Measures to Prevent Workplace Bullying: The laws, case law, and legislation are presented to form the legal standard for workplace bullying claims in Ireland. This is included because it is necessary to show why mediation may be needed to supplement the legal system's failure to eradicate workplace bullying.

Mediation and Workplace Bullying Disputes: This section examines both sides in the debate—those who think mediation should be used to resolve workplace bullying and those who do not. This is the most important section in the literature review because it covers the main objective of this project: determining whether mediation can effectively be applied to workplace bullying claims as a resolution method.

Characteristics of Mediation and Other Forms of Conflict Resolution: This section examines the advantages and disadvantages of mediation in comparison with other forms of dispute resolution such as arbitration, unmediated negotiation, and litigation. This section is included because mediation's benefits and drawbacks are important in the scheme of the analysis of whether mediation should be applied to workplace bullying.

3.1 Economics of Workplace Bullying

Economics must be considered in any analysis of mediation's usefulness in resolving and preventing workplace bullying. While workplace bullying might initially seem like a moral problem or a psychological problem, in reality, workplace bullying significantly damages corporations and individuals financially (Rayner and Keashley 2005). As a result, companies have a stake in measures like mediation that could potentially result in cheaper resolution of disputes and prevent future workplace bullying. As a matter of economics, companies generally institute measures like mediation only when the cost-benefit analysis weighs in favor of the strategy (Ostwald 1986). Because of this, it is important to this project's analysis to provide a thorough account of the impact of workplace bullying on both corporations and the economy, so that cost-savings can be factored into the evaluation of mediation's usefulness.

Workplace bullying can be very costly to employers and corporations in the form of replacement costs and litigation costs (Rayner and Keashley, 2005). According to Rayner & Keashley, for example, in many cases, workplace bullying causes the victim to leave the company. When an employee leaves a

company, the employer incurs a replacement cost to fill the old employee's vacant position. Searching for a new candidate for a job is expensive, time consuming, and expensive. According to Rayner & Keashly, a company with 1,000 employees can expect a replacement cost of $1.2 million because of workplace bullying. This figure does not include potential legal costs that the company might have to pay to victims of workplace bullying, as claims might be brought against the company because of the bullying (Rayner and Keashley 2005).

In addition, a study conducted by Hoel, Sparks & Cooper (2009) estimates the total cost to the U.K. economy associated with workplace bullying. According to the study, the U.K. economy lost 1.88 billion pounds during the year of the study because of workplace bullying. In addition, this study did not quantify the value of lost productivity, which makes the real damage to the U.K. economy from workplace bullying even higher. A more recent study done in 2018 by Ingrid Torjesen demonstrated that workplace bullying now costs the U.K. economy 2.96 billion pounds annually (Hoel, Sparks & Cooper 2009).

There are many additional studies that give an insight into the real economic cost of workplace bullying, such as Giga, Hoel and Lewis (2008). This is another study that measured the impact of workplace bullying on the U.K. economy. The study, conducted in 2007, concluded that 33.5 million days of work were lost in the U.K. economy because of workplace bullying. This is called absenteeism, where the victim of the workplace does not come to work or is unemployed because of the bullying. In addition, almost 200,000 U.K. employees would have left their company because of workplace bullying, which would have resulted in 100 million days of lost productivity. Much higher than the previous study cited in this literature review, this study, after taking into account absenteeism, turnover, and lost profits concluded that workplace bullying cost the U.K. economy 13.75 billion pounds in total in 2007. Factoring in a productivity loss would make losses even greater, especially when applied to GDP: a 1.5%

productivity loss due to workplace bullying would impact the U.K.'s Gross Domestic Product, a key economic indicator, by 17.65 billion pounds. After presenting these figures, the study stresses the importance of allocating time and resources for preventing and controlling workplace bullying (Giga, Hoel & Lewis 2008).

Adding to the data, the National Institute for Occupational Health and Safety measured the impact on the U.S. economy. The study shows that mental illness in the workplace, combined with workplace bullying, result in $19 billion in losses to the U.S. economy annually. This number does not include or quantify lost productivity, meaning that the impact on the U.S economy because of workplace bullying is even greater (Sauter 1990).

Finally, Purcell & Bradshaw (2007) estimated the economic impact of bullying in the workplace with an emphasis on Ireland specifically. According to the Purcell and Bradshaw, "Evidence from national and international research shows Ireland has a significant problem with both bullying and suicide and that these issues are frequently linked, with 25% of suicides believed to arise from workplace bullying. The total direct cost of bullying in Ireland and of bullying related suicides is estimated at 1.5 billion euros per annum. Research shows that current approaches to managing bullying and suicide in the workplace are ineffective and that BIS & CASPER's Health & Safety Approach reflects current evidence for effective practice" (Purcell & Bradshaw 2007).

Workplace bullying results in considerable litigation costs for the employer, according to the National Anti-Bullying Research and Resource Center, because employers are liable for bullying that takes place in the company, even if the employer has no knowledge of the bullying. In addition to extraordinary litigation costs, workplace bullying negatively impacts the workplace in the following ways: absenteeism (i.e. people missing work), turnover (people switching jobs), sickness (people calling in sick to avoid bullying), recruitment costs to train new or replacement employees, public relations costs,

and overall social and psychological costs (National Anti Bullying Research and Resource Center 2019).

3.2 Health Consequences of Workplace Bullying

Workplace bullying has serious impacts on the health and psychology of both the victim and the workforce at large. Since the success of mediation largely depends on the amicability between the parties and the willingness to engage in mutually beneficial negotiations, it is necessary to understand how workplace bullying impacts the mental state of the victim. If the victim cannot negotiate on even terms with the employer from a state of sound mind, then the entire mediation process is undermined. In addition, the literature included in this section will explore the overall health effects caused by workplace bullying and demonstrate mediation's potential to have a positive impact.

As a baseline, according to the National Anti Bullying Research and Resource Center, workplace bullying has drastic effects on individual health and well-being. According to the ABC, workplace bullying results in: "high levels of stress, serious somatic symptoms, depression, anxiety, post-traumatic stress, substance abuse, and suicide"(National Anti Bullying Research and Resource Center 2019).

Vartia (2009) examined the impact of workplace bullying on health more in-depth. The author examined workplace bullying's effect on the target's well-being and psychological health, as well as the subjective stress of those in the work environment who observe bullying. The result was that "both the targets of bullying and the observers reported more general stress and mental stress reactions than did respondents from the workplaces with no bullying." The victims of workplace bullying also indicated that they felt low self-confidence and disdain toward their work environment. Some of the most common reasons among respondents for the feelings of increased stress were tight work deadlines, being given exceptionally hard tasks, and not being given clear direction for a task. Finally, the author found that there was a higher rate of sleep-inducing drugs and sedative usage among respondents who indicated that they had experienced bullying in the workplace than those who did not. The conclusion of the study

was that workplace bullying results in significant mental stress not only to the victim of the bullying him or herself, but to the entire work unit, and the problem must be regarded as such (Vartia 2009).

An article by the NCBI corroborates Vartia's findings and presents the consequences of workplace bullying on victims. Corroborating the other studies that have been presented, this study shows that "increased stress and mental distress are possible psychological aftermaths of workplace bullying, even up to two years later." Studies have found a proliferation of sleep related disturbances due to workplace bullying, depression and anxiety, fatigue, lack of vigor, severe depression, mood disorders, anxiety disorders, adjustment disorders, and suicide: "Likely because of the preceding emotional difficulties, studies have also identified among the bullied a greater use of hypnotics as well as greater use of psychotropic medications in general." This is only the psychological. Researchers have also identified many medical conditions that result from workplace bullying: "In addition to the emotional/psychological consequences of workplace bullying, researchers have identified a number of medical consequences, as well. These include greater general health complaints, neck pain, musculoskeletal complaints, acute pain, fibromyalgia, and cardiovascular disease.

3.3 Legal Regimes

This section includes the relevant case law, legislation, and policies that target workplace bullying. It is important to include this information in order to differentiate where mediation can be successful in the scheme of workplace bullying prevention. For example, the law might only provide a legal remedy for certain types of workplace bullying (such as sexual harassment), whereas the victim of workplace bullying might use mediation to encompass broader circumstances (such as gossiping). In other words, this section is crucially important because it identifies potential gaps in the case law and existing legislation that result in an existing scheme where workplace bullying is not resolved.

Case Law

Una Ruffley v. Board of Management of St. Anne's School: This is a landmark workplace bullying case in Ireland. In this case, the Irish Supreme Court set forth the legal standard and clarified the legal elements for workplace bullying claims. Una Ruffley, a special needs assistant at St. Anne's School in Kildare, claimed that the Board of Management engaged in a bullying campaign against her, resulting in personal physical and psychological injury. She brought suit, and the lower court initially ruled in her favor (*Una Ruffley v. Board of Management of St. Anne's School* 2015). The judge in the lower court held to the definition of workplace bullying set out in the Industrial Relations Act 1990:

"*Workplace Bullying is repeated inappropriate behavior, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behavior described in this definition may be an affront to dignity at work but, as a once off incident, is not considered to be bullying.*"

The Board of Management appealed the decision, and the appellate court overturned the lower court's decision, ruling 2 to 1 against Una Ruffley. The appellate court's rationale for the reversal was that the Board of Management did not engage in the kind of repetitive conduct over a period greater than one year that is needed to satisfy the legal definition of workplace bullying (*Una Ruffley v. Board of Management of St. Anne's School* 2015).

The case then proceeded to the Supreme Court in Ireland, which agreed with the appellate court's decision and ruled against Una Ruffley. The court reiterated the legal test for workplace bullying set forth by *Quigley v. ComplexTool and Moulding Limited*: a workplace bullying claim must prove that the conduct was (1) repeated; (2) inappropriate; and (3) undermines the dignity of the employee at work. In addition, the court held that these elements must be satisfied in *each* instance of bullying included in the

pattern of bullying included in the complaint(*Una Ruffley v. Board of Management of St. Anne's School* 2015).

The court held: "*Correction and instruction are necessary for the functioning of any workplace and these are required to avoid accidents and to ensure that productive work is engaged in. It may be necessary to point to faults. It may be necessary to bring home a point by requesting engagement in an unusual task or longer or unsocial hours. It is a kindness to attempt to instill a work ethic or to save a job or a career by early intervention. Bullying is not about being tough on employees. Appropriate interventions may not be pleasant and must simply be taken in the right spirit. Sometimes a disciplinary intervention may be necessary.*"

Overall, this case raised the difficulty level for victims of workplace bullying to successfully win a claim against the employer. The Supreme Court, in this case, seemed to opt in favor of flexibility and discipline in the workplace rather than a harsh stance toward workplace bullying (*Una Ruffley v. Board of Management of St. Anne's School* 2015).

Legislation

Various laws and provisions target workplace bullying in Ireland. Citizens Information uses the same definition as the Health and Safety Authority: "Bullying is repeated inappropriate behavior that undermines your right to dignity at work. It usually takes place over a period of time. It can be done by one or more persons, and it is aimed at an individual or a group to make them feel inferior to other people. Bullying can be direct or indirect and can include verbal, physical, or cyberbullying" (Citizens Information, 2019). The primary legal mechanism in Ireland applying to workplace bullying is the Employment Equality Acts 1998—2015, which set forth the legal requirements for workplace bullying.

Safety Health and Welfare at Work Act 2005: Under this act, an employer has the general duty to stop any conduct that threatens the health of the company's employees. The employer is required to

"prevent any improper conduct or behavior likely to put the safety, health, and welfare of employees at risk" (Safety, Health and Welfare at Work Act 2005). In addition, under the language of the act, employees must not engage in behavior that would harm the safety or welfare of fellow employees (Safety, Health and Welfare at Work Act 2005).

Company Policies

Health and Safety Authority: In general, under the 2005 Act, employers must ensure the health and safety of employees in the workplace (Safety, Health, and Welfare at Work Act 2005). In other words, the employer must take reasonable steps to prevent workplace bullying. The common practice for companies in today's world is to institute an anti-bullying policy in terms of engagement and have established a process and procedure for managing allegations and complaints of workplace bullying. Companies rely on the guidance of the Workplace Relations Commission, as the WRC has publications that give employers guidance on crafting policy and addressing workplace bullying allegations (*see* Code of Practice detailing Procedures for Addressing Bullying in the Workplace).

National Anti Bullying Research and Resource Center: The Irish government has instituted many policies and programs to help employers eradicate bullying from the workplace. For example, the ABC has a program that gives direction and helps employees and employers regarding the effects of workplace bullying. The program helps employers with "identifying bullying, conflict awareness, responding to a bullying complaint, separating bullying from assertive management, dealing with workplace bullying through effective leadership, facilitating mediation, drawing up an effecting anti-bullying policy, and creating a bully-free work environment" (National Anti Bullying Research and Resouce Center 2019).

3.4 Mediation to Resolve Workplace Bullying

In the Irish system, as listed on the National Anti Bullying Research and Resouce Center's website, mediation is a way for workplace bullying victims and employers to resolve the issue. According to the

National Anti-Bullying Research and Resource Centre: "Mediation is a process whereby an independent, neutral Mediator(s) assists the parties to come to an agreement through a collaborative process. The Mediator is neither judge arbitrator and does not adjudicate or give decisions on the rights or wrongs of the actions of the parties. The Mediator supports the parties in identifying their issues and needs and in exploring how those needs can be addressed and how they might come to an agreement.Mediation is an alternative dispute resolution method which eliminates the time, stress, and costs associated with long-drawn-out legal battles" (National Anti Bullying Research and Resource Center 2019).

There is a split between proponents who advocate for the usage of mediation in workplace bullying disputes and those who believe mediation is an inappropriate method of resolving workplace bullying claims. This is central to the theme of this paper; whether mediation should be applied *at all* in the context of workplace bullying. The following scholars, experts, and practitioners have written on the subject, and the following pieces of literature capture the line of thinking on both sides of the argument:

One expert mediator, Walker, suggested in an article that mediation is not appropriate to resolve workplace bullying disputes and other forms of cases where abuse is present. The article says: "Mediation is an inappropriate alternative in cases involving any type of abuse or violence such as domestic violence, child abuse, sexual assault, school or workplace bullying" (Walker 2013). The mediator argues that using mediation to resolve a workplace bullying conflict only worsens the initial problem because the victim of workplace bullying is put in a situation where they are at a disadvantage and subject to further abuse (Walker 2013). Then, the mediator makes the important point that a fair mediation process needs to have both parties sufficiently capable of reaching a mutually beneficial agreement. In other words, both parties in the dispute must be on an equal footing throughout the process. In workplace bullying cases, "this is a false assumption; individuals experiencing abuse, violence, or similar interactions are disempowered their ability to deal effectively with their abusers are diminished"

(Walker 2013).

The mediator then supports his argument by listing the most common reasons that mediation fails. This is an important point in the context of this research project because the evaluation is about mediation as applied to workplace bullying specifically. According to Walker, mediation usually fails because of (Walker 2013):

-Retribution

-Lack of trust

-Power imbalance between disputing parties

-Forced agreements

-Forced or coerced mediations under duress

-Threats of harm after the mediation

-Victim's fear of abuse and intimidation after the mediation

-"Diminished psychological status of the complainant."

-Depression, PTSD, suicidal, or mentally damaged complainants

-Mediator's lack of power and control over the process

-Poorly trained and inexperienced mediators

-Difficulty differentiating between personal conflicts and workplace bullying

-Complainants trying to represent themselves legally during the mediation

-Making settling the case a priority despite the cost

-The accused falsifying information or leveling false accusations against the complainant

-The accused making him/herself out to be the victim

-Abusive tactics by the accused to emotionally damage the complainant during the process

-The complainant's unreasonable expectations

-Complainant unable to reach an agreement due to emotions

-Complainant unable to even speak or articulate facts due to emotions

-Overly aggressive and empowered complainant

-Accused interrupting the process with inappropriate body language or outbursts

-General lack of understanding between the two sides

-General lack of willingness between the two sides to work together amicably

-Hostile parties trying to negotiate a settlement at the same negotiating table

The article also includes statistics corroborating the assertion that mediation is inappropriate and ineffective in resolving workplace bullying disputes. According to the Workplace Bullying Institute, which surveyed 473 victims of workplace bullying who used mediation or arbitration to resolve the dispute, the accused bully faced no consequences in 52% of cases. In mediation, particularly, offenders suffered negative consequences in only 7% of cases. While 33% of bullying victims either quit their job or were terminated, only 3% of the bullies themselves were terminated (Walker 2013).

Finally, the mediator conducted a survey, which again supported the claim that mediation is an ineffective way to resolve workplace bullying. According to the results of 250 workplace bullying victims who were surveyed, 30% were disappointed after trying mediation, citing that their issues were unresolved by mediation. Another 17% did not pursue their claim through mediation, but they indicated that mediation would not have resolved their issue. Five people (2% of respondents) pursued their claim in mediation then were fired from their job within 2 months, and the employer cited unrelated reasons. A significant number, 120 respondents (representing 48%) refused mediation because of the feeling that their lives could not be mediated (Walker 2013).

The mediator's argument above that mediation is not appropriate for workplace bullying disputes is

supported by other academics and groups studying workplace bullying, such as the Australian Dispute Resolution Research Network. The Australian Dispute Resolution Research Network argues the same that workplace bullying should not be resolved with mediation. The article equates workplace bullying to domestic violence, stating that the two concepts are twins: "Workplace bullying is frequently compared to domestic violence—they are considered 'almost identical twins.' In both scenarios, there is an addiction to power, the controlling of another in a detrimental way and a severe power imbalance" (Batagol 2017). In Australian law, mediation and other forms of alternative dispute resolution, are not used in cases where there is family violence. The Australian law gives an exception to the mandate of ADR where family violence is involved because the legislature recognized the power imbalance in play that undermines the effectiveness of the ADR. The article focuses on the drastic impact that mediation could have on the target of workplace bullying, saying that mediation could even worsen the condition of the target and that a desire to compromise and reach a mutually beneficial together is the principal goal of mediation. Overall, the article is saying that the victims of workplace bullying simply do not have the capacity to negotiate with the accused bully and reach a favorable settlement without damaging themselves more in the process. Ultimately, this source's arguments against using mediation in workplace bullying claims are (Batagol 2017):

-Power imbalance (the bully is in a stronger position than the target)

-Lack of neutrality (mediation should begin from a neutral, even level)

-Mediation does not give consequences for past behavior

-Mediation does not help prevent future workplace bullying because it is not public

However, the article indicates that mediation might be acceptable in some instances, particularly where the bullying is at an early stage. The longer the bullying has persisted, and the more damaged the target of the bullying has become, is when mediation becomes inappropriate. The article states: "We should

begin with the assumption that mediation is an inappropriate way of dealing with workplace bullying. Where the bully is the employer, this position will not change. In such cases, arbitration provides a more appropriate dispute resolution as it offers the opportunity for the past wrongdoings committed by the bully to be discussed and for them to be held accountable. This is an important process for the victim in moving on and essential to facilitate a productive working environment by focusing on past behavior, which mediation fails to do. In addition, arbitration allows somebody in power to define what is and isn't bullying and to avoid allegations by the bully of hypersensitivity in the victim" (Batagol 2017).

Overall, the literature that argues against using mediation for workplace bullying disputes can be summarized as follows: Mediation is not appropriate, in most cases, to resolve workplace bullying complaints because of the inherently vulnerable position of the victim that would prevent a successfully mediated resolution.

On the other hand, many scholars, experts, and groups favor the use of mediation in the context of workplace bullying: For example, Pehrman studied Finnish workplaces and found that Finnish workplaces have double the amount of workplace bullying than other countries. Then, Pehrman studied whether mediation effectively resolved cases of bullying in the workplace. He found that "open discussion and bringing the dispute out into the open was a good started in order for both sides to understand the roots and reasons for the dispute. Conflicts can last for years if they are not nipped in the bud" (Mediate Ireland 2019). After examining 14 companies that applied mediation to disputes, Pehrman concluded that mediation is effective at resolving workplace bullying. There has not been a similar study conducted in Ireland yet (Mediate Ireland, 2019).

An article written by Jenkins (2011) supports the argument that mediation should be used to resolve workplace bullying and examines whether mediation is an appropriate method to resolve workplace bullying complaints, with a focus on different types of bullying. The article concludes that mediation is

appropriate for most forms of bullying, but argues that mediation is not enough, by itself, to prevent future workplace bullying or address the contributing factors to workplace bullying (Jenkins 2011).

Finally, McKenzie examined the role of mediation in resolving workplace conflicts, such as workplace bullying. The author concluded that mediation, alone, is not successful in resolving workplace bullying disputes, but is more effective when the mediation is part of an organizational scheme of ADR strategies, processes and policies, and when the mediation is conducted by parties who are truly neutral.

3.5 Mediation in Comparison with Other Conflict Resolution Forms

This section discusses the characteristics of mediation in comparison with other popular forms of dispute resolution, such as litigation and arbitration. It is important to include mediation, arbitration, and litigation in this literature review because all three forms of dispute resolution can be applied, in theory, to workplace bullying disputes.

Since this project is ultimately an overall evaluation of mediation's effectiveness in resolving workplace bullying disputes, it is critical to consider whether mediation is the *most well equipped* dispute resolution form to resolve workplace bullying disputes. Therefore, the following literature defines mediation, arbitration, and litigation, as well as their general benefits and drawbacks as forms of dispute resolution.

Table 1: Comparison of Dispute Resolution Forms

Form of Dispute Resolution	Definition/ Characteristics	Positives	Negatives
Mediation	Parties negotiate in the presence of neutral mediator. Interactive approach to reach settlement; judgments non-binding.	Speed: Mediation resolves very quickly, sometimes within a few hours Cost: Quicker resolution time allows parties to save on attorney fees, court costs, time and resources	Power imbalances: The potential for one party to exploit a weaker party Lack of consequences: Unlike arbitration or litigation, mediation does not, in theory, punish the accused for

		Privacy: Contents of mediation and agreement remain strictly confidential Compliance: High compliance rate with mediation agreements Amicability: Parties work together to craft a tailored solution that fits their needs; allows parties to retain relationship after negotiations Control: More mutual, amicable negotiating process in mediation where disputing parties are willing to move their positions	past conduct Mental and Emotional Health: In the context of workplace bullying disputes, subjects the target to more attacks from the bully; forces target to sit across the table and negotiate with the offending party, causing more stress
Arbitration	Parties negotiate in the presence of arbitrator (or panel). The arbitrator hears evidence from parties and renders *binding* judgment enforceable in court.	Speed: Quicker to resolve than litigation. It generally takes a few months. Specialization: Arbitrators/panels are specialized in the subject matter of dispute. Privacy: Confidentiality of the parties (both negotiations and judgment) is protected—awards and negotiations cannot be revealed.	Lack of Information: Relevant information often excluded from arbitration proceedings because undiscoverable Lack of Appeal: Arbitration awards cannot be appealed in court; final decision binding regardless of error Bias: Arbitration proceedings are often biased in favor of the more powerful party (in the case of workplace bullying, the company)
Litigation	Parties bring a formal legal complaint through the court system. Adversarial proceedings are	Existing Law: Judge applies existing substantive and case law; predictable Neutrality: Takes place	Cost: Extremely high cost to litigate claim: attorney fees, resources, etc. Time: Can take months,

	conducted in the presence of a judge and/or jury, which renders a legally binding decision based on the evidence presented during the trial.	in the courthouse, so no location advantage for either party <u>Appeal</u>: Final decision can be appealed in the event of an error <u>Publicity</u>: The proceedings and results, and awards, of litigation are public, which means that litigation can have a preventative or deterrent effect	even years, to reach the final result through court system <u>Appeals</u>: Lack of finality because either party can appeal the judgment <u>Publicity</u>: Litigation is highly public, which risks exposing or embarrassing the parties

Mediation

According to Trenczek, Mediation is a process where conflicting parties negotiate to resolve a conflict in the presence of a neutral third party mediator (Trenczek 2013). The process is structured, but dynamic and interactive, focusing on participation and centered around the party to facilitate a beneficial agreement for all involved (Trenczek 2013).

Many scholars have compared the forms of conflict resolution to study their optimality, disadvantages, and advantages, such as Goltsman. This article compares arbitration, mediation, and negotiation as forms of dispute resolution, with commentary on when the forms are particularly successful. According to Goltsman, unmediated negotiation is when two conflicting parties negotiate one-on-one oftentimes in an informal setting; in other words, the parties are engaging in "cheap talk" (Goltsman 2009). The article defines mediation as "parties [communicating] with a neutral third party who makes a non-binding recommendation" (Goltsman 2009). In essence this is the core principle of mediation: mediation incorporates the negotiating process, the difference being that the negotiation is facilitated by a trained mediator who then makes a recommendation for a settlement: "The neutral third party has no authority to impose a settlement, and merely suggests an agreement that must be mutually acceptable" (Goltsman 2009).

The Goltsman article also examines the conditions under which mediation is most successful when applied to practical examples. The study demonstrated that "there is a benefit in mediation over unmediated negotiation if and only if the degree of conflict between the parties is high" (Goltsman 2009). In other words, if the level of vitriol and animosity between the two conflicting parties is higher, then mediation has more practical benefit: "These findings resonate with well-documented stylized facts in the empirical literature on negotiation, that show that parties are less likely to reach an agreement without a mediator when the intensity of the conflict is high than when it is low" (Goltsman 2009).

Mediation, in particular, has the following benefits, according to Radford (2001):

Confidentiality: Unlike public court hearings, what takes place during mediation is confidential. Only the conflicting parties in the dispute and the mediator are privy to the events and information revealed in the negotiations. In addition, the legal system cannot compel mediators to testify about what was said during a mediation, and mediators responsibly uphold the practice of keeping mediation information secret (Radford 2001).

Influence: Unlike the court system, or arbitration, mediation gives the parties more control over the settlement of the negotiations. In the legal system, the judge determines the final outcome and makes a ruling one way or another. In mediation, however, the parties must agree on a solution that is recommended by the mediator (Radford 2001).

Compliance: Since a mediation agreement is negotiated by parties and agreed upon, the parties usually comply with the mediation agreement and make the payment that is owed. In other words, the parties do not have to incur an additional expense by going through the court system to enforce the award. In any event, the mediation agreement is enforceable in court, but the mutuality of the mediation process usually means that the parties willingly accept performing the terms of the agreement (Radford 2001).

Cost: Mediation costs much less than litigation. Even though mediators charge fees, the mediation

process is significantly shorter from start to finish than the litigation process. Court cases can take many months or even years to settle, but mediation can take only a few hours. As a result, parties to the mediation save significant court costs, attorney fees, time, resources, and more, which is a massive overall cost savings (Radford 2001).

Amicability: The premise of mediation is that parties work together, facilitated by a mediator, to reach an agreeable solution. This means that the parties are willing to work together and craft a solution that benefits both sides. Litigation is notoriously hostile, but mediation allows the parties to preserve the relationship and negotiate with the other side in good faith (Radford 2001).

According to Radford, a possible disadvantage of mediation includes:

Power Imbalances: "In an ADR proceeding, particularly mediation, the parties retain a great deal of control over the procedure and outcome of the case…a disadvantage of the parties retaining control is the potential for a more powerful party to overpower a weaker party" (Radford 2001).

Arbitration.

Arbitration is a form of alternative dispute resolution, where conflicting parties settle their disputes outside of the court system (O'Sullivan 2003). A panel of arbitrators, an arbitral tribunal, or a single arbitrator drive the process and decides an outcome in favor of one of the parties, called an arbitration award. The arbitration award is legally binding on the parties and enforceable in court (O'Sullivan 2003). In an article, Soderstrum discusses the benefits and drawbacks of arbitration. While the article discusses the features of arbitration in relation to litigation, the analysis applies to mediation as well. According to the article, arbitration has the following benefits:

Speed: Arbitration disputes resolve more quickly than lawsuits. Arbitrations can take place in just a few months (under 60 days), whereas litigation generally takes between 9 and 12 months to conclude (Soderstrum 2005).

Specialization: Unlike a court trial (litigation), where the judge might not have specialized knowledge of the kind of case being brought, arbitrations usually have an arbitration panel that features specialized professionals familiar with the subject of the arbitration. This helps facilitate the process, especially in complex cases (Soderstrum 2005).

Privacy: Mediation and arbitration both provide a degree of privacy to the parties, unlike litigation. In both arbitration and mediation, the results of the dispute itself, the terms of any award, and the negotiations between the parties during the process are confidential. This differs from litigation, which can often be highly publicized, written about in newspapers, and so on (Soderstrum 2005).

According to the Soderstrum article, arbitration has the following drawbacks:

Lack of Appeal: Arbitration cannot be appealed. Arbitration decisions that are rendered are final, as this is a prerequisite to agreeing to go through the arbitration process. This means that even if the arbitrator reaches an erroneous decision, the loser of the case cannot appeal to the next level. In rare situations involving fraud, corruption, or illegal means, which is very difficult to prove, a party to arbitration can petition a court to review the decision (Soderstrum 2005).

Lack of Discovery: The court system (litigation) forces parties to reveal as much information within the bounds of confidentiality as possible, which results in the more effective trial of cases. Attorneys obtain this kind of knowledge through subpoenas (court orders), depositions, and witnesses. In arbitration, however, the parties cannot be completely certain that all of the information necessary to the resolution of the case is being presented in the facts (Soderstrum 2005).

Frequency and Accessibility: There is a lower barrier to filing for arbitration than there is to file for litigation. In other words, it is easier for a victim to initiate the complaint process in arbitration than in litigation. This increases the frequency of arbitration and decreases the frequency of litigation. (Soderstrum 2005).

Litigation

Litigation, or a lawsuit, is an adversarial process between conflicting parties through the court system. In litigation, a plaintiff (in this case the victim of workplace bullying) brings a civil action in a court of law, claiming that he or she has incurred a loss because of the defendant's (in this case the employer or workplace bully) actions. The court hears evidence from both sides in the dispute and renders a judgment for or against the plaintiff, which could result in monetary awards or an injunction compelling the defendant to do something (i.e., stop the bullying, transfer the victim, etc.).

Litigation has various disadvantages, such as the disadvantages set forth by Arthur Cox in a panel discussion:

Duration: According to top Dublin law firm Arthur Cox, "The length of time from the date of issue of proceedings to trial varies depending on factors such as the urgency of the case and the extent of pre-trial steps required, for example, discovery. In a typical case, one might expect a trial date to be assigned within 12—18 months of admission to the Commercial List" (Arthur Cox 2019). This means that claimants hoping to bring a case in Irish court generally have to wait an exceptionally long period of time to have their argument heard before the tribunal.

Privacy: According to Arthur Cox, "all commercial proceedings in Ireland are held in public" (Arthur Cox 2019). This means that victims of workplace bullying pursuing resolution through litigation have to expose their grievances to the public. While many of the documents in litigation are confidential only to the parties, many documents are available in online databases published by the government.

Mazirow, a practicing attorney and scholar, then summarized some of the additional disadvantages of litigation in an article. The disadvantages are as follows:

Cost: The legal fees associated with litigation are very high because of court fees, attorney fees billing at an hourly rate, travel costs, etc. (Mazirow 2008).

Time: Litigation takes an exceptionally long time to resolve. Court cases can many times take months or years to resolve based on the urgency of the case: "The time that it takes to get to trial, which while much better than the five years that it used to take, can still take substantial time."

Lack of Knowledge: The judge and/or jury in litigation might not be subject matter experts in the issue at hand (in this case workplace bullying): "The fact that neither the jury or the judge may not have any knowledge or experience with the subject matter of the dispute between the parties which results in the parties having to educate the judge as to the law and custom and practice.

Appeals: The lack of finality in judgments rendered by the court since both parties have the right to appeal (Mazirow 2008).

According to Mazirow, there are some noteworthy advantages of litigation:

Existing Law: The judge merely applies a body of existing law in litigation: "There is a body of substantive law and procedure that exists which automatically controls the lawsuit, and the parties don't have to create the rules that will govern the lawsuit" (Mazirow 2008).

Neutrality: Litigation takes place in an official courthouse, which means that the setting is neutral for both parties. There is no territorial advantage for one party due to the physical location of the proceedings (Mazirow 2008).

Appeals: The right to appeal a judgment rendered in litigation can be seen as both a positive and negative. The right to appeal is positive in the sense that a litigant who is unhappy with the result of the case, or if an error was made, can then appeal the decision to the next level. The right to appeal is negative in the sense that the proceedings lack a sense of finality in that the other party might appeal the result (Mazirow 2008).

Chapter 4 - Research Methodology and Methods

Using the ONION analysis in application with this research project provides valuable insights into the research methodology and strategy.

Under the ONION analysis, research studies employ a positivist or interpretivist research approach with respect to the overall research philosophy. This research uses interpretivism because interpretivism focuses on social research that is more qualitative in nature, which relies on unstructured interviews, participants in a survey, and observation (Lin 2005). In other words, the core of interpretivism is interpreting qualitative data in relation to the research question, which is what has been done in this project (Lin 2005).

Then, in the ONION analysis, studies use deductive or inductive reasoning as a research approach, or a combination of both, in furtherance of the research question. The difference is that inductive reasoning goes from specific to general: inductive reasoning involves the transformation of specific observations into more generalized conclusions, and is not necessarily as accurate as deductive reasoning (Zalaghi 2015). On the other hand, deductive reasoning begins with general themes and principles, then translates those general themes and principles into more specified conclusions (Zalaghi 2015). In this research study, the main method is inductive reasoning because the individual experiences of the research participants and respondents are taken, gathered, analyzed, and used to form more general conclusions.

Regarding research strategies, the ONION analysis says that a study uses experiments, surveys, case studies, grounded theory, ethnography, or action research to support and collect results for the research question. Here, the primary method of data collection is by a survey questionnaire, although other forms are tangentially involved, such as grounded theories of economics, mediation, dispute resolution, etc.

Time horizon is an important element of a research project, and studies can choose between longitudinal studies or cross-sectional studies (At Work 2015). Both horizons rely on observation, but in a

longitudinal study, the researcher observes changes in the target population on a group and individual level across many different periods of time, which sometimes results in a sequence of events (At Work 2015). That is different from a cross-sectional study, which takes a snapshot and studies different population groups at one point in time. The time horizon utilized in this research study is cross-sectional, but has elements of longitudinal, because the snapshot of the respondents is taken in one moment but includes past experiences (At Work 2015).

Finally, the research study uses a data collection method under the ONION analysis, which includes interviews, questionnaires, observation, secondary data, and sampling. In this study, the most heavily utilized data collection method is a survey questionnaire. In addition, secondary data is also used to fill in the psychological background and outline important theories relevant to the research question.

4.1 Qualitative Research

Qualitative research principally relies on observational, non-numeric data (Berg 2012). As opposed to quantitative research, which is based on statistical explanation and prediction, qualitative research explores the deep reasons behind why something occurs. Particularly useful in social sciences and natural sciences, qualitative research excels at producing an insight into the human element. In addition, qualitative research aims at gaining an understanding of opinions, motivations, and reasons behind decisions and actions (Berg 2012). Researches use numerous techniques when conducting a qualitative-based study: techniques include individual interviews (with experts to acquire an in-depth insight), focus groups, surveys, and observations. Unlike quantitative research, which relies on large data sets to produce a more statistically significant and predictable sample size, qualitative research often employs a smaller sample size. In terms of analysis, the data is analyzed in themes by the descriptions and language of the respondents. In addition, the data is reported in the form of the respondent's language (Berg 2012).

4.2 Quantitative Research

In contrast, quantitative research focuses on solving a problem through "quantification"—in other words, using numerical data and statistics that can yield a conclusion or prediction (Corrine 2011). Strategically, quantitative researchers focus on collecting measurable data in order to comment on conclusions and discover research patterns. Unlike qualitative data, quantitative data is more structured in its data collection methods and analysis. Both qualitative and quantitative data emphasize the use of surveys in data collection, but quantitative data focuses heavily on the numeric, quantified aspect of this method: online polls, online surveys, and systematic observations (Corrine 2011).

4.3 Research Approach

While this research study incorporates elements of both qualitative and quantitative research, such as online surveys as a method of data collection, this project can best be described as a qualitative research study. The nature of this research project—whether mediation can solve workplace bullying—is inherently a personal question better analyzed through personal experiences and individual choice rather than by hard data. In other words, a qualitative approach provides a better route to reach the conclusions sought by this project, because the solution to workplace bullying disputes often rests on the willingness of the parties to negotiate together amicably. And, as the facts of each workplace bullying dispute are different, and therefore subject to different perceptions, the quantitative approach does not work as well.

4.4 Research Design

Therefore, the main method of data collection in this project is a survey questionnaire distributed to the Irish population at large. The survey aims to capture the willingness of the Irish population to engage in mediation with the employer in the event of workplace bullying.

<u>Survey Questionnaire</u>

Workplace bullying is a growing problem, especially in Ireland. Recently, Ireland was ranked number seven among European countries for most workplace bullying, with 6% of Irish workers claiming to have experienced workplace bullying. There are remedies, such as corporate anti-bullying policies and legal acts, that have addressed workplace bullying but have failed to provide an adequate solution and eliminate bullying from the workplace completely. And sometimes, the legal system fails victims of workplace bullying, as many victims of workplace bullying ultimately leave their job. Recently, mediation has been encouraged in the context of workplace disputes, as Irish workers can proceed through the Workplace Relations Commission to try and resolve a claim.

This project evaluates whether mediation, a form of alternative dispute resolution, can apply successfully to workplace bullying disputes and help combat the growing workplace bullying problem in Ireland, as there is a divide in thinking as to whether mediation can properly solve workplace bullying disputes. For purposes of this survey, it is important to have a foundational knowledge of what mediation entails as a form of alternative dispute resolution: Mediation, in contrast to arbitration, involves two conflicting parties who voluntarily agree to proceed through the mediation process to try and reach a resolution. The mediation process, conducted in the presence of a trained, expert mediator, often involves negotiations between the two parties until a solution can be reached. Whether or not mediation is successful depends on the starting positions of the parties, the willingness of the parties to negotiate together in good faith, and the open dialogue between the two parties during the process.

The goal of this survey is to gather experiences of workplace bullying in the Irish workforce, as well as to measure the Irish workforce's general willingness and thoughts regarding the mediation of workplace bullying claims. This survey uses the term "workplace bullying" in accordance with the Irish Health and Safety Authority's definition: repeated inappropriate behavior, direct or indirect, whether verbal,

physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. As this study is designed to capture and analyze *all* forms of workplace bullying, please feel free to use your own understanding and conception of what workforce bullying means.

(1) Have you ever experienced bullying in the workplace?

A: Yes
B. No

(2) Do you feel that your company actively *dis*courages workplace bullying?

A: Yes
B: No

(3) When you started your current job, did your company make you aware of a policy against workplace bullying (such as in training, videos, etc.)?

A: Yes
B: No

(4) Since you started your current job, has your company discouraged workplace bullying in any way?

A: Yes
B: No

(5) Imagine that you are currently being bullied in your workplace (or use a previous experience). Do you feel like you could easily resolve the problem? Why or why not?

A: Yes
B: No
Explanation_____

(6) If you were (or are) being bullied in the workplace, how would you describe your willingness to bring a *personal civil* lawsuit against the *employee*?

A: Not willing
B: Willing but hesitant/uncertain
C: Somewhat willing
D: Willing
E: Very willing

(7) If you were (or are) being bullied in the workplace, how would you describe your willingness to bring a *personal civil* lawsuit against your *employer*?

A: Not willing
B: Willing but hesitant/uncertain,
C: Somewhat willing,
D: Willing
E: Very willing

(8) If you answered "no" to question 6 or 7, please explain your answer.

A: Explanation_____

(9) Would you prefer litigation (i.e. a private lawsuit) or mediation to resolve a workplace bullying dispute?

A: Litigation (lawsuit)
B: Mediation
C: Neither

(10) How do you think workplace bullying can be reduced?

A: Stricter company policies
B: Litigation,
C: Mediation
D: Other
E: I don't know

Chapter 5 - Presentation of the Data

This chapter includes the results of the data collection. The data is presented along with explanations of linkages between the data points, as well as interesting data points, which are elaborated upon.

In this study, the survey presented in Chapter 4 (part a) was distributed to 55 participants. The participants were spread geographically across Ireland, and the survey distribution was intended to capture a broad range of diverse perspectives. The survey was distributed to members of the working population (because only people who have worked can meaningfully answer questions about workplace bullying). The data results were as follows:

(1) Have you ever experienced bullying in the workplace?

A: Yes (31)

B. No (24)

RESULTS: Interestingly, 31 respondents of the 55 surveyed indicated that they had experienced bullying in the workplace before. This data relates to the informational background of workplace bullying and demonstrates that the rate of workplace bullying in Ireland is in line with previously recorded amounts. This means that well over half, or 56% of respondents, felt like they have been a victim of workplace bullying in the past. This question was designed specifically to ask respondents about workplace bullying in the broad, conceptual sense, not under the precise definition. The point was to capture all instances of workplace bullying. Considering the results of this question, this statistic reinforces the severity of the workplace bullying problem in Ireland. This statistic is interesting and surprising because the rate of workplace bullying measured is higher than expected.

(2) Do you feel that your company actively *dis*courages workplace bullying?

A: Yes (22)

B: No (33)

RESULTS: This question relates to the measures undertaken by companies to prevent workplace bullying, as well as gathering important information on the feelings of employees toward their employers' efforts to reduce workplace bullying. 60 percent of respondents, or 33 people of the 55 surveyed, answered that they felt their employers do *not* discourage workplace bullying. Alternatively, 40 percent, or 22 of 55 respondents, felt that their employers discourage bullying in the workplace. In conclusion, the results of this question demonstrate that while some employers take enough steps to give the impression that workplace bullying is encouraged, more than half of the employers surveyed do not make it clear to the employees that workplace bullying is discouraged.

(3) When you started your current job, did your company make you aware of a policy against workplace bullying (such as in training, videos, etc.)?

A: Yes (19)

B: No (36)

RESULTS: Like question three, this question attempts to measure the amount of activity that employers/companies undertake to discourage workplace bullying. This question was asked because someone's first exposure to the job makes a lasting impression moving forward, and the result contributes to the data regarding employer proactivity toward preventing workplace bullying. The results were that 65 percent, or 36 of 55 respondents, answered that their current company did *not* make them aware of an anti-workplace bullying policy when they started the job. This is particularly telling because it adds data to the overall measurement of the mechanisms that companies are using to discourage workplace bullying. The statistic also demonstrates the level of importance to companies of discouraging workplace bullying on a conceptual, or policy, level. So, while companies are required by law to have an anti-bullying policy, it is clear that the company does not necessarily promote that policy to its employees.

(4) Imagine that you are currently being bullied in your workplace (or use a previous experience). Do you feel like you could easily resolve the problem? Why or why not?

A: Yes (16)

B: No (27)

Explanation_____

RESULTS: This question begins to measures the victims' feelings regarding their ability to resolve workplace bullying disputes, whether by themselves or through a different channel. The question captures the respondents' feelings toward their ability to resolve workplace bullying disputes using any means. The data gathered by this question is important because it speaks to the mental state of the victims and how they view their chances of resolving workplace bullying disputes, which directly relates to the potential effectiveness of mediation in these situations. Of the 55 respondents who were surveyed, 16 people representing 29 percent, answered that they felt like they could easily resolve a workplace bullying dispute. In addition, 27 of 55 people representing 49 percent of respondents, answered that they felt like their workplace bullying dispute could not be resolved easily. The remaining respondents gave a more vague answer along with an explanation that could not be counted in the "yes" or "no" column. The explanations are important because it gives an insight into the mindset of people experiencing workplace bullying in the context of how they view their ability to resolve the bullying, given the tools available to them. Some of the more relevant explanations are listed below:

Respondent A: "Absolutely not. Even though our company has policies against bullying in the workplace, our managers and team leads don't seem to be trained to recognize this issue, making it very difficult to seek help."

Respondent B: "I would leave the job because it would be the best way to get rid of it."

Respondent C: "No, because the manager needs to hear both sides and, normally, the bullyer is

manipulative always denying the behavior, what turns hard to prove it."

Respondent D: "For sure you feeling that is not easy to resolve because in general, the person being bullied is vulnerable, being part of minority groups in general, religious, racial or ethnic minorities for example."

Respondent E: "No. Because of the lack of company policy. Also, no communication, not empathy for the person being bullied or even blame the own person in matter."

Respondent F: "No, its really hard overcome It, i Just thought about leave the job."

Respondent G: "I feel like the problem could be solved if management showed employees that this behavior is not tolerated, but instead, they try to keep under cover."

Respondent H: "No. The manager does bulling with the sub-manager, who do bulling with the pizzaiolo, and kitchen porter. My story stop when the bullying became aggression and I called the garda."

Respondent I: "No, I would feel extremely intimidated, and that would definitely affect my work."

Respondent J: "No, because the guy who does it has over 15 years on the company, don't think anything would happen to him cause they need him too much."

There are some interesting patterns that emerge from these responses that link to the effectiveness of mediation in resolving workplace bullying disputes. The first is that many respondents noted that the behavior of the bully itself makes it difficult to resolve the problem with the employer. Some respondents pointed to the vulnerability of the victim and the aggression/manipulative behavior of the bully while citing an inability to resolve the workplace bullying.

Second, it seems that many respondents felt like simply leaving the job was a better alternative to prevent the bullying rather than resolving the dispute with the employer. Overall, this suggests that the respondents do not have the confidence to resolve the workplace bullying disputes due to being in a vulnerable position, especially when the bully is a "powerful" person in the company.

(5) In your experience, do employers have a separate and distinct policy on workplace bullying prevention/dignity in the workplace?

A: Yes (19)

B: No (36)

RESULTS: Again, this question gauges the level of proactivity of employers toward preventing and reducing workplace bullying. A strong majority of respondents answered that they were not aware of any separate or distinct company policy on bullying prevention in the workplace. This links to the other data points from this survey that demonstrate a weak level of workplace bullying prevention/dignity among employers.

(6) If you were (or are) being bullied in the workplace, how would you describe your willingness to bring a _personal civil_ lawsuit against the _employer_?

A: Not willing (8)

B: Willing but hesitant/uncertain (22)

C: Somewhat willing (12)

D: Willing (9)

E: Very willing (4)

RESULTS: This question explores the willingness of victims of workplace bullying to resolve their complaints through the legal process, which is filing a personal civil lawsuit against their employer. This data is important because it speaks to the willingness of victims to use an available resolution channel (an alternative to mediation) to solve the dispute. Overall, the respondents indicated that they were willing, with limitations, to bring suits against the employer for workplace bullying. Only 8 of 55 respondents, representing 15 percent, said that they would not be willing to bring a lawsuit. The majority of respondents, or 22 of the 55 respondents representing 40 percent, indicated that they would be willing

to bring a lawsuit against the employer but had certain hesitations or uncertainties about the possibility of bringing a lawsuit. The figures for the remaining responses are listed above: 12 said that they were somewhat willing, 9 said that they were willing, and 4 said that they were very willing. The best way to characterize these results is that there is not a particularly strong inclination to bring lawsuits, but that the respondents are, in general, at least open to the idea of personal civil lawsuits.

(7) If you answered "no" to question 6 or 7, please explain your answer.

Explanation_____

RESULTS: This question gathers the personal perspective of respondents for why they would not be willing to bring a personal lawsuit to resolve a workplace bullying claim.

Respondent A: "To much work- I rather change the job."

Respondent B: "Sometimes, you don't want to lose your job."

Respondent C: "The problem is the bully. A lawsuit against the employer would only be applicable if the company didn't do anything."

Respondent D: "Because how do we prove it? Also you very likely to lose your job."

Respondent E: "In my opinion, bullying is a new issue in the workplace, society has extremely rapid behavioral changes and probably what is bullying now maybe is not considered in the past, and the companies are unprepared and attentive to meet demand and they involved in your business what for improve some questions they need a professional help make slower the process. The second point is an increase in the individual requires a quality work environment of life; people need a more comfortable workplace; they look for better condition relation over the workplace."

The interesting point is that some respondents felt like trying to resolve workplace bullying through a lawsuit would only risk losing their job. In other cases, respondents felt like bringing a lawsuit is simply too much work. Overall, with the combination of the risk of losing the job, as well as the general hassle

of bringing a lawsuit, litigation is an undesirable resolution mechanism for many respondents. This links to question 9, which directly compares respondents' preferences between mediation and litigation.

(8) Assume that someone is bullying you. Would you be willing to negotiate a resolution with this person face to face?

A: Yes (40)

B: No (15)

RESULTS: This question links directly to the effectiveness of mediation in resolving workplace bullying disputes. The foundation of mediation is the willingness of the parties to work together amicably to reach a solution. Therefore, if the victim of workplace bullying is not willing to meet with the offender, then mediation cannot be an effective solution. In this question, 40 respondents representing 73% of the answers, said that they would be willing to negotiate in person with a bully, face to face. The remaining 15 respondents answered that they would not be willing to negotiate face to face with a bully. These results link to the questions on mediation and can be taken together to evaluate mediation's effectiveness in resolving disputes.

(9) Would you prefer litigation (i.e., a private lawsuit) or mediation to resolve a workplace bullying dispute?

A: Litigation (12)

B: Mediation (44)

C: Neither

RESULTS: This question is likely the most important question in this research project. This question directly measures the preferences of the Irish workforce regarding how they would prefer to resolve workplace bullying disputes. The question collects data on whether a workplace bullying victim would rather solve the dispute through litigation or mediation, which is essentially the central question in this

project. The question is also two-dimensional because it captures the mental state of the respondents and how they feel about mediation. From the literature, the success of mediation, in many instances comes down to the willingness of the parties to work together. If the workplace bullying victim is open to mediation in the first place, then that means that mediation has a greater likelihood of success. Here, a strong majority of respondents answered that they would prefer mediation to litigation: 44 respondents, representing 80 percent of respondents, said that they would prefer mediation. The remaining 11 respondents, representing 20 percent, said that they would prefer litigation.

(10) How do you think workplace bullying can be reduced?

A: Stricter company policies (28)

B: Litigation (6)

C: Mediation (11)

D: Other (2)

E: I don't know (8)

RESULTS: This question was intended as a general poll to understand how the broader workforce feels that workplace bullying can best be reduced. Interestingly, the vast majority of respondents said that stricter company policies would reduce workplace bullying. 28 of the 55 respondents answered that they believed workplace bullying could be reduced through stricter company policies, while 6 answered in favor of litigation, 11 answered in favor of mediation, 2 suggested other solutions, and 8 did not know. This result is particularly interesting because it links with the rest of the data collected in this survey that seems to suggest that most employees feel like the company/employer is not proactive enough about preventing workplace bullying.

Chapter 6 - Data Analysis and Findings

This section presents and illustrates this research project finding in more specific terms. This section interweaves literature from the literature review and connects them to the data through discourse. Ultimately, there were four critical themes from the data that emerged, that are relevant and connected to the literature on workplace bullying and mediation. First, the data revealed the rate of workplace bullying in Ireland. Second, the data revealed the level in which employers are taking measures to prevent workplace bullying. Third, the data measured the respondents' willingness to resolve workplace bullying claims from a psychological level. Finally, the data directly measured the respondents' willingness and preferences to resolve workplace bullying through mediation.

6.1 Rate of Workplace Bullying in Ireland

Workplace bullying in Ireland persists at an alarmingly high rate. A *Journal.ie* article published in 2014 cited a study conducted by the European Foundation for the Improvement of Living and Working Conditions, which stated that 6% of Irish workers had experienced bullying in the workplace before (Hennessy, 2014). In this project, 56% of the respondents answered that they had experienced bullying in the workplace before, which is significantly higher than the rate measured in 2014. This is a serious issue when considered in the context of the workplace: over half of the workers in any given office feel that they have experienced workplace bullying.

The high rate of workplace bullying means that the economic costs explained in chapter 2 might even be higher than recorded. For example, one study conducted in 2018 found that the damage to the U.K. economy from workplace bullying costs on an annual basis was 2.96 billion pounds. Another study, conducted by Giga, Hoel and Lewis found that 33.5 million days of productivity were lost because of workplace bullying (Giga, Hoel and Lewis 2008). Other studies stressed the damage caused by workplace bullying in the form of replacement costs (i.e., when employees leave the job because of the

bullying), litigation costs (i.e. when the employer has to spend money in court fighting a workplace bullying claim), suicide, and sickness (*See, e.g.* Hoel, Sparks & Cooper 2009).

Clearly, workplace bullying causes significant economic and financial harm to companies, and given the data collected by this study, the economic damage of workplace bullying might be *underestimated* by previous sources.

The reason that the rate of workplace bullying respondents is so high in the results of this project compared to previously recorded statistics is likely because of the definitional challenges of workplace bullying. This connects to the various definitions of workplace bullying provided in the project. For example, according to the NCBI, "workplace bullying is defined as the repetitive and systematic engagement of interpersonally abusive behaviors that negatively affect both the targeted individual and the work organization."(Sansone and Sansone 2015). But to another source, bullying in the workplace is "a persistent pattern of mistreatment from others in the workplace that causes either physical or emotional harm" (Rayner 2005). Here it is apparent why the rate of workplace bullying is so high in the survey results: the legal definition of workplace bullying, which focuses on a persistent pattern, excludes important cases of bullying. To the respondents, one-off instances can count as workplace bullying and have the same negative psychological and economic effects as a pattern of bullying.

Therefore, under a broader definition of workplace bullying that includes one-off instances and maybe more subtle forms of bullying, the psychological and economic toll is even greater.

6.2 Employer Prevention of Workplace Bullying

The data also demonstrated the level of which employers (companies) attempt to prevent workplace bullying. Overall, gathering from multiple questions and responses, companies generally do not proactively prevent workplace bullying at a high enough level.

For example, the data indicated that 65 percent of workers had not been made aware of a company policy

against workplace bullying when they started their current job. This means that the company did not take preventative measures employees to reduce workplace bullying in their place of employment by establishing a culture of anti-workplace bullying upon hiring and initiating a new employee. According to these respondents, the company did not show them training videos discouraging workplace bullying, highlight a corporate policy against bullying, or in any way indicate that workplace bullying was not tolerated.

The fact that employers do not actively engage in discouraging workplace bullying strongly enough was corroborated by other questions answered in the survey by the respondents. The survey directly asked the respondents whether they felt that their employers actively discourage workplace bullying. The majority of respondents answered that they did *not* feel like their employer discourages workplace bullying, as 65 percent of respondents answered negatively.

While employers do not discourage workplace bullying strongly enough, there are some measures they take to at least address workplace bullying in their company. Some of these measures were explained in chapter 2 (*See, e.g.* Health and Safety Authority 2019). Under the 2005 Act, which was promulgated by the Health and Safety Authority in Ireland, employers are responsible for ensuring the safety and health of employees in the workplace. This means that reasonable steps must be taken by the employer to prevent workplace bullying (Health and Safety Authority 2019). Most commonly, companies simply have an anti-bullying policy on the books, crafted in clear language that discourages workplace bullying. Companies use the guidance provided by the Workplace Relations Commission to create the company policy. In addition, companies generally have HR departments that handle complaints of workplace bullying. Victims of workplace bullying can report the problem to the HR department, which should be trained to manage and resolve the problem. Finally, there are many programs available for employers to participate in that help companies to prevent bullying in the workplace. For example, the National Anti

Bullying Research and Resource Center has a program that helps employers in "identifying bullying, conflict awareness, responding to a bullying complaint, separating bullying from assertive management, dealing with workplace bullying through effective leadership, facilitating mediation, drawing up effective anti-bullying policy, and creating a bully free work environment" (National Anti Bullying Research and Resource Center (2019).

However, just because a company has an anti-bullying policy on the books does not mean that the policy is effective. As seen from the data collected here, the majority of employers do not promote the policy to the employees. The results in this study indicated that a majority of respondents were not made aware of a company policy against workplace bullying. The takeaway here is that while companies might comply with the law and maintain a formal anti-bullying policy, the companies in Ireland, in general, are not vigorously trying to foster a culture of anti-bullying in the workplace.

6.3 Respondents' Willingness to Resolve Workplace Bullying

The data collected measured the respondents' willingness to resolve workplace bullying disputes as well as their corresponding preferences for the manner of resolution. The data that was collected suggests that victims of workplace bullying are willing to proactively resolve workplace bullying through various channels such as litigation and face to face negotiations but that they are not hopeful about the chances of positively resolving the dispute.

Many sources included in the chapter 2 review argued that mediation is not proper to resolve workplace bullying disputes because the victim is put at a disadvantage in the negotiations (*See, e.g.,* Walker 2013). In other words, a victim cannot effectively negotiate with the person doing the bullying because the situation is inherently abusive (Walker 2013). For example, Walker, who is an expert mediator, argued that "mediation is an inappropriate alternative in cases involving any type of abuse or violence such as domestic violence, child abuse, sexual assault, school or workplace bullying. The reasoning behind this

is that individuals who are experiencing abuse or bullying are disempowered to effectively deal with the bully" (Walker 2013).

In addition, the NCBI studied the terrible psychological consequences of workplace bullying on the victims, which is ultimately the foundational reason why many experts believe that mediation is not effective in resolving workplace bullying disputes. The NCBI demonstrated that workplace bullying creates "increased stress and mental distress", as well as depression, fatigue, lack of vigor, severe depression, mood disorders, anxiety disorders, and increased use of drugs. Workplace bullying also increases the number of suicides among victims (Sansone and Sansone 2015). Overall, workplace bullying takes a significant mental, emotional, and psychological toll on the victim, which brings into question the ability of mediation to resolve workplace bullying disputes, as mediation is a collaborative process where the parties should be on equal footing.

Overall, respondents in this study did *not* feel like they could resolve workplace bullying disputes easily in their workplace, despite a willingness to file claims in court and negotiate with the bully/employer face to face. Question 4 from the survey directly asked respondents whether they felt they could easily resolve a workplace bullying dispute, and a majority (27 of 55 respondents) answered that they did *not* feel they could easily resolve a case of workplace bullying. Interestingly, the explanations provided by many of the respondents match the reasoning provided by the mediator above, who argued that mediation is not appropriate for resolving workplace bullying. Respondents cited the fact that their managers are unable and/or unwilling to recognize workplace bullying, and, critically, that the case would likely be unresolved because the bully is oftentimes in a position of power while the victim is in a weaker position. The qualitative data collected in this study provides a powerful insight into the minds of workplace bullying victims—they recognize the psychological damage caused by workplace bullying and the inability to effectively negotiate with the employer/bully in many cases.

In addition, the respondents, overall, indicated that they were willing to bring claims in litigation for workplace bullying against the employer. Most respondents were at least willing but hesitant to bring a workplace bullying claim as a civil lawsuit. At the same time, there was a strong degree of hesitation in bringing a lawsuit, as many respondents provided an explanation that they would rather just leave their job to save the time and hassle of a lawsuit. This result makes sense because litigation does not solve the immediate problem caused by workplace bullying. Workplace bullying is happening *now*, and a long, drawn-out, costly court battle with the employer does nothing to solve the immediate problem. This seems to suggest that litigation, alone, should not be relied upon as a legal mechanism to help resolve and prevent workplace bullying. In other words, simply creating a legal claim in which a workplace bullying victim can bring against the employer does not have the deterrent effect necessary to prevent workplace bullying because many victims would hesitate to bring a claim because (1) changing jobs is easier or (2) they fear to lose their job.

Chapter 7 - Discussion

This section ties the ideas from the preceding chapters together and ultimately evaluates mediation's overall effectiveness in resolving workplace bullying disputes. This discussion is structured to comment on the relevant pieces involved in mediation's effectiveness in workplace bullying, designed to correspond with the literature review, such as cost, health, applicability, corporate policy, and workplace bullying prevention alternatives.

In addition, this section begins to make conclusions and formulates recommendations for societal implementation. In summary, mediation is an effective tool to use, in combination with legal mechanisms and corporate policies, to resolve workplace bullying, but it is not without its drawbacks. While mediation should be used to resolve workplace bullying disputes, its usage should be more nuanced and barred in certain circumstances, and corporate policy of discouraging workplace bullying should be used first and foremost. This argument will be clarified, explained, and supported in the following discussion.

7.1 Mediation Compared to Other Resolution Tools

Mediation is preferable to litigation as a dispute resolution mechanism in workplace bullying cases. Victims cannot rely on the legal system to resolve their claims, which increases the role and importance of mediation in solving these disputes. The data reflect this preference, as a majority of respondents would rather resolve a workplace bullying claim in mediation rather than through litigation.

Mediation is one of the many tools available to workplace bullying victims. Workplace bullying victims can try to resolve their dispute through the company's HR department, through face-to-face confrontation (unmediated negotiation), through litigation, or in mediation. Mediation is the most effective tactic to quickly resolve and settle *existing* workplace bullying disputes. For example, if employee A, a victim of workplace bullying, wants to stop the bullying he or she is currently

experiencing while staying employed, mediation is the best solution.

Mediation is preferable to litigation because of the time, expense, and unclear legal standards involved in litigating a workplace bullying claim against an employer. Someone experiencing workplace bullying needs resolution *now*, not a year from now. Litigation should be an option so that victims of workplace bullying are compensated for psychological and economic damages, but litigation does very little to solve workplace bullying or prevent workplace bullying in the future. While, in theory, the threat of litigation should deter workplace bullying by creating the possibility of financial loss for the bully and for the company, the threat of litigation apparently does not reduce or prevent workplace bullying. The results in this survey demonstrated that workplace bullying persists in Ireland at an even higher level than has been previously recorded.

While it is unclear how mediation works as a deterrent or could prevent future workplace bullying, mediation is preferable to litigation because at least mediation has the potential of solving the dispute *now*. Since mediation can result in conflict resolution within a few hours, the workplace bullying issue can be solved very quickly and effectively. This is one of the core benefits of meditation that has become apparent throughout this study: victims of workplace bullying desire a *quick* resolution more than anything else. Many of the respondents in the survey discussed how litigation takes too much time and is too much of a hassle or how they would simply leave their job to prevent bullying. These responses indicate an overall preference for quick resolution of workplace bullying, and mediation can directly provide this benefit.

Litigation is another way that victims of workplace bullying can, in theory, pursue a resolution. Litigation is the worst option for victims of workplace bullying because of the time and personal expense associated with litigation, as well as the low chances of winning a workplace bullying claim in court. In addition, litigation does not solve the immediate bullying problem taking place in the workplace. At

best, litigation can be seen as a deterrent that aims to prevent future workplace bullying. Since the threat of litigation exists, workplace bullying should, in theory, be reduced, especially considering the highly public nature of litigation. The expectation would be that companies would work hard to prevent workplace bullying because of potential litigation costs. However, litigation is clearly ineffective at preventing future workplace bullying from occurring: this study demonstrated that the rate of workplace bullying in Ireland remains extremely high. Therefore, mediation should supplement litigation.

Litigation is ultimately a poor mechanism to resolve and reduce workplace bullying because of the legal standards that have been created by the Irish Supreme Court. It is incredibly difficult for a victim of workplace bullying to successfully win a claim in court, as the Supreme Court has seemingly sided with protecting employers rather than making it easier for victims to win workplace bullying claims. The legal standard set forth in *Una Ruffley v. Board of Management of St. Anne's School* demonstrates the difficult task of winning a workplace bullying claim in court. According to the Court in this case:

"*Workplace Bullying is repeated inappropriate behavior, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behavior described in this definition may be an affront to dignity at work but, as a once off incident, is not considered to be bullying*" (Una Ruffley v. Board of Management 2009).

The court then clarified that a victim in a workplace bullying claim must prove that the conduct was (1) repeated; (2) inappropriate; and (3) undermines the dignity of the employee at work. In addition, the court held that these elements must be satisfied in *each* instance of bullying included in the pattern of bullying included in the complaint. Policy-wise, the court ruled in this direction because of the view that employers need a certain level of discretion and freedom to make proper business decisions (*Una Ruffley*

v. Board of Management 2009). While this policy justification is subject to debate and might be reasonable according to a certain viewpoint, the practical impact is that workplace bullying victims cannot rely on the legal system and litigation to resolve their conflict. This means that mediation's role has an increased level of importance if the victims cannot successfully rely upon legal mechanisms.

According to the results in this project, there is a strong preference for mediation as a resolution for workplace bullying disputes anyway. When surveyed, a vast majority of respondents answered that they would rather utilize mediation to solve a workplace bullying dispute rather than litigation. This preference reflects the inherent benefits of mediation as opposed to litigation.

7.2 Mediation's Effectiveness in Resolving Workplace Bullying Disputes

Mediation can be applied successfully to workplace bullying disputes, but not all forms of disputes. The broad definition of workplace bullying captures severe, minor, and unintentional forms of bullying. In severe cases of bullying, the victim is in too vulnerable a position for mediation to be appropriate. However, mediation can successfully, quickly, and cheaply resolve forms of bullying that do not involve serious abuse.

Mediation can be an effective tool when applied to workplace bullying disputes. In other words, using mediation to resolve a workplace bullying dispute can successfully result in dispute resolution. However, this is not universal. There are certain circumstances where workplace bullying should not be resolved with mediation, and some other form of prevention or resolution should be used by the victim and employer.

As previously explained, there are differing views regarding the appropriateness of mediation to solve workplace bullying disputes (*see, e.g.,* Walker 2013). The central contention made by those who oppose mediation in workplace bullying disputes is that the victim is at an inherently disadvantageous, vulnerable position in the negotiations (Walker 2013). Since the bully, the argument goes, often

manipulates, distorts, and abuses the victim, the victim cannot possibly negotiate for him or herself face-to-face with the bully for a successful resolution. This argument is hard to refute, especially considering the results of the survey. Many respondents gave answers that seemingly corroborate the school of thought where vulnerable victims cannot successfully mediate with the employer. For example, one respondent stated that the bully is often a powerful person in the company who manipulates, denies, distorts, or further abuses the victim when confronted with the bullying behavior.

However, this does not necessarily mean that workplace bullying should never be resolved using mediation. Mediation has too many practical benefits, and too much potential for quick resolution, to discard its use completely. While all forms of bullying should be discouraged, the practical reality is that the scale and level of bullying depend on individual circumstances. This is apparent in the many definitions of workplace bullying that narrowly or broadly define the concept. For some, workplace bullying comes in the form of aggressive shouting or even physical abuse (such as sexual harassment), or intimidating threats. For others, workplace bullying could come in the simple form of being purposefully excluded from emails. And for others, workplace bullying could be the result of a bully who is entirely unaware that his or her actions constitute bullying. Therefore, given the broad definition of workplace bullying that encompasses many different kinds of behavior, not *every* instance of workplace bullying involves the kind of manipulation, denial, and aggression that would put the victim in a vulnerable position.

This is corroborated by the fact that the vast majority of respondents when asked about the theoretical principle of whether they would negotiate with a bully face-to-face, answered that they would. The benefit here is that utilizing mediation as a tool to solve workplace bullying disputes can be a collaborative process to prevent abuse in the negotiations. Companies should work toward having HR departments that are trained to recognize when a workplace bullying complaint can or should go to

mediation. In cases where the HR representative or trained professional deems that there is a potential for further abuse, then mediation should not be used. But in cases where the HR representative or trained professional thinks that the facts are more simple, mediation should be used because of its potential for quick resolution and many benefits.

7.3 Recommendations

Given the benefits of mediation previously explained, as well as mediation's applicability to many forms of workplace bullying disputes, companies should craft an anti-bullying policy that focuses on mediation. Ultimately, it is the responsibility of the company to foster an anti-bullying culture, which is the most effective way to prevent workplace bullying in the first place. The anti-bullying policy should utilize mediation for the appropriate cases where the victim is not in a particularly abusive situation.

In essence, mediation should be used as a more versatile, nuanced tool that targets specific kinds of workplace bullying disputes rather than being used in *any* situation. This happy medium capitalizes on the benefits of meditation while mitigating the drawbacks. The imperative ultimately resides with the corporation itself to more aggressively foster a culture where workplace bullying is prevented because mediation alone cannot always solve or even apply to certain disputes effectively. In other words, mediation should be a central part of a wider scheme of workplace bullying prevention that focuses first on corporate policy with mediation as a centerpiece and litigation as a last-resort.

Corporations are not doing enough to manage and prevent workplace bullying. The single most important takeaway from the results of this research study is that employers in Ireland do not work to create a culture that discourages workplace bullying. According to the results of the survey, more than half of the respondents in Irish workplaces were not made aware of a company policy that discourages workplace bullying when they started their current job. The company did not show them training videos discouraging workplace bullying or highlight any specific company policy that discourages workplace

bullying. This statistic pairs interestingly with the explanations provided in another question, which asked respondents whether they felt they could easily resolve workplace bullying disputes: one respondent, for example, answered *no*, citing the fact that company management often neglects issues of bullying in the workplace.

Corporations can easily create a company culture that discourages workplace bullying by making employees aware that workplace bullying is not tolerated, especially when a new employee begins working at the company. This is important because it establishes a tone for the new employee and signifies to the employee that this is a workplace where bullying is not tolerated. While it may be impossible to completely eradicate all forms of workplace bullying from a company, a simple measure like this can contribute to workplace bullying prevention in the first place.

Therefore, companies should create the following mechanism to manage workplace bullying disputes. The company should (a) create a culture that discourages workplace bullying by educating new employees, and the broader workforce, with training videos and/or anti-bullying materials on a weekly basis. At the very least, employees should be made aware of the official corporate policy against bullying. Then, (b) the corporation should use mediation as a mechanism to resolve workplace bullying complaints. In practice, when a victim makes a complaint, the complaint should proceed to human resources. HR should be professionally trained to decide whether the complaint should be resolved in mediation or whether some other form of resolution is appropriate. Cases involving abuse, or cases where a strong amount of viciousness is involved, should not be sent to mediation.

The scheme outlined above, if effective, would result in many benefits for the economy, corporations, and the personal well-being of workplace bullying victims.

Preventing workplace bullying in the first instance through stricter company policies and the creation of anti-bullying company culture would reduce rates of workplace bullying. This would have enormous

benefits on an economic scale as there would be less productivity loss, less sick days taken, and less overall replacement costs incurred by companies (Rayner and Keashley 2005). In addition, the prevention of workplace bullying in the first instance would be less victims of workplace bullying suffering from stress, depression, suicidal thoughts, and the physical symptoms that accompany those effects.

This study contributes valuable data to both schools of thought, which differ on whether mediation should be used in the context of workplace bullying disputes. Ultimately, as was explained in the literature review, the argument of those who disfavor mediation to resolve workplace bullying comes down to the fact that victims are often in a vulnerable position, and therefore cannot resolve the issue on equal footing. It is interesting and provides insights to link this argument with the fundamental principle of mediation as a concept. Fundamentally, meditation is about the two parties working amicably together to reach a solution that is in the best interests of everyone involved. Therefore, given the argument previously explained and the core concept of mediation, there are two possible barriers (although in theory there could be more) that could prevent a successful mediation in the context of workplace bullying: (1) Hostility between the parties; and (2) The vulnerable position of the victim.

The data uncovered in this project reveals that the hostility between the parties would not prevent the successful usage of mediation in workplace bullying disputes. This is because the vast majority of respondents indicated that they would be willing to negotiate with the bullying party face-to-face. This indication of a willingness to negotiate means that the core principle of mediation is being satisfied, which leads to greater chances of success. While there will inevitably be some hostility between bullies and their victims that would prevent successful resolution, the fact that the respondents surprisingly indicated a willingness to enter into resolution negotiation is telling.

In addition, the second barrier (vulnerability) can be removed by the mechanism recommended in this

dissertation. Some respondents in the survey answered that mediation would be pointless because of the abusive behavior of the bully: this is exactly the kind of case that should be resolved through other means, while the respondents who answered that they would be willing to negotiate should have their disputes resolved in mediation. Overall, the result of this data, in conjunction with the arguments against mediation and what makes mediation successful, suggests that mediation can be strategically used to resolve workplace bullying disputes effectively.

Chapter 8 - Conclusion

The central conclusion discovered in this research project is as follows: Mediation has an important, valuable role to play in the prevention and resolution of workplace bullying. However, the application of mediation to workplace bullying disputes should operate along a sliding scale; mediation should not be applied universally. Corporations should filter workplace bullying complaints by severity and mediate only those cases of moderate to minor severity, in order to protect vulnerable parties. Overall, corporations should first seek to create a culture that more strongly discourages workplace bullying, which will lower the amount of workplace bullying that needs resolution. Then, mediation, litigation, and other alternatives should be used as tools in the proper instances to resolve the conflicts when they occur.

Therefore, the overall result of this study is a recommendation made to corporations, crafted by the results in this study and the relevant information pertaining to workplace bullying. By following this recommendation, corporations can prevent the high economic and financial costs caused by workplace bullying and its subsequent litigation, and the psychological and emotional damages to individuals from workplace bullying can be mitigated. The recommendation is as follows:

Corporations should strive to create an anti-workplace bullying culture by training employees and discouraging workplace bullying when a new employee is hired. In addition, corporations should be more proactive about discouraging workplace bullying through materials distributed to the workforce at large. For example, at regular intervals (perhaps once per quarter or once per year), the company should reiterate the company's anti-bullying policy to employees via email or internal memorandum. In essence, the recommendation is that corporations undertake more serious efforts to build an anti-workplace bullying culture; by any means, they deem appropriate. It is simply not enough to have an anti-bullying policy recorded on the books—the policy must be aggressively promoted within the company to stifle

bullying.

Creating an anti-bullying culture does not mean that all bullying will or can be eradicated from the workplace. There will inevitably be some workplace bullying conflicts that need resolution. For these conflicts, mediation is adequately equipped to handle cases where there is not a high amount of abuse or aggression present. In other words, mediation is well-equipped and effective at resolving moderate and minor cases of workplace bullying, because the victim is not in a particularly vulnerable position and the bully's behavior does not threaten the chances of successful mediation as highly. Therefore, the recommendation is that companies invest more in their human resources departments to understand and characterize workplace bullying complaints as severe, moderate, or minor. For cases where the hr representative does not think the level of bullying would prevent successful mediation, then the corporation should pursue mediation as a dispute resolution tactic. However, in particularly severe or abusive cases, the corporation should pursue other alternatives, such as an internal investigation resulting in the firing of the bully, or the relocation of the victim to a preferable team.

This scheme places emphasis on corporations to prevent workplace bullying by taking more proactice steps regarding policy and a greater, more refined and nuanced emphasis on mediation. The legal system will always be available to workplace bullying victims, but victims cannot rely on the legal system to provide quick resolution or even resolution at all. Mediation, as a form of dispute resolution, must become the emphasis so that workplace bullying disputes can receive the care and quick resolution they deserve.

In addition to the main objectives, there were many subsidiary objectives in this research project. Here, the conclusion regarding each of these objectives will be presented in the order they appeared in chapter 2.

This project aims to provide differing opinions, conceptions, and definitions surrounding the concept of workplace bullying. This study explored the various conceptions and definitions of workplace bullying. There is a crucial difference between the *legal* definition of workplace bullying and how employees view workplace bullying in practice. Legally, workplace bullying is *repeated* conduct that undermines one's right to dignity in the workplace and requires an element of intent on behalf of the bully. Practically, workplace bullying can include one-off instances of more subtle bullying. The conclusion is that workplace bullying is more widespread and more problematic than previously anticipated.

This project aims to quantify the economic impact of workplace bullying. This study summarized the overall economic impact of workplace bullying on corporations and the cost to various economies around the world. The conclusion is that workplace bullying costs employers millions in lost resources, lost productivity, and turnover costs. This study concludes that the real economic cost of workplace bullying is even higher relative to Ireland, given the measured rate of workplace bullying in the survey.

This project aims to analyze the health impact of workplace bullying. This study provided a rundown of the major health impact on society and individuals caused by individuals. As the economic cost of workplace bullying, the conclusion is that the health costs relative to Ireland are even higher given the high rate of workplace bullying discovered in the survey results.

This project aims to contribute to the ongoing debate regarding the appropriateness of using mediation to solve workplace bullying disputes. This objective is closely related to the main objective, which evaluated mediation's overall effectiveness in the context of workplace bullying. This study ultimately concludes that workplace bullying can properly be resolved by mediation in some instances where there is not a strong possibility for further abuse. The existing literature suggested that the biggest drawback with mediation in the context of workplace bullying was the vulnerability of the victimized

party in the negotiations. Both sides in the debate on the appropriateness of mediation for workplace bullying can find common ground if the risks and exposure of the victim can be reduced.

This project aims to exhaustively map the existing scheme of legislation and case law related to workplace bullying in Ireland. This research study comprehensively covered the legal standards for workplace bullying claims in Ireland and concluded that the legal system, in general, does not strongly prevent, discourage, or resolve workplace bullying disputes. Workplace bullying victims cannot rely on litigation (i.e., the legal system) for justice or for the prevention of future workplace bullying because of the way the system operates and because of the high legal standard for winning a case. The legal system does not combat workplace bullying because it operates too slowly and is too expensive. Furthermore, courts in Ireland seemingly favor employer discretion over aggressively discouraging workplace bullying: the burden on the victim is extremely high, as he or she must demonstrate a repeated pattern of abuse, which is very hard to satisfy in court.

This project aims to measure the working population's willingness to solve workplace bullying disputes through mediation. This study concluded that the Irish population is very willing to solve workplace bullying disputes in mediation. This bodes well for mediation's effectiveness as a mechanism to resolve workplace bullying disputes. The success of mediation often depends on the starting point of the parties and the parties' willingness to work together for an amicable solution.

Finally, this project aims to link the objectives explained above together to formulate a conclusion regarding the role of mediation in resolving workplace bullying disputes. This conclusion has been stated multiple times throughout this project but bears repeating: mediation has an important role to play in resolving workplace bullying disputes but should not be used in every instance of workplace bullying, particularly the cases where there is potential for future abuse or where the party would be at a significant disadvantage.

The main conclusion in this research study is significant from a research context. The conclusion is significant because the sliding-scale model recommended using mediation in targeted cases of workplace bullying has not been proposed in previous literature. As a result of this conclusion, the research study achieved its main objective, which was to define mediation's role in the context of workplace bullying. Overall, the implementation of this model could result in a general decrease in workplace bullying rates in Ireland, which in turn provides many economic and individual benefits.

REFLECTION

My research project went well, but there were some significant challenges I encountered. The biggest problem encountered in my Dissertation project was collecting data from expert sources. I originally planned to interview a series of expert mediators, employers, and workplace bullying victims who could provide valuable insights into my research question. However, given the sensitive nature of the topic, many of the potential interviewees I contacted were not willing to answer detailed questions about their experiences with this subject. They seemed uncomfortable about the idea of going into detail regarding workplace bullying. I was ultimately able to get some valuable interviews with knowledgeable interviewees, but the depth and number of interviews were less than my initial hope. This removed a valuable portion from my Dissertation project and forced me to reframe the data collection. Instead of the in-depth interviews, the survey became much more important within the overall scope of the project.

Another significant challenge in this project was linking the broad concepts associated with workplace bullying and mediation together to form a cohesive evaluation speaking to mediation's effectiveness in resolving workplace bullying disputes. There are many concepts relevant in this arena, such as the economic cost of workplace bullying, the psychological impact of workplace bullying on the victims, how victims try to resolve workplace bullying claims through available mechanisms, alternative dispute resolution forms, and how mediation works in practice. Linking these concepts together to comment on mediation's overall effectiveness proved to be a more monumental task than I initially expected, and keeping the concepts focused, narrow, connected, and linked throughout the Dissertation was a constant struggle.

There are, however, many things that I felt went very well during this Dissertation. Mainly, I think this project makes valuable, unexpected contributions, which were discovered from the data. First, while the concept of workplace bullying troubled and alarmed me before I began this project, the results I gathered

during this project make me even more concerned about the rate of workplace bullying. The biggest statistical takeaway I will remember about this project is that 56% of respondents answered that they had been bullied in the workplace currently or in the past. I think this is a valuable finding because it highlights and draws attention to what I would characterize, now, as a workplace bullying epidemic. In addition, I feel that this Dissertation makes valuable contributions in the split between the opposition and supports of mediation as a workplace bullying resolution tool: the explanations provided by the respondents directly tie into the psychological aspects present in the ongoing debate.

Throughout the course of this Dissertation, there have been a few areas I have come across where I believe further research is in order. I believe that corporate practices in discouraging workplace bullying should be researched more extensively. This is because it became apparent during the research process that many respondents felt like their employers were not doing enough to create a workplace culture that discourages bullying. Since corporations are ultimately in a unique position of power to foster anti-bullying cultures and address workplace bullying disputes between employees, the task of eradicating workplace bullying should ultimately start with them. Regarding mediation, specifically, I think there should be more case studies on how actual workplace bullying disputes that have gone through mediation are resolved. This is the only way to truly evaluate whether mediation can successfully resolve workplace bullying disputes.

Overall, I am happy with this research project. I feel like I met my overall goal, which was to provide a comprehensive analysis of mediation's role in resolving workplace bullying disputes. Despite the challenges in the data collection and the difficulties linking the concepts together due to the scope of the task, I feel confident that I prepared a quality, comprehensive Dissertation on the subject that would be useful to anyone interested in studying mediation as a dispute resolution mechanism in the context of workplace bullying.

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