

Nothing succeeds like SUCCESSION



Clare O'Keeffe is a mediator and farmer and a member of Succession Ireland

How would the story of 'The Bull' McCabe have turned out if he'd taken the time to work out a mediated family succession plan? **Clare O'Keeffe** brings the drama

“If you think I'm going to face my mother in heaven or in hell without that field, you've got something else coming” – ‘The Bull’ McCabe, from *The Field* by John B Keane.

In *The Field*, the raw passion for the land exemplifies underlying interests. These are the unspoken hopes, fears, concerns and beliefs held by the McCabe family members: ‘The Bull’, his wife Maggie, and their one remaining son Tadhg. These underlying interests informed the positions of silence, anger and resolute stubbornness that were seen on the surface of the characters.

What if the McCabe family of today took time and invested in working through a mediated farm family succession plan? This plan typically includes, though not exclusively, a time frame for shared management, expansion, alternative income options, entry/exit options, transfer of management and transfer of ownership. Such a plan would also cover current and future financial security for some or all parties, domestic arrangements, and perhaps a future healthcare plan.

Every one of us will die

Succession Ireland is a business that facilitates the family succession planning conversation through a mediation service. This service is based on the four core principles of mediation: confidentiality, impartiality, self-determination and voluntariness. The role of the mediator is to manage this process, not to give advice. The outcome is determined by consensus among the family members present, and it is this self-determination that can make agreements more successful and long-lasting. All mediations are

held at a neutral venue, typically a hotel conference room. The process is designed to allocate time to include all family members where each voice is of equal importance, embracing all options presented. Getting away from the farm and kitchen table adds to the significance and value of the succession planning process and the family's direct involvement in shaping their own plan.

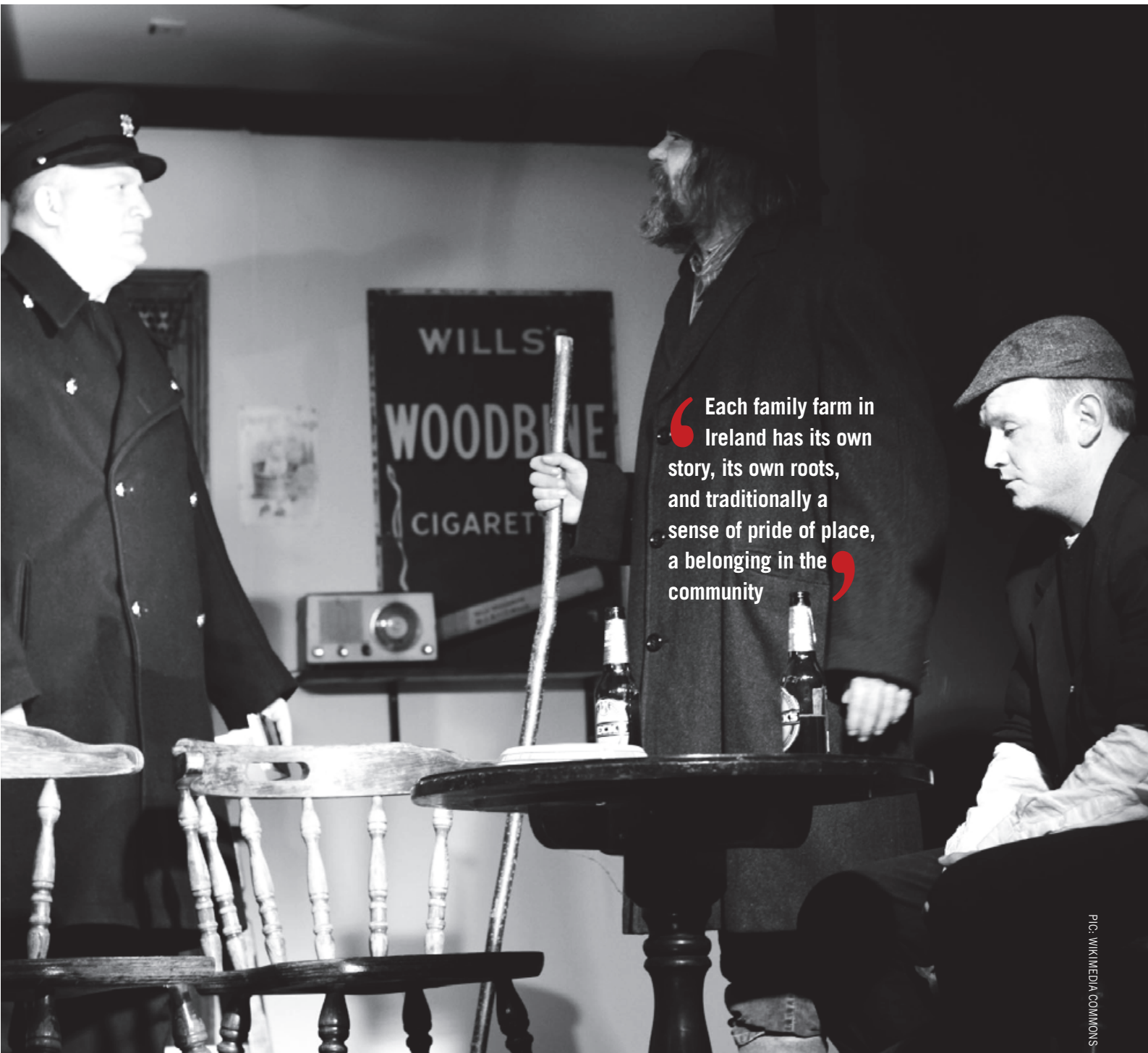
There are very few certainties in life. However, one certainty is that, as sure as we were born, every one of us will die. The tragic death of the McCabe's eldest son was never spoken of in their home and remained under a shroud of silence. Sometimes such tragedies remain under the radar for years, particularly where an appropriate succession plan had not been communicated within that family.

These unresolved emotions, beliefs and assumptions frequently surface during the mediation process. It is at the client's discretion if they decide to address some

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at a glance

- The role of the mediator is to manage the communication process – not to give advice
- The parties bind themselves contractually to the principles of mediation (confidentiality, voluntariness, self-determination) at the outset of the process
- Consensus among the family members present determines both the agenda and outcome of the mediation process
- The mediation process often provides the best chance of effective communication where important family relationships and inherent conflicts co-exist



Each family farm in Ireland has its own story, its own roots, and traditionally a sense of pride of place, a belonging in the community

"Get yer mitts off my posh imported German pilsner," said the Bull. "I've got me this here stick."

aspect of the past within the safe confidential environment of mediation. Clarification and resolution during the mediation process, addressing the 'elephant in the room', does clear the air for a better, more informed and inclusive succession plan. Each family farm in Ireland has its own story, its own roots,

and traditionally a sense of pride of place, a belonging in the community.

The Field: the director's cut

For the McCabe family, typically the initial contact with Succession Ireland would be as follows.

The family are not sure if they really need the service, as their son will be their natural successor. He has years of experience working side by side with his father. Both of them are good workers, but communication between the pair of them is poor. Unexpectedly, the adjoining land, which 'The Bull' has leased

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and managed for years, has been offered for sale by public auction. The owner, the widow Quinn, wants to sell her field to the highest bidder. 'The Bull' would like to buy the land as part of his farm-family succession plan. The McCabes as a couple have not discussed their intentions with their son Tadhg. Communication within the family is not good, since a family tragedy many years ago. The upcoming sale and planned purchase of the field is fraught with emotion. 'The Bull' would like to secure ownership, as he has invested years of hard physical work into this field.

The hopes, fears and concerns that many farmers and farm-family members at times find difficult to express are very real to them. While acknowledging difference, there will always be some positive memories, aspirations and shared values. This is generally true of any business. From this place, a meaningful, positive conversation can begin.

So would mediation benefit the McCabes?

Here are examples of when mediation may be advantageous to a family-farm business:

- A family member wants to enter into the business,
- A family member wants to retire from the business (or is writing their will),
- A new member joins the business (for example, through marriage or partnership),
- The unplanned happens (such as a marriage or relationship breakdown, an accident, serious ill health, or sudden death),
- Communication has broken down,
- No one is interested or available to manage the current farming business,
- A major change in the business strategy is needed or has occurred,
- Parents or executors are seeking fairness and harmony between siblings.

Where to begin?

The process begins with individual meetings for all family members, starting with the asset owner(s) or the most senior parties (those who have worked and managed the farm business to date). Then, on a family day where all family members are present, an 'agreement to mediate' is discussed and signed by each party. This covers the terms upon which everybody is coming to the table and binds the parties contractually to adhering to the principles of mediation. The history of the farm and family is shared, as this may be an influencing factor in the decision-making process. A lesson

FOCAL POINT

mediation bill

In July 2015, Justice Minister Frances Fitzgerald assured the Mediators Institute of Ireland of the Government's intention to enact the *Mediation Bill 2012*. Within this is expected to be an extension of the obligation on lawyers to advise clients to consider mediation where appropriate. This would be a positive step for dispute resolution in our society. Lawyers may understandably feel threatened by this, but it need not be so. Lawyers and mediators can peacefully coexist. Indeed, there are many situations where mediation is not the right forum for a dispute, as accepted in the recent

case of *Kilarden Investments Limited v Kirwans (Galway) Limited et al* ([2013] IEHC 602), where the plaintiff's refusal to mediate was found to have been reasonable. Also, where mediation has been successful, particularly in the area of succession, the lawyer's job is made easier. For example, who would you rather have sitting in front of you: a client who is wondering which of his children might be interested in taking over the family assets, or a client who is already clear on what the basic succession dynamic would be and is seeking advice on how best to implement their wishes?

from the past might be not to repeat certain patterns. As each family and farm is different and unique, no one plan fits all. Most families use the mediation process to create their farm family succession plan to the best of their ability, given the knowledge and information available at the time. All immediate family members are included, as future security and possibly a care plan for senior/current asset owners may involve non-farming members.

The succession triangle

On reaching an agreement within the family, it is recommended to get independent advice from an accountant or tax advisor, and legal advice prior to

implementing any major change. The outcome of an initial family day is rarely a binding contract. Often, a family will leave with a memorandum of understanding containing a provision that all relevant parties should obtain further independent legal advice and collective tax planning advice on the options raised at mediation.

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A good succession strategy requires communication and advice. Tax advisers, accountants and lawyers can provide the necessary advice. This advice is best implemented with effective communication. The mediation process often provides the best chance of effective communication where important relationships and inherent conflicts coexist.

I once heard an old solicitor explain that it is quite frustrating to try and provide effective advice when your client does not know what they, or other relevant parties, want. Wouldn't it be nice to meet a client who says: "Mary wants to go into partnership with me on the farm and Johnny just wants the value of a site as inheritance," rather than: "I would say Mary is more interested in farming and I suppose, to be fair, I will give a site to Johnny." The Succession Ireland family business mediation service works to remove blocks in communication within families in order that they may engage with their legal and financial advisers in a meaningful way. As a positive by-product, it provides the best opportunity for family harmony.

'The Bull' McCabe, due to his lack of an effective communications strategy, was left with a poignant legacy and self-image: "Curse myself. For cursing my mother to hell. To get the field." Perhaps if he had employed a good mediator to remove the toxic blocks in communication, we might have seen more of his caring fatherliness, like the following advice he gave to his son Tadhg: "She's a woman like your mother. If we knew how to keep the women happy, we'd still be in paradise."

If you or a client might be interested in learning more about the service, just call Succession Ireland or visit www.successionireland.ie.

