



CHAIRMAN'S ADDRESS



This is that last time I will write to you as Chairman of the Irish Branch since my term of office will end when the new committee, chosen at the recent AGM, meets for the first time on 19 May next. I was first elected to the committee in 2004 and re-elected in 2007; I stood down at the

recent AGM and did not put myself forward for re-election simply because I intend to serve next year on the committee ex-officio. That means I will have served for six years on the committee and in my opinion that is a sufficiently long tenure.

Details of the new committee are provided inside this newsletter and, while it is a relatively young committee, it has a particularly broad spread throughout the professions which I believe to be a most important feature for the Branch. Unfortunately for the second year in a row there is a gender imbalance. There was a particularly high turnout at the recent AGM where uncertainty as regards the Rules governing the Branch caused misgivings for some of the members. I have set out in somewhat greater detail within this newsletter the situation in this regard and the steps which I believe need to be taken by the new committee to resolve it.

The past year has been a particularly busy one particularly at a personal level but I found it very satisfying and I also believe that it has been a very successful year for the Branch. In the area of Dispute Resolution dramatic changes are taking place to the framework within which we operate with the introduction of the Arbitration Bill 2008. There is an update on the progress of this within the newsletter and I am happy to say that the Irish Branch was very much to the forefront in the debate on the Bill and in doing so we managed to involve and were assisted by all of the other professions working in this area. The year also saw the ICCA Conference, a major International Arbitration Event, which was much successfully hosted by the Bar Council and the Law Society and in which many of our members participated. During the course of the year the Irish Branch was also actively engaged with the Law Reform Commission arising from the publication of their excellent Consultation Paper in July 2008.

At a personal level I had the honour to represent the Branch at the Institute Congress in Malaysia in October 2008 and I also took the opportunity to attend an international dispute resolution Conference in Kuala Lumpur. The Congress itself culminated in the election of Joe Behan, last year's Chairman of the Irish Branch, to serve as President of the Institute next year and I am delighted to be able to tell the members of the Irish Branch that it is one of the most highly regarded within the Institute worldwide.

During the course of the year our events in particular the golf outing in June 2008, the Annual Dinner in November 2008 and the recent lunch in April of this year were extremely well attended despite the constraints arising from the economic downturn. These events serve as a showcase for the Irish Branch and also provide a unique opportunity for the members to meet and mingle with one another and it is most important that they are maintained at a high standard.

On the educational front the work of the Branch continued apace with Entry Courses being run in both Arbitration and Mediation. In June 2008 a Training Course for Conciliators with specific reference to the New Public Works Contracts was successfully run in conjunction with Engineers Ireland. In June 2008 we also ran a course leading to Accredited Mediators Status and it is also hoped to offer this course again in September of this year. This is a very highly regarded qualification and if members are interested in pursuing this they should make contact with the office. Equally the assessment associated with the course will offer an opportunity to members who have other Accredited Mediator Qualifications to qualify as CI Arb Mediators.

The work of our schemes has also continued during the year although the number of appointments/nominations in the consumer schemes is down somewhat particularly in the package holiday area. There has however been an increase in ad hoc appointments and particularly in requests for the Branch to provide the names of three suitably qualified Arbitrators. As a response to this during the year I wrote to all of the Fellows asking them to provide a one page Summary CV to enable them to be considered for such nomination. The response to this was particularly good but that said there are still some Fellows who have not sent their CV and I take this opportunity to encourage them to do so.

CONTENTS

	Page No.
Chairman's Address	1
New Committee 2009-10	2
Update on Arbitration Bill	3
A.G.M. 2009	4
Annual Lunch	5
Book Review	5
Northern Irl. Chapter News	6
New Members 2009	6
Education	7
• Accredited Mediator Training	
• Peer Interviews for Fellowship	
• Chartered Arbitrator	
Annual Golf Outing	8

Chairman's Address Contd.

The Irish Branch is a nominating body for both Conciliators and Arbitrators under the New Public Works Contracts and during the past year the Construction Subcommittee has been particularly busy and has finalised a procedure for appointments in these areas. They have also established a Panel of Conciliators and Arbitrators and we have written to the various relevant bodies to publicise their existence.

A further development during the year was the development of the Pupilage Scheme which was circulated last month and which has met with a very good response. It is obviously important that younger members should be facilitated by getting experience and I am pleased to say that a number of our more senior members have written to say that they would be delighted to take a pupil.

Finally I am delighted to say that work is in progress on upgrading our website which is beginning to show signs of its age. The main Institute Website was upgraded during the year and it is intended that the site of the Irish Branch will be consistent with it. This is obviously very important to facilitate communication within the Branch and equally I would encourage any member whose email address is not on record in the office to provide those details.

The past year has been an honour for me and I hope that my time on the committee has helped to strengthen the Branch. I have particularly sought to strengthen our relations with the other professional bodies and also to ensure a cooperative and workmanlike attitude on the committee; I like to think that I have had some success in both areas. I would like to thank all of the members of the committee for their unstinting work in the past year and in that regard I would like to single out Brian Anderson, John Glynn and John O'Brien who are stepping down after a number of years of service. I would also like to thank the officers Aedan McGovern, James O'Donoghue, Terence O'Keeffe and Larry Fenelon. Finally I would like to wish the new committee and indeed all of the members of the Branch every success in all of their endeavours in the year and indeed years ahead.

Ciarán Fahy
Chairman

New Committee 2009—2010



Aedan McGovern
Barrister – Senior Counsel
Vice Chairman (2008-09)
Year Elected: 2007



Joe Behan
Engineer
Chairman of the Mediation Sub
Committee and Course Director
Year Elected: 2008, 2006, 2003



James O'Donoghue
Architect (Chartered)
Hon Secretary (2008-09)
Year Elected: 2008
Previously As Committee Member
'83/'84 and '84/'85



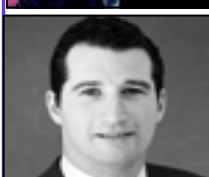
Pat Brady
Chief Executive Trade Association
Member—Industrial Relations Expertise
Year Elected: 2009



Terence O'Keeffe
Law Agent, Dublin City Council
Treasurer (2008-09)
Year Elected: 2009



Jim Bridgeman
Barrister at Law
Member
Year Elected: 1997-2007 and 2008



Larry Fenelon
Solicitor
Public Relations Officer (2008-09)
Year Elected
2008



Dermot Jewell
CEO—Consumer Association of Ireland
Member—Special Liaison re Consumers
Construction and Course Director
Year Elected: 2008



Anthony Hussey
Solicitor
Chairman of the Sub-Committee on
Construction and Course Director
Year Elected: 2007



Michael Murphy
Claims Manager (Insurance)
Member—Special Liaison re Insurance
Year Elected: 2007



Anthony Barr
Barrister—Senior Counsel
Member
Year Elected: 2009



Sean McCormack
Chartered Surveyor
Member
Year Elected: 2009—previous committee
member in 1999.

Update on Arbitration Bill 2008

As members are aware the Irish Branch has been very involved in discussions concerning the Arbitration Bill 2008 since it was published in June of last year. In September 2008, after consultation with the membership, we made a written submission to the Government which was the first such contribution by any professional body. The approach adopted by the Branch was to welcome the Bill which we feel represents a significant advance not only in terms of updating legislation which is now more than fifty years old but also in that it will bring Irish practice into line with what is commonly accepted as the best international practice.



Mr. Ciarán Fahy addressing Arbitration Bill Seminar 2008 Participants

Subsequently members of the Branch have been very actively involved in a number of seminars on the Bill with two of these taking place in October organised firstly by the ICC National Committee and then by the UCD School of Law. Following and arising from these discussions the Branch in conjunction with the Bar Council and the Law Society organised an extremely successful Seminar in late January 2009 which consciously set out to involve all of the participants in this area. A report of the discussions at that Seminar was prepared and sent to Government in February of this year and the document itself is available on our website.

At the time of the publication of the Bill An Taoiseach Brian Cowen gave a commitment to have it passed into law as a matter of urgency. Since then the Bill had its second reading in the Dail on 19 November 2008 and it recently passed through the Committee Stage on 23 April 2009. The debate on the Committee Stage is available at the following site:

<http://debates.oireachtas.ie/DDebate.aspx?F=JUS20090423.xml&Node=H2#H2>

while the amended Bill after the Committee Stage can be downloaded at:

<http://www.oireachtas.ie/documents/bills28/bills/2008/3308/B33a08D.pdf>

During the Committee Stage the Minister, Dermot Ahern, introduced 28 amendments and apart from him a significant contribution to the debate was made by Deputy Pat Rabbitte who specifically referred to concerns raised by the Irish Branch.

It is clear from the debate and the Bill as amended in Committee Stage that a number of the concerns raised by the Branch and indeed expressed at the Seminar in January 2009 have been taken on board and in some cases incorporated into the revisions. Examples of these are;

- Section 3 dealing with the Transition Provisions;
- Section 14 dealing with the Examination of Witnesses;
- Section 28 The Application to Other Arbitrations
- Section 30 dealing with Small Claims.

In a number of other areas concerns raised by the Branch were considered but the Bill has been unaltered and these include:

- Section 12 which is the Time Limit for Setting Aside Awards on the Grounds of Public Policy,
- Section 18 dealing with Interest
- Section 20 dealing with Costs,
- Section 21 Liability of Arbitrators,
- Section 29 Exclusion of Certain Arbitrations
- Section 31 Court Ordered Arbitration.

Equally there was no real discussion on a number of sections which received considerable attention at the Seminar and the most important of these is Section 32 dealing with the Additional Grounds for Setting Aside an Award in Standard Arbitrations but this also applies to the area of Special Oversight as set out in Sections 34, 35 and 36 of the original Bill.

I have since had a meeting with the Department of Justice, accompanied by Aedan McGovern and Anthony Hussey. The intention of the Government is to have the Bill pass through Report Stage and the Seanad so it can be signed into law before the Summer Recess.

The position as regards Sections 32, 34, 35 and 36 of the original Bill has not yet been finalised and we put forward the Branch's position to the Department based on the January seminar.

Ciarán Fahy
Chairman

A.G.M.



Chairman, Mr. Ciarán Fahy, and Hon. Treasurer, Mr. Terence O'Keeffe addressing the members at the recent AGM.

The recent AGM was held in the Radisson Hotel and was particularly well attended by some eighty members; in addition almost fifty persons sent their apologies or regrets.

The meeting itself was noteworthy for two separate issues, the first being a debate on the Treasurer's Report while the second concerned a question of the Byelaws which arose during the election of Members of the Committee.

The Treasurer's Report was presented by Terence O'Keeffe and the year itself showed a surplus of €50,000. However a number of members took exception to the fact that the Auditor's Notes were not circulated with the Summary of the Accounts and there was a suggestion at one point that the Report should be rejected on that basis. However the Notes were subsequently circulated and the Treasurer's Report was adopted unanimously later during the course of the meeting.

The Election of the Committee gave rise to a lengthy and lively debate and brought into focus the Branch Rules. The position is the Branch is currently governed by Branch Rules adopted in April 2003 but unfortunately these are out of date by reference to the Structure of the Institute which has changed since then. In April 2005 the Institute published Branch Model Rules with the intention that each Branch would adopt these making relatively minor alterations as they saw fit for local conditions subject to approval by the Board of Trustees in London. The Irish Branch Committee during the past year was conscious of this anomaly in other words that the Branch Rules were not in conformity and consequently a new set of Branch Rules was discussed at two committee meetings and finalised in August 2008 and were then to be sent to London for approval. Unfortunately in the event the Rules were not sent to London until February / March of this year and they were subsequently considered by a Board of Management in London on 17 April 2009.



Attendance at the A.G.M. 2009

Traditionally the election for Committee Membership has taken place in the Irish Branch at the AGM. However the Byelaws as adopted by the Institute in February 2005 require that such elections should take place by postal ballot in accordance with Byelaw 20 and the Revised Rules sent by the Irish Branch Committee to London failed to take this into account. Equally although there was some discussion between the Irish Branch and London it was not brought to the attention of the Irish Branch Committee until the very day of the AGM some two hours before the meeting was to commence.



(l-r) Larry Fenelon, PRO; Terence O'Keeffe, Hon. Treasurer; James O'Donoghue, Hon. Secretary; and Aedan McGovern, Vice Chairman at the recent AGM

During the course of the AGM a number of members questioned the voting method and suggested that it should be deferred since an election on the basis of those attending the AGM would contravene Byelaw 20. There followed a lengthy and lively discussion in which both points of view were argued before the meeting decided by a clear majority on a show of hands to proceed with the election as advertised in the traditional way.

This uncertainty about the Branch Rules is obviously unsatisfactory and it is something that I hoped to avoid at this year's AGM. Since that meeting I have spoken with the Director of Legal Services in London and asked him to come back and set out the various options open to the Irish Branch. I explained to him that in my view the Irish Branch would probably wish to continue with its traditional practice of electing committee members at the AGM but obviously if there was a strict requirement to carry out such elections by postal ballot then the Branch would comply with it. There are obviously pluses and minuses in relation to any form of election; however I understand the Institute as a body favours postal voting simply because the geographic area of many of the Branches is extremely large and thus elections on the basis of those attending the AGM would be likely to give rise to localised and possibly unbalanced results.

I have also discussed the matter with James Gilhooley SC who was one of those obviously concerned with the difficulty in which the Branch found himself and he has undertaken to assist the new committee in order to ensure that the position and in particular the Rules governing the Irish Branch are brought into line with the requirements of the Institute in the very near future.

Ciarán Fahy, Chairman

Annual Lunch



Chairman, Ciarán Fahy with guest of honour, Mr. Brendan Barrett, MD BAM Contractors at the recent Annual Lunch.

The annual lunch of the Chartered Institute of Arbitrators took place at the Radisson SAS, Golden Lane on Friday 27 March. The event, which has always been a highlight of the social calendar was very well attended. The venue was well located and modern while the food was very tasty.

The guest of honour Brendan Barrett is a Chartered Engineer and has been Managing Director of BAM Contractors (formerly Ascon) since 1986. BAM are involved in every facet of construction in this country and thus Brendan Barrett is uniquely qualified to speak of that industry. He outlined the very real difficulties being faced by the construction sector where the property bubble had caused it to become 25% of GDP twice the European average. Employment peaked at 400,000 in 2007 but has since fallen by 33% and is projected to contract even further during the course of 2009. He argued that such a decline in employment in any other industry would be a national scandal and suggested that

spending cuts in the National Development Plan by the government would simply exacerbate the situation. He referred to the proposals being advanced by the Construction Industry Council which has requested a stimulus of €5 billion per annum in the Public Capital Programme over the next three years. He advocated greater use of PPP's and other "off balance sheet" projects.

The Chairman, Ciarán Fahy spoke of the progress during the course of the year with specific reference to the construction industry. CI Arb is a nominating body for both conciliators and arbitrators under the new public works contracts and in recent months has developed a procedure for these contracts and also has a panel of arbitrators and also conciliators.

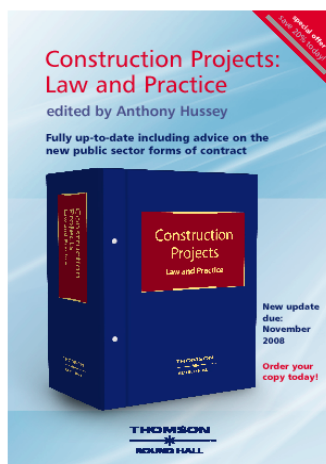


Committee with Mr. Brendan Barrett, Guest of Honour and Justice Liam McKechnie of the High Court at the recent Annual Lunch.

Book Review

Construction Projects: Law and Practice: Price: €490.00

Edited By David Keane & Anthony Hussey



Thomson Reuter, 2007, 702 pages Hardback, Looseleaf, ISBN: 978-1-85800-473-0
Reviewed by Nael G. Bunni.

This loose leaf, which was published in October 2007, is dedicated to David Keane (1929-2007) whose name remains associated with prolific writing and innovative architecture in Ireland. As its title suggests, this looseleaf not only deals with construction law, but goes beyond to include the entire project cycle and therefore deals with most topics that must be considered in bringing a construction project from concept to completion. It is aimed at legal and non-legal professionals involved in construction in Ireland. Lawyers would add to their knowledge of planning law, building control regulations and the health and safety at work regulations. Those who are not lawyers, not only need detailed knowledge of these subjects, but also on abstract legal issues that have to be addressed in carrying out their work. All these professionals benefit from learning more about claims, disputes and dispute resolution. This book fulfils all these requisites and is aimed at the construction trinity: employers; contractors; and their technical advisors.

There is no doubt about the need for a publication of this nature which specifically deals with the Irish conditions, and the need for constant updating, which is apparent from recent events including those relating to the Safety, Health and Welfare at Work Act 2005 and the consequent general application regulations; the Building Control Act 2007; and the recent major departure from the normal conditions applicable to construction contracts by the introduction of the controversial New Public Sector Contracts.

There are eight chapters, each written by different authors. All of these authors are highly regarded in their own profession in Ireland.

As mentioned above, it is intended that this publication would be updated on a regular basis to take account of any changes in the law and practice that would occur once a year. This is the major advantage of this book, if the updating is to be authoritative, annual and complete. Otherwise, it could be the rock on which it would perish.

Northern Ireland Chapter News



James Golden, the Convenor of the Northern Ireland Chapter, and Faisal Ibn Mansor Al-Fadhel

While visiting Saudi Arabia recently, James Golden, the Convenor of the Northern Ireland Chapter, had the pleasure to meet Faisal Ibn Mansor Al-Fadhel who is the author of a recent article in *Arbitration* on the changes in the judicial system in Saudi Arabia (see *Arbitration* page 91 *et seq* Volume 75 Number 1 February 2009). Mr Al-Fadhel is a member of the CI Arb and an enthusiastic supporter of the implementation and use of arbitration in Saudi Arabia. Mr Al-Fadhel sent his greetings and best wishes to both the Chapter and Branch and he and Mr Golden look forward to keeping in contact in the future.

Mock Mediation — Young Members

The Young Members committee will host a mock Mediation at Engineers Ireland, 22 Clyde Road on **9th June 2009 at 6.00—7.30p.m.**

Please email the office at ciarb@arbitration.ie for further information.

The cost to Young members is €75.00 and will count towards CPD programmes. The event is also open to members at a cost of €100.00.

Young members who are solicitors, barristers, engineers, architects or surveyors will find this a very stimulating means of learning more about mediation. The mediation will involve a role play of opposing parties and an experienced mediator who will seek to bring the parties to a compromise. The parties will attend a joint meeting with mediator and will then break into private sessions with the mediator. The mock mediation is guaranteed to be interactive and will be divided into stages whereby at the end of each stage, attendees will be invited to ask questions to the mediator and parties.

New Members 2009

We welcome the following Members and Associate Members to the Chartered Institute of Arbitrators, Irish Branch:

MEMBERS

Cassandra Byrne
Alison De Bruir
Fergus Deery
Thomas Patrick Farrell
Darragh McShea
Gerard Meehan
Ronan O'Briain
GP O'Sullivan
James Treacy
Pamela Vasey

ASSOCIATE MEMBERS:

Francis Paul Cassidy
Eoin Dillon
Robert Martin
Conor McCormick
Toal O Muire
Ruairc O'Tuairisg
David Sullivan
Paul John Sullivan
Clara Tierney

EDUCATION

Accredited Mediator Training

The Chartered Institute of Arbitrators will be hosting a 5 day accredited mediator training course which we propose to run from 24 to 29 September 2009 with a further assessment over the weekend in the first half of October.

The assessment on its own will be open to persons with suitable mediation qualifications who wish to also achieve CI Arb qualification.

For further details please contact Anne at 017079739 or ciarb@arbitration.ie

Peer Interviews for Fellowship

Wednesday 27 May 2009

RADISSON HOTEL, GOLDEN LANE, DUBLIN 8.

Peer interviews will be held in Dublin on the 27 May 2009 by appointment. Please contact the office at (01) 7079739 or email the office at ciarb@arbitration.ie if you have any queries.

Chartered Arbitrator

What is a Chartered Arbitrator?

A Chartered Arbitrator is a Fellow who has demonstrated to a Interview Panel advanced knowledge and understanding of arbitration and its practical application, evidencing a professional approach to parties and the public interest.

What is the criteria for passing the interview?

The standard to which the candidate will be judged is competence and experience to serve the public as an arbitrator in an ethical manner.

Who may apply?

Applications will be accepted from Fellows who are able to submit:

1. A current Curriculum Vitae
2. A schedule of CPD activities undertaken over the past 3 years
3. A schedule of appointments as arbitrator undertaken within the last three years; the schedule should give details of the
 - Name of the case;
 - Nature of the dispute;
 - Date of the appointment;
 - Name of the appointing body, if applicable;
 - The date of award, and an indication whether it was a final award, interim award, award by consent, a settlement or the case is still in progress;
 - The amount in dispute;
4. Copies of at least two orders for directions issued as arbitrator;
5. Copies of at least two reasoned awards issued as arbitrator, at least one of which should be a final award (the awards submitted should be from references which involved a hearing) respecting the confidentiality of the parties.
6. Copies of at least one reasoned award from a documents-only reference (if such a reference undertaken) respecting the confidentiality of the parties
7. Where the applicant is a judge, copies of two judgments.

Interview Fee

The fee for interview, which is non-refundable, is £100 + VAT and must accompany your application.

Annual Golf Four Ball Scramble—19 June 2009

The conversations that took place at the 19 hole at last year's annual golf outing were rich with promises from serious contenders followed by threats of fierce competition at next years event. Well, that time is almost upon us for those who took part in such conversations for they must now convert those words into action!

Once again we will return to the magnificent Powerscourt Golf Course for our Annual Four ball Scramble challenge on **19th June, 2009** with a shot gun start at **2.30pm**.

I would like to encourage all of our new members this year to seriously consider entering a team in this key social event of our calendar to raise the bar in what I hope to be another great event. The hugely successful four ball scramble format is an excellent opportunity for golfers of all levels to be contenders for the Dan McCrystal Perpetual Trophy and I promise you a great day out. It is a great opportunity for our new CI Arb members to meet with our more seasoned members in a relaxed sporting atmosphere followed by the culinary delights of the Powerscourt Golf Club restaurant where we will have our private dinner, speeches and prize giving.

If you or your company are interested in sponsoring some or all of the prizes please let Anne Walsh know as soon as possible, other than that I look forward to seeing you all on the 19th June.

John FFF O'Brien
CI Arb Golf Event Coordinator

THE CHARTERED INSTITUTE OF ARBITRATORS IRISH BRANCH

Present

The Annual

Four Ball Scramble Challenge

For

The Daniel B McCrystal Perpetual Trophy

2.30pm 'Shotgun Start' Friday 19th June, 2009

at

Powerscourt Golf Club, Enniskerry Co. Wicklow

Teams of four are invited to play at a cost of €520 per team which includes Golf & Dinner (Individuals may register to play at a cost of €130 per player including dinner, individuals will be advised of their fellow team members in advance of the competition)

After the outstanding success of last year's inaugural event we would strongly advise all members to book early to avoid disappointment as we can accommodate only 20 teams with a shotgun start.

[NB. Places secured on completion of entry form accompanied by full payment on a strictly first come first served basis]

Please complete the attached entry form in full and return to the CI Arb Irish Branch office as soon as possible together with your cheque to secure your place.

**Cheques should be made payable to The Chartered Institute of Arbitrators Irish Branch and posted to:
The Chartered Institute of Arbitrators - Irish Branch, Merchants House, 27-30 Merchant's Quay, Dublin 8.**