



ARBITRATION NEWS

The Newsletter of the Irish Branch of The Chartered Institute of Arbitrators

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CHAIRMAN'S ADDRESS

There has been an increasing awareness in recent times on the part of the State, public bodies, institutions and, perhaps most importantly, contracting parties of the role mediation can play in the resolution of disputes in a wide range of areas. The costs of litigation, both in financial terms and in terms of time, are very significant and mediation can and should play an important role in case management in litigation. Mediation will play a role in the operation of the new Commercial Court of the High Court which was officially opened by An Taoiseach, Mr Bertie Ahern on the 18th October 2004. The Civil Liability and Courts Act 2004, which came into force this year, introduces the concept of a mediation conference into personal injury litigation for the first time. The Act provides that the Court may direct that parties to a personal injuries action meet to discuss and attempt to settle the action and provides for the appointment of the chairperson of a mediation conference. Such a chairperson may be a person nominated by a body prescribed by the Minister for Justice, Equality and Law Reform and the Committee of the Irish Branch is working to secure the recognition of the Branch as a prescribed body.

The Branch has experienced practising mediators amongst its members. We wish to encourage other members to undertake training in mediation and have held two Mediation Entry courses within the past six months. The Committee wishes to facilitate members of the Branch becoming accredited mediators of the Institute and proposes holding a more advanced and intensive mediation accreditation training course in the Spring.

The Institute's petition for a Supplemental Charter as originally drafted contained the power to create the qualification of "Chartered Mediator". Certain mediation bodies in the UK objected to the proposed qualification and it was necessary to remove the power to create the qualification "Chartered Mediator" in order to secure the approval of the Supplemental Charter by the Privy Council. Instead the qualification "Accredited Mediator" may be conferred on Members of the Institute who undergo the necessary training and attain the requisite standard.

At an EGM of the members of the Institute in London on the 28th October 2004, the amendments to the proposed Supplemental Charter were supported overwhelmingly by the members of the Institute. The Privy Council in the UK has now approved the amended Charter and it is envisaged that the Board of Trustees of the Institute will take up office on the 1st January 2005. It is proposed to hold the first meeting of the Board of Trustees in Cyprus on the 28th February 2005 and to hold the First Congress of the Institute on the 1st March 2005.

The 90th Anniversary of the founding of the Institute occurs on the 1st March 2005. The Institute has requested all its Branches around the world to celebrate this milestone in the history of the Institute with a celebratory event and a Luncheon will be held by the Irish Branch on Friday the 11th March 2005 to celebrate the Institute's 90th Anniversary. The President of the Institute will attend the Luncheon as the Guest of Honour.

The Institute's Charter provides for a Board of Trustees comprising 12 Trustees from different regions around the world. The Irish Branch is part of the Europe Region and Mr Roy Sherlock, a past Chairman of the Irish Branch and a current member of the Committee, has been elected Trustee for the Europe Region. Roy has been an invaluable member of the Committee of the Irish Branch for some years and it is regrettable that upon taking up office as Trustee of the Institute, he will no longer be able to serve on the Committee. I should like to congratulate Roy on his election and to convey to him our best wishes and our thanks for years of dedicated service.

Ken McQuillan K.S.G., F.C.A., F.C.I.Arb our Hon Treasurer and a former Chairman of the Branch, died on the 4th September 2004. Ken worked tirelessly on behalf of the Irish Branch for many years and many of you will have known him well. He was one of life's true gentlemen and a font of wisdom and common sense. Ken will be very sorely missed by all of us on the Committee and by all those whose paths crossed with his. To his wife and family, I convey my deepest sympathy.

Rowena Mulcahy FCI.Arb
Chairman

Items of Interest in this Issue ...

- Obituary Ken McQuillan,
- Northern Ireland Chapter
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- Diary
- Legal Brief

Ken McQuillan K.S.G, F.C.A, F.C.I.Arb

Ken McQuillan ranked as one of the leading Chartered Accountants in Ireland. He was one of the most active and respected within that field, still working up to his death at the age of seventy-three. His love of his work is evident from the fact that retirement was never an option for him as he thrived on the stress that went with it. Ken trained with the firm of accountants Kennedy Crowley & Co., now known as KPMG, and qualified as a Chartered Accountant in 1955. He then went on to form his own practice McQuillan DFK, and later was one of the founding members of DFK International, a world wide association of Chartered Accountants.

The Irish Branch of the Chartered Institute of Arbitrators was extremely fortunate to have Ken as one of its founding members where his advice and expertise was essential in nurturing it into the position it now holds. In 1994 Ken became the Chairman of the Branch. Having stepped down as Chairman, he continued his work on the Committee holding the office of Branch Honorary Treasurer until his untimely death. Ken was dignified, loyal to his friends and encouraging in his dealings with others. He inspired respect and friendship.

A member of the Order of the Knights of Columbanus, Ken held the position of Supreme Knight from 1985 to 1987 and subsequently in 1988 became a Knight of St. Gregory.

Ken was an avid sports fan of Rugby, Rowing and Table Tennis were his main loves. He rowed for Drogheda and enjoyed his achievements in the Currick-On-Shannon Murphy Challenge, the Mullholland Challenge and the Portadown Challenge. Later on in his life, Ken came to love sailing, music and philately.

Ken was blessed with a long and happy marriage to his wife Maeve with whom he had four children: Fiona, John, Jean and Daniel. He had one brother, Damien, and two sisters, Jacqueline and Gemma.

Ken will be fondly remembered and sadly missed by all of us who were privileged to know and be associated with him.

Ken McQuillan, Chartered Accountant, was born on the 23rd January 1931. He died on 4th September 2004, aged 73.

Nael G. Bunni.

Northern Ireland Chapter

Since the Institute allowed the introduction of Chapters in the recent changes to its Rules, some progress has been made in constituting a Chapter within the Irish Branch for our members in Northern Ireland. A draft of the Constitution has been produced by a team of members from the North, and is now before the Committee of the Irish Branch for approval.

The drafting team in Belfast includes James Golden, who says "We are trying provide a simple framework for the Institute in Northern Ireland. It is clear that we need an easy to manage Northern Irish focus within the wider Irish Branch. There is real enthusiasm for the establishment of the Chapter both among the Northern Irish members and from the Branch Committee. I believe it will lend a dynamism to the Institute's work here which will benefit the whole branch".

The intention is to inaugurate the Chapter in 2005 and to use it as a focus for membership, training and arbitration development in Northern Ireland. A Chapter in the North will also help in providing a link between the Institute and the devolved government in Belfast when it returns. There is a real opportunity to develop ADR in a focused way in the tightly knit Northern Irish jurisdiction and the Institute has a real role to play in this. The establishment of the Chapter is a launch pad for this.

Congratulations to.....

- Dr Nael G. Bunni who was awarded the prestigious Institution Prize by the Institution of Engineers of Ireland for his 'contribution of outstanding merit and commitment to the activities of the Institution and benefit of its members.'
- Mr James Bridgeman who was appointed by the Minister for the Environment, Heritage and Local Government to the Private Residential Tenancies Board.



Dr Nael G. Bunni and Mr Peter Langford, President of the Institution of Engineers of Ireland

New Members

A word of welcome to the following who were recently admitted to the Irish Branch.

Mr R. Delaney (Kilkenny)

Mr J. Curran (Co Dublin)

Mr H. Best (Belfast)

Mr T Jessup (Co Dublin))

MR M. Hughes (Belfast)

Mr D Richardston (Co Dublin)

Mr J Gulliver (Co Wicklow)

Mr P. D'Helft (Co Wexford))

Mr J. Crawley (Coleraine))

Ms A Tuffy (Co Dublin)

Ms C. Trenaman (Co Dublin)

Mr T. Daly (Co Dublin)

Mr R. O'Keefe (Co Wicklow)

Mr D. Durack (Co Dublin)

Mr T. Jessup (Co Wicklow)

Ms H. Fletcher (Co Dublin)

Mr P. Convery (Co Dublin)

Mr P. Oscar (Co Tyrone)

Mr A. Martin (Co Dublin)

Mr M. Connolly (Co Wicklow)

Mr V. Campbell (Belfast)

Mr C. Boland (Dublin)

Mr M. Munnely (Dublin)

Ms M. Moran (Dublin)

Mr J. O'Keefe (Dublin)

Social Events

Annual Dinner 2004

The Annual Dinner of the Irish Branch was held in the President's Hall of the Law Society of Ireland, Blackhall Place, Dublin 7 on Friday 3rd December 2004 and was attended by 170 members and guests. The Guest of Honour, The Hon. Mr Justice Joseph Finnegan, the President of the High Court, spoke of the role that mediation can play in the management of cases in the Courts and of the need to look to bodies such as the Chartered Institute of Arbitrators to provide well trained mediators. This function has always proved to be extremely popular with our members but in past years it was necessary to restrict the number of guests that members were permitted to invite to attend the Dinner because of the size of the venue. The Annual Dinner of the Branch presents an ideal opportunity to promote the Institute and to highlight the important role that arbitration, conciliation and mediation play in the resolution of disputes. Many of our members have clients and colleagues who are not members of the Branch whom they would wish to invite as guests to our Annual Dinner and this year the Committee decided to hold the Annual Dinner in a larger venue so as to permit more of our members and their guests to attend the Dinner.



The Hon. Mr Justice Joseph Finnegan, President of the High Court; The Hon. Mr Justice John L. Murray, Chief Justice; Ms Rowena Mulcahy, Chairman Irish Branch; Mr Stuart Margetson, Law Society of Ireland and Mr Ben Maguire, Chartered Institute of Builders.

Mr James Macken SC, Vice Chairman; Ms Rowena Mulcahy, Chairman Irish Branch; Mr Dermot Roughan, Hon. Secretary; Judge Donagh McDonagh SC.



Golf Outing 2004

The fifth Annual Golf Outing took place on Thursday 17th June, 2004 at Glen o' the Downs Golf Club and was kindly sponsored by Deloitte & Touche and McCann Fitzgerald. Eighteen members and their guests participated in a most enjoyable round played in pleasant conditions. Dinner followed in the evening and the Vice-Chairman, James Macken SC, presented the prizes. Scoring was Stableford. Congratulations to:- 1st, Eamonn Walsh (10) 40 Points; 2nd Kevin Brady (22) 36 Points; 3rd Michael O'Reilly (15) 33 Points.

Annual Lunch 2004

A Members' Luncheon took place on 12th March 2004 in the Conrad Hotel, Earlsfort Terrace, Dublin 2. The Guest Speaker, Mr Dair Farrar Hockley, the Director General of the Chartered Institute of Arbitrators, spoke of recent developments in the Institute and the opportunities in different sectors of business namely Insurance/Re-insurance, IT & Media, Sport, the Environment and Consumer Disputes across the EU (EEJ Net).



Dr Nael G. Bunn, Mr Dair Farrar Hockley, Mr John McCoy

Courses

In addition to the very successful Entry Course for Arbitration directed by Bernard Gogarty in November, the Branch also ran two Mediation Courses in June and November, both of which were directed by Mr James Bridgeman. Peter Fenn and Anna Machin were the lead tutors on both Mediation Courses.

Diary 2005

Annual Luncheon A Members' Luncheon will be held in the St. Stephen's Green Hibernian Club, St Stephen's Green, Dublin 2 on Friday 11th March 2005.

AGM: The AGM of the Irish Branch will be held on Wednesday 27th April 2005 in the Conrad Hotel, Earlsfort Terrace, Dublin 2 commencing at 6pm. Light refreshments will be served following the meeting.

Annual Lecture: Mr Peter Wolrich, the Chairman of the ICC Commission in Paris, has kindly agreed to deliver the Branch's Annual Lecture on a topic relating to International Arbitration and the ICC. Details of the date and venue of the Lecture, which will be held in the Spring, will be published at a later date.

LEGAL BRIEF

NOTES ON CASES AND MATERIALS

Gulliver v Matheson Ormsby Prentice, Supreme Court, 19 December 2003

Hardiman J, Fennelly J, and Geoghegan J who delivered the judgment.

Background: The Defendants/Respondents are a leading firm of Solicitors in Dublin. The Plaintiff/Appellant is a tax adviser and specialist but not a Solicitor. A dispute arose from his claim that he had become a full equity partner in the firm. The main points of contention were whether:

- (1) The Appellant's rights and obligations as against the Respondents arose solely from a memo of understanding and related documents;
- (2) The dispute regarding the Appellant's alleged partnership had to be referred to arbitration under the arbitration clause.

The Appellant considered that he was not bound by the arbitration clause because his claimed partnership did not arise from the terms of the memo of understanding.

The Respondents brought a motion to stay legal proceedings pending reference to arbitration. The High Court, O'Sullivan J ex tempore, granted a stay on proceedings but the Appellant appealed that order to the Supreme Court.

Decided: There was essentially a single dispute i.e. whether or not the Plaintiff was a partner of the Respondents. That dispute was one "in relation to the relevant agreement" and also "in relation to the termination or validity" of the agreement. The dispute was arbitrable under the arbitration clause and a stay on legal proceedings had to be granted (sect. 5, Arbitration Act 1980). The appeal was dismissed.

Comment: The judgement included useful references to the meaning and interpretation of the following terms: disputes "in relation to" an agreement or to the termination or validity of an agreement, and also disputes "arising out of" contracts. The general trend is to give a wide meaning to those terms. In that context, books were cited: Russell on Arbitration, 22nd ed, pages 59-60; Law and Practice of Commercial Arbitration in England, Mustill and Boyd, 2nd ed. Pages 119 and 120.

McCarthy v Keame, Eireann International Finance Brokers Ltd, Warrantell Ltd., & Desmond Peelo, High Court, Lavan J 24 July 2003

Background: The Plaintiff sought orders: (1) setting aside the award of the fourth named Defendant (D. Peelo) as arbitrator in a dispute between the Plaintiff and the other Defendants; (2) removing Mr. Peelo as arbitrator, under sects. 37 & 38, Arbitration Act 1954 (as amended) and Order 56, Rule 4, Superior Court Rules. Other ancillary reliefs and costs were also sought.

Background: There was much technical detail about company structures, shareholding and related law. Both the Plaintiff and first named Defendant were directors of, and shareholders in, the second named Defendant (Eireann International).

Both parties were also shareholders in companies associated with that company.

The Plaintiff and first named Defendant conducted the affairs of Eireann International and its associated companies on a quasi partnership basis.

The Plaintiff took an earlier action in the High Court against the first and second Defendants claiming oppression under sect. 205, Companies Act 1963. Arising from those proceedings, Mr. Peelo agreed to value relevant shares. His appointment was varied to allow him to act as arbitrator rather than expert. As arbitrator, he made various rulings regarding procedures and the scope of the arbitration.

The Plaintiff took legal proceedings under sects. 37 and 38, Arbitration Act 1954 and Order 56, Rule 4, seeking to have the arbitrator removed and his award set aside on the basis of misconduct on many grounds. The Plaintiff claimed that the arbitration was conducted in an unreasonable way and had failed to give the Plaintiff due process and fair procedures. Those claims were contested. The arbitrator was seriously concerned that his integrity and honesty were called into question.

Decision: The Plaintiff, being disappointed with the arbitrator's fair and proper valuation of shares, sought to raise grounds to set aside the award. The matters complained of had no significant part up to and during the arbitration. No mistake of law appeared on the face of the award. The arbitrator conducted himself correctly within the terms of his appointment and made his award accordingly. Any prejudice or bias perceived by the Plaintiff should have been asserted during the arbitration and not subsequent to the award being made. The orders and relief, which the Plaintiff sought, were refused. The arbitrator's award was upheld.

Comment: This important judgement, relevant to company law, share valuation, and the courts' jurisdiction in arbitration matters, including remitting awards, upheld the arbitral process in line with the trend in Irish courts decisions. The main ones, such as Keenan v Shield [1988] IR 89, approved by the Supreme Court on 20 July 1999 in Sheehan v FBD Insurance were cited in the judgement. Also cited relevant to mistakes on the face of award: Tersons v Stevenage [1963] 3 All England Reports 863.

Anthony P Quinn, Barrister, FCI Arb

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