

ARBITRATION NEWS

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



Irish
Branch

CIArb

Issue 25 July 2007

CHAIRMAN'S ADDRESS



Mr. Joe Behan, The
Chairman of the Irish Branch
of The Chartered Institute of
Arbitrators

John Glynn, Mr. Aedan McGovern, Mr. Michael Murphy.

I salute you in your choice and welcome them, as they will add a new dimension and energy to the existing committee. As Chairman I intend to utilize their expertise, skills, wealth of knowledge and years of experience in a manner that will best serve you the members.

The focus of my chairmanship with the support of my committee will be to implement several areas of positive change for the Branch namely:

- To increase the numbers of schemes so that more nominations can go to the members and in addition to strengthen and improve the existing schemes.
- Improve and give variety in our educational and training programme.
- Enable Irish members to do peer interviews for Fellowship in Ireland.
- Improve our profile in the mediation field.

I intend to create a process to enhance the image of our Institute by encouraging links and debate with the Insurance Industry, Export industry, Health Services, Local Authorities and others.

I want to see our Institute named in contract dispute resolution clauses as the nominating body for Arbitrator, Mediator and Conciliator.

I see a need for the Institute to impact and support not only Dublin based events and training but countrywide. Our recent Symposium on Dispute Resolution held in

Engineers Ireland demonstrated the possibility of five major professional bodies collaborating to make such an event possible.

I am in the fortunate position to have taken over a Branch that is financially sound with good administration systems in place and a committee fully committed to the future wellbeing of the Branch.

As members I encourage your support, involvement and commitment to help build an Institute to be a world leader in the promotion and education of those involved in ADR, futuristic in its approach to dispute resolution and open to concepts that would further develop and enhance our organization.

Dr. Nael Bunni has generously agreed to run an Award Writing course to be held at the end of September. In addition we will soon put a new conciliation training programme into effect.

We have a full diary in place for our members which started with the Annual Golf Classic on the 22nd June. The outing was a tremendous success.

November will see a major event taking place in Dublin with a Trustees meeting, Branch Officers meeting and a two day conference incorporating Gala Ball and associated events. The event will take place in The College of Physicians. We are expecting a considerable number of overseas visitors from many continents for this event.

To conclude, I am looking forward to meeting with members during the course of my term as Chairman and I would encourage you to take part in as many events as possible.

Joe Behan
Chairman

Items of Interest in this Issue ...

- **Chairman's Address**
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- **Article by Mr. Brian Hutchinson**
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Committee 2007-2008

Joe Behan, Chairman (Consulting Engineer)

Ciaran Fahy, Vice-Chairman (Consulting Engineer)

Anthony Hussey, Honorary Secretary (Solicitor)

Mary Griffith, Honorary Treasurer (Quantity Surveyor)

John F.F.F. O'Brien, Public Relations Officer (Dispute Resolution Consultant)

Rowena Mulcahy (Solicitor)

Johnnie McCoy (Barrister & Lecturer)

Brian Anderson (Chartered Quantity Surveyor)

John Glynn (Civil Engineer and Contracts Manager)

Aedan McGovern (Barrister)

Michael G. Murphy (Claims Manager)



*Top left to right: John FFF O'Brien, PRO; Aedan McGovern; Anthony Hussey, Hon. Secretary; Michael Murphy; Johnnie McCoy; Mary Griffith, Hon. Treasurer
Bottom left to right: Ciaran Fahy, Vice-Chairman; Joe Behan, Chairman; Rowena Mulcahy*

MEMBERSHIP

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

Mr. D. J. Myers (Co Wicklow)
Mr. J. G. Kane (Co Wicklow)
Mr. B. J. Herbots (Dublin)
Mr. B. Chapman (Dublin)
Ms C. Cashin (Dublin)
Mr. J. Fielden (Dublin)
Mr. A. Sulwinski (Dublin)
Ms U. O'Connor (Dublin)
Mr. B. Grahame (Co Down)
Mr. J. Hutcheson (Co Down)
Mr. J. Evans (Dublin)
Mr. P. Smyth (Co Down)
Ms T. Horan (Co Kerry)
Ms C. G. Donnelly (Belfast)
Ms C. Avery (Belfast)

Mrs. L.F. Aitcheson (Co Down)
Ms T. Jawad-Sallar (Dublin)
Mr. F. Grogan (Waterford)
Mr. P.S. Brady (Dublin)
Mr. D. Nevin (Dublin)
Ms R. Henry (Dublin)
Mr. K. O'Regan (Co Cork)
Mr. A. J. J. Donaghy (Co Kildare)
Mr. L. F. O'Brien (Co Louth)
Mr. A. Tapley (Dublin)
Mr. K. M. Halley (Co Wicklow)
Mr. M. Whelan (Dublin)
Mr. J. O. Kinch (Dublin)
Mr. M. Butler (Dublin)
Mr. M. P. Naughton (Galway)

Ms F. M. P. Meenan (Dublin)
Mr. C. A. Mitchell (Co Wicklow)
Mr. T. Byrne (Kilkenny)
Ms. R. Behan (Co Wicklow)
Mr. J. P. Evans (Dublin)
Mr. M. Hutch (Dublin)
Mr. J.A. Curtin (Dublin)
Mr. P.A. Shaffrey (Dublin)
Mr. W.D. Malone (Co. Mayo)
Mr. D. Smyth (Dublin)
Mr. G. McManus (Co. Down)
Mr. J. Curran (Co Dublin)
Mr. R. Gibbons (Dublin)
Mr. B. Mannering (Dublin)

DIARY

Event	Details
Award Writing Course. Course Director—Dr. Nael Bunni	28 September 2007 , The Grand Hotel, Malahide, Co Dublin. Fee—€200+VAT. For registration please contact the Branch office.
Consumer Arbitration Colloquium on SIMI and Holiday Schemes	13 October 2007 . Further details will follow.
International Conference on Dispute Resolution	3-4 November 2007 , The Royal College of Physicians, Number 6 Kildare Street, Dublin 2. Further details will follow.
Introduction to Arbitration Entry Course in conjunction with the Insurance Institute of Ireland	8 November 2007 , The Insurance Institute of Ireland, 39 Molesworth Street, Dublin 2. Further details will follow.
Annual Dinner	30 November 2007 , Westin Dublin Hotel, Westmoreland Street, Dublin 2. Further details will follow.

EVENTS

NI Chapter Host Sir Michael Latham



The Northern Ireland Chapter of the CI Arb Irish Branch had the pleasure in hosting one of the most influential persons in the

UK Construction Industry of modern times.

To those involved in the Construction Industry, Sir Michael Latham needs no introduction as all will have some knowledge of his joint UK Government/Industry Report “*Constructing the Team*” (1994). It was this publication that was the catalyst for the Construction Act (1996) that introduced amongst other things, a statutory right to Adjudication as a form of dispute resolution throughout the UK, including Northern Ireland.

The success of Adjudication and the improvement of the Industry’s cash flow has been overwhelming, but not without its critics.

The UK Government are currently undertaking a review of the Construction Act and Sir Michael was able to provide the attendees with an invaluable insight into the various proposals for change and the actions (or inactions) of the UK Government’s response to the Industry’s concerns. Being a former Member of the Westminster Parliament himself, Sir Michael often lightened the evening discussion with anecdotes of his experiences dealing with the wheels and cogs of the Parliamentary machinery.

As the Irish Government move toward the introduction of a new Government Contract, those of us involved in the world of dispute resolution, both in the North of Ireland



Mr Michael McCarthy; Sir Michael Latham; Mr James Golden

and the Republic of Ireland, debated over a glass of wine if the opportunity for the introduction of an Adjudication type procedure was being missed with these contracts.

The evening talk of Sir Michael Latham was the Christmas gathering of the Northern Ireland Chapter, and concluded a successful 2006 for the Chapter as it develops its membership base and continues to make available opportunities to its members for further training; informative talks; and networking opportunities.

On behalf of the Northern Ireland Chapter Committee, I would like to take the opportunity to wish our members a prosperous 2007 and would ask if any member wishes to propose further events, that they approach any member of the Committee, or they may attend the Committee meetings which remain open to all members and are held on a bi-monthly basis. Contact details are available on the Northern Ireland Chapter link of the CI Arb Irish Branch website.

Jarlath Kearney

Annual Lunch

This years Annual Lunch was held on 9 March 2007 in the Kildare Street and University Club, St. Stephen’s Green, Dublin.

One hundred people attended a most successful lunch. The guest speaker was Mr. Rory Brady S.C. Attorney General, who met members of the Committee in his offices for a photo shoot before the lunch.

We are very grateful to the Attorney General for agreeing to be our guest speaker and for entertaining our members and guests with a great speech.

Our thanks to the Kildare Street and University Club for hosting the event.



John F.F. O'Brien, P.R.O.; Rowena Mulcahy; Johnnie McCoy; Rory Brady SC Attorney General; Ciaran Fahy, Vice-Chairman; Joe Behan, Chairman

Events

Mediator Training Seminar

A mediator training seminar was held on the 2 and 3 March 2007 in the Stillorgan Park Hotel in Dublin.

Trainers were Joe Behan, Julie McAuliffe and Ruth Behan. There were twelve participants from all parts of the Island including, Cork, Clare, Belfast, Tipperary and Dublin.

The event was very successful and there was fantastic feedback from the participants.

Joe hopes to have more of these training seminars in the next year as they present a great opportunity for mediators to learn their skills in a safe environment, where difficult scenarios are dealt with.

Introduction to Arbitration Course in conjunction with the Insurance Institute of Ireland

A one day Introduction to Arbitration Course was held in the Insurance Institute's headquarters in Dublin on 27 February 2007. There were 30 participants in a hectic days work.

The course director was Bernard Gogarty and the tutors were Jim Bridgeman, Roy Sherlock and Joe Behan. It was a very successful event and special thanks are due to Jim Bridgeman for arranging and organising the event with the Insurance Institute of Ireland.

It is hoped to run a further course before Christmas 2007.

Introduction to Mediation Course in conjunction with the H.S.E.

A two-day Introduction to Mediation Course was held in the H.S.E. Headquarters in Tullamore on 21 and 22 of May 2007. There was a total of 21 participants on this very successful course. The course director was Jim Bridgeman with tutor Joe Behan and facilitator Ruth Behan.

Many thanks to William Kennedy of the Irish Medical Council who travelled to Tullamore to give a presentation on the new Act. Our hosts, the H.S.E., treated us extremely well and our thanks to Greg Price, Nicola Williams and Mila Whelan for all their help in organising the venue and course.

A very special thanks to Jim Bridgeman for setting up and directing the course. We hope to repeat this course again soon.



William Kennedy; Joe Behan; James Bridgeman

ARTICLE

New Directions in the Law on Arbitration Agreements:

Fiona Trust v. Yuri Privalov

by G. Brian Hutchinson, Vice Dean, School of Law, UCD



enforcing an arbitration clause in a contract that one of the parties had purported to rescind because of al-

On 24 January 2007, the English Court of Appeal delivered an important judgment compelling arbitration by

leged bribery. The Court held the arbitration clause to be separate and autonomous from the contract containing it, so that unless the alleged bribery related specifically to the arbitration clause itself, the clause survived and the validity of the contract as a whole remained to be determined by the arbitrators, not the courts. The Court also took the opportunity to bypass a long line of English authority (also followed in the Irish Courts) that the form of words used in an arbitration clause narrows its scope – in particular, that a clause referring disputes arising "under" a contract to

arbitration is narrower than a clause referring disputes arising "out of" a contract – and concluded that arbitration clauses in international commercial contracts should be given a liberal interpretation.

Background to the Case

The case, *Fiona Trust & Holding Corporation & Ors v. Yuri Privalov & Ors*, [2007] EWCA Civ 20 arose from a wider dispute between the Russian Sovcomflot group of companies and a Mr Nikitin who is alleged to have suc-

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cessfully bribed one or more of the group's directors or employees. In the dispute before the Court of Appeal three separate chartering companies ("the charterers") commenced arbitration proceedings in London under the terms of charterparty contracts entered into with Sovcomflot companies as owners ("the owners"). The owners applied to court to restrain the arbitral proceedings on the basis that they had rescinded the contracts, and therefore the arbitration agreements contained within them, on grounds of bribery. The charterers responded by seeking a stay of the court action. At first instance, [2006] EWHC 2583 (Comm), Morison J. declined the stay and granted interlocutory injunctions restraining the arbitration proceedings pending trial of the court action.

The Court of Appeal

The Court of Appeal reversed the decision at first instance. Of particular note are the Court's decisions with regard to *separability* and *construction* of arbitration clauses.

a) Separability

It is a well established principle of English law since the 1990s (and since the 1960s in other jurisdictions such as France and the US) that an arbitration clause is *separable* from the contract containing it and thus, as a separate contract, is capable of surviving the invalidity or termination of the main contract: *Heyman v. Darwins Ltd* [1942] AC 356, *Harbour Assurance Co (UK) v. Kansa General International Insurance Co* [1993] QB 701. Thus, even where the entire contract is alleged to be invalid, that invalidity must be determined by an arbitral tribunal established under the arbitration clause, and not by a court.

The owners argued that they would not have made any contract at all had they been aware of the alleged bribery and that accordingly the arbitration agreement was non-binding. They argued that there was no consensus *ad idem* between the parties as a result. The Court of Appeal disagreed, however, saying:

"It is not enough to say that the bribery impeaches the whole contract unless there is some special reason for saying that the bribery

impeaches the arbitration clause in particular. There is no such reason here." (Para. 29 of the judgment).

Accordingly, any evidence of bribery or illegality must go to the root of the arbitration clause itself before the courts will intervene to declare the arbitration agreement inoperative.

(b) Construction

The owners argued that the arbitration clause was not drafted widely enough in any event to encompass disputes involving rescission for alleged bribery and corruption. They pointed to a long line of English authorities (notably *The Evje* [1975] AC 797, *The Playa Larga* [1983] 2 Lloyd's Rep 171, *Antonis P Lemos* [1985] AC 711, *Ashville Investments Ltd v Elmer Contractors Ltd* [1989] QB 488, *Fillite (Runcorn) v Aqua-Lift* (1989) 26 Const LR 66, and *The Angelic Grace* [1995] 1 Lloyd's Rep 87) which all established that arbitration clauses referring all disputes arising "in connection with" or arising "out of" the contract containing the clause were wide enough to encompass not merely claims for breach of that contract, but also claims for breach of related contracts, closely related torts, claims for rescission, misrepresentation, and even quasi-contractual relief, while arbitration clauses referring disputes arising "under" the contract were only wide enough to encompass claims for breach of that contract alone, and were not wide enough to cover claims involving rescission, tort, or quasi-contract.

The clause in question contained both formulations, referring first to disputes "arising under" the contract, and later to disputes which had "arisen out of" the contract. The Court of Appeal discussed the previous decisions and concluded:

"Not all these authorities are readily reconcilable ... For our part we consider that the time has now come for a line of some sort to be drawn and a fresh start made at any rate for cases arising in an international commercial context. Ordinary business men would be surprised at the

nice distinctions drawn in the cases and the time taken up by argument in debating whether a particular case falls within one set of words or another very similar set of words. If business men go to the trouble of agreeing that their disputes be heard in the courts of a particular country or by a tribunal of their choice they do not expect ... that time and expense will be taken in lengthy argument about the nature of particular causes of action and whether any particular cause of action comes within the meaning of the particular phrase they have chosen ... [I]t seems to us any jurisdiction or arbitration clause in an international commercial contract should be liberally construed." (Paras. 17 & 18 of the judgment)

The Court of Appeal therefore concluded that *international* arbitration clauses should be given a broad or liberal interpretation and should be presumed to encompass all manner of disputes between the parties in connection with the contract - not merely disputes concerning breach of that contract but disputes concerning the validity of the contract, and rescission of the contract, as well.

Implications for Irish Law

The decision of the Court of Appeal in *Fiona Trust v. Yuri Privalov* firmly endorses the separability principle as part of English Law. An arbitration agreement will survive claims of illegality, bribery, misrepresentation, or other defects in the main contract unless they go to the root of the clause itself, and the arbitrators, not the courts, will decide on substance of those claims. The Irish Courts have not as yet had the opportunity to embrace the separability principle so fully. While the

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the High Court has employed it in repudiation cases such as *Parkarran v. M & P Construction* [1996] 1 IR 83 (repudiation of contract for alleged fundamental breach did not extend to arbitration clause) and *Doyle v. Irish National Insurance Company* [1998] 1 IR 89 (repudiation of insurance contract non-disclosure of material fact (misrepresentation) did not impugn arbitration clause) it remains to be seen whether the Irish courts will go so far where illegality of the contract containing the arbitration clause is alleged. It would be surprising if the Irish Courts were to decide differently, particularly given the widespread endorsement of the principle in other jurisdictions.

The decision further marks a new departure in the English law governing

the interpretation of the scope of arbitration clauses. The Court of Appeal bypassed the established technical, perhaps pedantic, approach in favour of a liberal interpretation. The Irish Courts have employed or alluded to the older approach on a number of occasions - see for example *Templeville Developments Ltd v. The Leopardstown Club and Ors* [2006] IEHC 129; *Gulliver v. Brady & Ors* [2003] IESC 68; *Carroll (a minor) v. Budget Travel*, High Court, 7 December 1995 (Morris J). Though it might be argued that this evidences a less liberal approach on the part of the Irish courts it is worth noting that in each of the above cases the court found *in favour* of arbitration by finding the dispute in question to be within the scope of the arbitration clause. It should also be noted that the new approach adopted in *Fiona*

Trust v. Yuri Privalov is limited to international arbitrations – where parties are presumed to wish to keep all their differences away from national courts. It may be of less relevance in the domestic context and should not be followed blindly. However, should the issue arise before the Irish courts in the context of an international arbitration it would be difficult to decide differently – indeed the modern approach internationally is towards a liberal approach (see eg *Genesco Inc v Kakiuchi* 815 F2d 847 (Court of Appeals, US 2nd Circuit, (NY) 1987) – as a matter of federal law, the US courts will construe an arbitration clause "liberally" i.e. in favour of arbitration) and it would certainly be in Ireland's interests to follow suit. ■

OBITUARY

JAMES MACKEN S.C. FCI Arb (1945-2007)



James Macken S.C. was one of the most highly regarded barristers at the Irish Bar.

An accomplished linguist, he had a fluency in Irish, French, Spanish and Italian and could converse in German. His first years at school were spent at The Crescent in Limerick and then he attended Gonzaga College when his family moved to Dublin. Following a successful undergraduate career at UCD, he won a scholarship to the Sorbonne where he attained his MA. Following his return to Dublin to read law at the Kings Inns, he was called to the Bar in Michaelmas term 1975.

As a barrister, he practiced and expected, the highest standards, traditions and ethical practices of the bar. This was universally recognised by his colleagues. His strength was advocacy and never felt a need to rely on ambush or take a colleague short. A difficulty encountered when writing an obituary for James is that he had a certain attitude towards clichés. That being said, anyone who knew James would testify that he did not suffer fools gladly and that is one cliché that he would permit! I first met James when he was a junior counsel. He came highly recommended to me as a Master and he agreed to take me on as his devil and that was the beginning of a long friendship.

While his strongest practice area was in Local Government and Planning Law, his practice went beyond those areas, particularly as a junior counsel. He retained an active interest in the law and legal matters and was called to the bar of England and Wales in 1987. It was inevitable that he would take silk and when he did, in Hillary term 1995, he took his place among the leaders of the planning bar. His publications survive him as a testament to his expertise.

He became a highly respected arbitrator and advisor on arbitration law. He was a Fellow of the Chartered Institute of Arbitrators and he served on the Committee of the Irish Branch for a number of years as Hon. Secretary, Vice-Chairman and as Chairman in 2005-2006. It was during that year that his illness was diagnosed but he subsequently enjoyed a full remission that allowed him to resume a full and active life.

He had a passion for the sea. He was a member of the Howth Yacht Club and an accomplished sailor. He retained his interest in literature and read widely. He enjoyed music, travel and the good things in life, but while he had many interests his greatest passion was his family. He was a very kind and cultured man and very proud of his Irish and European traditions. It was always a pleasure to be in James' company and he will be missed.

Ar dheis Dé go raibh a anam.

J.B.

OBITUARY

TIM SULLIVAN BE, BSc, DIC (1925—2006)



The death has taken place, in December 2006, of Tim Sullivan, well known consulting engineer and former Chairman of the Chartered Institute of Arbitrators Irish Branch (1993-1994).

Born in Dublin in 1925, Tim attended O'Connell's School and University College Dublin, from where he graduated in 1945 with a Bachelor of Engineering Degree. He then studied water-borne tropical diseases at Imperial College London, on a Rockefeller scholarship, before returning to Dublin. Following a brief period with Dublin Corporation, in 1951 he joined T. J. O'Connor, Consulting Engineers where he was involved in many water supply and wastewater treatment projects and in the design of Galway Cathedral.

In 1969 he became a partner in Dermott C. Coyle and Partners, Consulting Engineers, where Shay Ryan first made his acquaintance. An extremely capable and meticulous engineer, he was responsible for many significant projects, the largest probably being the Liffey Aqueduct Duplication Scheme.

Tim was a scrupulously fair and conscientious arbitrator. However, he was not a man who one could bluff or over whose eyes one could pull wool as he had a large streak of common sense (coupled with his great experience) and neither did he suffer fools gladly. Michael O'Reilly thinks that the only case in which he was subjected to a challenge in the courts he was emphatically vindicated in his actions in that arbitration by no less a body than the Supreme Court.

When Dermott Coyle retired Tim carried on the consultancy until ill health forced him reluctantly into retirement in 1997.

In 1963 Tim married Clare Corbett and together they brought up four children, Sinéad, Caitriona (who predeceased him), Áine and Eoin. A dedicated family man, he had no formal hobbies, but he read extensively, and could discourse knowledgeably on a wide variety of topics including History, Archaeology and Poetry. Shay Ryan frequently found himself arriving home very late, having dropped in to his office for a brief chat which ended up as a long discussion.

He will be sadly missed by all who knew him.

Shay Ryan and Michael O'Reilly

OBITUARY

DAN McCRYSTAL MCIarb FRICS FSCS (1940-2006)



A chartered quantity surveyor by trade and a member of the Chartered Institute of Arbitrators, Dan started his career in Belfast in the late 1950's, moving to Dublin in 1973. He set up his practice DB McCrystal & Co in Dublin in 1978 and over the years built his practice and reputation by providing a wide range of services to include conciliation and arbitration, initially as an expert witness and recently in the Chair. Cases varied immensely from surveying matters to those dealing with protected structures.

Dan had a deep interest in conservation and older buildings and he was the only RICS accredited conservation surveyor practising in the Republic of Ireland until recently.

Dan was keen to share his knowledge and experiences with others and thoroughly enjoyed lecturing and presenting.

Dan's professionalism was highly respected; he was very conscientious and impartial and had a very sharp intellect, which proved very useful when acting as an expert witness. He was witty with a unique sense of humour. He will be sadly missed by all those who knew him on both a personal and professional level.

Maeve Coffey

Legal Brief

Gaya Ltd & Applied Medical Resources Corporation, High Court - Commercial 2006/701P [2006] IEHC 402

Interpreting dispute resolution and arbitration clauses - Defendant's submission construed as application to stay proceedings

Background: The plaintiff, Gaya, an Irish company, made agreements with the defendant, Applied, a Californian corporation. The secrecy agreement included clauses on dispute resolution and arbitration. Gaya claimed that confidential information was used in breach of contract. From oral submissions in urgent proceedings, the case was treated as defendant's application under s. 5(1), Arbitration Act 1980 to stay legal proceedings.

Held by Kelly J, *ex tempore* on 30 June 2006 that claims made under licence and option agreements must be stayed. So also should claims under the secrecy agreement as courts presume that parties do not intend the inconvenience of disputes being heard in different places. An order was made staying all legal proceedings.

Cases cited: On interpreting arbitration clauses liberally and not restrictively: *Rau v Cross Pacific* [2005] Federal Appeal Court of Australia, 1102, *Allsop J Francis Travel v Virgin Atlantic* [1996] 39 New South Wales LR 430

Limerick Co Co v Uniform Construction Ltd. High Court, Commercial, 2005/420 & 445 SP 2005/72Com [2005] IEHC 347. Error of law on face of award- Alleged breach of complex construction contract- Standard of review- Materials to be considered- Can courts review matters referred to arbitrator? - Jurisdiction under common law and statute to set aside or remit award- Misconduct- Was arbitrator entitled to decide on matters not put to parties?

Background: The plaintiff challenged various aspects of an interim award of the arbitrator who was named as defendant in complex proceedings which were consolidated. The challenged was based on the Arbitration Act, 1980, s.38(1), setting an award aside, s 36(1) remission to arbitrator, and also the courts' common law jurisdiction on setting aside and remission because of alleged errors of law on the face of the award. Misconduct was alleged under specified headings.

Held by Clarke J on 1 November 2005, in a long judgment of sixty pages, that none of the issues raised were sufficient to warrant the court to exercise its jurisdiction to interfere with the award. An order setting the award aside was refused. (In general, the arbitral process was upheld).

Cases cited included: *Keenan v Shield* [1988] IR 89, McCarthy J, *McStay v Assicurazione*, [1991] IRLM 237, at 243 Finlay CJ in the Supreme Court, and *Church and General v Connolly and McLoughlin*, High Court, Costello J, 7 May 1981, on courts' restrictive jurisdiction at common law to set aside or remit an award even where there was an fundamental error on its face. *McStay v Assicurazione* [1991] IRLM 237 at 243, Finlay CJ on courts' discretion to intervene in arbitration in interests of justice. *Denny v Minister for Social Welfare* [1988] 1 IR 3 and *Carrickdale Hotel v Controller of Patents* [2004] 3 IR 410 on courts' deference to specialist arbitrations.

These notes are not intended as legal or other professional advice which should be obtained if considered necessary.

ANTHONY P QUINN, Barrister, FCI Arb, Dip Arb Law, Dip Intl Arb Law

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