



## CHAIRMAN'S ADDRESS



The political and economic outlook has worsened significantly since I last wrote to you in December 2008 and there is now a real sense of foreboding in the country. There has been a significant reduction in output and loss of jobs most notably in the construction industry which has traditionally been one of the main areas of activity for this Branch.

This return of hard times has already started to lead to an upsurge in disputes and this is evident in an increased workload of litigation cases coming before the Courts. Within the Branch itself I have noticed a decrease in the number of references under our two consumer arbitration schemes and also under the NRA/IFA assessment scheme. However there has been a marked increase in ad hoc references and in particular in parties asking us for a list of three arbitrators to be put forward for consideration.

In order to deal with this demand I wrote to all of the Fellows some time ago inviting them to provide me with a summary CV. The response to this has been good and it is particularly useful as a reference when such requests are made. At this stage there are still some Fellows who have not returned CVs and if you are in that category I strongly suggest you do so as soon as possible.

Since I last wrote the Branch was strongly represented at the recent seminar organised by the

Law Reform Commission on Alternative Dispute Resolution while on 31 January last we organised and ran a very successful seminar on the Arbitration Bill 2008 in conjunction with the Bar Council and the Law Society. A more detailed account of the seminar is provided within this newsletter and in addition

the report of the seminar is now available on our website. The report has been sent to the government and hopefully its recommendations will be incorporated within the new Act as passed by the Dáil later this year.

At its most recent meeting the Committee decided to upgrade our website. Some two years ago this was improved to provide for online booking of events but is now in need of a more comprehensive overhaul to bring it in line with modern practice and hopefully that will be completed within the next couple of months.

Our Annual Lunch has been arranged for Friday, 27 March 2009 in the Radisson Hotel at Golden Lane. This is a modern four-star hotel within walking distance of Grafton St and we are fortunate to have as guest of honour Brendan Barrett who has been one of the leading figures in the Irish construction industry for over 20 years. I think this is particularly appropriate given our involvement with, and indeed reliance upon, the construction industry over the years. Consequently I urge you all to attend what is always a most pleasant social event and I invite you to bring non members as guests.

Finally the term of this Committee is starting to draw to a close and the Annual General Meeting has been fixed for Tuesday, 21 April 2009. You will be formally notified of this in due course and I urge you to attend in order to make your views felt and to participate in the election of the new Committee.

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## Arbitration Bill 2008 Seminar

A half day seminar on the Arbitration Bill 2008 took place at the premises of Engineers Ireland in Clyde Road on Saturday, 31 January 2009. The event was jointly organised by the Irish branch of CI Arb together with the Bar Council and the Law Society and it was attended by a full house of over 100 delegates.



Chairman, Ciarán Fahy introducing panelists

The purpose of the seminar was to give all of those involved in arbitration an opportunity to comment on the Bill which is currently at committee stage in the Dáil and which is expected to be passed into legislation within the next few months. The event was organised to involve as wide a group as possible and consequently speakers were drawn from not only the three organising bodies but also the Society of Chartered Surveyors, the Royal Institute of Architects of Ireland, Engineers Ireland, the Association Of Consulting Engineers of Ireland as well as the UCD School of Law and the Irish High Court.



Chairman, Ciarán Fahy, Michael Carrigan & Dr. Nael Bunni

The event was chaired by Ciarán Fahy who set the scene initially by saying that the seminar was based on a welcome for the government's approach and in particular the adoption of the UNCITRAL Model Law in domestic arbitrations. He also made the point that the seminar should be seen as a continuation of the work from previous seminars in April 2007 and subsequently in October 2008. He also explained that in the first half of the morning there was to be a general introduction of the Bill followed by a panel discussion with audience participation on various topics which had given rise to comment while the second part would focus on the role of the High Court under the provisions of the new Bill.

The first speaker Michael Carrigan, Partner Eugene F Collins Solicitors, described the structure and layout of the Bill as well as its relationship with the UNCITRAL Law. There then followed a discussion involving the audience and the panel which comprised: Mr Sean MacCormack, President SCS, Mr Brian Hutchinson, School of Law UCD, Mr James O'Donoghue, Partner Bluett & O'Donoghue Architects, Mr Anthony Hussey, Partner Hussey Fraser Solicitors.



Contributors, Colm Ó'hOisín & Dr. Nael Bunni



Mr. Justice Frank Clarke, Colm Ó'hOisín & Chairman Ciarán Fahy

In the second half of the morning Mr Colm Ó'hOisín SC presented a paper "*Section 32: do we really need additional grounds for setting aside arbitral awards?*" and this was responded to by Prof Dr Nael Bunni. This in turn was followed by a keynote address from Mr Justice Frank Clarke under the title "*The Role of the High Court*". These contributions gave way to a lively audience discussion before the Chairman brought matters to a close and attempted to summarise the deliberations. A report of the seminar has been prepared which sets out full details of the discussions and contributions. It is being widely disseminated and it has already been sent to the Minister for Justice who has responsibility for moving the Bill through the Dáil. A copy of the report is available on the website : [www.arbitration.ie](http://www.arbitration.ie)

## Young Members' Sports Arbitration Seminar



The seminar on sports arbitration was given by David Casserly BL photographed above.

The Young Members' Committee (Larry Fenelon Chair, John Cheatle BL, and Charles Mitchell) organised a seminar for our young members which took place on Friday 6 February 2009 at the St Stephen's Green Club.



Young Members



Larry Fenelon, Chairman, Ciáran Fahy and David Casserly BL

While the inclement weather kept a considerable number of confirmed attendees away those who struggled through the elements were treated to a very interesting presentation on the mechanisms and cases emanating from the Court of Arbitration for Sport (CAS) based in Lausanne, Switzerland. Very positive feedback was received from attendees. Those who seek further information email Larry Fenelon [lphenelon@lemansolicitors.com](mailto:lphenelon@lemansolicitors.com).

## Young Members Mock Mediation

The Young Members' Committee will be in touch shortly with young members (under 35) with a news of their forthcoming mock mediation which will be followed by drinks afterwards. Young members are very much encouraged to participate in these events. You are reminded that these events will contribute towards your CPD requirements as well as giving you an opportunity to meet other young members. If any young members have any suggestions, then you are invited to post those suggestions to [lphenelon@lemansolicitors.com](mailto:lphenelon@lemansolicitors.com).

## Educational Courses

An introduction to arbitration course was held at the Grand Hotel, Malahide, on Monday, 23<sup>rd</sup> February 2009. The course was intended to cater for a maximum of 32 participants and there was a full attendance on the day.

The Course Director was Bernard Gogarty. The lecturers included Aedan McGovern SC (Assistant Course Director), Roy Sherlock and Jim Bridgeman BL, Tutors, and John Cheatle BL acted as Assistant Tutor.

Those who participated in the course are expected to submit a written paper of between 1,000 to 1,500 words. Successful candidates are eligible to apply to the Institute for associate membership (ACIarb).

In light of the high level of interest shown, it is hoped to organise another introductory course in the near future. Entry will be open to members from all professions and backgrounds.

The Irish Branch is organising an introduction to arbitration course in conjunction with Engineers Ireland. This has been fixed for Monday 20 April 2009 at the premises of Engineers Ireland in Clyde Road.

The branch intends to run a training course for mediators in May 2009. A similar course was held last year. A two day assessment will take place at the end of the course. The assessment is open to persons who complete the course and any person who wishes to obtain accreditation with Clarb.

## Scaife - v - Falcon Leisure Group (Overseas) Ltd.

Members dealing with arbitrations under holiday schemes administered by the Irish branch may be interested in a recent Supreme Court case which considered the liability of tour organisers under the provisions of the Package Holidays and Travel Trade Act 1995. The case is Scaife -v- Falcon Leisure Group and is now reported at (2008) 1 Irish Reports, 359.

### Facts

The Plaintiff entered into a contract with the Defendant under which the Defendant was to supply a package holiday in Spain. The package included air flights, holiday accommodation and an evening meal. During the course of her evening meal, the Plaintiff slipped and fell in the hotel restaurant and sustained injuries. The Plaintiff slipped on foot spilt on the floor by a member of the hotel staff.

In the High Court (Herbert J) found for the Plaintiff. The Defendant appealed to the Supreme Court.

### **Package Holiday and Travel Trade Act 1995**

This Act transposed into Irish Law, European Council Directive 1991/314/EEC. Section 20 of the 1995 Act *inter alia* provides that:-

- (i) The organiser shall be liable to the consumer for the proper performance of the obligations under the contract, irrespective of whether such obligations are to be performed by the organiser, the retailer, or other supplier or services.
- (j) The organiser shall be liable to consumer for any damage caused by improper performance of the contract unless the improper performance is due to:-
  - (a) The consumer.  
A third party unconnected with the services, and they are unforeseeable or unavoidable or Force majeure.

### Appeal

The Defendant/Appellant submitted that the 1995 Act not covered in an event of casual negligence of which the Defendant had no knowledge, and over which it could not exercise control. The Defendant further contended that the liability of a tour operator was confined to ensuring that the structure of the hotel premises was safe. The Plaintiff/Respondent argued that the package which the Defendant contracted to provide included the hotel accommodation and an evening meal. The accident occurred in the hotel restaurant during the evening meal. Section 20 of the 1995 Act rendered the Defendant primarily liable to the Plaintiff. The Defendant could escape liability only in three exceptions identified in Section 20(2).

### Decision

The Supreme Court (Hardiman, Fennelly and Macken JJ) dismissed the Appeal and affirmed the Order of the High Court. The Supreme Court stated that the contractual obligations were assumed by the organiser as part of the package holiday contract. These obligations remained those of the organiser, and did not become the independent obligations of the service provider. In the event of any doubt, the provisions of the Directive must be interpreted in the manner most favourable to the person they were intended to protect. The Court expressly rejected the argument put forward by the Defendant/Appellant that the organiser's liability under the contract was confined to ensuring that the structure of the hotel premises was safe. The standard to which acts in question were to be judged was not one of strict liability, but one of reasonable skill and care. In this regard, the Court followed the decision of the Privy Council in Wong Mee Wan -v- Kwan Kin Travel Services Ltd (1996) 1 WLR 38 and the decision of the Irish Courts in McKenna -v- Best Travel Ltd (1998) 3 IR 57.

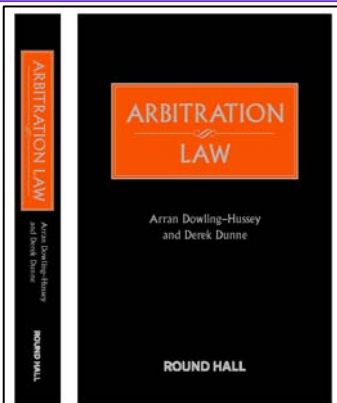
**Aedan McGovern SC, Vice Chairman.**

## Law Reform Commission - ADR

The Branch made a Submission in response to the LRC Consultation Paper published in June '08. The Chairman, Ciaran Fahy, led a delegation to meet the LRC President, The Honourable Mrs. Justice Catherine McGuinness; Ms. Patricia Richard-Clarke, Commissioner; Mr. Byrne, Head of Research; and Ms. White, Researcher in October '08. He also led a five-person delegation to attend a Seminar at the LRC for invited professional bodies and community groups on the 17<sup>th</sup> February of this year. The Seminar was chaired very effectively by Dr. John Bowman. There was strong representation from family law practitioners and social interest groups. There appears to be a high degree of consensus on civil ADR matters and the majority of the Draft LRC Recommendation were supported by attendees. The consultation paper is on the LRC website, it is a very informative read. It is expected that the LRC Report will be submitted to Government in mid '09.

**James O'Donoghue, Hon Secretary**

## Book Review -



*“Arbitration Law”* by Arran Dowling Hussey and Derek Dunne (Round Hall 2008), is an important publication on arbitration law in Ireland, being the first major text on arbitration in a number of years. The express purpose of this text is to provide a comprehensive and up-to-date discussion and overview of the law of domestic arbitration in Ireland. To this end, this text admirably achieves that goal. The text begins by setting out what exactly arbitration is, and compares it with other methods of dispute resolution, such as litigation, conciliation, mediation and expert determination. The book also explains what types of dispute are not arbitrable, as well as those that are.

Issues such as the role, duties and power of an arbitrator, the form and nature of an enforceable arbitration agreement and the conduct of the arbitration (including procedural steps that a party may need to consider in the course of an arbitration) are considered in detail. The authors also address the award itself, as well as considering costs in arbitration. The authors also devote a chapter to the circumstances in which a party may seek to invoke the court to assist it, whilst there is a separate chapter dealing with matters arising after the arbitral hearing which covers recourse against an award and enforcement. The sample precedents included in the book are of practical assistance.

However, the Arbitration Bill 2008, proposes to change arbitration law such that a unitary scheme premised upon the UNCITRAL Model Law will apply to all arbitrations. Whilst the Preface to the text does consider some headline issues likely to arise under the proposed legislation, it remains to be seen how the authors will address this in more detail in any later editions of this text. Notwithstanding that, this text is to be warmly welcomed and the authors commended for their excellent work.

**Gearoid Carey, Matheson Ormsby Prentice**

## Annual Lunch

**FRIDAY 27 MARCH 2009**

12.30p.m.—2.30p.m.

RADISSON HOTEL, GOLDEN LANE, DUBLIN 8.

**Guest of Honour: Mr Brendan Barrett, Chartered Engineer**

Brendan Barrett is MD of BAM Contractors (previously Ascon) since 1986, and is one of the most influential persons in the Irish construction industry.

Booking on line: [www.arbitration.ie](http://www.arbitration.ie)

## A.G.M. - 21 April 2009

**TUESDAY 21 APRIL 2009**

6.30p.m.—8.00p.m.

RADISSON HOTEL, GOLDEN LANE, DUBLIN 8.

Formal notice to all members will follow.

## 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 next and further details will be sent out within the next few weeks. Please contact the office at [ciarb@arbitration.ie](mailto:ciarb@arbitration.ie) if you have any queries.

## Annual Golf Outing June 2009

**Friday 19 June 2009**

POWERSCOURT GOLF CLUB, Enniskerry, Co. Wicklow

A note for your diary - further details to follow.