



THE CHARTERED INSTITUTE OF ARBITRATORS

Issue 10, February 2000

Irish Branch

Chairman's Address

We were privileged to have the Honorary President of the Institute, Lord Justice Anthony Evans, who was accompanied by his wife Caroline, as our guest of honour to our October luncheon, which was held in the Westbury Hotel, Dublin. Lord Justice Evans addressed the members and their guests on the subject of Alternative Dispute Resolution.

It is hoped that there will be an on-going series of luncheons in the future to enable members and their guests to meet on more occasions.



Michael M. Moran, Chairman, Irish Branch (left) and Lord Justice Anthony Evans, Honorary President of the Institute (right).

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The Annual Dinner of the Irish Branch took place in the Royal St. George Yacht Club, Dun Laoghaire, Co. Dublin on 3rd December, 1999. Our guest of honour, the Attorney General, Michael McDowell, S.C. in his address to a full house was very supportive of arbitration as a means of Dispute Resolution. We were also honoured to have had the presence of the President of the Institute, Mr. Neil Kaplan, Q.C. and his wife Paula.

On 22nd January last, the Chairman and the Vice-Chairman travelled to Cork and met with members from the Munster Region in Jurys Hotel, Cork, for a very positive discussion and an up-date on the Holiday Scheme operated by the Irish Branch.

On a social note, an inaugural golf outing and dinner is being arranged for Portmarnock Golf Club in early summer. A booking form will be sent out in due course.

On behalf of the members of the Irish Branch, I would like to take this opportunity to extend to Judge Roderick Murphy, a former Chairman and recent member of the Committee, our best wishes on his appointment as a Judge of the High Court.

Finally, I would remind you that the Annual General Meeting of the Irish Branch will take place on Wednesday 12th April next in the Shelbourne Hotel, Dublin commencing at 6.00pm. I look forward to meeting you there.

Michael M. Moran
Chairman

COURSES FOR THE YEAR 2000

ENTRY COURSE

March 24th, 25th and 26th – The Grand Hotel, Malahide, Co. Dublin.

SPECIAL FELLOWSHIP COURSE – REPEAT AWARD WRITING EXAMINATION

March 26th – The Grand Hotel, Malahide, Co. Dublin.

FELLOWSHIP ASSESSMENT COURSE FOR DIPLOMA HOLDERS FROM U.C.D.

This 1½ day course for holders of the U.C.D. Diploma will take place in June – the venue and date will be notified in due course.

TRANSFER TO MEMBER COURSE

We have, as yet, received no notification from London on the format and structure of this course. When the necessary information is received a transfer course will be organised.

SPECIAL FELLOWSHIP COURSE

Following the introduction of the new Regulations, SFC's are discontinued. However, a course, similar to the old SFC, is, I understand being considered by Headquarters. Again, as with the new Transfer to Member course, we have received no formal information from London as to its format or structure. However, as soon as we have the relevant information a course will be organised.

Anne Bunni - Chairman, Seminars & Functions Sub-committee.

REPORT OF THE LIBRARY SUB-COMMITTEE

A review of the library and its usage has taken place. In addition to the on-going purchase policy of books and journals, the sub-committee Chairman would be pleased to receive any suggestions as to suitable titles to purchase. It is the intention to place a full catalogue of books on the Web Page as soon as possible.

Johnnie McCoy - Chairman, Library Sub-committee.



Legal Brief: Notes on Cases and Materials
Winter 1999/2000

by Anthony P Quinn

**Telenor Invest AS, Plaintiff v. IIU Nominees Ltd and
 Esat Telecom Holdings Ltd, Defendants**

High Court, 20 July 1999, O'Sullivan J

Decision Interpretation: The High Court decided that a dispute between the parties relating to interpreting a shareholder agreement should be determined by arbitration under the Arbitration Acts 1954-1980 but parties were not precluded from seeking interim relief pending determination of the dispute.

The Court granted: (1) The first defendant's application for a stay on the plaintiff's proceedings under section 5 of the 1980 Act and (2) Interim relief by way of an interlocutory injunction to the plaintiff restraining the first named defendant's activities regarding the management of the relevant company. Specifically, the first defendant's nominee directors were restrained from acting on the board pending resolution of the dispute about a clause in the shareholding agreement.

Points: Company law and shareholder agreements about contributing capital plus principles on granting injunctions were inherent in the case. The arbitration points are outlined below:

The first defendant (IIU Nominees Ltd) sought a stay on the proceedings under section 5 of the 1980 Act on the basis that under the shareholder agreement all disputes should be determined by arbitration. Plaintiff's counsel contended that the Court had no jurisdiction to grant a stay or, in the alternative, if the court had such jurisdiction it was not precluded from granting ancillary relief under section 22 (1) (h) of the Arbitration Act 1954 - the Principal Act. The first defendant argued that the court should grant a stay only and that any further relief should be only to preserve the status quo.

There were also legal arguments about interpreting sections of the Arbitration Acts and specifically section 22(1)(h) of the 1954 Act which gives the High Court power to make order for interim injunctions or appointing a receiver. The Court rejected the submissions on behalf of the first defendant that section 22(1)(h) of the 1954 Act has been repealed or abrogated in relation to "foreign arbitration agreements", as a consequence of the 1980 Act. Mr Justice O'Sullivan noted that while section 4 of the 1980 Act enacted an explicit repeal of section 12 of the 1954 Act, there was no such repeal of section 22 (1)(h). Remedies under that section were available. Parties apparently accepted that the 1998 Act did not apply to the agreement in this case.

The Telenor case was reported in The Irish Times Law Report, 11 October 1999.

The High Court decision (O'Sullivan J, 20.7.1999) in the **Telenor** case, is analysed in an article, Injuncting the Arbitral Process, by Ronan C. Kennedy, BL, in the Bar Review, January/February 2000, vol.5 issue 4, published by the Bar Council. The article considers what constitutes "a step in the proceedings" having regard to previous cases and distinguishes **Telenor** from **Monaghan Co-op** [1988] IR 304 in which O'Hanlon J refused a stay because the applicant had obtained an interlocutory injunction.

Legal Brief: Notes on Cases and Materials
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The article welcomes the **Telenor** decision as further judicial support for the arbitral process but submits that in future when granting interlocutory relief, the Court should emphasise that it is not playing any part in resolving substantive issues but merely acting as facilitator to ensure that the reference to arbitration is effective.

COSTS

Tobin & Toomey Services Ltd., Plaintiff v. Kerry Foods Ltd., and Timothy C. Sullivan, (Arbitrator), Defendants

Further to the High Court judgment of Laffoy J on 22 April 1998, (reported in Branch Newsletter, issue 7, February 1999), the case came before the Supreme Court on 25 November 1999.

The plaintiff's appeal against the High Court decision in the defendant's favour had been withdrawn but the Supreme Court heard arguments on costs. Plaintiff's counsel contended that, as special circumstances applied, the Court should exercise its discretion under Rule 99, Rules of the Superior Court, rather than applying the general principle that costs follow the event.

The Supreme Court (Keane J, with Murphy J, and Barron J agreeing) decided that:

- (1) The High Court order, including the awarding of costs to both defendants, should be affirmed.
- (2) The Supreme Court costs should be awarded to the first defendant but limited to a date in July 1999 when the Appeal to the Supreme Court and the allegations against the arbitrator and second defendant (Mr. Timothy C Sullivan) had been withdrawn. The second defendant did not seek costs of the Supreme Court appeal.

The above case had also been subject to a hearing before the High Court on costs and taxation. Kelly J on 3 December 1998, reviewed the Taxing Master's decision under section 27 (3) of the Courts Act 1995, as reported at [1999] ILRM, no.6 @ 428.

In summary, the main points were:

- (1) Before altering a decision of the Taxing Master, the court must be satisfied not only that he erred, but also that his taxation was unjust. The court must not merely substitute its decision for that of the Taxing Master. Smith v. Tunney [1999] 1 ILRM 211 followed.
- (2) As a general principle, luxury payments (eg for conducting litigation more conveniently) are not allowed.
- (3) By adopting a comparative approach in line with other cases, the Taxing Master adopted the correct principles regarding the instructing solicitor's fee.

Note

A new book on Taxation of Costs, by Taxing Master Flynn and Tony Halpin, a barrister, published by Blackhall, provides a comprehensive work of practical reference on principles and relevant cases. It is recommended for arbitrators as well as lawyers although the price (£175) may be a deterrent.