



THE CHARTERED INSTITUTE OF ARBITRATORS

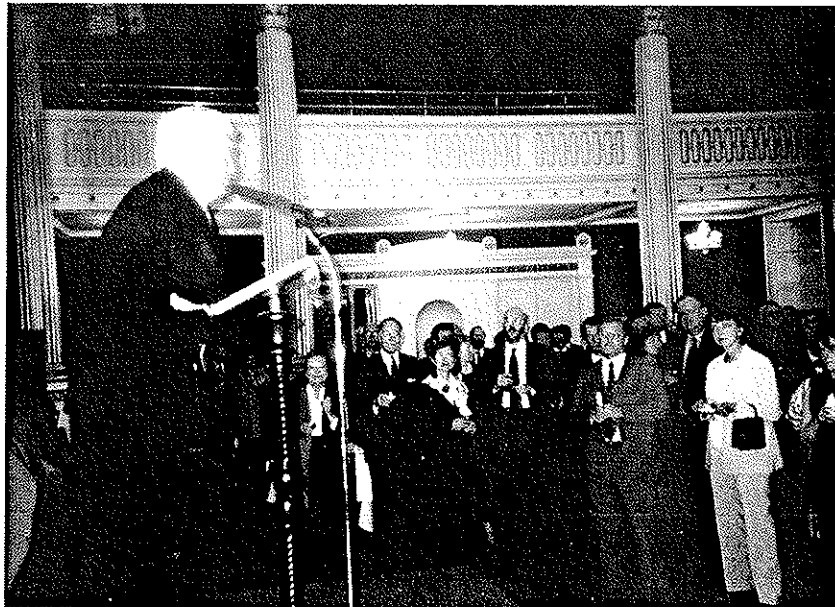
Issue 12, November 2000

Irish Branch

Chairman's Address

As members will know the annual conference of the Chartered Institute of Arbitrators was held in Dublin from the 28th to the 30th of September last. It was agreed by all to have been a great success and I would like to pay tribute to the work of the staff of the Institute from Angel Gate who organised the conference. It was, I think, an unusual experience for many of the Irish delegates to be involved in a conference in an Irish city without having to do very much by way of any organisational work.

One of the most interesting topics raised during the various sessions was from a speaker, Professor John Uff, who suggested that arbitrators were, in many cases, sticking far too rigidly to what they perceived as an arbitration framework and ignoring the possibilities of using some of the techniques now used in alternative dispute resolution while conducting an arbitration. It was suggested that there is no reason why an arbitrator should not for instance if it seems to him or her appropriate to call the parties or their advisors together and suggest to them a course of action which might lead to a speedy resolution. It is a suggestion that I agree with. As long as an arbitrator stays within the confines of the arbitration acts and also, though not quite as mandatory, any arbitration rules which apply to any particular reference that there is no reason why the arbitrator cannot take action to resolve the dispute. It was pointed out that the purpose after all of all forms of dispute resolution is precisely to do that, that is to resolve the dispute and that the people that are to be served are the disputants.



David Keane, Irish Branch Chairman Welcomes Conference Delegates at Reception in St. Patrick's Hall, Dublin Castle.

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The one part of the proceedings which the Irish Branch was heavily involved in was the holding of a mock arbitration on the last day of the conference. This took the interesting form of having an arbitration dealing with the same facts conducted first of all in a manner which would lead to problems and secondly, in a manner which would ease the progress towards a solution. I see no significance in the fact that the Chairman of the Irish Branch was asked to chair the "bad" arbitration and a prominent English arbitrator, Mr. Mark Cato was asked to chair the "good" arbitration. Members of the Irish Branch taking part were, as solicitors Anthony Hussey and Michael O'Reilly, as counsel Rory Brady and Michael Stimpson, as a member of the Tribunal Michael Carrigan, as the presenter and commentator Bernard Gogarty and finally as the summer up of the proceedings Max Abrahamson. The proceedings were drafted by Mr. Rowan Planterose and the technicalities were controlled by Oliver Connolly.

The mock arbitration was another success and judging from the many and varied questions that were asked was of considerable interest and benefit to the delegates.

David Keane
Chairman



The Right Hon. Sir Anthony Evans, Hon. President (Left) and Dr. E. Salpius at the Conference.

EDITORIAL

Many thanks to all those involved in the Millennium Conference at Dublin Castle. An international event such as this, which does much to raise awareness of Arbitration in Ireland, takes much effort. The facilities offered at the Dublin International Arbitration Centre were much commented upon. The social side was not neglected with plenty of opportunities to meet colleagues from home and abroad. Members are reminded that the Annual Dinner will take place in the Royal St. George Yacht Club on the 8th of December next.

There is much to recommend the domestic and international arbitration courses in University College Dublin. Indeed it is hard to see how one can expect to progress as an arbitrator without these or similar qualifications. However the standard of quality and presentation of the Diploma in International Arbitration as presented to this writer and others, brings to mind those immortal school report words "could do better". This all the more so when this most disappointing piece of paper is compared with the impressive domestic parchment. The Registrar of U.C.D. has assured me that the "University is conscious of the quality of its various degrees and diploma parchments and has in recent years done much to enhance their overall appearance and quality." While this writer does not doubt the sincerity of this assertion, the evidence in this case does not appear to come to her support.

...nie McCoy, Editor.

VISIT OF THE SECRETARY GENERAL

The Branch was honoured at its September Committee Meeting to be joined by Dair Farrar-Hockley. Mr. Farrar-Hockley witnessed the efforts of the Committee on behalf of the Members, as well as making many valuable contributions of his own. After the meeting, our hosts Dr. Nael and Mrs. Anne Bunni entertained all present to a most welcome supper.



James Bridgeman, Hon Secretary of the Irish Branch, Dair Farrar-Hockley, Secretary General, Dr. Nael G. Bunni, President, David Keane, Chairman of the Irish Branch and Michael M. Moran, past Chairman of the Irish Branch (right to left).

INFORMATION EXCHANGE

In the last edition of the Newsletter, the issue of opening sealed offers was raised. Two responses are published below. The Editor wishes to thank most sincerely Mr. E Quigg and Mr. B. Gogarty for their respective responses.

From Bernard Gogarty F.C.I.Arb., Smyth and Son, Solicitors, 30 Magdalene St., Drogheda, Co. Louth.

I believe the best practise for Arbitrators is to write his complete award insofar as same deals with all matters save as to costs. Having done this he should in the presence of a witness (preferably a colleague such as a Partners, Solicitor, Architect, etc.) Having first shown to the witness the award clearly evidencing that he had made his decision on all the issues save as to costs. Having done so he should then open the sealed bid and complete the award insofar as same relates to costs.

I do not believe that the parties should be requested to attend nor should they be asked if there is "need to open it at all" as this would only give rise to further delay and possibly an opportunity for a party to raise further objections and prolong the matter.

From Edward Quigg, Contract and Construction Consultants (Irl), Clifton House, Lr. Fitzwilliam St., Dublin 2.

The purpose of a sealed offer is to protect the Offeror's cost position in the event that an award is made against him. The practise involves two letters. First, the offer which is sent to the Offeree and the second, a letter to the Arbitrator enclosing a sealed envelope which in turn contains the offer. The Arbitrator should be instructed not to open the sealed envelope until such time as he has made his award on the substantive issues.

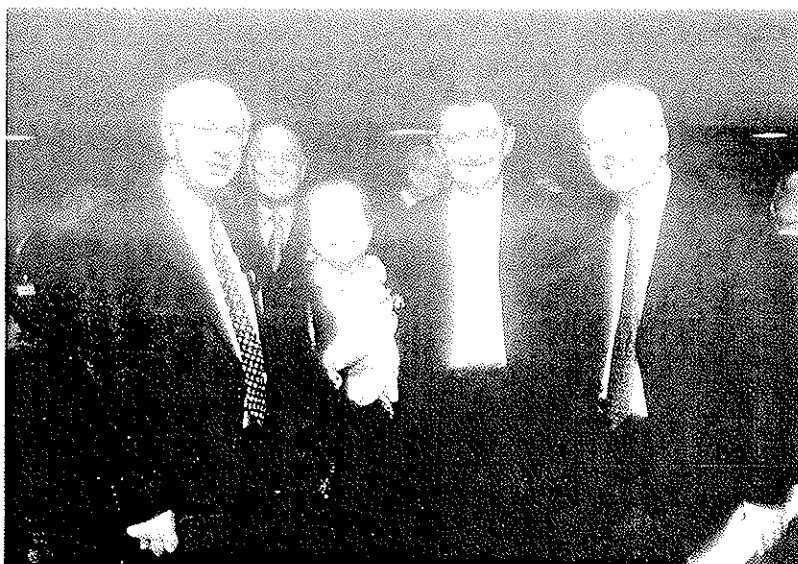
If the Offeree rejects the offer and continues the Reference, he will *prima facie* be liable for the costs incurred subsequent to the Offer. Of course, this principle is always subject to the overriding discretion of the Arbitrator provided at Section 29 of the Arbitration Act, 1954.

It can therefore be seen that what matters is not the contents of the sealed envelope, the terms of the Offer received by the Offeree (which of course should be the same). For this reason it has become common practise not to bother sending the sealed envelope to the Arbitrator and instead send the offer to the Offeree headed "without prejudice save as to costs". This practise was first suggested by Cairns L.J. in *Calderbank v. Calderbank* (an English case) and has since been given judicial approval in this jurisdiction.

I would therefore suggest that you invite submissions to be made from the parties on the matter of costs when, and if relevant, the existence of any offer will be made known to you. There should be no need for you to open the envelope in your possession.

In fact, I would strongly suggest that you do not open the envelope as you may wish to establish that you did not have knowledge of its contents prior to making an award on the substantive issues. If you feel you do not need to open the envelope then it would be preferable to do so in front of the parties, or if that is not practical in front of a witness, who can, if necessary, testify that the envelope was still sealed prior to you opening it.

Readers are encouraged to send questions, answers, note, comments to the Editor at 8 Merrion Square, Dublin 2. If you wish to remain anonymous please send your letter directly to me, Johnnie Mc Coy, Law Library, Four Courts, Dublin 7.



Among those present at the Bar Council's Reception Michael McDowell S.C., Attorney General, The Hon. Ronan Keane, Chief Justice (right to left), The Hon. Mr. Justice Roderick Murphy, past Chairman of the Irish Branch (far left)

BRANCH NEWS

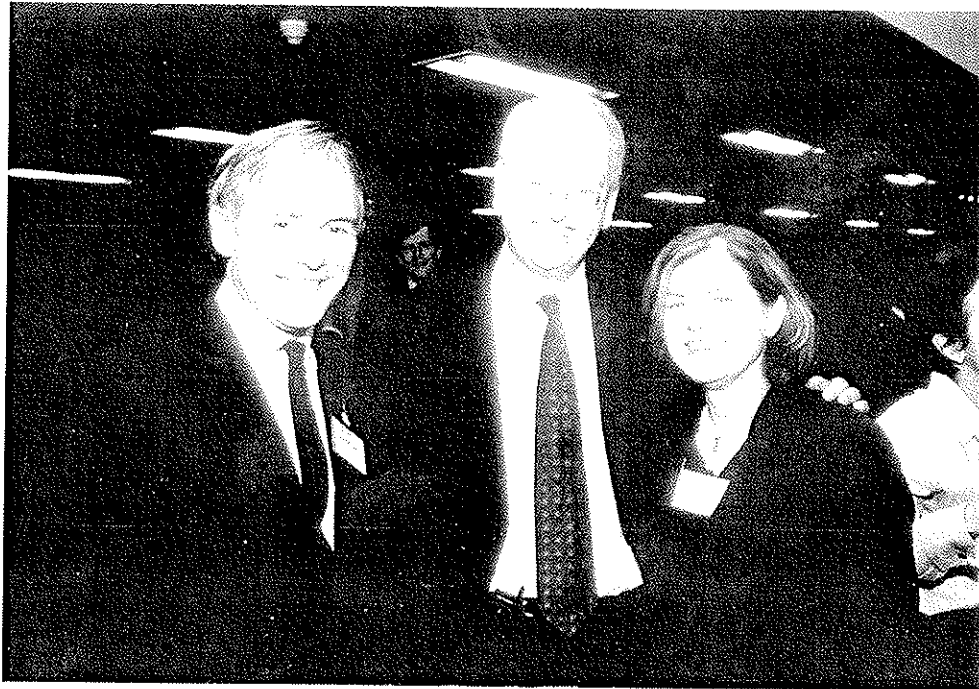
Congratulations to the Hon. Mr. Justice McKechnie on his appointment to the High Court of Ireland. The Judge was recently elected to membership of the Institute. On his appointment the Judge was obliged to resign as Chairman of the Bar Council.

Congratulations to the Hon. Mr. Justice McLaughlin on his appointment to the High Court of Northern Ireland. Sir Richard was a fellow and a leading practitioner of arbitration. There is no doubt but that this experience will stand him in good stead in his new office.

Congratulations to Rory Brady S.C., F.C.I.Arb on his election as Chairman of the Bar Council. Until his appointment, Rory was Chairman of the Arbitration Sub-Committee of the Bar Council and has done much to raise the profile of arbitration. He took part in the mock arbitration at the recent Millennium Conference.

A word of welcome to the following new members of the branch;

Mr. R.G. Cochran, CEng, CStat, FRSS, FICS, MIEI	Software Engineer	Dublin
Mr. M.B.J. Foody, ARICS, SCS, IA, VI.BSc(Hons)	Chartered Surveyor	Cork
Mr. S.A. Fuller, FRICS, FSCS	Project Manager	Dublin
Mr. P. Oates, BComm, LLB, BL	Estate Planner	Galway
Mr. S. Canney, ARICS, ASCS, FASI	Chief Quantity Surveyor	Galway
Mr. T. Cowhig, BComm, ACA	Chartered Accountant	Cork
Ms. S.J.G. Hart, LLB, BL	Case Researcher	Dublin
Mr. W.K. O'Mahony, ACIOB	Cost Engineer	Waterford
Mr. J.V. Ward, BComm, BL	Barrister-at-Law	Cork



*Margaret Cuddihy, Michael McDowell S.C. Attorney General & Ercus Stewart S.C.
(Right to Left)*

GOLF OUTING

The inaugural golf outing took place on Thursday 21st September, 2000 at Tulfarris Golf and Country House Hotel. Despite a wet morning, the sun shone for most of the afternoon on a spectacular and scenic course. Nineteen intrepid golfers braved the elements and had an enjoyable round. The scoring was stableford and our congratulations to the following:-

Winner	Sean McDermott
Runner Up	Michael Coughlan
Best Score First Nine	Gerry Duffy
Best Score Second Nine	John Bourke

In the evening, the dinner was attended by the participants and guests. The Society is very grateful to Deloitte & Touche and A. & L. Goodbody for their generous sponsorship. A date for your diary 2001 for the next outing is Thursday 21st June, 2001 at the same venue.
Michael M. Moran

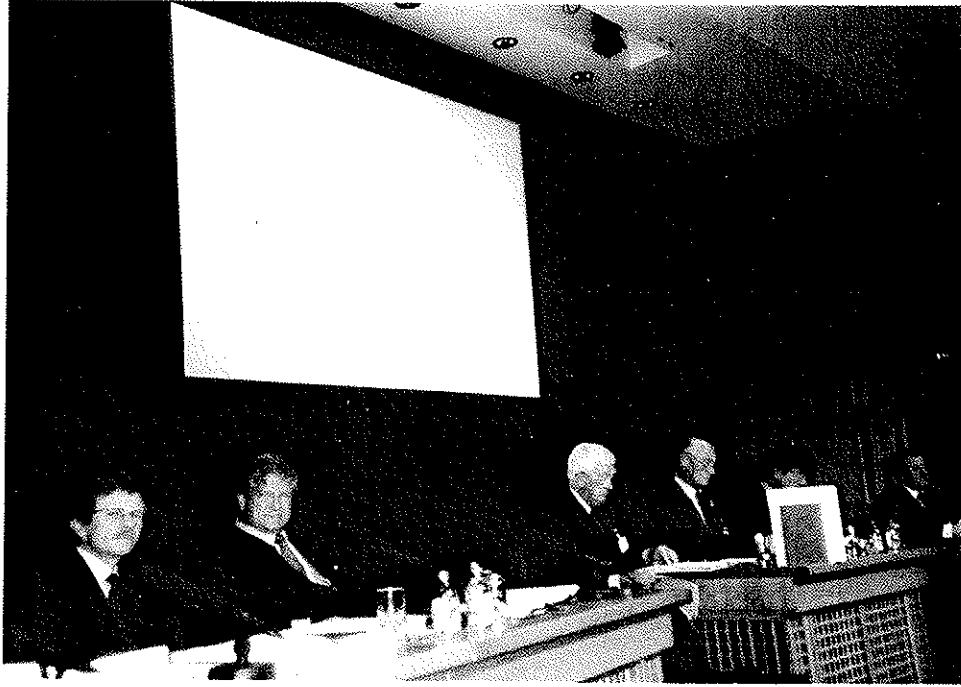
COURSES FOR THE YEAR 2000

Please contact Suzanne Laing @ (01) 662 7867, Fax (01) 662 7891 or by e-mail @ ciarb@arbitration.ie for further details.

Anne Bunni

COMPETITION

Thanks to all the Fellows, Members and Associates who most kindly submitted suggestions. I am still awaiting a response from London to avoid duplicating the name of any other newsletter. It is expected that the results will be announced in the next edition.



*Moot Arbitration Hearing at Conference
Michael O'Reilly, Michael Stimpson, David Keane, Chairman Irish Branch, Mark Cato, Michael Carrigan & Rory Brady S.C. (left to right)*



Dorothy Ufot & Dafe Akpedeye at the Bar Council's Reception.