



# ARBITRATION NEWS

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

February 2002 Issue 15

## Items of Interest in this issue ...

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Roy Sherlock (Chairman, Irish Branch) and Karen Gough (President, Institute of Chartered Arbitrators) at the Annual Dinner on 30th November 2001 in the Royal St. George Yacht Club.

A timely trip to the International Conference in Hong Kong at the end of January took Hilary, myself and John McCoy to warmer climes whilst you lot, I understand, were busy trying to contain the River Liffey.

No sooner was I back than I was called upon to attend the Society of Chartered Surveyors' dinner, followed the next day by our Members' Luncheon at the Conrad, followed by a Members' 'session' in Alfie Byrnes – a Chairman's life is not for the faint-hearted.

## CHAIRMAN'S ADDRESS

Time races on and the end of my Chairmanship is in sight. For any of you who aspire to this position and think that it will be just one long social whirl, think again. Unless you can spare 10-12 hours per week out of either your professional time or your spare time, again, think again.

Having issued this health warning, I must say that it has been a most memorable and extremely exciting year. Since the date of the last Newsletter I have attended another Branch Officers' meeting in London. These meetings are an excellent forum to make our views known and to network with branch officers world-wide who, I can assure you, have many similar problems to our own.

The Annual Dinner at the Royal St. George Yacht Club in December was a most notable event as usual. We were extremely fortunate to have Ms. Karen Gough, our President, as guest of honour. Karen entertained those present with a memorable after-dinner speech, confining its contents to scandal and humour as specified.

'Just in case' any of you think that this gallivanting has been at the Institute's expense, I must assure you that it has not – another good reason for thinking long and hard before taking the plunge.

On more mundane matters ... we have recently negotiated Dispute Resolution Schemes with both the Department of Agriculture (BSE Eradication) and the Department of Environment (Compulsory Purchase); these should bring many more opportunities to our members.

We have also negotiated the long-overdue increase in both the licencing fees and, more importantly, the arbitration fees in connection with our Holiday Arbitration Schemes with the ITAA and with affiliated tour operators.

I look forward to seeing the majority of members at our AGM in April. Whether you aspire to the 'top job' or not your contribution at committee level would be most welcome. Do think about serving on the committee when you receive the nomination forms.

Lastly, may I thank all the members of the 2001/2002 Branch Committee for all their efforts during the year; and a special thank you to Anne Farrell, without whom I do not think I would have survived.



Frank Murphy and Elma Lynch (President, Law Society)



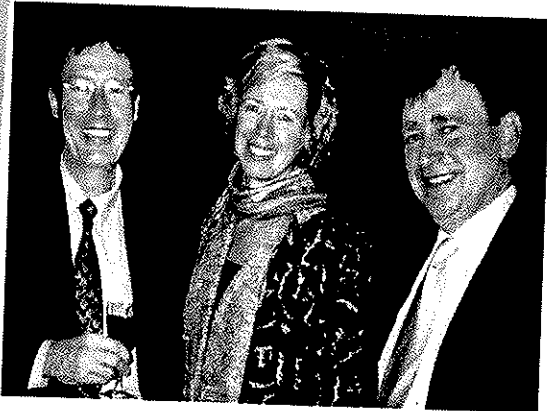
Michael O'Reilly, David Bell and Ken McQuillan (Hon. Treasurer, Irish Branch)



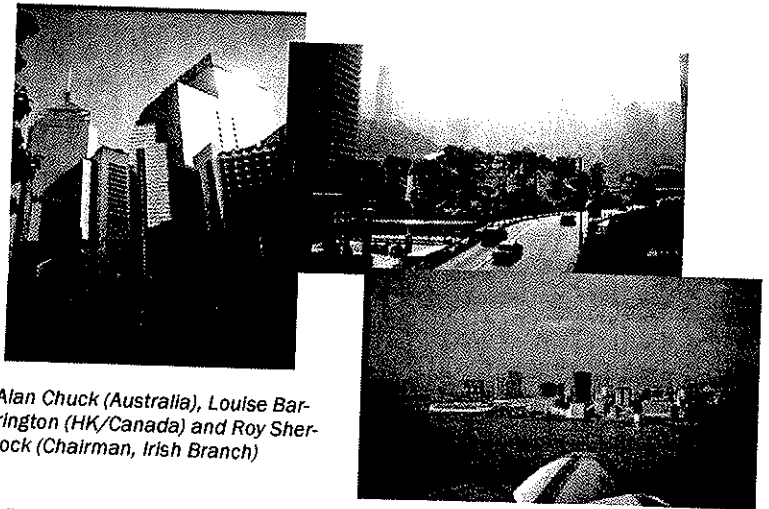
James Macken S.C., Don Menzies and Maeve Macken

The Editor welcomes your views as expressed in articles or other forms of comment. Please send material to The Editor, Arbitration News, Irish Branch of The Chartered Institute of Arbitrators, 8 Merrion Square, Dublin 2.

## Hong Kong Conference



Alan Chuck (Australia), Louise Barington (HK/Canada) and Roy Sherlock (Chairman, Irish Branch)



Robert Morgan (Chairman, East Asia Branch) and John McCoy (Hon. Secretary, Irish Branch)

Top marks to Robert Morgan, Host Chairman of the Hong Kong Committee, and the ever helpful Primrose-Law and her team of assistants for a warm welcome and much assistance. This was a very well organised conference on the theme 'East Meets West'. Hong Kong has followed in the high standards set in Dublin and Edinburgh in recent years. I do not envy the organisers of the next such conference. Venues being mentioned include Bermuda and Paris.

The Irish Branch was represented by the Chairman, Roy Sherlock, his wife, Hilary, and the Hon. Secretary at the Conference. Hong Kong, a Special Administrative Region of China, has changed a lot since I was last there nine years ago; then it was very much a colony, albeit with the end of empire fast approaching. Now Hong Kong is much more Asian in its outlook. Indeed, when the Chairman was trying to book a restaurant and encountered difficulty in being understood, the maitre d' asked "don't you speak Chinese!" (my emphasis). The conference took place in the Exhibition Centre which is built on reclaimed ground on the harbour.

Mr. and Mrs. Chairman were booked into the recommended conference hotel with full length glass bedroom windows which afforded an unbeatable harbour view, especially at night. I was in the much more modest Hotel China Plate with kitchen view.

The conference was an ideal opportunity to share ideas and understandings. The cultural differences alone can often make the dispute resolution process a minefield. The need to be increasingly sensitive to cultural differences and to seek local advice was as ever to the fore. The set speeches from a wide range of very experienced arbitrators reflected the increasing global aspects of dispute resolution and the need to focus on particular events such as the Olympic Games. Full use was made of the opportunity for questions and answers and it was well received. Such advice normally comes at a considerable price. Even greater participation would have been encouraged if the conference had broken down into workshops with representatives from the many jurisdictions present. Copies of the papers handed out at the conference will be lodged in the library for use by the members.

Conferences afford an ideal opportunity to network and spread the word that Ireland is a good venue for international arbitrations. Roy and I respectfully urge as many members as possible to attend future conferences. When you have travelled a long way your presence is appreciated by the local branch. Travel does indeed broaden the mind.

Johnnie McCoy, Hon. Secretary.



Roy & Hilary Sherlock and Guest Speaker Geoffrey Corry

A members' luncheon took place on Friday 8th February 2002 in the Alexandra Room of the Conrad Hotel, Earlsfort Terrace, Dublin 2, and was attended by 50 persons. The guest speaker was Geoffrey Corry, Chairman of The Mediators Institute of Ireland, who spoke about current developments in mediation in Ireland. The event was most enjoyable and informative for the members present. It is intended to make this an annual event.

## Members' Luncheon

## Membership

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

Ms. K. M. O'Driscoll	(Cork)	Mr. R. Watson	(Co. Dublin)	Mr. P.J. Brogan	(N.I.)
Ms. A. T. Doyle	(Dublin)	Mr. G. Rice	(Dublin)	Ms. J.M. Ward	(Dublin)
Ms. A. Harnett-O'Connor	(Co. Dublin)	Mr. F. Oluwole	(Dublin)	Mr. P. O'Sullivan	(Co. Tipperary)
Ms. M.N. Anyadike-Danes	(Belfast)	Mr. S. Carty	(Dublin)	Mr. I.J. Sutherland	(Dublin)

## Diary ...

### AGM 2002

The AGM will be held in the Shelbourne Hotel Dublin on 17th April 2002, commencing at 5.45 p.m. Light refreshments will be served following the meeting.

### Chairman's Visit to Cork

It is intended that the Chairman and some members of the Committee will visit Cork to meet members in the Munster region on Saturday 13th April 2002.

The meeting will take place in Cork City and will commence at 11.00 a.m. It is expected to conclude at approximately 1.00 p.m. followed by lunch.

The Chairman will furnish an up-date of developments in the Irish Branch followed by a question and answer session.

Those members wishing to attend should contact Frank Nyhan on (022) 21539 or e-Mail to frank.nyhan@djomeara.ie for details.

## Social Events ...

### Golf Outing 2002

The annual golf outing of The Chartered Institute of Arbitrators - Irish Branch Golf Society will be held at Rathsallagh Golf Club on Thursday 20th June 2002 and will be followed by a dinner in the evening, to which non golfers are welcome to attend. Further details will be circulated in due course.

The Branch is grateful to Deloitte & Touche and McCann Fitzgerald for kindly sponsoring this event.

### R. I. P.

#### PADRAIC CLARKE, RIP, AN APPRECIATION

His colleagues and friends in the Law Library and wider a field were shocked and saddened by Padraic's premature death. Fr. Michael Hastings said at the funeral Mass in Firhouse that Padraic Clarke was a man of many talents which he exercised in his own gentle and unassuming manner.

After school in St. Mel's, Longford, Padraic arrived in Dublin in 1964 to start his career in Dublin Corporation before joining the civil service. After evening study at UCD he graduated with a B.Comm. Migrating to the private sector he qualified as a chartered accountant and became an associate of The Institute of Taxation in Ireland. At a private law school in Sandymount he attended evening and Saturday morning classes guided by James O'Reilly (now SC) and Breda Ging. Having passed the Kings Inn's entrance/diploma exams, Padraic successfully completed the barrister course and was called to the Bar in the Trinity Term, 1984. He continued for some years in the accountancy profession and achieved further distinctions by part-time study, including an LL.B and a Diploma in European Law (UCD). By the early 90's Padraic was in the Law Library. Devilling with Rory Brady (now SC and Chairman of the Bar Council) Padraic gained further experience and expertise in many areas, especially litigation, commercial law and arbitration. He added extra qualifications to his long CV with diplomas in Domestic and International Arbitration from UCD and was admitted as a Member of The Chartered Institute of Arbitrators. His practice in Dublin, the Midland Circuit and Donegal included arbitration as well as taxation and chancery.

Padraic gave generously of his time and talents. He served on the board of directors and committees of the Law Library Credit Union Ltd. His sharp mind could quickly see through nonsense and waffle. He listened patiently to colleagues who had professional or personal dilemmas. He participated cheerfully in community and parish activities.

For relaxation, he played golf in Newlands and Newcastle, Co Down. He enjoyed hill-walking during holidays with his wife, Mairead, in Austria. He had wide tastes in music but was disappointed not to have learnt to play the violin. At the funeral Mass, the altar gifts included a law text and another book to symbolise Padraic's interest in reading which included John Grisham's novels.

Padraic Clarke, a good companion and an exceptional professional, departed this life before reaching three score years. He sleeps at Mount Venus cemetery in the foothills high over Dublin, his adopted city. God grant consolation to Mairead, his family and friends.

Ar dheis Dé go raibh a amam dílis. A.Q.

### Right of Reply

If you are dissatisfied with any part of the content of "Arbitration News" or require a right of reply, a correction to be made or any other action to be taken, please contact The Editor, Arbitration News, Irish Branch of The Chartered Institute of Arbitrators, 8 Merrion Square, Dublin 2 at your earliest convenience. The Editor is anxious at all times to provide the highest service to members by way of our newsletter. One of the best methods of achieving this is to receive feedback from you, the readers. Messages for the Editor may be left via any of the following: office telephone (01) 662 7867, office fax

(01) 662 7891, e-Mails to [ciarb@arbitration.ie](mailto:ciarb@arbitration.ie).

### Holiday Colloquium

A Holiday Colloquium will be held in the Alexander Hotel, Fenian Street, Dublin 2 (off Merrion Square) on Saturday 9th March 2002 commencing at 9.30 a.m. All members are invited to attend.

It will be particularly beneficial to those members involved in arbitrations under the Holiday Arbitration Scheme.

### Updating Database Information

In our previous Newsletter we requested the membership to furnish their details to enable us to update our database records. Less than one-third responded to this request and we would urge those who have not returned their details to us to please do so.

Current details of the membership are required to assist the Chairman when making arbitration nominations.

# Legal Brief

## NOTES ON CASES AND MATERIALS

**Brenton Dewick (a Minor) v Falcon Group Overseas Ltd.** - High Court, Johnson J. 22 October 2001.

Background The defendants/applicants by motion applied for a stay on court proceedings under section 5, Arbitration Act 1980. The application was opposed on behalf of the plaintiff. Damages were claimed for breach of contract and negligence resulting in substantial injuries suffered while the plaintiff was on holiday with his parents. It was contended that the negligence arose out of alleged representations made by the defendant in respect of the fitness and/or suitability of the relevant holiday apartments for young children.

Order 22, Rule 10, Superior Court Rules, gives the courts an inherent jurisdiction to approve settlements in proceedings on behalf of infants' claims for damages. It was argued on the plaintiff's behalf that although section 5, Arbitration Act 1980 allowed the court's jurisdiction to be ousted further to an arbitration agreement, it did not oust the court's jurisdiction in infants' cases. Questions also arose as to whether -

- (1) an arbitration clause varied the terms implied by section 39 of the Sale of Goods and Supply of Services Act 1980 that such services be supplied with skill, care and diligence,
- (2) the clause ousted the court's jurisdiction,
- (3) the relevant terms and conditions should have been specifically brought to the consumer's attention.

According to evidence in an affidavit on behalf of the plaintiff, his mother when signing the holiday contract had no knowledge of the arbitration clause and it had not been brought to her attention. The defendants/applicants contended that the mother had signed beneath the contract's text which drew her attention to the arbitration clause.

Decided Johnson J in an ex tempore (unwritten) judgment refused to grant the stay on court proceedings sought by the defendants, Falcon. He refused to let the case proceed to arbitration and it will take its place in the relevant list for court hearing. The decision was based solely on the question of the courts' jurisdiction in infant cases and the absence of any authority suggesting that an order under section 5 of the 1980 Act should be made despite Order 22, Rule 10, Superior Court rules.

### Cases Mentioned

**Interfoto Picture Library Ltd v Stilleto Visual Programmes Ltd.** (1989)

QB 433. The English High Court considered a contract clause, not involving a consumer, was so onerous and unusual that the party seeking to enforce it had to show that it had been brought to the other party's attention.

**Carroll (a Minor) v Budget Travel**, unreported, High Court, Morris J. December 1995.

The facts were broadly similar to the instant Brenton Dewick case. The point at issue was the scope of arbitration clauses containing the phrase "in connection with" a contract. The question of public policy about courts' jurisdiction in infant cases was not raised in the **Carroll** case.

In the Bar Review, vol. 7, issue no.2, December 2001, p.74, the **Brenton Dewick (a Minor) v Falcon** case was reported and analysed by Derek Sheahan, barrister. He referred to section 8 (1), Married Woman's Status Act 1957, under which contracts benefiting third persons (spouses or children of the contracting party) shall be enforceable by the third person as if they were contractual parties. Sub-section (2) preserves the valid defences and it is arguable that it is a legitimate defence to an arbitration agreement that the inherent jurisdiction of the court prevents removing an infant's action from the court's purview.

Comment The above case is significant for arbitrations involving minors under the Irish Branch's travel scheme and the staying of court proceedings in favour of arbitration. Protecting infants' interests is important for public policy reasons and the court was anxious to ensure such protection. It should be noted that the case was decided on its own facts and circumstances and there was no written judgment.

### Correction

In Arbitration News, issue 14, November 2001, the final sentence under **Portsmouth Arms Hotel Ltd v Enniscorthy UDC** should have read: Herbert J said that O'Hanlon J had not indicated that the limits for court intervention had been determined, fully and irrevocably.

Anthony P. Quinn, Barrister, FCI Arb.

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