

## News...

- Arising from the Institute's successful Golf Outing in Glen o' The Downs in July 2003, we were invited to participate in the Glen Challenge which took place at Glen o' The Downs on Friday 3rd October 2003. The Branch was represented by Aine Connolly and John R. Lynch who were runners-up on the day - a great achievement. The event concluded with an excellent meal, prize-giving and entertainment which was thoroughly enjoyed by all participants. We hope to improve by one place this year!!!!!!
- In October 2003 a lecture was held in Belfast in relation to commercial mediation. It was attended by committee member Joe Behan who spoke on the subject of mediation. Thanks to our Northern Ireland members who organised this well-attended event and for the hospitality shown to all attendees.
- All Fellows interested in acquiring Chartered Arbitrator status should indicate their interest to the Branch Office as soon as possible. The Branch Chairman is presently negotiating with London in relation to Fellows who may be eligible to become Chartered Arbitrators subject to satisfying all qualifying conditions and requirements. Please note that the admission to the status of Chartered Arbitrator is a matter for Head Office in London.
- From time to time the Branch receives enquiries for advisors. All those interested in putting themselves forward for inclusion on such a panel, should indicate their interest to the Branch Office. We are hoping to have this panel in place before year-end.
- To enhance the experience of our newest members, the Branch requires volunteer 'Mentors' who are involved in the arbitral process and who would be willing to give assistance in this matter. Forward your details to the Branch Office as soon as possible.

### John Glynn wins Parc sponsored IEI Chartered Engineer of the Year 2003



Peter Langford, IEI President, John Glynn and Marion Noone, Chief Executive of PARC (Resource Management & Technology Division).

John Glynn from Julianstown, Co. Meath, won the Parc sponsored Institution of Engineers of Ireland (IEI) Chartered Engineer of the Year Award 2003 for his work as Deputy Project Manager of the Boyne Bridge project, Ireland's first cable-stayed road bridge. The Boyne Bridge has an overall length of 400m and a main span of 170m. This 38m asymmetric structure traverses the River Boyne west of Drogheda as part of the M1 Northern Motorway.

John obtained his UCD Diploma last year and is a Member of the Institute. He is presently doing an MBA at Smurfit BS. There were over 300 entrants for the contest.

He was selected as the overall winner from six short-listed finalists who presented their projects to a judging panel at the IEI Headquarters in Clyde Road, Ballsbridge, Dublin. The Boyne Bridge was constructed by a fully integrated joint venture of SIAC Construction Ltd. and Cleveland Bridge Ltd.

This is Patrick Curran, winner for the second year in a row of our Golf Outing. Apologies for using the incorrect name in the caption in our last Newsletter.



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, 31 Mespil Road, Dublin 4.

### Farewell ...

On a sad note, I regret to inform you that our highly valued Office Administrator Anne is emigrating to Australia with her husband, David. Anne has worked for the Irish Branch for three years and put a lot of effort in the finding the new premises and ensured that the transfer took place smoothly. We wish them both well in their new life Down Under.

I would like to welcome Anne's replacement, Debbie Alexander, who started in early March. I am sure you will join me in wishing her all the best in her new role.

**John McCoy, Chairman.**

### Diary ....

- Mr. Neil Kaplan will present a lecture on International Arbitration on 23rd April 2004. Members will be advised of the venue in due course.
- A Holiday Colloquium will be held in mid-May at a venue to be arranged.
- This year's Annual Golf Outing will be held on Thursday, 17th June, 2004 at Glen 'o The Downs Golf Club.

**Subscriptions** The Branch and Institute depend on your subscriptions to remain in business. Those of you who have not already done so, please make your payment as soon as possible.

## LEGAL BRIEF

### NOTE ON CASES AND MATERIALS

#### Case Stated on Statutory Interpretation in Property Arbitration

#### **Chadwick (reps. of deceased) and Goff (claimants) v Fingal County Council (respondents).**

High Court, O'Neill J, 17 October 2003.

#### Background

This was a complex consultative case stated for the High Court's opinion. The property arbitrator, Mr John R. Shackleton posed a question on the extent of compensation payable: Was he correct in holding that on the true construction of sect.63 of the Land Clauses Consolidation Act 1845, (the 1845 Act) compensation for injurious affection to lands retained by the claimants was limited to that caused by such works on, and such use of, the lands actually acquired from the claimants?

#### Main Points

The case arose from the compulsory acquisition of farmland and buildings for works connected with the motorway from the M1 at Dublin airport to the Balbriggan bypass. The land acquired did not form part of the new carriageway. Claimants considered, however, that their retained property's value would be depreciated because it was close to the new motorway.

Claimants sought compensation under sect.63 of the 1845 Act for the entire depreciation of the property's value caused by the respondents' exercising their relevant statutory powers in having the motorway constructed.

Respondents contended that claim should be limited to injury caused to the land by works and use on the land actually acquired from the claimants. Compensation could not extend to depreciation of property caused by use of two carriageways as a highway on lands not acquired from the claimants. In support of their submissions, respondents referred to the principle of proportionality in interpreting property rights, as discussed in the case In re Article 26 of the Constitution and part 5 of the Planning and Development Act 1999 [2000] 2 IR 321.

#### Decided

The High Court answered "Yes" to the question posed by the property arbitrator. He was correct in interpreting sect.63 of the Land Clauses and Consolidation Act 1845, (the 1845 Act) to mean that compensation for injurious affection to lands which the claimants retained was limited to the injurious affection caused by the relevant works on the lands actually acquired from the claimants. This interpretation is consistent with Articles 40 and 43 of the Irish Constitution and claimants' property rights were not infringed. The basic aim of statutory interpretation is to give effect to Parliament's intention. Actionable wrong must be consistent with the correct interpretation of sect. 63, 1845 Act. The High Court's interpretation in this case confirms the line of authority in the UK in the cases cited below:

#### Cases cited

English (& Welsh) and Scottish jurisdictions:

Leigh v Stockport, Tilbury and Altringham Railway Co [1846] 3 QB 251

Hammersmith and City Railway Co v Brand [1869] LR 4 HL 171

City of Glasgow Union Railway Co v Hunter [1870] LR 2 HL SC 78

The Duke of Buccleuch v the Metropolitan Board of Works [1870] LR 5 HL 418

Cowper Essex v Local Board for Acton [1889] 14 App. cas. 153. This was an important case as it approved conclusively the main principles in the Stockport case, above, on limitation of claims for damages.

Horton v Colwyn Bay and Colwyn Urban Council [1908] 1 KB 327

Sisters of Charity of Rockingham v The King [1922] 2 AC 315 which followed the Essex and Stockton cases.

Edwards v The Minister for Transport [1964] 2 QB 134 This important case was the modern authority relied on by the respondents but the claimants submitted that it was wrongly decided. The facts were similar to those in the present case of Chadwick and Goff v Fingal County Council. The court had considered sect. 63 of the 1845 Act and limited the compensation to the damage related to the lands acquired from the claimant.

Australia: Marshall v Director General, Dept. of Transport High Court [2001] HCA 37. The Australian High Court rejected the line of authority in the Edwards case. A literal interpretation of a statutory provision similar to sect. 63 of the 1845 Act was preferred. The Irish High Court in the present case did not follow the Marshall case.

Ireland: In re Article 26 of the Constitution and part 5 of the Planning and Development Act 1999 [2000] 2 IR 321.

Underwood v Dublin Corporation [1977] 1 IR 70 Claimants cited this case to claim the whole loss on the basis of Article 43 of the Constitution on property rights.

#### Comment

Chadwick and Goff v Fingal County Council was an important case relevant to statutory arbitration, limits to compensation for damage arising from compulsory acquisition of land for motorways, and the procedures for arbitrators' powers on consultative cases stated to the High Court. In general, arbitrators have power under sect. 35 of the Arbitration Act 1954 to state cases to the High Court. The case law cited is useful and informative. This case was reported in more detail by Alison Keirse, barrister, in Irish Times Law Report, 10 November 2003, ed. Bart D. Daly and Agatha Clancy, barristers.

These notes are not intended as legal or other professional advice which should be obtained if considered necessary. Thanks to colleagues for their continuing co-operation in providing information on cases.

**Anthony P. Quinn, Barrister, FCI Arb.**