

# THE CHARTERED INSTITUTE OF ARBITRATORS

## Irish Branch

### NEWSLETTER

Issue No. 6, September 1998

#### EDITORIAL

The recent statement by the Institute on the unseemly row that has been grinding on for quite some time with regard to the conduct of some of the Institute's affairs has now come to an end. The statement is given in full later on in the Newsletter. The sorry episode, however, highlights the difficulties that can arise even in the most diligently conducted institutions and emphasises one of the disadvantages of a legal system that goes to considerable lengths to ensure that all subjects', or citizens', rights are upheld. It stems from the principle that it is better for one hundred wrongdoers to go free than for one just man to be condemned. But this can result in considerable injustice. The recent sorry episode of the proposed hotel development in College Street shows how a proposal can be delayed at enormous cost while a series of legal mechanisms are used in succession. These mechanisms are designed to ensure that all legal rights are available to all. This is admirable but there was a saying somewhere about sledgehammers and nuts. Similarly in the conduct of professional institutions. A number of them, both here and in the United Kingdom, have been involved in court actions over the appropriateness or otherwise of their administrative procedures and all such organisations must always be vigilant in respect of the conduct of their affairs. It only takes a few determined, if misguided, members to cause considerable, and expensive, trouble.

#### HANDBOOK ON ARBITRATION IN IRELAND *by Michael W. Carrigan*

This recent publication by the Law Society of Ireland is a very welcome addition to a busy practitioners library as a guide to arbitration in Ireland. In his forward, Laurence Shields, the President of the Law Society of Ireland, mentions that the Handbook "is not intended to be a detailed treatise on arbitration but rather to be a simple and practical introductory guide for those who are not familiar with it". Whilst this

may be the primary purpose of the Handbook, it is also an excellent guide for those who are familiar with the arbitration process.

The chapters are short but very informative and give a guide through the entire arbitration process and also include in the Schedules useful precedent clauses. Michael, who is also a past Chairman of the Irish Branch, is to be congratulated on producing such an excellent Handbook, which is modestly priced at IR£12.50 and is available from the Irish Branch's office or the Law Society.

*(Michael Moran)*

#### FELLOWSHIP ASSESSMENT COURSE

Fellowship Assessment Course on 17th and 18th October, 1998 in the Grand Hotel, Malahide.

This course is particularly relevant to those who have successfully completed the Diploma in Arbitration Law Course, or who have passed, or been referred, in one part of the Part II Examination.

This course is now full.

#### SPECIAL FELLOWSHIP COURSE

Special Fellowship Course on 6th to 8th November, 1998 in the Grand Hotel, Malahide.

Admission to this course is open to those with considerable experience of arbitration or litigation who consider that they will be able to demonstrate to the assessors, during the course, a thorough knowledge of the law and practice of arbitration and to write a satisfactory, enforceable award in the Paper C Examination. It is unlikely that lawyers with less than 10 years involvement in contentious business or arbitrators and lay advocates with less than a similar period of involvement in arbitration will be able to satisfy the above conditions.

Associate members should note that this could very well be the last opportunity open to them to proceed to Fellowship by this route prior to the new membership regulations being implemented.

*Course Fee:* IR£450.00.

## ANNUAL DINNER

*Date:* 27th November, 1998

*Venue:* Royal St. George Yacht Club, Dun Laoghaire.

*For further details on the Annual Dinner,  
see separate notice.*

## NEW MEMBERSHIP ARRANGEMENTS

The following is an extract from the booklet published by the Institute:

### **“Membership of the Chartered Institute of Arbitrators - with effect from 1.1.1999.**

No person shall be elected as a Fellow, a Member or an Associate unless, in addition to complying with the requirements and conditions provided in the Charter and Bye-Laws of the Institute, he/she shall have passed such qualifying examination as shall be prescribed by the Bye-Laws.

Such examinations may be dispensed with in such exceptional cases on such conditions, to such extent and in such manner as may be prescribed by the Bye-Laws.

Members having qualified in accordance with the Bye-Laws may use the post-nominal letters:

**Associate** - ACI Arb

**Member** - MCI Arb

**Fellow** - FCI Arb

- a Fellow shall be entitled to describe himself as ‘Chartered Arbitrator’.
- (Fellows who are not Panel members or a Registered Arbitrator at 31.12.1998 are not entitled to describe themselves as ‘Chartered Arbitrator’.

**Companions** - the Council may elect not more than 10 Companions at any one time without the sanction of the General Meeting. Such persons who, by reason of their position and experience relating to arbitration or alternative means of dispute resolution (or who appear to Council otherwise as able to render important assistance in promoting the object of the Institute), shall be eligible for election or re-election as Companion for a period of 5 years.

Companions shall be entitled to call themselves Companions of the Chartered Institute of Arbitrators and enjoy member benefits but shall not be entitled to vote at General Meetings, take part in the management of the Institute, be elected as honorary officers or members of the Council.

They shall not be deemed to be members of the Institute nor shall they be required to contribute to the funds of the Institute.

**Retired Members** - Fellows, Members and Associates above the age of 60 years may be designated by the Council, upon the application of the member, as ‘Retired Members’ provided that they are not actively engaged in any occupation directly or indirectly concerned with arbitration or alternative means of dispute resolution. They shall retain the privileges of membership except the right to vote at General Meetings, take part in the management of the Institute, be elected as honorary officers or members of the Council. Retired members shall be required to pay such annual subscriptions or other payment as may from time to time be prescribed by Council.

**Affiliate Members** - The Council may elect as Affiliates persons or bodies who are interested in the Institute and in arbitration or other alternative means of dispute resolution, and are approved by the Council as persons or bodies eligible to become Affiliates. All such Affiliates, who shall not be members, have the rights and privileges subject to and co-extensive with the rights and privileges conferred on Companions, except that they shall be required to pay such annual contributions and subscriptions as may be determined by Council from time to time.”

## CO-OPTIONS

Ms. Wendy-Jane Catherwood, Mr. Boyce Shubotham and Mr. John Frazer have been co-opted to the Committee of the Irish Branch since the last Annual General Meeting.

## CHARTERED INSTITUTE OF ARBITRATORS

Many members of the Institute are aware that during the past year the Council has had to deal with an internal conflict which has taken up a considerable amount of time. Three members of Council, Mr. Keith Pickavance, Mr. Ben Beaumont and Mr. Michael Chapman made serious allegations of impropriety in claims for, and payment of, expenses by senior members of Council and the Secretariat. In order for these allegations to be thoroughly and independently investigated Council appointed Sir Francis Purchas, a retired Lord Justice of Appeal, to investigate, and prepare a report on, these allegations for Council.

Sir Francis delivered his report on 21st April, 1998. He concluded that there was no substance in any of these allegations, and found that those against whom the allegations had been made had acted properly at all times and within the constitution of the Institute. Council considered and accepted this report and its conclusions at a Special Meeting on 18th May 1998.

Mr. Pickavance also repeated these allegations in a complaint to the Charity Commission, and they were therefore considered also by that body. In a letter dated 22nd June 1998 the Commission expressed itself to be satisfied that no financial impropriety had been disclosed.

Prior to the quarterly meeting of Council on 23rd June 1998 each of the three members concerned tendered his resignation from the Institute, and these resignations were each accepted by Council at that meeting.

It is to be hoped that this unfortunate and divisive episode is now behind us, and staff and Council members can now concentrate on the considerable challenges that lie ahead.

## DOMESTIC ARBITRATION AND THE 1998 ACT

*Dr. Roderick Murphy*

The recent Arbitration Act makes two important amendments to the Arbitration Acts, 1954 and 1980.

The first and more extensive relates to **interest on awards** and amends Section 34 of the 1954 Act. The amendment allows the parties to agree on the power of an arbitrator to deal with the award of interest. In default of agreement the arbitrator is given power to simple or compound interest on all or part of the

amount awarded; on all or part of the amount claimed but paid before the award was made; on the outstanding amount of the award (including costs) until payment.

The second relates to **small claims** and amends Section 5 of the 1980 Act by providing that nothing in the section shall prevent any party from invoking any alternative method provided by Rules of Court of commencing and dealing with a civil proceeding in respect of a small claim.

This article first considers the background of an increasing reliance on arbitration as a means of efficient dispute resolution before examining the amendment in detail.

### Interest

The power of an arbitrator to award interest, even where the interests of justice so demand, as can be seen from the case law considered below, has always been doubted. There is no implied power to award interest. (*See Mustill and Boyd: The Law and Practice of Commercial Arbitration in England, 2nd ed. (1989) 393 and Redfern and Hunter: Law and Practice of International Commercial Arbitration, 304-305*). While some legal systems regard this as a matter of substantive law, others regard it as a matter of procedure.

Section 17, in amending Section 34 of the Arbitration Act, 1954, is, for the greater part, similar to that of Section 10 which applies to international arbitration. It is also non mandatory. The amended section now reads as follows:

34-(1) The parties to an arbitration agreement may agree on the powers of the arbitrator or umpire as regards the award of interest.

(2) Unless otherwise agreed by the parties, the arbitrator or umpire may award simple or compound interest from such dates, at such rates with such rests that he or she considers meets the justice of the case -

(a) on all or part of any amount awarded by the arbitrator or umpire, in respect to any period up to the date of the award.

(b) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment.

(3) The arbitrator or umpire may award simple or compound interest from the date of the award (or any later date) until payment, at such rates and with such

rests as he or she considers meets the justice of the case, on the outstanding amount of any award (including any award of interest under sub-section (2) and any award as to the costs).

(4) References in this section to an amount awarded by the arbitrator or umpire include an amount payable in consequence of a declaratory award by the arbitrator or umpire.

(5) This section shall not apply to an arbitration commenced before the day on which *the Arbitration (International Commercial) Act, 1998* comes into operation unless-

- (a) the arbitration is concluded after that date, and
- (b) the parties agree that this section shall apply.

(6) This section shall apply to an arbitration commenced on or after the day on which the *Arbitration (International Commercial) Act, 1998* comes into operation-

- (a) under an arbitration agreement entered into on or after that day, or
- (b) if the parties so agree, under an arbitration agreement entered into before that day.

(7) This section shall not apply to an arbitration conducted by a property arbitrator appointed under Section 2 of the Property Values (Arbitration and Appeals) Act, 1960.

The section replaces Section 34 of the Arbitration Act, 1954 which reads as follows:

34 - A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgement debt.

There is now no automatic court rate interest on the award.

It should, accordingly, be borne in mind by arbitrators and by their advisors that the provisions of Section 34 of the 1954 Act will no longer apply to interest on the award unless the arbitrator expressly awards such interest. Accordingly, arbitrators should expressly provide for interest. As a safe option, in the absence of special circumstance, the award can be in the following form:

I award and direct that the Respondent pay to the Claimant the sum of £            together with interest on the said sum as from the date of the award at the same rate as a judgement debt.

Notwithstanding the limited circumstances in which the Courts award compound interest, an arbitration or umpire has now clear and extensive powers to award interest.

### Small Claim Procedure

The second feature affecting domestic arbitration in the 1998 Act relates to small claims as defined by the Rules of the Superior Courts.

Section 18 of the Act amends Section 5 of the 1980 Act (which is Part II: Effect of Arbitration Agreement on Court Proceedings) by the addition of a further subsection (3) as follows:

(3) Nothing in the section shall prevent any party from invoking any alternative method provided by Rules of Court (as amended from time to time), of commencing and dealing with a civil proceeding in respect of a small claim.

The Small Claims Procedure was originally contained in the District Court Rules (S.I. 310 of 1991) in respect of the Dublin Metropolitan Area and that of Cork and Sligo and was extended to all District Court Areas in 1993 (S.I. 356 of 1993).

Small Claims are defined as civil proceedings instituted by a consumer against a vendor in relation to any goods and services purchased in which the amount of the claim does not exceed £500. Hire Purchase and Leasing agreements are excluded.

### CASE NOTES

- (1) The Supreme Court judgement in the "Vogelaar" case.
- (2) High Court judgement of Ms. Justice Laffoy delivered 22/4/1998 in the Tobin and Twomey Services Limited, Plaintiff and Kerry Foods Limited and Timothy C. Sullivan, Defendants case.

A full comment on the above two cases will appear in the next Newsletter.