

# ARBITRATION NEWS

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



Irish  
Branch

**CIArb**

Issue 27 May 2008

## CHAIRMAN'S ADDRESS



*Joe Behan, Chairman of the  
Irish Branch of the Chartered  
Institute of Arbitrators*

Since taking over as Chairman, it has become evident that there is an enormous appetite for knowledge within our membership and beyond.

Over the past fifteen months, the branch has held:

- Numerous introduction courses to both mediation and arbitration
- Workshops on arbitration
- A seminar on dispute clauses in construction contracts
- An international conference on dispute management
- An Award Writing Course
- A workshop on consumer disputes
- Annual lecture

The feedback from each of these events has been overwhelming positive. Several requests have come from our members for more of the same, especially those workshops that provide advice and knowledge from the experts through questions and answers sessions.

This organisation's strength is in its diversity of membership. This is now most evident in the makeup of the committee, who come from a wide range of backgrounds such as architecture, engineering, dispute consultants, surveying, law library, law society, insurance industry, consumer association and more.

The committee is now providing a range of experience and skill base representative of the branch membership. We are optimistic in gaining an even broader representation from the auctioneering and accountancy fields.

There has been an upturn in requests from parties seeking three names, for the most part in ad-hoc disputes. Having such diversity in our membership enabled the Branch to nominate Arbitrators for disputes in many different spheres and locations this year. In my opinion good marketing by our PRO has attributed greatly to this change.

Last month we held a seminar in the IMI Sandyford called New Dispute Resolution Procedures for Public Works, GCCC and Private Contracts. The seminar attracted over a hundred participants, almost half of whom are non-members. There is a considerable interest in dispute resolution clauses and procedures on the new contracts and a major review is required to the already published contracts and accompanying rules. The Irish Branch will assist in this review process as we are in the fortunate position of having among our membership, the most eminent leading experts in the field in Ireland.

We welcome the introduction of mediation into construction contracts and we should be thankful to our colleagues in the CIF, RIAI and SCS for their enormous efforts and actions taken in this regard.

As can be witnessed from the activities of the commercial court, mediation is now becoming a more acceptable form of dispute resolution. This branch has within its membership qualified and experienced mediators and I look forward to seeing our members giving service to the commercial court and others in this field.

The Institute have recently introduced new pathways to Fellowship through mediation, which is a tremendous initiative. This system provides great opportunity for those involved in mediation to progress through the ranks of the Institute to fellowship level. Information on the pathways to fellowship is available on the website.

It has been an exciting, challenging and fruitful term for me as Chairman of the Irish Branch. I would like to once again take this opportunity, to give my sincere thanks to all the committee and especially to Ciaran Fahy Vice-Chairman, our Honorary Secretary Anthony Hussey, PRO John O'Brien, and Mary Griffith, Honorary Treasurer.

I thoroughly enjoyed my term in office and wish my successor well.

It has been an honour to serve you, the members, and I look forward to staying on the committee to bring more of our initiatives to further success.

Joe Behan Chairman

### Items of Interest in this Issue ...

- **Chairman's Address**
- **Obituary**
- **Membership**
- **NI Chapter**
- **Events**
- **Diary**
- **Symposium summary**

**Our condolences to the family and colleagues on the death of Joe O'Donovan, President of the Association of Consulting Engineers of Ireland, who died on 10 May 2008. May he rest in peace.**

## Obituary

### Anthony P. Quinn B.L., F.C.I.Arb.



It was with great shock that the wide circle of friends and colleagues learned of the sudden death of Anthony P. (Tony) Quinn, during a family holiday in Donegal. Tony was a fellow of the Institute and active in many of the Branch's activities. He completed the diplomas in arbitration and international arbitration at U.C.D. He contributed his arbitration notes to Arbitration News for many years. These notes provided invaluable knowledge to practising arbitrators with their detailed case analysis and comment.

Tony joined the Civil Service and was attached to the Registrar of Friendly Societies. He read commerce at Trinity College and subsequently read for the Bar at King's Inns. Taking early retirement from the service, he practiced at the Bar until his death.

His first publication was editing a book on the artist and mystic George Russell a.k.a. A. E. He wrote the seminal book on the legal regulation of credit unions, *The Law of Credit Unions*. It was in his writings that lead to a fruitful association with the Irish Writers' Union, an organisation that does so much to promote and improve the position and recognition of writers in Irish society. But it is his advocacy of Public Lending Rights for Irish authors for which he will be most remembered.

As a member of the executive of the Irish Writers' Union, and as its chair 2004 – 5, Tony was dogged in pursuit of the right of authors to be paid when their books are borrowed through the library system. The day that Irish writers receive their first payment from a PLR scheme here will be a celebratory one and it will also be a day to remember Tony's determined efforts on behalf of Irish writers, the results of which he was justly proud of.

Tony had a great sense of history. He was a regular attendee on military history trips to foreign cemeteries. These interests culminated in his well received "*Wigs and Guns Irish Barristers in the Great War*". This book required considerable research both at home and abroad. It was during this research that he discovered that the name of Major Willie Redmond of the Irish Guards and brother of the leader of the Irish Parliamentary Party, John Redmond M.P. was missing from the war memorial of the Honourable Society of Middle Temple. It was thanks to Tony's efforts that the memorial in the Temple Church, London was amended to include Major Redmond's name. One of the late Tony's proudest days was presenting a copy of this book to the President, Mrs. McAleese.

With such a wide range of interests and knowledge ensured that Tony was welcome company at the A.G.M. and on any table at the annual dinner of the Branch.

To his widow, Dr. Ann Quinn, his brother, John; his children Bláithín, Jeannette, Anthony and Paul; and his grandchildren Maya, Ruarí, Anú and Tegan, together with his wider family circle, I extend the deepest sympathy of the committee and members of the Branch.

Johnnie Mc Coy

## International Conference 2007 on Dispute Management: Practice & Promise

Pictures from the International Conference on *Dispute Management: Practice and Promise* held on 3 & 4 November 2007 can be purchased online [www.silverimage.ie](http://www.silverimage.ie).

### MEMBERSHIP

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

Mr. D. Shortall (Dublin)  
Mr. S. M. Seymour (Dublin)  
Mr. J. F. O'Brien (Co Cork)  
Mr. D. O'Riordan (Cork)  
Mrs. I. Leech (Co Dublin)  
Mr. A. Barr (Co Dublin)  
Mr. S. Moka (Co Offaly)

Mr. M. Morrissey (Co Kilkenny)  
Mr. J. Kane (Dublin)  
Mr. M. McAllister (Co Antrim)  
Ms R. Graydon (Dublin)  
Mr. J.W. Hogan (Dublin)  
Mr. T. McDonald (Dublin)  
Mr. K.P.A. Wright (Antrim)

Mr. J.P. Halley (Dublin)  
Mr. D.P. Byrne (Co Meath)  
Mr. L. Boylan (Dublin)  
Ms R. Casey (Dublin)  
Mr. F. J. Barry (Dublin)

## Northern Ireland Chapter

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### “Christmas Cheer” Event

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On 11<sup>th</sup> December 2007, Monye Anyadike-Danes QC was invited to speak to the NI Chapter of the CI Arb at their 'Christmas Cheer' event. Mrs Danes recently took silk and has extensive experience of all forms of dispute resolution both for the Claimant and the Respondent.

Following an introduction by James Golden, Convenor of the Northern Ireland Chapter of the CI Arb, Monye's lively and informative talk on the trials and pitfalls of adjudication for both adjudicators and users at the Ulster Reform Club in Belfast was extremely well received by CI Arb members and guests.

Monye clearly laid out the many jurisdictional traps for adjudicators, despite clear jurisprudence and explained the cultural differences between Courts and their Judges in Northern Ireland and the rest of the UK.

This was an excellent opportunity to hear one of the leading and most experienced legal minds in this area in the jurisdiction of Northern Ireland and an enjoyable evening was concluded with drinks and canapés.

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### Mr. Paul Wright's Talk

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On 24<sup>th</sup> September 2007, Mr Paul Wright an esteemed and experienced Mediator and the co-founding Director of the International Mediation and Arbitration Centre of Malibu was invited to speak to the NI Chapter of the CI Arb in Belfast.

Mr Wright delivered an enthusiastic and enlightening talk to CI Arb members and guests, in Bourbon Restaurant, Belfast. Mr Wright explained in detail the Californian legal system and the differences between the Construction Industries in the US and the UK. He also highlighted the recent, notable increase of the use of Alternative Dispute Resolution in the US, particularly Mediation. Mr Wright stated that, “The beauty of Mediation is that you can craft any settlement you want. Mediation is the future in a global economy, as it is speedy and flexible, suitable for complex cases, and enables parties to have the confidence to work together again. An experienced Mediator can validate parties, dealing with their psychological issues and provide a satisfactory settlement of their disputes.”



*Mr Ian Kirkpatrick, Deputy Convenor of the Northern Ireland Chapter; Mr Paul Wright, Attorney-At-Law; and Mr David Cartmill BL, a committee member of the NI Chapter who arranged Mr Wright's visit*

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### Mr. Guy Cottam's Talk

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On 11<sup>th</sup> September 2007, Mr Guy Cottam was the guest of honour at a dinner and discussion forum, hosted by the NI Chapter of the CI Arb branch in Belfast. Mr Cottam, a civil engineer and experienced arbitrator, adjudicator and mediator, gave an engaging and informative two-part talk to CI Arb members, members of the Adjudication Society and their guests present. Mr Cottam covered whether it was appropriate for arbitrators to encourage settlement (and how they might do so) and, then, discussed the proposed amendments to the 1996 Housing Grants Regeneration and Construction Act.



*Mr James Golden, Convenor of the NI Chapter of the CI Arb and Mr Guy Cottam, the Guest Speaker*

followed by a stimulating question time, then dinner and a “few” glasses of red wine!

Mr Cottam, also an established author and lecturer on construction law, regarding the proposed changes to the Act and with reference to adjudication, considered “Contracts in Writing” and the “pay when paid” provisions and liabilities. In relation to arbitration, he looked at the pros and cons of involving the arbitrator at an early stage of an arbitration to aid settlement, in particular how the process can be made as cost effective as possible for all parties involved.

The evening was a great success with a welcoming speech by Quigg Golden Director, James Golden,

## EVENTS

### Annual Lunch

This year's annual lunch was held for the first time in the Westbury Hotel. The guest of honour was the Attorney General Mr. Paul Gallagher S.C. and the event was fully booked.

The guest of honour, the Attorney General Mr. Paul Gallagher, commenced his speech by recognising that he was amongst some old friends. He stated there were two general themes to his address. Firstly, the continuing growth of the importance of alternative dispute resolution to dispute resolution and secondly, why has alternative dispute resolution become so accepted.

He spoke of the present and prospective developments in alternative dispute resolution. He praised the seminar held at Engineers Ireland. He commended the I. C. C. on its conference to mark the 50<sup>th</sup> anniversary of the New York Con-



*The Hon Mr Justice Roderick Murphy ; Mr. Paul Gallagher SC, Attorney General; Mr. Joe Behan Chairman Irish Branch; Mr Ciaran Fahy, Vice-Chairman Irish Branch*

vention and the I.C.C.A. conference to be held in Dublin. He said that this would lead to the presence of many experienced arbitrators being here. He said that through dialogue we could improve the alternative dispute resolution system, as there is always so much to learn. He spoke of developments



*Mr Paul Laughran, Lomac Developments; Mr. Patrick Curran, Atis Real; Joe Behan Chairman Irish Branch; Mr Paul Gallagher SC, Attorney General*

in Collaborative Law. He said there were developments and changes in U.N.C.I.T.R.A.L. Model Law. He referred to the Lisbon Treaty and said that Article 81 provided empowerment for the European Parliament to introduce measures to facilitate the internal market.

He spoke of the importance of the U. S. Supreme Court decision of [\*Hall Street Associates L.L.C v. Mattel\*](#), where that Court had to consider whether parties can subject an arbitration award to additional judicial scrutiny beyond the grounds in the Federal Arbitration Act. He said that the award binds the parties and they cannot extend it by agreement.

Secondly, why has alternative dispute resolution become so successful? Fundamental is the rule of law to the functioning of a proper society. If one adheres to the rules, therefore one has rights and obligations. One knows what they are and how they will be upheld. It is crucial to society to be able to resolve disputes. Alternative dispute resolution has to be self contained. It cannot be disputed further in the courts. An advantage of such is that the parties. He referred those present to the I.C.C. report on time and costs. He stressed the need to be alert to efficient procedures and to be cost effective. Access to the court post arbitration should be very limited. He believed all want to win their dispute, yet it is very significant that an effective resolution is achieved and that such should be cost effective. This is more effective than a process that explores every avenue of inquiry. There must be the delivery of a service to the people. The process must vindicate rights in a proportionate manner that respects the people and preserves dispute resolution facilities.



*Mr Nicholas O'Loughlin, Department of Finance, National Public Procurement Policy Unit; Mr Max Ambrahamson, McCann Fitzgerald Solicitors; Joe Behan Chairman Irish Branch*

The Chairman Joe Behan, spoke of the deficiencies that have become evident and are well known in the existing arbitration acts. He stated that the existing legislation governing arbitration not only needs to change but that it may also have to change to accord with E.U. obligations. Joe Behan assured the Attorney General of the Chartered Institute of Arbitrators commitment in assisting the formulation of any new legislation as outlined in the symposium report given to the Attorney General last November. ■

## EVENTS

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### Annual Kenneth McQuillan Lecture 2008

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On the 21<sup>st</sup> April 2008 Mr. Serge Lazareff of the ICC presented the Annual Kenneth McQuillan Lecture in UCD entitled *About and Around ICC Arbitration*. Mr Lazareff is Chairman of ICC Institute of World Business Law and Chairman of French International Arbitration Commission (ICC France).

The event was co-hosted by UCD's Law Department and we are grateful to Brian Hutchinson for arranging the venue and co-hosting the event. Mr. Lazareff's lecture was very informative and the large audience for a Monday night enjoyed both the lecture and the reception held afterwards.



*Mr Joe Behan, Chairman Irish Branch, made a presentation to Mr. Serge Lazareff*



*Mr James Bridgeman; Mr Anthony Hussey, Hon Secretary; Mr Joe Behan, Chairman Irish Branch; Mr Serge Lazareff; Mr Ciaran Fahy, Vice-Chairman Irish Branch; Mr. Brian Hutchinson, UCD*

### Introduction to Arbitration Entry Course

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An Introduction to Arbitration Entry course was held on Saturday 19 January 2008 in the Grand Hotel, Malahide, Co Dublin. Twenty-eight people attended the course. Bernard Gogarty was course director, tutors were James Bridgeman, Anthony Hussey and Arran Dowling-Hussey.

### Introduction to Mediation Entry Course

An Introduction to Mediation Entry course was held on Saturday 26 January 2008 in the Grand Hotel, Malahide, Co Dublin. Eleven candidates attended the course. Joe Behan was course director and tutors were James Bridgeman and Martin Lang.



### Introduction to Arbitration Entry Course in conjunction with the Irish Auctioneers and Valuers Institute

An Introduction to Arbitration Entry course in conjunction with the Irish Auctioneers and Valuers Institute was held on Thursday 1 May 008 in the Irish Auctioneers and Valuers Institute, Dublin. The faculty was James Bridgeman, course director, and tutors Bernard Gogarty and David Gill.

### Elections for Deputy President and Vice President 2009

The candidate nominated by the Irish Branch for the post of 2009 Deputy President/Vice President of The Chartered Institute of Arbitrators is Mr. Joe Behan.

## Events

### Annual General Meeting 2008

On the 23<sup>rd</sup> April 2008 the AGM was held for the first time in the Westin Hotel. The Chairman Joe Behan and Treasurer Mary Griffith gave their annual reports which were adopted with little debate.

Eleven candidates contested the election to the committee and those elected were Joe Behan, Jim Bridgeman, Larry Fenlon, Dermot Jewell and James O'Donoghue. This means that for the first year in many years the committee will be all male.

The Chairman paid a special tribute to former chairmen Rowena Mulcahy and Johnnie Mc Coy who together with the Honorary Treasurer, Mary Griffin were retiring from the committee this year. He thanked all of them for all the great work they had carried out over many years for the Branch and wished them well in the future.

The first meeting of the new committee will be held on the 20<sup>th</sup> May 2008, when elections will take place for the new officers of the Branch.



*John FFF O'Brien, PRO; Ciaran Fahy, Vice-Chairman; Joe Behan, Chairman; Anthony Hussey, Hon. Secretary; Mary Griffith, Hon. Treasurer*

### Workshop on Arbitration Practice. Interactive Discussions Forum

After many years lapse, a workshop on arbitration was held on the 12<sup>th</sup> April 2008 in the Davenport Hotel.

A three person panel, comprising of Michael Carrigan Former Chairman, Anthony Hussey Honorary Secretary and Roy Sherlock Trustee took questions from a very lively audience on many different areas of practice for arbitrators and party representatives.



*Joe Behan, Chairman Irish Branch chaired the workshop*

The interactive style of the workshop allowed open debate and sharing of experiences. It was chaired by the Chairman Joe Behan.

*Workshop panel comprised of Michael Carrigan, Former Chairman, Anthony Hussey, Honorary Secretary, and Roy Sherlock, Trustee*



### Peer Interviews for Fellowship

Peer Interviews for Fellowship were held on Wednesday 14 May 2008 in Dublin. The session was led by Roy Sherlock, Trustee. Eleven candidates were interviewed by Roy Sherlock, Joe Behan, Anthony Hussey and John FFF O'Brien.

## DIARY

Event	Details
<b>Conciliation Training Programme in conjunction with Engineers Ireland</b>	<b>19-22 May 2008</b> , Engineers Ireland, 22 Clyde Road, Dublin 4
<b>Annual Golf Outing</b>	<b>Friday 13 June 2008</b> , Powerscourt Golf Club, Enniskerry, Co Wicklow. For booking please contact the Branch Office.
<b>Mediation Accreditation Training and Assessment Course</b>	Training: 19, 20 & 21 and 27&28 June 2008; Assessment: 4 & 5 July 2008. Venue: The Grand Hotel, Malahide, Co Dublin. Fee: €4,890. For booking please contact the Branch Office.

## EVENTS

### Seminar on New Dispute Resolution Procedures for Public Works and Private Contracts

A very successful seminar was held by the Branch at the IMI Conference Centre in Sandyford on the 30<sup>th</sup> April 2008. There was no doubt from the presentations and discussions that ensued, that the changes to the new dispute resolution procedures will have a significant effect on those working in the various different sectors of the construction industry.

The conciliation and arbitration clauses in the new GCCC Contracts and the new accompanying rules, already published by the Department of Finance, still contain ambiguities and inconsistencies that need to be ironed out immediately to prevent major problems arising in the interpretation of the dispute resolution procedures.

It was clear that the necessary tools for conciliators and arbitrators are not in good and clear working order in the new contracts and must be urgently reviewed. A process which can be helped by the Chartered Institute of Arbitrators, who are a nominating body.

Mediation is being introduced into a number of key contracts.

The seminar was addressed by Dr. Nael Bunni, Max Abrahamson, Eamonn Conlon, Martin Lang and Roy Sherlock and was chaired by Branch Chairman Joe Behan.



*Dr. Nael G. Bunni, Bunni & Associates; Mr. Roy Sherlock, SIAC Construction; Mr Joe Behan, Chairman Irish Branch; Mr. Eamonn Conlon, A&L Goodbody Solicitors; Mr. Martin Lang, Construction Industry Federation; Mr. Max Abrahamson, McCann FitzGerald Solicitors*



*Mr Joe Behan, Chairman Irish Branch and Dr. Nael G. Bunni, Bunni & Associates*



*Mr Eamonn Conlon, A&L Goodbody Solicitors; Mr Joe Behan, Chairman Irish Branch; Mr Max Abrahamson, McCann FitzGerald Solicitors*



*Mr Joe Behan, Chairman Irish Branch and Mr Martin Lang, Construction Industry Federation*

# Dispute Resolution Symposium held on 28 April 2007

## SUMMARY

### SUMMARY OF RAPPORTEUR – MICHAEL W. CARRIGAN

Michael W. Carrigan, partner in Eugene F. Collins Solicitors and Irish Court Member of the ICC International Court of Arbitration, noted that the debate had been prompted by a perception apparently held by some people abroad that Irish arbitration law has not been modernised in that our domestic law is based on a statute now over 50 years old which in turn was based on an English statute long since repealed; the very fact that Ireland has not updated its domestic arbitration law for over 50 years suggests that Ireland and the people involved in arbitration in Ireland have an antediluvian attitude to arbitration; this creates a serious negative in people's overall assessment of Ireland as a potential venue for international arbitration.

Mr. Carrigan also noted that the debate is very timely in light of the fact that Ireland has been chosen by ICCA, as the venue for its 2008 Congress which will take place in Dublin in June next year. This marks the 50<sup>th</sup> Anniversary of the enactment of the New York Convention. As this Congress gathers together the largest number of people involved in international arbitration at any one time with over 700 expected for next year's Congress it is very important that we combine at every level to put our best foot forward; if ever there was an opportunity for Ireland to be a showcase of all that it has to offer in the field of international arbitration, both as a venue for international arbitration and as a source for highly trained and experienced people to act as international arbitrators and advisers, then this is it and the opportunity should not be lost.

Acting as a barometer of the views expressed, Mr. Carrigan summarised that there appeared to be a general consensus that: our domestic law can be improved; and there may well be merit in consolidating the provisions of the existing Arbitration Acts insofar as they relate to domestic arbitration into one new Act.

Mr. Carrigan suggested that although various amendments had been proposed and while some differences of opinion had been expressed about some of the amendments, there appeared to be much agreement on the proposals which would need to be discussed and teased out in a little more detail.

However, we have to take account of the issue identified by Michael Collins being the European Law issue. That seems to put us in considerable difficulty about making any amendments to our domestic arbitration laws unless we make them compatible with our international arbitration laws. We have therefore to decide how best we formulate a law to comply with our EU obligations which would satisfy all our requirements on the domestic front and at the same time make Ireland an attractive venue in the international context. Mr. Carrigan concluded that any progress which we can make by discussing and finding solutions to this issue in advance of the ICCA Congress next year can only be for the good.

Before the Attorney General concluded the morning session, Dr. Bunni spoke very briefly in order to clarify his fifth proposal and stated it would lead him to say that he would not object to the UNCITRAL Model Law being adopted for domestic arbitration.

### SUMMARY OF RAPPORTEUR – JUDGE PETRIA MCDONNELL

Based on the presentations and input from the floor Judge Petria McDonnell summarised the afternoon in the following terms: firstly, we are on the cusp of development in the whole domain of mediation and conciliation so it behoves us to get any change right. The question was raised whether we should adopt the Model Law on Conciliation and also whether we should dispense with the word 'mediation'. The aim of any regulation of the profession would be to protect the public and in considering how to implement any such regulation, due regard should be given to preserving flexibility. Rather than regulating the process, it might be a better idea to regulate mediators and require them to sign a code of ethics. Similarly, since a key feature of mediation is flexibility, it was suggested that mediation should never be compulsory.

On the construction side, conciliation has a high success rate. It is not considered that conciliation in the construction industry needs legislation except perhaps to put confidentiality on a statutory footing. There was general dissatisfaction expressed with the new Public Sector contracts and they are not very welcomed. The comment was made that it is key that lawyers have proper training in mediation; otherwise they will revert to type and take on an adversarial role. It was also suggested that in order to regulate mediators and training, we should constitute a professional body comprised of outside lay people.