

In this issue:

- 01**
Message from the Chair
- 02**
Dates for your diary
- 03 – 09**
The Annual Conference
- 10 – 11**
Conciliation and the Nec4 – are they compatible?
- 12**
Introduction to alternative dispute resolution
- 13**
Construction disputes: Lessons from the coal face
- 14 – 15**
Dispute avoidance best practice on construction projects
- 16 – 17**
Harnessing the power of artificial intelligence in the construction industry
- 18**
Thank you to all our sponsors
- 19**
Training course – Introduction to ADR
- 20**
Ciarb and workplace dispute resolution
- 21 – 22**
Equality, diversity & inclusion
- 22-23**
ICC National Nominations Commission
- 24-27**
Book review by Ciaran Fahey & John Trainor
- Back page**
Committee Members 2023-2024



Message from the Chair

Now that we are all well into our stride for 2024, we can reflect on the continuing momentum of branch activity and events. Through the end of 2023 and into the spring of this year we have held several seminars and courses. The first of the events was titled “Conciliation and the NEC4 – are they compatible?” which was a joint event with Engineers Ireland. Following this we had a first regional event in Tipperary was a course titled “Introduction to Alternative Dispute Resolution (ADR) in construction.”

At the beginning of the year, we held a seminar “Construction disputes – Observations from the coal face.” We then had a second regional event which was a seminar “How best to avoid and resolve construction disputes” held at Cork County Hall, followed by our most recent seminar “Harnessing the power of artificial intelligence in construction.” Following this we held the second running of our course titled “Introduction to alternative dispute resolution (ADR).” Finally, we held the Annual Conference under the theme “Dispute avoidance and management in construction” where all these events are reported on in detail within this newsletter.

Looking to the future, we are holding the Annual General Meeting (AGM) and Annual Luncheon on the 26th of April with a return to the splendid surroundings of the Banking Hall, in the now College Green Hotel in the centre of Dublin. The



Peter O'Malley

guest speaker for the luncheon will be the former Government Minister, Ivan Yates who I am sure will thoroughly entertain us all on the day. At the luncheon it will be my immense pleasure to pass on the chain of office to Dermot Durack, as the next Chair of the branch for 2024/2025. I know that Dermot is planning an exciting programme of events for the year, including the Annual Dinner which is to be held on Friday 1st of November.

We naturally hope that you, as the members of the Ireland Branch will continue to support and promote these events in future, where further details will be posted on our web site. As this is the last newsletter for my year as Chair, I take the opportunity to thank the branch committee for their continuing support and hard work in creating the wonderful and interesting events that make membership of the Ciarb Ireland Branch so worthwhile and enjoyable. However, my final thanks are to you as our members where without your support we would not be able to continue to promote the continuance of the Ireland Branch and further build upon its over 40-year history.

Dates for your diary

14th March – 6.00pm

Seminar

'*The perils of being an expert witness*' presented by Mark Tottenham with a supporting panel of speakers, at the Irish Architectural Archive, 45 Merrion Square, Dublin D02 VY60.



21st March – 3.00pm

Training Seminar

'*Gender matters – Issues and solutions*' an online seminar comprising several brief presentations followed by a Question & Answer session.



16th April – 9.00am

Training Course

'*Introduction to Construction Adjudication*' to be held on-line to comprise of five different modules by five industry specialists over one half-day.



26th April – 11.00am

Annual General Meeting

The Ciarb Ireland Branch Annual General Meeting to be held in The Guinea & Florin Suite at the College Green Hotel, Westmoreland Street, Dublin D02 HR67.



26th April – 12.00pm onwards

Annual Lunch

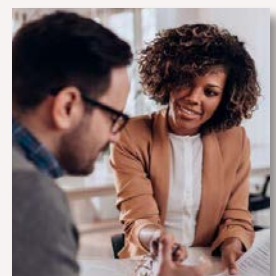
The Ciarb Ireland Branch Annual Lunch to be held in the Banking Hall at the College Green Hotel, Westmoreland Street, Dublin D02 HR67, with guest speaker, Former Government Minister Ivan Yates.



4th July – 3.00pm

Seminar

'*Family law arbitration in Ireland*' to be held at the Dublin Dispute Resolution Centre (DDRC), The Distillery Building, 151 Church Street, Smithfield, Dublin D07 WDX8.



Tickets for all the events will be available on our website www.ciarb.ie where we hope you will support with your attendance.

Annual Conference

Dermot Durack – Vice-Chair



The audience

'Dispute Avoidance and Management in Construction', was the theme for the Branch's Annual Conference held on the 1st of March in the Hilton Charlemont Hotel in Dublin, where we had a great turnout despite delegates having to brave an unexpected snowfall to get there. We are very grateful to our event co-sponsors Addleshaw Goddard and Yendall Hunter for their support of the Event.

Branch Chair Peter O'Malley opened the conference and introduced the keynote speaker, Bernard Gogarty of Smyth & Son Solicitors. Bernard took us back to a time where Arbitration was the only method of ADR in town, the ADR Community was small, we had jurisprudence and if you had a construction query you either consulted Max Abramson's book or David Keane's book. Bernard explained how he felt the demise of the case stated provisions, with the introduction of the 2021 Arbitration Act, was a backward step as it is not included in UNCITRAL Model Law which the Act is based on, and we can't have a domestic Arbitration Scheme and an International Arbitration Scheme in the one jurisdiction. Bernard did suggest one solution, that may be to introduce it for Construction cases under the Construction Contracts Act. Panel one was made up of Gerard Monaghan, Clare White, Claire McCarry and moderated by Dermot Durack who looked at Dispute Avoidance and whether or not it is realistic. The consensus

was that dispute avoidance is possible but in the Irish context under the Public Works Contracts we could do with following NEC and FIDIC by including the requirement in the contract rather than the guidance and Projects need to give more consideration to the people they put on the Project Boards.

Panel two was made up of Helen Kilroy, Lisa Maloney, Siobhan Kenny from our co-sponsor Addleshaw Goddard and was moderated by Dermot Durack and looked at whether Mediation is the most expedient and economic alternative. This panel discussed the challenges with multi-party mediations, the importance of preparation, building trust and the skillsets you need to make a mediation successful. The consensus with the panel and the delegates is that Mediation is the most expedient and can be the most economic alternative.

Panel three was made up of Brian Bond, Martin Cooney, Siobhan Fahey and was moderated by Arran Dowling Hussey and looked at whether conciliation is the most appropriate method of dispute resolution. Our three panellists are all proponents of conciliation particularly Brian who has just published a book on the topic and if you get a settlement agreed during the process it can't be wrong. Some shortcomings were discussed including the fact that sometimes it is not quick, the standing conciliator process needs

some improvement and recommendations without sound reasons can be hard for Public Body Representative to justify to those who control the purse strings. The consensus was that it is still the most appropriate method of dispute resolution in the construction industry although there are other tools in the ADR Toolbox that should be considered when you review the circumstances of the dispute.

After a break for a three-course lunch, Panel four which was made up of Niav O' Higgins, David McCarthy and James Burke and was moderated by Keith Kelliher looked at Adjudication and discussed was it the panacea the industry hoped for. With the exception of large complex disputes and low value disputes, it was felt that the Act had achieved what it set out to do as it has in other jurisdictions. The fact that the Courts are supportive is positive and the professional bodies are looking into establishing a Low Value Scheme, so it looks like adjudication is here to stay.

Panel five was made up of Meg Burke, John Farage O'Brien, Ruaidhri Farrell of co-sponsor Yendall Hunter and was moderated by Keith Keliher and they discussed whether Arbitration was still relevant. While there are downsides to Arbitration, particularly the cost it does work and there are opportunities for Arbitration in other sectors such as Patent Law and Family Law. The point was also made that with all the ADR Clauses in Irish Construction Contracts ultimately leading to Arbitration with no appeal that Arbitration is effectively our TCC, so it needs to be nurtured and promoted by the ADR Community. The panel believed that Arbitration is still relevant, but it is a machine in the corner of the gym that needs a bit of oil and dusting down.

The sixth and final panel was made up of Catherine Needham, Brian Hutchinson, Éamonn Conlon and was moderated by Joanne Cooney



L to R – Dr Brian Bond and Ruaidhri Farrell

where the panel looked at where we are going and what does the future hold. Max Abrahamson reminded us of the importance of records; however, we now have so many records that the difficulty has become managing the huge amounts of data that construction disputes generate. AI would seem to be the answer, but questions arise about transparency, privacy, security and who controls the dataset, algorithms and how this all fits into a framework of justice. Will people trust AI or is it as case that we would prefer a pilot to be sitting in the front of the plane. We were also reminded that in addition to AI the future will also look different as the ADR community embraces diversity.

All delegates received a printed copy of the conference brochure which included papers by the panellists and a limited-edition Branch Notebook. The attendees were treated to a drinks reception after the event courtesy of the support our co-sponsors Addleshaw Goddard and Yendall Hunter. Finally, a special thanks is due to Jennifer Crowther and Keith Kelliher in organising such a successful conference.



L to R – Clare White, Peter O'Malley, Danyal Ibrahim, Paula Murphy and James O'Donoghue



Panel 1 – L to R – Gerald Monaghan, Claire White, Claire McCarry and Dermot Durack



Panel 2 – L to R – Siobhan Kenny, Dermot Durack, Helen Kilroy and Lisa Maloney



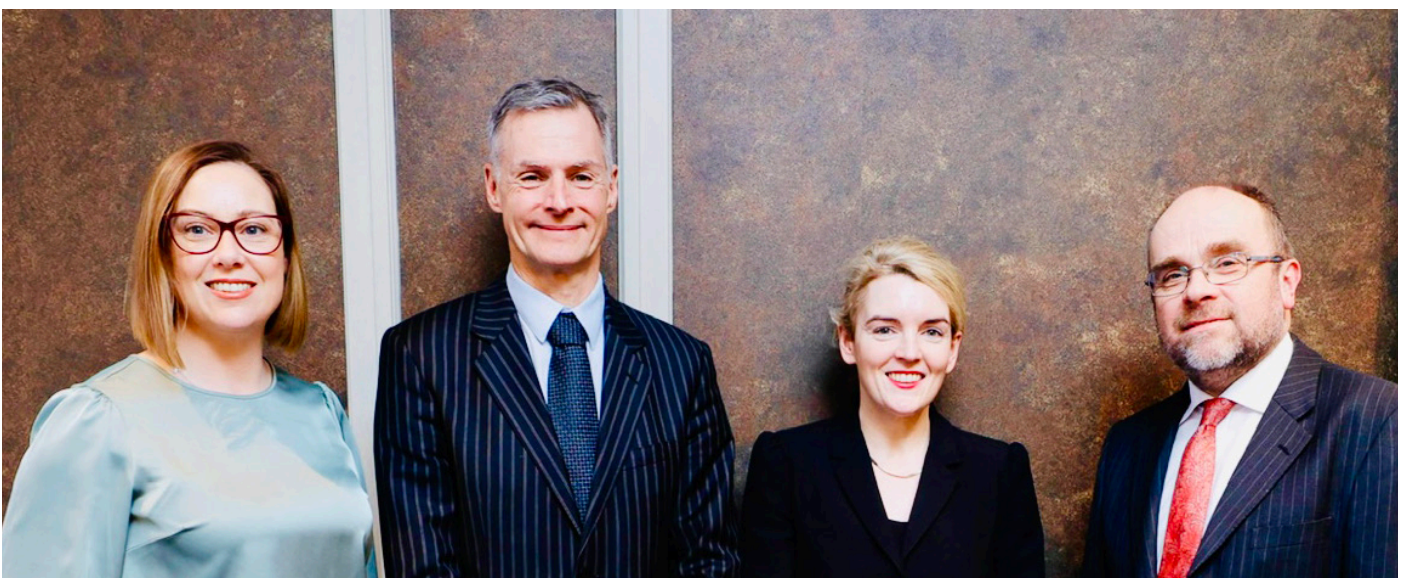
Panel 3 – L to R – Arran Dowling-Hussey, Siobhan Fahy, Dr Brian Bond and Martin Cooney



Panel 4 – L to R – James Burke, Keith Kelliher, Niav O’Higgins and David McCarthy



Panel 5 – L to R – Ruaidhri Farrell, Meg Burke, John Farage-O’Brien and Keith Kelliher



Panel 6 – L to R – Joanne Cooney, Brian Hutchinson, Catherine Needham and Éamonn Conlon



L to R - Éamonn Conlon and Siobhan Kenny



Meg Burke



L to R - Paula Murphy and Finola Doyle O'Neill



Peter O'Malley opening the conference



Mark Wearen



Bernard Gogarty making the keynote address



L to R – Denise Kennedy and Conor Kelly



L to R – Michael Carrigan and Bernard Gogarty



L to R – Terry McLoughlin and Sarah Murphy



L to R – John Farage O'Brien and Gerry O'Sullivan



Jennifer Crowther



Jim Bridgeman



L to R – Orla FitzGerald and Éamonn Conlon



Panel 5 – L to R – Keith Kelliher, Meg Burke, Ruaidhri Farrell and John Farage-O'Brien



L to R – Ruaidhri Farrell and Peter O'Malley



Dr Brian Bond



L to R – Joanne Cooney and Catherine Needham

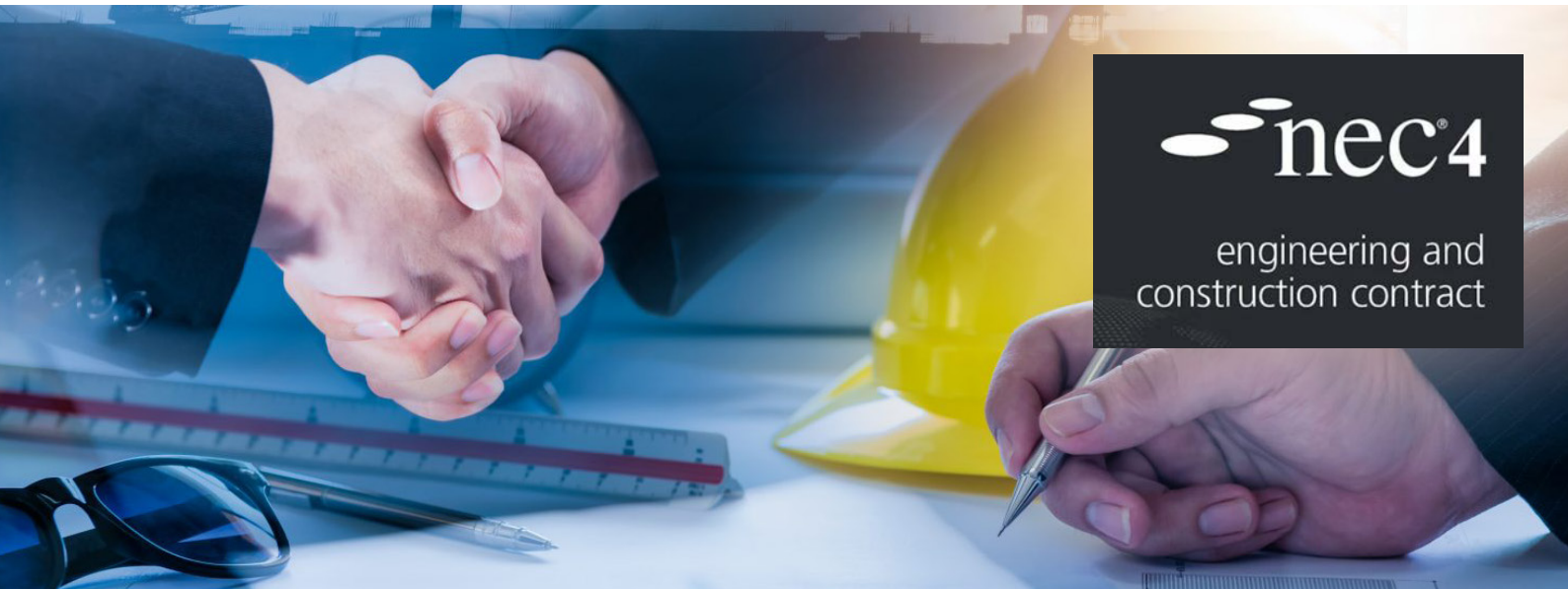


Éamonn Conlon

Seminar

Conciliation & the NEC4 – Are they compatible?

Dermot Durack – Vice-Chair



Engineers Ireland and the Chartered Institute of Arbitrators, Ireland Branch hosted a joint event on the 24th of November 2024 in the headquarters of Engineers Ireland on Clyde Road where the topic for discussion was Conciliation and the NEC4, are they compatible. The event was moderated by Branch Chair Peter O' Malley and the speakers included Brian Bond, Ciaran Fahy, Gerry Monaghan, and Níav O' Higgins.

Brian Bond opened the event by outlining to us why he believed conciliation is the best method for resolving most construction disputes. Brian's research into Conciliation tells us that the majority of disputes referred to conciliators are resolved in an in-expensive manner where relationships are preserved. Few conciliator's recommendations are rejected and some of those that are end up being resolved through further negotiations. Brian also spoke about the history of Conciliation in Ireland and the UK and why it thrived in Ireland but withered in the UK. If you want to find out more about Conciliation from Brian, you can read his book which is also reviewed in this Newsletter by John Trainor SC.

Following this Peter O'Malley gave us an introduction to the increasing use of the NEC4 in Ireland and there are a growing number of users particularly main contractors, who consider that the risk transfer between the employer and contractor in the PWC is unbalanced to the point of being punitive. The NEC4 seeks to introduce effective project management procedures, requiring a pro-active approach to risk and change. Some of the Projects using NEC4 include Haulbowline Island Cork, Runway 16/34

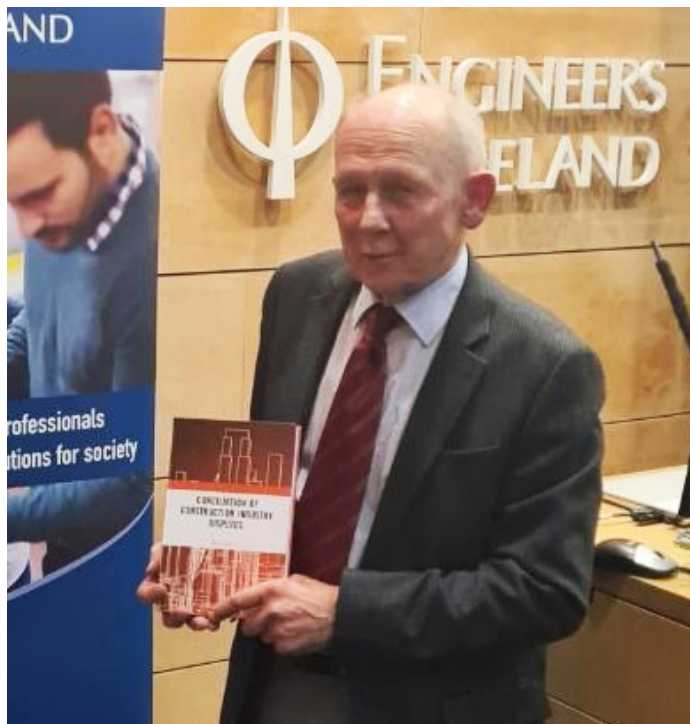
at Cork Airport, Baggage Handling Upgrades at Dublin and Cork Airport and the M28 Cork to Ringaskiddy.

Gerry Monaghan then set the scene for the Panel discussion and Q&A by giving us an overview of the NEC4 Dispute Resolution Provisions and Dispute Management Provisions and comparing them to the Conciliator and Standing Conciliator provisions under the Public Works Contracts. Gerry wrapped up by making some suggestions for updates to the NEC Option W clauses for use on Projects in Ireland.

- NEC4 Y(IR)1 Clause which deals with payment provisions, disputes, and adjudication in accordance with the Construction Contracts Act 2013 to be adopted in lieu of NEC 4 Option W1 (adjudication). Option W2 (Adjudication in UK) not applicable.
- NEC4 Option W3 (Dispute Avoidance Board) not to be utilised.
- A new Option X or Y clause to be drafted based on the PWC Standing Conciliator provisions modified as required in lieu of Option W3.
- Gerry also provided some key considerations for a new X or Y Clause (Standing Conciliator).
- 1 or 3 persons depending on size of project and to be identified in the Contract Data.
- Some provision to interact with Senior Representatives to be considered.

- Greater focus on Dispute Avoidance by way of informal assistance or otherwise.
- Consideration given to procedural rules for the Standing Conciliator particularly at dispute avoidance stage.
- Conciliation process as per PWC and EI procedures with a binding recommendation.
- Where recommendation requires payment of an amount, the SC upon application of a Party and where reasonable grounds exist, shall determine an appropriate security to be paid by the payee (akin to SC21.4.3 FIDIC RB 2017/2022).

Gerry's talk was followed by a Panel discussion and Q&A which included the Speakers plus Níav O' Higgins and Ciaran Fahy. While some delegates thought there would be difficulties with introducing Conciliation to NEC4 the consensus in the room was that it work. The Q&A was followed by networking and light refreshments for all those that attended in the Clyde Café.



Dr Brian Bond with his new book



Ciaran Fahy



Gerard Monaghan



L to R – Ciaran Fahy, Dr Brian Bond, Níav O'Higgins and Gerard Monaghan

Seminar

Introduction to Alternative Dispute Resolution (ADR) in Construction

Paula M Murphy – Equality Diversity and Inclusion SIG Chair



One of the suggestions that arose from an EDI (Equality Diversity and Inclusion) Survey, issued, and then responded to by the branch membership was a request to have more events taking place in the regions, as had been the case in the past. This request resulted in the decision to hold a Seminar 'Introduction to ADR in Construction' in Horse and Jockey Hotel, near Thurles in Tipperary on the 30th of November 2023. The Horse & Jockey Hotel is a well-known conference venue, suitably located for people travelling from the surrounding counties of Laois, Offaly, Cork, Limerick, and Kilkenny in addition to those living nearby.

The event was targeted towards Contractors, Sub-contractors, Design Professionals, Employer Representatives, Legal Practitioners and County Councils where promotional details were widely circulated in advance. The event, held in the late afternoon, lasted for just over 2½ hours with the objective of providing a whistle stop tour of the various ADR processes, their appropriate uses and differences. The event was a success with representatives from each of the groups detailed above in attendance.

The speakers were:

- **Paula Murphy** – Architect, Arbitrator, Conciliator who moderated and outlined the current Initiatives in Ciarb and the role of the Institute.
- **Aaron Desmond** – Barrister & Lecturer gave a general background to ADR.
- **Meg Burke** – Barrister, Arbitrator and Adjunct Professor of Law University College Cork, spoke on Arbitration.

- **Billy Morrissey** – Civil Engineer, Conciliator, Mediator and Adjudicator spoke about Conciliation and the role of the Standing Conciliator.
- **Peter McCarthy** – Surveyor & Adjudicator spoke about Adjudication.

The speakers are all Fellows of the Institute, where with multiple qualifications in the various areas of dispute resolution, they are established and committed practitioners in the sphere of Dispute Resolution, thus providing what proved to be an excellent overview of ADR in construction as the topic. The Event concluded with a question-and-answer session, with CPD Points available to the attendees. After the seminar there was an opportunity to network with the Ciarb Committee providing refreshments. Following on from the success of this regional event it is now planned for the seminar to be repeated in the future in Galway, Waterford & Limerick.



L to R – Peter McCarthy and Conor Kelly

Seminar

Construction Disputes: observations from the coalface

Ruaidhri Farrell FCIArb



L to R – Margaret Austin, Siobhan Kenny, Ruaidhri Farrell and Omar Jassam

In early February, Yendall Hunter and Addleshaw Goddard held a joint seminar at the Irish Architectural Archive under the title 'Construction Disputes: observations from the coalface'. The wider CIARB community and other attendees braved the elements to hear the panel of Siobhan Kenny, Omar Jassam and Ruaidhri Farrell. The seminar was ably moderated by Margaret Austin, where the panel discussed their experiences and observations on delay, quantum, and the law, set against a range of scenarios that professionals in the construction dispute industry would be more than familiar with.

The first scenario concerned a common situation where an Employer selects the lowest bidder to construct a development based on an incomplete, despite the project finishing with minimal delay the contractor having raised several claims. Siobhan discussed the legal issues that an employer should consider when embarking on a project such as this and some of its consequences. Omar discussed quantum issues regarding how design changes can be priced using an 'add-omit' approach and how the 'omit' priced element can require significant witness or technical expert input, which should be addressed as early as possible. Ruaidhri discussed some of the challenges that he sees contractors facing when they seek to

advance claims for lost productivity on account of the design changes that arise in this type of scenario.

In the second scenario, a Developer had engaged a Contractor to design and build a luxury development with vague Employer Requirements. Delays followed and the Contractor blamed both the Developer and its Subcontractor for the delays. Siobhan, Ruaidhri and Omar gave their thoughts on the types of issues of issues that arise in multi-party disputes, with the complexities arising from parallel proceedings being a common issue faced across the panel. Ruaidhri discussed his experience where contradictions between an employer's case presented in litigation had a significant bearing on the outcome of separate but related arbitration proceedings. Omar then talked to the issues that arise with the timing of multi-party disputes and solutions to circumstances where pass-through claims that had yet to be determined in separate proceedings and where the losses have yet to crystallize as a result.

After the seminar ended most of the attendees enjoyed the excellent spread of canapes and refreshments in continuing debate and discussion, where a thoroughly enjoyable and thought-provoking evening was had by all.

Seminar

How best to avoid and resolve construction disputes

Alan Philip Brady BL



On the 16th of February, the Ciarb Ireland Branch hosted a networking and learning event in Cork County Hall entitled “How Best to Avoid and Resolve Construction Disputes”. The events aim was to give guidance on how construction disputes can best be avoided and resolved on construction projects, with some emphasis on the success of Conciliation in Ireland. The event was moderated by Billy Morrissey, a former Chair of the CIARB Ireland Branch, who gave a very warm welcome to the large crowd in attendance.

The first speaker was John Lyden who spoke about best practice in dispute avoidance and what his experience has taught him. John discussed the main causes of disputes and the need for early intervention by all parties. He noted that “A major cause of disputes is where people are unable to see things from other peoples’ perspective.” John highlighted that many disputes arising early in construction projects involve unforeseen ground conditions and noted that a thorough site investigation prior to any substantial design and the disclosure of the findings of that site investigation to the contractor is essential to minimise unforeseen delays and extra costs. John further highlighted that Contractors when tendering should carefully

ensure that they understand what they are being asked to build. If a specification has unusual terms, clarify what it means. During the post-award stage, John referred to Max Abrahamson’s saying that three things were necessary for successful claims – records, records, and records. In John’s view, during the construction stage, three things that are necessary to avoid disputes, are co-operation, co-operation, and co-operation.

The next speaker was Peter McCarthy, Principal consultant at Conlex Consulting Ltd, who provided the attendees with a very interesting presentation on the success of Conciliation in Ireland. Peter explained the Conciliation process under both the RIAI and PWC suite of contracts. He discussed why Conciliation has been hugely popular in Ireland and touched upon the fact that Conciliation, as opposed to more litigious forms of dispute resolution, is helpful in maintaining ongoing relationships between the parties who may find themselves in dispute. He noted that this was particularly key in a more close-knit market like Ireland. Peter also referred to a recent survey, which noted that 88% of disputes referred to Conciliation were resolved without the need to go to arbitration or the courts.

Peter then addressed statutory adjudication which he noted can be pursued at any time and overrides dispute resolution procedures in construction contracts, such as the RIAI and the PWC. Billy, John and Peter, were then joined by Alan Philip Brady BL and Seamus Duggan, of Duggan Brothers Contractors, for a panel discussion. Alan addressed the attendees on the support that the Courts have been affording to the statutory adjudication scheme by the introduction of a streamlined and quick mechanism to have an award enforced before the Courts together with the judicial support generally of the process. He gave several practical examples of cases he was involved in where the measures taken by the Courts have resulted in successful parties to adjudication being paid far quicker than would be the case with any other dispute process.

Seamus Duggan provided the attendees with his unique perspectives from a contractor's viewpoint. He emphasised the need to make sure that the appropriate people are involved early on both sides to a dispute so that differences can be addressed quickly before a dispute escalates. The event then closed with many of the audience continuing discussion over tea, coffee, and croissants where everyone was appreciative of the Ciarb Ireland Branch holding the event in Cork City, as opposed to Dublin. As a result of the strong attendance and audience interest the organising team, led by Peter McCarthy, are considering a future running of the event in cities such as Waterford and Galway.



Peter McCarthy presenting to the audience



Billy Morrissey



John Lyden

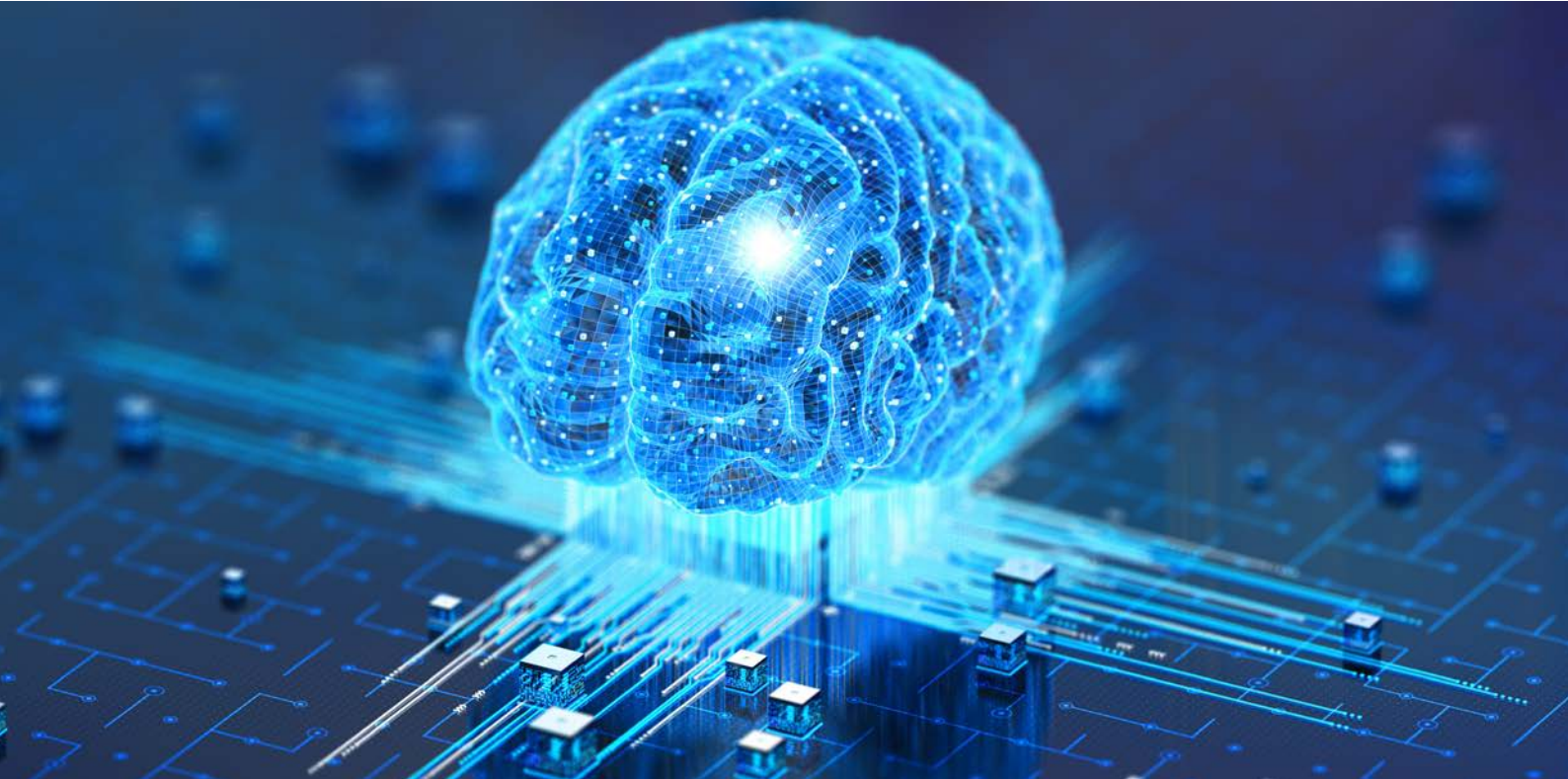


Peter McCarthy

Seminar

Harnessing the power of artificial intelligence in the construction industry – The future of dispute resolution and the impact on GDPR

John McSorley



The branch hosted a seminar on Artificial Intelligence (“AI”) at the Irish Architectural Archive in Merrion Square on the 21st of February, moderated on the evening by the Vice-Chair Dermot Durack. The seminar comprised of two presentations followed by questions from the audience. The opening presentation was by John McSorley, Managing Director of FTI in their Construction Projects and Assets segment. John commenced his presentation with the question ‘what is Artificial Intelligence’ taking the attendees through the various key components of AI, such as machine learning, natural language processing, computer vision, expert systems, and neural networks.

John looked at how AI could have an impact on improving the efficiency and accuracy in the resolution of disputes from the perspective of contract interpretation, delay analysis and quantum. The presentation was thought provoking, leaving the audience to consider if in the future whether robots could be used as decision makers.

The next presentation was from Gráinne Bryan, a Senior Managing Director with FTI within their Technology Segment. Gráinne focused on the

growing body of emerging AI laws, regulations, strategy, and policy directives which now demand an initiative-taking approach to ensure readiness for organisations to help optimise and monitor the use of the technology, control regulatory risk and associated IT, together with operational, and legal costs. Gráinne’s presentation was inciteful and informative as to the impacts of corporate governance on AI as well as discussing some practical considerations. The presentation was followed by questions from the audience which included the use of AI in the production of independent expert reports. The following discussion included whether construction contracts could in the future include a provision for an AI platform to deal with disputes and how could the appropriate information be introduced to an AI based platform.

The evening concluded with closing remarks from Peter O’Malley, Chair of the Ciarb Ireland Branch, followed by light refreshments and further discussion on what everyone considered was an excellent and most interesting presentation by FTI.



Gráinne Bryan



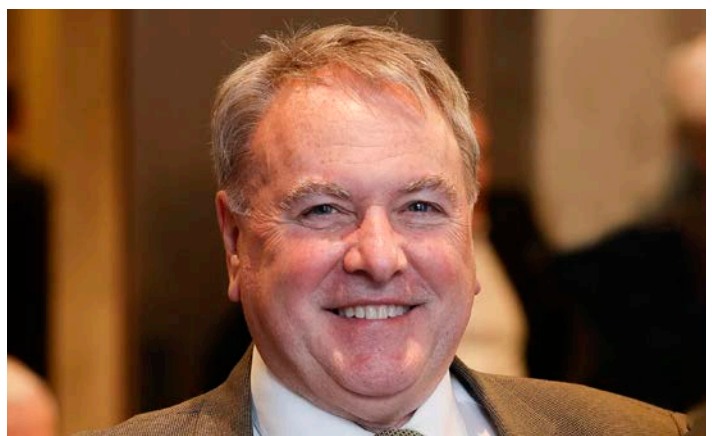
John McSorley



L to R – Dermot Durack, John McSorley, and Gráinne Bryan

Call-out for Fellows

If you are an Associate (ACI Arb), or a Member (MCI Arb), you may be eligible to apply for Fellowship of the Institute. Being a Fellow allows you to be considered for appointment as arbitrator for the resolution of disputes, such as for the Society of Irish Motor Industries (SIMI) arbitration scheme that is administered by the branch. This can provide you with invaluable experience, where for many of our membership this has formed the first step in a longer career in dispute resolution. If an application for Fellowship is of interest you can contact Arran Dowling-Hussey, our Branch Trustee, at adhussey@lawlibrary.ie who will be pleased to help.



Peter O'Malley

Thank you to all our sponsors

Peter O'Malley – Chair

This past year has seen an increase in the number and profile of events organised and hosted by the committee of the Ciarb Ireland Branch. Apart from the considerable investment of time in making these events happen there is also significant financial resource required to have an event profile that reflects the importance and professionalism of the institution represented by our branch. These resources allow us to host events in prestige venues, secure important and relevant guest speakers and to extend our hospitality to the many honorary guests that we invite to our flagship events.

Our financial resources, as expected of any charitable institutions, are finite. We as a branch are fortunate to have had long established relations with the legal sector and the wider dispute resolution industry in being able to attract sponsorship for many of our events including the flagship events of the Annual Dinner, the Annual Conference, and the Annual Lunch.

We would like to extend a heartfelt and sincere thanks to all our sponsors and to those individuals within these organisations who have championed our case internally to secure this sponsorship.

We take this sponsorship seriously and continue to aim to ensure that we can provide a level of increased awareness and impact for those who support us. We naturally hope that these sponsorship relationships will continue in the future where we cannot be complacent. For our part we must strive to ensure strong attendance at our events and to continue to provide value to those who generously support us. Finally, I would also like to thank those sponsors who also support us with venue space to host our events at no or reduced cost, again your support of our work of the branch is gratefully appreciated.

PHILIPLEE

**ADDLESHAW
GODDARD**

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Annual Lunch**



Venue sponsors

CI Arb and workplace dispute resolution; an opportunity

Pat Brady FCI Arb



We are an organisation of dispute resolvers, one of whose great strengths is our multi-disciplinary skillsets. Strangely, despite the importance of the workplace and the frequency of disputes that arise we seem to have little interest or influence in this sector, despite the opportunity for membership and training services that could be provided.

There is a large 'HR' sector in Ireland where there is a huge opportunity for improvement in conflict avoidance and resolution skills. Some Human Resource (HR) practitioners tend to be risk averse when it comes to dispute resolution because of a fear of litigation. This fear may reflect an inadequate understanding of legal concepts around fair procedure and related issues, but it then feeds into a culture in which conflict avoidance and management becomes less of a priority than simply processing it. The skillset and expertise of Ciarb member can add value to workplace dispute resolution in several ways.

1. Mediation (note the Mediation Act 2017 does not apply, but it is still influential)
2. Workplace investigations.
3. Disciplinary 'adjudication' processes.

HR practitioners and Ciarb have a mutual interest in the possibility of upgrading the skills of HR professionals. This can be achieved by providing access to Ciarb qualifications and postnominals, creating opportunity for training and membership. It would not be too ambitious to target growth through a significant number of new members in this area over a couple of years.

We already offer mediation training where we have in the past provided a course on

workplace investigations. Our arbitration training could easily be adapted or supplemented by workplace disciplinary processes, applying general principles of managing arbitration/adjudication hearings and the relevant law applicable to the workplace setting.

A suite of training packages could be developed for large organisations, both in the public and private sectors. Enterprises could choose which parts they most required, where the marketing impact of a fully integrated Ciarb package would be strong given the inter-related skillset. As already noted, an attractive outcome for HR professionals that would enhance their status would be Ciarb membership.

So, this is an invitation to Ciarb Ireland members who are dispute resolvers, employment law practitioners etc who might be interested in assisting in this important initiative. We would need to start by identifying, updating, and developing specific training needs and options, through a closer assessment of a marketing strategy, and by establishing what could be offered in terms of Ciarb membership for successful participants.

These are early thoughts, but we need to start somewhere and recognise the potential to further enhance the presence of the Ireland Branch in a widening of our offering to a sector where we could provide significant benefit. The Committee would welcome any further thoughts or comments from those members who would be interested in pursuing this area through a Special Interest Group (SIG). If this is something for you, let us know by contacting Jennifer at info@ciarb.ie

Viewpoint

Equality, Diversity, and Inclusion (EDI); encouraging generational diversity in ADR based on intentional inclusion

Scarlet Atuhaire Eva



1. Introduction

This article will address the key concepts to promote inclusion in ADR and look at some statistical data from international organisations and lastly suggest a way forward to encourage generational diversity in Alternative Dispute Resolution (ADR).

2. Focus on Inclusion

Inclusion encompasses the degree to which organisations embrace all individuals to ensure that everyone's voice is heard in society¹ and make meaningful contributions. This concept differs from equality and Inclusion, equality seeks to ensure fair treatment and outcomes for all individuals while diversity recognises the various elements of society. The Equal Representation in Arbitration (ERA) pledge launched in 2015, stated that there is an increased awareness of the importance of gender (and other) diversity, in arbitration.

The late 20th and early 21st centuries have seen a movement in the demographics of ADR, with more divergence of professionals many with years of experience in fields like construction joining. According to Ratliff², there will be increased opportunities for ADR experts from diverse backgrounds due to the evolving demands for access to justice.

There is a lack of age diversity in arbitration as age plays an important role in the selection of arbitrators. ICC statistics indicate that the average age of arbitrators sitting in ICC arbitrations in 2019 was 56.7 – only 34% of arbitrators were under the age of fifty³. Despite

progress in representation and inclusion in the arbitration community⁴, progress towards parity and true representation on multiple diversity fronts remains regrettably slow.

3. Additional Incentives a way forward to encouraging generational diversity in arbitration.

Various strategies are being implemented to promote equality, diversity, and inclusion EDI in ADR.

(a) CIARB commitment to inclusion

The Ciarb is dedicated to promoting an inclusive panel of ADR practitioners. The Ciarb Strategy 2021 – 2023, highlights the benefits an inclusive ADR profession brings to societies and economies around the world. Ciarb's programmes and activities such as courses, seminars and publications are aimed at assisting professionals, promoting their development, and helping them prosper, regardless of their backgrounds. This recognises that that the opportunity to select diverse neutrals with a variety of backgrounds⁵ and skillsets, facilitates conversations that offer opportunities or more equitable and effective problem solutions⁶.

(b) Young Arbitrator Rule

The International Institute for Conflict Prevention and Resolution ('CPR') has incorporated a "Young Lawyer Rule" into arbitration rules⁷ allowing junior lawyers to examine witnesses and present arguments, if lead counsel and client agree. This increases opportunities for junior lawyers to actively participate in arbitration hearings.

(c) Leadership and mentorship

Seasoned ADR professionals serve as mentors using their expertise to guide new professionals through their career. This can reduce obstacles to inclusion⁸. The Ciarb has made mentoring a top priority. Mentors and Mentees can interact with each other through the MentorLoop.

4. Conclusion

Effective and equitable dispute resolution needs a diverse, culturally conscious community of neutrals of all ages. Embracing a diverse range of perspectives and experiences enriches ADR, ensuring its relevance and resilience for generations to come.

(Click for links below)

- ¹ What is diversity equity and inclusion
- ² What is the potential of Alternative Dispute Resolution (ADR) in insurance
- ³ 360degree kaleidoscopic view of diversity and inclusion or lack thereof in international arbitration
- ⁴ ICCA report 8 gender diversity
- ⁵ Ciarb edi strategy
- ⁶ What is the potential of Alternative Dispute Resolution (ADR) in insurance
- ⁷ CPR incorporates "Young Lawyer" rule into its arbitration rules
- ⁸ Diversity wins how inclusion matters

Scarlet Atuhaire Eva, MCI Arb, is a member of the Ireland Branch Equality Diversity and Inclusion, Special Interest Group where the views expressed in this article are her own.

Request for expressions of interest for nomination to: ICC National Nominations Commission, Ireland

Overview

The International Chamber of Commerce (ICC) was founded in 1919 following World War I with the objective of expanding international trade for business all over the world. The ICC is represented in individual countries by a national committee. In Ireland that committee is ICC Ireland, which is operated and managed by Chambers Ireland. One of the functions of ICC Ireland is to represent the dispute resolution services of the International Chamber of Commerce (ICC), which are:

- ICC International Court of Arbitration and
- ICC International Centre for ADR

These activities are carried out through the ICC Ireland National Arbitration Committee, which is chaired by the Chief Executive of Chambers Ireland. The remainder of the committee consists of 6 members, who are nominated by 3 of the Corporate Patron members of Chambers Ireland: Ciarb Ireland Branch, Law Library, and the Law Society, where each is entitled to nominate 2 of the 6 committee members. The ICC Ireland National Arbitration Committee also functions as the National Nominations Commission, which is responsible for the nomination of potential arbitrators, experts, mediators, etc in response to requests from the ICC.

Ciarb Ireland Branch (IB) Nominees

To achieve increased participation from the branch membership and best practice in governance, the Ireland Branch of Ciarb is seeking to appoint the two nominees to the National Arbitration Committee on a staggered basis for a term of 4 years, i.e. the first nominee will be appointed in 2024 to serve until 2028, and the second nominee will be appointed in 2026 to serve until 2030, and so on.

Thus, the Ciarb Ireland Branch is seeking expressions of interest from branch members to be nominated to these roles where they have the capacity, interest, and willingness to actively engage with the Nomination Commission activities, which includes:

- Available to attend and participate in committee activities – approximately 6 meetings per year
- Available to attend and participate in visits to ICC Paris – approximately every 18 months
- Available to attend and participate in visits by ICC Paris to Dublin – approximately every 18 months
- Available to brief the CI Arb (IB) committee on relevant ICC Ireland activities and ICC generally
- Willing to stay informed and knowledgeable on the ICC and its activities
- Interested in international dispute resolution and the services provided by the ICC in particular
- Understand and reflect the unique and diverse membership of the Ciarb Ireland Branch relative to the other Institutional Members of the National Arbitration Committee
- Understand and represent the ICC dispute resolution services in the Irish context.

Activities

The activities of the ICC Ireland National Arbitration Committee are summarised as follows:

- Promotion of ICC Dispute Resolution Services within the Irish Market. (Note: In recent years the focus has been the unique services offered by the ICC in respect of the supervision of the arbitration process by the ICC Secretariat and the review of the draft awards by the Court of Arbitration)
- Nomination of the Irish member to the ICC Court of Arbitration. (Note: In addition to the nominated Court Member, there is also an alternate proposed, but the nomination of the alternate is by the Court President.)
- Nomination of Irish representatives to the ICC Commission on Arbitration and ADR. (Note: The number of representatives is currently uncertain as the ICC Commission membership is currently being reviewed by the ICC)
- Nomination of potential arbitrators, experts, mediators, etc in response to requests from the ICC. (Note: Approximately 4 to 6 requests made per year with approximately 2 appointments being confirmed. The appointments arise across a range of sectors and in circumstances where the Parties are unable to agree on an appointment.
- Assist in the organisation of ICC visits and CPD events within Ireland and Paris.
- Participate in the wider dispute resolution environment as it exists within Ireland, including organisations such as Arbitration Ireland and Ireland for Law.

Expressions of Interest

The participation of members in the ICC interactions and activities is always both welcome and encouraged, whether simply as a CPD activity, or with a view to gaining knowledge and familiarity with the intent of future increased participation.

Members currently interested in being considered for nomination to the ICC Ireland Arbitration Committee are invited to submit their Curriculum Vitae setting out relevant experience, together with a summary of why they consider they are suitable for consideration (maximum 200 words).

Note

- Overarching CI Arb principles and policies will be taken into consideration, including EDI.
- Membership of the ICC National Nominations Commission is pro bono.
- All costs necessary to undertake the role are self-funded.
- An expression of interest does not preclude CI Arb (IB) from considering other suitably qualified members.
- Nomination is subject to ICC ratification/ acceptance.

Timescale

- Request for Expressions of Interest published by CI Arb (IB) in March 2024.
- Expressions of interest to be forwarded to info@ciarb.ie in soft copy on or before 5.00pm on Friday 19 April 2024.
- The Ciarb Ireland Branch Committee will then review and consider applications, including discussion with potential nominees during May 2024.
- It is anticipated that the nominee will be proposed to the Ciarb Branch Committee in June 2024, after which the nomination will be placed before the ICC National Nominations Commission.

Further Information

Further information may be found on the following ICC website link:

<https://iccwbo.org/governance/governing-body-for-dispute-resolution-services/>



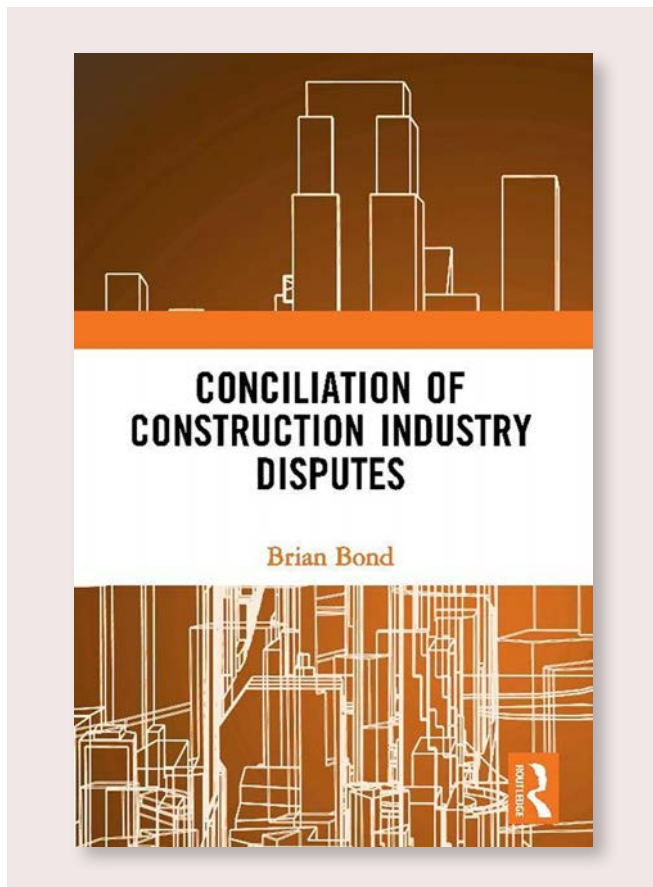
The world business organization

**ICC International Court of Arbitration
ICC Commission on Arbitration and ADR**

Book Review

“Conciliation of Construction Industry Disputes”: Brian Bond

Reviewed by Ciaran Fahy



The recently published “Conciliation of Construction Industry Disputes” is a very welcome addition to the relatively small number of books about the Irish construction industry, particularly as there are no other books about conciliation.

The author is a very experienced civil engineer and dispute resolver. Graduating from Trinity College in 1962, with a PhD added in 1965, he initially worked for a well-known contractor which specialised in design and build contracts (both building and civil engineering). This provided wide and varied experience. He became a director of the company in 1978. In 1984 he set up his own consultancy practice, which provided engineering advice and advice on contractual issues. He was involved in the evolution of alternative dispute resolution (ADR) methods and conducted his first conciliation in 1988, which put him at the forefront of conciliation as a process.

In 1984 he also became a part time lecturer in the Trinity College Department of Civil Engineering, lecturing undergraduates and post graduate diploma course students. In 1993 Professor Simon Perry asked him to design and set up a one year post graduate diploma

course in construction law, a task in which he was assisted by Max Abrahamson and Professor William Binchy. The course “*Construction Law and Contract Administration*” was launched in 1996 and, until 2004, Brian Bond was the course director and gave many of its lectures. This very successful course is still running today. Since 1988 Brian Bond has resolved many disputes acting primarily as conciliator and also as arbitrator and mediator. In his experience, conciliation proved to be by far the best method leading to the resolution of virtually all the disputes referred to him, mainly by agreement between the parties.

The book itself is a comprehensive work running to some 300 pages in 14 chapters which are well structured and written. It starts with a very comprehensive overview of the how the construction industry operates and has evolved in Ireland and the UK and how disputes are inevitable, though many could be avoided. Resolution involving independent third parties is described, distinguishing between determinative methods (litigation, arbitration, and adjudication) which impose a resolution, and consensual methods (mediation and conciliation) which do not. Dispute boards and dispute avoidance are also covered.

The book describes how, following the publication by Engineers Ireland of its Conciliation Procedure in 1995, mandatory conciliation was introduced into all Irish construction contracts and traces how it has evolved with introduction of the Public Works Contracts in 2007 and how in 2016 the RIAI decided to replace conciliation with a version of facilitative mediation, which it calls “*MedRec Conciliation*”.

Conciliation was first devised and introduced into its contracts by the Institution of Civil Engineers in London culminating in the publication in 1994 of a Conciliation Procedure (closely resembled by the IEI 1995 Procedure). Then, the UK the Housing Grants, Construction and Regeneration Act of 1996 created a statutory right to refer disputes to adjudication which became the standard method in the UK, where conciliation was soon forgotten. Thus, Ireland is now the only country in which this version of conciliation continues in use. Conciliation is a hybrid process where the primary purpose is to achieve an agreed settlement (which is the sole purpose of mediation) but if agreement is unachievable, there is second stage where the conciliator must

issue a recommendation for the resolution of the dispute. The recommendation becomes binding unless one of the parties actively rejects it within a defined limited time (usually a few weeks).

The book describes exactly how conciliation works and its various stages. It is in effect a comprehensive textbook of how conciliations should be conducted and includes summaries of the author's findings from two surveys he carried out into the experience of conciliators and users of conciliation. This book should be essential reading for anybody acting as conciliator or standing conciliator or indeed who has aspirations to act in that capacity. It will also be invaluable to anybody involved in conciliation as a party or representing a party; it will also be of great value to anybody working in the construction industry.

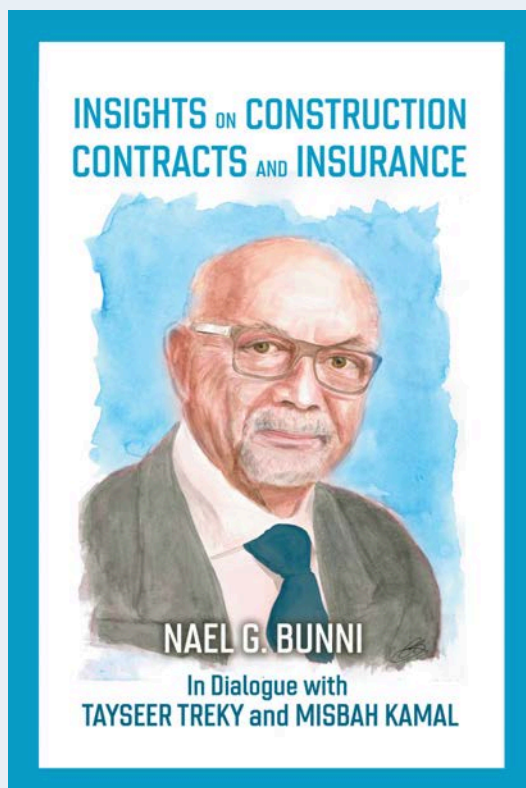
Because conciliation has been so successful in Ireland (which is the only country using conciliation) the book should be of great interest in the UK and in other countries which do not use conciliation or even know about it. It is therefore worthy of international interest. *"Conciliation of Construction Industry Disputes"* is published by Routledge (Taylor & Francis Group) and can be purchased online from the publisher at a price of £120.



Ciaran Fahy

Book Review

**"Insights on Construction Contracts and Insurance":
Nael G. Bunni in dialogue with Tayseer Treky and Misbah Kamal
Reviewed by John Trainor SC**



Professor Nael G. Bunni is probably Ireland's best known and most internationally celebrated arbitrator, conciliator, and mediator, and was also the first Chairperson of the Minister's Panel

of Adjudicators. But construction and dispute resolution is only half of Professor Bunni's extraordinary life. He is also an acknowledged expert, both nationally and internationally, in the fields of insurance and reinsurance, where his knowledge and understanding of construction risks, responsibilities, liabilities, and all the factors that go into assessing the insurable risks and interests in construction contracts are extensive.

Half of Professor Bunni's early life was spent in his native Iraq assessing construction risks, fixing premia for construction insurance policies, and investigating and dealing with claims concerning construction project mishaps and even disasters. Against that background, he published his first landmark book "Risk and Insurance in Construction" in 1986, now in its third edition. That work provided the inspiration for this new work "Insights on Construction Contracts and Insurance". The book follows an unusual style, namely that of a dialogue, with the authors, well know insurance experts in their own right, posing questions which Professor Bunni then answers and expands upon.

The book comprises eight chapters and an epilogue. The first three chapters ask about Professor Bunni's formative years in Iraq, the origins and development of construction insurance in Iraq and his subsequent move to Ireland where he set up home with his wife Anne

and young family. In Chapter 4, Professor Bunni is then asked about his views in relation to a wide variety of issues dealing with insurance, reinsurance, the state of the insurance market in the Middle East and in many Arab countries. In Chapter 5, he addresses a number of issues relating to the world of construction insurance underwriting. In Chapter 6 he deals specifically with several questions relating to the Arab construction insurance market. In Chapter 7 he deals with loss adjustment, or, as it is described, "Order out of chaos". In Chapter 8 he deals with the international construction insurance scene. His views and comments on all these issues are of extreme interest and very easily read.

In the Epilogue, Professor Bunni sets out how, at 83, he maintains his intellectual agility, and conveys valuable advice to younger scholars and practitioners. This is a well-written and fascinating book and gives a most valuable and lasting insight into one of the most remarkable minds ever to grace the construction insurance and dispute resolution worlds. It is heartily recommended to all. If you are interested in purchasing a copy of the book it can be bought through this link: www.naelbunni.com using the 10% discount code RESOLVER10.



John Trainor SC

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Architect

Peter McCarthy
Quantity Surveyor

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Dermot Durack
Quantity Surveyor

Greg Daly
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Solicitor

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