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### Message from the Chair

This autumn has been busy with much activity with the branch seminar programme. The first, a joint event with the Society of Construction Law, took place in Limerick, “Lessons learned from the procurement and construction of onshore and offshore wind projects.” This was quickly followed by two seminars entitled “Limitations of Actions and Time Bars – essential and current issues” and “Adjudication – the only game in town.” The final seminar was entitled “Claims for delay and prolongation costs – improving outcome for both parties.” The seminars were very well attended with reports on each within this newsletter.

The following event was our flagship event of the year, the Ciarb Ireland Branch Annual Dinner. Assisted by the kind generosity of the sponsors Philip Lee and Kroll, this spectacular event was sold out with 180 in attendance including many honorary guests. The Guest of Honour was the Former Taoiseach Bertie Ahern who enthralled the audience with an incisive and highly relevant discussion on the future of The Good Friday Agreement and what it may hold for a ‘new Ireland’. The Former Taoiseach also presented the Lifetime Achievement Award to Lydia Bunni, collecting the award on behalf of her father Dr Nael Bunni who unfortunately could not attend. We also ran our continually popular “Introduction to Alternative Dispute Resolution (ADR) Course” with 28 attendees.



Peter O'Malley

This autumn will see two further events “Conciliation and the nec4 Contract – Are they compatible”, a joint event with Engineers Ireland and the “Introduction to Alternative Dispute Resolution (ADR) in Construction” seminar to be held in Horse and Jockey, Tipperary. We are now also looking forward to a full programme of events early next year. It is a mark of the success of the Ireland Branch that we have and continue to be able to deliver a broad range of events, as both educational and social gatherings, to the benefit of our members and beyond. It is only through the hard work of the committee that these events can be realised.

We naturally hope that you, as the members of the Ireland Branch will continue to support and promote these future events, where further details will be posted on our web site. As this is the last newsletter for this year, I take the opportunity on behalf of the branch committee to wish everyone all the very best for the festive season and to look forward to meeting everyone again in early 2024.

# Dates for your diary

**24th November – 5.30pm**

**Seminar**

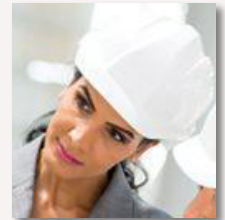
'*Conciliation and the nec4 Contract – are they compatible?*' and launch of new book on conciliation by Dr Brian Bond, a joint event with Engineers Ireland, 22 Clyde Road, Dublin 4.



**30th November – 3.00pm**

**Regional event**

'*Introduction to Alternative Dispute Resolution (ADR) in construction,*' with a panel of speakers discussing current topics at the Horse and Jockey Hotel, Kilnoe, Co. Tipperary.



**8th February – 6.00pm**

**Seminar**

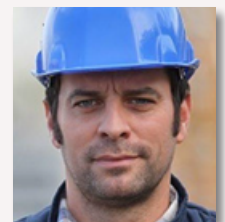
'*Construction disputes: Observations from the coal face*' a joint event between Yendall Hunter and Addleshaw Goddard at the Irish Architectural Archive, 45 Merrion Square, Dublin D02 VY60.



**16th February – 5.30pm**

**Regional seminar**

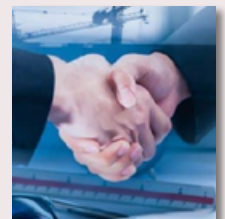
'*Dispute avoidance and best practice on construction projects*' to be held on the top floor of Cork County Hall, Carrigrohane Road, Cork T12 R2NC.



**21st/22nd February – 9.30am**

**Course**

'*Introduction to Alternative Dispute Resolution (ADR)*' to be held on-line. A two-morning introductory course delivered in 17 Modules on all the primary processes of dispute resolution.



**1st March – 9.00am**

**Annual conference**

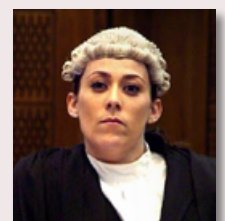
Ciarb Ireland Branch – Annual Conference, a one-day event titled '*Dispute avoidance and management in construction*' to be held at the Hilton Hotel, Charlemont Place, Dublin 2.



**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.



Tickets for all the events will be available on our website [www.ciarb.ie](http://www.ciarb.ie) where we hope you will support with your attendance.

# The Ciarb Ireland Branch Annual Dinner

Dan Daye



It was an immense pleasure to welcome the many guests of the Ciarb Ireland Branch to our Annual Dinner held within the splendid surroundings of the Banking Hall at The College Green Hotel (formerly The Westin). The room packed full to its capacity of 180, was treated to excellent dining, refreshment, and entertainment. We had 30 honoured guests including the CEO of Ciarb, Ms Catherine Dixon, two past Ciarb Worldwide Presidents Mr Jim Bridgeman SC and Mr Joe Behan, two judges from Northern Ireland, Sir Declan Morgan, and Dame Justice Denise McBride together with our own judge of the High Court, Ms Justice Nuala Jackson. We also had the President of the SCSJ, Mr Enda McGuane and the President of EI, Dr Edmond Harty together with our Branch Trustee, Mr Arran Dowling-Hussey. The event also benefitted from the presence of members from Northern Ireland in addition to members of the Scottish branch of Ciarb.

A highlight of the evening was the fascinating insights from the Guest of Honour for the evening, former Taoiseach Mr. Bertie Ahern, who spoke on the 25th Anniversary of the Good Friday Agreement. As part of the introduction, the Chair of the Ireland Branch, Peter O'Malley outlined Mr. Ahern's long list of political and personal achievements. From his first election to the Dáil Eireann in 1977 to leading his party Fianna Fáil and serving as Leader of the Opposition, his career culminated in becoming

Taoiseach in June 1997, being then re-elected in two successive general elections. Mr. Ahern's leadership has been recognised internationally with honorary degrees from several universities, and he has the unique distinction of having addressed both Houses of Parliament at Westminster and a Joint Session of Congress in Washington D.C.

Mr. Ahern has continued to dedicate his career to conflict resolution in various forms. Since leaving government in 2008, he has chaired and participated actively in many international peace and mediation organisations. For many,



the defining moment of his premiership was the successful negotiation, alongside then-British Prime Minister Tony Blair, of the Good Friday Agreement in April 1998. This historic accord between the British and Irish Governments, along with the political parties in Northern Ireland, marked a turning point in modern Irish history. The years of dedicated work by this group paid a rich dividend in ultimately leading to the establishment of a power-sharing administration in Northern Ireland, fully implementing the Good Friday Agreement in May 2007.

Before turning to the Agreement, Mr. Ahern's speech delved into the origins of arbitration in Europe and the early history of dispute resolution in Ireland. He referenced the famous tale of St. Colmcille who, while staying as a guest of St. Finian, copied a book belonging to his host. This resulted in a dispute that was referred to Diarmuid Uí Neill, High King of Ireland at the time. In an early example of a considered arbitral award, the High King ordered the return of the book. The award was made based on the principle of, to a cow must belong her calf and to a book must belong its copy. The award displeased the interested clans, leading to a mighty battle on the slopes of Benbulbin. The King lost and ultimately conceded the copied psalter to St. Colmcille. Mr. Ahern regards this as one of the earliest recorded instances of dispute resolution in Ireland.

Mr. Ahern highlighted Ireland's unique position as the only English-speaking member state of the European Union post-Brexit, making it an ideal centre for international dispute resolution and arbitration. Ireland's reputation for neutrality and its longstanding history of peacekeeping have positioned it as a prime destination for international dispute resolution.

The 25th Anniversary of the Good Friday Agreement presented an opportune moment



An appreciative audience in the Banking Hall

for Mr. Ahern to reflect on the progress made since this historic Agreement put an end to the decades-long violence in Northern Ireland. The Agreement showcased the ability of key players to broker compromise in the face of deep-rooted divisions and historical hostilities. Mr. Ahern identified as the greatest achievements of the negotiations the removal of the threat of violence and implementation of political arrangements to secure long lasting peace in the region. In place of conflict, the Agreement instituted a new paradigm for peace in Northern Ireland providing a roadmap based on the principle of consent by the people in determining their political future. Mr. Ahern in this way spoke not of a united Ireland, but of a New Ireland. He warned, however, that any poll to decide the fate of the island should be grounded in engagement with the people and the need not simply of consent, but of informed consent. This is all the more important when we acknowledge the generations of Irish people who have known nothing but peace.

The Good Friday Agreement's enduring relevance underscores the historical significance



L to R – Bertie Ahern, Peter O'Malley, Michael Mulcahy SC, and Sir Declan Morgan

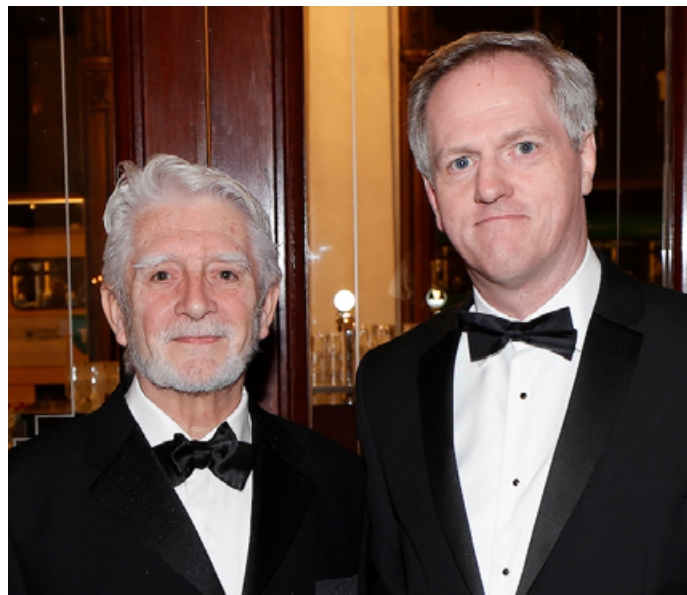
of the past and offers a valuable roadmap for conflict resolution in the present day. Its lessons extend far beyond Northern Ireland, inspiring those dedicated to fostering peace and resolution in divided societies. The evening was filled with meaningful reflections and a renewed commitment to the principles of dialogue, compromise, and reconciliation, which have the power to transform even the most challenging of disputes.

A further highlight of the evening was the presentation of the Ciarb Ireland Branch Lifetime Achievement Award for the first time in the

history of the branch. It was unfortunate that Dr Nael Bunni as the recipient was unable to attend to receive the award personally, where his daughter Lydia Bunni received it from Mr Bertie Ahern on Dr Bunni's behalf. There is a more detailed report on the presentation of the Lifetime Achievement Award in this newsletter. Since the event the branch has received many messages of congratulations on the overall success and enjoyment of the event, in the unique venue of the Banking Hall, with thanks being extended to the committee for organising what was a most memorable evening.



L to R, Paula Murphy and Adjunct Professor Meg Burke



L to R, James Bridgeman SC and Patrick Hynes



L to R – Sandra Cullagh, Jennifer Crowther, Peter O'Malley, Bertie Ahern, and Catherine Needham



Kathryn Meghan



Danyal Ibrahim



Joe Behan



John Trainor SC



Dr Roisin O'Shea



Terence O'Keefe



L to R, Professor Nicholas Gould, Brendan Kilty SC, Orla Fitz.Gerald and Associate Professor Brian Hutchinson



L to R, Sarah Murphy and Robert Laird



L to R, James O'Donnell and Susan Ahern



L to R, Terence O'Keefe, Paul Watts and David McDonagh



L to R, Sandra Daly and Anne Marie Kehoe



L to R – Saoimh McNamee, Peter O'Malley and Ercus Stewart SC



L to R, Enda McGuane and Dr Edmond Harty



L to R, Lydia Bunni and Jonathan FitzGerald



L to R, Bill Holohan SC, Ercus Stewart SC and Associate Professor Brian Hutchinson



L to R, Pia Waldron and Martin Waldron



L to R, Maebh Gogarty, Bernard Gogarty, and Simon Fraser





L to R, Jarlath Kearney, Anthony Hussey and Tim Hopkins



The attendees in the Banking Hall

# Lifetime Achievement Award

Presented to Dr Nael Bunni at the Annual Dinner

Peter O'Malley



The Ciarb Ireland Branch Lifetime Achievement Award being received by Lydia Bunni, on behalf of her father (right) Dr Nael Bunni, from the Former Taoiseach Mr Bertie Ahern

A highlight of the Annual Dinner was the presentation of a Lifetime Achievement Award. Dr Nael Bunni, as the recipient, is the last remaining founder member of those who established the Ireland Branch in late 1981. For over 50 years, Dr Nael Bunni has been involved in the practice of construction dispute resolution. Through this long and remarkable career, Dr Bunni has held many positions in construction dispute resolution, including:

- Past Chair of the Ireland Branch of the Chartered Institute of Arbitrators
- Past Worldwide President of the Chartered Institute of Arbitrators
- Past President of the Association of Consulting Engineers of Ireland
- Member of the Board of Directors of the London Court of International Arbitration
- Chair of the Dispute Resolution Panel of what was then the Institution of Engineers of Ireland
- Member of the Board of Trustees of the Dubai International Arbitration Centre and Chair of its Executive Committee
- Member of the Commission on International Arbitration of the International Chamber of Commerce in Paris
- Past Chair of the Ministerial Panel of Adjudicators appointed under Construction Contracts Act 2013
- Member of the International Council for Commercial Arbitration

Dr Bunni is an authority on specific aspects of construction through his extensive writings, which include: "Risk and Insurance in Construction",

now in its third edition having been published in 2022 and being co-authored with his daughter Lydia Bunni. Dr Bunni has also authored three editions of "The FIDIC Form of Contract". In 2018 in recognition of his contribution to the work of FIDIC, or the International Federation of Consulting Engineers, he was awarded the Louis Prangey Award, named after the founding President of FIDIC. This is the highest possible recognition that any person can receive for dedicated service to FIDIC. Dr Bunni's interest in dispute resolution remains undiminished, where only in the last few weeks he has completed a further book entitled "Nael G. Bunni in Dialogue with Tayseer Treky and Misbah Kamal: Insights on Construction Contracts and Insurance".

But despite these many accolades and honours, there are many of our members who remember Dr Bunni for something else - his teaching. Dr Bunni has been the Visiting Professor in Construction Law and Contract Administration at Trinity College Dublin since 1996. In recognition of these many achievements and as the Branch Patron the committee considered it fitting that Dr Bunni's contribution to the Ireland Branch should be acknowledged and marked. It was unfortunate that Dr Bunni was not available to attend the Annual Dinner. In his absence the award, a working model steam engine reflective of Dr Bunni's engineering background, was received by Lydia Bunni, Dr Bunni's daughter. Lydia was presented with the award from the former Taoiseach Mr Bertie Ahern, where Lydia then added her own words in appreciation, of behalf of her father, before a generous applause by all those present at the dinner.

# Seminar

## Lessons learned from the procurement and construction of onshore and offshore wind projects

Alan Carr



Dr Hamish Lal KC

Eamonn Conlon SC

Orla Fitz.Gerald

On the 12th of September, the Ciarb Ireland Branch and the Society of Construction Law hosted a joint event in Limerick focusing on the lessons learnt from the procurement and construction of onshore and offshore wind projects. The event followed on from the publication of 8th July on the Shannon Estuary Economic Taskforce report. The report highlighted the importance of the Shannon Estuary as the foundation on which to build the western FLOW (floating offshore wind) system to support both the Irish Climate Action Plan 2023 and the European Commission's 'Green Deal' in the generation of renewable energy.

The event was chaired by Peter O'Malley who introduced the panel of experts invited to speak on wind procurement, construction, and dispute management. He invited the speakers to address the attendees on the lessons learned from current and previous wind farm, electrical generation construction projects.

Éamonn Conlon SC introduced onshore wind development starting with a project update from Bord na Móna's Derrinlough Wind Farm currently under construction in Co. Offaly. Eamonn highlighted the complexities of integrating the development with the environment and the existing utility infrastructure. The potential future challenges for adjudicators applying the Construction Contracts Act 2013 against a maritime or hybrid maritime context was also identified.

Dr. Hamish Lal introduced the attendants to the expanded horizon of complexity in delivering

offshore wind projects. The environmental challenges of both wave and wind to logistical and assembly schedules were highlighted as challenges to be mitigated within the Irish FLOW project where works may have to be seasonally staged to accommodate weather patterns. These challenges will also require reflection on the understanding of contract performance and on the application of the concepts of negligence and potential liability, in this significantly more complex operational environment.

Orla Fitz.Gerald spoke on the balance between technical and legal expertise in achieving dispute resolution in claims arising from onshore wind development. Orla explained that the allocation of risk between the contracted parties required clarity especially in contexts arising from interactions with third parties, such as state agencies or local authorities.

The question & answer session at the end discussed the challenges of applying established onshore norms for critical path formation and delay analysis to offshore disputes in seeking resolution. The clarity of risk allocation between parties interacting with public utilities regarding potential delays was also identified as an ongoing challenge in wind farm projects.

In conclusion, the event highlighted potential challenges on the route ahead for securing the development of renewable energy off the coast of Ireland. There may be merit in revisiting these discussions as the Irish Climate Action Plan progresses.

# Seminar

## Limitation of Actions and Time Bars

Danyal Ibrahim



Panel, L to R - Gavan Carty, Jamie McGee, Fiona Egan, Cathy Smith SC and Martin Canny

On the 28th of September, at the Royal Institute of the Architects of Ireland, Martin Canny BL delivered a paper at a seminar entitled 'Limitation of Actions and Time Bars' (drawn from his book 'Limitation of Actions,' third edition, Round Hall.) Martin presented a comprehensive whistle-stop tour of the statutory provisions in respect of limitations and on the common law principles that have emerged over time.

His presentation was followed by contributions from the seminar panellists: Cathy Smith SC provided insights in relation to time limits on a range of categories of actions, in particular those related to judicial review where the onus rests exclusively with the applicant to prosecute their cause; Gavan Carty (Solicitor, partner at Kent Carty Solicitors) highlighted the importance of timely notification to insurers if there is any concern with regard to potential claims on Professional Indemnity (PI) insurance, where there were some interesting contributions were received from the audience; Fiona Egan (Senior Associate at Arthur Cox) recounted her experience in practical situations concerning the importance of timely action in construction law cases; Jamie McGee (Partner at McCann FitzGerald) provided an explanation of the solicitors role in relation to reports on suites of contract documents as a matter of good practice in order that funders are fully informed of any limitations and time bars. The following panel discussion was competently moderated, with continuing questions tabled by the audience, by James O'Donoghue.

To give us a flavour of the international scene in arbitration, former ICC Court of Arbitration Members, Michael Carrigan and Tim Bouchier-Hayes, brought us into the world of the scrutiny of draft arbitral awards and the tight timelines that apply in the ICC Rules system. Current ICC Court of Arbitration Member, Éamonn Conlon SC, commented on the changes to the increasing use of online platforms for international arbitration and the work of the ICC. The evening was rounded off with a selection of canapes, wines and fine whisky provided by the event sponsor Walsh Whiskey for whose support we are grateful.



Martin Canny

# Seminar

## Adjudication – the only game in town

Dermot Durack



The Branch hosted a well-attended seminar on Adjudication in the wonderful surroundings of the Irish Architectural Archive in Merrion Square on the 12th of October, where attendees were treated to two well researched papers followed by a lively panel discussion.

The evening commenced with a presentation from Dan Daye, a Director at McCauley Daye O’Connell Architects and Chair of the RIAI Dispute Resolution Taskforce. Dan delivered a talk on Adjudication in Ireland based on his past prepared academic paper entitled ‘Adjudication, the only game in town’ which was recently published in the Institute’s Journal. It is not possible to summarise the breadth of Dan’s presentation in a short article, so I would wholeheartedly recommend that you read his paper for yourself. The paper focused on how adjudication continues to see greater adoption and has now become established as one of the most effective ways of resolving Payment Disputes in the Construction Industry in Ireland. Dan discussed the primary differences between Adjudication in Ireland and the UK, he examined the core issues that were identified shortly after enactment, as possible barriers to adjudication, and how they have been surmounted. He also looked at Judicial Review and Enforcement, illustrating these two aspects through all the cases that have come before the courts before looking at what the next five years could hold, before concluding that generally adjudication is working well.

Dan’s paper was followed by Peter O’Malley, a Founder and former Director of LOM Architecture and Design in London, and current Chair of the

Ciarb Ireland Branch, giving a very detailed insight into fees charged by Adjudicators in Ireland with comparison to those in the UK. Peter’s paper was the result of research he carried out into Adjudicators Fee’s following a previous lively debate on the topic at the recent Ciarb conference titled ‘The Construction Contracts Act 2013 – 7 years on,’ held on the 5th of July 2023 in Dublin. One of the points put forward that day was that people were turning away from Adjudication because of the level of fees. Peter’s research was based on the Annual Report of the Chair of the panel of adjudicators, presently Mr Bernard Gogarty. Amongst other matters, the report provides statistical data in relation to fees charged and the amount in dispute that Peter used to extrapolate key information. Some of Peter’s findings in relation to expected Adjudicators fees are tabled below, concluding that generally, although there are some exceptions, adjudicators fees are reasonable in consideration of the complexity and the amount in dispute.



Dan Daye

Amount in Dispute	Adjudicators Fee	Extrapolated % range
Up to €50,000	Up to 10%	5% to 10%
Up to €500,000	Up to 5%	2.5% to 5%
Up to €5m	Up to 1.5%	0.75% to 1.5%

**Indicative percentage of adjudicators fee relative to value in dispute**

The presentation of the two papers was followed by a lively debate with a panel comprising Níav O’Higgins of Arthur Cox Solicitors, Keith Kelliher of Kelliher & Associates Quantity Surveyors, being chaired by Danyal Ibrahim of Bluett O’Donoghue Architects. The debate was so lively that the event continued for an extra 30 minutes where one of the key points arising from the debate, in relation to reported, fees was that some adjudicators

are not returning statistical reports as required by the supporting Code of Practice to the Act. It was agreed that this could have an impact upon the data in relation to fees, as circa 18% of the adjudicators on the Ministers’ Panel are not returning statistical reports. The branch would like to extend thanks to the Irish Architectural Archive for providing the venue.



The discussion panel: Keith Kelliher, Níav O’Higgins, Dan Daye and Peter O’Malley

# Online course – 18/19 October 2023

## Introduction to Alternative Dispute Resolution (ADR)

Greg Daly



There was a strong attendance for the recently convened 'Introduction to Alternative Dispute Resolution' online course, delivered by the Ciarb Ireland Branch. A cohort of twenty-eight attendees participated in the course, which was hosted online over two mornings on Wednesday 18th and Thursday 19th of October 2023.

The course was delivered earlier in the year, and being a popular event, it was decided to repeat the course in the Autumn. The course covered a wide range of ADR processes including the primary methods of mediation, arbitration, construction adjudication, conciliation, but also featuring interesting presentations on less frequently used ADR processes, including several hybrid versions of the better-known processes. The course, being intense and rich in content, was presented over two mornings where six speakers delivered seventeen Modules (comprising a total of 276 PowerPoint slides). A comprehensive selection of supplementary reading material, some 15 relevant publications in all, was also circulated to the attendees over the two days.

The speakers, who delivered a quality set of well-prepared course modules were:

- **Maebh Gogarty Solicitor**, MCI Arb, Partner at Smyth & Son Solicitors (Honorary Secretary CI Arb – Ireland Branch)
- **Alison Irving Barrister**, MCI Arb, Executive – Main Contracting, Construction Industry Federation
- **Meg Burke BL Barrister**, FCI Arb, Adjunct Professor at the UCC School of Law
- **Danyal Ibrahim Architect**, FCI Arb, Senior Associate at Bluett & O'Donoghue Architects
- **James O'Donoghue Architect**, FCI Arb, Director & Founder at Bluett & O'Donoghue Architects
- **Fergus Cooney Chartered Engineer**, FCI Arb

On completion of the course, candidates had the option, on completion of the course, to undertake in an online assessment which should they be successful in passing, allows them to apply for associate membership of Ciarb. The course was facilitated and arranged by Greg Daly, Chair of the Education & Training Special Interest Group (SIG), and with the continuing support from Jennifer Crowther, the Administrator of the Ciarb Ireland Branch.

# Seminar

## Claims for delay and prolongation costs – Improving the outcome for both parties

Peter O'Malley



Despite the passing through of Storm Babet, we had a good attendance for the seminar entitled 'Claims for delay and prolongation costs – Improving the outcome for both parties.' Such was the interest in this event we had quite a few people who had travelled some distance, including several of our Northern Ireland Chapter members, where this support is greatly appreciated.

The seminar, hosted in the splendid offices of Kroll on St Stephen's Green, comprised of three presentations followed by a discussion panel taking questions from the audience. The opening presentation was from Brian Barry who gave a very interesting presentation, drawing on his extensive experience, on 'Quantifying and substantiating delay, cause and effect.' Brian focussed on the recurring themes that are the primary causes of delay. These themes are Scope and Phasing, Baseline Programme, Records and Programme Assurance. Brian explained in detail, through real project examples, how the lack of attention to these recurring themes at the commencement of a project will almost certainly result in later delay.

The second presentation was from Mark Wearen who spoke about 'Valuing prolongation' starting with the sources of construction disputes on construction projects. Then Mark discussed prolongation costs and the typical heads of claim which can be advanced including preliminaries, overheads and profit, Loss of contribution to overheads and profit, finance costs and activity related resources such as labour and plant.





Mark then identified the key factors impacting upon the substantiation of claims with reference to case law including *Ascon v Alfred McAlpine*, *Costain v Haswell* and *Walter Lilly v Mackay*. This was then followed by a discussion on the contract provisions within the RIAI Yellow Form and the Public Works Contract. Mark summed up with four key recommendations: 1. Implement dispute avoidance and mitigation measures, 2. Be aware of Legal and Contractual obligations, 3. Find common ground and 4. Engage the appropriate independent legal and technical expertise.

The final speaker was Lydia Bunni BL who explained the importance of time bars and conditions precedent in assessing the strength of

position in advancing construction claims. Lydia referred to the continuing developments in case law that reiterate the importance of a continued awareness of ensuring that legitimate claims do not fall foul of time bar provisions.

The talks were followed by a lively question and answer session between the audience and the panel with interesting views being expressed by Tim Bouchier-Hayes and Joe Kelly in particular. The seminar was then formally closed with everyone then enjoying a reception of wine and warm canapes to continue debate and discussion. We would like to thank Kroll, who were also a co-sponsor of our Annual Dinner, on behalf of everyone who attended for all their hospitality in making the evening so enjoyable.



L to R – Brian Barry, Mark Wearen and Lydia Bunni



L to R – Brian Barry, Mark Wearen, Lydia Bunni, Gary Comerford and Peter O'Malley

# Viewpoint

## We need to talk about women

Éamonn Conlon SC



Éamonn Conlon SC

Have you seen a female colleague wearing a unicorn badge? [Word](#) got back to Lucy Greenwood CI Arb that a man working in arbitration had said to another male colleague that good female arbitrators were as rare as unicorns. Her creative response was to buy several hundred unicorn pin-badges and post them to female arbitration practitioners all over the world. Women in arbitration are now proudly wearing their badges to show that they are not invisible.

### Gender diversity data

Eleven years ago in 2012 Greenwood and Mark Baker [estimated](#) that women made up around 6% of arbitrators appointed to international commercial arbitration tribunals around the world –because women were not reaching the top of the legal profession, also parties and their lawyers preferred appointing known arbitrators ('usual (male) suspects') and had unconscious gender bias. In a 2015 [update](#) they estimated that the female participation figure had gone up to around 10%. They were unsure whether this represented an improvement or the lack of data, because most institutions were not publishing gender-sorted data. In another update published in 2017, Greenwood [revised](#) the estimate to around 15%. By then more institutions were gathering and publishing data, the [Equal Representation in Arbitration \(ERA\)](#) pledge had been launched, with wide sponsorship, and there was an increased awareness of the importance of gender (and other) diversity, and increased visibility of women in arbitration.

The International Council on Commercial Arbitration (ICCA) established a Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings. It [reported](#) in 2020 the proportion of female arbitrators appointed in international commercial, investment treaty and sport arbitration cases in 2019 at 21.3%, almost double the 2015 figure which was 12.2%. In a 2022 [update](#), the task force reported that the figure for 2021 was up to 26.1% (1,317 women out of 5,049 recorded arbitrator appointments).

### Adjudication

In the UK, a 2022 [report](#) by Kings College London in cooperation with the Adjudication Society found that women account for less than 8% of adjudicators named on the panels of the (only) eight adjudicator nominating bodies which list their panels online. One had no women at all on its panel.

### Ireland

The first Irish statutory panel of adjudicators was all male. The current panel was appointed with 36 (now down to 34) members, of whom only 4 are women. The annual reports of the panel chair (the most recent [September 2023](#)) categorises the number of adjudicators appointed by primary professional qualification, but not by gender. The following professional bodies maintain panels of arbitrators, conciliators, mediators, and adjudicators, or some of those roles. By my count the number of panel members, and number of women, is as follows:

	Total	Women
<b><u>Engineers Ireland</u></b>	25	1
<b><u>RIAI</u></b>	27	6
<b><u>SCSI</u></b>	45	0
<b><u>Law Society</u></b>	41	6

The Construction Industry Federation panel is only made available online to federation members. Adding the statutory panel of adjudicators to the panels listed in the above table, and attempting to avoid counting people who serve on more than one panel more than once, I reckon this comes to approximately 128 people listed on these panels. Only 13 of them are women.

Thus, while female participation in international arbitration seems to be rising, in Ireland only a shade more than 10% of the membership of the panels from which resolvers are appointed in Ireland is female. This is very far from equal participation. Unfortunately, we do not have statistics of how many men and women are appointed from these panels, except in the case of the Law Society, whose president has made 93 arbitral appointments in the last 5 years (2019–23), 16 of which (17%) have been women. In addition to its arbitration panel, the Law Society has a [find a mediator](#) search facility, identifying solicitors who have a mediator qualification. Approximately 41% of the listed mediators are women. The [Bar of Ireland](#) also provides a search facility for arbitrator and mediator barristers, but no gender breakdown seems to be available.

### Why it matters

Of course, gender is only one of the areas where equality, diversity, and inclusion in ADR matters. For example, on 30 October 2023 the International Chamber of Commerce published an important [Guide for Disability Inclusion in International Arbitration](#). Nonetheless, there are several reasons why we should be concerned about the massive gender imbalance in this work.

To start, there is the law. So big is the imbalance it suggests that discrimination is at least a factor. Public sector bodies in particular have a legal duty to have regard to the need to eliminate discrimination. Section 42, Irish Human Rights and Equality Commission Act 2014. Many parties to disputes, public or private, have put on record their aspiration to avoid discrimination and promote a culture of diversity and inclusion. Institutions involved in forming panels and

making appointments, such as those mentioned above, also vaunt their commitment to equality, diversity, and inclusion. So does our institute. ADR processes will be seen to lack legitimacy if they are tainted with discrimination, inequality, and exclusion. This is significant as many of these processes involve the public interest, or a wide range of stakeholders for whom legitimacy is important. But the drivers for equality, diversity and inclusion go beyond compliance and legitimacy. It is hard for (potentially) disputing parties to find the right neutral for a dispute and agree on their appointment. Yet it is crucial. It simply makes no sense to exclude half the available talent. It should not need to be said: the best person for a particular case might be a woman.

### What is to be done?

Everyone involved in ADR has a role in solving this problem. The ICCA task force 2022 [update](#) gives a lot of very useful suggestions, almost all of which apply beyond arbitration. I will conclude with a few steps for institutions and individual practitioners. First, institutions need to make an effort to have more diverse panels. They should be more transparent about their appointments, appoint more women of all ages to leadership positions and ensure diverse and inclusive involvement in all their events. Men and women need to work together to fix this. Men can help other men by calling out slights, interruptions and other microaggressions against women (such as comments about unicorns).

Those of us whose job includes appointing or recommending neutrals need to reflect on our unconscious biases and change our approach to identifying qualified candidates. Just as it has become ‘not OK’ to hold an event with an all-male speaking panel—most men would normally refuse invitations to any remaining ones—it should be unacceptable to propose all-male lists of ‘the usual suspects’ to a client or a counterparty when selecting a neutral. For this, we need to broaden our sources of information about the field of qualified candidates. Word of mouth from an echo chamber of colleagues who know the same other colleagues is not enough for the crucial job of selecting a neutral.

Éamonn Conlon SC FCI Arb is a member of the Ireland Branch Equality Diversity and Inclusion – Special Interest Group. The views in this article are his own.

# New Appointments

Peter O'Malley



It is not often that our members are made Adjunct Professors or a judge of the High Court where it is a privilege to now congratulate three of our members who have received these prestigious accolades, Meg Burke BL, and Arran Dowling-Hussey BL, who is the Trustee of our branch, together with Nuala Jackson SC.

Meg is a graduate of University College Cork with a degree in Law & French. During her time in UCC Meg studied at Universite Robert Schuman, Strasbourg and was awarded a placement in the Office of the Public Defender, San Francisco, California. She served as a committee member for the Inaugural U.C.C. Law Conference (2001) and as Director in 2002. As a fulltime barrister Meg has extensive experience in the field of litigation having been called to the Bar in 2006, following her Barrister at Law Degree in the Honourable Society of King's Inns. Meg is a member of the Cork and Munster Circuits and is a committee member of the Tort & Insurance Bar whilst also being the Chair for the Mental Health Commission in respect of tribunal hearings.

Meg, a long-standing committee member of the Ireland Branch, retains close ties with UCC, regularly contributing as guest lecturer to the College's ADR programme as well as presenting to final year undergraduate students on careers in dispute resolution. She has also been involved in the organisation of several CPD events at UCC, including ADR20/20. Most recently she was a panel member for U.C.C.'s 2023 Women In Law Forum. Meg has also served on the School of Law's Liaison Committee since 2017. Speaking on

her appointment Meg said "It is a huge personal honour to have been appointed by President of University College Cork, Professor John O'Halloran, as an Adjunct Professor within the School of Law in my old alma mater. I am really looking forward to my tenure as Adjunct and to working with Professor Thia Hennessy, Acting Head, College of Business and Law, together with Professor Mark Poustie, Dean, and all the remarkable teaching staff in the School of Law."

Our second Adjunct Professor is Arran Dowling-Hussey who apart has been the long-serving Trustee of the Ireland Branch, is a barrister and arbitrator in addition to being a member of several domestic and international arbitration panels including the Law Society of Ireland (and Law Society of England's) Panel of Arbitrators. He was a member of the Chartered Institute of Arbitrators Board of Management in London from 2013-2015 and has been a Ciarb Trustee since 2017. Arran has co-authored three editions of 'Arbitration Law' (2008, 2014 and 2018) which has been cited and approved by the Irish Superior Courts and co-wrote the first annotation of the 2010 Act. Arran is a former lecturer in arbitration at Dublin City University, and the Law Society of Ireland. He has also taught/ delivered ADR training in Cork, Dubai, Lahore, London, and Yerevan including on behalf of the Council of Europe. Arran commented on receiving the appointment that "It's a great privilege to have become an Adjunct Professor at UCC's School of Law and I look forward to helping develop the university's ADR courses."

Nuala Jackson, a Senior Counsel specialising in Family Law and Child Law, has now been appointed as a judge of the High Court. Nuala was formerly Chairperson of the Family Lawyers' Association of Ireland. She has a particular interest in legal issues relating to family formation. Called to the Bar in 1988, she has lectured and written extensively on numerous aspects of child and family law as well as being involved in many landmark cases in these areas. Prior to commencing her legal practice and in the early years of same, she lectured in the Law Faculty in NUIG.

Nuala is a law graduate of Trinity College Dublin and has a Master of Laws degree from Cambridge University. She completed a LLM in Canon Law in Cardiff University in 2013. She was awarded an Advanced Diploma in Applied Employment Law in 2014 (King's Inns) and a Certificate in Charities Law, Governance and Trusteeship in 2015 (Law Society of Ireland). In 2016, she completed an Advanced Diploma in Election Law and the Democratic Process (King's Inns) and in 2017 received a Certificate in Data Protection Practice (Law Society of Ireland). She completed an Advanced Diploma in Medical Law (King's Inns) in 2019 and an Advanced Diploma in Media and Social Media Law in 2022.

Nuala is also an accredited mediator (CEDR and Resolution, Family Law) and holds a Diploma in Arbitration Law (UCD) and a Diploma in International Arbitration Law (UCD). She is a committee member of the Family Law Arbitration Scheme and represents family law on the Ciarb (Ireland Branch). She is Chair of the Legal Aid Board (LAB) and is a member and former chair of the Appeals Committee of that organisation as well as being a member of the Finance Committee of the LAB. She is a Vice Chairperson of the Personal Injuries Assessment Board and a member of the Complaints Committee of the LSRA. She is a member of the Finance Committee of the Bar Council of Ireland. She is a Fellow of the International Academy of Family Law.

## 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](mailto:adhussey@lawlibrary.ie) who will be pleased to help.



**Meg Burke BL, Adjunct Professor**



**Arran Dowling-Hussey BL, Adjunct Professor**



**Justice of the High Court Nuala E Jackson**



The Ciarb Ireland Branch is, uniquely amongst other Ciarb Branches, affiliated with the International Chamber of Commerce (ICC) through ICC Ireland - a National Committee within the structure of the ICC. Our branch nominates two people to serve on ICC Ireland, presently Gordon Barry and Orla Fitz.Gerald, alongside two nominees from the Law Society and two nominees from the Bar of Ireland. ICC Ireland meets regularly under the Chair of Ian Talbot, CEO of Chambers Ireland. The business includes the advancement of ICC policies, events, interaction with ICC HQ and other National committees. Of particular interest to Ciarb members, is the function of ICC Ireland as nominator of persons to act as Arbitrators, Mediators and Expertise Service Providers in disputes between parties from jurisdictions other than Ireland & Northern Ireland when called upon by ICC HQ in Paris. When international appointments arise from these nominations, it is said by many who have received them that it has spring-boarded them into the world of international ADR.

#### **ICC International Court of Arbitration**

For the ICC International Court of Arbitration, now celebrating its Centenary Year since its

foundation in 1923, ICC Ireland has the privilege of nominating a Court Member and Alternate, currently Louise Reilly BL and Eamonn Conlon SC. These appointments are for a two-year term where the Court Member then steps down, the Alternate is then appointed as the Court Member and a new Alternate is nominated.

#### **ICC Commission on Arbitration and ADR**

The ICC's 'Disputes Resolution Services' unique think tank, serves to enable thought leadership in the field of dispute resolution, pooling expertise and raising awareness and understanding on practical and legal issues in arbitration and ADR. The service, maintained separately from the ICC Court of Arbitration, advises on the continued

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development of the flagship ICC Arbitration Rules. ICC Ireland nominates members to serve on the Commission, currently; Dr Nael Bunni Patron of the Ciarb Ireland Branch, Siobhan Fahey, and James O'Donoghue of Ciarb Ireland, Michael M. Collins SC and Patrick Leonard SC from the Bar of Ireland, together with John Gaffney, Gavin Woods LSI, and Klaus Reichert SC.

The full Commission meets twice annually, where the Commission meeting held in Paris on 27 October was particularly well attended with c. 380 persons in the room and c. 300 attending online, with ICC Ireland well represented. Interestingly, the theme for the afternoon session was Artificial Intelligence in ADR, legal and expertise services – presented by the renowned information technologist, lawyer, and author Richard Susskind.

### ICC International Centre for ADR

The ICC International Centre for ADR offers services in respect of Mediation, Dispute Boards, and Expert Proceedings. The Expert Proceedings also include Expert Investigations to support Arbitrations and other processes, and disputes arising in respect of generic Top-Level Domain Names (gTLDs). There is a separation from the ICC Court and the Commission so to ensure that no potential conflict arises in respect of any arbitration proceedings happening, subsequent to, or in parallel with an ADR proceeding. The Dispute Boards aspect of the ADR Centre is of particular interest to engineering and construction professionals, since the ICC is one of the organisations that typically nominates dispute board members, being also the named entity for deciding any challenges to dispute board members, under the current suite of FIDIC contracts.

### ICC Young Arbitration & ADR Forum (YAAF)

The YAAF is for individuals who are 40 years of age and under where you sign-up to become an ICC YAAF member at [iccwbo.org/dispute-resolution/professional-development/yaaf-programme/join-the-icc-yaaf-network](https://iccwbo.org/dispute-resolution/professional-development/yaaf-programme/join-the-icc-yaaf-network). The YAAF has an exclusive network of over 27,400 young dispute resolution practitioners, where you can stay up to date with all YAAF activities; attend our educational programmes and events; engage with the most diverse group of young professionals; obtain preferential rates on some of the ICC training; gain an insight into ICC Dispute Resolution Services and boost your career development.

### Learn More About the ICC

Whereas the ICC is headquartered in Paris, both the International Court of Arbitration and the ICC International Centre for ADR operate truly internationally in the global arena. For those of our members who take an interest in the ICC, it is said to have broadened their professional horizons and opportunities. We would encourage those members with an interest in the ICC to learn more at: [iccwbo.org/dispute-resolution/dispute-resolution-services/adr](https://iccwbo.org/dispute-resolution/dispute-resolution-services/adr) and [iccwbo.org/dispute-resolution](https://iccwbo.org/dispute-resolution)



Richard Susskind addressing the ICC Commission on Arbitration and ADR

# Committee Members 2023 – 2024

**Chair:**

Peter O'Malley  
Architect

Paula Murphy  
Architect

**Vice-Chair:**

Dermot Durack  
Quantity Surveyor

Meg Burke  
Barrister

**Honorary Secretary:**

Maebh Gogarty  
Solicitor

Jim Bridgeman  
Senior Counsel

Peter McCarthy  
Quantity Surveyor

**Honorary Treasurer:**

Catherine Needham  
Barrister

Greg Daly  
Engineer

**Immediate Past Chair:**

Tom Carey  
Engineer

Nuala Jackson  
Senior Counsel

Sean O'Flaherty  
Quantity Surveyor  
and Engineer

Adrian Kearney  
Surveyor

**Northern Ireland  
Chapter Chair:**

Jarlath Kearney  
Quantity Surveyor

**Supported by:****Branch Patron:**

Dr Nael Bunni  
Engineer

**Branch Trustee:**

Arran Dowling-Hussey  
Barrister

**Branch Administrator:**

Jennifer Crowther

## Special Interest Groups (SIG's)

Within the branch there are several Special Interest Groups (SIG's). The SIG's are an important part of branch activity, providing a platform for members to pursue a particular interest in the wider sphere of dispute resolution. The individual SIG's are listed here.

Most of the members of the branch committee have been, and continue to be, involved in one or more of the SIG's. If you would like to become involved in one of the SIG's, please let us know or send an e-mail to [info@ciarb.ie](mailto:info@ciarb.ie) advising of your interest.

Adjudication SIG

Arbitration SIG

Dispute Avoidance SIG

Education and Training SIG

Environment and Climate SIG

Equality, Diversity, and Inclusion SIG

Family Law SIG

International Arbitration SIG

