

Arbitration, Mediation and the Courts – Perspectives on the Relationship¹

by

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Protocols.

Introduction

I am deeply honoured to have been invited to deliver this Keynote Address at the 3rd International Arbitration Conference, which is hosted by the Caribbean Branch of the Chartered Institute of Arbitrators. I am told that this is the first time this event is being held in Guyana. The timing is perhaps opportune, given that Guyana appears poised to become a hub for commercial activity in the region in light of recent developments in its oil and gas sector.

As the patron of the Caribbean Branch, I am particularly proud of its continued activity and expansion. Within the last two years I have participated in landmark activities in the Bahamas, the British Virgin Islands and Barbados, and have addressed on the topic of Arbitration at the Jamaica Bar Association Training program. So, I am particularly pleased to come to Guyana to share in the efforts to bring Guyana into the fold of international commercial arbitration, and even in domestic arbitration

The Caribbean Branch of the Institution is headquartered in Jamaica and has many chapters, and in addition to those earlier mentioned I could include Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago. Since its establishment, the Caribbean Branch has done facilitated training and outreach activities across the region. It has also engaged in strategic relations with stakeholders, including such as the Secretariat of the United Nations Commission for International Trade Law (UNCITRAL); Organisation of American States (OAS); and the University of the West Indies (UWI). These activities, including the facilitating of a Conference of this magnitude, are landmark achievements in the goal of promoting ADR as an effective mechanism for resolving disputes in the Caribbean region. For this, I must congratulate the entire team who contributed to making this event a success.

Several Caribbean countries have established arbitration centres, most notably Bahamas, Barbados, Jamaica and Saint Lucia. I had the privilege to participate in the opening of the British Virgin Islands International Arbitration Centre (BVI IAC) which was launched on 16th November 2016. My tour of the facility was impressive to say the least. It is indeed world class in every way, functional, attractive, modern and technologically advanced. The facility serves as demonstrable evidence of our region's commitment to support the infrastructure required

for a top-tier arbitration centre of international repute. I daresay that the demand for these services may develop quite quickly here in Guyana with the rapid growth of the oil and gas industries.

these developments are not limited to the British Caribbean as evidenced by the Organization for the Harmonisation of Business Law in the Caribbean (OHADAC) Project. OHADAC was created to contribute to the reduction of legal constraints, consolidate the economic integration of the entire Caribbean. Among the tools it develops are harmonised commercial and arbitral law and practices. I am happy to see that they are represented at this conference. I think practitioners, experts and academics in the Commonwealth Caribbean could benefit from cooperative relationships with OHADAC and at the CCJ we have set the example by entering in such a cooperative arrangement and I take this opportunity to encourage you to find out more about it with a view to participating in its activities and growth in the region.

The Revised Treaty of Chaguaramas and ADR Mechanisms

Another instrument that I would like to encourage to your attention is The Revised Treaty of Chaguaramas (RTC). This bible for Caribbean integration contains much of value to facilitate our regional economic development and social stability. It is very significant that it expressly endorses the use of ADR to resolve disputes that may arise under it. In that vein, Article 188 prescribes six modes of dispute settlement including arbitration.

These provisions of the RTC encouraging the use of alternative dispute resolution are consistent with the approach of the international community to conflict resolution. There is great significance attached to the peaceful resolution of disputes in the international community, particularly within the United Nations family.

A couple years ago I presented a paper entitled: “Does Caribbean Inter-State Arbitration have a Place in the Sun?” and observed that despite the fact that there have been conflicts between Member States concerning CSME issues, they have reached the level where dispute resolution modes have been invoked by these States. Article 190 of the Treaty requires Member States to notify the Secretary-General of the existence of disputes and the mode of dispute settlement agreed upon or initiated. As of now, in no case has any Member State communicated with the

Secretary-General. However, preparedness is essential for success and the growth of a sector of trained arbitrators is an important element in the enhancement of the integration movement.

Facilitating an ADR-Friendly Environment in the Caribbean

ADR mechanisms in the region do not exist in a vacuum. Indeed, a number of factors have contributed to the significance of the various forms of ADR in the region today. These include:

- The growth of global trade and commerce;
- The expansion of financial markets;
- The rapid increase in telecommunications;
- The massive expansion in the movement of peoples and businesses throughout the region in accordance with the principles of CSME as well as across the wider world; and
- The unfortunate sloth and other inadequacies of domestic courts in providing redress to those who have a legal dispute arising out of transactions of an international commercial nature.

These factors underscore the critical fact that technology is an important stimulus to all of the foregoing developments. It follows, therefore, that the use of technology must be at the heart of any effective dispute resolution process. Why is this so? Well, it is important for us to remember that arbitration, mediation and all other forms of ADR, must be viewed as a way to facilitate broad access to justice for our region's citizens. I see no logical reason why the mechanisms for improving access to justice ought to be restricted to traditional court systems. They extend to extra-judicial means of dispute resolution. There is an overriding public interest in more efficiency in dispute resolution processes.

It is to this end that the CCJ sponsored the establishment of APEX - an agency established to promote and advance the standards of efficiency in the administration of justice in the Caribbean Community. In November 2017, we held its first convention in the Bahamas and it was a major success. The first project developed by APEX was the CURIA e-Filing and case management suite. This system has been in use by the CCJ for over a year and it has had a transformative effect on the ability of litigants to access the Court as well as the day to day case management practices of the Court. This system has contributed to the CCJ being completely backlog-free. This level of efficiency and technological capacity must be similarly reflected in

ADR processes employed throughout the region. The services of APEX and its support systems are offered for the arbitral process.

Conclusion

The holding of events such as this Conference to facilitate training and information dissemination further strengthens these benchmarks in the region and promotes a healthy level of respect for these processes throughout the region. A lot of work has been put into this conference and the associated training modules. The practitioners who have facilitated this, must be congratulated. Many of them have supported the development of the process in every jurisdiction in the region. This morning in an earlier session the legislative framework necessary for the development of international arbitration scheme was examined, and I would only hope that the reforms that have been discussed are addressed and introduced into legislation expeditiously.

I would hope that Guyana realises the benefits of developing a strong cadre of arbitrators. In a sense the resolution of commercial disputes has become an industry, and there is no reason why Caribbean practitioners should not be involved at every level.

On this note, may I conclude by reiterating my gratitude to the organisers of this event, and to wish the Conference, its Workshop and related activities every success.

I thank you.

The Right Honourable Sir Dennis Byron

