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THE ADJUDICATOR

"A NEWSLETTER OF THE CI Arb BAHAMAS BRANCH"



SCAN ME

ISSUE #3

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EXECUTIVE COMMITTEE OF **CIArb BAHAMAS BRANCH (2021-2022)**



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**Executive Chairman &
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 FCIArb



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Retired Judge
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 Rubie Nottage
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 MacMillan-Hughes**
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Kenia Nottage
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**Cherise
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Rev. William Higgs
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**Carla
 Card-Stubbs**
 FCIArb



**Damani M.
 Horton**
 MCIArb



Jethlyn Burrows
 FCIArb



SIR DENNIS BYRON

**INTERNATIONAL PATRON
OF THE CIARb BAHAMAS BRANCH**

- ◆ **Sir Charles Michael Dennis Byron was born in Basseterre, St. Kitts, on July 4, 1943**
- ◆ **College, Cambridge University, from which he graduated with an M.A and an LL.B. In 1965, he was called to the Bar of England and Wales by the Honorable Society of the Inner Temple.**
- ◆ **Barrister-at-Law and Solicitor throughout the Leeward Islands, with Chambers in St. Kitts, Nevis, and Anguilla from 1966 to 1982**
- ◆ **1982 appointed as a High Court Judge of the Eastern Caribbean Supreme Court**
- ◆ **In 1997, launched the Judicial Education Institute, as a Committee of the Chief Justice's Chambers**
- ◆ **In 1999, appointed Chief Justice of the Eastern Caribbean Supreme Court**
- ◆ **Served as President of the Commonwealth Judicial Education Institute (C.J.E.I.) since the year 2000**
- ◆ **Appointed by the United Nations Secretary-General, where he served as a Judge of the United Nations International Criminal Tribunal for Rwanda (I.C.T.R.) from June 2004**
- ◆ **President of the Tribunal in May 2007 and in May 2009**
- ◆ **In 2000, knighted by Queen Elizabeth II and was appointed a member of the Privy Council in 2004. In 2004, he was appointed an Honorary Bencher of the Honorable Society of the Inner Temple**
- ◆ **Sir Dennis Byron took the oath of office as President of the Caribbean Court of Justice in his home country.**





DR. EARL CASH

PATRON OF THE CIArb BAHAMAS BRANCH

- ◆ **Born in Nassau, Bahamas.**
- ◆ **B. A. in English Marquette University, Milwaukee**
- ◆ **M. A. in English, University of New Mexico, Albuquerque**
- ◆ **Ph.D. in English University of Miami School of Law**
- ◆ **J. D. in Law, and Univ. of Miami School of Law**
- ◆ **LL. M. in International Law**
- ◆ **Called The Florida Bar April 1979 and The Bahamas Bar September 1982**
- ◆ **A Partner in the firm of Higgs & Johnson in Nassau where employed since 1980**
- ◆ **Specialized in Private Client and Wealth Management, Trusts, Estates, and Banking Law, servicing major trust companies in the Bahamas;**
- ◆ **Listed as a leading lawyer by the International Financial Law Review (IFLR1000) in 2010 and Chambers Global (2014-2018); Legal 500 (2010-2019)**
- ◆ **Recommended in the City wealth Leaders List (2010-2012); listed in Who's Who Legal for Private Clients 2018**
- ◆ **Author of legal articles on trusts, estates, foundations, and asset protection, plus a collection of short stories called Nassau Escapades.**
- ◆ **Served as Magistrate for Night Court**
- ◆ **Member of The Bahamas Bar Disciplinary Committee;**
- ◆ **Former Chairman of the Board of Trustees of the University of The Bahamas**
- ◆ **Member of the Board of Directors of the Bahamas International Stock Exchange and the Catholic Board of Education**





RENGIN JOHNSON (FCI Arb)

**CI Arb BAHAMAS BRANCH CHAIR
AND EDUCATION CHAIR 2021-2022**

- ◆ **Sr. Barrister / Counsel and Attorney-at-law / FCI Arb / Notary Public at the law firm Ayse Rengin Dengizer-Johnson & Co**
- ◆ **Graduated from North London University**
- ◆ **Called to the Honorable Lincoln Inn, Utter Barrister in 1983 in England and the Bahamas Bar in 1992**
- ◆ **Member of CI Arb Bahamas Branch 2011**
- ◆ **Chair of CI Arb Bahamas Branch, FCI Arb 2021-2022**
- ◆ **Former Deputy Chief Magistrate and Circuit Justice**
- ◆ **Established "Scales of Justice" Legal Aid Program through Radio Show**
- ◆ **Life Member of the International Federation of Women Lawyers (F.I.D.A.) and former Vice President of The Bahamas Chapter**
- ◆ **Rotarian since 1996. Present and Former President. 2018-2019 Assistant District Governor of Southern Florida and Grand Bahama Island District 6990**
- ◆ **Former Director of the Grand Bahama Chamber of Commerce and Director of I.W.H.A.A.M.**
- ◆ **Member of the Bahamas delegation to attend U.N. Commission on Women C.S.W. 2017 and 2018**
- ◆ **Representative of the Judicial Department of the Bahamas at San Salvador hosted by I.E.L.A. Enforcement Academy on the topic Public Corruption Ethics Course (organized by the U.S.A.)**
- ◆ **Negotiator, Mentor and Counselor**

1. What do you want to see in your Branch this year?

I would like to see the continued use of virtual communication that allowed the Chair to meet with the Executive Committee Members, connect with CI Arb HQ, other Branches' events and courses, and to conduct the Branch's affairs. It is also important that we create an annual calendar with events, courses and training to attract members, especially introductory courses. We must look to interact and collaborate with other Branches and institutions on a more frequent basis.

By adopting a virtual platform, we are providing members with convenience, saving time and travel expenses to take courses and train globally and this will encourage diversity and increase membership and the ADR courses which are made available. The Branch must continue its efforts to organize educational events and make them available to all its members. We must also continue to increase the number of Fellows from the current total of 20 practitioners who are trained in Arbitration, Mediation, and Adjudication.

2. How will you implement and deliver success?

By strategy and adequate planning to create a successful dynamic teamwork amongst the Branch members. We must also collaborate with other Branches and institutions and devise collective policies to provide the best pathway forward. The Branch's aim is to provide approved courses and tutors who can, in turn, give quality presentations in courses and training. The Branch shall succeed by promoting a good reputation, top training, and best practice by adhering strictly to ethics and professional conduct.

3. How will you use or expand social networking? How have you used social networking?

The Branch has been expanding by social networking, joining groups, being active in social media, diversifying, building links, broadening its knowledge, and nurturing global relationships. The Branch has access to other Branches and institutions regarding new legislation in ADR courses, and training styles. Social networking has been a valuable tool for the current Chair and the members to contact other Branches and create positive relationships by supporting their events and articles.

In 2019, we started an Annual Newsletter titled Adjudicator, which has been very successful in presenting our history, the patrons, the chairs, executive members, articles by our members and our global guests, etc. We are very proud to share our Adjudicator newsletter with others. Our past Chair, Cherise Cox-Nottage, created the Adjudicator Newsletter 1. The Adjudicator Newsletter 3, 2021-2022, will feature many articles, including our former CI Arb Presidents Ann Ryan Robertson and Professor Sundra Rajoo (2016), and remarks from our Senator and Minister of Economic Affairs, Mr. Michael B. Halkitis.

4. What have you done to engage younger members/students?

On an annual basis, the Branch includes in the Executive Committee a Youth Chair to foster closer relations with younger members. Furthermore, the Branch promotes approved introductory courses in Arbitration and Mediation to the younger members and students. In addition, all Branch events include involvement by younger members and students. During, 2021 the Branch has provided ADR courses on two separate occasions on a pro bono basis to the law students, including subjects such as negotiation, job and business opportunities with ADR. The newly qualified students are encouraged to gain experience through a mentorship, including in the events, and to participate in role plays to gain confidence and expertise.



5. How will you communicate more effectively with your members?

CI Arb Bahamas Branch communicates with all its members through social media, emails, monthly meetings with the Executive Committee, and quarterly virtual meetings with all the members, seeking their input. The Chair also shares the links of all the global events from CI Arb and its Branches. The members' voice assists the Chair and the Branch in creating unity, loyalty and helping to promote the Branch, CI Arb, and ADR courses and training. In addition, the Branch creates events to meet in person with the members in compliance with COVID-19 protocols and to maintain fellowship.

6. Do you have a social media presence as a Branch? (LinkedIn, Facebook, Twitter)?

The Bahamas Branch has a social presence through LinkedIn, Facebook, Twitter, and messaging groups with The Bahamas Branch members, and other groups such as legislative ADR, legislative committee, etc. Further, the Branch also advertises its events and courses on the CI Arb calendar, and through articles in the local newspapers, and TV news. When the global calendar is published, the Branch shall advertise its courses, and also support other Branches courses and interact. The Branch has extended its presence globally to support the family of CI Arb and will continue to adopt and promote high-quality ADR courses and assist as a Branch with CI Arb's reputation as a top-quality institution.

The above article was presented by Chair Rengin Johnson of the CI Arb Bahamas Branch on March 15, 2022, in the eSolver of CI Arb News Info.

The Bahamas Branch Calendar of Events organized by Chair Rengin Johnson and her Committee from 2021 through to 2022 as follows:

On July 29, 2021, a Virtual Webinar held by Ann Ryan Robertson the President of CI Arb International presentation on ‘CI Arb and ADR Courses’.

On June 15, 2021, a Virtual Webinar held by Mr. John Bassie the CI Arb Global Vice President and Chairman of the Board of Dispute Resolution Foundation and New President presentation on ‘CI Arb and Its Future’.

On August 12, 2021, Bahamas Executive Committee Virtual Meeting with by Bryan J. Branon the CI Arb Reginal Relationship Manager presentation on ‘Introduction to the Executive Committee’.

On August 14, 2021, Bahamas Executive Committee Virtual Meeting with Bryan J. Branon the CI Arb Reginal Relationship Manger presentation on ‘London Maritime Arbitration Association’ in respect to the maritime industry in The Bahamas.

On January 24, 2022, Bahamas Executive Committee Virtual Meeting with Lisa Munroe Canada Branch FCI Arb and Q.Arb presentation on ‘New Arbitrator Pilot Program in The Bahamas’.



On March 22, 2022, Bahamas Executive Committee Virtual Meeting with Datuk Professor Sundra Rajoo the Director of AIAC, Past President of CI Arb 2016, and Chairman of ADNDRC presentation on ‘Arbitration Award Writing Skills’.

On March 22, 2022, The Bahamas Branch approved Virtual Module 1 Training and Assessment Pathway Course for 7 weeks of training and 8th week Assessments.

On March 30, 2022, the Bahamas Executive Committee Virtual Meeting on ADR Legislation of the Bahamas with Guest Speakers QC Metta MacMillian-Hughes, Peter Maynard, and Damani Horton

Further to the interview of Bahamas Branch Chair Rengin Johnson, this article was published in Chartered Institute of Arbitrators (CI Arb) eSolver Newsletter on March 15, 2022.

CI Arb Bahamas Branch is located in Nassau, New Providence, one of 700 Islands in the Commonwealth of The Bahamas.

The Bahamian system of law and government is based on the Westminster Model, which entails cooperation between the Executive, Parliament, and the Judiciary. It is governed by the principle of separation of powers as articulated in the Constitution of The Bahamas. The country’s legislative and judicial background is modeled after the United Kingdom, and the Bahamas is widely recognized as a Common law jurisdiction.

The Bahamas is a world-renowned destination for tourism and cruise ships and has established industries in finance, agriculture, fisheries, cement manufacturing, oil refining and transshipment, salt production, rum distilling, aragonite, and manufacturing spiral-welded steel pipe. In addition, Grand Bahama Island is the Bahamas’ industrial, pharmaceutical, manufacturing, and maritime center, with one of the most extensive Container Port facilities globally.

Since the birth of the CI Arb Bahamas Branch in 2011, it has been involved in marketing and organizing CI Arb’s globally recognized A.D.R. courses, programs, webinars for students and practitioners, networking with other institutions, and thereby creating a following with its loyal members at the Branch and global level. It has also built relationships with the Bahamas Bar Association, the Judiciary, Legislation Department, the Industries, the Chamber of Commerce, and the Government Departments.

The Branch’s current membership consists of 121 professional members, including leading domestic and international A.D.R. practitioners and at least 20 Fellow Chartered Institute of Arbitrator practitioners.

The CI Arb Bahamas Branch Members have played the critical role of mentors to encourage values and standards in the profession, diversity, and inclusion, which are among the fundamental foundations of the Branch’s philosophy





**SENATOR THE HONOURABLE
MICHAEL B. HALKITIS**
MINISTER - MINISTRY OF ECONOMIC AFFAIRS

- ◆ **Born in Nassau, Bahamas**
- ◆ **Graduated from the College of the Bahamas and earned a Bachelor of Arts Degree in Economics from the University of Western Ontario**
- ◆ **Qualified as a Chartered Financial Analyst in 1995.**
- ◆ **Elected to The Parliament of The Bahamas in 2002 and 2012**
- ◆ **Serves as Minister of Economic Affairs and Leader of Government Business in The Senate**
- ◆ **His portfolio responsibilities include Promotion of Financial Services, Small Business Development, Ease of Doing Business, Consumer Protection, and International Trade.**
- ◆ **Under his leadership, the Bahamas' Ministry of Finance digitized its operations and implemented taxation reforms**
- ◆ **Currently, he oversees the nation's trade financial services industry to improve The Bahamas' business and financial sector.**

REMARKS

By Senator The Honourable Michael B. Halkitis Minister-Ministry of Economic Affairs

The Ministry of Economic Affairs is responsible for inter alia the development and promotion of an international commercial arbitration centre in The Bahamas. As part of this responsibility, the Ministry is charged with the implementation, and where necessary, the revision, of the legislative framework that not only supports international commercial arbitration, but that also supports other forms of alternative dispute resolution (“ADR”) including mediation and construction adjudication. The Davis administration is laser-focused on moving The Bahamas ahead in ADR as it supports its mission to foster economic recovery and eventual robust, broad-based economic growth.

The promotion of an international commercial arbitration centre in The Bahamas has been a key focus of the Ministry for several years and in the past few years significant progress has been made toward establishing The Bahamas as a centre for international commercial arbitration and other forms of ADR. The Ministry has not made this progress alone but has worked closely with its Strategic Partners to ensure that there has been a collaborative effort between the Government and industry stakeholders.

One of the key Strategic Partners of the Ministry is the Chartered Institute of Arbitrators, Bahamas Branch (“CIArb Bahamas”). CIArb Bahamas is an organization that has immense value and is of significant importance to the Ministry. It is the leading organization for ADR professionals globally and the technical skills of the members of the local branch have been of immeasurable support to the reform of the ADR legislative framework in The

Bahamas. Members of CIArb Bahamas have contributed to the drafting of the International Commercial Arbitration Bill 2021, the proposed International Mediation Bill, Domestic Mediation Bill, and the Construction Adjudication Bill in addition to amendments to The Arbitration Act 2009. This suite of legislation will assist in building opportunities for all Bahamians, from all walks of life, not just legal and business professionals. We have seen the success of a strong ADR industry in leading arbitral seats like London, where the combined value of international arbitrations taking place there has been recorded at USD \$40 to \$50 billion in any given year. This kind of revenue contributes to the income of both legal and dispute resolution service providers as well as the wider service economy. This is the type of success we hope to achieve in The Bahamas, although we recognize that it cannot be achieved overnight and without the assistance of our Strategic Partners, like CIArb Bahamas.

With that being said, 2022 will be an exciting year for ADR in The Bahamas. In late 2021, the Ministry circulated its International Commercial Arbitration Bill 2021 for public consultation and has some additional amendments to the same based on the aforesaid public consultation. However, once enacted, this legislation will incorporate the UNCITRAL Model Law on International Commercial Arbitration, widely considered to be the gold standard for the harmonisation and modernisation of laws on arbitral procedure. The incorporation of the Model Law will

REMARKS (cont'd)

By Senator The Honourable Michael B. Halkitis **Minister-Ministry of Economic Affairs**

position The Bahamas well in the region to competitively offer itself as a seat for ADR and is a path for transformational economic growth for The Bahamas.

Besides the advent of the International Commercial Arbitration Bill 2021, the Bahamian public can also expect that the International Mediation Bill and Domestic Mediation Bill will also soon be circulated for public consultation. Both of these Bills have been drafted in the spirit of the UNCITRAL Mediation Framework and the Singapore Convention on Mediation. The implementation of the Construction Adjudication Bill is also a priority of the Ministry. We anticipate that these initiatives to establish The Bahamas as a centre for international commercial arbitration and other ADR processes will result in (i) The Bahamas becoming more attractive to international investors, (ii) improvement of The Bahamas' position as a leading offshore financial centre and (iii) the development of a new sub-industry that would ultimately positively affect trade and other commercial activities.

Moreover, The Bahamas, as it progresses to become a leading centre for international arbitration and other forms of ADR, will not only benefit from the modernisation of the ADR legislative framework, but will also benefit from the cadre of ADR professionals that form CIArb Bahamas, a branch with the highest amount of Fellows per capita in this region and a demonstrative presence in the local community for the promotion of ADR. It is with great pleasure that I, on behalf of the Ministry of Economic Affairs, congratulate CIArb Bahamas on all of its achievements in 2021 and reiterate the Ministry's commitment to its strategic partnership with CIArb Bahamas. We look forward to working together in 2022!



SHELLYN INGRAHAM

MCIArb CIArb BAHAMAS BRANCH

FIRST CHAIR & HONORARY SECRETARY

- ◆ **Chartered Fellow of The Chartered Institute of Legal Executives (CFILEx)**
- ◆ **Member of (CIArb) (MCIArb)**
- ◆ **Master of Laws Degree in International Commercial Law, Salford University, London, England**
- ◆ **Former Employee of the National Insurance Board**
- ◆ **Former Office Manager & Secretary of the Law Firm of Allen Gomez & Co. and Executive Legal Secretary of the Law Firm of Nottage, Miller, Johnson & Co.**
- ◆ **Certified Mediator (Accredited by the Mediation Board of Trinidad & Tobago and approved by the Association for Conflict Resolution, USA)**
- ◆ **Business Consultant**





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CI Arb BAHAMAS BRANCH AND THE WAY FORWARD

By Shellyn Ingraham, MCI Arb

The 2020/2021 Year has been challenging for the Chartered Institute of Arbitrators (CI Arb) Bahamas Branch; but despite the setbacks visited upon The Bahamas and, indeed, the world by the COVID-19 pandemic, the Branch, with Rengin Johnson at the helm, has kept to its mission of educating, training, and qualifying members, while sensitizing the general public on alternative dispute resolution (ADR).

CI Arb Bahamas Branch gained its status in June 2012; it is one of 41 Branches under the Chartered Institute of Arbitrators, headquartered in London, England. The Bahamas Branch consists of an Executive team (known as the Ex-Com) with 15 persons plus three co-opted Members. It brings to 18 the number of qualified persons charged with the responsibility of effectively elevating the Branch, each one with his/her specific and respective area of expertise.

In the 2021/2022 term, the Ex-Com grew the membership by a remarkable 30% to 121 members. This is impressive, considering the prevailing COVID-19 environment. Students from both the Eugene Dupuch Law School (EDLS) and the University of The Bahamas (UB) played a fundamental role in the sustained growth and development of the Branch with their persistent quest for excellence through involvement and participation in ongoing education and training exercises.

The primary aim of the CI Arb Branch, continues to be to facilitate and advance ongoing education, training, and promotional exercises. Equally as important is its vision to become the leading centre for arbitration in the Caribbean and, indeed, the Americas. This vision is eminently achievable considering both the breadth of knowledge and talent in the Branch, and its strategic proximity to the United States, with its growing demand for neutral third party arbitration.

For example, there is no doubt that arbitration will continue to be the number one choice for resolution of maritime disputes around the world. The Bahamas' second city, Freeport, which boasts of being one of the world's largest shipping registries, is, therefore, primed and positioned to take advantage of this growing trend.

Part of the success of the Bahamas Branch can be attributable to its collaboration and partnership with various stakeholders, primary among which was The Bahamas Financial Services Board (BFSB). BFSB is a well-established private and financial institution that partners with The Bahamas Government in its focus on the business and regulatory sector.

Each year, an Executive Member of CI Arb Bahamas Branch represents the Branch under the body of 'The Professional Industry Association Working Group' (PIAWG). PIAWG is the elected group where representatives like CI Arb sit as part of the overall BFSB Board of Directors.

All Members of the Board are provided with updates from the BFSB Chair and/or Chief Executive Officer. All Members of the BFSB Board, including PIAWG members, are invited to provide updates to their respective organizations or Branches of the BFSB Board. We look forward to a continued collaboration with BFSB through our representatives of CI Arb Bahamas Branch.

Other stakeholders who played pivotal roles in the 2021/2022 term include but were not limited to:

- The Ministry of Economic Affairs
- The Bahamas Chamber of Commerce
- The Bahamas Institute of Financial Services (BIFS)
- Eugene Dupuch Law School (EDLS)
- University of The Bahamas (UB)

We similarly look forward to our continued mutual cooperation.



ANN RYAN ROBERTSON

CI Arb GLOBAL PRESIDENT

- ◆ **Chartered Arbitrator, FCI Arb**
- ◆ **The immediate past President of the Chartered Institute of Arbitrators**
- ◆ **Served as the Chair of the I.C.D.R. Rules Revision Committee**
- ◆ **Published 2021 I.C.D.R. Mediation and Arbitration Rules.**
- ◆ **An International Partner in Locke Lord L.L.P.’s Houston office,**
- ◆ **An arbitrator and advocate for business disputes in numerous industries.**
- ◆ **Recipient of awards and honors in the States Department of Trade**
- ◆ **Selected as one of ten arbitrators appointed by the United States to serve as a dispute settlement panelist according to Chapter 31 of the United States-Mexico-Canada Agreement (U.S.M.C.A.)**
- ◆ **Named to Global Arbitration Review’s “Who’s Who Legal: Arbitration” in 2015 and “The Best Lawyers in America, International Arbitration/Governmental” in 2014**
- ◆ **Member of arbitral institution panels; S.I.A.C., H.K.I.A.C., and I.C.D.R**
- ◆ **Author and speaker on arbitration issues**
- ◆ **Professor at the University of Houston Law Center**
- ◆ **Coached the Law Center’s Vis Moot team**
- ◆ **Supporter of diversity in Arbitration**
- ◆ **Founding member of Arbitral Women.**



THE 2021 ICDR RULES

Integrity, Innovation and Efficiency

By Ann Robertson C.Arb FCI Arb

On March 1, 2021, the International Centre for Dispute Resolution (ICDR) of the American Arbitration Association (AAA) launched its 2021 ICDR Rules. ¹The 2021 ICDR Rules address both arbitration and mediation and represent the culmination of more than 15 months of collaboration between an ICDR Rules Committee and the ICDR management team. ²Equally divided between civil law and common law practitioners, the ICDR Rules Committee was comprised of advocates, arbitrators, mediators and former in-house counsel. The foundational philosophies adopted by the ICDR Rules Committee include integrity and transparency, innovation, and efficiency and economy, with these philosophies permeating the 2021 ICDR Rules. The ICDR has long been an innovator in international dispute resolution. ³Among the 2021 ICDR Rules innovations are an emphasis on cyber-security, privacy and data protection; reference to the Singapore Convention and concurrent mediation; requiring a party to opt out of mediation (as opposed to opting in); addressing jurisdiction on arbitrability without the need to refer the matter to the court; and providing for a separate award (during the pendency of the matter) for the arbitration fees if one party pays after the other fails to pay.

This article not only explores these innovations but also highlights other significant changes and revisions found in the 2021 ICDR Rules.

The 2021 Arbitration Rules—Significant Developments

Mediation Opt-out—Articles 2 and 3

Parties are to state in the Notice of Arbitration and Answer whether they are willing to mediate either prior to or concurrently with the arbitration. This revision is in keeping with the ICDR's philosophy of promoting efficient dispute resolution.

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¹The arbitration rules were last revised in 2013; the mediation rules in 2008.

²Members of the ICDR Rules Committee included Chair Ann Ryan Robertson (USA), Alan Crain (USA), Beata Gessel (Poland), Reza Mohtashami (England), Lucia Ojeda Cardenas (Mexico), Anke Sessler (Germany), John Townsend (USA) and Christine Kang (China). The ICDR management team was composed of Eric Tuchmann, Steve Andersen, Yanett Quiroz, Luis Martinez, Thomas Ventrone, Michael Lee, and Miroslava Schieholtz. The ICDR also sought feedback and comments from the ICDR Publications Committee and the users of the ICDR Rules who attended the ICDR Americas Conference.

³Among the ICDR's pioneering innovations are the Emergency Arbitrator (2006); the arbitrator list method and early case management conference (prior to 2006); document exchange guidelines with limitations on U.S. style discovery (2008); expedited proceeding (2014); privilege rule providing the highest level of protection (2014) and appointment of an arbitrator to decide consolidation issues (2014).

“International Administrative Review Council”—Article 5

Article 5 is amended to clarify that the International Administrative Review Council (IARC) may act as the decision-making authority for the administrator. The IARC may determine (a) arbitrator challenges, (b) the continuing service of an arbitrator, (c) disputes regarding the number of arbitrators, (d) the location of hearings, (e) the place of arbitration, and (f) whether the administrative requirements on initiating or filing an arbitration have been met. This new rule imparts clarity and transparency regarding IARC’s role. With the exception of the decision regarding the place of arbitration,⁴ all other decisions of the administrator are final.

Joinder—Article 8 (former Article 7)

Article 8(1) builds on former Article 7.1 by permitting joinder after constitution of the tribunal. Article 8(1) authorizes joinder after the tribunal constitution if the tribunal determines that the joinder of an additional party would serve the interests of justice and the additional party consents to be joined. The change results in an expansion of the rule’s application.

Consolidation—Article 9 (former Article 8)

Article 9(1) retains the ability of a party to request a separate arbitrator to determine whether two matters should be consolidated, described as a consolidation arbitrator, and further provides that the Administrator on its own initiative may appoint a consolidation arbitrator. Although the standards for permitting consolidation remain unchanged, the ability to consolidate is now enlarged to permit consolidation when the arbitrations involve “related” parties as opposed to the “same” parties as required by the prior rule. This expanded scope will allow parties to resolve these types of issues within an arbitration setting without the need to refer to the authority of the applicable court(s).

Impartiality and Independence of the Arbitrators—Article 14 (former Article 13)

Article 14(1) imposes additional obligations on arbitrators. Those obligations include (a) maintaining standards of impartiality and independence, (b) knowing and acting in accordance with the ICDR Rules and the terms of the Notice of Appointment, and (c) adhering to the Code of Ethics for Arbitrators in Commercial Disputes.

Third Party Funding—Article 14 (former Article 13)

Article 14(7) contains new language focusing on the issue of third-party funding and undisclosed economic interests. Importantly, Article 14(7)’s purpose is to protect the integrity of the award. On the application of a party or on its own initiative after consulting with the parties, the tribunal may require the parties (a) to disclose whether a non-party (such as a third-party funder or an insurer) has undertaken to pay or to contribute to the cost of a party’s participation in the arbitration, (b) to identify the person or entity concerned, and (c) to describe the nature of the undertaking. Similarly, the tribunal may require the parties to disclose a non-party (such as a funder, insurer, parent company, or ultimate beneficial owner) having an economic interest in the outcome of the arbitration and to describe the nature of the interest.

Arbitral Tribunal Secretary—Article 17 and Article 41 (former Article 38)

A new Article 17 clarifies that a tribunal may appoint a tribunal secretary with the consent of both parties and in accordance with any guidelines that the ICDR may offer. Article 41 extends exclusion of liability to tribunal secretaries. The ICDR Rules Committee is in the process of preparing tribunal secretary guidelines to aid tribunals in the use of tribunal secretaries.

⁴The tribunal ultimately makes the final decision on the place of arbitration.
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Arbitral Jurisdiction—Article 21 (former Article 19)

There is potential controversy regarding whether reference to arbitral rules constitutes a clear delegation of the issue of arbitrability to the tribunal. Therefore, Article 21(1) clarifies and further strengthens the concept that the tribunal has the jurisdiction to determine arbitrability objections without court involvement. The reason for this change is to counteract any doubt about the effect on this rule by the recently adopted Restatement of the U.S. Law of International Commercial and Investor State Arbitration⁵. The Restatement adopted a position, contrary to the weight of case law, concerning when the incorporation of arbitration rules into an arbitration agreement may constitute the “clear and unmistakable evidence” of an intention to delegate questions of arbitrability to arbitrators, rather than to courts, as required by the Supreme Court in *First Options of Chicago, Inc. v. Kaplan*⁶.

Cybersecurity, Privacy and Data Protection—Article 22

The AAA-ICDR® has demonstrated an ongoing commitment to the security and privacy of customer and case information. Article 22 on “Conduct of Proceedings” requires the tribunal to discuss cybersecurity, privacy and data protection with the parties in order to provide an appropriate level of security and compliance in connection with the case. To that end, the ICDR sends helpful resources to the parties in every case, the AAA-ICDR Best Practices Guide and AAA-ICDR Cybersecurity Checklist.

Use of Video, Audio or Other Electronic Means—Article 22 (former Article 20) and Article 26 (former Article 23)

Articles 22 and 26 each acknowledge the use of video, audio or other electronic means (collectively, “video”) for conducting preliminary matters and final hearings. As a corollary, Article 22(3) encourages the parties and tribunal to consider at the preliminary conference the rules and procedures needed to ensure data protection and security. Article 26 directs that all or a portion of a hearing may be held by video. In that regard, the parties may agree to video or the tribunal may order video after consultation with the parties, provided video will not compromise the rights of any party to a fair process.

The tribunal is also authorized to direct that witnesses be examined through means that do not require the witnesses’ physical presence.

Early Disposition—Article 23

Recognizing the need to promote efficiency in arbitration, new Article 23 specifically permits early disposition of issues. A party seeking early disposition of an issue must first request leave to file an application for early disposition of the issue. If the tribunal determines that (a) the application has a reasonable possibility of succeeding, (b) it will dispose of, or narrow, one or more issues in the case, and (c) consideration of the application is likely to be more efficient or economical than leaving the issue to be determined with the merits, the tribunal is to allow the application to be filed.

Importantly, Article 23(2) enshrines the right of both parties to be heard on the issue of whether leave to file the application should be granted and if leave is granted, whether early disposition should be granted. Article 23(3) empowers the arbitral tribunal to make an order or award in connection with the application. If an award is made, the tribunal is to furnish reasoning for the award. This rule was thoroughly analyzed to accommodate and balance practice styles amongst practitioners in jurisdictions and legal systems around the world, and the addition of Article 23 has been met with near universal approval by arbitration users.

Electronic Signatures—Article 32 (former Article 29)

Drafted to meet the challenge imposed by worldwide COVID-19 restrictions, new Article 32(4) permits a tribunal to electronically sign an order or an award unless (a) the applicable law requires a physical signature, (b) the parties agree that a physical signature is necessary, or (c) the arbitral tribunal or Administrator determines that a physical signature is appropriate.

Deposits—Article 39 (former Article 36)

Should a party fail to pay a required fee or deposit, Article 39(3) affirms the failure will result in a withdrawal of the party’s claim or counterclaim. The party, however, remains entitled to defend claims or counterclaims. New Article 39(4)

⁵ (ALI 2019) (Restatement).

⁶ 514 U.S. 938, 944 (1995).

The 2021 ICDR Rules: Integrity, Innovation and Efficiency (cont'd)

empowers a party that pays the deposit for a party that has failed to pay to request that the tribunal make a separate award in favor of the paying party for recovery of the payment, plus interest. If more than one party has paid, the tribunal may make an award as to each paying party. In the event no party is willing to pay the deposit for the recalcitrant party, pursuant to Article 39(5), the arbitral tribunal may order suspension or termination of the proceedings. If the tribunal has not been appointed, the Administrator may suspend or terminate the proceeding.

Confidentiality—Article 40 (formerly in Article 30.3 Time, Form and Effect of Award)

Article 40(4) addresses the publication of awards. Unless a party objects in writing to publication within six months from the date of the award, the ICDR is permitted to publish selected awards, orders, decisions, and rulings, edited to conceal the names of the parties and other identifying details. This language was previously found in the “Time, Form and Effect of the Award” section, but the committee determined this language was better placed under the “Confidentiality” Article.

The 2021 International Mediation Rules—Significant Developments

Recognizing that mediation is a viable and important alternative dispute resolution mechanism, the 2021 Rules made significant substantive changes to the International Mediation Rules. These International Mediation Rules represent the first amendment to the international mediation rules that do not shadow the AAA Commercial Mediation Rules.

Use of Video, Audio or Other Electronic Means—Rule M-1 and Rule M-9

Mediation Rules 1 and 9 acknowledge that all or part of a mediation may be conducted via video.

Appointment of the Mediator—Rule M-4

Mediation Rule 4 reframes language focusing on the importance of party involvement and the obligation of the ICDR to assist the parties in finding an agreed mediator. If the parties are unable to agree on a mediator and the parties’ agreement provides no

other method of appointment, the ICDR will send to each party a list of mediators from the ICDR’s Panel of Mediators. The parties are encouraged to agree to a mediator on the list. In the absence of agreement, each party is to strike and rank the mediators. The ICDR shall appoint a mutually acceptable mediator from the list based on the parties’ designated preferences. If the appointment cannot be made from the list, the ICDR retains the authority to make the appointment from among the Panel of Mediators without the submission of additional lists.

Duties and Responsibilities of the Mediator—Rule M-8

This Rule previously had six enumerated paragraphs detailing not only the duties of the mediator, but also how the mediation proceedings might be conducted. For clarity, a majority of Rule M-8 was moved to the new Mediation Proceedings Rule (Rule M-9), focusing on managing and organizing the mediation. Rule M-8 retained the remainder of the original rule setting forth the duties and responsibilities of the mediator.

Mediation Proceedings—Rule M-9

In addition to acknowledging the appropriateness of video, new Rule M-9 adopts best mediation practices by setting forth a comprehensive outline regarding how the mediation is to proceed. Those procedures include (a) the possibility of conducting a preliminary conference with the parties for the purpose of organizing the mediation, (b) permitting all or part of the mediation to be conducted via video, (c) exchanging all documents pertinent to the relief being requested, and (d) exchanging memoranda on the issues, the underlying interests and the history of the parties’ negotiations.

Information a party wishes to remain confidential is to be sent in a separate communication to the mediator. The mediator may conduct separate or ex parte meetings and other communications with the parties and/or their representatives before, during and after any scheduled mediation conference. These communications may be conducted in person, in writing, or via video. The mediator may make oral or written recommendations for settlement privately or, if the parties agree, to all parties jointly. If the parties do not achieve a complete settlement of all issues during the scheduled mediation, the

The 2021 ICDR Rules: Integrity, Innovation and Efficiency (cont'd)

mediator may continue to communicate with the parties in an effort to facilitate a complete settlement. Another important newly added procedural consideration is for the mediator and parties to address the appropriate level of protection for cybersecurity, privacy, and data protection for the case.

Responsibilities of the Parties—Rule M-10 (former Rule 8)

Mediation Rule 10 reinforces the responsibility of each party to have present at the mediation a representative with the authority to commit to the execution of a settlement agreement.

Enforcement of Mediated Settlement Agreement – Rule M-14 (former Rule 12)

Although the Singapore Convention is in its infancy, new Mediation Rule 14(e) is designed to assist the parties in enforcing settlement agreements pursuant to the Singapore Convention or other applicable law. The ICDR Rules are the first institutional rules to reference the Convention. In accordance with Article 4(b) of the Convention, the parties may ask the mediator to sign the settlement agreement; request a document signed by the mediator indicating that the mediation was carried out; or request the ICDR to issue an attestation that the settlement was reached in the course of a mediation.

The 2021 ICDR Rules not only embody current best international practices, but also meet the challenges posed by the ever-changing dispute resolution landscape. Commentary from advocates, arbitrators and users regarding the new rules has been extremely positive. The 2021 ICDR Rules are comprehensive and innovative and worthy of study by the ADR community.





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- ◆ **Founder of the Annual Arbitration and Investment Summit for the last ten years for the Caribbean, Latin American, and other A.D.R. markets.**
- ◆ **Recognized as a leading anti-fraud litigator worldwide by the International Chamber of Commerce (Fraud Net) to complete the caseload of 70.**
- ◆ **35 globally noted cases featured in Carilow and Lexis Nexis**





10 ADR Resolution for 2022

By Dr. Peter D. Maynard¹

It is customary to begin a new year with resolutions that express aspirations for the following twelve months. It is not too late to suggest what we should reflect and act on during the rest of this year.

The Right Honourable Phillip Brave Davis, Prime Minister during his remarks for the 10th Annual Arbitration and Investment Summit 28 January 2022 stated that it is not the government’s plan “to preserve the status quo, but to reimagine what is possible” and “usher in a new era of possibility and prosperity”. Relating to investment, the Prime Minister highlighted that there will be “improvements to the ease of doing business” with hopes that the Bahamas will reach within the Top 50 countries regarding the ease of doing business. He further stated that in order to improve the investment climate, there must be reliance on “promotional mechanisms and “digital technologies”. He also highlighted that there are “efficient mechanisms” to resolve disputes for potential foreign direct investors. The Prime Minister ended his speech by declaring that at the right time, the Bahamas will be promoted “as a centre for international commercial arbitration”.

What resolutions would I suggest regarding alternative dispute resolution (ADR)?

Countries like The Bahamas are potential gateways for investment in the Western Hemisphere and centres for international arbitration. Arbitration is fast, confidential, relatively inexpensive and is used

in many contexts, ranging from war and peace to investment and commercial disputes. Generally speaking, methods of resolving disputes other than litigation are referred to here as alternate dispute resolution (ADR), such as arbitration, construction adjudication, mediation and conciliation.

Here are 10 resolutions.

1. Resolve disputes peacefully, efficiently and inexpensively. This applies across many different domestic and international spheres. That is why it is proposed that alternate dispute resolution be the basis of the next phase for judges, magistrates, justice or urban renewal centres², civil society, community organizations, and social and economic institutions, which implement peaceful resolution of disputes in our communities. Demonstrate that differences can be settled without resorting to violence.

But, similarly, regarding financial services, trade, maritime, cruise ship, investment, trade, construction and other commercial disputes and types of arbitration, both domestically and internationally, wouldn’t it be great if by year’s end, this country had firmly established its availability and reputation for resolving disputes? The challenges range from domestic to international matters, and touch sensitive nerves running through the spinal column and transcend critical synapses in the collective mind of our society.

International commercial arbitrations are probably at their highest tide in history. Therefore, the time is

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² In the case of The Bahamas, I proposed a more robust Urban Renewal 2.0+, with an active programme of identifying community issues and nipping them in the bud.

10 ADR Resolution for 2022 (cont'd)

opportune time to launch the region's arbitration boats on the rising tide. For example, the Hong Kong centre reportedly completed about 450 cases per year producing millions of dollars of revenue for the city. Kuala Lumpur Malaysia had more than 200 cases. Singapore had an even larger number. China also has the China International Economic and Trade Arbitration Commission (CIETAC). With headquarters in Beijing, CIETAC has centres or sub commissions in Chongqing, Shanghai, Shenzhen and Tianjin. Those are major Pacific Rim Tigers. The numbers are as huge in other parts of the world, such as the Tigers of the Arctic (Canada and the Scandinavian countries). Middle East countries, notably Dubai, Bahrain and Qatar, built significant arbitration centres. Western cities, such as Paris, the Hague, London, New York, Miami and Dallas, continue to be prominent in the arbitration world.

2. Understand the root and scale of the problems, educate and train yourself in new mind and skill sets, and become a problem solver. We need to adopt completely different mind and skill sets, and to recognize that the difference between a developing society, such as ours, and a rich society that produces peace, wealth and prosperity for all, is a deep capacity to solve its problems and in particular the existence of institutions that constantly do so.

3. Change your thinking and behaviour, and become a magnet for business. This cannot be stressed too much. If you want big things to change, you have to make big changes. Start with yourself. Have confidence in yourself and in the business environment. Beyond that, be an innovative, resourceful catalyst for positive change. As Gandhi put it, be the change you want to see. An holistic approach is needed. People must want to come to this country to do business quite apart from arbitration. Investors have many options. Therefore, effective steps need to be taken to increase business opportunities, expand the volume of business and improve the ease of doing business.

4. Reinvent yourself. The Bahamas could sign onto the Singapore convention without further delay. We already know that the courts will be doing more mediations. That will require people to be trained in ADR. We need to work together to bring cost of ADR training down. Already three courses are

offered at The University of The Bahamas. There is a follow-up at Eugene Dupuch Law School. The UB training is designed to prepare students to pass the CIArb exams. Hopefully, the increased numbers will allow the cost of CIArb training to come down. Before the advent of industrial courts and tribunals, conciliation and arbitration were widely used for example to deal with labour and other disputes. So we really have a long tradition with arbitration. But, stretch yourself. Step out of your comfort zone. Engage the stakeholders in this arbitration field and others. We need to be on the radar of the many arbitration organizations, general counsel of multinational corporations, and other stakeholders worldwide.

5. But, at the same time, focus on what you do best. As a financial centre of choice, it is only natural that the Bahamas should be a centre for financial services arbitration. Financial services cover a lot of things. For example, the Trustee Amendment Act 2011 (TAA), under section 91A, enables any dispute or administration question related to a trust to be determined by arbitration in accordance with the provisions of the trust instrument. Any provision in a trust instrument referring a matter to arbitration shall operate as an arbitration agreement between the parties. Further, the TAA, in section 91B, gives the tribunal of a trust arbitration all of the powers of the Court in relation to administration, variation, execution, or the exercise of any other power under a trust. So, we should do more trust arbitrations.

Also, the impetus to sign the important New York Convention on the automatic enforcement of arbitral awards (NYC) came originally from the maritime sector. As arbitration is a preferred method to resolve maritime disputes and as The Bahamas has the third largest ship registry (after Liberia and Panama), signing onto the NYC was imperative in order to allow awards to be automatically enforceable in member countries. This writer encouraged the Bahamas to be onboard the NYC, but also saw this as a timely opportunity to completely overhaul the arbitration law in The Bahamas and to make it an attractive arbitration centre. Now, we have both the NYC and the Arbitration Act 2009, and need to take them to the next level by actively conducting arbitrations in the maritime and cruise ship sectors. We have lots of assets, such as Freeport as an

10 ADR Resolution for 2022 (cont'd)

excellent maritime arbitration centre, and also the Bahamas Ship Owners' Association, who should have the development of maritime and cruise ship arbitration placed squarely before them as a pressing item on their agenda.

It is of concern that it is proposed to have two separate Bahamian arbitration regimes (domestic and international) instead just one. Although the Bahamas has had a single regime all along, the correction of the error of not being UNCITRAL compliant under the 2009 Act, will be "fixed" by having two Acts – a matter which has already caused some confusion. In spite of an internationally compliant, unified CARICOM model law dealing with both domestic and international cases and thereby saving resources and avoiding confusion, an International Commercial Arbitration Bill has been tabled in the House intended to cover international disputes, while the existing the Arbitration Act 2009 would be retained for domestic arbitration. Some people think any action is better than none in this field. But, I think it is better to get it right, keep it simple, treat Bahamians equally in relation to non-Bahamians, save resources and not have to worry about determining what is domestic and what is foreign. It is not too late to retain a single regime and embrace an UNCITRAL compliant bill such as the CARICOM model law.

Overall, a national plan is needed supported by adequate resources. The International and Western Hemisphere Arbitration Adjudication and Mediation Centre (IWHAAM), involving Nassau and Freeport, has been established. It is a neutral, independent, non-profit organization dedicated to change and to instituting and nurturing a culture of effective dispute avoidance, management, and resolution. IWHAAM's ambition is to become an Atlantic tiger of dispute avoidance, management, and resolution. The skills required to conduct international commercial arbitration and construction adjudication, domestic arbitration and adjudication, restorative justice, peer mediation, and community mediation require essentially similar skills. For that reason, the provision of services designed to meet these broader commercial and domestic objectives have also been incorporated into IWHAAM's mission. IWHAAM was built from the ground up, not from the top-down, as an inclusive social

enterprise involving all sectors of society. The subscribers and members of IWHAAM come from all walks of life.

Similarly, the nineteen directors are elected from a wide spectrum of civil society. IWHAAM seeks to raise public awareness of the benefits of ADR and provides training in cooperation with the Chartered Institute of Arbitrators, the University of the Bahamas, and other recognized institutions as part of its mission. Its services are competitive, affordable, and cost-effective. Apart from international commercial arbitration and training and public education in ADR, IWHAAM could also earn its keep through providing mediation and ADR services to reduce the court backlogs, and also community mediation through urban renewal centres.

6. Get on with it. The big shakedown is here and now. At first, three countries in the region were very active in arbitration: Bahamas, Barbados, and Dominican Republic. They had the political will to differentiate themselves early from the rest of the competition by accepting the NYC and introducing modern, widely recognized and accepted laws based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law. Jamaica, and Trinidad and Tobago were not far behind. OHADAC based in French Guadeloupe and the Dutch ABC islands (Aruba, Bonaire and Curacao) are also interested in attracting more arbitral cases. Dramatically, the British Virgin Islands brought into effect its Arbitration Act 2013 on October 1, 2014, giving effect to the NYC and the UNCITRAL Model Law, and establishing an international arbitration centre (BVI IAC). Within the 15-member CARICOM alone, arbitration centres are proliferating like bunny rabbits.

Three lessons emerge. Firstly, many centres will not be viable. They are just too small. Secondly, most of the remaining jurisdictions are quite similar in their offerings. Thirdly, consolidation and cooperation among them is needed if they are to survive and compete with Miami, Atlanta, New York, Boston, Toronto, Montreal and other cities which are active on the North American east coast.

The should take proactive steps to generate more market activity, and to capitalize on our comparative advantage. Consisting of government and private sector including Chambers of Commerce, Bahamas

10 ADR Resolution for 2022 (cont'd)

Maritime Authority, Grand Bahama Port Authority and other bodies, it should aim to generate more activity in this area and position The Bahamas as leading arbitration hub in the region.

7. Build smart. The Bahamas can leverage its modern legislative platform, our skills platform, and strategic location between East and West, and between North and South, and in the Eastern North American time zone. Build it they will come. People do business where they like to be. Bahamas is naturally an attractive market. But, advanced information technology and communication platforms, a pool of trained support staff, English real time translation, efficient translators, interpreters and stenographers, and an enlightened immigration policy are also required. With hearings taking place virtually, a custom designed high-tech state of the art building or even a purpose-built floor are not as important, in the initial stages, as well trained and able personnel.

8. Small is beautiful. Bigger is not necessarily better. Little things are important. It would be a great accomplishment if, among other things, a plan could be implemented, including sample arbitration clauses for the Bahamas, rules and a website, at an early stage during this year. Poor quality of arbitration clauses accounts for many problems. The use of good Bahamas arbitration clauses in contracts can be an important driver of business to the country.

9. Choose your friends wisely. Key strategic alliances are important. But, keep your neutrality and the moral high ground, and nurture your special attributes.

The Permanent Court of International Arbitration (PCA) in Mauritius gives it credibility. But, an alliance with one arbitral institution alone may identify the country too closely with only that institution and discourage other institutional arbitral cases. The advertisement may in a time of virtual hearings, exercise a pull of business away from a new centre to the PCA itself, and not the other way around.

Join the Inter-American Convention on International Commercial Arbitration, adopted in Panama in 1975 (Panama Convention) and in force since 1976. The Dominican Republic is the only regional island state party to it. To be attractive to the rest of the hemisphere, the Bahamas should consider joining the Panama Convention as well, lodging a reservation similar to that of the United States. That reservation applies the Panama Convention to arbitration agreements in which the majority of the parties are citizens of states members of the Panama Convention and the OAS, unless the parties agree otherwise; and for other arbitration agreements, the NYC would apply.

10. Don't trample on other competitors, but instead find commonalities and work and cooperate with them to the greatest extent possible. Is this not a time to collaborate with and convince other countries in the region, many of whom are aspiring to be arbitration centres, that the Bahamas is prepared to lead a cooperative effort? CARICOM also encourages the increased use of arbitration and ADR in the context of regional trade and the Caribbean Single Market and Economy.

Thus, The Bahamas and other Caribbean countries have the potential to become “Atlantic Rim Tigers” in this field. Conditions appear to be present for them to play a significant role in providing international and regional commercial arbitration services.

Be sure to attend the 11th Annual Arbitration and Investment Summit: Caribbean, Latin America and Other Emerging Markets to be held virtually on Friday, January 27, 2023, from 8:30 am to 5 pm EST when key issues will be dealt with, such as maritime disputes, cryptocurrency, financial services and other forms of commercial arbitration.³

Therefore, as we make our resolutions for the new year, much can and should be tried and achieved by the Bahamas in the world of arbitration over the coming months.

³ The 3 Declarations of the Summit can be found at



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SUPREMACY OF THE PRINCIPLE OF KOMPETENZ-KOMPETENZ IN INTERNATIONAL ARBITRATION

By Datuk Professor Sundra Rajoo (FCIArb)

The doctrine of *kompetenz-kompetenz* provides that the tribunal has the power to review and decide the effectiveness of an arbitration agreement and consequently the jurisdiction of the tribunal.² It evolves from the theory of autonomy and emphasizes the independence and competence of the tribunal.

The *kompetenz-kompetenz* doctrine is rooted in the arbitration agreement itself.³ In application of the separability doctrine, the arbitral tribunal's authority to decide on its jurisdiction therefore exists irrespective of whether the legal instrument containing the arbitration agreement has been terminated.

Historically, German scholars referred to *kompetenz-kompetenz* as the sovereign's authority to define its own powers. Later, it is applied in the court as a total independence from the "executive power". The application of the concept to the arbitration would be inherent to the arbitrator's power to decide on the merits of the dispute and would not depend on the prior agreement between parties. It is called as *Binding Kompetenz-Kompetenz*.⁴

The UNCITRAL Model Law incorporates the principle of *kompetenz-kompetenz* in Article 16. It implies both the principle of positive effect *kompetenz-kompetenz* and separability doctrine in the same provision under the Article 16 (1) which states that:

"The arbitral tribunal rules on its own jurisdiction,

including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause".

Pursuant to Article II (3) of New York Convention:⁶

"The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this Article, shall, at the request of one of the parties, refer the parties to the arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed".

Thus, the arbitral tribunal jurisdiction supplanting first-instance national court jurisdiction depends upon the existence, validity and scope of an arbitration agreement formed between parties, whether there is any kind of disputes that can be arbitrated or not.⁷

In general, there is developing issue against the *kompetenz-kompetenz* doctrine on the granting of anti-arbitration injunction. It happens when the injunction targets arbitral proceedings, infringing on the arbitrator's *kompetenz-kompetenz* and the supervisory of the courts at the place of arbitration.⁸

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² Philip Landolt, 'The Inconvenience of Principle: Separability and Kompetenz-Kompetenz' (2013), Wolters Kluwer Law & Business at p.513.

³ Seraglini, C. and Ortscheidt, J., 'Droit de l'arbitrage interne et international', LGDJ, 2nd ed. (2019) at para. 679.

⁴ André Mena Hüsgen, 'Rethinking the Negative Effect of Kompetenz-Kompetenz' (2018), Catolica Global Law School at p.9.

⁵ UNCITRAL Model Law on International Commercial Arbitration, 1985 (with amendments as adopted in 2006).

⁶ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

⁷ John J. Barceló, 'Kompetenz-Kompetenz and Its Negative Effect—A Comparative View' (2017) at p. 1.

⁸ Gabrielle Kaufmann-Kohler, 'How to Handle Parallel Proceedings: A Practical Approach to Issues such as Competence-Competence and Anti-Suit Injunctions' Dispute Resolution International, vol 2, (2008) at p.112.

SUPREMACY OF THE PRINCIPLE OF KOMPETENZ-KOMPETENZ IN INTERNATIONAL ARBITRATION (Cont'd)

However, to enforce an arbitration agreement effectively, the tribunal can issue an injunction to prevent a party from commencing or continuing a suit in another forum⁹ that will lead to parallel proceedings.

There is no express provision in the New York Convention or the UNCITRAL Model Law that authorises or bars the issuance of an anti-arbitration injunction. Under the New York Convention, a Contracting State is obligated to give recognition to an arbitration agreement.¹⁰ Further, the UNCITRAL Model Law, gives supremacy to the principle of *kompetenz-kompetenz*¹¹ and limits court intervention.¹² Hence it is often argued that any attempt to injunct arbitrations subject to the New York Convention, will be contrary to its basic legal framework.¹³

Lord Collins in *Dallah Real Estate and Tourism Holding Co. v Ministry of Religious Affairs of the Government of Pakistan* explained that the principle of *kompetenz-kompetenz* cannot be interpreted to absolutely limit the powers of the court.

A determination of whether grant of an anti-arbitration injunction is opposed to the New York Convention and UNCITRAL Model Law will thus depend upon the importance given to the principle of *kompetenz-kompetenz*:

Either we consider the principle of kompetenz-

kompetenz to be inflexible and absolute or consider it to be relatively flexible. In the case of the former, the national court should not be deciding on the question of invalidity and instead defer it to the arbitral tribunal to be constituted later. Conversely, in the case of the latter, we may recognize the role of the national court in the arbitral process and its potential contributions in the protection of innocent parties, in which case, it may be allowed to rule on the validity of the agreement. Needless to say, the existence of the anti-arbitration injunction will be a possibility only in the latter option.

In Malaysia, the doctrine of *kompetenz-kompetenz* pursuant to Section 18(1) of the Arbitration Act corresponds with Article 16 of the UNCITRAL Model Law. The Malaysian courts in issuing anti-arbitration injunctions however adopt general injunctive principles¹⁷ and there is recent shift towards granting anti-arbitration injunctions.¹⁸

Although, the corresponding impact on the enforcement of the arbitral award and dealing of tribunal remain to be seen, there may be a need to provide an objective test which the court may rely upon when an anti-arbitration injunction is sought. This includes the considerations on the seat of the arbitration, the parties' agreement, the bar or limit of the tribunal's ability to assess the issue and/or the grounds for the prayers sought.

⁹Michael Douglas, 'Anti-Suit Injunctions in Australia' (2017), 41(1) Melbourne University Law Review at p. 1.

¹⁰New York Convention, Art II.1 reads:

Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

¹¹UNCITRAL Model Law Art 16(1): "*The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement...*".

¹²UNCITRAL Model Law Art 5: "*In matters governed by this Law, no court shall intervene except where so provided in this Law*".

¹³Gary B. Born, *International Commercial Arbitration* (3rd edn, vol 1, Wolters Kluwer, 2021) 1418: "*...all Contracting States have mutual obligations to recognize and enforce arbitration agreements, that argues cogently against the issuance of anti-arbitration injunctions enjoining international arbitral proceedings and award enforcement, even though such injunctions might well be permissible and sensible in domestic matters*".

¹⁴[2010] 3 WLR 1472, [2010] UKSC 46.

¹⁵*Dallah Real Estate and Tourism Holding Co. v Ministry of Religious Affairs of the Government of Pakistan* [2010] 3 WLR 1472, [2010] UKSC 46 [84].

¹⁶R Subramaniam, '*Anti-Arbitration Injunctions and their compatibility with the New York Convention and the Indian Law of Arbitration: Future directions for Indian law and policy*' (2018) *Arbitration International* 34 (2) 5. See Sundra Rajoo, '*Law, Practice and Procedure of Arbitration in India*' (2021) Thomson Reuters at p. 469.

¹⁷See Malaysian Court in *Federal Land Development Authority & Anor v Tan Sri Haji Mohd bin Dato Haji Abdul Samad & Ors* (2021) which followed the Federal Court decision in *Jaya Sudhir al Jayaram v Nautical Supreme Sdn Bhd & Ors* (2019) applying the general test for interlocutory injunctions.

¹⁸See *Perspectives on Anti-Arbitration Injunctions* [2021] 3 MLJ ccxl.



SHAN M. GREER

FCI Arb

- ◆ Graduate from Kings College, London MSc in Construction Law and Dispute Resolution
- ◆ 20 years of experience in litigation and dispute resolution in the Caribbean, Canadian Arbitrator, Mediator, and Lawyer based in the island of Saint Lucia
- ◆ Served as Counsel and Arbitrator in banking and finance, construction and infrastructure, energy, investment, commercial, intellectual property, joint venture, and shareholders disputes
- ◆ Arbitrator under I.C.C. and UNCITRAL Rules in ad hoc international and domestic arbitrations
- ◆ Admitted to practice in Saint Lucia, Saint Vincent, Belize, England, and Wales
- ◆ Named to the roster of the International Institute for Conflict Prevention and Resolution, British Virgin Islands International Arbitration Centre, Dispute Resolution Centre in Trinidad and Tobago, Dispute Resolution Association in St. Lucia and the Jamaica International Arbitration Centre
- ◆ Nominated by Saint Lucia for inclusion in the C.A.R.I.C.O.M. Secretariats List of Arbitrators and Conciliators established pursuant to the Revised Treaty of Chaguaramas
- ◆ Appointed by the Permanent Court of Arbitration in international oil and gas dispute



MEDIATION, ARBITRATION, LITIGATION OR SOMETHING IN THE MIDDLE.

By Shan M. Greer

WHOSE LINE IS IT ANYWAY?

Conflict exists in all aspects of life, including while conducting business. When addressed constructively, conflict can lead to positive change and improvement in the way organisations carry on business with their employees, suppliers and customers. Unfortunately, conflict can lead to disputes which, if not managed appropriately, pose a threat to the viability of any organisation. ADR describes all forms of dispute resolution other than the courts, such as negotiation, mediation, and arbitration. These processes vary in terms of the length of time they take, cost of participation, level of control in determining the outcome and degree of involvement of the neutral selected by the parties. Depending on the nature of the dispute, ADR can offer the flexibility parties need to control how disputes impact the success of their organisation.

While the benefits of ADR are unquestionable, they do not occur as of right. The backlog in most court systems across the world, including the Caribbean region, is testament to the fact that many disputants are not convinced that ADR is the holy grail of effective dispute resolution. This skepticism is multifaceted, but one factor is the promotion of ADR as a one-stop-shop for resolving any and every dispute. In promoting ADR, its advocates, often without context, present its long list of advantages contrasted with the myriad of disadvantages associated with opting to engage the courts. Armed with this list, organisations assume mere selection of ADR will result in cost-effective and timely dispute resolution. Unfortunately, this is rarely the case. To truly maximise ADR, the processes must be tailored in a manner that considers the needs of the likely disputants, including their culture, goals and budget.

In more recent times, calls have been made to move away from demonising the court system to focusing on implementing dispute resolution methods in a manner that meets the potential disputants' needs. This more holistic exercise requires ADR professionals to adopt a diagnostic approach to advising on dispute resolution, which includes considering factors such as an organisation's structure, communication style and resources. By way of example, if an organisation predominantly communicates information in writing through a hierarchical structure, it is less likely to successfully implement a dispute resolution method that does not produce a written result. In these circumstances, the implementation of a non-written process will need to be coupled with training or the adoption of policies that change the existing culture.

An organisation's structure is not the only factor that can impact the successful use of ADR. Financial and human resources play a critical role in any organisation's ability to use ADR effectively. There is no benefit in recommending arbitration to an organisation that does not have the resources to finance the suggested dispute resolution method. ADR advisors must consider the extent to which the process can be tailored to meet the financial limitations of its users. Where such an implementation is not practicable, mediation together with litigation may be a preferable option. Unnecessarily demonising the court system does little to support ADR and the broader goal of promoting effective and appropriate dispute resolution. To this end, there is a role for all forms of dispute resolution, whether it be the courts, arbitration, mediation a combination of these or a process in the middle.



NICOLETTE C. GARDINER

**CPA, CA, ACIarb
HONORARY TREASURER
& CIarb EXECUTIVE MEMBER (2009 -2022)**

- ◆ **A Chartered Accountant with 25 years of experience in the Offshore Private Wealth Management, Funds Industry, international offshore finance industry in the Bahamas and Bermuda areas of Venture Capital, and Private Equity.**
- ◆ **Corporate Restructuring, Insolvency, Portfolio Management, Budgeting, Corporate Finance, Financial Analysis, Investment Valuation, Strategic Planning, and Forensic Accounting,**
- ◆
- ◆ **Worked at Aon Insurance, Management, SG Hambros, and Inventages**
- ◆ **Member of Chartered Institute of Arbitrators (ACIarb)**
- ◆ **Member of the Bahamas Institute of Chartered Accountants (B.I.C.A.), American Institute of Certified Public Accountants (A.I.C.P.A.).**
- ◆ **The Honorary Treasurer and member of the Executive Committee of the CIarb Branch.**
- ◆ **Graduate of Acadia University, Nova Scotia, Canada, in business administration with a major in accounting**
- ◆ **Training at firm of PricewaterhouseCoopers.**
- ◆ **Served as a council member of the B.I.C.A.**
- ◆ **Member of the Bahamas Financial Services Board Funds Working Group and Taxation Group committees.**
- ◆ **Member of Rotary Club**



VALUATION METHODS OF EXPERTS IN ARBITRAL AWARDS

By Nicolette C. Gardiner CPA, CA, ACI Arb

One of the key factors in the Alternative Dispute Resolution (ADR) is the valuing of companies, assets and personal items at the final stages when the process is coming to its finality and the arbitral award or decision is being made by the Arbitrator/Mediation/Adjudicator. Even though the ADR process is sometimes relatively much shorter than the court legal system, there are cases that can take a number of years before a final decision is made and the arbitral award is granted. For cases where a company's business is halted and/or assets are frozen, there can be a significant impact on the change of the value of both the business and the assets as time progresses. At the end of the arbitration, those assets or companies have to be valued by various experts and professionals in order for the arbitrator or mediator to determine the amount of the award to grant to the successful parties.

There are three popular valuation methods which are used to value the companies or assets. They are the Income Approach or the Discounted Cash Flow Approach, the Market Approach or the Comparable Assets Approach and the Historical Cost Based Approach. The Income Approach is usually used to value investment properties, financial instruments and intangible assets. The Market Approach is used for debt, equity, unlisted investments such as venture capital investments, biological assets and real estate. The Historical Cost Approach is generally used for property plant and equipment assets which are tangible assets that are vital to a business operations. There are an average amount of valuation methods used when business or relative assets involved in the dispute is used to determine the settlement or award to be given to the successful party – 3 valuations – 30%, 2 valuations - 25% & 1 valuation -20%.

One of the popular valuation approach is the Discounted Cash Flow Method (DCF) is a forward looking valuation and uses estimated future cash flows and prospective income in the coming years to determine the present day value of the company. This is done by estimating revenue and cost in future years and related cash flows and using an appropriate inherent discount rate for risk purposes and to account for the time value of money; where a \$1 today is worth more than \$1 five years from now since that \$1 can be invested to earn additional income. An example is that \$100 today with a 10% interest rate will be worth \$110 in a year if invested. Thus, \$110 a year from now when discounted at 10% is worth \$100. The same concept is applied to future cash flows of a company and they are discounted to arrive at a valuation at the present day.

The DCF method uses a discount rate which is calculated using the time value of money and risk rate which is determined by factors such as currency risk, country risk, industry risk and business risk and company specific-risk. The DCF or Income method can only be used in certain situations and where the application can be reasonably calculated and quantified. Reference is made to FTI Consulting where it is noted that in the case of *Rusoro Mining Limited vs. Venezuela*, the International Centre for Settlement of Investment Disputes (ICSID) provided a list of factors that has to be available when calculating DCF - i) an established historical record of financial performance ii) reliable projections of the company's future cash flows iii) company's prices for products and services can be reasonably calculated iv) ability and path to finance the company the clear and concise of where cash/funds will be obtained v) a weighted average Cost of Capital can be calculated that takes into account both the country's risk premium which duly incorporate the relative political risk of the host country & vi) the ability to determine the impact of government regulations on future cash flows with a minimum of certainty. The advantages of this approach are that it can be used by various form of business and the numbers can be tied down to specific performance of the company. Some of the disadvantages include the difficulty in determining certain numbers such as the risk rate, estimate future cash flows and the timing of income amounts.

Valuation Methods of Company / Asset In Arbitral Awards (cont'd)

A second approach is the Market Comparables Approach also referred to as the multiples approach uses comparable companies or comparable assets/transactions to determine the value of a company. With this approach, you have to ensure that there are available prices for similar assets which are predicible and are widely accepted across the relative industry. Most of the data is used from publicly traded companies and it applies a price multiple such as a price earnings ratio against the company's earnings to get an estimate company valuation. There could be a need for adjustments across various assets for year, age, quality and size. An example to this method is the EBITDA Method which evaluates the company on a basis of Earnings Before Income, Taxes, Depreciation and Amortization (EBITDA) and help to determine the enterprise value multiple (EV). The EV is calculated by dividing the company's earning by EBITDA which results in a valuation of the sum of the total market capitalization and the value of the company's debt. Some of the difficulty using this method is to find companies at the same stage of development, in the same line of business with the same capital structure and risk.

The Historical Cost Based Approach is the third most popular valuation asset method and is generally used in property plant and equipment. This can be applied by using the historical cost or replacement costs where for example cost of constructing or purchasing similar assets is calculated. It takes into consideration, the asset's current age, condition and any economic or functional obsolescence. Another method would be to calculate the Net Book Value of an Asset minus the current liabilities to reflect the current market value. This method is usually used for recent purchases or for investments where no comparable market value is available.

In conclusion, the World Bank Guidelines for calculating fair market value of an asset is the DCF method for a profitable going concern company, the liquidation value for an asset for a non-profitable company that may be insolvent and replacement value or book value for all other assets.

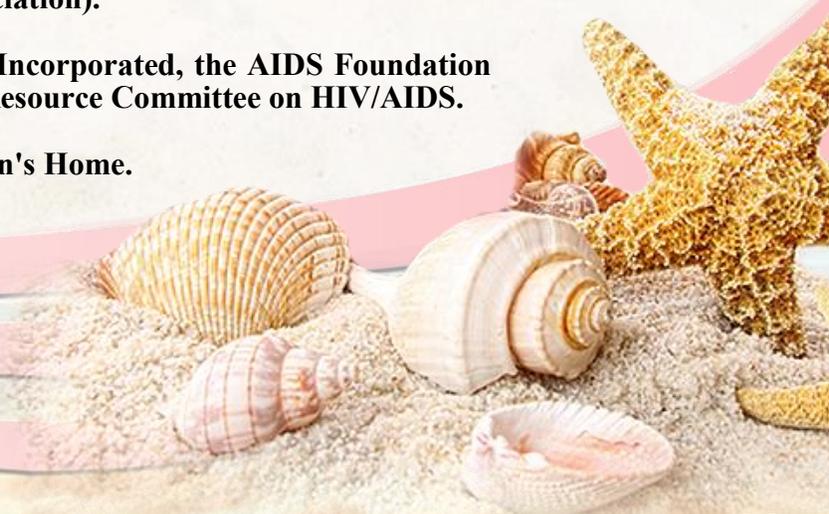


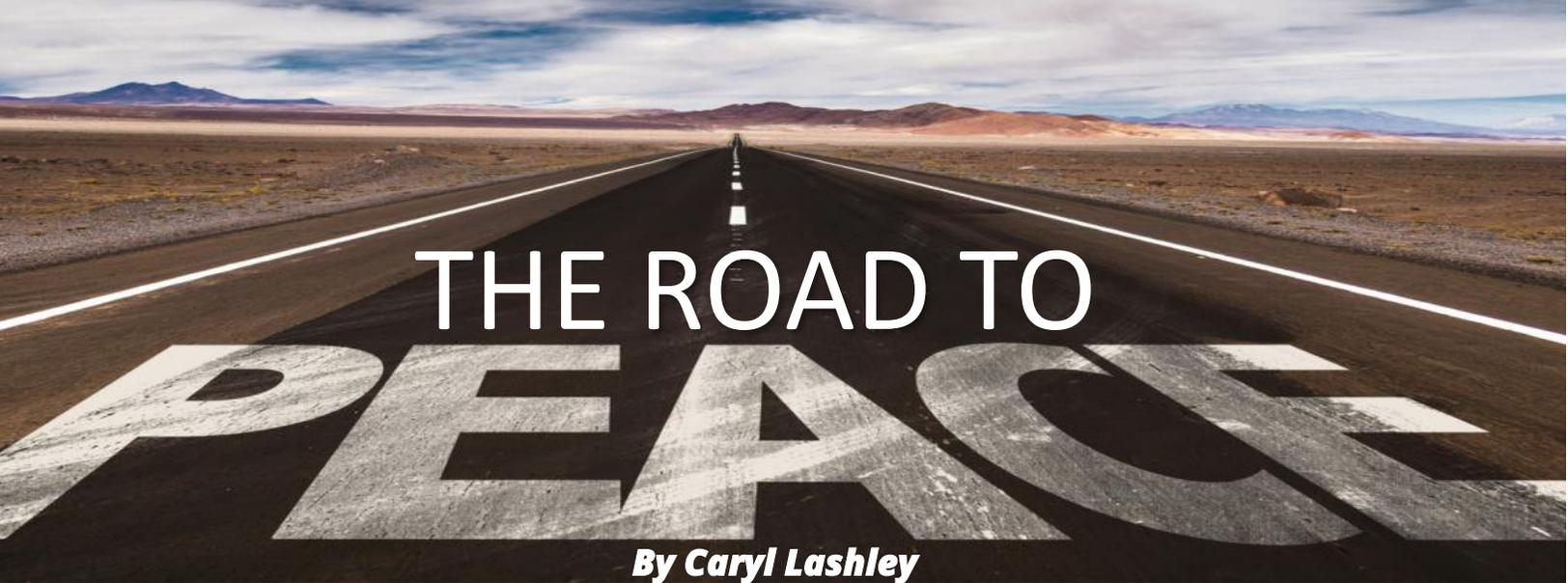


CARYL LASHLEY (FCI Arb)

**CI Arb BAHAMAS BRANCH
LEGISLATION CHAIR**

- ◆ **Barrister and Attorney-at-Law of over 40**
- ◆ **Member of F.I.D.A. (International Federation of Women Lawyers) and The Society of Trust & Estate Practitioners (STEP)**
- ◆ **Member of Bahamas Bar Association**
- ◆ **Mediators Beyond Borders International Mediator Academy**
- ◆ **Fellow Chartered Institute of Arbitrators (FCI Arb) and Approved Faculty Member**
- ◆ **First, Bahamian to teach the new virtual course - Module 1 Mediation.**
- ◆ **2014 obtained a certificate in Trust and Estate Mediation from STEP**
- ◆ **Served in the I.C.S.I.D. (International Centre for the Settlement of Investment Disputes) Panel of Arbitrators and Conciliators.**
- ◆ **Participated in I.C.S.I.D.'s first Mediation Training in June 2017 at the World Bank in Washington D.C.; the following year, she undertook Train the Trainer Mediation Training with Mediator Ken Cloke.**
- ◆ **2016 founded A.D.R. Bahamas to provide education and stimulation for non-violent communication and conduct and to provide neutrals to facilitate conflict resolution**
- ◆ **Member of B.R.E.A (Bahamas Real Estate Association).**
- ◆ **Member of The Nassau Chapter of The Links, Incorporated, the AIDS Foundation of the Bahamas, and the Public Education and Resource Committee on HIV/AIDS.**
- ◆ **Chair of Board of The Elizabeth Estates Children's Home.**





THE ROAD TO

PEACE

By Caryl Lashley

The Road to Peace is a personal journey, unending, and forever. It is the journey of life, personal, continuous, illogical sometimes, and laden with conflict.

Conflict abounds because we are always of two minds, one mind inappropriate, damaging to relationships, uncaring, even mean. The other mind, however, enables us to think before we speak, think before we act; it is kind. It makes us pause and consider the consequences, as we travel along the unending Road to Peace.

Being mindful of the importance of relationships, how much they matter, we pause to consider consequences; we think before we act. We are on the Road to Peace; we are tranquil, full of conciliation, completely lacking in confrontation, in unity with ourselves. Relationships matter!!

Good communication travels with us in tranquility, unity and conciliation. We resolve rather than confront; we care and share. We observe, we even give the odd opinion; but on our journey we do not criticize, we do not cause a disturbance; we stay away from conflict.

Although peace is universally described as good, conflict is not always bad. The good thing about conflict is that it conjures up many emotions and enables us, our journey to Peace, to engage in introspection, to determine what problems beset us, to examine what we need to do to find resolve. Sometimes conflict, through introspection, keeps us on our journey and enables us to remain on the Road to Peace.

The Road to Peace is a very long road, with many a winding turn, many dead ends, and many mis-named streets, and many dark alleys, but we must persevere, because relationships matter! Relationships matter. How we treat each other is a reflection on ourselves, not on the person we mistreat, nor the person to whom or about whom we speak badly.

The art of the apology is an essential tool to keep us on the road to Peace. We have to know how to apologize, properly. We have to be appropriate and intentional and sincere. On our Road to Peace we have to be able to articulate and own our error. We must acknowledge our wrong, express our regret, and promise not to repeat it. We have to seek the forbearance and forgiveness of those we verbally injure to ensure that we might rebuild, maintain, and retain the relationship. We shall otherwise find ourselves lost, completely off and far away from The Road to Peace.

We must always engage our communication, negotiation and introspection skills to ensure our steady footsteps on the Road to Peace. No man is an island; we need each other. Peace nurtures the hope of forgiveness.

Life is about Rules. Relationships matter! Relationships are important, essential to our wellbeing! We know the Rules. We have to play by the Rules even if others do not. We must not get distracted; we have to maintain our focus; we have to work at it constantly and consistently.

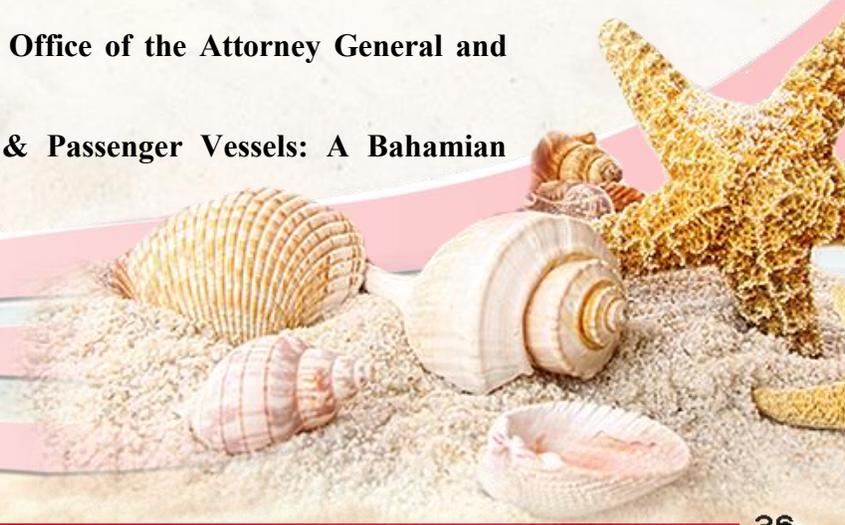
Let us keep walking and stay on the Road to Peace.



KENIA NOTTAGE (FCI Arb)

BARRISTER, COUNSEL AND ATTORNEY-AT-LAW
GOVERNMENT LEGAL CONSULTANT

- ◆ **Called to Bar of England and Wales (2002)**
- ◆ **Member of the Honourable Society of the Inner Temple (2002), United Kingdom**
- ◆ **Member of The Bahamas Bar (2002)**
- ◆ **Fellow of the Chartered Institute of Arbitrators (FCI Arb)**
- ◆ **Member of the Women’s International Shipping and Trading Association (WISTA), Bahamas Chapter**
- ◆ **International Maritime Organization (IMO) Registered Consultant**
- ◆ **Caribbean Community (CARICOM) Listed Expert**
- ◆ **Bar Vocational Course (BVC) at the University of the West of England, Bristol, United Kingdom (2002)**
- ◆ **Council of Legal Education Certificate(LEC), Postgraduate Bar Qualification obtained at the Eugene Dupuch Law School, Nassau, Bahamas (2011)**
- ◆ **Master of Laws in International Maritime Law (LL.M) with Distinction at the International Maritime Organization (IMO), International Maritime Law Institute (IMLI), Malta (2009)**
- ◆ **Served in the Ship Licensing and Registration Depts. of The Bahamas Maritime Authority, London, United Kingdom (2003-2005)**
- ◆ **Served as Legal Attaché & Alternate Permanent Representative for The Bahamas to the International Maritime Organization (IMO), Bahamas High Commission, London, U.K. (2005 -2008)**
- ◆ **Served as Legal Officer within the Caribbean Community (CARICOM) Secretariat, Georgetown, Guyana (2011-2013)**
- ◆ **Currently serving as Legal Consultant for the Office of the Attorney General and Ministry of Transport (2013 – present)**
- ◆ **Author of “ISPS Code, SUA 2005 Protocol & Passenger Vessels: A Bahamian Perspective**



Seas the Day!

A MARITIME PERSPECTIVE

By Kenia Nottage

The Latin phrase “Carpe Diem” often used by the Roman poet Horace is translated to mean “Seize the Day”. The phrase encourages each of us to embrace all that each day has to offer.

It has been noted that the phrase “Carpe Diem” attained its own level of Hollywood recognition when it was uttered multiple times in the 1989 film “*Dead Poets Society*” by the late actor Robin Williams.

However, as this article* focuses on a maritime perspective, the title and content endeavors to follow the *intent* of the notable phrase and encourages the readers to embrace the perspective of the “seas”.

Taking the above into account, the focus of this article will be on the issue of **Seafarer Abandonment**.

Specifically, the commendable efforts of the International Maritime Organization (IMO) which is the United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine and atmospheric pollution by ships; in addressing the matter of Seafarer Abandonment and the possible implementation of Arbitration within this context.

During World Maritime Day 30th September 2021, the IMO hosted a webinar exploring the **theme “Seafarers: at the core of shipping’s future”**.

The Opening Remarks by the IMO Secretary General Mr. Kitack Lim, included the following:

“As we all know, the COVID-19 pandemic has brought tremendous hardships for seafarers. We need seafarers and they need our support. IMO, in cooperation with all stakeholders, has been working hard to resolve issues such as crew change, access to medical care and vaccination for seafarers.

These issues are close to my heart - as a former seafarer myself – and I will continue to push for seafarers to be recognized as key workers; in the interests of global trade and the economy.”

Seafarer-related issues constitute a continuing thread that has run through IMO's work for several decades. On the one hand, the clear understanding that seafarers are ultimately responsible for implementing many of IMO's measures have led to standards for Seafarer Training, Certification and Watchkeeping (STCW) being developed and enshrined in the STCW Convention.

Further, a related concern for Seafarers’ welfare, both as employees and as individuals, is evident in IMO’s continuing work on issues such as fatigue, fair treatment, liability and compensation. It should also be noted that IMO’s Annual Day of the Seafarer, is celebrated each year on June 25th. This date places emphasis on the Organization's global campaign to give wider recognition to seafarers.

The collaboration of the International Ship Suppliers’ Association (ISSA), International Labour Organization (ILO) and IMO, enabled the establishment of a consolidated database which provides information with respect to the reported incidents of Abandonment of Seafarers (the database includes all cases reported after 1st January 2004).

Seas the Day -A Maritime Perspective-

(Cont'd)

For the purposes of the accurate reporting of incidents, the above mentioned entities agreed that the term “abandonment” arises when the ship owner fails to fulfill certain fundamental obligations to the Seafarer relating to timely repatriation, payment of outstanding remuneration; and the provision of basic necessities of life (which may include adequate food, accommodation, and medical care).

Additionally, the term of “abandonment” also arises when the master of the ship has been left without any financial means with respect to the operation of the ship.

It is worth noting that categories on the referenced database include *resolved cases, unresolved cases, disputed cases and inactive cases*.

Taking the above also into account, it is submitted that there exists an opportunity for the Chartered Institute of Arbitrators (CI Arb), a globally recognized qualifications and professional body for dispute avoidance and dispute management; to collaborate with the above mentioned entities; and work corporately towards the resolution of the various categorized cases.

Further and also, the CI Arb qualification in relation to the *Virtual Diploma in International Maritime Arbitration* undoubtedly addresses the need for maritime arbitration in this context. The CI Arb Virtual Diploma is definitely a step in the right direction from an industry perspective.

In conclusion, the subject matter of Seafarer Abandonment is a globally recognized problem. This very contemporary issue which adversely affects the lives of Seafarers in various ways and on various levels, is likely to linger for years to come. The continued cooperation and collaboration of the IMO, ILO, non-governmental organizations, Flag States, Port States and the inclusion of other groups such as the Chartered Institute of Arbitrators (CI Arb); is necessary to properly address, and ultimately eliminate this unwelcome issue. We all have a human duty to protect Seafarers.

The time is now to **Seas the Day!!**

**Excerpts of this article were taken from www.imo.org and www.ciarb.org*



“CI Arb stands by Alternative Dispute Resolution (ADR)”

CIArb BAHAMAS OUR FELLOWS



CIArb
evolving to resolve



RENGIN JOHNSON



CARLA CARD-STUBBS



KAREN BROWN



JUSTICE PETRA
HANNA-ADDERLEY



JOY DELANEY



CHERISE
NOTTAGE-COX



MICHAEL DIGGISS



CHARISSE BROWN



JETHLYN BURROWS



KENIA NOTTAGE



CI Arb
evolving to resolve

CI Arb BAHAMAS BRANCH

MEET OUR FOUR NEW FELLOWS

CHARTERED INSTITUTE OF ARBITRATORS (FCI Arb) DECEMBER 2021



Dr. Charles Diggiss
President & C.E.O. of Doctors Hospital
Health System (DHHS) Bahamas.



John Michael Clarke
Chartered Surveyor and owner of
VERITAS Consultants Limited,
A Project Management Company



William Higgs (W.R. "Bill" Higgs)
Minister
Trinity Methodist Church, Nassau



Chris Guthro
Attorney-at-Law



CI Arb
evolving to resolve

EVENT HIGHLIGHT

CI Arb BAHAMAS BRANCH



**Luncheon at Altitude Restaurant located at Fusion Superplex
held on Saturday, April 23rd, 2022**

FROM LEFT TO RIGHT:

**Dr. Peter Maynard, Kenia Nottage, Chair Rengin Johnson, Dr. Earl Cash, Shellyn S. Ingraham,
Caryl Lashley, Yolande Rolle, Carla Card-Stubbs & Nicolette C. Gardiner**



CHAIRMAN'S RENGIN JOHNSON REPORT

YEAR IN REVIEW ★★★★★

2021 - 2022

I am very honored to have been given the privileged opportunity to be the Chair of The Bahamas Branch for the years 2021 to 2022.

Additionally, I thank, appreciate, and am grateful for the trust of The Bahamas Branch for electing me as its Chair, Education Chair, and the other roles I have adopted to reach our goals.

The Bahamas Branch, due to the COVID-19 restrictions, adopted the use of a virtual portal locally and internationally to connect with its Executive Committee, Members of the Branch, CIArb HQ, and global Branches. As a result, we were able to attend meetings, courses, webinars and organized virtual Bahamas Branch courses to accomplish our agenda.

The Branch was able to achieve its goals due to the committed, united, inclusive, and resourceful Executive Committee Team (ExCom) and the members that participated in the organized events.

During 2021-2022, we have accomplished to work together with the CIArb Departments. The Branch supported the adopted changes, including the Global calendar, eSolver Newsletter, the digital program, the data management, the New Pathway courses, and the Extranet Pilot Program.

The members of the ExCom Team for 2021-2022:

Rengin Johnson	Chair
Shellyn Ingraham	1st Vice-Chair/Honorary Secretary
Yolande Rolle	2nd Vice-Chair
Nicolette Gardiner	Honorary Treasurer

Committee Chairs

Legislation	Caryl Lashley
Education	Rengin Johnson,
Membership	Yolande Rolle
Students	Damani Horton

Rubie Nottage
Kelpheene Cunningham
Peter Maynard
Michael Diggiss
Kenia Nottage
Charisse Brown
Metta MacMillian-Hughes
Carla Card-Stubbs
Jethlyn Burrows
William Higgs



CHAIRMAN'S RENGIN JOHNSON REPORT

Year In Review 2021 - 2022 (cont'd)

The following lists are the goals and accomplishments of the Bahamas Branch:

Public Relations of CIArb Bahamas Branch focused on the Promotion and Marketing of CIArb Bahamas through Events and ADR Courses.

The calendar of events

On June 15th, 2021, a Virtual Webinar guest speaker Mr. John Bassie the CIArb Global Vice President and Chairman of the Board of Dispute Resolution Foundation and New President, **presented on 'CIArb and Its Future.'**

On July 29th, 2021, a Virtual Webinar guest speaker Ann Ryan Robertson the President of CIArb International, **presented on 'CIArb and ADR Courses.'**

On August 12th, 2021, Bahamas Executive Committee Virtual Meeting guest speaker Bryan J. Branon the CIArb Regional Relationship Manager **presentation on 'Introduction of the Executive Committee, question, and answer.**

On August 14th, 2021, Bahamas Executive Committee Virtual Meeting with guest speaker Bryan J. Branon the CIArb Regional Relationship Manager **presentation on 'London Maritime Arbitration Association' regarding the maritime industry in The Bahamas.**

On October 2nd, 2021, CIArb Bahamas Branch held peer interviews for Fellows Christopher Guthro, Dr. Charles Diggis, Rev. William Higgs, and John-Michael Clarke

On November 4th, 2021, CIArb Bahamas Chair Rengin Johnson and Executive Committee Virtual Meeting organized by the Office of Minister of Economic Affairs Mr. Michael Halkitis, and Attorney General Queen's Counsel Mr. Ryan Pinder

On January 24th, 2022, Bahamas Executive Committee Virtual Meeting with guest speaker Lisa Munroe Canada Branch FCIArb and Q. Arb **presentation on 'New Arbitrator Pilot Program in The Bahamas.'**

On March 22nd, 2022, Bahamas Executive Committee Virtual Meeting with guest speaker Datuk Professor Sundra Rajoo, the Director of AIAC, Past President of CIArb 2016, and Chairman of ADNDRC **presentation on 'Arbitration Award Writing Skills.'**

On March 22nd, 2022, The Bahamas Branch organized 1st globally approved Virtual Module 1 Mediation Training and Assessment Pathway Course for seven weeks of training and the 8th week of Assessments on May 10th and 12th.

On March 30th, 2022, the Bahamas Executive Committee organized a virtual event with Guest Speakers QC Metta MacMillian-Hughes, Peter Maynard, and Damani Horton **on "ADR Legislation" of the Bahamas**

On April 1st, 2022, the Bahamas Executive Committee had an interview with ZNS about the CIArb Bahamas Branch with Branch Chair Rengin Johnson and First Chair and Honorary Secretary Shellyn Ingraham

On April 23rd, 2022, the CIArb Bahamas Branch members of the ExCom Committee hosted a luncheon at Fusion Superplex Altitude Dining Room, Nassau, New Providence. The guests included our Patron Dr. Earl Cash and the attending Members of ExCom.

CHAIRMAN'S RENGIN JOHNSON REPORT

Year In Review 2021 - 2022 (cont'd)

I thank the ExCom Committee 1st Chair and Honorable Secretary Shellyn Ingraham, 2nd Chair and Membership Chair Yolande Rolle, Hon. Treasurer Nicolette Gardiner, Fellow Kenia Nottage, for their assistance in organizing and making an enjoyable event.

Administration

The CIArb Bahamas Branch appointed 2 Patrons, Dr. Earl Cash and International Patron Sir Dennis Byron

The CIArb Bahamas Branch selected the online banking program for all the courses and any other activities by utilizing the services of Sebastian Alliance Group (SAG)

The CIArb Bahamas Branch obtained, through the assistance of Caryl Lashley, the Business License and Certificate of Taxpayer Registration and the Business License Certificate for the Branch

The CIArb Bahamas Branch met with ExCom Committee, CIArb Executive Committee Director Catherine Dixon, Deputy Director General Tom Cadman, and Senior Membership Courses Manager Andrea Khan.

ExCom also had several organized meetings with the Regional Relationship Manager, Bryan J. Branon, to enhance our link globally and with CIArb HQ.

Legislative Committee

The Legislative Committee and Fellows Caryl Lashley, Rubie Nottage, Kelpheene Cunningham, Bertha Cooper-Rousseau, and Chair and Fellow Rengin Johnson met on several occasions regarding the legislative framework for ADR Bahamas.

The Education Committee Chair Rengin Johnson organized peer interviews for members Dr. Michael Diggis, John-Michael Clarke, William Higgs, and Chris Guthro, conducted by Retired Justice and Fellow Rubie Nottage, Fellow Kelpheene Cunningham, and Fellow Caryl Lashley. As a result, the four new Fellows were added to the list of CIArb Fellows.

Registry and Ethics Committee

Chair Rengin Johnson, Caryl Lashley, Kelpheene Cunningham, and First Chair and Honorary Secretary Shellyn Ingraham

Under the leadership of Caryl Lashley completed a draft Ethics for the CIArb Bahamas Branch and commenced creating a Registry

Membership Committee Chair Yolande Rolle

The Bahamas Branch Members have increased to 121 members. Thank you, our 2nd Vice-Chair and Membership Chair, for her assistance.

Under the leadership of Fellow Caryl Lashley During 2021-2022

The CIArb Bahamas Branch's Members tutored and assessed the Eugene Dupuch Law School (EDLS) ADR Modules for about 150 students.

The CIArb Bahamas Branch thanks the following tutors and assessors for their excellent dedication and service.

Caryl Lashley
Rengin Johnson

CHAIRMAN'S RENGIN JOHNSON REPORT

Year In Review 2021 - 2022 (cont'd)

Kelphene Cunningham
Indira Francis
Cherise Cox-Nottage
Yolande Rolle
Michael Diggiss

Financial Management led by Nicolette Gardiner

The Branch has had a very healthy fiscal year through good management and dedication of the much-appreciated Honorable Treasurer. Further, under the leadership of Shellyn Ingraham, the Branch was able to collect Branch ADR Courses from past debtors.

CIArb Head Quarters

CIArb is actively engaging with Branches and the Branch Chairs.

It has organized quarterly meetings with the Director-General and Branch Chairs to discuss matters of policy and governance related to CIArb.

The CIArb Trustee has established quarterly CIArb meetings with the Trustee for The Americas, of which The Bahamas Branch is a part. The conference aims to discuss matters of common interest with the Branches.

As I complete my position as the Chair from 2021 to 2022, I express my deepest gratitude and support to the Members of the Executive Team.

According to the successful list of events, the Branch has accomplished its goals. In addition, the Bahamas Branch has set a solid platform with its public image locally and internationally.

The CIArb Bahamas Branch appreciates CIArb HQ for assisting us with our website and presenting globally. CIArb London eSolver Newsletter and under its Events featured the Bahamas Branch and its achievements by a presentation by the Chair Rengin Johnson.

Also, eSolver Newsletter has featured the Bahamas Branch and its Chair as the first Branch of CIArb to conduct a Module 1 Mediation Training and Assessment Course.

The Bahamas is very proud to publish the Adjudicator Newsletter 3 by including ADR articles from its members, global CIArb friends, including the author of the ICDR Rules by the CIArb International President Ann Robinson, and the events of the Bahamas Branch.

The Adjudicator Newsletter 3 will be requested to feature by CIArb HQ as a global article.

Finally, my longstanding desire is that the CIArb Bahamas Branch can support and assist our beloved country with an ADR Center.

I wish the distinguished Members, ExCom Members of the Bahamas Branch, and its new Chair and Officers a successful term, and I do give my commitment to assist so we can continue to grow as a successful Branch.

The Bahamas Branch Chair Rengin Johnson and the members of the Bahamas Branch thank the participants .