

Keynote Address*

by

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**Introduction to the
Arbitration and Mediation Court of the Caribbean
Barbados**

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Protocols.

Introduction

I would like to thank the Director General (Designate) of the Arbitration and Mediation Court of the Caribbean (AMCC), Ms Baria Ahmed, for extending the invitation for me to speak at today's introduction ceremony for the AMCC. It is truly an honour.

I wish to congratulate the originators of the AMCC concept and those who have stuck with that idea to its fruition, as is signalled by this event.

- Sir Trevor Carmichael QC & Chancery Chambers, including partners Andrew Ferreira and Giles Carmichael, as the champions of the initiative and the founding directors of the AMCC.
- Compete Caribbean as the funders of the initial feasibility study undertaken in 2014 looking into the establishment of an ADR Centre in Barbados, and their continued support following the delivery of that report.
- The Barbados Chamber of Commerce and Industry as the initiators of the said feasibility study and for their continued support throughout.
- Baria Ahmed as the ADR and institutional development expert, on board initially as the consultant undertaking the feasibility study and currently as the Director General (designate) of the AMCC.
- The Government of Barbados, particularly the Ministry of International Business, for their encouragement and interest.

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- Members of the Bar, many of whom have already committed membership contributions or are in discussions to do so, without which support the AMCC could not fully operate its services.
 - Corporate and commercial partners for their continued interest and support.

As Patron of the Chartered Institute of Arbitrators (CIArb) Caribbean Branch, I am very pleased to support the launch of this institution. It is an innovative approach to improve the quality of justice delivery in our region. The successful realization of the objectives to provide modern and effective arbitration and mediation services for Barbados and the Eastern Caribbean will be a catalyst of investment growth in Barbados and the region; supplement the overburdened state judicial machinery, which has unacceptable delays in the adjudication of commercial claims; and augment efforts to enable the attraction and maintenance of investment with the region. It will provide a direct stimulus to regional investment and regional economic development because its proper functioning requires the application and development of productive skills and investment in a range of adjunct and ancillary services - including specialised legal services, technological services, translation and transcription services, and other administrative and secretarial services.

The general idea of the AMCC began as an expression of interest among both public and private stakeholders in Barbados to institutionalise commercial alternative dispute resolution (ADR) as a viable tool in the management of conflicts that arise in the course of business. Mobilization of the concept began as early as 2007 when the Government of Barbados, through its economic development agency Invest Barbados, approached the London Court of International Arbitration (LCIA) with a view to establishing that Court's first regional office and the objective of making

Barbados an attractive jurisdiction for international arbitration. This effort, for external reasons – specifically the global financial crisis, never got off the ground beyond the signing of a Memorandum of Understanding.

The attempt to realise formal linkage with an internationally recognised arbitration provider was revived a few years later when the Government entered into discussions with the New York-based International Centre for Dispute Resolution (ICDR). Again, this initiative did not materialise.

Undaunted, and perhaps invigorated, by these events, the members of the Legal Committee of the Barbados Chamber of Commerce and Industry (BCCI), including venerable Queen's Counsel Sir Trevor Carmichael, embarked on discussions sometime in March 2014 as to how the Chamber could meaningfully participate in resuscitating the efforts to establish a commercial ADR centre in Barbados. This led to the commissioning of a 5-month feasibility study on the issue with particular emphasis on Barbados and the Organization of Eastern Caribbean States (OECS). The research was conducted by Baria Ahmed Ltd and the final report was delivered and presented to stakeholders in the legal fraternity and business sector in November 2014. The research revealed that there was broad stakeholder buy-in for the establishment of a commercial ADR centre in Barbados to serve both domestic and OECS clients and, in time, an international clientele.

A year later, the report was presented to the Government, through the Ministry of International Business. A keen interest was shown in establishing the ADR Centre and Ms Ahmed was invited

to serve as the founding Director General for the centre. Sadly, for a number of reasons, funding was delayed. I admit that this is a euphemism for saying that despite the fact that the Government remained committed and lent support by way of technical assistance and guidance, it did not put up the money to initialise the project. The initial advisers and supporters of the concept of a Barbados-based ADR centre, including Sir Trevor, intent on guarding the wicket, embarked upon a path of innovation. They decided that the Caribbean has sufficient expertise to make it unnecessary to chase the ball outside the off stump to try to reach international arbitration providers. They decided to play with a straight bat and use their own expertise to streamline, to revise, to fashion a solution customised to domestic and regional needs and capacity. They eventually came up with a model for developing regional institutions that serve the public good without reliance on public funding. I think that in our economic situation as a small state, and our place in globalisation, this creativity and self-reliance must be commended and supported.

Thus the AMCC was incorporated in April of this year in Barbados as a private not-for-profit company constituted by members. It is now open for business and is ready to support its first clients as early as tomorrow. This dynamic journey demonstrates what can be achieved when stakeholders are determined to be part of the solution.

I invite you to join me in congratulating them.

Structure and Legal Framework of the AMCC

The AMCC will operate under a 3-tier structure – the company, the Arbitration Court and the Secretariat.

The company, AMCC is a not-for-profit company constituted by members. As the Foundation Member, Chancery Chambers is responsible for the initial organisation of the entity. Further contributory membership is open to legal and civil society, including legal practitioners, holders of judicial office, institutional arbitration associations, government and regulatory aid agencies.

The company's Board of Directors, appointed by its members, will be responsible for general administration, including appointing members of the Court. In keeping with the principle of judicial independence, the Board will not have an active role in the administration of cases. This is integral to bolstering the legitimacy and effectiveness of the institution. The company's operations, of course, will be governed by the provisions of its Articles of Incorporation.

The Arbitration Court will consist of members, plus representatives of associated institutions, selected to provide and maintain a balance of leading practitioners in commercial arbitration. Overseas bodies associated with AMCC may be invited to nominate special delegates to the Court. The AMCC Court will be the final authority for the proper application of the AMCC international arbitration rules. Its principal functions will be appointing tribunals, determining challenges to arbitrators, and controlling costs.

The objective of the constitution of its membership is to 'provide and maintain a balance of leading practitioners in commercial arbitration'. It is hoped that this will serve to reinvigorate the region's interest in arbitration, and ADR in general, and help to dispel the fear expressed in

Professor Fiadjoe's seminal text on alternative dispute resolution that, "arbitration [as an alternative method of dispute resolution] 'has for all intents and purposes fallen into disuse'"¹.

The Secretariat, which will be tasked with the daily administration of all disputes referred to the AMCC, will facilitate a full suite of ADR services in commercial and non-commercial arbitration, conciliation and mediation, under its own rules, and will also provide a facility for mutual consultation proceedings under international treaties.

AMCC is also intended to act as administrator in UNCITRAL-rules cases (UNCITRAL being the United Nations Commission on International Trade Law) and to provide a fundholding facility in otherwise *ad hoc* proceedings. AMCC will also provide registry and secretarial services, in addition to the provision and maintenance of the physical facilities (meeting rooms and preparation rooms), and I add, where necessary, because it is my expectation that from the day it starts to operate, it will provide the opportunity for online adjudication – which has the effect of cost reduction including that of providing physical facilities.

As for the operation of the Court and Secretariat, rules for international and domestic arbitration, as well as for commercial mediation, have been drafted and are in the process of being finalised, together with fees schedules and related service delivery documents. These draft non-international arbitration rules, as they exist now, are intended to work harmoniously with the

¹Albert Fiadjoe, *Alternative Dispute Resolution: A Developing World Perspective* (Cavendish Publishing Limited, 2004) at p 72 citing SM Shelton, 'Arbitration as an Alternative Means of Dispute Resolution: An Introductory Road Map' (2001) 26(1) and (2) WILJ 84.

existing legal framework (in Barbados) while expecting that a new modern legislative framework, a draft of which has also been prepared, will be adopted by Parliament expeditiously.

Alternative Dispute Resolution and Justice Administration : Indicators of Social and Economic and Development

The establishment of the AMCC and the ADR services that it is intended to provide are a welcomed addition to the cadre of dispute resolution services currently available in Barbados and the OECS. It cannot be denied that easily accessible and efficient and effective options for dispute resolution are key components to, and indicators of, economic and social development.

From a socio-legal perspective, the findings of the Law Reform Commission in its 2010 Report² are apt. In that Report, the Commission noted that,

“Access to justice, in its widest sense of the effective resolution of disputes whether through court-based litigation or alternative dispute resolution processes, is an essential aspect of ensuring the realisation of the fundamental rights recognised and given protection by the Constitution...”³

The Commission then went on to cite an earlier Consultation Paper which set out the conclusion that the promotion of access to justice in a modern civil justice system is predicated on,

“[offering] a variety of approaches and options to dispute resolution. Citizens should be empowered to find a satisfactory solution to their

² Law Reform Commission, ‘Alternative Dispute Resolution: Mediation and Conciliation’ (November 2010) <http://www.lawreform.ie/_fileupload/reports/r98adr.pdf> accessed 9 October 2017.

³ Ibid at p 7.

problem which includes the option of a court-based litigation but as part of a wider ‘menu of choices’”.⁴

This brings me to an important point which, I believe, cannot be stressed enough. That is, ADR is not inimical to the “traditional” concept of justice delivery or to the “traditional” courts. Many dissenting voices articulate the fear or reservation that ADR methods will eventually bring courts and the “traditional” legal system into extinction. This is simply not the case. Although the 2010 Report of the Law Reform Commission focused primarily on conciliation and mediation, the following statement is applicable here. In advocating for an “integrated approach to dispute resolution in which ADR plays an appropriate part, and in which it complements the role of the courts in resolving disputes”⁵, the Commission observed that:

“In that respect, the word ‘alternative’ in ‘alternative dispute resolution’ does not prevent the court-based dispute resolution process from continuing to play a positive role in resolving disputes by agreement. This can be through the long-established practice of intervening at a critical moment in litigation to suggest resolution by agreement or though...structured innovations...The Commission agrees that an integrated civil justice process includes a combination of ADR processes, such as mediation and conciliation, and the court-based litigation process. Each process plays its appropriate role in meeting the needs of the parties involved and fundamental principles of justice.”⁶

⁴ Ibid (citations omitted).

⁵ Ibid at p 3.

⁶ Ibid (citations omitted).

Put even more bluntly, the United States Agency for International Development (USAID) in its ADR Practitioners' Guide⁷ noted as the first of eight 'Key Observations' that ADR, "cannot be a substitute for a formal judicial system".⁸ The complete removal of courts from the dispute resolution services '*market*', is therefore not in issue and there is no need for alarm on the part of *players* in that *market*. In fact, as I mentioned in another setting a few months ago, lawyers should consider diversifying their traditional practice to include an active ADR practice – whether it be mediation, conciliation, arbitration, or all of these.

Professor Fiadjoe, a clear proponent of this integrated approach, an approach with which I unreservedly and wholeheartedly concur, suggested that,

“...having regard to the evolution of modern techniques, such as caseload management and the ever-growing prevalence of ADR within the litigation context, it might be more accurate now to describe ADR not as an *alternative* to litigation but one technique which is appropriate in the context of dispute resolution generally. Following that way of thinking, litigation is considered as just one of a variety of methods of dispute resolution.”⁹

It is pellucid, therefore, that ADR is as an integral part of justice administration, generally, and also in the Caribbean context.

⁷ USAID, 'Alternative Dispute Resolution Practitioners Guide'
[<https://www.usaid.gov/sites/default/files/documents/1868/200sbe.pdf>](https://www.usaid.gov/sites/default/files/documents/1868/200sbe.pdf) accessed 10 October 2017.

⁸ Ibid at 3.

⁹ Albert Fiadjoe, Alternative Dispute Resolution: A Developing World Perspective (Cavendish Publishing Limited, 2004) at p 2 (emphasis added).

From an economic perspective, commercial interests will always be keen to invest in jurisdictions where suitable, affordable, accessible and timely dispute resolution systems are in place. A 2015 Report, which examined factors considered by multinational corporate entities in selecting where to invest internationally, indicated that, “Rule of law conditions in host states can, and often do, lead to withdrawals or reductions of investments in states”¹⁰. In this context, the ‘rule of law’ was defined as, “ ‘certain, accessible and prospective laws; equally enforced; with access to justice...where rights may be asserted...through fair trials before an independent judiciary’”¹¹.

This is not to say, however, that such systems are any less important to domestic commercial interests of all sizes and configurations. Indeed, they are equally important - so much so that the World Bank now produces an Annual Report which examines the ease of doing business for local entrepreneurs. This examination involves the exploration and measurement of several indicators, not least of which is contract enforcement. As you can appreciate, at the heart of commercial disputes is the issue of contract enforcement. Now in its fourteenth iteration, the World Bank Group’s *Doing Business* 2017 Regional Profile for Latin America and the Caribbean, which ranks economies from 1 – 190 “based on indicator sets that measure and benchmark regulations applying to domestic small to medium-size business through their life cycle”,¹² shows CARICOM States ranking 67 to 181 in terms of the ease of doing business¹³.

¹⁰ Hogan Lovells, The Bingham Centre for the Rule of Law and The British Institute of International Comparative Law (Investment Treaty Forum), ‘Risk and Return: Foreign Direct Investment and the Rule of Law – Briefing Note’ (Hogan Lovells, 2015) at p 6 <http://www.hoganlovellsruleoflaw.com/uploads/risk-and-return/rar_note.pdf> accessed 10 October 2017.

¹¹ Ibid at p 3.

¹² World Bank, ‘Doing Business 2017: Equal Opportunity for All – Regional Profile 2017 (Latin America and Caribbean (LAC))’, DOI: 10.1596/978-1-4648-0948-4 (Washington DC 2017) at p 6

<<http://www.doingbusiness.org/reports/~media/WBG/DoingBusiness/Documents/Profiles/Regional/DB2017/LAC.pdf>> accessed 9 October 2017.

¹³ Ibid at 7.

After assessing the efficiency of the process of resolving a commercial dispute through courts in the region, we ranked between 35 and 187.¹⁴ These rankings took into account contract enforcement with specific focus on time, cost and quality of judicial processes index.¹⁵ The ‘judicial processes index’ took into account the existence of ADR mechanisms.¹⁶ As you would probably know, Barbados did not fare too well in these rankings. I am of the view that the AMCC is poised to make a significant contribution to our performance as a region in the international, regional and domestic spheres.

ADR in the Caribbean Community: The Legal Framework

The establishment and operation of the AMCC falls within the context of a rich domestic and regional framework supported by the regional judiciaries and the general political attitudes. I will discuss this framework in very brief detail.

The Revised Treaty of Chaguaramas

The promulgation of Alternative Dispute Resolution within the Caribbean Community (CARICOM), is supported by the very underpinnings of our institutional framework. The Revised Treaty of Chaguaramas (RTC)¹⁷, the governing instrument of CARICOM and the CARICOM Single Market and Economy (CSME), embraces a robust dispute resolution framework. In its Preamble, the Treaty recounts the affirmation of States Parties that “the employment of internationally accepted modes of disputes settlement in the Community will facilitate achievement of the objectives of the Treaty”. It also expresses their collective

¹⁴ Ibid at 264.

¹⁵ Ibid at 265.

¹⁶ Ibid at 262.

¹⁷ Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market & Economy (signed 5 July 2001, entered into force 1 January 2006).

consideration that, “that an efficient, transparent, and authoritative system of disputes settlement in the Community will enhance the economic, social and other forms of activity in the CSME leading to confidence in the investment climate and further economic growth and development in the CSME”. These policy positions are given flesh in the text of the Treaty and reflect an integrated approach to dispute resolution as concerns the interaction between alternative modes of dispute settlement and litigation.

Article 188(1) of the RTC prescribes modes of dispute settlement for disputes concerning the interpretation and application of the Treaty. Specifically, good offices¹⁸, mediation¹⁹, consultations²⁰, conciliation²¹, arbitration²² and adjudication²³ are designed to be exercised without prejudice or contradiction to the exclusive and compulsory jurisdiction of the Caribbean Court of Justice (CCJ).²⁴

The Treaty also makes provision for the use of ADR in disputes not concerning the interpretation and application of the Treaty. Of note, Article 223, for example, requires Member States:

“...to the maximum extent possible, [to] encourage and facilitate the use of arbitration and other modes of alternative disputes settlement for the settlement of private commercial disputes among Community nationals as well as among Community nationals and nationals of third States.”

¹⁸ Dealt with specifically in Article 191.

¹⁹ Dealt with specifically in Article 192.

²⁰ Dealt with specifically in Articles 193 and 194.

²¹ Dealt with specifically in Articles 195 to 203.

²² Dealt with specifically in Articles 204 to 210.

²³ Dealt with specifically in Article 211 to 222.

²⁴ See Article 188(4).

It should be noted here that not only is there a focused commitment to the use of arbitration and other ADR tools, but also an emphasis on private commercial disputes. The latter, no doubt, weighed heavily on the framers of our regional ‘Constitution’ in light of the fact that the CSME was intended to deepen economic integration and to foster economic development within States. Article 223 also imposes an obligation on States to ensure that their legislative procedures make appropriate provision for the observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards.²⁵ States which have implemented the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (‘the New York Convention’) or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) are deemed to be compliant with that obligation.²⁶ There is also the obligation on Member States to harmonise their laws and administrative practices as they relate to commercial arbitration.²⁷

Civil Procedure Rules: ADR, Case Management Powers, Court-connected mediation

Many of the Civil Procedure Rules (CPR) across the region embrace an integrated approach to dispute resolution by making provision for and/or accommodating ADR tools, including mediation. Some, like Barbados and the OECS, permit courts in the exercise of their case management powers in furtherance of the overriding objective, to “[encourage] the parties to use any appropriate form of dispute resolution including, in particular, mediation, if the court considers it appropriate, and [facilitate] the use of such procedures”.²⁸ It should be mentioned

²⁵ Article 223(2).

²⁶ Article 223(3).

²⁷ See Article 74(2).

²⁸ Supreme Court (Civil Procedure) Rules, 2008, Rule 25.1(2)(c) (Barbados) and Eastern Caribbean Supreme Court Civil Procedure Rules 2000, Rule 25.1(h) (OECS).

that in Barbados, the Civil Procedure Rules do not apply to family proceedings.²⁹ Last year, Barbados launched a court-annexed mediation pilot project in both the Magistrates' and Supreme Courts.³⁰

This is an opportunity for the AMCC to collaborate with the Honourable Chief Justice to provide the needed mediation services which would assist in reducing delay and eliminating backlogs in the commercial dispute resolution services offered by the courts.

Court-annexed arbitration: The Belizean Model

Let it not be said that our region has merely shadowed international developments in the integrated use of ADR methodologies and that we have simply ‘fallen in line’ or merely ‘gone with the flow’. We continue, as we have in various other spheres, to pioneer new frontiers - even in law. In this regard, I make specific reference to Belize’s recent establishment of Court-Connected Arbitration which the Chief Justice, the Honourable Kenneth Benjamin, has identified as “the first of its kind in the *world*”.³¹ This was an initiative of the Justice Abel-led Court Mediation and Arbitration programme carried out under the auspices of the Chief Justice.

Following an extensive training and certification programme, facilitated by Dr Christopher Malcolm and Shan Greer, Fellows of the Chartered Institute of Arbitrators Caribbean Branch, 32 persons were sworn in as Court-Connected Arbitrators in the Supreme Court of Belize before the

²⁹ Supreme Court (Civil Procedure) Rules, 2008, Rule 2.2(3)(b) (Barbados).

³⁰ Government Information Service, ‘Court Mediation Project in Operation’, <<http://gisbarbados.gov.bb/blog/court-mediation-project-in-operation/>> accessed 10 October 2017.

³¹ Belize Press Office, ‘Arbitrators Called to Office’ (3 October 2017) (emphasis added).

Honourable Chief Justice. The Arbitrators will be guided by the newly added Arbitration Rules under Part 74 of the Belize CPR.

This is indeed an exciting time in our region and bodes well for the ADR-litigation- integration process. The Belize Model demonstrates two important points. First, it epitomises the commitment of our judiciaries to the provision of responsive dispute settlement options to users using an integrated approach, thereby providing meaningful justice delivery. Second, it demonstrates the ingenuity of the region's people and our ability to craft responsive solutions tailored to suit our specific needs.

This too is an opportunity for AMCC to collaborate with the Honourable Chief Justice to extend this innovative process to support the judicial function in Barbados.

Regulatory Framework in Barbados

It is to be noted that Barbados has a regulated arbitration framework. The key pieces of legislation include the 1958 Arbitration Act, which addresses domestic and international non-commercial arbitrations; the 1980 Arbitration (Foreign Arbitral Awards) Act, which gives effect to the New York Convention; and the International Commercial Arbitration Act 2007, which is closely based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law.

It has, however, been widely accepted that there is a need to update the law as espoused by the 1958 Arbitration Act to bring it into compliance with current best-practices for domestic

arbitration. I am advised that agitation in this regard has resulted in the development of draft legislation which is presently being finalised for presentation to Parliament in the near future. There are also separate efforts at modernization by the IMPACT Justice Programme, funded by the Government of Canada and executed by the University of the West Indies, with a view to developing regional standards in legislation across the Caribbean.

Harmonization Efforts of OHADAC

I must pause here to recognise the work of another harmonisation project, the Organization for the Harmonisation of Business Law in the Caribbean (OHADAC) Project. Based in Guadeloupe, the OHADAC Project broadly aims to consolidate the economic integration of the entire Caribbean, following similar reforms undertaken in Africa. The Project's definition of 'Caribbean' includes the Spanish, Dutch, British and French and its remit covers a population base of over 200 million people. The Project seeks to facilitate increased trade and promote international investment by providing a unified law and alternative dispute resolution methods. It is the ultimate goal of the harmonization process to have a unified law that is internationally respected, recognised and utilised. Given the AMCC's intended capacity to conduct proceedings in 'any language', OHADAC may provide opportunities for linkages to be established.

The 2015 London Centenary Principles

Although my discussion thus far has focused primarily on the regional and domestic context, mention must be made of one particular international development – the 2015 London Centenary Principles. These Principles are part and parcel of the infrastructural context within which the AMCC will now operate.

The London Centenary Conference 2015, in observance of the 100th anniversary of the Chartered Institute of Arbitrators (CIArb), introduced a draft set of principles said to be “necessary for an effective, efficient and ‘safe’ Seat for the conduct of International Arbitration”.³² The Principles can not only serve as a part of the governance framework but can also be viewed as benchmarks for continued performance assessment.

Some of the key Principles are: **Law** - clear, effective and modern (International) Arbitration law which recognises and respects parties' choice of arbitration for dispute settlement; **Judiciary** – an independent judiciary, competent, efficient, with [relevant] expertise and respectful of parties' choice to arbitrate; **Legal Expertise** – an independent, competent legal profession wth [relevant] expertise in arbitration and dispute resolution providing significant choice for parties who seek representation in the Courts of the Seat or in the [arbitration] proceedings conducted at the Seat; **Education** – implemented commitment to the education of counsel, arbitrators, judiciary, experts, users and students; **Facilities** – functional facilities for the provision of services; **Ethics** – professional and other norms which embrace a diversity of legal and culural traditions, and the developing norms of international ethical principles governing the behaviours of arbitrators and counsel; and **Enforceability** – adherence to international treaties and agreements governing and impacting the ready recognition and enforcement of foreign arbitration agreements, orders and awards made at the Seat in other countries.

³² Chartered Institution of Arbitrators (CIArb), ‘The London Centenary Principles 2015’ <<http://www.ciarb.org/docs/default-source/ciarbdocuments/london/the-principles.pdf?sfvrsn=4>> accessed 9 October 2017.

In my view, the aims and spirit of these Principles are noteworthy. I would therefore commend these Principles for due consideration by the implementers of the AMCC for them to take the Principles under advisement; critically analyse them; and adopt and adapt them to ensure that the AMCC is properly positioned to fulfil its desired mandate and objectives.

It is quite clear that the inception of the AMCC comes at a time when the region is pregnant with possibilities and is fully focused on creating and improving responsive institutions which foster an integrated climate for dispute resolution and allow for greater access to and better delivery of justice not just for our citizens, here, but on the international landscape.

The Next Innings

So, what's next? Now that the AMCC has been incorporated and the membership drive is on in earnest, what should the next steps be?

Training & Sensitization

Training and sensitization must form part of AMCC's arsenal as it introduces itself to Barbados, the OECS, the wider region and the globe. I am told that the AMCC has already hosted its first round of international arbitration training. The training exercise, which took place last week here in Barbados, involved the delivery of the Accelerated Route to Membership and Fellowship courses and was conducted in partnership with the Chartered Institution of Arbitrators (CIArb) Caribbean Branch and its Barbados Chapter.

Sensitization of regional stakeholders will also be key. To this end, I am informed, that a full roster of regional seminars and events is already designed.

Linkages

At the beginning of this address I referred to Sir Trevor and his contribution to innovative and creative solutions for regional agencies for the public good without public financing. Another of his ‘babies’ (so to speak) is the regional court technology and training solutions provider, Advanced Performance Exponents Inc (APEX). APEX, a non-profit agency serving a diverse and multi-national stakeholder group, was established for the purpose of “implementing and supporting court technology solutions and services [within] Caribbean courts and [to] facilitate development of a region-wide ‘ecosystem’ for Court service innovation and support.” Its mission, as the Caribbean’s only dedicated special-purpose Agency, is to support, strengthen and develop the region’s justice sector through technology enabled solutions and capacity building initiatives.

A founding idea for APEX, whose Chairman is Sir Trevor Carmichael QC, is that the courts and legal profession should ‘own’ the agency and take a lead role in guiding and controlling its activities and operations. It is owned by the Caribbean Judiciary and the Caribbean legal profession. The Chief Justice, the Honourable Attorney General and the President of the Bar are, or should be, institutional members. They are entitled to share in the ownership and direction of the company and the tools it develops for improving justice delivery in the region.

Even specialized courts such as AMCC would be entitled to be institutional members and share in the ownership and management of the operations. This is particularly relevant because the first project of APEX was the development of the Curia Court Management Suite for e-filing, case management and related support activities for an efficient and effective delivery of services. So today, as we celebrate AMCC, we can also celebrate APEX - both of which are joined together by the innovative and creative genius of Sir Trevor through the similar institutional arrangements for the establishment and the concept of providing arrangements for the public good without public financing.

Support

To ensure the achievements of the AMCC's objectives, wide-ranging stakeholder support is a necessity. Although the AMCC will be embarking on its own drive to shore up support, I believe that we must all lend support as and when possible.

The relationship with the judiciary is very important. One of the traditional difficulties experienced by the move towards arbitration was the supervisory role exercised by courts. This often resulted in the frustration of the very purpose for going to arbitration by interjecting mechanisms that caused delay in the final settlement and adjudication of the disputes. The modern jurisprudence and legislation has addressed and limited the scope for judicial supervision over arbitration proceedings and the enforcement of arbitral awards.

The CCJ, has already addressed these issues. In one case, *British Caribbean Bank Limited v The Attorney General of Belize*,³³ the Court was called upon to assess the jurisdiction of courts in Belize to issue an injunction restraining international arbitration proceedings commenced pursuant to an arbitration clause agreed to by the parties. The Government sought to resist the continuation of the international arbitration proceedings on the basis that it was vexatious and oppressive to pursue those proceedings simultaneously with domestic proceedings challenging the constitutionality of certain related legislation and the validity of a loan and mortgage facility. In determining that a valid arbitration agreement existed in the case, the Court observed that it would exercise “heightened vigilance when asked to restrain international arbitration because the parties have contracted to arbitrate their dispute.”³⁴ The Court stated as follows:

“In particular, the jurisdiction to grant an anti-arbitration injunction must be exercised with caution and only granted if the arbitral proceedings are vexatious or oppressive. Proceedings could be vexatious where they are absurd or the litigant seeks some fanciful advantage by suing in two courts at the same time but they would not be so held where there are substantial reasons of benefit to the plaintiff to bring the two sets of proceedings. There is no presumption that a multiplicity of proceedings, or that merely bringing the proceeding in an inconvenient place, is vexatious. In normal circumstances the widely recognized principle of *forum non conveniens* will apply but in anti-arbitration injunctions cases the mere fact that the court is the natural forum for the case is not sufficient for it to grant the injunction.”³⁵

³³ [2013] CCJ 4 (AJ).

³⁴ Ibid at [37].

³⁵ Ibid at [41].

Another case concerned the recognition and enforcement of a foreign arbitral award. In that case³⁶, the Government of Belize sought to resist recognition and enforcement proceedings in the domestic court of an arbitral award made by the LCIA. The critical ground of resistance surrounded the question of whether it would be contrary to public policy to enforce the award. The CCJ refused enforcement having found that the Settlement Deed, at the centre of the dispute, was illegal, void and contrary to public policy. Notwithstanding this ultimate conclusion, however, the view expressed by the Court demonstrates a supportive attitude towards international commercial arbitration. In particular:

“Where enforcement of a foreign or Convention award is being considered, courts should apply the public policy exception in a more restrictive manner than in instances where public policy is being considered in a purely domestic scenario. This is because, as a matter of international comity, the courts of one State should lean in favour of demonstrating faith in and respect for the judgments of foreign tribunals. In an increasingly globalised and mutually inter-dependent world, it is in the interest of the promotion of international trade and commerce that courts should eschew a uniquely nationalistic approach to the recognition of foreign awards.”³⁷

³⁶ *BCB Holdings Limited and The Belize Bank Limited v The Attorney General of Belize* [2013] CCJ 5 (AJ).

³⁷ *Ibid* at [24].

Avoiding the “Pitfalls”

Before concluding, I must exhort the AMCC to avoid the pitfalls that made it necessary to consider its establishment such as ‘accessibility’, ‘delay’ and ‘court backlogs’ – all of which featured as concerns in the AMCC’s pre-cursor feasibility study. Specifically, the report highlighted “concerns as to the accessibility of the court system, with a significant backlog of cases meaning timely dispute resolution is often not available”.³⁸ It went on to state that, “[t]his is partly a result of under-resourcing in the courts, but can mainly be attributed to procedural delays caused by somewhat outmoded laws and procedures and the absence of effective enforcement mechanisms.”³⁹ The study also reported that:

“There are few mechanisms in place to prevent or reduce delays, and courts are not pro-active as regards case management. Indeed, in many cases, delays are due to the practice of courts themselves granting repeated adjournments, failing to set early dates of hearing, or to hear cases on a day by day basis, or not producing and signing judgments and orders as soon as they are pronounced”⁴⁰.

Two tools are therefore critical in ensuring that the AMCC’s operations are efficient from commencement: effective and efficient case management and continuous performance assessment. I deal with these in turn.

³⁸ Baria Ahmed Ltd, ‘Feasibility Study for the establishment of an Alternative Dispute Resolution Centre in Barbados: An Executive Summary’ (2014) at p 2.

³⁹ Ibid.

⁴⁰ Ibid at p 3.

Effective & Efficient Case Management

Effective case management supported by electronic tools and online case filing are essential for a modern court that intends to be efficient, fair and expeditious. It facilitates improved and convenient access, reduces time and expense, removes the need to copy and courier documents, avoids tedious and time-consuming manual filing practices, and so on. It also facilitates the work of the registry and the judges and improves the process.

The CCJ has implemented the Curia Management Suite, the comprehensive electronic filing, case management and court performance reporting platform to which I referred earlier. The platform is working very well and serves the members of the profession here who have been engaged in litigation before our Court. Curia is a productivity tool created to manage the full lifecycle of a case and to provide executive insights into the overall performance of the Court. The solution leverages the use of software, hardware, and cloud technologies to bring the judicial system to the highest level of performance.

The Suite is made up of various applications each of which has been designed to meet the dynamic needs of the modern court and its diverse stakeholders and which provides responsive user interfaces and secure computing protocols. It has supported an effective system where there is no backlog and timely dispute resolution. As of today, every case filed before 1st June this year has already been heard. In addition, the issue of access is already producing results. As at the end of July, more cases have been filed than were filed for the entire year last year. I suggest that this system will support the AMCC just as it would support the court system and assist in improving the quality of its justice delivery.

I must mention four (4) of these applications: **Folio** – the e-filing platform which delivers electronic filing via a secure web portal for attorneys, self-represented litigants and government agencies; **Attaché** – the powerful case management tool which assists officers in managing all aspects of the case life cycle; **Sightlines** – the performance toolkit which automates the production of court-intelligent reporting and analytics; and **Tando** – the secured contact management system. The streamlining of the Court's processes, as far as case management is concerned, has benefitted exponentially from the implementation of Curia. Demonstrated benefits include:

- a) instantaneous access to all case information from anywhere by litigants, their representatives and registry staff;
- b) facilitated electronic service of documents;
- c) facilitated generation of notices, directions and orders;
- d) support for online adjudication of all pre-trial processes and some substantive hearings;
- e) reminders to support on time performance;
- f) automated statistical and other reporting to monitor performance according to specific metrics including clearance rates, reports on filed and disposed cases, and case status reports.

Performance Measurement

Performance management based upon measurable standards is a key component in ensuring that any modern court continues to meet its objectives and deliver quality service to its users. To this

end, the International Consortium for Court Excellence developed an International Framework for Court Excellence⁴¹ which is also applicable to institutions providing ADR services.

The Framework sits on seven pillars which encompass the ten core values that guide successful courts: equality before the law, fairness, impartiality, independence of decision-making, competence, integrity, transparency, accessibility, timeliness and certainty. The seven pillars of the framework are: court management and leadership; court policies; court proceedings; public trust and confidence; user satisfaction; court resources; and affordable and accessible court services.

The first step towards court excellence is the assessment of the current performance of the institution against the identified pillars. Assessment is done through a prescribed self-assessment questionnaire. Coming out of the initial assessment, the institution's strengths and weaknesses will be identified. Out of this exercise, the institution must then craft practical measures to improve on weak areas and ensure persistence of its strengths. It is to be noted that this is an iterative process and continuous evaluation is required.

Having implemented the Framework at the CCJ and going through the 'growing pains' as we strive daily towards court excellence, I believe I am in as good a position as any to table the implementation of the Framework for the consideration of the management of AMCC going forward, if this has not already been implemented.

⁴¹ More information can be accessed at www.courtexcellence.com.

Closing

In closing, I must once again congratulate those persons and institutions who championed this cause and challenge all stakeholders to lend their full support to the AMCC.

Thank you.

The Right Honourable Sir Dennis Byron

