



# The CI Arbbean News

QUARTERLY NEWSLETTER

of the Caribbean Branch of the Chartered Institute of Arbitrators

VOL. 1 NO. 10

1 JANUARY 2020

## ST. LUCIA ELECTS CHAPTER CHAIR AND COMMITTEE



Past and present members of the St. Lucia Chapter Committee share a photo op with Patron of the Caribbean Branch, The Rt. Hon. Sir Dennis Byron and Norma Lady Byron. Pictured (from l. to r.) are: Martin Renee, Sir Dennis, Chair Kit-Juelle Frank-Amoroso, Lady Byron, Lisa Evans, Shan Greer, Past Chair Ronald Gardner and Tedburt Theobalds

The **CI Arb** members residing in St. Lucia held their Annual General Meeting on 3<sup>rd</sup> December 2019 and elected a new Chapter Committee.

The new Chair is Ms. Kit-Juelle Frank-Amoroso, MCI Arb and the other members of the Committee are Ms. Lisa Evans, FCI Arb, Mr. Martin Renee, ACI Arb and Mr. Tedburt Theobalds, ACI Arb.

The AGM was followed by a Dinner which was attended by the Patron of the Branch, The Rt. Hon. Sir Dennis Byron and Lady Byron, who were the Guests of Honour.

The formal presentation of a **CI Arb** Certificate of Honorary Fellowship was made to Sir Dennis by Past Branch Chair, Ms. Shan Greer. (pictured below)

## CHAIRMAN'S NEW YEAR MESSAGE

As we start another year and the third decade of the twenty-first century, I wish each of you, the members of the Caribbean Branch as well as all the other readers of this newsletter, a successful and productive year in the resolution of disputes. It is my wish that each member will strive to maintain a keen interest in the Branch and its activities, thus ensuring that the Branch's vision in its 2020 Development Plan is achieved.

The 2020 Development Plan seeks to strengthen and improve the Chapters and their functions, to increase programmes aimed at awareness of appropriate dispute resolution solutions among the business and legal community and to adapt the training programmes to align with the new **CI Arb** Pathway structure. Everyone needs to be a part of this Plan. With all my best wishes for a Happy New Year!

*Miles Weekes, Chairman*



## POOL WIDENED

Under the new **CIArb** Pathway structure, the entry requirements for both the Accelerated Routes to Membership (ARM) and Fellowship (ARF) in International Arbitration have been broadened so that an applicant no longer needs to have a formal legal education at or above undergraduate level. This change will permit persons with the requisite legal knowledge and arbitration experience, but without a formal legal education, to apply.

All ARM and ARF applicants must show knowledge of the framework of international arbitration and, for the ARF applicants, such knowledge must be shown to be substantial. In addition, ARF applicants must show the ability to recognise and evaluate evidence and must have five or more years of practical experience of international arbitration, either as a representative or an international arbitrator.

For both the ARM and the ARF, all applicants must show the ability to evaluate and apply the principles and requirements of an international arbitration and to demonstrate awareness of the practical tasks required in preparing for and progressing an international arbitration, albeit to a higher level of ability for the ARF applicants.

While these changes in entry requirements are unlikely to affect the number of persons with formal legal education who comprised the applicants to the ARM in the past, the new requirement to show practical experience in international arbitration will have an impact on the traditional pool of persons who applied for the ARF, reducing the number of qualifying candidates and leaving the others to follow the alternative Pathway to Fellowship, by way of the Module 2 Exemption Test and the Module 3 course.

## MODULE 1 COURSES COMPLETED



*The participants in the Module 1 Law, Practice and Procedure of International Arbitration course share a photo op with Course Director and Tutor, Ms. Shan Greer (front row centre)*

The Caribbean Branch successfully completed the second Module 1 course of its 2019 **CIArb** Pathway training programme. The 18-week Module 1 course – Law, Practice and Procedure of International Arbitration – began in August in Barbados and attracted 14 candidates of various professions, including architects, engineers, quantity surveyors, building contractors, construction project managers, bankers, accountants and lawyers. [The CIArb News](#) congratulates the participants on completing the course.

## LET US SEE YOU

Members are reminded to activate their online member profiles on the upgraded **CIArb** website. To do so, go to <https://www.ciarb.org/log-in> and log in to your MyCIArb account.

Click on the red arrow next to your name on the top right-hand corner of your account page and choose 'Edit Profile' from the pop-up menu. Fill in your professional details and consider uploading a photo and making your profile public for viewing in the Members Directory.

Members are reminded of the Branch's LinkedIn Group found at <http://www.linkedin.com/groups/8201202>.

## HAVE YOUR SAY

[The CIArb News](#) is published on a quarterly basis, on the first day of January, April, July and October.

Readers are encouraged to share their views and comments on the newsletter and its content, and to submit original papers, opinions and information on items of interest for future publication. Submissions, views and comments should be sent to [barbadoschapter@gmail.com](mailto:barbadoschapter@gmail.com).

Past copies of the newsletter, unabridged articles and more information about the Caribbean Branch and its Chapters can be found on the Caribbean Branch's website at [www.ciarbcaribbean.org](http://www.ciarbcaribbean.org)

# CARIBBEAN CODE OF GOOD ARBITRATION PRACTICE

*In the July 2019 edition of this newsletter, the writer introduced readers to the need for acceptance of a code of good practices by the Caribbean arbitration community and establishment of a set of guidelines that can be adopted by regional arbitration institutions. Recommending that the Guidelines be divided into four sections, the writer in this article sets out the content of the first three sections geared towards arbitral institutions, counsel and arbitrators.*

## **Section I - Recommendations for Arbitral Institutions**

Section I would contain eight main responsibilities for arbitral institutions, together with the requisite duties necessary to fulfil those responsibilities. They are as follows:

1. **Quality of Service.** Arbitral institutions should provide their services in an objective, efficient and responsible way.
2. **Institutional Independence.** Arbitral institutions should conduct themselves in an independent and neutral fashion in the administration of arbitration proceedings.
3. **Transparency.** Arbitral institutions should provide full and transparent information on the institution, its services and the internal procedures followed in the administration of arbitration proceedings.
4. **Speed.** Arbitral Institutions should take steps to expedite the conduct of the cases they administer.
5. **Flexibility.** Arbitral institutions should agree to adaptation of their rules in the cases they administer.
6. **Objective Selection of Arbitrators.** Arbitral institutions should use objective criteria in the selection and appointment of arbitrators.
7. **Confidentiality.** Arbitral institutions should protect the privacy and

confidentiality of the cases they administer.

8. **Promotion.** Arbitral institutions should promote arbitration for the resolution of disputes.

In jurisdictions where the practice of international arbitration has had a longer history and is more developed, these recommendations may seem standard and non-innovative. However, such is not the case in the Caribbean.

Comprehensive international arbitration reform is yet to be introduced in most jurisdictions in the region and as a result, arbitration institutions have only recently been operating therein. But are these arbitration institutions well-resourced for the effective and efficient administration of both domestic and international arbitrations?

Like all other arbitration institutions, institutions in the Caribbean have adopted and developed their own unique practices, rules and regulations – some adhering to international standards from the start, others just catching on and the laggards have at times frustrated the efforts and practice of practitioners accustomed to working in the international arbitration sector.

The recommendations contained in the Guidelines will likely serve as a useful directional point for arbitral institutions in the Caribbean to evaluate their own procedures and also grant some foresight to newer arbitration institutions.

## **Section II - Recommendations for Caribbean Counsel**

Section II would contain at least six main responsibilities for counsel in arbitrations, together with the requisite duties necessary to fulfil those responsibilities. They are as follows:

1. **Probity.** Counsel should not engage in activities intended to obstruct the arbitration process.
2. **Truth and Integrity.** Counsel should not make false statements to the Arbitral Tribunal or to opposing counsel.
3. **Aiding and Assisting of False Evidence.** Counsel should not procure, assist in the preparation of, or rely upon, any false evidence presented to the Arbitral Tribunal.
4. **Tampering.** Counsel should not conceal, or assist in the concealment of, any document which is ordered to be produced by the Arbitral Tribunal.
5. **Ex parte Communications.** Counsel should not, during the arbitration proceedings, initiate unilateral contact with any member of the Arbitral Tribunal, which has not been disclosed in writing, prior to, or shortly after the time of such contact, to all other parties and all members of the Arbitral Tribunal.
6. **Sanctions.** Counsel's violation of these general guidelines will be subject to sanctions at the sole discretion of the Arbitral Tribunal.

Experienced practitioners are well aware of the significance of counsel and counsel's comportment in international arbitrations. Arbitral tribunals consistently rely on counsel's professional obligations to, inter alia, comply with disclosure orders, properly communicate with witnesses, make factual representations and display decorum in addressing opposing counsel.

Accordingly, the content and reliability of counsel's ethical obligations are crucial to the arbitral process.

The spectacular proliferation in the number of international arbitrations, together with the growth of the international arbitration community, emphasises the position that implicit cultural or professional expectations,

*(continued on the next page)*

# CARIBBEAN CODE OF GOOD ARBITRATION PRACTICE

including national rules of professional responsibility, existent in the Caribbean jurisdictions, cannot, if ever they could, be relied upon to ensure fair play.

However, no counsel should be put in a position where he or she has to choose between being at a disadvantage or engage in conduct which is unethical under the respective national rules.

By way of example, the Guidelines should prohibit counsel from making false submissions of fact. If counsel learns that he or she made a false submission, counsel should – subject to countervailing considerations of confidentiality and privilege – promptly correct such submission.

The duty of candor applies also to fact and expert witnesses. If counsel discovers that a witness intends to make false submissions, he or she should promptly take remedial measures. Moreover, counsel should urge the witness to correct or withdraw the false evidence. As the most drastic remedial measure, the Guidelines may stipulate that counsel, if the circumstances so warrant, withdraws from the case.

Further, counsel must agree to comply with the Guidelines as a condition of appearing by name before the tribunal. The sanctions available to the tribunal in case of non-compliance with the Guidelines should include the following: a written reprimand, a written caution as to future conduct in the arbitration and any other measure, including drawing a negative inference and or application of costs, necessary to fulfil the general duties of the tribunal, as specified in applicable rules or modern arbitration practice.

## Section III - Recommendations for Arbitrators

Section III would contain at least six main responsibilities for arbitrators, together with the requisite duties necessary to fulfil those responsibilities. They are as follows:

### 1. Impartiality and Independence.

The arbitrators must be impartial and independent throughout the arbitral process. This means that the arbitrator must have the resolve and capacity to carry out his or her functions without favouritism to either of the parties, while maintaining a professional distance from the parties and others involved in the arbitration.

The duty of maintaining impartiality and independence applies even in relation to the party that has appointed the arbitrator. Importantly, the arbitrator designated by a party does not have any special obligations to the party that appointed him or her. He or she does not have an obligation to ensure that the party's case is adequately understood by the tribunal or any other such special function.

2. **Duty of Abstention.** A candidate should refuse a nomination if he or she is not qualified or otherwise capable of discharging his or her duty; or if there are circumstances which give rise to maintaining impartiality and or independence; or if he or she does not have the qualifications required by the parties; or if he or she does not have sufficient time to serve.

3. **Duty to Disclose.** The candidate who decides to accept a nomination must disclose to the parties any facts and or circumstances which may give rise to reasonable doubts to his or

her impartiality and independence. This duty is continuous throughout the arbitration. When in doubt, the candidate should opt for disclosure.

4. **Duty to Investigate.** In order to properly assess the candidate's own impartiality and or independence, he or she must perform research about past and present relationships with the parties and subject matter of the dispute.

5. **Prohibition against Ex parte Communications.** The arbitrator or candidate must abstain from any unilateral or ex parte communication with the parties, including with the parties' counsel. The duty begins from the moment the arbitrator became a candidate for nomination until the end of the proceedings. The prohibition does not include those communications which the candidate had while being considered as a candidate for nomination, provided the said communication only covered the identity of the parties; ascertainment of the availability of the candidate; determination of whether the candidate is qualified; and presentation of a brief description of the case.

6. **Confidentiality.** The deliberations of the tribunal are secret. This duty continues even when the proceedings are terminated. Unless the parties agree to the contrary, the arbitrator must maintain the confidentiality of the information learned during the arbitration.

*In the next edition of this newsletter, the writer will continue setting out his recommendations for the content of the Guidelines, looking at Section IV: A Model Code, covering ten broad areas of arbitration.*

*Submitted by Calvin Hamilton  
Barbados*

**DISCLAIMER:** The articles published in this newsletter are for general information purposes only and do not reflect the views of The Chartered Institute of Arbitrators. Their inclusion in the newsletter does not imply any endorsement by the Institute of their content, accuracy or authenticity.

Submissions, views and comments should be sent by e-mail to [barbadoschapter@gmail.com](mailto:barbadoschapter@gmail.com)

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