



The CI Arbbean News

QUARTERLY NEWSLETTER

of the Caribbean Branch of the Chartered Institute of Arbitrators

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1 OCTOBER 2019

NEW BRANCH CHAIR AND COMMITTEE ARE ELECTED

The **CI Arb** Caribbean Branch held its Annual General Meeting (AGM) on 7 August 2019 and elected the members to serve on the Branch Committee for the year 2019 – 20. The Branch Committee members subsequently met on 21 August 2019 and elected the officers:

Chairman:

Miles Weekes (Barbados)

Vice Chairman and Hon. Secretary:

Anthony Gafoor (Trinidad & Tobago)

Hon. Treasurer:

Mandish Singh (St. Lucia)

Public Relations Officer:

Jodi Ann Stephenson (St. Lucia)

Education and Training Officer:

Patterson Cheltenham (Barbados)

Webmaster:

Ebrahim Lakhi (Barbados)

The remaining members comprising the Branch Committee are the appointed ex-officio members:

Immediate Past Chair:

Shan Greer (St. Lucia)

Elected Chapter Chairs:

Calvin Hamilton (Barbados)

Ronald Gardner (St. Lucia)

Tameka Davis (British Virgin Islands)

Regional Trustee:

Ann Ryan Robertson (USA)

The Chairs of the Sub-Committees from last year were re-appointed:

Newsletter: Miles Weekes

Education and Training: Patterson Cheltenham

Young Members Group: Jodi Ann Stephenson



Miles Weekes (*pictured above*), the new Chairman of the Branch, is a chartered quantity surveyor and a construction project manager, who specialises in dispute resolution. He is a Fellow of the Royal Institution of Chartered Surveyors (FRICS) and a Fellow of the Chartered Institute of Arbitrators (FCI Arb). In addition to a Bachelor’s degree in quantity surveying, he holds a **CI Arb** Diploma in international arbitration, a UWI Certificate in mediation and a FIDIC-approved Certificate in dispute adjudication.

First appointed as the Interim Chairman of the Barbados Chapter in 2014, he was later elected as the Chairman and served for two terms until May 2019. He has been a Branch Committee member since December 2015, serving on the Newsletter and the Education and Training Sub-Committees.

He is a former President of the Barbados Association of Quantity Surveyors and an Affiliate of the Barbados Institute of Architects.

In accepting the office of Chair, Mr. Weekes thanked the members for the honour entrusted to him and stated that he would aspire to achieve the high standards of stewardship exhibited by the Immediate Past Chair, Shan Greer, and indeed by all the previous Chairs. He noted with appreciation Ms. Greer’s sterling work in the area of education and training and was very happy that she would remain a Regional Pathway Leader.

Mr. Weekes has observed that of the 177 members identified in the Branch, nearly 90% of them reside in five of the 16 countries covered by the Branch. He is therefore of the view that an important factor in sustaining the Branch must be the existence of active and functioning Chapters in those five countries and devoting time to developing the membership in the other countries. He hopes to formulate policies aimed at providing greater support, including financial support, for the activities of the Chapters.

CHAPTER ELECTIONS

The members resident in the British Virgin Islands have elected a new Chapter Committee comprising:

- **Chair** - Tameka Davis
- **Vice Chair** - Peter Ferrer
- **Member** - Monique Peters
- **Member** - Rosalind Nicholson

The BVI Chapter has 18 members.

EVENTS DIARY

● International Arbitration

Accelerated Route to Membership

A two-day Workshop with a written Assignment and a three-hour written Exam

Course Fee: US\$1,000.00

* Kingston, **JAMAICA**

10 – 12 October 2019

● International Arbitration

Accelerated Route to Fellowship

A two-day Workshop with a written Assignment and a four-hour written Exam

Course Fee: US\$1,400.00

* Kingston, **JAMAICA**

12 – 14 October 2019

● International Arbitration

Accelerated Route to Membership

A two-day Workshop with a written Assignment and a three-hour written Exam

Course Fee: US\$1,250.00

* Road Town, **TORTOLA, BVI**

15 – 17 November 2019

● International Arbitration

Accelerated Route to Fellowship

A two-day Workshop with a written Assignment and a four-hour written Exam

Course Fee: US\$1,750.00

* Road Town, **TORTOLA, BVI**

15 – 17 November 2019

For further details and information, please contact the Course Administrator at info@ciarbcaribbean.org.

● ARBITRATION 2.0

The 3rd BVI International Arbitration Conference convened by Business BVI in partnership with the BVI International Arbitration Centre

* Road Town, **TORTOLA, BVI**

18 – 22 November 2019

For further details, information and registration, please visit the website <https://bviarbitrationconference.com> and for **CIARB** members' discount please contact Claire Shefchik at c.shefchik@oysterbvi.com

ROLL OUT OF MODULE COURSES



Module 1 Mediation Training and Assessment course participants display their Certificates of Attendance with their tutors Patterson Cheltenham and Stuart Kennedy (back row left)

The Caribbean Branch has successfully launched two of the Module courses of the **CIARB** Pathways training programme. The first such course offered was the one-week Module 1 Mediation Training and Assessment. This attracted a sufficient response to allow for its delivery in Barbados in July to a cohort of six candidates. The second course offered was the 18-week Module 1 Law, Practice and Procedure of International Arbitration which also attracted a sufficient response to allow for the start of its delivery in Barbados in August to a cohort of 14 candidates. The course is ongoing and is due for conclusion in December. The Branch hopes to offer these courses again in 2020 in different locations and looks forward to the resultant diversity that will become present within its membership by the addition of accredited mediators and trained arbitrators drawn from a variety of professions.

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 **CIARBbean 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.

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

SPORTS ARBITRATION IN TRINIDAD AND TOBAGO

This article, first published in the September 2014 edition of the Global Sports Law and Taxation Reports, has been updated for current publication. In the first four sections, published in the April and July 2019 editions of this newsletter, the author explored how arbitration evolved to settle sports disputes and the trends of curial intervention in setting aside awards, citing the Trinidad and Tobago case of WIPA v WICB in 2011. The article concludes with a review of another sports arbitration case in Trinidad and Tobago that was the subject of an application to set aside.

Section 5. The Ian Mill Award: FIFA World Cup 2006

The parties were all from Trinidad and Tobago, the Claimants being sixteen football players who had represented their country at the FIFA 2006 World Cup, while the Defendants were the national governing body for football, then known as the Trinidad and Tobago Football Federation (TFFF), and its former president, Oliver Camps.

The relevant arbitration provision was Clause 14, found in the Player Agreements which were executed before the World Cup, and it stated:

“The parties shall submit all disputes arising out of or relating to this Agreement before an arbitration panel or a mediator appointed by the TFFF in Trinidad and Tobago. The award shall be rendered in such form that a judgment may be entered thereon. An appeal arising out of a decision of the arbitration or mediation shall be to an appeal committee appointed by CONCACAF (the Confederation of North, Central American and Caribbean Association Football) and any appeal therefrom shall be to the Court of Arbitration for Sport (CAS).”

The procedural direction of this dispute was somewhat unorthodox. The case started as a High Court breach of contract claim by the players, alleging non-payment of money due and owing to them arising from their participation in the 2006 World Cup. An initial question that arises is whether, according to Clause 14 of the Player Agreement, the first course of action was to the High Court. The wording of the clause suggests that the dispute should have gone to arbitration or mediation in Trinidad and Tobago.

On the facts of the case, arbitration did take place but only after the High Court claim was filed. The way that the arbitral process was engaged is noteworthy, since it was the Defendants who applied for a stay of proceedings pursuant to Section 7 of the Trinidad and Tobago (TT) Arbitration Act Ch 5:01.

The matter is further complicated given the signing of a new Arbitration Agreement in September 2007 (the September Agreement) which provided for arbitration under the English Arbitration Act 1996 and not the TT Arbitration Act. With the inherent confidentiality of arbitration proceedings, crucial documents have not come into the public domain and one can only speculate that the new Arbitration Agreement superseded Clause 14, which, in arbitration law and practice, is sufficient in and of itself to constitute an arbitration agreement.

The arbitral award was made by Ian Mill Q.C (the Mill Award) on behalf of the Sports Dispute Resolution Panel (SDRP) under whose auspices the English arbitration took place. The Defendants expressed concerns after parts of the award were leaked to the media and decided to re-engage the High Court.

If Clause 14 still applied, it is reasonable to assume that their next step could have been to a CONCACAF Appeal Committee.

Clause 10 of the September Agreement now becomes instructive. It said: *“The Arbitration award shall be final and binding on the parties and shall be registered as a judgment of the High Court of Trinidad and Tobago in these proceedings and enforceable accordingly, provided however that either party shall have a right of appeal to CAS but only with leave of the Arbitrator.”* This clause left available a right of appeal to CAS, an option which evidently was not explored.

The entire process suggests, at least, two possibilities: a failure to adhere to procedural guidelines or an in-built flexibility which is a hallmark of ADR processes. The question still begs, though, whether CAS would have been a more appropriate forum for this matter to be heard with regard to the Defendants’ challenge to the SDRP arbitration. In fact, it is also important to consider whether the stay of proceedings did contemplate the exhaustion of the entire arbitral process including an appeal to CAS. It may be, that since the Defendants sought to challenge the validity of the agreement itself and not the actual arbitral award, they returned to the High Court as against approaching CAS.

To the chagrin of Trinidad and Tobago nationals, this case endured an eight-year legal roller coaster and although the approach to the SDRP with a right of appeal to CAS was a commendable measure, since it placed the imbroglio before two specialist sports disputes tribunals, it is hard not to conclude that an opportunity for earlier resolution was missed. *(continued next page)*

SPORTS ARBITRATION IN TRINIDAD AND TOBAGO

Section 6. Setting aside the Arbitration Agreement

Very early in his judgment, Rampersad J summarised the key areas for determination, stating that the case “specifically examines the question of breach of confidence in arbitration. Incidental to this principle of confidentiality is the issue of the binding nature of the arbitration award and its enforcement in the High Court of Trinidad and Tobago.” However, the twist in this case, mentioned earlier, was the Defendants’ attempt to invalidate the September Agreement and not the Mill Award.

Justice Rampersad further distilled the issues down to one, namely, “whether the disclosure of the award was a fundamental breach of the terms of the arbitration agreement such that the agreement ought reasonably to have been set aside.” He did not have much difficulty in finding, in light of the prevailing law, that the confidentiality obligation, so fundamental to the arbitral process, was breached by the Claimants. The SDRP Rules also expressly provided for the confidentiality of the proceedings. The salient question that followed was whether that breach went to the root of the contract leading to a repudiation of the entire agreement. Justice Rampersad answered in the negative.

Citing Redfern and Hunter in *The Law and Practice of Commercial Arbitration*, the judge noted that there “are limits to the confidentiality of the arbitral process” giving as an example the instance where

“the existence (and perhaps the contents) of an award may become public knowledge if the winning party is obliged to take action in the courts to enforce it.” He concluded that the arbitration agreement remained irrevocable in accordance with Section 3 of the TT Arbitration Act. Additionally, pursuant to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards and Section 6 of the Arbitration (Foreign Arbitral Awards) Act Ch 5:30 of Trinidad and Tobago, the court granted leave for the Mill Award to be registered and enforced as a judgment of the High Court of Trinidad and Tobago.

Section 7. The Way Forward for Sports Arbitration in Trinidad and Tobago

It is indisputable that arbitration has evolved into a favoured mechanism for the extra-judicial settlement of disputes. In the lead up to the 2022 World Cup, Qatar, as host nation, continues to refine its ADR framework as are many of its Middle Eastern neighbours, whose increasing prowess in trade and economy has necessitated such initiatives.

The August 2013 edition of *The Resolver*, reported: “Qatar is in the process of modernising its law on arbitration. It is expected the new rules, again based on the UNCITRAL Model Law, will be passed shortly. Aside from the World Cup...there has been a clear shift in favour of arbitration in domestic disputes because it is recognised as a more expedient process.”

In the Caribbean, the journey is still very much at the early stages given the *ad hoc* nature of sports dispute resolution processes. At present, arbitration has been centred primarily on conflicts in cricket, with no new or established ADR entity having developed a lucid, well-structured framework for managing sports-related disputes, as the CAS and others like Just Sport Ireland, the Sports Dispute Resolution Centre of Canada, Sport Resolutions UK or the Sports Tribunal of New Zealand have so successfully done.

In Trinidad and Tobago, sporadic sports-based arbitrations have been the norm and while the above-mentioned High Court decisions have offered a useful starting point in discerning how arbitration law and principles can be applied to the sports sector, this country still awaits a coherent legal, academic and practical foundation that would give sports arbitration, the credibility and sustainability that the industry really needs.

In closing, current research suggests that no case from Trinidad and Tobago has been heard and determined before the CAS. At best, the *Mohammed Bin Hammam v FIFA* case, [CAS 2011/A2625] merely involved events in, and personalities from, Trinidad and Tobago, while the anti-doping disciplinary appeals of two female Olympians both reached settlement before the scheduled CAS hearings. Perhaps the CAS needs to be brought to Trinidad and Tobago before Trinidad and Tobago is brought to the CAS!

*Submitted by J. Tyrone Marcus
Trinidad and Tobago*

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Submissions, views and comments should be sent by e-mail to barbadoschapter@gmail.com

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