ciarb Caribbean Branch

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CARIBBEAN BRANCH TRIENNIAL CONFERENCE IS COMING

■ **Planning for the upcoming Ciarb Caribbean Branch's Fifth Triennial Conference is well advanced; so, it is time to save the date and start preparing to travel to Trinidad and Tobago in mid-October to attend this much-anticipated, in-person, flagship event.**

The Conference will be held from 14 – 18 October 2024 at The University of the West Indies Conference Centre in St. Augustine, Trinidad and Tobago.

An interesting conference programme is being prepared and it will include welcome remarks and feature addresses by prominent personalities from the legal and ADR professions and academia, including the Ciarb Global President, Mr. Jonathan Wood.

During the middle days of the week, from Tuesday, 15 October to Thursday, 17 October, there will be a series of roundtable and panel discussion sessions led by individual Caribbean and international panellists, as well as by select arbitral institutions, on a wide variety of topics of relevance to Caribbean practioners.

Focus will be on the application and use of ADR in the energy industries, both the traditional oil and gas sector and the renewable green energy sector; in the construction industry; in industrial relations and in sports.

Other topics will cover the roles of the Courts and the State in ADR; the state of arbitration in the Caribbean, including recent legislation and court decisions impacting the same; the trend towards greener arbitrations and the Singapore Convention.

For those seeking to expand their knowledge base in dispute boards, a training session is being planned for Monday, 14 October, and for those interested in mediation, there will be a Ciarb training session on Friday, 18 October.

Networking and social events are also being planned for the evenings, including a boat tour to the Caroni Bird Sanctuary on Thursday, 17 October where delegates will be able to witness the colourful spectacle of flocks of Scarlet Ibis, the national bird of Trinidad, returning to roost in the mangroves.

Registration forms for the conference will be available soon. The Hyatt Regency and the Radisson hotels are the preferred accommodations for overseas delegates and shuttle services on the conference days will be arranged from those two locations to the conference venue. ▲

TRAINING DIARY

The below Ciarb training course is open for registration:

17 August to 16 November 2024
Module 1 – Law, Practice and Procedure of International Arbitration – Online: US$800.00

This course is intended for anyone who is interested in obtaining a detailed knowledge of international arbitration and wishes to act as a party representative or counsel in arbitral proceedings or to proceed to become qualified as an arbitrator. The course information sheet and registration form are available at www.ciarbcaribbean.org or from the Course Administrator, Ms. Theresa Williams at email: info@ciarbcaribbean.org

THE IMPACT OF ARTIFICIAL INTELLIGENCE ON ARBITRATION

■ I am delighted that this topic has stormed into arbitration practitioners' consciousness, seemingly out of nowhere. As a tech and pharma-focused lawyer and now arbitrator, I have been studying about A.I. since well before 2018, when A.I. was one of the "disruptors" I discussed in my Alexander Lecture at Ciarb's biennial Congress.

With all due respect to ChatGPT, the concept is older than many of our members. For example, in 1970, years before development of the first rudimentary personal computer, two computer scientists at Stanford published a paper titled "*Some Speculation About Artificial Intelligence & Legal Reasoning*."

Also, dispute resolution by non-humans is already in wide practice. Online dispute resolution ("ODR") systems at eBay, PayPal, and other new economy titans are reportedly processing – *i.e.*, resolving – close to 100 million cases per year, most without third-party human intervention.

In my view, the entry of non-human decision-makers into legal sectors, including arbitration, is natural, inevitable, and desirable.

Natural? All forms of dispute resolution are algorithmic, *i.e.*, they are processes of collecting, organizing, and evaluating inputs to produce an outcome per certain rules. Such functions would seem to fall within the competitive advantage of machines. Judging the potential of A.I. based on the current version of ChatGPT would be a mistake comparable to an alien visitor from space judging human potential by observing a toddler in a pre-school playground.

Inevitable? I am old enough to remember the introduction of personal computers, cell phones, and the internet into law practice. I am young enough to have been startled at how vigorously so many other lawyers at first resisted such tools. I am enough of a student of history to know that humans once thought they could limit and control each new discovery or technology.

Desirable? The introduction of A.I. into our sector could be a major step in reducing costs faced by disputants and thus expanding access to justice. It could also facilitate more expeditious processes (because of its potential ability to scan, summarize, and even draw conclusions from massive factual records) and higher quality awards (by confirming factual conclusions, checking citations, and possibly challenging the logic of certain preliminary conclusions).

Frankly, it could also in the blink of a human eye scan all public digital information on the planet and propose arbitrator selections based on criteria provided by a party.

I won't take your time restating what you've likely already read, including reports of lawyers caught submitting ChatGPT-generated briefs containing fictional cases … or initial steps to create norms that limit, manage, or proscribe use of A.I. in dispute proceedings. History shows that a technology will always outstrip the ability of its purported masters to control it. Mary Shelley taught us that in 1818.

To tie the topic directly to **Ciarb**, I note that in March of last year, I chaired a tribunal in the first (moot) arbitration in which a party was represented wholly by an artificial intelligence rather than human advocates.

Organized by our colleagues in the Brazil Branch, the arbitration used the fact pattern, exhibits, procedural orders, and key case authority from that year's Vis Moot. The Claimant was represented by the winning team from the Rio de Janeiro Vis pre-moot. The Respondent was represented by ChatGPT and two actors who simply read ChatGPT's arguments, rebuttals, and answers.

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THE IMPACT OF ARTIFICIAL INTELLIGENCE ON ARBITRATION

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Sitting as wings were Louise Barrington and Sophie Nappert. The proceeding followed the standard pattern of arguments, counterarguments, rebuttals, and surrebuttals by the advocates. The arbitrators questioned both sides.

Although it "hallucinated" by citing a non-existent case and then admitted its fabrication when questioned further, ChatGPT's performance exceeded the tribunal's expectations. Responses to tribunal questions aside, the A.I.'s arguments came close to matching the humans' arguments in quality and coherence, even though ChatGPT did not have real-time access to treatises and legal authorities.

If you are interested in viewing that moot (including technical commentary by the team that prepared and coached ChatGPT), you can find it on the Arbitration Channel on YouTube.

If you are interested in more detailed discussion than possible in a newsletter, I would draw your attention to an excellent, comprehensive article published last year by Orlando F. Cabrera Colorado in the *Journal of International Arbitration*.

For those persistent sceptics among us, I draw your attention to the conclusion of an internal Western Union memo from 1878 that I think well captures how things might appear in hindsight if we under-estimate A.I.'s relevance in our sector:

"*This 'telephone' has too many shortcomings to be seriously considered as a practical form of communication. The device is inherently of no value.*" ▲

This article was submitted by Amb. (r) David Huebner, FCIArb, C. Arb Ciarb Trustee for the Americas Region

THE CAYMAN COURTS JUDGMENT IN THE MINSHENG CASE

The Cayman Islands courts have recently delivered a judgment concerning the law and practice of international arbitration, which is a growing feature of the offshore legal landscape.

In ***Minsheng Vocational Education Company v Leed Education Holding Limited & Others,*** the Cayman Islands Court of Appeal (CICA), in an unreported decision dated 28 March 2024 in CICA (Civil) Appeal No. 0019 of 2023, upheld the first instance decision by Segal J to grant an injunction pursuant to Section 54 of the Arbitration Act 2012 (the Act) in support of foreign arbitral proceedings.

The factual background involved disputes over complex corporate lending and security interests, including a contested put option for the sale and purchase of shares in Leed International Education Group Inc. (a Cayman Islands company) and related share charges in favour of the Appellant.

These disputes gave rise to separate arbitral proceedings in Hong Kong and, later, in Beijing. Whereas the Hong Kong arbitration concerned matters including the put option, the Beijing arbitration concerned rights and obligations under the loan agreements

The Beijing arbitration was conducted under the rules of the China International Economic and Trade Commission (CIETAC), as stipulated by the relevant loan agreements, whereas the share charges contained a non-exclusive jurisdiction clause in favour of the courts of the Cayman Islands.

At first instance, Segal J granted an injunction to restrain the Appellant from enforcing the share charges pending the outcome of the Beijing arbitration. The jurisdictional basis for the injunction was Section 54 of the Act, which provides that:

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(1) A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their seat of arbitration is in the islands, as it has in relation to the proceedings in court.

(2) The court shall exercise those powers in accordance with its own procedures and in consideration of the specific principles of international arbitration.

In the exercise of this discretion, Segal J had applied the well-established *American Cyanamid* principles. The order was made by Segal J before the tribunal in the Beijing arbitration was fully constituted, and evidence had been adduced by the Respondents to the effect that no such protective measures could, in any case, be granted by the tribunal of the Beijing arbitration.

Segal J took account of those factors in his order, by requiring the Respondents to apply to the tribunal in the Beijing arbitration within five business days of its constitution for permission to continue to rely upon the interim injunctive remedies

The Respondents duly applied to the Beijing tribunal for such permission, however, a decision upon that application remained pending.

On appeal to the CICA, the Appellant advanced four grounds of appeal against the first instance decision. For the reasons given in the leading judgment delivered by the Hon. Sir Anthony Smellie KC, the CICA unanimously dismissed the appeal and upheld the judgment of Segal J.

The first ground of appeal was that the Respondents were required to seek relief in either the Hong Kong or Beijing arbitrations, or from the supervisory courts at the seat of the arbitrations. In rejecting this argument, Smellie J. A. stated that the jurisdiction of the Court to grant interim relief in aid of foreign arbitral proceedings allows the issuance of interim measures in support of arbitrations taking place in other jurisdictions and there is no hard and fast requirement that a party must first apply to the arbitral tribunal itself or to a court in the seat of the arbitration for an interim measure, before applying under Section 54.

The second ground of appeal was that an injunction was unavailable because of the competing jurisdiction clause in the share charge documents. This ground failed because the jurisdiction clause in the share charges was non-exclusive and thus did not preclude another forum, including an arbitral forum, from having jurisdiction in respect of disputes arising in relation to the share charges. Furthermore, the parties had contractually agreed to resolve all disputes "*relating to*" the loan agreements by arbitration, thereby giving the tribunal jurisdiction to resolve them.

The third and fourth grounds of appeal concerned arguments that no preservation order could properly be made in the case and that there could be no injunction to restrain enforcement of security. These grounds were also dismissed.

Consequently, the decision of the CICA in ***Minsheng*** represents a robust confirmation of the jurisdiction of the Cayman Island courts to grant interim protective measures in support of foreign arbitral proceedings in appropriate cases. ▲

This article was submitted by Andrew Pullinger and Shaun Tracey