

Final Report of Caribbean Task Force Institute for Transnational Arbitration – Americas Initiative

12 June 2023

**Calvin Hamilton and Hon. Barry Leon (Co-Chairs)
Theominique D. Nottage (Deputy Chair)¹**

The Caribbean Task Force of the Americas Initiative was established in September 2021 to facilitate Institute for Transnational Arbitration (“ITA”), through its Americas Initiative, to assist with the development and increased use of arbitration in the Caribbean. It was believed that the Caribbean, while located in the Americas, has infrastructure, cultural and capacity building needs which require independent focus. We were honored to have been entrusted with leadership of the Task Force.

Objectives. The objectives of the Caribbean Task Force included the following:

- Supporting existing and future regional and local international arbitration initiatives in the Caribbean;
- Raising awareness of and advancing international arbitration practice throughout the Caribbean (specifically targeting the legal and business sectors, as well as the judiciaries of the region);
- Promoting good international arbitration practices, in addition to raising the awareness of, and challenging any perceived deficiencies in, existing arbitration laws and practices in the Caribbean;
- Encouraging and assisting countries in the Caribbean to adopt the Model Law and encouraging all stakeholders in those countries to be knowledgeable about best practices regarding the Model Law’s implementation and interpretation; and
- Supporting ongoing conversations in the Caribbean about the evolution of cutting-edge arbitration relation issues, such as third-party funding, transparency, open court versus confidentiality issues, immunity of arbitrators, corruption, and so forth.

Working Plan and Advising on Actions, Projects and Opportunities. The Task Force was charged with developing a working plan, which it did, and then advising ITA on further actions, projects, and opportunities. We provide that advice to ITA in this Final Report.

Focus Group Meetings. The Task Force concluded that the most effective course would be to consult widely (through what we termed “Focus Group Meetings”) with those in the Caribbean most involved with arbitration and/or in positions important to its development and success, on

¹ Hana Doumal, former Registrar of the BVI International Arbitration Centre, served as a second Deputy Chair until about early March 2023.

how ITA can be of greatest assistance to the institution of arbitration in the Caribbean, including to arbitration organizations and practitioners.

We viewed the Focus Group Meetings as having two main purposes. Firstly, we wanted to – and did – gather information on the state of arbitration in the Caribbean, and needs, strengths, opportunities, desires, and the like. Secondly, we wanted to – and believe that we did – explain ITA’s objectives in and for the Caribbean. Our goal was to build a favourable perception that ITA desires to team up with Caribbean practitioners and organizations to support their initiatives, create opportunities and identify synergies. As we said to many of the people with whom we met, ITA is not looking to come to the Caribbean to tell people what to do or how to do it, but rather to support existing and new initiatives, and undertake initiatives (perhaps together with others) that practitioners and others in the Caribbean would like to pursue. Finally, we worked to build an understanding of and support for the roles that the America’s Initiative may be able to play in the development of arbitration in the Caribbean.

Initial Focus Group Meeting and Core Group. The Task Force held an initial Focus Group Meeting with four key people², which went very well, and added to our knowledge and understanding of the state of arbitration in the Caribbean and what ITA assistance may be needed. Those four key people continued to assist us with our subsequent meetings, with one or more of them attending most of our other Focus Group Meetings.

Focus Group Meeting with a Wide Range of Caribbean Stakeholders. The Task Force sought to meet with, and seek the advice and counsel of, over 50 individuals in the Caribbean. While scheduling logistics did not enable us to meet with all of them, which of course was not a surprise to us, we met with several in each of our categories (as outlined below), including a couple of categories that had not been part of our initial plan for our Focus Group Meetings. Everyone engaged with us in the Focus Group Meetings and appeared supportive of the ITA’s involvement in the Caribbean.

Ultimately, we concluded that we had obtained sufficient information such that meeting with more people would bring us to the point of diminishing returns. We believe we obtained a high percentage of the relevant information that was possibly obtainable. We also believe that we have a very good understanding of where the ITA can add value.

Although we did not meet with all the individual stakeholders, we expect that what we accomplished with those with whom we did meet has been and will be transmitted informally to others in the Caribbean. Additionally, having tested our desired messaging, there will be an ongoing opportunity for the ITA to “keep spreading the word.”

² Shan Greer (St Lucia; now BVI); Dancia Penn, OBE KC (BVI); Andrew Pullinger (Cayman); Miles Weekes (Barbados; former chair of Caribbean Branch of the Chartered Institute of Arbitrators)

Among the stakeholders, and others, with whom we met were the following:

- senior and former members of Caribbean judiciaries with arbitration knowledge;
- several Caribbean Attorneys General with arbitration involvement, including bringing arbitration legislation before their legislative bodies;
- senior and up-and-coming arbitration practitioners and litigation counsel in Caribbean jurisdictions;
- leaders of Caribbean arbitral institutions and organisations;
- people involved with various current arbitration initiatives in the Caribbean;
- academics / law teachers in Caribbean universities and law school;
- General Counsel, Caribbean Development Bank; and
- ICC International Court of Arbitration representatives regarding potential greater ICC involvement in the Caribbean.

The names and positions of the stakeholders with whom we met appear in the Appendix at the end of this Report (pages 7 – 8).

Potential Areas for Task Force Role. The Task Force initially identified six potential areas in which the ITA may have a role in the furtherance of development of arbitration in the Caribbean, and through the various Focus Group Meetings, we ascertained others:

1. UNCITRAL Model Law implementation in Caribbean jurisdictions that have out-of-date arbitration laws.³
2. Raising arbitration awareness among litigation and transactional lawyers and the Caribbean business community (including chambers of commerce); demonstrating to them why arbitration can be to their economic and professional advantage; assisting them to understand and get comfortable with arbitration; developing more of an “arbitration culture” in the Caribbean by assisting and working with those organisations and institutions that are working on this already; and assisting litigation counsel with ideas on how to build an arbitration component in their practices.
3. Assisting Caribbean arbitrators to increase their practical knowledge, competitiveness, profile, and arbitration network, including within ITA.

³ Some Caribbean jurisdictions modernized their arbitration laws by adopting the Model Law, while a few others are at various stages of doing so. Yet several Caribbean jurisdictions continue to have outdated arbitration laws and have been doing little or nothing to update them. Significant steps forward recently have been the adoption of a version of the Model Law for the Caribbean known as the CARICOM (Caribbean Community) Model Arbitration Bill, and then the most current version of the model, the Impact Justice Model Arbitration Bill 2022. The development of the model bill was through a Canadian-funded project, the Improved Access to Justice in the Caribbean Project (IMPACT Justice) and involved leading arbitration practitioners in the Caribbean. Now Caribbean jurisdictions desiring to update their arbitration laws can adopt or adapt the Model Arbitration Bill, leading to modernisation and harmonisation throughout the Caribbean.

4. Judicial education about arbitration and the arbitration issues that come before courts, where such judicial education is desired by the judiciary. Also, encouraging jurisdictions to have specialized judges for arbitration matters and providing coordinated training for them (which was suggested by one of the Caribbean chief justices, who suggested this could be implemented informally and reasonably quickly by heads of judiciaries in the Caribbean who have an informal network).
5. Increasing the awareness of arbitration in the Caribbean business community, especially among SMEs, chambers of commerce, and the many Caribbean businesses that transaction across borders.
6. Leveraging the arbitration activity in Latin America for the mutual benefit of the Caribbean and Latin America, including the nuances of civil versus common law issues and practices.
7. Assisting legal educators in the Caribbean to develop and present arbitration courses in law schools including arbitration mooted programs.
8. Working with the Caribbean Development Bank (“CDB”) to gain its assistance in education and capacity in borrower countries, including in the countries’ Attorneys General departments, as lending arrangements frequently include arbitration clauses, and the CDB is focused on “ease of doing business” initiatives.

Conclusions, Recommendations and Priorities. We have concluded that the most effective participation of ITA in the Caribbean, which we recommend to the Americas Initiative as priority activities, should be where it can make the greatest impacts in both the shorter and longer term.

We consider it important that initial projects be achievable in a reasonable period, be visible, garner positive attention from stakeholders, and build a base of support and positive feelings.

Initial ITA Priorities in and for the Caribbean. Having regard to those criteria, the following should be considered as ITA initial priorities:

1. **Model Law Implementation.** Assisting in those jurisdictions in which efforts are being made already by government and/or practitioners to modernize their arbitration laws. ITA can assist them to explain to stakeholders (including in the public and private sectors) the importance, particularly for economic development, of a jurisdiction having modern arbitration laws.
2. **Capacity Building Among Legal Practitioners.** There are adequate arbitration training and education programs available for legal practitioners, through the Chartered Institute of

Arbitrators, arbitration centres and institutions, the Caribbean ADR Initiative (CADRIN), and ad hoc programming.

First, the need is to assist dispute practitioners to appreciate that there can be rewarding arbitration components to their practices, and to assist transactional practitioners to appreciate the value and fundamentals of arbitration so that they will include arbitration clauses in commercial contracts.

Overall, younger practitioners have had more exposure to arbitration during their legal education and in prior work experiences. Senior practitioners are less familiar with arbitration, are comfortable in the courts, and have some concerns that they will not have the same competitive advantages in arbitration as they consider they have in court litigation, and that arbitration may not be as remunerative for them.

Then, we anticipate that there will be increased take-up of arbitration training and education, and more tailored courses and programs to the needs of legal practitioners in different circumstances and jurisdictions.

- 3. Judicial Education and Training About Arbitration.** Overall, judicial education needs to accompany the modernization of arbitration laws and the increased use of arbitration. Judges in some Caribbean jurisdictions see few arbitration matters, and often may not have the benefit of counsel who are well-versed in the field. Judges would benefit from increased arbitration training relating to their role and the types of matters likely to come before them, and ideally from having more resources to consult, as and when needed. Programs such as the ICCA Judicial Outreach Programme, which centres around its New York Convention Roadshow, come to mind.⁴
- 4. Assisting Legal Educators in the Caribbean.** There are legal educators in the Caribbean who would like to see their institutions implement arbitration courses and mooted programs. ITA and its members can be resources for them, including as guest lecturers, assisting with skills development programs and the like. The normalization of online teaching and training can make such assistance easily accessible and economical.
- 5. Raising the Profile of Caribbean Arbitration in the Americas.** Until recently, the Caribbean has not been too visible on the world of international arbitration. This has changed to some degree because of promotion done by some Caribbean arbitral institutions, law firms, and individuals. Caribbean Arbitration would benefit from greater profile in the Americas and more interaction between more Caribbean practitioners and practitioners in the Americas. More interaction between Americas and other ITA members,

⁴ <https://www.arbitration-icca.org/judicial-outreach>

and Caribbean arbitration practitioners, would advance this goal. It would be valuable for more ITA members to attend, and participate in, arbitration conferences in the Caribbean, and to encourage more Caribbean arbitration practitioners to join ITA and/or attend ITA programs and events. In this respect, and consistent with the goals of the ITA Task Force, it may be constructive to consider reduced rates for participation in ITA for certain eligible members of the Caribbean community.

Endnote. We appreciate the opportunity which the ITA Americas Initiative afforded to us to conduct this Task Force and would welcome the further opportunity to assist the Americas Initiative in moving forward with its initiatives in the Caribbean.

NOTE: Appendix is on Pages 7 – 8

Appendix

Names and Positions of Stakeholders with Whom Task Force Met

1. Dancia Penn, OBE KC (Dancia Penn & Co; former BVI Attorney General, BVI)
2. Shan Greer (at the time, St Lucia; now CEO & Registrar, BVI International Arbitration Centre, BVI)
3. Andrew Pullinger (Campbells, Cayman)
4. Miles Weekes (former chair, Caribbean Branch, Chartered Institute of Arbitrators, Barbados)

5. Sir Dennis Byron (former President, Caribbean Court of Justice)
6. Chief Justice Patterson Cheltenham (Barbados)
7. Mr. Justice Sir Brian Moree (now Justice of the Court of Appeal of The Bahamas; at the time, Chief Justice of The Bahamas)
8. Hon. Dennis Morrison (former appellate court judge in several Caribbean jurisdictions, including President , Court of Appeal of Jamaica; former Judge, Caribbean Court of Justice)
9. Justice Jacob Wit (Judge, Caribbean Court of Justice)

10. Vanessa Abdel-Razak (La Chambre de Conciliation et d'Arbitrage d'Haïti (CCAH))
11. Tanya Goddard (Arbitration and Mediation Court of the Caribbean (AMCC), Barbados)
12. Francois Lassalle (at the time, CEO, BVI International Arbitration Centre, BVI)
13. Dr. Peter Maynard (International and Western Hemisphere Arbitration and Mediation Centre (IWHAM), The Bahamas) [also in subsequent Focus Group – see #28]
14. Marie-Camille Pitton (CARO Centre, OHADAC Regional Arbitration Centre, Guadeloupe)

15. Carita Wallgren-Lindholm (former Chair, ICC Commission of Arbitration and ADR, Anguilla)
16. Gregory Pantin (Hamel-Smith, Trinidad)
17. Jamal Smith (Thornton Smith, BVI)
18. Dr. Jane Fedotova (Conyers, BVI)
19. Arabella di Iorio (Agon Litigation, BVI)

20. Diana Wilson Patrick (General Counsel, Caribbean Development Bank)

21. Hon. Jaundy Martin (at the time, Attorney-General, St. Vincent & the Grenadines)
22. Stacey Grinage (Senior Crown Counsel, Head of Legal Advice Unit, Attorney General's Ministry, Belize)

23. Nirana Parsan (Head, Process Review Team, Ministry of the Attorney General and Legal Affairs, Trinidad & Tobago)
24. Seryozha Cenac (Senior Crown Counsel, Attorney General's Chambers, St. Lucia)
25. Claudette Joseph (at the time, Attorney General and Minister of Legal Affairs, Grenada)

26. Eddy Ventose (University of the West Indies, Cave Hill Campus, Barbados)
27. Retired Justice Rubie Nottage (University of The Bahamas)
28. Dr. Peter Maynard (Law Department, University of The Bahamas) [also in prior Focus Group – see #13]
29. Dr. Kim Kyte-Thomas (Law Department, University of Guyana)
30. Raffael Heffron (University of the West Indies, St. Augustine Campus, Trinidad & Tobago)
31. Tonya Bastian Galanis (Principal, Eugene Dupuch Law School, The Bahamas)

In addition, the Task Force met with Natalie L. Reid and José Feris, ICC International Court of Arbitration's Caribbean Working Group.
