Court-Connected Arbitration in Belize

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Introduction

1. I have the dubious, and as yet untested, privilege, of having conceived the current Belize proposal for Court-Connected Arbitration (CCA).
2. It was conceived during a day-dream during the interesting Fourth High-Level Meeting on the Role of the Judiciary in International Commercial Arbitration held during October 23-24, in Castries, St Lucia 2014 - proof that positive results do sometimes come out of such meetings.
3. The conception of the Rules, as well as having piloted its drafting to the point ready for enactment, was conducted by me under with the enlightened approval and under the guidance of our Chief Justice Hon. Kenneth Benjamin, as the only Chair of the Belize National Court-Connected Mediation Committee ("the Committee") since its establishment.
4. As conceived, CCM is not dissimilar, in administrative concept, to the now well established system of Court-Connected Mediation (CCM) successfully implemented in Belize and the rest of the English speaking Caribbean.

Court-Connected Mediation in Belize

5. In Belize, the Supreme Court of Judicature Act, provides for the Chief Justice by himself or with the concurrence of the other judges, to make rules for the purposes of regulating and prescribing the procedure and the practice to be followed by the Court in certain civil causes and matters.
6. By this process the Civil Procedure Rules, 2005 was introduced in Belize.
7. Such rules expressly established as its overriding objective, the need for the court to deal with cases justly, so as to save expense, while also dealing with cases proportionately, expeditiously and allotting to each case an appropriate share of the court's resources, and also taking into account the need to allot resources to other cases.
8. These Rules also obliges the court, in exercising any discretion granted to it, and in the interpretation of the rules, to give effect to its overriding objective, to more actively manage each filed claim, including by encouraging and facilitating the parties to use any

appropriate form of dispute resolution to resolve their disputes. This included not only mediation, but by extension, arbitration as well

9. It was by this process and under this procedure, that a system of CCM was approved by the Chief Justice and brought into force as an amendment to the Civil Procedure Rules, for the purpose of regulating and prescribing the procedure and the practice in civil claims for mediation.

CCA in Belize

10. Under a draft proposal, rules and a code of ethics was originally drafted by me, developed by experts in the field in the UK[1] and the Caribbean[2], but was fine-tuned by a specially convened sub-committee of the National Court-Connected Mediation Committee of the Supreme Court of Belize[3].

11. The draft rules for CCA has now been finalized, approved by the Committee, presented to and approved by the Chief Justice, is now being finalized by the Belize's Government Legislative draftsperson, prior to its enactment ready for implementation.

12. It is to be noted that Belize has a very old Arbitration Act which, even in the absence of CCA services, already makes complete, if somewhat unsatisfactory, provision for parties to civil claims, indeed to any potential dispute, or any claim, to opt out of the court trial process, by submitting their dispute or claim to be heard by an arbitrator.

13. In addition to the rules being prepared a large number (41 persons) of both lawyers (28) and non-lawyers (16) have been trained and obtained certification as Arbitrators from the Chartered Institute of Arbitrators (CIArb), as well as having received a certificate from the University of the West Indies (UWI) and are eligible to be approved to be on the Roster of Arbitrators by the Chief Justice (of which many have already been sworn).

14. Following enactment and implementation CCA it is intended to give further encouragement to the parties in civil claims to use CCA, where appropriate, as part of an increasing multi-door approach to dispute resolution.

[1] Dr Emilia Onyema, Associate Dean, Learning & Teaching, Faculty of Law & Social Sciences, SOAS, University of London.

[2] Dr. Christopher Malcolm, Senior Lecturer and Deputy Dean in the UWI Faculty of Law at Mona, and Partner in the firm of Malcolm Gordon, Attorneys-at-Law; and Ms. Shan Greer a Legal Consultant with the Firm of Floissiac Flemming, Attorneys-at-Law; and both Fellows of the Chartered Institute of Arbitrators and respectively the Chair and Vice Chair of the Caribbean Branch of this Institute.

[3] Under my Chairmanship and advisory to the Chief Justice of Belize, comprising Ms. Julie-Ann Ellis Bradley, Ms. Ashanti Marin Arthurs, Ms Liesje Chung and Ms. Samantha Matute.

What is CCA?

15. The purpose of CCA and its rules and administration is predominantly to promote, encourage and make more accessible, the use of existing arbitration laws by incorporating the arbitration process into Court services. As already noted, CCA in this respect, is not particularly innovative but presents and new twist to the procedures in Belize.

16. As conceived, the total effect of the intended CCA rules, like the system of mediation, will be to create only part of the whole system of arbitration, but to which will be added a system of administrative and advisory functionality.

17. The administrative function is to be performed by an Arbitration Coordinator (an officer of the court appointed by the Chief Justice), as well as an advisory Committee of stakeholders to be morphed out of the existing Committee and to be restyled a National Dispute Resolution Committee.

18. It is hoped that these recommended advisory functions, will support the proposed system by adding additional persons, related to arbitration, which will result in a wide ranging and representative group of stakeholders to the justice system to monitor and advise the Chief Justice on how the whole system, of CCM, CCA and dispute resolutions, would be administered, both within the court system – and also linked into similar initiatives within the community.

19. This administrative layer, of stakeholders, which has generally worked well in relation to the system of CCM, in Belize, would add legitimacy and integrity to the system by enabling meaningful stake-holder participation within the justice system.

18. It is also felt that the involvement of such a, expanded body of stakeholders would greatly enhance the overall Justice system by not only assisting in guaranteeing its efficacy and responsiveness to community needs; but also helping to generate and garner public support and acceptance of this additional layer (CCA) to the dispute resolution system.

What is Court-Connected Arbitration – & what are its objectives?

20. CCA is a relatively new, indeed novel, arrangement to the region, and as conceived, to the world. It was not modelled on any other institutional arrangement but I am told, however, by at least one expert, Dr Malcolm[4], that something like it may exists in a state in the USA.

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21. CCA is an arrangement by which a national court, in relation to a domestic and filed claim, and as part of, and to benefit, its own institutional or procedural arrangement, decides to promote and to offer its institutional name (the Supreme Court), administrative services and weight, as well as a very close and specific connection, to a proposed system of arbitration, as a possible additional optional method of dispute resolution, where considered appropriate by litigants,.

22. It is a means by which the court publicly and specifically offers, indeed positively promotes, arbitration, to parties to a specific filed claim, subject to its civil procedure rules, by offering them an opportunity to opt out of the need for the court's own civil judges trying any dispute.

23. It essentially involves an institutional decision to promote and to administer, arbitration and its National arbitration laws, as an appropriate dispute resolution arrangement, as not merely an alternative, but as being considered a better option than trial by a Judge.

24. The essential aspect of this arrangement is the freedom, or autonomy, of the parties to opt into the use of trial by trained arbitrator(s), rather than its otherwise busy judges, through this dispute mechanism; and to use its laws, rules, practices and procedures to govern the conduct of such arbitration, to conclusion or resolution, before such a matter is returned to court for enforcement, if needed.

25. The process of getting to CCA involves first establishing administrative machinery, around its own arbitrations laws, and enacting suitable rules, involving a fee for the use of its services, principally to disputing parties.

<u>The Rules, Practice and Procedure of CCA</u>

26. The rules as conceived and drafted (together with attached forms), and the practice and procedures, as well as a Code of Ethics for CCA Arbitrators being suggested, are devised:

    (i) To be wholly consensual with all of the parties having the absolute right to select from a trained and approved Roster of arbitrators to resolve their dispute; and to take responsibility for the selection of such arbitrator(s) to act as the judge of their claim.

    (ii) While not mandated, the Court, given that this new development is court-connected, does have an interest, including reputational interest, to protect. AS such it will have an on-going responsibility to support capacity building and professional development for the persons on its Roster of Arbitrators and who are to be utilized in court-connected matters.

(iii) The Court may be engaged to select an arbitrator only where parties who submit their claim to arbitration are unable to agree to the selection of arbitrator(s).

(iv) Court-Connected Arbitrators are to impartially assist the court on the matters submitted to them. So are such person(s) selected to be Arbitrator(s), from a Roster approved by the Court, as they are to be deemed, by the Court, to be fit and proper persons to maintain the high standards of competence, and the standing, to be expected in a just and relatively modern and efficient court system; and of persons who are expected to maintain public confidence by their competence, independence and integrity.

(v) A Code of Ethics for Arbitrators also accompanies the proposed Rules in order to "regulate, assist and guide" Arbitrators in the conduct of arbitrations; and to provide an additional framework of conduct for such arbitrations.

27. Thus a precondition of any CCA arbitration is an absolute right of all of the parties to a filed claim to agree to opt into CCA.

28. Unlike the court-connected mediation process, which may or may not result in a final resolution of the issue or dispute before the mediator, any decision (or award as it is called) of an arbitrator, ought in every case to result in a final determination by way of a determination of the dispute by way of a final award, with the eventuality and result similar to a final and binding judgment of a Judge of the court (in legal terms described as having 'res judicata' status).

29. Thus such a final decision of an arbitrator (a final award), with the permission (or imprimatur) of the court, ought then to be enforced in the same manner as a judgement or order of the court - and with the same binding and legal effect.

30. The process of reaching such a final decision involves the decision, or award, being returned to the Court for final disposal by order of the court as if the case had been tried by a Judge of the court; and then immediately, if found appropriate by and with the permission of the court, subjected to enforcement procedures as if the case had been tried by a Judge of the Supreme Court.

31. This arrangement has potential benefits not only for litigants but also to the persons who represent parties to a civil claim, as well as trained arbitrators, who may be, but not necessarily, be lawyers. These benefits will be in the form of new opportunities to be trained (which has in some measure already taken place) for, and to function, as part of the Supreme court trial process, as attorneys, adjudicators and even as expert

witnesses (as a by-product of a specialist being trained in arbitration) and thereby to assist in the resolution of civil disputes in the Supreme Court.

32. In this regard the Belize Supreme Court will piggy-back on, and take the benefit of, the world-class, well recognised and established training services being provided by both the University of the West Indies (UWI) (Open Campus of Belize) and the Chartered Institute of Arbitrators, of which there is a Branch in the Caribbean at the time of the training headed by Dr Christopher Malcolm as its Chair and Ms. Shan Greer as its Vice-Chair.

33. The court would maintain an acceptable Roster of Arbitrators, already established, all of whom are governed by an approved Code of Ethics, which could be enforced through the auspices of the Court.

34. CCA would not therefore be considered as part of a system of its alternative, so called 'ad hoc' arbitration, since it is court-connected, and is therefore attached to the considerable institutional weight which the court, as part of the legal system, has as a separate branch of Government.

35. The court, by its proximity to and as the seat of the claim, is uniquely able to administer, manage, supervise and assist in the process of arbitration, by leveraging its considerable weight to it. This would take place even before commencement of the arbitration; by being available to constitute the arbitration tribunal itself from its own roster of Arbitrators, and thereafter, if absolutely necessary, providing backup during and after the arbitration, in as many ways as necessary, and from a relatively close position.

36. The court in CCA is conveniently and strategically proximate, to act as a back-up, by providing its necessary and close connection and presence in relation to any such arbitration under it. This might take place for example in the case of the provision of any necessary interim measures of protection, particularly by guaranteeing the preservation of the subject matter in dispute, and also by providing mechanisms for security for costs and the enforcement of any award.

37. As conceived the intended rules, when enacted, have been carefully crafted by the national court, in our case Belize, to securely fit with the national mandatory arbitration laws in place, and within which the arbitration may take place.

38. In this regard it may be necessary to give a plug to the UNCITRAL Model Law to be adopted as the generally accepted 'gold standard' for a model arbitration law. The approved rules have sought to incorporate this Model Law, and its accompanying rules, wherever possible, into its provisions which, it is hoped will provide a secure basis for

and a secure seat and centre to attract arbitration to the jurisdiction, and will allow a seamless fit when, it is hoped, the Model Law is introduced into Belize (which is being highly recommended).

39. As conceived, in addition, the proposed Rules of CCA have careful considered and even had added into it, other non-mandatory rules, often taken from either treaty's ratified by Belize. This has been done alongside other best practices operating in other treaties and international conventions, to guide the parties, their lawyers and the arbitral tribunal. The drafters of the Rules considered that there is no point in reinventing the wheel, as we have learned, and can readily see, a great many minds, learned in arbitration worldwide, have already given a lot of time and attention to different aspects of arbitration, from which we can benefit, and of which we can take advantage

40. It is thus that we in Belize, in the case of CCA, have devised our rules; based on such best practices; which the parties by agreement can opt into; as a preferred alternative, as appropriate, to trial by a Judge.

41. The Rules for CCA, as conceived, will therefore have established procedural rules and a Code attached to it, and guiding its process, after the parties to a claim have opted into it. Therefore as proposed, the Rules for CCA will provide, a secure place, or seat, of arbitration, under, hopefully, modern laws of arbitration, to provide, certainty and security, and on which the parties can rely.

42. The court is already in the business, and therefore has the know-how, of providing to the public the services connected with litigation. This is by having a suitably adopted venue, competent secretarial support, and having available translators', interpreters and court reporters. It has hearing rooms with all the court paraphernalia etc. which is its raisin detre to provide. But the court is aware that it will have to be prepared, and willing, to meet the challenge to able to also extend itself administratively by providing, or indeed outsourcing, additional, efficient and neutral (but basic) secretarial, administrative and communication services, to support the expertise of the arbitrators, which will guarantee the smooth and efficient functioning of the arbitral process.

<u>Why have CCA now?</u>

43. It is a recognition that a national legal system has advanced to the point where it is in a position to leverage the highly developed jurisprudence and desirability of making available arbitration as an appropriate method of dispute resolution to litigants, their lawyers and the community, and also to relieve the pressure on its own resources, and be in a position to administratively support such a development.

44. The immediate benefits sought to be introduced by CCA are many and include that:

(i) litigant's choice is introduced into the civil justice system;

(ii) appropriate expertise could be accessed and brought into the judicial/adjudication process;

(iii) a filed claim, as appropriate, could otherwise be diverted from the already stretched and underfunded resources in the justice system of trial by a Judge;

(iv) the judicial function would be outsourced while bypassing any need for a trial by an overworked and under-resourced Judge without being subjected to any of the usual constraints connected with such a trial;

(v) the conservation of time and resources by a court-connected process which has community support and involvement.

(vi) the overall democratization of the justice system by training and suitably tapping into available human resources in the community to assist in dispute resolution.

45. All of these would assist the court in its attempts to promote and otherwise facilitate a multi-door approach to dispute resolution, and also further the court's objective of the use of alternative dispute resolution in appropriate cases.

<u>The Way forward for CCA</u>

46. In short the way forward is to roll CCA to the region, with Jamaica as the start, and other legal systems, like Guyana, Barbados, Trinidad & Tobago and the Eastern Caribbean to follow. All as a way of leveraging the considerable benefits which arbitration provides, as an addition to the menu of options available to our court systems, to enable a just and expeditious resolution of disputes – particularly commercial ones. There appears to be a growing interest in other such legal systems such as Guyana, Barbados Trinidad & Tobago and the Eastern-Caribbean.

47. In so doing it is hoped that in Belize modern arbitration laws will be swiftly enacted, in the form of UNCITRAL Model Law, as a low hanging fruit to be grabbed, as an immediate and tangible improving to the system, and by CCA, a considerable advancement could be made to the present system.