

LAUNCH OF BI LONDON DISPUTE RESOLUTION BROCHURE

"DELIVERING RESULTS IN DISPUTE RESOLUTION"

11 am Mansion House Wednesday 2nd February 2000

Address by Lord Hacking

It is most gracious of you, my Lord Mayor, to have invited us today to this magnificent room in the Mansion House. Your personal interest in our project is greatly appreciated.

In launching today our brochure "Delivering Results: Dispute Resolution in London" we are, in the first place, celebrating two ancient arts long practised in the City of London - 'the art of trading' and 'the art of arbitration'.

As you know, my Lord Mayor, London can trace its history in trading back to the first century AD when, as *Londinium*, a Northern city in the Great Roman Empire, London developed a significant trade in exporting wool and wood - that strong durable English oak - and in importing wax and other more refined goods from other parts of the Roman Empire.

What you may not know, my Lord Mayor, is that, arbitration as a means of settling disputes, was well established under Roman Law by the first century BC. Under Roman Law the parties to a dispute entered into an agreement, called

a *compromissum*, to submit to arbitration and abide by the award. Among the writings of Roman authors - Cato, Cicero, Livy, Ovid and Seneca - of the first century BC and the first century AD - there are to be found extensive references to arbitration. Cicero, for example, considered arbitration as "mild and moderate" as against litigation which he considered to be "exact, clear-cut and explicit"!

Although not authenticated, it is a nice thought that both the arts of trading and arbitration were practised here in London two thousand years ago - another Millennium event for celebration!

Nor is mediation new to London. Although I could probably improve upon my sources it is interesting to note that William Shakespeare, four hundred years ago in London, felt so confident of his audience's knowledge of the difference between arbitration, mediation and litigation that, in *The Rape of Lucrece*, he put these words into the mouth of the unfortunate Lucrece:

*'Out, idle sons, servants to shallow fools!
Unprofitable sons, weak arbitrators!
Busy yourselves in skill - contending schools,
Debate where leisure serves with dull debaters;*

*To trembling clients be your mediators.
For me, I force not on argument a straw,
Since that my case is past the help of law.'*

When working with my fellow editors on our brochure, I was rather taken with these words. As those of you, who have opened the pages of the brochure, will notice, we have sought to 'spice up' the brochure by putting in quotations alongside the main text. I therefore tried to persuade my fellow editors to include this quotation ... *'Unprofitable sons, weak arbitrators ... to trembling clients be your mediators'....!* My Lord Mayor, I was met with a solemn silence. "Well" I said "If you don't like that quotation. What about a good quotation on trading? What about John Masefield's poem: *Cargoes*?" I am sure, my Lord Mayor, you are familiar with this poem:

*'Quinquireme of Nineveh from distant Ophir
Rowing home to haven in sunny Palestine ...'*

and then to the third verse

*'Dirty British coaster with a salt-caked smoke stack,
Butting through the Channel in the mad March days,
With a cargo of Tyne coal,
Road-rail, pig-lead,*

Firewood, iron-ware, and cheap tin trays.'

Alas, my Lord Mayor, my fellow Editors seemed to be even less impressed. It was at that moment Judith Gill spoke.

I have been fortunate to have an excellent Board of Editors working with me. Unfailingly, however, it was Judith who spoke with reason and good sense. As I recall she said something on these lines

'David: in the first quotation you were at least only asking us to offend the entire arbitral and mediation community in London, whose interests I thought we are meant to be promoting! In the second quotation we will be vexing London Maritime Arbitrators Association, upsetting the Institute of Chartered Shipbrokers, wounding the Institute of Marine Engineers, distressing the Institute of Materials, perplexing the Institute of Mining and Metallurgy and insulting the London Metal Exchange ..."

There is a time in our lives, my Lord Mayor, when we should just gracefully give way ...!

I should, therefore, like to express publicly the kindness and generosity of my fellow editors in actually agreeing to publish two other quotations which I brought to them.

One appears on page 10 of the brochure, for which I am originally indebted to Professor Martin Hunter. Quoting the Chancellor in the Star Chamber of 1475

'This dispute is brought by a foreign merchant ... who has come to conduct his case here, and he ought not to be held to await trial by twelve men and other solemnities of the law of the land but ought to be able to sue here from hour to hour and day to day for the benefits of merchants.'

And the other is to be found on page 12, for which I express thanks to Adrian Winstanley, Registrar of the LCIA. Thus we record the statement made at the inauguration of 'the City of London Chamber of Arbitration' (the predecessor of the LCIA) on 23rd November 1892

'This Chamber is to have all the virtues which the law lacks. It is to be expeditious where the law is slow, cheap where the law is costly, simple where the law is technical, a peacemaker instead of a stirrer-up of strife.'

Arbitration in England had a rather tempestuous time during the first three-quarters of the now departed

twentieth century. In words which we would find today to be as untrue as they are rude, Lord Justice Scrutton ruled in the Court of Appeal in 1925 that arbitrators "untrained in law" were unfit to conduct arbitrations unless supervised by the courts. Two years earlier, when the British government proposed to enter into the Protocol of the Assembly of the League of Nations in Geneva of 24th September 1923 on the validity of arbitration agreements both the Lord Chancellor, Lord Cave, and the Attorney General, Douglas Hogg KC, threatened resignation rather than to have an Assembly of the League of Nations create laws to which English Courts would be bound.

It is, therefore, most happy for us that these difficulties and others are of the past. Thanks, most particularly, to the work of Mark Littman's London Arbitration Group (called rather unflatteringly LAG), and the Report of the Commercial Court Users' Committee, under Mr Justice Donaldson, as he then was, we rid ourselves at the end of the 1970's of excessive interference by the English Courts into the arbitral process. Although it took us another 18 years to get our Arbitration Act 1996 onto the statute book, we can say with confidence, and with particular thanks to Arthur Marriott and his Arbitration Group and to the noble and learned Lords Mustill, Steyn and Saville, and their colleagues in the DTI Departmental Arbitration Committee, that we have truly reviewed the law

and practice of arbitration in London. Gone now are the 'special category disputes' (which were only invented as an ingenious compromise by John Donaldson to get the 1979 Arbitration Act onto the statute book) as is also gone the different treatment in law between domestic and international arbitrations. Big effort it has been but it has truly been worth it. Yet we can never rest on our laurels. We should never stop seeking to improve the application and practice of our arbitration law.

Our first aim, therefore, in preparing the brochure was to celebrate the new legal environment in which arbitrations and mediations can now be conducted in England. More, however, is needed than getting our arbitral law and practices right. As that grand old Judge, Lord Denning said, shortly after the 1979 Arbitration Act went onto the statute book:

'The law has been reformed. The need now is a place in London where the great international arbitrations can be held.'

That day has now been reached. The new International Dispute Resolution Centre is shortly - very shortly - to open in Breams Buildings off Chancery Lane. Madeleine May, Executive Director of the LCIA, is here to tell us

about it. It is all part of our celebration in presenting this brochure to you.

Our second aim, in preparing the brochure, was to acquire and master the facts. We wanted to know how many international arbitrations are being conducted each year in or from London. We wanted to know how important were these arbitrations and what was the value of the issues at stake. We wanted to know from where the parties came and in what areas of commercial activities the disputes arose?

On behalf, therefore, of all the editors and sponsors of this brochure, I would like to express deep thanks to all of the barristers' chambers and other London law firms who gave us assistance. We name those who helped us in the acknowledgements on page 16 of the brochure: the most sincere thanks to you all.

While it was not possible for us to establish exactly how many international arbitrations and mediations, which are taking place each year in or from London, we are satisfied that there are between 4,500 and 5,000 international arbitrations and mediations taking place each year in or from London. That is a considerable number and uses much resource from London's arbitral and mediation community.

So it was we began at the beginning by defining the

various forms of dispute resolution, litigation, arbitration, mediation and the other species of what is often described as Alternative Dispute Resolution or ADR. In this we were greatly assisted by being able to quote a wonderful description of international arbitration in action which is contained at the beginning of the latest edition of Redfern and Hunter:

International commercial arbitrations take place daily, in different countries and against different legal and cultural backgrounds; because they take place by agreement between the parties, and are conducted in private, there is an informality about them which is striking. There are no national flags or other symbols of state authority. There are no ushers, wigs or gowns - simply a group of people seated round a row of tables in a room hired for the occasion. To an outsider, it would look as if a conference or business meeting was in progress.

Redfern & Hunter do go on, of course, to state "the appearance" of the international arbitration in action "conceals the reality" because this arbitration process can only take place under "a complex system of national laws and international treaties".

Our third aim was to identify and describe what we perceive to be the important dispute resolution services

which London offers to the international community. We therefore focused upon the quality of our dispute resolution skills, the quality of our commercial law and the available expertise from arbitrators, mediators, experts and all others who are all involved in London in the dispute resolution process. We were able to identify, for example, there are no less than sixty-six arbitration and mediation bodies, Trade Associations, Councils, Academies, Exchanges, Faculties, Institutes, Institutions, Schools of Higher Learning and the providers of support services who are all importantly involved, one way or the other, in dispute resolution in and from London. It has to be stated this is a most impressive list. If you want an expert in marine engineering, you can go to the Institute of Marine Engineers, if you want an expert on plastics, glass or metals, the Institute of Materials is there to supply you one. If you want expertise in the mining and extraction of metals from the earth, the Institute of Mining and Metallurgy is there to help you. I name few out of many. Do spend some time to look through the Principal Contacts list and tell us, as I am sure we should be told, there are still others we have not yet found and identified.

I think it ~~is~~ important to pause here and focus upon the particular contribution that our premier arbitral and

mediation bodies, the Chartered Institute of Arbitrators, the LCIA (the London Court of International Arbitration) and CEDR (the Centre for Dispute Resolution) are making internationally in the provision of our dispute resolution services. As the very distinguished Secretary to UNCITRAL (the United Nations Commission on International Trade Law) has publicly stated - we quote his words on page 13 of the brochure - the Chartered Institute of Arbitrators provides, as the premier body the world-over, the "most comprehensive and high quality arbitration and training and certification programme" which is of enormous benefit to the better conduct of all arbitration anywhere in the globe. A most important contribution is also made by the LCIA, now administering arbitrations where there is a 90% representation of overseas parties, in its LCIA Symposiums for international arbitrators. They are so popular you had better start reserving places for 2001 ! A similar important contribution is made by CEDR, who is much increasing its work load of international mediations, in its training programme. Its most popular Annual Summer School is attended by a world wide network of international mediators.

If evidence is needed of these training programmes increasing the quality of English arbitrators and arbitrations one has to go no further than the statistics published by the ICC (the International Chamber of

Commerce) in Paris where we find for 1998 (the 1999 figures are not yet out) that the ICC, in appointing 107 English arbitrators, appointed more arbitrators from this country than from any other country. Of equal significance there has been one hundred per cent increase, over the last three years, in the number of ICC arbitrations held in London. Pages 12 and 13 of our brochure, covering these facts, are also worthy of study.

Our fourth, and, in some ways most important aim, was and is to direct those who want to use the dispute resolution services available in London to where they can be found. As we state on page 16 of the brochure

'There is unlimited choice. Those who come to London may want the full arbitration or mediation services of one of London's big international law firms with the vast range of resources which it can provide. Others who come to London may just want the advocacy or specialist services provided by barristers' chambers. Some may want to use one of the many of other forms of dispute resolution in employing solicitors or barristers or neither. Others may just want an hour's worth of advice before conducting their own arbitration or mediation in London. Some may only want the essential assistance of an expert

witness while others may need no more than to know which premises can be booked for their arbitration or mediation, or where stenographers, notary publics, translators and interpreters are to be found.'

It is, therefore, much our hope that our brochure will serve anybody who wants to use any part of the dispute resolution services which we provide in and from London.

I and my fellow editors also learned a lot. We learned how large is the volume of trade. We learned, for example, there is traded every day at the LIFFE Exchange between 25,000 and 50,000 metric tons of coffee futures. We learned that the total annual trade in cocoa in London amounts to 10.8 million metric tonnes and that 80% of claims administered by the Cocoa Association of London involves overseas parties on both sides. Outside London we learned that 60% of the world's cotton trade (valued at US\$ 18 billion) is conducted under the Rules of the Liverpool Cotton Association. Gone may be the textile industry in Lancashire but not our share in the world cotton trade. We also learned that maritime arbitration can trace itself back to brokers meeting in a coffee house in London in 1744 or earlier - this being the origin of the Baltic Exchange. We learned too of the huge involvement of GAFTA and FOSFA in international trade -

the former having 800 members spread across 80 countries and the latter 700 members spread across 67 different countries. We also learned of the capacity of GAFTA, FOSFA and the LMAA in the conduct of arbitrations. Members of the LMAA are now receiving over 3,000 arbitral appointments each year. There was much else we also learned. The large number of ad hoc arbitrations, numbering as we best were able to calculate between 400 and 500, which are conducted each year in London, predominantly have overseas parties and involve colossal sums ... US\$ 390 million and US\$ 1.5 billion to name two of the figures which were given to us. We also learned of many initiatives which have been taken in the field of arbitration and other dispute resolution, by the worldwide trade associations based in London. For example it was as a result of the initiative taken by an enterprising Secretary of Lloyd's, one Henry Hozier, in 1890, in a visit to the Dardanelles, after a large number of groundings of ships in those waters, which resulted in the formation of Lloyd's Salvage Arbitration Branch and the worldwide use today of the Lloyd's Open Form.

Out of all our work, we have **not** been able to produce a modest document of humility. It is, therefore, perhaps a little un-English in its immodesty! We were furnished with the facts. We have stated them as we saw them. It

is for you to state whether or not you agree with us. What I, and my fellow editors, know is that we could not have completed our work on the brochure without the enormous help which so many gave to us. Duncan Mackenzie of BI was a pillar of strength and the support staff, particularly Emma Blair and Sarah Balfour, of the now dissolved London Office of Sonnenschein, gave us unstinting assistance. Our copy writer Nigel Page was inspired and our graphic designer Tony Payne gifted. We would not have got anywhere but for the painstaking early research provided to us by Ted Martin and we happily follow, my Lord Mayor, in your footsteps in congratulating our printer, John Fitzgerald, for the fine finished product of our published brochure.

I end with heartfelt words of praise to my fellow editors ... even if they do not like my quotations - I suppose I have to admit that it was not that **I** was having trouble with them but **they** were having trouble with **my quotations**

...Judith Gill, Arthur Marriott, Geoff Prevett and Peter Rees to whom I would like to couple, the names of David Sutton and Michael Lee who joined, for a time, our editorial board and gave us much valuable advice as did also Neil Aitken and John Bishop. To these words of praise and thanks, I express great gratitude to all six of the sponsoring law firms. In a decision, which I hope

will be a forerunner of other such decisions in London when we are grouping together to present the best of our skills, each of the sponsoring firms most gracefully waived their right to use this brochure for promoting their firms. They asked for no more than their names should appear on the back of it. In acts of equal generosity other law firms, whether named in the brochure or not, have offered through their own outlets to give this brochure the widest of circulation. This is in splendid recognition that our legal profession and all others involved in dispute resolution in London can and do unite for the common good.

This whole enterprise would never have happened but for the initiative of two years ago of the Joint Consultation Council (the 'JCC'), the parent body of the LCIA, under the Chairmanship of Arthur Harverd. Nor would this enterprise got under way but for 'London First' initially taking the lead before BI most generously made all of its resourses available to us. I am very grateful too for the personal invitation of Madeleine May to take over the editorship from her and for the continued support of her and the JCC under John Bishop's Chairmanship throughout this project.

My Lord Mayor, and all assembled here to-day, in giving

most sincere thanks to the JCC, BI, my fellow editors, the sponsors, and all the contributors to this excellent brochure, may I invite you all, in the words of Puck, at the end of Shakespeare's A Midsummer Night's Dream to

'Give me your hands'.

DAVID HACKING

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22.5.00.