

The International Arbitrator

Louise Barrington – *Managing Director*

Aculex Transnational Inc. Hong Kong

Tel: + 852 6409 0356

Email: louise.barrington@gmail.com

Website: www.aculextransnational.com

ACULEX TRANSNATIONAL INC.
The Professionals...



Businesses all over the world are increasingly turning towards ADR mechanisms such as arbitration to settle disputes, moving away from the traditional approach of litigation via the courts. Arbitration is time-saving, confidential and cost-effective; it has become a vital means of protecting commercial interests.

With 2010 coming in as a blockbuster for cross-border M&A activity, international arbitration has never been hotter. It's a constantly evolving and dynamic field and it is essential for arbitrators keep up with regional, technological and cultural developments within all of the areas they operate. Acquisition International speaks with Louise Barrington, Managing Director at Aculex Transnational Inc, Hong Kong and the leading international arbitrators about finding the "common ground" in their jurisdiction.

Louise Barrington trained and practiced in Canada, attorney in New York and qualified solicitor in England. In 1997 she founded the ICC's first regional office, ICC Asia, in Hong Kong and was responsible for promoting and teaching arbitration from Pakistan to New Zealand. She later joined City University School of Law and first sat as arbitrator in 2001. She now acts as counsel in international cases as well. Clients range from insurance and contracting companies, to private individuals and law firms seeking outside expertise in international arbitration.

With experience on four continents, including a dozen years each in Europe and Asia, and 25 years in international arbitration, she has handled scores of commercial cases in London, Paris and Hong Kong, under English, French, Hong Kong, Vietnamese, Korean laws, as well as several US states and Canadian provinces under ICC, HKIAC, UNCITRAL rules.

An accredited mediator, she tailors techniques and procedure to the circumstances of the parties and their case, always attempting to find the most efficient and cost-effective solution to the dispute.

Louise is a Commission member of the ICC which is currently revising the ICC Arbitration Rules among its projects. She is also a Chartered Arbitrator and Fellow of the Chartered Institute of Arbitrators (London), and former officer, and a currently a member of its Education & Training Committee in London. She is a panel member of BCIAC, SIAC, KLCCA, BANI, CIETAC, and founding president of Paris-based ArbitralWomen, and of the Vis East Arbitration Moot in Hong Kong.

"Because the practice is truly trans-continental, I work by email and videoconferencing. Typically, this week while in Korea to conduct a conference, I sent a draft witness statement for approval to a client in Paris, discussed it with him by videoconference, had the statement formatted in Hong Kong and sent to Paris by email for signature, then filed it with a tribunal in London. CDs transport the case 'files'."

One continuing concern to clients is expense. The longer and more complex the procedure, the more expensive it is. Before embarking on a full-scale "litigation style" procedure, consider which elements are really necessary. Are two exchanges of witness statements really needed? Will parties agree to production of necessary evidence without orders? Can some issues be agreed before the procedure commences? Use mediation to try to settle all or some issues and reduce the resulting efforts and hearing time. Is an oral hearing necessary? Is a jointly appointed expert feasible? Most important, does the claim amount justify the expense of the procedure? Consider the possibility of an "arbitration pre-nup" - a contractual clause limiting the kinds and expense of procedures to be used, should a dispute arise.

One important consideration for parties intending to arbitrate is the choice of the place of arbitration. Hong Kong is for many disputes, the ideal 'seat'. Its new Arbitration Ordinance, Cap. 609, is expected to come into force in June 2011. It provides a single regime for both domestic and international cases, extending the UNCITRAL Model Law to all arbitrations in Hong Kong.

At the request of construction industry representatives however, the Ordinance does allow Parties to "opt in" to elements from the old domestic regime, for example, to seize Hong Kong court on a preliminary question of law or a limited right of appeal.

The Hong Kong International Arbitration Centre (HKIAC) continues as the appointing authority, should one or both parties fail to choose an arbitrator. This is far easier and more efficient than the Model Law's default clause specifying the courts at the seat. Hong Kong's statutory default is one arbitrator, for a less expensive and probably quicker procedure than the Model Law default of three.

The new Ordinance adopts the 2006 Model Law amendments on tribunal ordered interim measures, and provides a broad definition of "writing". It also continues the existing regime for enforcing awards between Hong Kong and Mainland China - not covered by the New York Convention.

The new user-friendly format cites the Model Law verbatim, clearly indicating which articles are applicable and which have been modified for Hong Kong. It is easily readable and accessible for non-Hong Kong parties.

With the finest judicial system in the region, its excellent infrastructure, a large pool of experienced arbitrators and counsel, and now one of the most advanced arbitration laws in the world, Hong Kong maintains its leading role as a dispute resolution centre for the Asian region.



Luis M. O'Naghten
Chair, International Litigation & Arbitration
 25th Floor, 1 SE Third Ave., Miami, Florida 33131
 Tel: 305.982.5687 Email: luis.onaghten@akerman.com
 Web: www.akerman.com



Akerman serves clients throughout the United States and overseas from Florida, New York, Washington, D.C., California, Virginia, Colorado, Texas, and Nevada. Akerman is ranked among the top 100 law firms in the U.S. by The National Law Journal NLJ 250 (2010) in number of lawyers and is the largest firm in Florida. Luis M. O'Naghten Chairs the Akerman's International Litigation and Arbitration practice, based in Miami. Akerman's international arbitration practice has been recognized by U.S. News - Best Lawyers as a national tier one law firm for International Arbitration.

"My typical clients are large multinational companies, although I also represent foreign sovereigns and individuals with large claims.

"Akerman's construction arbitration team is generally engaged by the arbitration administrative body as well as acting as party appointed neutrals in self-administered arbitrations. Client representation includes both industrial and commercial owners as well as general contractors."

What experiences do you possess in terms of international disputes and the laws of different nations?

"As both an arbitrator and counsel for parties, I am regularly tasked with interpreting and applying laws of different nations. Although trained as a US lawyer, as an arbitrator I have had to apply the laws of several Latin American nations as well as other civil law countries, including Spain and France."

How has the global downturn impacted both the type and the volume of work in your jurisdiction?

"The global downturn has, paradoxically, created pressure to both bring new claims as well as to hinder the filing of new arbitrations. Clients are much more careful before committing to an expensive arbitration process when there is much doubt that even if successful in the arbitration, the ability to collect is diminished because the respondent simply does not have the funds to pay an award. Conversely, there are simply more disputes that have arisen due to the downturn.

"What I have definitely seen in my practice is the increased involvement of sovereigns in disputes, particularly out of Latin America. Sovereigns are taking a much more aggressive stance that has resulted in a greater number of arbitrations.

"The fact that more is being expended by governmental agencies in order to stimulate the economy, gives rise to unfamiliar business arrangements and requirements creating disputes between Joint Ventures, Prime Contractors and Subcontractors and participants in Teaming Agreements."

"The global downturn has, paradoxically, created pressure to both bring new claims as well as to hinder the filing of new arbitrations. Clients are much more careful before committing to an expensive arbitration process when there is much doubt that even if successful in the arbitration, the ability to collect is diminished because the respondent simply does not have the funds to pay an award. Conversely, there are simply more disputes that have arisen due to the downturn."



CONWAY & PARTNERS
 ADVOCATES AND ATTORNEYS-AT-LAW

Shawn C. Conway
Partner
 Otto Reuchlinweg 1132, P.O. Box 52610,
 3007 KC Rotterdam, The Netherlands.
 Tel: +31 (10) 204 2200 Email: conway@conway-partners.com
 Web: www.conway-partners.com



Conway & Partners N.V. is one of the few firms in the Benelux region with extensive experience in the area of international dispute resolution. AI talks to Shawn Conway, managing partner of the law firm Conway & Partners.

"As a boutique law firm focused on international arbitration as one of our core practice areas, Conway & Partners has a team lawyers trained in both the civil and common law systems who have a proven track record dating back to the early 1980's of successfully representing clients in complex matters. Lawyers in our practice group have acted as counsel in cases submitted to arbitration under the rules of the International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), Stockholm Chamber of Commerce (SCC), World Intellectual Property Organization (WIPO), American Arbitration Association (AAA), Netherlands Arbitration Institute (NAI), International Centre for Dispute Resolution (ICDR), and in related court actions before U.S. and Netherlands courts, as well as the European Court of Justice.

"In addition to the arbitration practice, Conway & Partners lawyers are also experienced litigators, and thus regularly act for parties before the district and appellate courts of the Netherlands. Our litigators work with our transactional attorneys in, for example, corporate litigation matters."

What makes you the right arbitrator?

"Our lawyers are regularly asked to serve as sole arbitrators or on tribunals in disputes administered under the auspices of leading arbitration institutions and associations, such as the Netherlands Arbitration Institute, London Maritime Arbitration Association and the Permanent Court of Arbitration. Obviously our long experience in the international arbitration field is an important factor. But perhaps a more distinguishing factor in our being appointed is our familiarity with both common law and civil law regimes. That can be an important asset in dealing with counsel and fellow arbitrators from different legal systems as is for example often the case in major arbitration venues like Switzerland. Language ability can also play a role."

Although still considered a less expensive means of dispute resolution, there is growing concern that arbitration proceedings are becoming more costly both in time and money, what are your thoughts?

This is certainly a risk and there is an undeniable trend in that direction, particularly in large value disputes. The creeping growth of US-style "e-discovery" is one of the greatest threats in this regard. If it continues to gain traction, it could cause a very significant increase in not only costs, but also the duration of arbitrations.

How has the global downturn impacted both the type and the volume of work in your jurisdiction?

"Volume most definitely has increased. We have seen a marked increase in disputes in the Middle East, particularly out of Dubai, Abu Dhabi, and Qatar. In addition, there has been a wave of joint venture and long-term contract disputes as business partners have felt the effects of the downturn and sought to terminate relationships which are no longer considered viable."

"In addition to the arbitration practice, Conway & Partners lawyers are also experienced litigators, and thus regularly act for parties before the district and appellate courts of the Netherlands. Our litigators work with our transactional attorneys in, for example, corporate litigation matters."

Toronto has become a “go-to” destination for complex commercial arbitration. I am a committed participant in this process both as counsel and arbitrator. As an advocate for 38 years, a certified civil litigation specialist and a Chartered Arbitrator, I practice commercial arbitration globally and locally every business day in the Ellyn Law LLP Arbitration Group.

I am a member of TCAS¹, which promotes Toronto as an international arbitration centre benefitting from the competence of local counsel and arbitrators, excellent facilities and a supportive legal environment. Our judiciary defer to arbitration. The UNCITRAL Model Law forms part of our statute law.

A member of the Canadian Panel of International Commercial Arbitrators of the ICC² I accept engagements as arbitrator, mediator and counsel. I arbitrate fluently in English and French and am also conversant in Romanian, Hebrew and German. Ellyn Law LLP is the designated Toronto arbitration firm of the prestigious INBLF³ network. My colleagues and I are keenly focussed on excellence in commercial arbitration and litigation.

Our cases span many industries including software, insurance marketing, reinsurance, mining, media, waste management, financial services, pharmaceuticals, auto dealers, construction and manufacturing. We know the UNCITRAL, ICC and LCIA and other arbitration rules. We have also litigated over arbitration clauses before trial and appellate Courts in Canada.

Recently, I was counsel both at an arbitration in Canada and in the English High Court in the seminal case of *Accentuate Ltd. v. Asigra Inc.*, which addressed difficult questions as to choice of arbitral forum and law in the face of mandatory law relating to English and EU commercial agents. I was temporarily called to the English Bar to appear as a QC before the High Court.

The resolution of complex business disputes is the *raison d'être* of Ellyn Law LLP. We represent private and public corporations and their shareholders. We have represented foreign banks and multinational corporations. Our practice includes enforcement of arbitral awards under the New York Convention and enforcement of judgments of foreign courts.

My colleagues and I have written extensively in our fields of expertise. Our paper, *Shareholders Remedies in Canada*, has been especially well-received as have others published on the internet. We authored the Canada chapter of *Enforcement of Money Judgments* (Juris Publishing, New York). We also presented a paper on international arbitration at a conference of the New York State Bar Association and Cornell University.

Even as devoted users of the latest technology, we are impressed by the power of the internet and social media to help business people find competent advocates and ADR professionals. These technologies enhance our ability to serve clients from every corner of the globe, as demonstrated by an interactive world map posted on our website.

“Thinking globally. Acting locally.” is a motto Ellyn Law LLP takes very seriously in every engagement.

¹ www.TorontoCommercialArbitrationSociety.com.

² Canadian representative of International Chamber of Commerce, www.chamber.ca.

³ International Network of Boutique Law Firms, www.INBLF.com.



Igor Ellyn, QC, CS, FCI Arb
Senior Partner – Chartered Arbitrator & Mediator
Tel: +1 416 365 3750
Fax: +1 416 368 2982
Email: iellyn@ellynlaw.com
Website: www.ellynlaw.com



ELLYN LAW LLP

Business Litigation & Arbitration Lawyers
Toronto, Ontario, Canada

BOUCHAIB LAW FIRM

Maitre Bouchaib Adnane
Avocat à la cour

20, Rue Claude Debussy, (en face du conseil d'Etat),
Alger centre, 16000

Tel: +213 (0) 21 74 80 43
Fax: +213 (0) 2174 80 44
Mob: +213 (0) 770 588 555

E-mail: bouchaiblawfirm@hotmail.com
Web: www.whlaw.eu



HUGHES HUBBARD & REED LLP

8, rue de Presbourg, 75116 Paris

Tel: 33.(0)1.44.05.76.22 / 33.(0)6.72.07.92.73
Fax: +33.1.45.53.15.04

E-mail: hoogveld@hugheshubbard.com
Web: www.hugheshubbard.com



BHEEROO CHAMBERS

Sunil Bheeroo
Barrister

507, Chancery House, Lislet Geoffroy Street, Port Louis, Mauritius

Tel: +230 210 0507 Mob: +230 256 3824
Fax: +230 210 5782

E-mail: sunilbheeroo@intnet.mu
E-mail: bheeroochambers@intnet.mu
Web: www.bheeroochambers.com





B U F E T E

Rodríguez Márquez

José Antonio Rodríguez Márquez, Chartered Arbitrator, and the founding partner of Bufete Rodríguez Márquez, S.C. 25 years ago.

"I started my practice in dispute resolution 15 years ago; during those years I have acted as sole arbitrator, chair, co-arbitrator, and advocate in more than 40 cases, most of them international ones, with venues in Mexico, and the United States of America. I have been involved also in international mediation during the last 7 years.

"Normally my services as arbitrator have been engaged through the arbitral institutions; in most of my arbitral cases where I have acted as an arbitrator, I have been appointed by the institutions. As an advocate my services are hired normally by medium and large national and multinational companies.

"I am the right arbitrator because of my background as international transactional attorney, and the experience that I have gained in the international cases where I have participated."

What experiences do you possess in terms of international disputes and the laws of different nations?

"The experience I possess in international disputes comes from controversies in corporate

José Antonio Rodríguez Márquez.

Partner

Socrates 128-602 Polanco Chapultepec
11560 Mexico City, Mexico.

Tel: +52 55 5282 4608 Email: jarodz@brm.com.mx Web: www.brmlex.com



matters, commercial ones, energy, construction, infrastructure, hospitality industry, real estate, and taxes, where I have handled laws of different countries and legal traditions, such as the Anglo-American, and Romanic-Germanic, systems."

Although still considered a less expensive means of dispute resolution, there is growing concern that arbitration proceedings are becoming more costly both in time and money, what are your thoughts?

"I concur that arbitration proceedings are becoming more costly both in time and money. Because of the way that advocates present their cases, and the perception of certain abuse of process and discovery. There is also certain dissatisfaction in the consumers of arbitral services, the companies, because of the deficient training and poor performance of some arbitrators, and the uncertainty in the process."

How has the global downturn impacted both the type and the volume of work in Mexico?

"It is my perception that the global downturn impacted both the type and the volume of work in my jurisdiction; now there are more litigious work than corporate one. There are less cases and more potential lawyers offering their services, and clients experiencing the lack of cash flow."



BRICK COURT
CHAMBERS
BARRISTERS

Hilary Heilbron QC

Barrister

Brick Court Chambers, 7-8, Essex Street, London WC2R 3 LD

Tel: 0207 520 9932 (Direct dial) Email: hilary.heilbron@brickcourt.co.uk

Web: www.brickcourt.co.uk/hilary-heilbron-qc/arbitration-cv.asp



Hilary Heilbron is a barrister and Queen's Counsel with extensive experience as counsel both in international arbitration and commercial litigation where both English and foreign law is involved. She has appeared in numerous court cases and international arbitrations for a wide range of national and international clients, including as leading counsel in the Supreme Court and Privy Council and in many LCIA and ICC arbitrations. Her experience extends to many industry sectors.

She also sits regularly as an international arbitrator, as chair, sole and party or institution appointed arbitrator, in ICC, LCIA, ICDR and ad hoc arbitrations and is a registered arbitrator trainer for the ICDR. She is a Deputy High Court Judge and an accredited mediator.

She has spoken and written extensively on international arbitration and cross-border litigation and is the author of "A Practical Guide to International Arbitration in London" and the chapter on Damages in the Second Edition of "The Leading Arbitrators' Guide to International Arbitration".

"International arbitration offers considerable benefits over litigation to parties with cross-

border disputes. This may explain why, despite the recent global downturn, it continues to flourish as a means of dispute resolution. In particular it takes place in private; the parties can usually choose their own arbitrator; and it is often speedier than litigation as there is no appeal save in very limited situations and the flexible procedure available to arbitrators, together with more limited disclosure rules, enables tribunals to focus on the real issues in the case.

"Importantly the New York Convention, to which over 140 states are signatories, makes international awards more readily enforceable than judgments. While sometimes the costs of arbitration can be almost as expensive as litigation, this is not always the case, and in any event such costs have to be viewed in the context of the substantial sums at stake and the importance to the parties.

"London is one of the leading centres for international arbitration and the Arbitration Act 1996 provides a modern approach to arbitral procedure in line with other countries, although not directly adopting the Model Law in full."



STRACHAN
PARTNERS
Solicitors and Advocates

C.A. Candide-Johnson SAN, FCI Arb

Partner

5th Floor, Akuro House, 24 Campbell Street, Lagos, Nigeria

Tel: +234 1 7748703 ; +234 803 403 0224

Email: cacj@strachanpartners.com Web: www.strachanpartners.com



Strachan Partners is a commercial law firm providing a full range of services to local and international clients all over Nigeria from its offices in Lagos. AI Magazine talks to C. A. Candide-Johnson S.A.N., FCI Arb, about the firm's experience in dispute resolution.

Who normally engages your services?

"National and multinational Insurance companies, oil and telecommunications companies as well as ship owners and cargo interests."

What makes you the right arbitrator?

An accumulation of high skill and experience in the arbitration and litigation of complicated and big ticket commercial transactions along with a jealously guarded reputation for integrity and a record of unimpeachable awards. I was chairman of the committee that drafted the far visionary 2009 Arbitration Law of Lagos and a founding member of the Lagos Court of Arbitration.

What experiences do you possess in terms of international disputes and the laws of different nations?

"I have advanced academic training in UK and international commercial law and maritime law, have trained in ICC arbitration procedures, and have actual experience from

appointment in ICC and LMAA arbitrations.

Although still considered a less expensive means of dispute resolution, there is growing concern that arbitration proceedings are becoming more costly both in time and money, what are your thoughts?

"This concern is real and users, including substantial corporations approach the process with trepidation. Often ad hoc arbitrations are of open ended cost and even institutional arbitration portends great cost to parties based on value of dispute and such considerations. It is increasingly necessary to reassure users that they will get high quality for a commensurate cost and that uniformity across jurisdictions and institutions will be pursued. Arbitration has to succeed as a genuine alternative to litigation by delivering a cost effective and time effective alternative to the states courts system."

How has the global downturn impacted both the type and the volume of work in your jurisdiction?

"It is clear that the volume of work has contracted but not necessarily at the high quality end of dispute resolution. There is an increased tendency to try and limit costs including tribunal fees and this is not necessarily bad. We have to live the legend that arbitration is not so much about earnings as about effective and high quality resolution of commercial and such disputes."