Director General’s Review of 2006

Round-up

2006 was another eventful and successful year for the LCIA.

In May, the LCIA Court and Board took the landmark decision to publish the LCIA Court’s decisions on challenges to arbitrators, in the form of abstracts. This decision was informed, in particular, by a detailed report prepared, at the request of the Court, by Geoff Nicholas and Constantine Partasides of Freshfields Bruckhaus Deringer, to whom a debt of thanks is due.

The “Nicholas-Partasides” report will appear in the next issue of Arbitration International and work is under way on the preparation of abstracts of all LCIA challenge decisions.

November saw the inaugural meeting of the “Corporate Counsel International Arbitration Group” (CCIAG) at the Paris offices of GE. CCIAG was an LCIA initiative, led by Jean-Claude Najar and Paul Hannon, to whom we are most grateful.

CCIAG was established to act as a forum for debate among the end-users of arbitration and as a channel of communication for their concerns, proposals and initiatives. Though initially sponsored by the LCIA, CCIAG is an independent body and it is expected that, once fully operational, CCIAG will consult with all the leading institutions, with a view to ensuring that the services we provide are relevant and effective.

In December, through the good offices of Pierre Bienvenu and Azim Hussain, of Ogilvy Renault, and of Fédéric Bachand, of McGill University, the LCIA intervened in the appeal in the Supreme Court of Canada, from the Quebec Court of Appeal, in the case of Dell Computer Corporation against Union des Consommateurs, on two of the main issues of that appeal. Namely, the role of the Court on an application seeking the referral of an action to arbitration and the enforceability of pre-dispute arbitration clauses in consumer contracts, including in the context of a class action.

Membership and Conferences

Users’ Councils

In May, the LCIA Court and Board adopted the first written Constitution for the LCIA Users’ Councils, setting out the aims and objectives of the Councils and the criteria for, and benefits of, membership, in a move that it is hoped will provide a foundation for a more active and productive relationship between the LCIA and its membership.

At the same time, the Arab Users’ Council was established to address the anomaly by which Arab members have had, most typically, to affiliate themselves either to the European Council or to African Council, despite many residing in the geographically distinct Gulf region.

Correcting an earlier omission, the Latin American Council was renamed the Latin American and Caribbean Users’ Council.

As the adoption of the Constitution was intended to mark a new beginning, the loyal and long-serving Council Officers were permitted to retire and new Presidents were appointed to all six Councils. These are Fidelis Odithah (African Council), Essam Al Tamimi (Arab Council), Dushyant Dave (Asia Pacific Council), Wolfgang Peter (European Council), Francisco Orrego-Vicuña (Latin American and Caribbean Council) and David Rivkin (North American Council).

Consultations with the Presidents are now ongoing to fill the other offices on the Users’ Councils and a full roll-call will be published in due course.

The Australian “Chapter” of the LCIA was also disbanded, though Australia will, of course, remain a jurisdiction of great importance to the Asia Pacific Users’ Council. We extend our thanks, therefore, to the Officers of the Chapter: James Creer, Andrew Gibson, Malcolm Holmes, Doug Jones, Andrew Rogers and Laurence Street.

Conferences

We put on as full a programme of conferences as ever, all of which were loyally supported by LCIA members in large numbers.

We began with a symposium in Singapore, in February, in our successful joint venture with the IBA. We supported a very successful conference organised by Maitland in Johannesburg in March. In May we were at Tylney Hall and also in Montreal for a symposium linked to the ICCA Congress, of which the LCIA was an important sponsor. September found us in Chicago, with a symposium just ahead of the IBA’s annual conference, and again at Tylney Hall. In October, we were in Mexico City, with CANACO, and November found us in Washington with a joint conference with ICSID. We ended the year as a key supporter, and as the primary organiser, of a conference held under the auspices of IFSL to mark the 10th anniversary of the English Arbitration Act.

But our conference programme was marked by two poignant events. The first was the end of the Tylney era, as this year we shall be holding our flagship spring and autumn symposia at The Grove in Hertfordshire. We hope that The Grove will prove a worthy successor to Tylney Hall, but the proof of the pudding is yet to come.

Second, and of far greater consequence, the departure of Irene Bates, after ten years dedicated service, many of them as the Manager of the membership and conferences department. We expressed our thanks and appreciation to Irene, on behalf of the LCIA Court, Board and membership, at the autumn Tylney and followed up with a most enjoyable farewell party here at the LCIA, which was attended by many members, and at which we were pleased to present Irene with a gift as a token of our affection. We wish Irene all the very best for the future.

YIAG

The Young International Arbitrators Group goes from strength to strength under the chairmanship of Domitille Baizeau, Matt Gearing, Melanie van Leeuwen and Shai Wade, with membership up by 300, to over 1,460, during the past twelve months, despite the automatic cancellation of the membership of those YIAG members who pass the dreaded milestone of 41 years of age.

Our thanks to the co-chairs and to their most able regional representatives.

Casework referrals

Another year of growth in our core casework appears to confirm that the decline in 2004 was atypical and that we are once again moving firmly ahead.

As between 2006 and 2005, total referrals were up almost 13%, with the 251 cases filed during our biennial monitoring period showing an increase of more than 31% as compared to the previous 24 month period.
As ever, Claimants brought claims arising from a whole raft of commercial enterprises, including agency and distribution; aircraft leasing; construction and infrastructure; deeds of guarantee; engineering; insurance and reinsurance; a variety of joint ventures; loan agreements; a wide variety of agreements in the broad field of petrochemicals; the sale and purchase of shares; shipbuilding and repair; and telecommunications.

**Sums in issue**

In an established pattern, the Claimants in more than a third of the cases referred in 2006 (excluding ad hoc cases referred for selected administrative services) sought initially unquantified damages and/or declaratory relief. As previously, the majority of these cases were to prove high value, once claims and counterclaims were quantified, bringing most into the US$10million-plus category. The fact that the LCIA’s charges, and the charges of the tribunals it appoints, are not calculated on an *ad valorum* tariff may be one factor in this tendency to leave claims initially unquantified. The remaining two thirds of new referrals brought claims with monetary values from US$1million or less up to US$20million-plus, with a number running into the hundreds of millions. As ever, the value of counterclaims typically doubles the sums that are shown on the chart below.

**The parties**

The following charts show the nationality of all parties, Claimants and Respondents, in cases referred in 2006 and in 2005.

The percentage of UK and US parties remains largely unchanged as between those two years. Worthy of note, however, is the number of cases involving German parties, which merits a separate category for
Germany, and a significant increase in the number of parties from Switzerland, Russia and Africa, and a noticeable decline in parties from the Asia Pacific region.

2006

The Tribunals

(2005 figures are shown in brackets for comparison.)

During the course of 2006, the LCIA Court made a total of 175 (152) individual appointments of arbitrators, to a total of 89 (74) tribunals. 46 of those tribunals (52%) comprised of a sole arbitrator; the remaining 43 (48%) of three arbitrators. 13 (9) of these tribunals were appointed in cases that had been referred to arbitration in 2005, with one tribunal appointed in a case that had started in 2004, then gone into hibernation for many
months only to wake up again in 2006. The remaining 75 (65) tribunals were appointed to cases commenced in 2006.

The parties, or party-nominated arbitrators, nominated 101 (81) of the 175 (152) individuals, sometimes from lists provided, at the request of the parties, by the LCIA. The LCIA Court directly selected the remaining 74 (71), in cases in which there was either no express provision for party nomination, or where a party defaulted. 71 (57) of the 101 arbitrators nominated by the parties, that is 70% (the same percentage as in 2005) were of UK nationality. 40 (36) of the 74 arbitrators selected by the LCIA Court (that is 54% (50%)) were of UK nationality. Once again, therefore, the “Englishness” of LCIA tribunals is shown to be a product of party autonomy exercised by users of the LCIA’s rules and services, the great majority of whom are not English.

The nationalities of the remainder of the arbitrators appointed in 2006 included: American, Canadian, Chilean, Dutch, Egyptian, French, German, Greek, Indian, Irish, New Zealand, Nigerian, Swedish, Swiss and Ukrainian.

**Contract dates**

The dates of the contracts in dispute in cases filed in 2006 (where known), and the parallel dates for 2005, are shown in the following two charts. Disputes arising from contracts entered into in the current year and in the two previous years now account for almost 60% of referrals; up 10% in the past two years.

**2006**

![Diagram of contract dates 2006](image)

**2005**

![Diagram of contract dates 2005](image)
Looking forward

In the coming year, we shall strive to maintain the best possible service in the interest of the parties in dispute. We shall also seek to extend our programme of conferences to a wider audience, with a view not only to growing the LCIA’s business, but to meeting our key objective of extolling the virtues of arbitration and other forms of ADR, in particular in jurisdictions in which the virtues of the LCIA option are not well enough known.

We also hope, through the reinvigorated Users’ Councils, to begin to interact more effectively with our membership, to all of whom we wish a happy and rewarding 2007.

Adrian Winstanley
Director General