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MOCK ARBITRATION: CIArb Caribbean Branch Centennary Conference

Christopher Malcolm

TIME 10:25 a.m.

MRS. JANET MORRISON: Good morning, ladies and gentlemen. We are going to start the day's session now. I am Janet Morrison and I am the day's chair. It is with great pleasure that I am here this morning on this historic occasion, what I have to do is merely to say congratulations to those who did the Accelerated Programme. I understand you survived. Congratulations.

Welcome to all the other persons who are here from overseas and abroad. Ladies and gentlemen, welcome. The session will actually be chaired through Mr. Maurice Stoppi, for those who know him and I think all of us who do, he can just be described as the father of arbitration in Jamaica and he has been a practicing arbitrator for the past 25 years. He has authored several local textbooks on the subject of Arbitration and Adjudication and he is the person who I think is most suitable to chair this session which is dealing with the Mock International Arbitration which is going to feature a Mock International Arbitration. I think this is the first time any such effort has been put on in Jamaica and it is going to be very useful in actually demonstrating what an arbitration is all about. Put it simply, it's where the rubber hits the road. Without more adieu, I know our timetable; I am going to ask Mr. Stoppi to take over as the session chair of the mock arbitration session. You will not hear from me again until the end of the day when I do a wrap-up of the entire presentation. It will be tight and short but in that wrap-up session, pull all the strings together so that we come to a tight and tidy conclusion of the arbitration. So ladies and gentlemen, enjoy and have a great day, great session, Mr. Stoppi is going to come.

MR. STOPPI: Nice comments, things I accept with my utmost, I am humbled, I accept with humility. It takes a lot of work to get through today and this mock international arbitration I am assuming that all participants are present. I am thanking Janet for the nice things that she said about me and in doing so I accept it, it is quite—I accept that most humbly, with humility and modesty. Let us get immediately down to the business of things since time is not with us.

The first part of our presentation is between now and 12:30. Before doing so I want to pause just one minute to recognize the extraordinary amount of work that the Programme Coordinator, Mr. Calvin Hamilton
has put in the mock arbitration, not quite so mock. On behalf of the Chartered Institute I extend our congratulations and thanks.

Now, Madam Chairman, before I go into the details I would like to present to you the panelists who are going to take us through this event today. I will begin with—I will identify the persons first, as I do so perhaps you will be kind enough to stand so that you can be recognized. The three arbitrators who chair this Arbitration dispute, Ms. Rocio Dijon who you heard from earlier this morning and the two other arbitral members are Professor John Rooney, who you also heard from earlier this morning and The Right Honourable Edward Zacca. O.J. CD.

Appearing for the Claimant will be Mr. Murray Smith and a short biography will be given and their actual names and for the Respondent/Defendant whichever term you prefer, will be Calvin Hamilton.

Now, just briefly to tell you about the names that I have just mentioned. Mr. Calvin Hamilton is a Senior lecturer at the UWI Faculty of Law at Cave Hill, Barbados and is a Member of the Caribbean ADR Chambers. Ms. Rocio Dijon as you heard is Counsel for the ICC, Court of International Arbitration.

Professor John Rooney is the head of the School of Law at the University of Miami. He is the immediate Past-Chair of UNCITRAL and Past-Chair of the International Arbitration Law Committee and Inter-American Bar Association of Miami. The Right Honourable, Sir Edward is retired Chief Justice of Jamaica 1994. He is the Retired President of the Courts of Appeal Cayman Islands, Bermuda, Turks and Caicos and a member of FSc Tribunal in Jamaica.

Mr. Murray Smith, who is appearing for the Claimant is the Principle of Smith Barristers and he has come all the way from Vancouver in Canada and for the Tribunal Secretary is Mr. Lowel Morgan, who is a Fellow of the Chartered Institute and Managing Partner of Nunes Schofield and Deleon, Attorneys from Kingston. Mrs. Janet Morrison who you heard earlier immediately before me is the Senior Attorney in a Kingston firm of Attorneys Hart Muirhead and Fatta. The CEO for the Claimant, I say Claimant because the procedures are very much in terms of strictly dialogue, all the serious points and salient point in International Arbitration but see CEO Chief Executive Officer of the Claimant in this case is Miss Grace Lindo I see here, for the Respondent Miss Tanya Dunn, Miss Gabriel Hosing, General Counsel for the Claimant, Claimant’s General Counsel is Miss Stephanie Forte. I am sorry, that ladies and gentlemen that completes, oh yes, I should also add. I would like my representatives of the legal profession, I am not in the legal profession I came up through the rank of the construction industry and have seen some of my fellow colleagues here this morning and since what I would like you to do before I hand over the actual work of the mock arbitration I just want to simply outline what we are about to see.

First thing I want to tell you is that a number of scripts have been handed to members, to you, ladies and gentlemen, I’m reliably informed,
that they specific, again good authority, there are more copies so you should get them very shortly so in the meantime I will share and follow as you can.

Basically what we have is the script of the place basically being in text, three acts before lunch and three after lunch that is the suggested Programme. The first one is access to court, place of arbitration, process of meeting of Claimant and his legal advisers. The second meeting of the tribunal is to discuss procedures and the third one before lunch will be the actual hearing including the sole witness, cross-examination of that witness and the 4 will be the tribunal's deliberation of the award and 5 and 6 will be concerned with the award itself.

One thing I should point out is that I mentioned that the first 3 acts will finish at 12:30 so when we come back at one thirty we will deal with the acts in law. First is related only to short theory which I will chair. For the questions and answers and when the times come I will suggest how that process is to be conducted and after that we should be—which would take us to roughly about 4:30. We can wrap up the proceedings of the entire day and we will hear from Janet.

Now as you all know the case that we are dealing with had to do with a manufacturer of wine and the selling of commercialization of the wine. Mr. Hamilton has asked me to—I have been requested by Mr. Hamilton to advise the members here today because this is a mock arbitration there will be no distribution of free samples of wine. Thank you.

(LAUGHTER)

MR. STOPPI: Next part of the proceedings. Madam Arbitrator thank you.

MR. HAMILTON: We go by Claimants and Claimant interview of the potential arbitrator to determine whether or not to appoint that arbitrator so I think you should—the first scene will deal with the Claimant interview of the potential arbitrator to determine the appropriateness for appointing that arbitrator, to determine whether or not that arbitrator is qualified to act as an arbitrator to the Tribunal. So what you will see playing out here Professor John Rooney being the potential arbitrator and the counsel, in-house counsel and outside counsel, arbitration counsel interviews Mr. Rooney to determine appropriateness as arbitrator.

MR. STOPPI: Thank you, Mr. Hamilton. Over to you, Mr. Rooney.

SCENE ONE

PROFESSOR JOHN ROONEY: (Description of experience) I have worked in this field for a large part of my professional life. I have represented both Claimants and Respondents in Arbitral Proceedings. I have represented parties in judicial proceedings as it relates to arbitration. I have served as both as co-arbitrator and as chair of the tribunal. In terms of numbers I will give you an approximate numbers in terms of the time I serve as arbitrators, probably thirty to thirty-five.

MR. HAMILTON: That completes Scene One.

(APPLAUSE)
SCENE TWO

(A P P L A U S E)

MR. HAMILTON: That ends scene two. And what was played out there was the actual consultation that goes on, consultation that goes on between the CEO, persons responsible for legal affairs at the company and the counsel with respect to the arbitrators or potential arbitrator, this is exactly what will happen, they will make the decision, try to make the decision, try to cover all the aspects of that profile for the arbitrator, to take into consideration potential issues that might arise in the arbitration itself and also addressing questions which may or may not arise, the seat of the arbitration, that question about seat of arbitration is a crucial one because that is where if indeed we need to have a nationality of the award, that's the nationality, we need to find if the arbitration structure we need is a place that is arbitration friendly and we need laws that are modern and flexible and laws that persons arbitrating in that seat who might not be familiar with that Jurisdiction laws, at least would be familiar with the arbitration laws in the sense these arbitration laws and practices would be common throughout the universe or globally where you do arbitrations, I think that is crucial and that had come out there quite well.

Now this third scene. We go to the other side of the decide and this is where the Respondents now they have gotten wind of that interview and the notes that in-house counsel made of that interview got to the ICC and the ICC distributed that to the Respondent for the purposes of disclosure and fairness and the likes and you will see this role being found out that the interview actually took place and the content of the interview, how they react to the knowledge of the content of that interview.

SCENE THREE

(A P P L A U S E)

MR. STOPPI: That was how we decided doing it for lunch 12:30, what we have decided to do, we could do the first 3, we should continue. Let's do ACT 4.

Well actually what's going to happen as you picked up from the last scene there is a concern about what transpired in the interview and a decision has been made to file the challenge. So what you will be seeing that playing out in Act 4 a panel established by the ICC to determine admissibility and merits of the challenge.

MS. ROCIO DIJON: Just before we go a few points, how a challenge works for the ICC. We are not regular a tribunal; please don't think of us as that. At the ICC challenges are typically decided at the monthly plenary session of the court. Once a month there is a plenary session, that court session involved 3 members. At the plenary session no member of the arbitral tribunal would be present to invite even if they are court members. There are seventeen Vice-Presidents who discuss challenges, awards, opinions and these kinds of plenary session, the opinion and consultation with sort of a larger body of people that are there, furthermore when a challenge is decided two reports is to be prepared, one by the
team in charge of the file at the Secretariat and one by a court member. For example I filed one of my case, North American team, I would prepare sort of a report, this report summarizes the grounds for legal challenge and makes a recommendation to the court in terms of probable ground to deny the challenge on the basis of submissions and comments if any is provided from the members of the tribunal itself and in addition one of the court members prepares a report as well with the recommendation that was read at the plenary session which involves a very brief and discussion during that monthly plenary session. As a matter of practice, the rules on decisions and challenges do not include reasons. Reasons are not provided. Court has now provided two reasons one state the agreement and request of the parties so with that sort of contacts in mind we will begin. This is a sort of smaller group and we are court members right now on stage.

MR. STOPPI: I would like to say it was a wonderful job.

(APPLAUSE)

MR. STOPPI: Calvin you just wish to -will you allow me? We do have—so since the proceedings are just heard and are still fresh in your minds, you recollect fresh things that may have come to you during the course of the previous proceedings I think it would—if we ask our performers to form a small panel to ask questions from the audience. Ask Calvin Hamilton, Professor John Rooney and Mr. Murray Smith, 3 gentlemen occupy the rostrum. Very remiss of me, we do need a rose to sit between the thorns; she would be kind enough to join the panel. We have got a limitation.

PROFESSOR JOHN ROONEY: Possible to hear us like this.

DR. MALCOM: You can project, you can use that mike.

MR. STOPPI: Those asking questions kindly stand and give your names while you ask your questions. Thank you.

MR. DEAN BARROWS: I would like to ask a question with regards to the challenge to the ICC from the Caribbean. Does parties sitting or selected arbitrator appeal directly to the ICC for failure of potential arbitrators or potential arbitrators failure to disclose, is that one of the reasons? Should we go all the way to the ICA in England or is there a local—could we appeal to our local body in the Caribbean?

MS. ROCIO DIJON: In terms of arbitration ICC Rules, it is administered by a case management team, so there are nine in total, seven in Paris, one in New York and one in Hong Kong. The court session are done via video conferences, you make that challenge to the team in charge of the file and that goes to a court session, it doesn’t go sort of to someone in London or someone in Jamaica, you have arbitration under the ICC Rules that challenge is decided by the ICC Courts which is composed of eight different nationalities from different countries.

MR. DEAN BARROWS: I was just speaking of access.
PROFESSOR JOHN ROONEY: Every time that you would have an ICC Arbitration you would have someone assigned to your case and so that would be the person who received the communication.

MR. DEAN BARROWS: Thank you.

JUSTICE GAFOOR: Good morning. I am Anthony Gafoor. I just wanted to raise a point of procedure that if the ICC Court is faced with determining a challenge, is there evidence that where the arbitration challenged would either be brought in or invited to come in to be interviewed or to be given an opportunity to make a statement or response to the challenge?

MS. ROCIO DIJON: There is no opportunity for any sort of oral communication. There is opportunity once to file that challenge, once it is filed it is final, it is sent to all parties and we are given a time limit within which to comment, written form.

PARTICIPANT: I think probably the logical next question if one party is dissatisfied with the decision of the court then what happens next, can that party appeal the decision and if so to whom or would you wait until the award is given and then apply to have it not imposed?

PROFESSOR JOHN ROONEY: I think on the first instance you might look to the law and I think almost it's certainly in the United States, if you have a doubt as to the impartiality of the arbitrator the court will not interfere with that decision, in other words it will take that to the end, in that time you will have an opportunity under our statute law to challenge established by Law, one of statute evidence, impartiality or corruption and the other thing National Law, so important in our law for example we have this little peculiarity, if you challenge the arbitrator for lack of impartiality in attendance the court will not interfere but we have a couple of cases attack arbitrators for lack of qualification, i.e. 5 years of experience in a service industry, we have some cases in the US where the court has entertained that but it's a general proposition for independence and impartiality, the court will not interfere. Once again you need to go before the judge before whom you ask that question.


MS. ROCIO DIJON: So in terms of access to court, you can't appeal the decision, as a general matter parties rarely ask for reconsideration that only recourse is if you have new elements involved, if it exists the court may be invited to reconsider but as a general matter no, you could file 10, 15 challenges, there is one challenge, 12 times rejected each time it happens in practice.

MR. HAMILTON: I actually had an ICC matter which was seated in London where a decision of the court was actually taken to the English Courts, we challenged the decision by the English Courts, we lost it but in some occasions it's done and it came out in the role played that we did. There was a comment that I made to my client that I indeed that this is something that we want to consider if indeed the Jurisdiction in which we are sitting will allow any such appeal or challenge directly to the Court,
challenge of a decision made by the ICC, for example, I made a specific reference to the UNCITRAL Rules, Article 13(3) of the UNCITRAL Rules does speak to possibility of challenging an institution as I think John mentioned, you would have to look at the law of the site to determine whether that would be allowed, well most courts would not usurp the position of the institution. They would say that's where you decided it or the rules that you have adopted the fact that it's unfavourable to you, they wouldn’t really intervene.

MR. MURRAY SMITH: I just like to add that since we are celebrating the Centenary Chartered Institute of Arbitrators, this topic of introducing partiality and impartiality has been the subject of much discussion in the international literature and conferences like this around the world, as a result the Chartered Institute prepared what are called practice guidelines for interviewers and the prospective arbitrators. This document was provided to the participants in the training Programme that we had over the last 2 weeks. The last Charter, couple of materials I will just mention what the guidelines do and identify its great service I think provided by the Chartered Institute is to go through and look, first of all the debate is, then to look at some of the other references or sources or law or authority such as the ADA, Code Of Ethics in Commercial Disputes and the Chartered Institute Guidelines then go on and the proposed guidelines that actually will be followed by any party and that whenever they can after each guideline the guideline with the reference to something in the literature such as article by Reid and something that was written, so a great source if you have any challenge. As I said it is a subject of considerable debate to the point where one of the leading authorities in the world on arbitration matters (John Poolson) has suggests that they should never be party appointed arbitrators that all arbitrators should be independently appointed, much conversation at various conferences I have a couple of questions. First one, Sir Edward get to that point, first I thought I would ask John and Calvin for their thoughts on whether it is something different said in his comments in the role play about loss of credibility but I am wondering if we could take it to a very practical level and ask experienced arbitrators, what is the practical effect of having what I am going to call a ‘homework’ on the tribunal? If you are the Chairman or co-arbitrator perhaps you can do the chair and Calvin do the co-arbitrator, what’s your action when a party has appointed somebody who is obviously partial to their interest?

MR. HAMILTON: Of course we start from the premise that the guide that breaks the deadlock is the chair; obviously his opinions need to be taken into account. Obviously if there is a bias arbitrator then natural human reaction behaviour he will give you would not attribute much credibility to what he or she do. I had an arbitration in Switzerland precisely that happen when one of the arbitrators appointed by the Respondent was obviously bias and had obviously read documents prior to coming or at the beginning of the arbitrator because he came with some
knowledge of facts and figures because we didn’t see the submission so
the question was obvious, how did he know and that was the first dead-
lock and throughout the proceedings he confirmed that indeed he had
been talking to the parties and he had been developing strategies. The
other members of tribunal didn’t take anything that he did seriously and
anything he did say we were skeptical and we were challenging with how
do you know that because we don’t have that fact, he himself realized
that he has overplayed his hand and indeed in that situation the cred-
ibility was gone.

MR. MURRAY SMITH: So you will have to be careful what you wish
for John. What about as the chair, how do you appear control as chair if
there an obvious bias on tribunal.

PROFESSOR JOHN ROONEY: I think it is a sort of correction. I
said to a certain extent I believe that it is a sort of correcting mechanism.
If you have two arbitrators on the panel, one is the chair and the other is
the party appointed, you take seriously demanding they should act impar-
tially and independently in the face of conduct to the contrary by one of
the three arbitrators, the real danger is that that person’s opinions be-
come marginalized and eventually irrelevant during the discussion in the
arbitration to a large extent, so I think that answers the comment Calvin
made, we have to be very careful what you wish for because if you pick
someone for example if as the in the case of Calvin’s arbitration, the arbi-
trator basically agrees to hear arguments, to review documents, can one
of the arbitrators—shouldn’t at all do anything? What ultimately hap-
pens is the two arbitrators understand what’s going on, devalue the posi-
tion of the arbitrator so from having the mutual, independent, impartial
person who really will sit and judge on the merits of a case, you are push-
ing the tribunal to perhaps a two to one decision, maybe not, the position
the arbitrator takes is a practical one borne out but you run the risk of a
person being marginalized.

MR. STOPPI: Tony did you want to say anything?

MR. HAMILTON: That’s exactly my point and I am saying then as far
as the tribunal is concerned internally you have got a two to one from the
beginning, it’s a problem. You don’t have a tribunal of 3.

MR. MURRAY SMITH: It goes to the heart of the integrity of the
process. Another question by me. I was interested in the ruling of the
ICC Panel and some of us may agree or disagree with that ruling but we
are all lawyers and we need metrics in order to gauge whether something
is right or wrong and so my question essentially is for Justice Zacca, the
Caribbean Branch, what is the standard that a court will apply where this
arbitration is in Jamaica, the challenge would be a Jamaican Court and in
Canada for example, historically we had a very strict test for bias, it was
called the reasonable apprehension of bias test, if you believe the slight-
est hint of something was amiss that was something that the courts would
sanction. A number of cases then came along, recently came to the En-
glish Court of Appeal where they said, well we are not going to apply that
reasonable apprehension of bias test anymore. We are going to apply a real danger of bias and you can see how interesting the language is, it is a more than a bit higher threshold for the challenging party to meet in order to meet, achieve the disqualification for lack of impartiality. I am wondering if I am not putting you on the spot if you could speak to that in the Jamaican context.

MR. ZACCA: So far as Jamaica is concerned we have an Arbitration Law which provides for an appeal against anyone on a point of law and it seems to me, leaving aside the International Arbitration Rules and things like that, if an Arbitrator is appointed by one party, it is clear that that arbitrator is in fact bias and in fact an award comes down even if it’s a unanimous award, it would seem to me that the losing party would be able to appeal to the Court of Appeal in Jamaica on the basis that one of the arbitrators was bias and in such circumstances it would seem to me that the award would be vacated, I would think, I am not sure what order could be made after that, I don’t think Court of Appeal should allow such an order to stand.

MR. MURRAY SMITH: We should go back to letting people asking questions.

MS. ANN RYAN ROBERTSON: I would just like to follow up on something that the judge said and also John Rooney and that as it relates to ICC Guidelines, have one list for what needs to be disclosed and not disclosed, a red list, a waiver red list and orange list and a green list as John said that has taken almost self-law which you need to be extremely careful. For example there is not a single State in the United States in which the court have followed those guidelines in making those determinations whether those awards should be set aside for reasons, however long, long ago particular guidelines standard to judge whether or not there was actually an appearance of impartiality is what makes the difference. So you need to be careful about your Jurisdiction and not assume that just because you have complied with the guidelines that you are protected.

MS. VALERIE GORDON: Yes. Good afternoon. My name is Valerie Gordon. To be very practical, is there a cost associated with the appealing to the ICC Challenging the Arbitrator? And if a party continues to challenge despite the decision of the ICC, are damages awarded or are there any penalties in cases like that?

MS. ROCIO DIJON: I will answer your first question. There is no cost to file a challenge. The cost you pay the final fee $3,000 and then the sort of costs are based on the amount dispute, this means that an ad valorem basis the arbitrators are not paid hourly rates, rule on the website you can put your amount dispute 5 million so arbitrator come out sort of a number of giving you the range, this doesn’t include arbitrators expenses, you can get how much arbitration may cost, any additional cost possible joinder of a party, that’s also $3,000, procedures there are no additional costs in perspective, final file this will be reconsidering filing additional chal-
lenges hence parties can do as they please, it's their arbitration, they have a right to file challenges or not effect proceedings, clearly the tribunal can take that into consideration when fixing costs, attorneys business, that is the discretion of tribunal.

MR. MAURICE STOPPI: As I said in my introduction we are—from a long legal stand point it seems that this could enlarge the question of whether arbitrations should be decided by 3 arbitrators or by two arbitrators and in terms of local practice Commercial Arbitrator. Another aspect of how impartiality is treated on the basis certainly from my experience that it is almost totally impossible especially if one lives in an especially enclosed society like in Jamaica, be free of any bias whatsoever. The conscious or unconscious inconceivable, any arbitrator closely social to anyone from that point of view it seems that there could be some consideration given, the concept, yes we know that arbitrators are bias. We hope they are not too bias. We hope they are not too obvious because of their professional commitment and so if the final decision is not left to an umpire or referee who is external as in this case presumably by consideration. So silence means consensus, there are no more questions.

MS. ROCIO DIJON: I mean outside the rules clearly provide for a sole arbitrator Tribunal bound by new revision of laws that may or may not allow for an umpire.

PROFESSOR JOHN ROONEY: I would second that. I would—I also just want to mention a point which I made earlier today, what we are talking about here is the internal governance of the arbitration, which is the ICC, the institution, they will make a decision, court will make a decision with respect to challenges based on our experience, I think and mentioned, as I mentioned before statute determines how you may challenge awards. Statute One ground is evident impartiality or corruption on the part of the arbitrators that is a different standard in terms of its articulation in terms of what ICC states. Only point is that the ICC is concerned directly with that standard applying its rule impartiality and independence, but as a lawyer you always need to once the award is issued the panel by the principle no longer has any power whatsoever and only surviving instrument award might be presented to another body for a possible vacatur or set aside annulment and that body may operate under exactly this, the same rules. And also when you make aside Ministry of Justice noted the possibility of Jamaica adopting Modern Law. The New York Convention contain seven grounds, non-recognition, seven grounds the Model Law Article 34 adopts six of those. 5 grounds, sole grounds for attack on an award, Model Law Jurisdiction, the legal seat of the arbitration, you know that you are not going to necessarily have that surprise that you might have in the United States where the articulation has grown for attacking award is different than the Article 5, your convention were Jamaica to adopt Modern Law or those from Modern Law jurisdiction when that seat of the arbitration grounds for attack award same defence to recognition enforcing that you found in Article 5. I think that's
important, that's not identify with 5 what we find in the Modern Law the Arbitration articulation in the latest modification ICC Rules, so you want consistency you want to be able to rely want to sin Modern Law Jurisdiction consistency way and you also have those cases that the court to look to see how other Jurisdictions have done so Jamaica adopt 2000 amended version of a section of Law that basically says court should keep in mind International Character of the Law in uniformity in this application which might give added weight to what you might find.

MS. ROCIO DIJON: Three small points for the afternoon. One is that the arbitration proceedings can challenge the file, that's not clear in terms of process. Continues, two statistically in 2004, 66 challenges were filed, only 6 of which were accepted, that's consistent with sort of historic statistics there are many, many more challenges filed and accepted. In my specialty procedure list to be successful, that sort of goal to actually—procedural unfairness and 3 just to a point of clarification, Nationality of Jamaica ICC Arbitration in terms of the sole arbitrator where the parties are picking, that person can be any of nationality including that any one of the parties where the court appoints someone, not from either nationality unless the party agrees within a certain time period that can be said in an American case involving American party and Jamaican party, so you have that liberty of selecting. That's all from me.

MR. STOPPI: Thanks very much. There are no other questions. We can adjourn for lunch. Let us thank the participants.

(A P P L A U D E)

We will return at 1:30.

Time 1:35 P.M.

MR. STOPPI: Ladies and gentlemen, may I have your attention please. We have decided a slight change of the programme. I understand all members have had copies of the award; am I correct in that assumption? What we probably do is to read, digest, study the award that has been given and that would take us up to about 2:15; so that would give us like 20 minutes. At 2:15 we will recommence the normal proceedings. Thank you ladies and gentlemen.

May I have your attention. We are now back from lunch and to continue with the presentation of The Mock International Arbitration. We did see 1, 2, 3, 4, before lunch, what we are going to do now, unlike the cinema where you have to wait till the end to find out, everybody knows what the award is, what we are going to do now is to see a presentation of how the award was arrived at by the panel and the process of examination and cross-examination of the witness. On conclusion of that I am informed that there will be a panel upon the platform here following which there will be the question and answer session. So that's the programme, ladies and gentlemen for the rest of today and rest of the arbitration. So I hope everyone is totally enthralled up to now. We prefer to defer. Thank you.
MS. ROCIO DIJON: Thank you very much. Just right now we are onto Act 5, which is the hearing phase followed by deliberations where we will discuss the process in the context of the award, right at the end. Just to give you a brief of what will happen now. Now we will have cross-examination and the relevant Article 22 which refers to conduct of the arbitration. 22 says:

"The Arbitration Tribunal and the parties shall make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute."

So this is a general obligation on the parties. It could be a hearing, it could not be hearing it could be based on written submissions; it is up to the tribunal and the parties to decide the important things to establish the facts of the case. This is Article 25:

"One shall proceed within as short a time as possible to establish the facts of the case by all appropriate means."

Part two says:

"after studying written submissions of the parties and all documents relied upon, the arbitral tribunal shall hear the parties together in person if any of them they so requests or, failing such a request, it may of its own motion decide to hear them."

So here is the situation there will be a hearing and you have an excerpt of the hearing with you now. So we are no longer just court members we are the tribunal and we are sitting as International Arbitrators, with that we will begin.

(ACT 5)

MS. DIJON: That ends the session.

(A P P L A U S E)

There are two elements here and one is sort of in terms of arbitral procedure and two is questioning and a sort of quick warm-up from Calvin and the interaction in the Arbitration in a formal cross-examination and two if you could offer a script in essence a more active tribunal. We could have just sit there and say something and be more involved in relation to the panels' perspective, do they want to help the party uncover or they want it as it is presented? It really depends on the Arbitrator's philosophy and John will give you preview of that.

PROFESSOR JOHN ROONEY: Actually following upon that I think the reference to the ICA Rules on the Taking of Evidence. If the Chair is correct that we have no indication that it appears in the order but what I will notice is that when you were dealing with International Arbitration and in organizing your hearings if you are dealing with counsel on either side the issue is likely to come up. So the point being that you need to be aware that there first of all exists these items on the evidence and then you need to develop a position with respect to whether you want them or not. If I was sitting in another jurisdiction where we need to apply them and it turns out upon the review of your work that was favorable to our
client that counsel for the other side began to object to a number of points that were clearly resolved in our favour in the Rules but more importantly counsel actually wrote an article on the idea of the Taking of Evidence, recommended that they not be adopted but unfortunately he did agree to adopt them and to his detriment, the point is that when the rules are important in the first instance because they exist and because they exist you need to know that they exist and what the content is. And second you will notice that Mr. Smith indicated, Oh, I don’t think we need the procedural order but we should be guided by them, you should take them into account. Sometimes the tribunal will take a position that we are going to use the rules and guidelines and we are not going to use them as findings. I personally generally have a problem because I think that counsel is entitled if they ask for and is given guidelines. The guidance simply means that okay, we are involve here, we are not going to do it and I think you should be entitled to do that and I have seen situations where the tribunals have offered to accept the guidelines and counsel will say I prefer your position to whether you are going to use them or not which brings us to another question which often comes up especially in what I would call the beginning of the career, more advocated as arbitrators, your condition is a great difference given to the arbitrators which you need to remember that arbitrators make decisions which might have an unfavourable consequence or make mistakes so when you have an objection as to ruling, in other words don’t let it sit there, don’t refrain from making an objection and offend the arbitrators because at the end of day if the award is not favourable to your clients and they would want to have a basis for any review that might be possible. But this is what I am saying treat with difference but understand your final objection basically that objective basically you need to know what the arbitrators are doing and why they are doing it. And if my recollection is correct in the rules I believe unless the party agrees to the contrary, you—Mr. Hamilton would have been entitled to take your objections in his direct and then he would be crossed coming from the parties in international arbitration he will have to agree that the witness statement will strictly necessary stick to re-examination. In that case that’s what happens here the witness is presented, the witness is asked to confirm the statement, mistakes, etc. and it is adopted at that point in time, tribunal is just to give a general description of what they are going to say or not, witness tendered to the other party for cross-examination it depends on the Jurisdiction and depending on the arbitrator. The question of the scope of that cross-examination would come up so once you have the witness here counsel can ask the witness any question or is counsel restricted to the scope of the witness statement, just get it clarified. In other words earlier when you talk to the arbitrator because there are different opinions on that has that as well. The other thing your re-direct after cross is restricted to the scope of the cross-examination. One arbitration where the witness on the other side which is the crucial witness made a terrible mistake in the witness statement and to make a long story short I didn’t cross-examine the
other side. Now that was a horrible mistake, stock of documents ready, basically to rehabilitate and the arbitrator after I said no questions then tendered the witness to the council that offers the witness rules that the only questions he can ask in the scope of cross is on the content of the witness statement, if there is no cross, there is no question. Okay. Truly that's an interesting point. No questions. So you never know, point is basically, we are all litigators, know the importance of procedures, rules, IBA Rules, special rules in procedures only need to know, if you don't know, of course we get into problem.

PARTICIPANT: One last question. Have you had a situation where an arbitrator is asked to question a witness that wasn't called for cross by counsel, do you believe witness A, B, C, D, E, F, G.

PROFESSOR JOHN ROONEY: You know I haven't but it's certainly contemplate arbitrator have the power to listen to testimony even if no other parties offer them because I think probably a couple of the vacation earlier my career might in fact be useful as a tribunal we did exercise the power, there was one case in which one of the parties was basically family members, two members so far as family and only one of them appeared for testimony as it turned out the testimony for both get recorded so the rule do permit them. Just to say permit arbitrator to require expert testimonies.

MS. DIJON: With that we move onto Scene 6 the Deliberations.

(SCENE 6)

MR. HAMILTON: That in effect is—that would conclude the descriptive part of these proceedings. What we hope to do now we are going to convene a panel and we are going to sort of recap some of the issues that you have listened to today. From Act 1 through to Act 6 and then we are going to have an Act 7 which will look at the award that you have been handed out, that award result in issues arising in this dispute. Obviously what you have heard today we haven't got into each and every aspect of the work but we will have Sir Edward read out the decision and then we will take some questions on that, what I would say is just that the key to this whole bundle of question is—really is this question of the improvement of the wine whether or not Frontero was an improvement on Toro or was it something totally different. The contract, of course, doesn't describe what is to be considered an improvement so you have got the definition or lack thereof. The article with respect, I think it's Article 3 where they are saying you will distribute to and then any improvement but it doesn't go into what are the improvements. Well if this was a real life situation we would have had expert testimony with respect to the technicalities and all the different things that would go into wine making and viniculture but we don't have that so that would have been considered. I think the expert testimony would have been offered up by both sides to make those determinations. Now the question, what ABC is saying, this was an improvement, they are also saying that and recognizing in
effect in the contract it doesn't help much what is an improvement however they are saying that the improvement was contemplated, they are saying they had discussions and the discussions included the that Frontero would be an improvement and the memoranda is so important as Mr. Smith was trying to get from the witness that witness knew all about the negotiations. This was a contract that was important to ABC that this was a contract there if you would negotiate to this was so important to you, improvements were important to you, some place it would have been discussed but unfortunately it is not in the contract so this memorandum indeed exists and seems to exist the memorandum ought to have in this memorandum for the purpose of addressing all these issues to the Board, it ought to mention something about the improvements but if it doesn't it would mean it would lead to the conclusion that this new wine is not an improvement and this conversation did not take place if it was so important it properly would have been in that memorandum and the Board would have been aware of it and so that is why this document is so important, just to determine this whether or not these negotiations take place, if it didn't take place then of course you got your answer that it wasn't going to be considered an improvement so that's the setting. So contemplate that while we put the panel together and then we will be back at you

In another two or 3 minutes.

(B R E A K)

MR. HAMILTON: Okay. Let's get to it. You have a day of fascination exercise of how you conduct international arbitration including the hearings we thought it was a good idea to start off the Programme with the questions of the arbitrator because at the end of day that's the person or tribunal, that's where the Programme is run, is conducted after the file is received by the tribunal and selection of the arbitrator is very important and the profile of that arbitrator needs to include proper management of the arbitration and the proceedings, you got a feel how heated discussions can become at the hearing so you want to have a tribunal and chair of the tribunal who could command respect and understand the procedure and who can have his opinion and capacity as chair felt by counsel because if not then, of course, things will run awry and so when you decide on the arbitrator or the profile of the arbitrator you need to take these things into consideration; the initiative that we talked about this morning including bias, including whether the arbitrator has time, is available and in that respect, what happens in reality is that the ICC before they make their appointment they would send you a form and ask you to make any disclosures that are relevant for that arbitration, so that's your opportunity to say, well my cousin is the lawyer for one of the parties or any such issue that will give rise to a challenge. I can't stress enough the issue of whether or not there is a bias, there is a question of partiality, is not what you think is what someone else would perceive to be bias and I think this morning it was when you mentioned our traffic light issue in the guide-
lines, they give some guidance as to what should be disclosed but the rule of thumb, if you are in doubt disclose because if they find out later there will be a problem and you could be a challenge.

Now I think there are a number of issues again raised this morning and we will go in the questions and answer, if you have any questions and answers. I will want to make a point with respect to the review and the scrutiny of the award which is very integral of the set of services that the ICC provides and that is something that is very much valued by users of the services of the ICC and so I think if you want to explain Dijon.

MS. ROCIO DIJON: We just saw the last scene on our deliberation, so what happen, then of course, the tribunal drafts the award. The next step is not that the tribunal sends the award to the parties; the tribunal sends that draft award to the ICC Secretariat for scrutiny under Article 33.

"Before signing award arbitrator shall submit a draft form to court, court may lay down modification as to the form of the award and without arbitration liberty of the decision may also draw attention."

Point of substance no award shall be tendered until it has been approved by the court as to its form. So the purpose of Article 33 is really to help sort of entraining the integrity of the New York Convention and that's laid down by modification as to the form. It's not rewriting the award, it will not change the outcome in anyway and the process is 3 steps. We receive the draft award from the Secretariat, counsel turn file over to me, I do the first review, second level review by management which also the Secretary General deposit, Secretary General or Manager, then third level, it goes to court and so at that court session typically either it will be 3 court members that is you saw today our decision involving the opinion state go to full plenary session with all of the court management as many as possible present at that session. There are 3 possible options in terms of this decision it can be approved without any sort of model law or suggestion from the order, it can be approved subject to comments which is the most typical or if it is not approved its returned back to the tribunal and they have to make revision, submit it back to the court and it goes through that same review Secretariat Counsel, Management Court again as many times as is necessary until its approved. In terms of actual type of model law it could be simple typo, the numbers are not right typographic error could in fact award also the ISCS document terms of reference drafted beginning of arbitration constituted this includes list of issues to be determined in the arbitration, part of my job is checking whether all the issues listed were considered in the final award if not that could make comments please indicate what happened to this issue maybe it was dropped but the tribunal need to deal with it in some way, that's how strictly it works. In reference to the statistics in 2014 awards were approved without any comments 493 were approved subject to comments and 55 were not approved so really the majority is approved subject to and that's all scrutiny.
PROFESSOR JOHN ROONEY: I want to say that is something that you get with the ICC you don’t get many of these arbitrators and I guess to the point you may, I think in reference to the court is actually through an internal court that is part of the ICC and not a court of any judicial power or any judicial Jurisdiction but you get that quality control. I think there was one other point which would point to the fact of quality control all of this starts with the ICC starts actually I suppose with the very level of arbitration then reference. In terms of reference what happens to the ICC arbitration and in many other arbitrations as well it is depended on the need of the arbitrators and counsel and so you articulated five issues confirm where issues is going to be held etc., that document is also approved by the ICC and also ultimately should be signed by counsel like an arbitrator, fact becomes internal guiding document in arbitration.

MS. DIJON: Point if you are worrying how long I can sort of tell you, on my team it’s a ten day process, if you receive award by Monday go to court session not that first Thursday the following that is the practice of my team I can’t speak to the others, not a source of delay as some people sometime say.

MR. HAMILTON: Thank you. Most of the panel members here were introduced to you at some time today except the gentleman on the right and he is Thomas Piper. He is of German Nationality, he has been living and practicing law in New York for as long as I can recall. He is a partner with Hogan Lovells, arbitration firm here in New York. They are all over the world. His office is in New York and Thomas has been sitting throughout these proceedings all these days so I am anxious to hear his views on many of the things that we discussed them today and how he sees them to compared to real arbitration, significance of having a bias on the tribunal which bias might not be until a later moment that might be too late you want to.

MR. THOMAS PIPER: Thank you very much for having me here. I guess my first point would be in real life as an arbitrator first on orderliness in this case and then we will make a position and decide site visit and picking up on what you just mentioned the selection of arbitrators, I think it’s very important as the session this morning showed an arbitration is only as good as the arbitrators are and you can have any rule if the arbitrators are not for the plan the rules don’t really help much. I think what has been a good method is each party appoints one arbitrator and the two party appoints the chair and ideally you—I am speaking as counsel now, we should retain a possibility, you can discuss the idea of a candidate, at least a profile of the chair so that gives you some sort of influence of what you of have of the tribunal including the chair some of these discussions we saw this morning were obviously overplayed it would never happen in real life. We would never ask these questions to a candidate, some arbitrators even flatly refuse, some of the accomplished arbitrators would say, well you don’t want me or you want me. Fair enough. And the selection process is very important. As I say it is sometimes very long and clients
sometimes client don’t understand what it takes to find the right candidate, call your friends and ask around who is the best candidate for this case, you have some associates if you go through all the publications the candidate has published, find decisions in general I would subscribe to the rule or Model. When I was at the law school Sherry Thaxton, very accomplished arbitrator it’s like a thirty minute rule basically said you should not take longer than thirty minutes and should be limited to the points that were mentioned this morning experience, availability, conflicts and such the likes that never go through substance. So that’s any thought on that point and just to pick up the last point that came up after disclosure issue, one solution that arbitrators sometimes offer is they order what’s called encamera review meaning you have to submit the document in question but only to the arbitrators for the arbitrator’s eyes then they will make the call if that should go to the other side or what portion should be or what should not. Solution here I guess in Europe or in civil law countries attorney client privilege does not extend to in-house counsel there was a decision in the European Court of Justice, case you can look it up disparity and arbitrators are trying to level the playing field and there are various options. These are my two things.

MR. HAMILTON: Thank you. I think it is now left for me to open up to the floor if there are any questions, as we comment here anybody wants to ask a question please feel free to do so if we not we just continue talking. Any questions down there?

MR. HAMILTON: In Lebanon on this question of disclosure and the privilege how would that be handle is this public policy position or is this a rule of evidence position; how would the question as in ours play out in Lebanon.

MRS. NAYLA COMAIR-OBEID: Remember the professional who is at the Bar Association we are bound by legal privilege it’s a public policy.

MR. HAMILTON: Would the fact that it’s an international arbitrator seated in Lebanon the rules, are the arbitration still bound by your public policy or in Lebanon would you take a more international public policy outlook to the question of whether this was?

PROFESSOR NAYLA COMAIR-OBEID: In fact, this question, I don’t think the question was addressed to the court but we have an international centre of arbitration and I think that surely needs to be looked at it. What are the rules on international arbitration not to be strictly let’s look at it as our privilege as the Bar Association privilege.

JUSTICE GAFOOR: Okay. I was just wondering as an alternative to the actual panel view of the document in terms of admissibility extent, would they be stated by a judge ruling on that issue.

MR.SMITH: Who wants to answer that one?

JUSTICE GAFOOR: Whether the document should be referred to a judge instead of the tribunal.

PROFESSOR JOHN ROONEY: The problem I think you might have with that is a procedural vehicle first of all doing it under the law, a judge
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to be given second would whether the decision of the judge could then be appeal and how long it could be appeal, possible disadvantage exist that when you think litigation element you introduce a very potentially powerful tool to delay or disrupt the arbitration. The rules provide generally if there is a document confidential in nature and ultimately it quite rests on the principle of confidentiality and there is a concern, for example, of the party being requested to dispose of this close document is somehow contaminated, there is a possibility of examination by a third party so probably a better compromise might be that the party submitting the document, third party is bound by it.

SHAN GREER: Okay. This is really a side point highlight need for some form or arbitration laws and our laws in the Caribbean that are outdated. For example quite a few countries Trinidad, and St. Lucia in particular where the Evidence Act specifically states that it applies to arbitration so that you cannot opt out of the Evidence Act and that means in this instance those rules would apply and that sort of waters down the autonomy of the parties because you are bound by that legislation. I just want to indicate that is why one of the reasons why we have to have look at our legislation if we want to see legislation, legislation will have to be changed.

MR. HAMILTON: We had an interesting discussion and Janet is going to expound on that.

MRS. JANET MORRISON: Thanks Calvin. That discussion surrounds the discussion around whether or not when a special case is sent to our court during tribunal whether that suspends the process of the arbitration. I thought that Sir Edward might be able to assist us in answering that question because in fact that would account considerable amount of delay in the process and in fact could tie up the whole arbitral proceedings in the court for a pretty long time.

JUSTICE ZACCA: Sorry, what was the question you posed?

MRS. JANET MORRISON: The question is during the process of arbitral proceedings a request for an injunction or special case is stated to the court as can happen under our own very Arbitration Act 1900 Act that whether or not that suspends the arbitral proceedings until the determination of the court.

JUSTICE ZACCA: On that issue I know that certainly where you have arbitration proceeding and the Jurisdiction of the arbitrators hearing the proceedings is challenged one has the opportunity before the hearing to go to the Supreme Court to have the question of Jurisdiction decided. In fact in Bermuda we had a case where an award had actually been made but the question of Jurisdiction was to be raised under an appeal and one party took the matter to the Supreme Court and then it came to the Court of Appeal on the basis, the argument was well the award is before the Court of Appeal, let the Court of Appeal hear the merits on the award and also deal with the question of Jurisdiction, the court has an opportunity to deal with matters I think before the hearing starts.
MRS. JANET MORRISON: Sir Edward, what's the case when the arbitration has actually started, are the proceedings suspended on an interim point, an interlocutory point taken by the parties?

JUSTICE ZACCA: If the point is been taken before the arbitrator, well the arbitrator could proceed if they wish to proceed.

SHAN GREER: I think it's more of a practical point our Acts don't necessarily say that you have to suspend the arbitration matter going by case stated, I think you need to do it with the arbitrator's consent. Challenge, what's the point of continuing proceedings and incurring all of that costs if you are not sure what the court is going to do, from a blanket perspective it does not make sense, court does make a decision that requires you, you don't have Jurisdiction, it disagrees with your decision, all those costs are wasted. I think from a practical perspective and the specifics would require you to stop the proceedings.

PROFESSOR JOHN ROONEY: The general rule, UNCITRAL Modern Laws that recourse to judicial protection or assistance outside of simply aiding the prosecution of the arbitration doesn't indeed affect the ability of the tribunal to continue and even to proceed to final award Article 8 of Modern Law which basically copies in large part Article 23 of the New York Convention, parties goes to court the judge that you would refer the parties to arbitration claim to recover by the arbitration agreement unless the arbitration agreement is null and void, opportunity capable of being performed. Article 8 of the UNCITRAL Modern Law adds another paragraph which is client-privilege basically says in such case the tribunal can continue in giving final award and point with respect to the expense can in fact become a good case by case basis if you know that the judicial process takes a very, very long time perhaps it might make more sense to move to final award if you get a favorable results from the court you have the award and in the event you could still take the award to another country.

MR. DEAN BARROWS: I think under the English 1996 Act, they allowed a leap call to the Commercial Court so it is not delay or held-up at all while the arbitration proceedings is going you can immediately get a judgment while you are deliberating.

MR. HAMILTON: I think the principle though is that the tribunal is not obliged to wait for a response from whomever. They do have the ability and capacity to continue and the Modern Law, John described, did I misunderstand you, did you say that there was an award and after the award they are challenging the Jurisdiction, question of Jurisdiction.

JUSTICE ZACCA: Yes.

MR. HAMILTON: Isn't there a waiver of the Jurisdiction?

JUSTICE ZACCA: Not necessarily. I am not sure whether they took the point originally.

MR. HAMILTON: Oh, I see later under the outdated legislation you can challenge from conduct and you can make that challenge at any time.
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Jurisdiction before conduct, one of the grounds that the courts act is outside of the Jurisdiction that can count as misconduct.

MRS. JANET MORRISON: I just wanted to mention something else that came out of the mock arbitration which is, I think that that is a strong case, an ordinary case for arbitrators to be chosen from a panel of arbitrators that have been put together saying that the ICC, to my own mind, that would eliminate substantially all of the issues that we would have here this morning, I am not so—what I was saying I think that this is a case for arbitrators to be appointed from an international panel of arbitrators and that would eliminate altogether all of the issues that we were grappling with this morning, conflict of interest, experience, integrity, all of the other issues, pertinent ones and in that way someone who does a request for an arbitration would depend entirely on the empanelling of the arbitral tribunal by the ICC or if they choose just one arbitrator, one arbitrator would come from that panel and the issues that they would have been grappling with wouldn't present themselves at all. I wonder how some persons feel about that, I had the benefit of reading something that Calvin gave me which said that the number of eminent European Arbitrators have declined to interviews like the one that we just went through, in that they were at least demeaning or at worst improper. The contrary view when conducted properly is that the integrity, propriety and if it is done with integrity, propriety and restraint such interview process of allowing the party to gain confidence in the experience, intellectual knowledge of potential arbitrator, there is one view which some arbitrators particularly the prominent ones, I am not going to be asked about conflict, my experience, Oh I a big mighty arbitrator and there is the other view that it gives the party an opportunity to know who they are going to select but at the end of day I still see strong an argument for the empanelling of an arbitrator of the level of the ICC and that selection is made from there, that's anonymous, there is no connection there is no background, there is no history and it cures the ills that we were addressing. I am interested in hearing your views.

MS. ROCIO DIJON: As it is the ICC doesn't have any panelist of arbitrators, if ICC is asked to appoint an arbitrator on the basis of National Committee System, you in Canada, Caribbean National Committee based out of Trinidad & Tobago you have party simple claim parties doesn't want to nominate please appoint when they seize to, please appoint given appointing for the claimant that is US the approach, the US National Committee, that National Committee typically some kind of database or list of people that are registered considered and some 6,000 names registered with the US National Committee there but they receive a letter from the Secretary saying we have a case please propose an arbitrator, here is the case information, here is some sort of salient things to consider, please propose in a week or a certain time period, the court then has to appoint that person, that's how ICC system works. If indeed the court with appointed power of direct appointment in certain circum-
stances hence involved I don’t remember the exact numbers but the majority arbitrators are either nominated by the parties, jointly nominated by the parties so it’s over seventy percent of the times that are parties themselves constitute.

SHAN GREER: I was just asking for the national committees, is there a process that—do you regulate how they put persons on their list? How do you ensure persons on their list are suitable or qualified? Do you regulate how they choose their persons?

MS. DIJON: We don’t have a pool of candidate to choose from, court takes decision as to appoint who that person when it’s given the proposal.

PATICIPANT: My question was if ICC had a panel of recommended arbitrators but Miss Dijon answered but my follow-up question she said that their National Committee, so you mentioned there was one in Trinidad that covers our region? And is there anybody from Trinidad here who could tell us how an arbitrator gets into their pool because the ICC doesn’t have any involvement in it so I just want to.

PATICIPANT: Miss Morrison I hear you about panel and that you remove from the party the capacity to choose, would the court because right now you got a dispute and the only difference is whether or not you go under the rules of the court or rules of arbitration but you don’t have any choice who is going to be your decision-maker. I think that’s a very, very important aspect we have to be very careful that you do not erode the arbitration opportunity just going back to the court, it is already overloaded.

MR. HAMILTON: What we are going to do is to read the judgment and see one or two questions with respect to the judgment but the response to your question quickly I don’t know how the Trinidad National Committee Court works but I do know how the Spanish National Committee, they know people, they go out, they determine their qualifications, they would just see how you act in certain circumstances and they have heard you speak, they might have heard you sit as counsel, have you prepared them, they have the discretion to determine the people that would go into that list so there is no strict formula for determining how you get on their—get into that data base except for the fact they feel they would have vetted you based on what their requirements are with respect to what the profile should be, what they should have, a large discretion, I think saying that at the end of the day ICC Court will determine suitable candidate, if you are not then they would not accept. And lastly with respect to Tony’s question, it’s a huge debate, I think counsel was the one who raised this question about whether or not the constitution should appoint the arbitrator forgot party interview and likes, end of the day talking about autonomy of the process like I said one of the important aspects of arbitration is that the party has the right and capacity and the ability to appoint his or her arbitrator, to deprive the party of that right I think would be a transgression to many of the practitioners, transgression
wouldn’t be forgiven that would be my one comment while we get the privilege the tribunal will be ready, you want to make the comment Janet.

MRS. JANET MORRISON: Tony I made that comment in the context refining the rules, Rules of Arbitration process to borrow from the judicial system, this will, I think is an admirable feature of having a judge that you don’t know where he is coming from, you see because, advantage that of empanelling arbitrators ICC offers is that those arbitrators would be already certified to be experts in a particular area whereas the risk that you take with a judge of the court is that you might get a judge who doesn’t know twidly twat about the particular matter that you have brought before the judge but you still have that opportunity in an arbitration proceedings based on empanelling of the ICC to get a particular arbitrator that is suitable for your particular case, your particular matter and I don’t see that it necessarily takes us back to the litigation process because the empanelling of the arbitral tribunal is just a little small part of the though important of the whole arbitration process.

PROFESSOR JOHN ROONEY: I have strict instructions from management that we must be finished by 4:15. I am going to suggest that we move to Act 7 and Sir Edward to take the stage.

(SCENE 7)

(A P P L A U S E)

All right. That’s it.

MR. HAMILTON: Thank you for staying the course and thank you very much for all our panelists and a lot of my colleagues that I don’t see this afternoon, they have dealt with me so nicely this morning to make this effective. Now I would—I thank him for affording his entire litigation department one wonders then who is working at the office but in any event thank you, I hope this was enjoyable. We will do it again next time.

(A P P L A U S E)
Reports