

BUILDING CANADIAN ARBITRATION: THE 2023 CIARB (CANADA BRANCH) DISTINGUISHED SERVICE AWARD

Barry Leon

At CanArbWeek in October 2023, CJCA Executive Editor Hon. Barry Leon was presented with the Distinguished Service Award of the Chartered Institute of Arbitrators (Canada Branch). Presenting the award, CJCA Executive Editor Janet Walker CM recounted Barry's many years of achievement and service to the Canadian arbitration community. He was a Litigation Partner at Torys in Toronto for many years and later Head of the International Arbitration Group at Perley-Robertson, Hill & McDougall in Ottawa. Then he was the Presiding Judge in the Commercial Division of the Eastern Caribbean Supreme Court in the British Virgin Islands, and now is an independent arbitrator at Arbitration Place in Toronto, 33 Bedford Row Chambers in London, and Caribbean Arbitrators. He has been a most prolific leader of conferences, events, and other initiatives including from the 2006 International Law Association biennial conference held in Toronto, to ArbitralWomen and the Campaign for Greener Arbitration, to CanArbWeek, and as a co-founder and continuing ambassador for this journal. Janet also particularly lauded Barry for his dedication to mentorship and diversity over many years. Since long before diversity became a common topic of discussion, and against some resistance from within the profession, Barry has not only driven the conversation forward but advocated for concrete steps to provide better opportunities for new faces in the profession. In recognition of these efforts, in 2014 Barry was awarded the CPR International Institute for Conflict Prevention and Resolution's Award for Outstanding Contribution to Diversity in ADR. For all these reasons, his professional achievements, his unflinching advocacy for

Canadian arbitration, and his sincere and persistent allyship in support Canadian practitioners of all stripes, we are proud to recognize our Executive Editor, Hon. Barry Leon, for his receipt of the Chartered Institute of Arbitrators (Canada Branch) 2023 Distinguished Service Award. We reproduce here Barry's remarks accepting the award, an opportunity he used—as always with Barry—not to promote not his own career, but rather to charge members of the Canadian arbitration community to renew and strengthen their commitment to the cause of Canadian arbitration itself.

Thank you for this wonderful Award. I am truly honoured ... and very grateful! I regret that the Branch's Patron, Beverley McLachlin, is not able to be with us. She is working outside Canada this week. She has become a busy arbitrator, mediator, and judge of international courts since leaving her long-time position as Chief Justice of Canada.

I am privileged and honoured to follow the amazing prior recipients of the Canadian Branch's *Award for Distinguished Service in Canadian Arbitration*: Paul Tichauer, Brian Casey, David Haigh, Janet Walker, and the late Tom Heintzman.

The Chartered Institute of Arbitrators has become a major force in arbitration in Canada, the US, and the Caribbean (where I am a vice-chair of the Caribbean Branch). In the Caribbean it is the major arbitration organization.

I would like to use—perhaps some may say, “abuse”—the balance of my acceptance remarks to focus on what I believe is an important issue for the future of Canadian Arbitration—that is, for Canadian arbitration practitioners, and for Canada as a seat and venue for arbitration.

I am going to speak about where I see Canada is lagging behind many other jurisdictions in becoming a global presence in arbitration.

Within Canada:

- we continue to increase the use of arbitration to resolve commercial disputes, having gone from it being a rarity for commercial litigators to do an arbitration, to it being common that most commercial litigators have commercial arbitrations as an important part of their portfolio of cases—we saw strong evidence of this in the presentation yesterday on the information derived from the Canadian Arbitration Survey 2023;
- we continue to build capacity, and to do so with increasing diversity on most dimensions;
- we continue to modernize our arbitration laws in most provincial jurisdictions, hopefully with more to come, including in Ontario with the proposed Commercial Arbitration Act;
- we continue to increase the arbitration knowledge and understanding of our judges;
- we continue to build pro-arbitration jurisprudence, particularly at most appellate levels, but also in many first instance courts;
- we continue to increase our training of arbitration practitioners through, in particular, the Chartered Institute, the Toronto Commercial Arbitration Society's Gold Standard Course, and the ADR Institute of Canada; and
- more recently, we have been doing more to increase our teaching of arbitration in law schools—I am delighted that the inaugural meeting of the Canadian Forum for Arbitration Academics will take place this Friday, under the leadership of Tamar Meshel of University of Alberta.

But we are letting Canada “hide its light under a bushel,” as the expression goes.

We promote ourselves as arbitration counsel, arbitrators, and arbitration expert witnesses. Arbitration counsel promote their firms' capacity and expertise in arbitration. Expert witnesses promote their firms' capacities and expertise in

arbitration. But overall, we are not doing what arbitration practitioners in other jurisdictions are doing.

Early on, the Arbitration Roundtable of Toronto, a predecessor to the Toronto Commercial Arbitration Society, did a lot of promotion of Toronto as a seat and venue, as well as promoting, in Canada, arbitration as a dispute resolution process.

A lot of the promotion of Canada over the past decade has been done by Arbitration Place. VanIAC (the Vancouver International Arbitration Centre) appears to be doing some promotion of Canada and has opportunity to do more.

Other organizations, not so much, as far as I have seen.

Law firms and other professional firms, and service providers, all of which earn part of their livings from arbitration, not so much.

CanArbWeek has done a lot to pull together Canadian arbitration practitioners and organizations nationally, however, CanArbWeek's focus has appropriately been on that same national focus, not on raising Canada's profile internationally. To some degree, the promotion by CanArbWeek and the Presenting and Supporting Organizations is doing that promotional work, as evidenced by the institutions and organizations that are part of CanArbWeek. This year SIAC (Singapore International Arbitration Centre) has joined us, and we were recently approached by another significant international player wanting to be part of CanArbWeek. These are all positive signs for our global profile.

Nevertheless, I believe that we need to adjust our mindset.

For example, too often firms based in Canada assess whether to support CanArbWeek, or to support other Canadian arbitration activities that help to "make a market" and build the international Canadian Arbitration brand, only by assessing the

value to the promotion of their firm. “Is it a good “marketing” expense?” they ask themselves.

Too often we do not appreciate that the promotion and marketing of Canada as a seat and venue, and of Canadian arbitration counsel, arbitrators, and experts, is the way we build the Canadian Arbitration brand. This work makes it easier for law firms and expert firms, and their lawyers and experts, to get work in Canada and internationally in this important and growing line of law firm business—a trend that was confirmed by the Canadian Arbitration Survey 2023 results.

With greater collective effort, arbitration can become even more important for Canadian law firms and expert firms. “A rising tide lifts all boats”, as US President John Kennedy famously said.

I strongly believe that if we come together more—if we work together more—to build the arbitration market for Canada and Canadians, and the Canadian Arbitration brand, all of us—and those coming up behind us in the field of arbitration—will benefit.

Thank you again to the Canadian Branch for this wonderful honour!