

ALTERNATIVE DISPUTE RESOLUTION

Continuing with our extensive feature on Alternative Dispute Resolution this month, *Lawyer Monthly* speaks to Karen Hill-Hector, who currently serves as a Magistrate in the Federation of St. Kitts & Nevis and is also the Founder of the first formal conflict resolution service in St. Kitts & Nevis operating under the name 'The Arbitrator'.

As a magistrate whose experience spans sectors from financial services to intellectual property rights, what would you say are the most common conflicts to be resolved through alternative dispute resolution in St. Kitts & Nevis?

The types of conflicts to be resolved through alternative dispute resolution are wide and varied. The types of matters included are insurance, contracts, construction, property, motor vehicle accident and family disputes.

Family cases are perhaps the most dominant both in the High Court and at the magisterial level. We at "The Arbitrator" believe that with the exception of divorces and annulment of marriages all family matters should be dealt with through ADR and that the benefits of doing so are tremendous. Typically, persons engaged in divorces or family disputes experience tremendous stress and there is a great deal of anxiety and disruption. ADR focuses on finding acceptable solutions in a non-adversarial setting rather than focusing on blame, accusations and guilt. ADR can and often does reduce the stress, anger, fear and anxiety. Also because ADR processes are faster and more confidential they severely limit the intensity and duration of the conflict between disputing parents and its resultant negative impact on children.

There is another category of disputes which I will call "quantum disputes" in which ADR could be particularly beneficial to all parties irrespective of the subject matter of the dispute. These are cases where the parties are already in agreement on the issue of liability or fault and all that remains to be determined is the issue of quantum. In these cases, the parties can take advantage of one or more of the available ADR processes. Mediation would perhaps be the first option. In the event that the parties cannot agree or simply prefer to have the issue determined by a third party they may opt for arbitration by submissions only and may even go further and set the parameters by utilizing the high-low or bracketed arbitration technique.

Can you elaborate on what is meant by high-low or bracketed arbitration and why this technique might be beneficial?

High-Low or Bracketed Arbitration is a procedure

whereby the parties mutually establish a range in which the award must be, that is an upper and a lower limit. This is done prior to the hearing. If the arbitrator's decision is within the range, that amount is the final award. However, if the arbitrator's decision is above the pre-set maximum, it automatically moves down to the previously agreed upon upper limit figure. Conversely, if the arbitrator's decision is below the agreed minimum, the award moves up to the pre-determined lower figure. Under this type of arrangement, the plaintiff is certain that he will recover at least the amount at the low end of the agreement and the defendant is certain that he will not have to pay more than the agreed cap. In most instances, the parties agree to not inform the arbitrator of the range of their High-Low agreement until after the award has been rendered. This type of arrangement is beneficial to both sides because it limits the maximum exposure of one party while at the same time assures the other party of a minimum recovery. This unique feature makes it appealing in cases where either or both parties would like to avoid an extreme result. One example is where a defendant needs to settle within the limits of his or her insurance policy.

In family matters what are the types of issues that can be dealt with through arbitration? Are there any risks associated with these proceedings?

For centuries arbitration has been well-known and well-used to resolve commercial disputes, but only in the last two decades or so has it been applied to family law. Nonetheless, family arbitration has been and is being used successfully in other

commonwealth jurisdictions and more and more divorcing couples are turning to arbitration following the breakdown of their relationships. The types of family matters that are typically referred to arbitration are ancillary matters arising from a divorce, in particular, financial and property issues and in some instances arrangements for the children. In St. Kitts & Nevis there is no statutory family law arbitration scheme, however based on the relevant arbitration legislation family arbitration can be conducted in relation to property disputes and financial matters including financial contributions towards the maintenance of the children and/or spouse. The primary risk associated with these proceedings is the same as it would be with any other type of arbitration, that is that there is only a limited right to appeal in the event that a party is not satisfied with the award.

Is there anything else you would like to add?

At a time when there is much focus on improving access to justice not only in St. Kitts & Nevis but throughout the wider Caribbean ADR cannot be ruled out as a viable option and an integral part of that equation. As a starting point, it is important for disputing parties and their legal representatives to be aware of their dispute resolution options in order to determine which procedure might be most appropriate for their dispute. "The Arbitrator" offers consultation on these and a range of other issues relating to the management and timely resolution of disputes. **LM**



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