

British Brazilian Exchange Programme

1 February 2017

Introduction

In May 2015 I joined four other English-qualified lawyers on a two-week trip to Sao Paulo in Brazil. The trip was the second leg of an exchange programme organised jointly by the Law Society and the Bar Council, and the Ordem dos Advogados do Brasil (the "OAB"), which is the Brazilian national lawyers' association. The aims of the trip were to increase our understanding of Brazil as a legal market, to help Brazilian lawyers understand what we do, and to deepen relations and exchange ideas between the two jurisdictions.

The OAB

The first few days of the trip were a whirlwind of meetings and receptions organised by the OAB to welcome us to Sao Paulo. We were overwhelmed by the size of the organisation (it has nearly 900,000 members) and the resources available to it. Those resources included its own TV channel which broadcast over the OAB website - and on which every member of the delegation was interviewed live within an hour of arriving!

As the hours passed and some of the history of the OAB was explained to us, we began to understand why and how this organisation had become so powerful and well-respected.

One reason is that, in Brazil, the lawyers are the only professional body who are specifically mentioned in the Brazilian constitution. (Cynics might think this has something to do with the fact that it was the lawyers who helped to draft it, in 1988). The constitution allows a body of lawyers to directly lobby to change the law, if they collect enough signatures. They are also one of a very few groups of people who are permitted to challenge the constitutionality of a law in the Supreme Court.

However, the OAB's importance goes back much further than the constitution. The organisation has a strong and proud history of fighting to protect the basic human rights of more marginalised members of society. One famous case from the 1930s involved a member of the OAB using an animal protection law to argue against the torture of prisoners. And in the 1960s, Brazilian lawyers fought hard to secure the return of habeas corpus, which they finally achieved after it had been suspended for more than ten years during the military regime.

The pride the members of the legal profession have in that history was evident when we visited Sao Paulo. Elections for senior positions within the OAB were taking place at the time, and the city was covered in posters and banners advertising the different candidates, in a manner not dissimilar to the way presidential elections are fought in the US. It is clear there is (justifiably) an enormous level of respect for this organisation, and we were proud and humbled to have benefited from their hospitality during our visit.

Arbitration and Commerce

We were introduced to various appellate judges in Sao Paulo who told us that there were 220m people in Brazil - and approximately 200m active cases in the courts! Despite there being some 16,000 judges overall, there remains (unsurprisingly) an enormous backlog of cases which means that litigation is not usually resolved for several years, at best.

Law firms are therefore always looking for ways to speed up that process, and accordingly interest in alternative methods of dispute resolution, from mediation to arbitration, is on the up. That is despite a history of suspicion of arbitration amongst Brazilian firms, and indeed across South America (Venezuela, Ecuador and Bolivia have all withdrawn from the ICSID in the last few years, apparently perceiving it as having a "pro-investor" stance). Those past suspicions may explain why Brazil is a relative latecomer to the international arbitration community - but it has now adopted the New York Convention (in 2002) and things are, slowly, changing.

That does not mean, however, that a foreign arbitration seat (such as London or New York) will necessarily resolve that issue. We were told that, for an arbitration award to be enforceable in Brazil, it must be "recognised" - for which it must be proven to meet the relevant criteria, including, the requirement that it is a "final award." The process of having an award recognised alone can take up to two years - and that must happen before any enforcement takes place in Brazil.

Individual Law Firm Placements

After our initial few days' introduction from the OAB, each delegate was posted to a law firm in Sao Paulo to gain some specific on-the-job experience. I was placed with Montgomery & Associados, who offer a "lean full service" specialising in several areas. I was given the opportunity to present the English legal system, and I was also taken to court to witness several cases.

One of the things I noticed at the firm was the sheer number of employment claims which were dealt with on a regular basis. I learned that employment claims account for a huge proportion of the litigation which takes place in Brazil. That is partly because there is little protection offered to companies; essentially, the law compels the party with the deepest pockets to pay up. The firm took me to observe an employment case and I was struck by just how vast the court building was; a towering skyscraper with a central atrium running the full height of the building. Looking up through the atrium I counted at least twenty floors and I learned that there were numerous courts on each floor.

Once in the courtroom, I noticed two striking features. First, a typist who sat next to the Judge on the bench transcribed the entire hearing live as it was happening. Each advocate had a computer screen in front of them on which the transcript appeared as they spoke, and so were able to look back over what had been said by the witnesses as they asked questions. Given how long some of my clients have waited to obtain an approved transcript of a hearing, I felt that this innovation was one the English courts could usefully learn from. Second, the advocates had to tell the Judge each question they were going to ask the witness, and obtain the Judge's approval of those questions, before they were put to the witness. Several questions were disallowed by

the Judge. In that respect, the process seemed to offer witnesses a lot more protection from potentially oppressive lines of questioning.

Conclusion

The British-Brazilian Lawyers' exchange programme offered a welcome and unparalleled opportunity to experience and learn about the legal process in Brazil, and to understand some of the fundamental differences between the English and Brazilian legal systems. All of the delegates were extremely well looked after by the OAB, and by their individual law firms. I was also lucky enough to make some great friends, both English and Brazilian, who I remain in touch with. Overall, it was a wonderful experience and one which I would highly recommend to anyone with an interest in this area.

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These views are the views of the author and not those of the Bar Council.