

The Rising Arbitrator's Challenge: Navigating the Premise and Perils of Your First Appointment(s) Australia and New Zealand

Kluwer Arbitration Blog

July 17, 2021

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Please refer to this post as: Zuzanna Cieplińska, 'The Rising Arbitrator's Challenge: Navigating the Premise and Perils of Your First Appointment(s) Australia and New Zealand', Kluwer Arbitration Blog, July 17 2021, <http://arbitrationblog.kluwerarbitration.com/2021/07/17/the-rising-arbitrators-challenge-navigating-the-premise-and-perils-of-your-first-appointments-australia-and-new-zealand/>

On 30 May 2021 the fifth webinar of the series “The Rising Arbitrator’s Challenge: Navigating the Premise and Perils of Your First Appointment(s)” covering Australia and New Zealand was presented by ACICA45 in collaboration with the Rising Arbitrators Initiative (RAI). RAI was created in September 2020 to support arbitration practitioners under 45 who have either already received their first arbitrator appointments or have at least seven years of professional experience.

The webinar series began in Washington DC in December and has since been hosted in Vienna, Hong Kong, Montevideo and Nairobi. The aim of the series of events is to bring discussions around the main issues which arbitrators face in their first appointments and how they overcome the challenges. The series brings rising arbitrators together as well as representatives of arbitral institutions and aims to support practitioners tackling their first appointments.

The 30 May 2021 webinar focused on Australia and New Zealand and was moderated by Erika Williams (Williams Arbitration). Rocio Digon, RAI co-founder

and legal consultant at White & Case gave her opening remarks briefly introducing the RAI initiative to the audience.

The panel consisted of four speakers: Caroline Swartz-Zern (Australian Centre for International Commercial Arbitration), Lucy Martinez (Martinez Arbitration), Jun Wang (Fitzgerald Lawyers) and Anna Kirk (Bankside Chambers).

Institutional perspective: what candidates can be appointed as arbitrators?

The first topic addressed by **Caroline Swartz-Zern** was the issue of first appointments from the institutional perspective. Caroline Swartz-Zern highlighted that probably every institution would say that it focuses heavily on the actual identity of the case and looks at the domain complexity of it. The candidates that will best fulfil the role of arbitrator are those who have experience in the particular area of the case. ACICA also looks at diversity both from the perspective of geographical and jurisdictional experiences, as well as, for example, the specific language skills. ACICA does not necessarily always look at whether or not someone has had experience acting as arbitrator before, but rather whether the person is fit to sit in a particular case, regardless of whether the matter is very complex and difficult. Further, Caroline Swartz-Zern also mentioned that it is good to consider being on the ACICA Fellows List, which practitioners can join after applying for the ACICA Membership. There are certain criteria that have to be met, including the level of experience, for joining this List. Further, ACICA also relies on the information already available to ACICA Secretariat on the potential arbitrators. As such, it is relevant that young practitioners and arbitrators publish, have speaking engagements, etc., to gain visibility. Moreover, the potential arbitrator would also have the right availability.

Insights on the first appointment and some top tips for rising arbitrators

Lucy Martinez talked about her first two appointments that were both institutional appointments and which came at the time when she was still working at a law firm. Both appointments were unexpected, and Lucy Martinez mentioned that she was not even aware that she was being considered. She recalled how later

she did follow up with the two institutions. For one of the appointments, she was the last option on the list of potential candidates, all other potential arbitrators being conflicted. For the other, the fact that she was based in London was critical in securing the institutional appointment. These stories indicate that there is some randomness in the serendipity of the first appointments, which can be frustrating for those who are trying to get appointments. Thus, she highlighted, it is important to have a profile in the community and building up one's practice towards an arbitrator profile.

Lucy Martinez continued with practical tips for arbitrators tackling their first appointments. The first one is to be confident in procedural decisions that one has to make as arbitrator, as most jurisdictions such as Hong Kong, Singapore and Australia would not entertain challenges to arbitral awards related to arbitrators' discretion. Her second practical tip was "to sleep" on everything before sending it out, as, especially when sitting as sole arbitrator, there is the solitude of the decision making process and, hence, no review of drafts before being sent to parties. Another point highlighted was to have financial resources saved up because arbitrators are usually paid at the end of the arbitration. Further, Lucy Martinez advised to engage with institutions and institutional representatives, as statistically speaking, first few appointments are going to come from the institutions and, therefore, it is important to engage with them. For example, signing up to the ACICA Fellowship Programme, getting on the SIAC Panel or Reserve Panel, on the HKIAC Panel, being in the LCIA Council of Users, etc., and then making sure to join the various organizations that are around and to attend their conferences - like this one.

Jun Wang continued with his insight in his first appointment, which came not from an institution, but from a party. Jun Wang spent the first 26 years of his life in mainland China practicing as a Chinese lawyer in Beijing, before leaving China to move to Queensland, Brisbane, in January 2004. Prior to the pandemic he spent a good time in Asia, Australia and Southeast Asia, working on international arbitration cases as counsel, sometimes co-counsel with local law firms. His network, roots and connections in Asia were of great help, while he received the proposal to act as arbitrator in Asia, in 2017. The most challenging thing in first appointments, Jun Wang mentioned, is meeting expectations of both parties as well as the other members of the tribunal. Sometimes there can be a tension between the members of the tribunal, but one has to make sure that the job is

done in a truly impartial manner and everyone is treated equally. Top tips Jun Wang gave to aspiring arbitrators include trying to build up a niche area, for example specializing in a particular sector such as renewable energy or being fluent in a particular language. As such, one has to try to make himself/herself unique in this increasingly congested market, so that users and institutions can consider them once the appropriate opportunity comes.

Anna Kirk started her arbitration career in London at one of the big law firms and then moved back to New Zealand. At that point she was thinking of how to continue her international arbitration career from there. She got to meet David Williams QC one day and that is how it has all begun, working with him as tribunal secretary for several years. Anna Kirk recalls this as an absolutely invaluable experience, in terms of the exposure to a tribunal's perspective on arbitration, the decision-making process, written communicating with parties, observing how procedural issues play out etc. From this, she moved on to her own practice as barrister and arbitrator. Her main recommendations to rising arbitrators are to get yourself known in the community, speak, attend conferences, be a speaker at seminars, write articles and become known to the institutions. And this is actually how she got her first appointment, which was through the recommendation from the Executive Director at New Zealand Arbitrators and Mediators Institute. She has also done it entirely pro-bono. It was a small domestic matter, but this was less important, as it was the start of her path to becoming an arbitrator. Her first international arbitration appointment came through the ICC New Zealand National Committee, and again she highlighted how important is to make yourself known to the ICC National Committees. She also mentioned that institutions are keen on promoting young lawyers especially in the smaller cases. Her top tips to aspiring arbitrators are to have a mentor, from whom you can bounce ideas off, seek guidance from, of course preserving the confidentiality of the arbitration. Anna Kirk mentioned that she has seen senior arbitrators do this between each other because it is really helpful, especially when one is a sole arbitrator.

Conclusion

The speakers of the event took the audience on a very interesting journey where they shared personal stories of their first appointments. It was a great opportunity for young practitioners to get practical tips on how to get the first appointments

and how to overcome challenges faced while sitting as an arbitrator for the very first time. RAI initiative is helping young professionals all over the world in their careers as arbitrators.