

Kluwer Arbitration Blog

Interviews with Our Editors: Nicole Smith, Vice-President of AMINZ

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Nicole Smith is the Vice-President of the Arbitrators' and Mediators' Institute of New Zealand (AMINZ), the leading membership organisation for dispute resolution specialists in New Zealand. In addition to her work with AMINZ, Nicole is also a barrister at Mauao Legal Chambers specialising in commercial litigation and arbitration. Dual qualified in New Zealand and England & Wales, Nicole has previously worked in the litigation group of a top-tier New Zealand firm, and in the international arbitration group of Clifford Chance in London.

Welcome Nicole, thank you for joining us today!

1. To start, could you briefly introduce yourself, AMINZ and your role at AMINZ?

I am a specialist in all aspects of domestic and international arbitration, with a particular interest in construction, property, natural resources, and energy disputes. I sit as an arbitrator in New Zealand and internationally. I am based in Tauranga (by the beach on New Zealand's east coast) and I also provide English law advice as a partner in Keystone Law (a new model law firm with the firm's management based in London and partners working remotely from around the world).

AMINZ provides training and credentialing for its members, advocates for improvements to legislation and regulation around dispute resolution, and acts as the default appointing authority under the New Zealand Arbitration Act. AMINZ is also the only independent organisation that has reciprocal rights of membership (for Fellows and Associates) with the Chartered Institute of Arbitrators.

I am the Vice-President on our 7-member Council. All members of Council are volunteers and assist in setting the strategic direction of AMINZ and helping the AMINZ management to achieve its many and varied tasks.

2. You have been involved with the AMINZ Council since 2017; how has the arbitration landscape changed in New Zealand in that time? Has AMINZ seen any trends develop in its users, or the disputes that have been referred to it, in reflection of that changing landscape?

One of the key changes in the arbitration landscape in New Zealand (and elsewhere) is that arbitration is extending beyond its traditional fields of construction and property disputes. AMINZ members are now dealing with arbitrations that cover a broad range of subjects, including shareholder disputes, facilities management, trusts and family property.

Arbitration is also being used to resolve inter and intra-iwi Māori disputes (Māori are the first peoples of New Zealand), many of which arise out of settlements with the government over Treaty of Waitangi claims (being the Treaty signed between the British Crown and Māori chiefs in 1840, at a time of expanding European settlement in New Zealand).

One of the other key changes is the appointment of AMINZ (by the Minister of Justice) as the default appointing authority for arbitrators under the Arbitration Act. This has removed the need for costly and time-consuming applications to the courts where the parties have an agreement that provides for arbitration, but the agreement does not make it clear how the arbitrator is to be appointed.

The other change is that parties and arbitrators are now very comfortable with online and hybrid case management conferences and hearings. This is saving on time and travel and makes it easier to line up schedules. We are also now very familiar with saying (or hearing) “I think you are on mute”.

3. Part of your role on the AMINZ Council concerns reviewing the AMINZ arbitration rules. Could you comment on the specific benefits of conducting an arbitration under the AMINZ rules, and having a New Zealand seat generally?

The Arbitration Act is a modern statute, incorporating the UNCITRAL Model Law, and New Zealand could be described as a “Model Law plus” jurisdiction. It was one of the first countries to incorporate the 2006 amendments to the Model Law (dealing with interim measures and preliminary orders) into its national legislation. Further, the Arbitration Act also has a comprehensive set of provisions dealing with the privacy and confidentiality of arbitral proceedings and documents produced in arbitral proceedings.

As the Arbitration Act incorporates the Model Law, it is possible (in most circumstances) to conduct efficient and effective arbitral proceedings in New Zealand, relying solely on the provisions of the Act.

Where parties wish to have more certainty as to the likely structure of their arbitral proceedings, they may wish to adopt the [AMINZ Arbitral Rules](#). A new set of arbitration rules was issued by AMINZ on 1 January 2022. The Rules adopt an “institution light” approach.

If the parties need assistance with appointing the tribunal or to deal with challenges to the tribunal, they can look to AMINZ. The Rules also provide for a number of matters that are not dealt with in the Act, including the appointment of emergency arbitrators, expedited proceedings, summary dismissal of unmeritorious claims and consolidation (in international proceedings). They also include a protocol to be applied where a tribunal secretary is appointed.

The Rules are ideal for disputes where the tribunal and parties are comfortable with the administration of their own proceedings, including processes for the payment of the tribunal and

the exchange of documents. However, where parties consider that they need additional administrative support, the [New Zealand International Arbitration Centre](#) is willing to administer arbitrations conducted under the Rules.

4. What, in your opinion, are two areas of challenge, and two areas of opportunity for international arbitration in New Zealand in the post-COVID era?

Starting first with the areas of opportunity: I consider that, particularly for lower value international disputes, institutions, arbitrators and parties are now more comfortable with conducting such proceedings online. That means that New Zealand can overcome the “tyranny of distance”, and being a 24-hour flight from European centers is not an issue.

I also consider that New Zealand has maintained its reputation as a stable environment, politically and socially, with an independent and well-functioning judiciary. When parties are entering into contractual relationships, they seek certainty over uncertainty wherever possible. Therefore, they are likely to avoid choosing a seat of arbitration that has been (or is) going through a period of political or social upheaval. I consider that New Zealand’s ongoing stability makes it an attractive seat for its Asia-Pacific neighbours.

An area of challenge (for parties and arbitrators based in New Zealand) is that we tend to get the “short end of the stick” when timetabling online meetings and proceedings. It is fortunate that we have great cafes to help us get through the day after a 3am procedural hearing.

Another challenge is that for several years New Zealand’s “bright young things” deferred their overseas adventures and we have had the luxury of retaining all that education and enthusiasm in New Zealand firms and institutions. With borders opening, it is only natural that they will go to seek opportunities offshore. Our role and responsibility is to wish them well and to use our networks to ensure that the New Zealand diaspora continues to punch above its weight at the highest levels in international arbitration.

5. We understand that AMINZ has recently undertaken its inaugural survey of arbitration in New Zealand, can you give us a preview of two or three of the key insights to be taken from that survey?

The survey was undertaken by AMINZ (led by [Royden Hindle](#) and [Dr Anna Kirk](#)) in association with the [New Zealand Dispute Resolution Centre](#). The data that has been gathered is still being analysed. However, some preliminary results shared at the AMINZ Arbitration Day on 16 February 2022 indicate that over 110 New Zealand based arbitrators were appointed to sit in arbitrations in the years 2019 and 2020, with approximately 15% being international arbitrations. As there is no central registry for arbitration appointments, it is possible that this understates the number of appointments that were made.

While the majority of appointments relate to the more traditional areas of building and construction, and lease disputes, there were a large number of general company and commercial disputes dealt with by arbitration, and a range of natural resources and issues involving Māori assets.

The results also indicate that there is still a long way to go on achieving gender equity in arbitral appointments, with only 20% of the appointees being women.

6. AMINZ has also recently launched scholarship programmes focusing on mediation and arbitration, aimed at encouraging diversity and leadership in the New Zealand dispute resolution sector. What are the key benefits you see as arising from the scholarships, and what words of wisdom can you offer to aspiring arbitration practitioners?

The establishment of the AMINZ scholarships has brought about more awareness of the dispute resolution sector in general, especially in the younger generation of practitioners. It has allowed those starting out in their careers to consider furthering their knowledge and experience in ADR.

The Scholarship programme has also provided opportunity for senior practitioners to meet with our scholars at various education and event opportunities, to mentor them, and to allow them to observe mediations and arbitrations.

In New Zealand, I recommend joining AMINZ (of course), and utilising the resources it offers, such as attending local dispute resolution breakfast sessions, webinars and the annual AMINZ conference. Write and publish articles on your areas of interest (AMINZ is always happy to publish articles in its newsletters) and join the Young Arbitration Practitioner Group. I would also recommend getting involved in mooting opportunities either as coach or participant (depending on whether you are still at university). The international moots are a great way to meet practitioners from all over the world.

7. Part of AMINZ's unique offering is its comprehensive education and training programmes, how important is education and personal development for the Institute, and what other initiatives does AMINZ undertake to promote the use of arbitration?

A rolling calendar of education topics play a key role in the Institute's ongoing commitment to diversity and inclusion. We strive to have ample and accessible opportunity for learning and personal development so that anyone who is looking to build upon their knowledge and enhance their skillsets and experience has the opportunity to do so. This is reflected in the range of topics and levels of learning offered throughout the year – be it complimentary webinars with experts, through to the Arbitration Skills Intensive workshops. or the rigorous Fellowship programme.

The move to combining both in-person and virtual programmes has meant greater accessibility overall. It's meant those who otherwise would have missed a learning opportunity have been able to participate and engage with fellow practitioners through online education. An example being Arbitration Day, which was held as a hybrid event with practitioners logging in nation-wide to hear and learn from leading practitioners both from New Zealand and internationally.

In terms of knowledge-sharing, members are encouraged to share their publications, research, or insights through presentations at networking meetings and seminars, AMINZ's digital channels, and groups such as the Young Arbitration Practitioner Group. This helps provide a collegial environment, and the opportunity to continuously learn and engage on the latest arbitration topics and up-to-date thinking.

The Institute is also developing a Mentoring Programme designed to provide support and encouragement to young practitioners, from those who have been in the same position – albeit a few decades prior! The Programme’s development is already receiving positive feedback, and will be come into its own in the latter half of 2022, and 2023.

AMINZ is also involved in developing policy and commenting on new legislation that includes provision for dispute resolution. Our goal is to continue encouraging organisations, institutions, and central government to adopt and promote arbitration in contracts, regulation, and legislation.

Thank you for your time, Nicole. We wish you and the AMINZ team all the very best!

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