Kluwer Arbitration Blog

Quiet Evolution

Gregory Roy Fullelove (Freshfields Bruckhaus Deringer LLP) · Tuesday, September 21st, 2010 · YIAG

"*To the rest of the world, the English legal profession is a very strange species indeed*" (Berlins and Dyer, *The Law Machine*)

As autumn, season of mists, beckons there is, in London at least, a sense of the legal profession going 'back to school'.

During the summer, many firms will, like my own, have run some form of vacation scheme for university students. This opportunity to spend a few weeks in the thick of it provides would-be lawyers with an opportunity to test the water. Those of us who signed up some time ago benefit from hearing at first-hand the preoccupations and expectations of the next generation.

Over the years, I have had numerous conversations with students about an age old and (mostly) peculiarly English dilemma, namely the choice between qualifying as a barrister or as a solicitor. At the outset of their career, students must choose between one branch or the other of the profession, a choice which – whilst not irreversible – is frequently path-determining. As is well-known, barristers have traditionally constituted the specialist advocacy branch of the profession. The erroneous public perception of solicitors (reinforced by countless television legal dramas) has long been that they dedicate themselves solely to non-contentious matters and paperwork. There is also a common assumption that, if you work in a city law firm, you must be a 'deal lawyer'. In short, society's view of the roles of barristers and solicitors is engrained and somewhat wide of the mark.

In fact, the perceived strict delineation between a barrister's and a solicitor's work has for some years, as commentators have observed, been something of a 'common fallacy'. Over the past decade in particular, solicitor advocacy in the English courts has been on the increase. That said, barristers have essentially held on to their advocacy monopoly at the top end of the domestic process. This is unlikely to change any time soon, not least because the legal community is (for the most part) understandably comfortable with a system that is rather effective.

However, there has been one field of law in which for some time things have been developing in a significantly different way. That field is international arbitration.

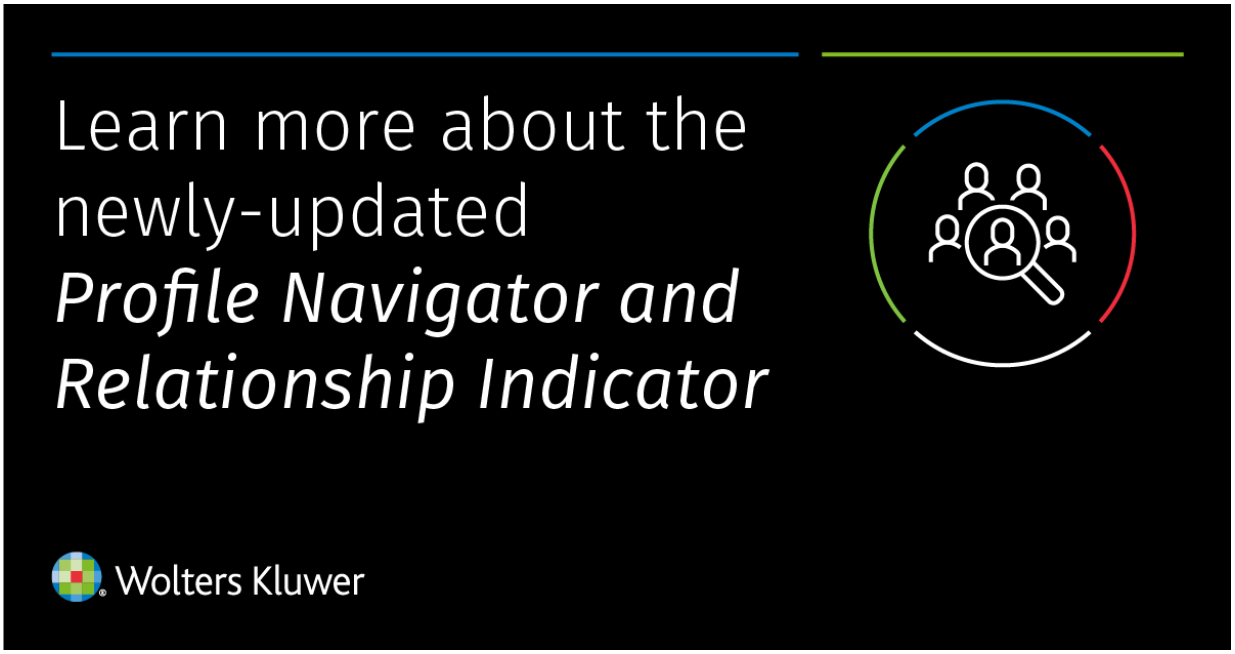
From the earliest days of modern international arbitration, firms conducted their own cases from instruction to final hearing, with the lead solicitors often shouldering the advocacy burden. Particularly where an arbitration hearing was located abroad, and the other side was represented by a firm from another jurisdiction, the question of bringing in a barrister was simply not a live one.

More recently, because arbitration teams are often drawn from various offices across a network, curiously English concerns about advocacy have tended to fall away. There is a generation of English solicitors who have established themselves as leaders in the field as counsel in the fullest sense, particularly in matters involving international law. Of course, barristers have established themselves too, but (critically) the default position amongst the leading English arbitration practices has become that they will not usually look for an advocate beyond their own ranks, absent special circumstances.

Had international arbitration remained a 'niche' area, this subtle change in advocacy practice may have gone largely unnoticed by the English legal community. But that was not to be: international arbitration has boomed.

And so it is that we are now seeing a surge in interest in international arbitration amongst the most junior lawyers and a noticeable change in their expectations. Increasingly, international arbitration is being regarded as a natural path for those with a deep interest in the law (both domestic and international) and a passion for advocacy. Whether the individual wants to pursue the arbitration path as a barrister or as a solicitor is less of an issue and to some extent a question of preference and opportunity.

At the recent charity ball in London, a large number of the arbitration community's finest gathered in the neo-gothic splendour of the Royal Courts of Justice. The tables were packed with lawyers of all varieties and backgrounds. Barristers, solicitors, *avocats* and attorneys swapped war stories of recent forensic battles, when not parting with their cash. That snap-shot should provide some comfort and perhaps inspiration to those making choices about career paths this autumn. Those who dream of the Court of Appeal or the Supreme Court will doubtless begin filling out the form for bar school. Those whose imagination is fired by the LCIA or ICSID may, by contrast, see more opportunities at a leading arbitration firm. But at least there is, in the sphere of international arbitration, a genuine choice to be made between the branches of the profession. A quiet evolution of our strange species is well underway.



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