

Kluwer Arbitration Blog

Getting to Know You

Michael McIlwrath (MDisputes) · Tuesday, April 2nd, 2013

Improving the search for information about arbitrators



Last week I received an invite to a [summer gathering](#) organized by English mediator, David Richbell. One of the events is “Speed dating: Senior mediators including, amongst others, Michel Kallipetis, Liz Birch, Nicholas Pryor available for ten-minute personal interview.”

Imagine how such an innovative method for choosing an arbitrator might work:

Would parties say you manage proceedings with a firm hand?

How long do you think an arbitration should last?

Do think it is appropriate for a tribunal to decide dispositive issues at the outset of a proceeding?

Ding!

[Announcer] “Time’s up! Please move to your next candidate.”

Introducing new methods to select and appoint arbitrators presents special challenges. Arbitrators may be justifiably timid about testing new ideas on reputations it took them years to build. And parties may be reluctant to try something radically different when faced with an important dispute.

Still, ideas once regarded as controversial can quickly become established practice if their efficacy can be demonstrated. For example, the practice of interviewing prospective arbitrators was once “[the subject of heated debate](#)” among practitioners. Today, a request to interview should not raise an eyebrow.

In 2007, the Chartered Institute of Arbitrators promulgated a guideline for interviewing. Albeit not contemplating a speed-dating format, [CIArb’s Practice Guideline 16: The Interviewing of Prospective Arbitrators](#) helped interviewers and prospective arbitrator remain within the proper bounds of what can be discussed.

The benefits of interviewing will be obvious to anyone who has participated in one. It can surface procedural issues that may be of special concern to a party, calibrate expectations as to how the proceeding should be conducted, and help build confidence in the selected chair. In short, interviewing can correlate with higher party satisfaction with the overall process and the tribunal.

Of course, interviewing is not ideal for *selecting* arbitrators. If it were, then I would be an easy date. It is difficult for me even to imagine rejecting an arbitrator after all the time and effort that goes into agreeing upon a candidate, not to mention the awkwardness the rejection would create.

To address this more fundamental need, a number of public databases now attempt to aid parties in finding suitable arbitrators. For international arbitration, the earliest and perhaps best example is the pioneering [iaiparis.com website](https://iaiparis.com), now also available through Kluwer, which allows parties to compare different arbitrators based on their biographical information, national origin, language capabilities, and the amount of experience they claim.

A more recent example is [Arbitral Women](#), which, as the name implies, lists women arbitrators, and also whether they are an arbitrator or counsel, their type of legal expertise (common law, civil law, European law, Islamic law, or international law, which may be said to be an expression of their style) and their area of substantive expertise.

Both iaiparis.com and [Arbitral Women](#) also contain a component of subjective evaluation: they are selective in whom they choose to list, although such databases may not always be transparent about their criteria.

Pushing the subjective element even further is the [Energy Arbitrators' List](#). Maintained by the ICDR, the list gathers feedback from professionals in the energy industry, aiming to include only those “lawyers and arbitrators who come from the business or technical side of the industry” around the world.

While the list may have been innovative for energy disputes, the idea of industry practitioners vetting the most suitable arbitrators is hardly novel. The practice has firm roots in domestic practices and other industries. For more than two decades the London insurance and reinsurance industry has maintained a list of “trained, insurance-practitioner arbitrators from whom well reasoned awards might be forthcoming”.

The Next Step?

The holy grail of information about arbitrators continues to be feedback from parties and counsel who have used their services in the past. This information is still conveyed today by word of mouth, often after an email that says only, “yes, I know him/her; call me”. Despite being widely acknowledged as hit and miss in accuracy and relevance, anecdotal information derived this way is commonly used to select arbitrators even for (especially for) large cases.

Three years ago the [International Mediation Institute \(IMI\)](#) introduced a [global database of leading mediators](#), around the world. The [IMI portal](#) gives users free access not only to the profiles of mediators in different countries, but also information about their mediation styles and, importantly, feedback from parties who have used their services in the past.

Two of the mediators mentioned in the first paragraph of this post – [Richbell](#) and [Kallipetis](#) – are listed with IMI, where their profiles include comments from parties about their performance.

Will arbitration institutions follow IMI's lead? At a minimum, they are taking notice, since several international institutions are represented on IMI's board (AAA/ICDR, ICC, BCDR, and JAMS).

If institutions do not make performance feedback available, it is likely that others will. This past December, Prof. Catherine Rogers posted here [a proposal for such a user-accessible database containing information about international arbitrators](#), including feedback about performance. The information would be provided through an institution or organization that is independent of the providers of arbitration services.

An improvement like the database Rogers has proposed should not be seen as revolutionary change, but as an enhancement to make the current method of selecting arbitrators easier and more accurate. Word-of-mouth referrals, as imperfect as they may be, are unlikely to fall out of use since parties will always desire the recommendations of colleagues whose opinions they respect.

It is also conceivable that one day we will be speed-dating prospective arbitrators, but I'm not holding my breath for that one.


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