

Kluwer Arbitration Blog

Interviews with Our Editors: Thoughts and Perspectives from Winnie Tam SC

Theresa Tseung · Friday, October 25th, 2019

Introduction

Ms Winnie Tam SC is a leading intellectual property specialist in Hong Kong, and was the first female specialist of the field to be appointed Senior Counsel by the Chief Justice of Hong Kong in 2006.

After her elected term as Chairman of the Hong Kong Bar Association (“HKBA”) between January 2015 and January 2017, Ms Tam SC continued to engage in leadership role in the HKBA and currently sit as Chairman of its Committee on Intellectual Property.

As the last post on our Blog’s live coverage of Hong Kong Arbitration Week this year, we have invited Ms Tam SC to share with us her insights on various topics ranging from gender diversity and arbitrators’ expertise, to use of AI in arbitrations and the future of arbitration in Hong Kong.

1. Has arbitration always been your interest from the start of your career?

My interest for the early years of my career has been in intellectual property and general corporate commercial work. I also have a deep interest in civil procedural law and private international law, not least due to the nature of intellectual property litigation. I began to be involved in arbitration when I was introduced to it and thrown in at the deep end, learning, researching, teaching, speaking on and practising it almost at the same time, and helping with the formulation of the new legislation in Hong Kong on arbitrability of IP. It has been a great journey and I am loving it.

2. There have been a number of initiatives aimed at improving gender diversity in international arbitration. However, we are still faced with an under-representation of women at senior levels in the legal profession and on arbitral tribunals. What do you think are the greatest hurdles to achieving gender diversity in international arbitration? How may we overcome them?

There are several aspects to achieving greater equality in gender in the international arbitration, but I am hopeful that it can be done given time and a gradual change in mindset. We need capacity building amongst women. In terms of counsel teams, I do not see any real hurdle in women being

engaged as part of the counsel team in international arbitration. As more female counsel enter the sector, more of them will reach the higher rungs of the ladder in due course.

Female lead counsel are fewer in number compared to their male counterparts, but that is true too in the litigation world and in the appointment of silks at the Bar. From my observation, there are several hurdles to overcome:

- **Stamina.** While some young (age 40-45) arbitrators enjoy early success due to special factors, parties do mostly prefer to appoint more experienced arbitrators or lawyers. On the other hand, many women burn out or fade out of the scene around the age of 50 unless they are determined and confident to continue to push their own career to new heights. It could be because of their family, e.g. trying to synergise with the husband retirement plans, or it could be a lack of opportunity to demonstrate their stamina to take on greater challenges with all the years of experience under their belt. It is very much determined by self-perception.
- **Perception.** The notorious glass ceiling, as I see it, is formed by perception. Well-heeled senior female lawyers are often presumed to wish to slow down after they reach middle or late-middle age. That perception will need to be removed by some positive indication by word or conduct on the part of the woman practitioner herself. Declaring a keen interest in a new practice area, taking silk, taking up rigorous teaching work alongside practice, and active networking in conferences all have the effect of negating any undesired perception or presumption of “slowing down”.
- **Fighting gender-consciousness.** It is natural that arbitrators would choose those they enjoy working with to share a panel, particularly where they may have to arbitrate away from home. Where the designation is the decision of two males, do women stand a chance? To be good around people regardless of their gender is a great asset in arbitration. On the other hand, the more you think you are suffering a disadvantage because you are a woman, the more likely you are going to suffer that disadvantage. It is important that women who aspire to be arbitrators are able to feel at ease, quietly confident and able to engage both professionally and socially when they are appointed to work whether with male counsel or arbitrators. Furthermore, it is important that successful women practitioners who are fortunate to rise through the glass ceiling do not only enjoy the kudos of being the rarer species, but would also empower other women to join them.

3. *Online dispute resolution platforms have been created to improve procedural efficiency and cost-effectiveness in international dispute resolution. In your view, is online dispute resolution, assisted by emerging technologies such as blockchain and artificial intelligence, the answer to such concerns?*

There is no doubt that technology will increasingly be deployed widely to achieve lower cost and higher efficiency in international arbitration. I do believe that there are major contributions to be made by technology in the near future by the use of artificial intelligence and block chain in document management, in deal making and administration of the execution of certain types of contracts through to dispute resolution, and in the administration of proceedings such as filing of documents and procedural compliance, in breaking language barriers and more. In terms of the cost of arbitration, there will be a day when virtual hearings will be as common as video-conferencing. Further down the line, holograms of individuals attending an arbitration in various capacities may well make physical congregation in a hearing room look archaic and an absurd waste of time. We all need to be prepared to embrace the changes ahead.

4. *What in your view is the greatest pitfall of an increasing use of artificial intelligence in arbitral proceedings? Could it be avoided?*

It is hard to predict all the forms of disaster an over-reliance on technology would bring. More immediately, where certain types of disputes are reserved to be resolved by a robot, such as smaller and fixed form disputes suitable for a formalistic mode of resolution, e.g. parking ticket disputes, e-Bay type disputes, injustice is sized by the monetary value at stake. However, where the dispensing of justice depends on judgment calls to be made on the credibility of witnesses, or appropriateness of non-monetary relief, which is often the case, the value of traditional human effort cannot be marginalised. I believe maintaining a firm belief in the value of human judgment, and treating dispute resolution as a humanistic, not mechanical, undertaking will help guard against over-enthusiasm in the use of technology leading to apparent efficiency at the expense of justice.

5. *What are the skills you would consider critical to an arbitration practitioner for him or her to be practising as a counsel above his or her peers?*

There are three skills that are critical:

- **Management skills.** These skills relate to accessing, organising and managing information, managing co-workers, clients' and the tribunal.
- **Skills in expression and presentation.** I cannot over-emphasise how the format of presentation of information and materials can make or break a case, especially where the case is complex. The skill to be able to master simplicity and lucidity in organizing information for presenting a forceful case is at least as valuable, if not more valuable, than good legal research.
- **Outgoing personality.** As a person relatively new to the practice, the mindset of a senior barrister, who is accustomed to being reserved and almost withdrawn in a professional circle, must change.

6. *What do you think are the biggest challenges to the growth of arbitration in Hong Kong and Mainland China in the next decade?*

With the development of the Greater Bay Area ("GBA"), I can see a lot of potential in Hong Kong's continued growth as an arbitration hub for the fast-growing foreign investment in the GBA. The challenge is how to synergise the unique features of Hong Kong's relevant experience and attributes to maximise a win-win scenario for both China and Hong Kong. As for the fear of competition from places like Singapore, I believe we should instead be focusing on our unique position as an independent but integral part of China with a fiercely protected spirit of independence under One Country, Two Systems.

7. *Any words of wisdom for budding arbitration practitioners?*

Work hard, play hard and rest well. Above all, learn for life and serve non-stop. Your high

aspirations will be better achieved with a healthy body and high spirit. When you feel that you have been working too hard in your practice, take a little time off and work for public causes. Find a sense of purpose in making contributions. You will find that it enriches you well beyond the time cost you “lose”.

More coverage from Hong Kong Arbitration Week is available [here](#).

This interview is part of Kluwer Arbitration Blog’s “Interviews with Our Editors” series – past interviews are available [here](#).

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