Kluwer Arbitration Blog

LIDW 2022: What is the Role of London for North American Disputes? A North American Perspective on London as an International Dispute Hub

Thomas Lehmann, Erdem Evranos (Queen Mary University of London) · Wednesday, May 11th, 2022

As part of the 2022 London International Disputes Week, McCarthy Tetrault, Queen Mary University London, Clyde & Co, Hughes Hubbard, and Fountain Court Chambers organized a conference on “What is the role of London for North American disputes? A North American perspective on London as an international dispute hub.”

The panel was composed of Remy Gerbay (QMUL, Hughes Hubbard), Domenico Di Pietro (GST), Miranda Lam (Acuitas Therapeutics), Robin Lööf (Fountain Court), Junior Sirivar (McCarthy Tetrault), and Jamie Spotswood (Clyde & Co).

The panellists discussed London’s role in arbitral disputes from the US and Canadian perspectives. The session focused on a few key topics particularly relevant to North American disputes, especially: (1) the choice of US and Canadian parties of London as a seat of arbitration; and (2) London as a sustainable, ethical and global spot for North American disputes.

London as an arbitration hub for North American disputes

Remy Gerbay kick-started the event by asking the panel whether it was common for North American parties to resolve disputes in foreign seated arbitrations and whether London was a preferred choice.

The panelists agreed that dispute resolution regularly takes place outside North America, and English courts and arbitral institutions as forums provide the best choice for international disputes. According to the panellists, London is a very reliable spot for three main reasons:

1. Traditionally, the UK courts are widely considered reliable and a predictable place to settle disputes. Historically, the UK is one of the first jurisdictions to embrace alternative dispute resolution.
2. London provides an extremely varied pool of professional expertise in the world, as shown by the composition of the panel.
3. The English courts are naturally international, as 70% of commercial cases before them had an international nexus, with over 70 countries worldwide using London as a seat. A panellist described London as a commercial "World Court" and a major arbitration hub.

Moving to substantive law, the panellists emphasized the close ties between North American and the English & Welsh legal systems, as they are built upon common law principles. One member said that parties would refer to commercial decisions adopted in English courts even in Canadian-based litigations. London also appears as a "fairly easy and neutral ground" for Canadian parties who do not wish to opt for Canadian courts. Similarly, the members emphasized the culture of cooperation between Canadian and UK courts on topics ranging from freezing orders to enforcement of arbitral awards. A panellist expressed that the recent wave of sanctions against Russia – which was much more coordinated among G7 leaders – might also result in a rise in US sanctions enforcement, driving in turn greater UK sanctions enforcement.

Moving to the advantages of London as an arbitration seat, the panel praised the culture of procedural efficiency the city had to offer compared to prospective venues in Canada or the US. As one of the panellists underlined, the "English Arbitration Act is old but aging very well." According to the experience of the panel members, the LCIA "came out 9 times out of 10" as the preferred arbitration center when there is an international component to a contract. It was the panel's view that when London is chosen as a seat, the parties tend to adopt English law as governing law.

Finally, the panellists pondered whether London was a competitor to American or Canadian arbitration forums. New York and Singapore are given as other popular destinations for both litigants and arbitrators from the region. One member expressed the view that Canada is quickly developing a high-standard system able to welcome arbitral activities founded on a well-established judiciary. Others recognized that London presented competitive advantages, particularly for certain types of disputes, such as banking, maritime, shipping, and new types of technological disputes. This ascendency seems not to be undermined by Brexit, as US companies are planning to increase their presence in England. London remains a very attractive place for business – anecdotal evidence for this is that (most) major international law firms have an office in London.

London: global, sustainable and ethical?

The panel also addressed the theme of this year's LIDW, namely "Dispute Resolution – Global, Sustainable, Ethical?"

On sustainability, a panellist admitted that he had to look up the notion in the dictionary before the session, expressing a favourable opinion on developing best practices that reduce our environmental impact. The panel showed consensus that efforts could be made to better allocate budgets and resources for environmental benefits – i.e., reducing the amount of paper and the amount of travel to prepare for hearings and arbitration proceedings. However, it seemed that, in practice, the driving factor for change was not environmental protection but cost-savings, convenience, and efficiency – even though the benefits were intertwined. . The panellists agreed that virtual hearings could dramatically increase efficiency compared to physical venues.

Diversity was considered a topic related to sustainability that is becoming increasingly significant. According to a panellist, external counsel is increasingly chosen according to values, with the team's diversity being one of the major elements when in-house counsel chooses an outside law firm.

On the global importance of London, the perception was that England provided excellent legal education, deriving great value from training in England, with well-established foundations to practice. This might be reflected in the appointment of arbitrators. A member of the audience raised a question on the cooperation between the US and UK, mentioning that English arbitrators are particularly appreciated in the US and Canada, while US and Canadian arbitrators are often appointed in the UK.

Finally, the panel addressed the topic of ethics and whether the high ethical standard could be an impediment to London as an arbitration seat. The panel was divided on the issue of witness preparation and coaching. Some expressed the view that while Canadian lawyers are subject to high ethical standards, it would be considered negligence *not* to coach the witness in Canada. What is considered appropriate is to prepare the witness in the best possible way without misleading the court. On the contrary, in England, the line between preparation and coaching – the latter being prohibited – is blurred. This may raise concerns in international disputes. However, the panel agreed that high ethical standards were a long-term asset rather than an obstacle.

Conclusion

The panel's main subject turned out to be the quality of service London may offer to North American parties. Overall, the panellists agreed that the excellence of the legal system, education, and arbitration institutions in England constituted vital reasons why a London seat was preferred over some continental seats. Reflecting on the last 20 to 30 years, the panel agreed on the exponential development of London as an international arbitration hub, rising as a result of resourcefulness, to one of the top three arbitration spots in the world, if not the first.

More coverage from LIDW is available here.

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