

Kluwer Arbitration Blog

Highlights from CanArb Week 2022: The 2022 ICC Canada Conference – The New World

Rachel Howie (Dentons), Sara Nadeau-Seguin (Teynier Pic), and Bruno Savoie (Mayer Brown LLP) ·
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On the third and final day of [CanArb Week 2022](#), the ICC Canada Arbitration Committee held its annual conference titled *The New World*. The conference sessions were bookended by opening and closing remarks by Professor [Janet Walker](#) (Chair, ICC Canada, Atkin Chambers, Full Professor, Osgoode Hall Law School) and [Myriam Seers](#) (Vice-Chair, ICC Canada, Partner, Savoie Laporte). The forward-looking discussions gathered Canadians and other international arbitration practitioners from around the world, including in-house counsel and leading international arbitrators, to share practical insights on key issues in international arbitration. The conference program examined the future of the international dispute resolution community, in particular in light of recent legal and institutional developments.

Including the world: achieving equity, diversity and inclusiveness

The first panel discussion was moderated by [Dr. Todd Weiler](#) (Independent Arbitrator), and featured [Dr. Ayodele Akenroye](#) (FCI Arb, Independent Arbitrator), the [Hon. Clément Gascon](#), (Former Justice of the Supreme Court of Canada, Arbitrator, Woods LLP), [Dana MacGrath](#) (Independent Arbitrator), and [Nancy Thevenin](#) (General Counsel, USCIB). The panelists shared their perspectives and personal experiences with the challenges of and solutions to increase the representation of diverse arbitrators and lawyers, from gender and ethnic diversity to “invisible” disabilities such as attention deficit hyperactivity disorder (ADHD).

The panelists agreed on the need to expand the pipeline of students and lawyers interested in arbitration, increase interest and awareness, create new pathways with scholarships and internships, hire diverse students, and create opportunities for lawyers to move up the ranks within the field. The panel observed that efforts towards diversity need to be intentional, and praised the work of several organizations and initiatives supporting diversity, including [ArbitralWomen](#), the [Equal Representation in Arbitration \(ERA\) Pledge](#), and [Racial Equality for Arbitration Lawyers \(REAL\)](#). It was also noted that these issues are not new to the world of adjudication. Highlighting the approach that the Federal judiciary has used in Canada to increase diversity on the bench, it was observed that institutions in charge of appointments intentionally took a more active role in promoting diversity. Finally, all of the stakeholders who are part of the system must realize the importance of bringing diversity to the forefront, the “hidden” factor, as we all work toward

inclusiveness.

Four simultaneous roundtable discussions

The second conference session offered the participants a choice of four roundtable discussions held simultaneously in different rooms of the McGill Faculty Club, which were then summarized by the facilitators in a plenary session.

The first roundtable, which discussed the topic of “modern” investment treaties, was facilitated by [Pierre Bienvenu](#), Ad. E. (Senior Counsel, IMK s.e.n.c.r.l./LLP, Independent Arbitrator, Arbitration Place) and [Alexandra Dosman](#) (Counsel, Trade Law Bureau, Government of Canada). The discussion focused on the main changes introduced in Canada’s new 2021 model Foreign Investment Promotion and Protection Agreement (FIPA), the release of which was [previously discussed](#) in detail on the Blog. There was also a lively discussion on the introduction of provisions to promote mediation, expedited proceedings, the code of conduct for arbitrators, and the broad prohibition on double hatting.

The second roundtable, which examined the use of technology in international arbitrations, was led by [Stephanie Cohen](#) (Independent Arbitrator) and [Michael Kotrly](#) (Barrister, One Essex Court). The participants discussed the practical aspects of technology in arbitration, including whether familiarity with technology should be a factor in appointing an arbitrator, and how practitioners can incorporate technology into their practice. The discussion relied on the [ICC report](#) on leveraging technology, which was praised as a useful resource for counsel and tribunals.

The third roundtable, on efficiency in international arbitration, was moderated by [David Roney](#) (Partner, Sidley Austin LLP) and [Ema Vidak Gojkovi?](#) (Independent Counsel & Arbitrator). The participants first discussed whether efficiency is always desirable, and noted that tribunals should engage in a dialogue with the parties in this regard. The discussion then turned to whether efficiency can look differently at various stages of an arbitration. Finally, it was suggested that some practices which used to be seen as inefficient, such as case management conferences throughout an arbitration when they were held in person, can be efficient today with the use of technology.

The fourth roundtable, facilitated by [Philippe Boisvert](#) (Counsel, Borden Ladner Gervais LLP) and [Annie Lespérance](#) (Omni Bridgeway), was particularly popular and discussed the strengths of Montreal as a seat of arbitration. In particular, Montreal was praised as a fantastic seat given its bilingualism, dual legal culture, and the large number of bilingual arbitrators with common law and civil law experience. As a result of the discussion, a number of participants agreed to create a steering committee whose purpose will be to further the place of Montreal on the Canadian and global arbitration stage.

Keynote speech

[Meg Kinnear](#) (Secretary-General, ICSID) delivered the keynote speech. Her insightful comments focused on the key changes in the [2022 ICSID rules](#), which were five years in the making. The reform, which represents the most extensive rule-revision process in the centre’s history, includes

new standalone mediation rules and expanded access to the Additional Facility rules, which can now be used when neither party is affiliated with ICSID – effectively creating a new regime for disputes administered by ICSID, new provisions aimed at reducing time and cost, and provisions on transparency and conflict of interest, in particular in relation to third party funding. The new rules, it is hoped, will provide practitioners guidance on contested issues in international arbitrations and increase the legitimacy of investor-state arbitration by enhancing transparency, and expanding ICSID’ dispute resolution offering.

Modified Tylney session

This modified Tylney session, a format in which participants are invited to submit questions and observations in advance, was moderated by [Robert Deane](#) (Partner, Borden Ladner Gervais LLP) with panelists Prof. [Fabien Gélinas](#) (Full Professor, Sir William C. Macdonald Chair, McGill University) and [Erin Miller Rankin](#) (Partner, Freshfields Bruckhaus Deringer). Under this modified Tylney, they shared their views on the future of arbitration and addressed questions from the audience, including many which had not been submitted in advance.

The panelists and audience first discussed the future of witnesses in arbitration, and shared a common concern for the importance of allowing a party to tell its story and the importance of stories in changing the mind of the arbitral tribunal, while noting the downsides of the heavy influence of lawyers on witness statements. The discussion then turned to the future of costs in arbitration and focused on whether more reasoning is needed as the amount of costs awarded increases. For example, a losing party may wish for more transparency and standardization of the reasons for cost awards. However, it was suggested that there are good reasons for the discretionary nature of cost decisions and that we should approach standardization cautiously, given that costs determinations are highly factual. Finally, participants engaged with the panelists on whether arbitration is part of a public civil justice system or whether it stands apart from civil justice system, echoing [the remarks of the Hon. Louise Arbour at the 2022 ICCA conference](#).

Special guest speaker

[Michael McIlwrath](#) (MDisputes; Chair, ICC Governing Body for Dispute Resolution Services; Chair, Corporate Counsel Committee of Campaign for Greener Arbitrations) gave a brief overview of the important role of the Governing Body in overseeing ICC Arbitration and ADR, and an introduction to the [Campaign for Greener Arbitrations](#) and its Corporate Counsel Committee, including practical techniques to conduct arbitrations cost-efficiently and effectively with a reduced environmental impact.

Debate on sanctions

The last session consisted of a debate on whether financial, trade and political sanctions must be adhered to by arbitral institutions and tribunals, and whether such adherence negatively impacts their neutrality, independence, and impartiality. The debate between [Joseph Chedrawe](#) (Vice-Chair, Disputes, Europe, Middle East, and Africa, Covington & Burling LLP) and [Jessica Crow](#)

(Independent Arbitrator, Arbitra International) was moderated by [Colin Trehearne](#) (Counsel, Mori Hamada & Matsumoto).

By way of introduction, it was noted by the moderator that sanctions take a variety of forms, including trade sanctions (e.g., service embargoes), financial sanctions (e.g., asset freezes), and immigration sanctions (e.g., travel bans). It was reported that the General Counsel of the ICC stated that one third of ICC arbitrations over the last two years have involved sanctions in some way. The impact on arbitral institutions includes additional compliance verifications to identify the ultimate beneficial owner of a party, and forcing institutions to consider the need to seek licenses from regulators.

The debaters raised many reasons for their assigned positions, skillfully navigating developments by institutions, practical realities, and legal impacts. The well-researched and articulated presentation added a lively closing to the day's discussions.

Conclusion

The ICC Canada Arbitration Committee conference was a resounding success, not only for its enlightening and interactive discussions, but also for the palpable enthusiasm shared by the participants in meeting the Canadian arbitration community again in person. With the program integrating many opportunities for interaction, participants were able, thanks to the masterful guidance of the panelists and facilitators, to delve into issues and connect on ideas, best practices, challenges and how to proceed into the future.

Follow along and see [Kluwer Arbitration Blog's prior coverage of CanArb Week here](#).

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