

Kluwer Arbitration Blog

Young Arbitrators Sweden (YAS) Arbitration Day 2022 Recap: the Goose that Laid the Golden Egg

Jake Lowther (MAGNUSSON) and Isabelle Sundström-Stridh, Mathilde Hofbauer (Hannes Snellman) · Saturday, January 21st, 2023

It was St Martin's Eve on 10 November 2022, a day also known in Sweden as "Martin's goose" (Sw. *Mårtensgås*). As the Swedish name suggests, the St Martin's Eve custom involves a three-course goose dinner in which all parts of the goose are used and finished with apple cake. It is particularly popular in Scania in southern Sweden, where goose farming has long been practised. It was also the day Young Arbitrators Sweden (YAS) held its heavily oversubscribed [fourteenth annual Arbitration Day](#) (Sw. *skiljeförfarandedagen*) in Stockholm.

As ever, the YAS Arbitration Day 2022 covered numerous interesting and highly topical subjects in the field of arbitration, from the practical, such as how to build a case, methods for probability assessments, tribunal secretaries and third-party funding, to the ongoing question of how to increase diversity within the ranks of arbitration. Featuring voices from Sweden, the Nordics and beyond, several common or "golden" threads were woven throughout the day and this blog post provides a summary of some of these.

How to Build a Case?

Following welcome remarks from [Tora Larusdottir](#) (Cederquist), YAS Arbitration Day 2022 was kicked off with a highly practical discussion from [Andreas Johard](#) (Hammarskiöld) and [Wendela Hårdemark](#) (Westerberg & Partners) on how an arbitration practitioner ought to go about building a case. The preparation of a case was divided into three distinct but somewhat overlapping phases. Key pointers included to allow for sufficient time to gather the evidence, which has become increasingly difficult with clients with shorter data retention routines and policies, and to avoid group think and confirmation bias by taking the time to listen to any dissenting or wavering voices within the team.

Methods for Probability Assessments

[Christian Hauge](#) (Wiersholm), together with [William Lundgren](#) (Cederquist) rolled the dice and provided the audience with some food for thought. For Hauge, checking the facts of the case and an analysis of the litigation risks is a prerequisite for effective dispute resolution. While it may be

impossible to predict with certainty the outcome of a legal dispute, there are methods available to help counsel and their clients to calculate the risks involved and determine their strategies accordingly. For example, the “expected value” tool rests on the idea that a claim that is certain to succeed has greater value than a claim that is not certain to succeed. A claim’s “expected value” is equal to the sum of the probability of the successful outcome of the dispute minus the probability of the unsuccessful outcome of the dispute. Employing this tool can also be useful in calculating the worth of any settlement proposals as well as to avoid the risks of confirmation bias (for more information, see [here](#)).

How to Increase Diversity Within Arbitration?

In the day’s second panel, comprised of [Lisa Bourghardt](#) (Vinge), [Jasdeep Singh](#) (MAQS), [Jake Lowther](#) (Magnusson), [Daniel Wätz](#) (Time Danowsky) and moderated by [Isabelle Sundström Stridh](#) (Hannes Snellman), the ongoing question of how to increase diversity within arbitration was discussed.

The discussion commenced with a review of statistics from the recent International Council for Commercial Arbitration (ICCA) report from the [Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings](#) (previously discussed on the Blog). The discrepancies between institutional and counsel appointments of arbitrators were highlighted. Although Sweden is in many respects a world leader on equality and non-discrimination, the panellists underlined the need to continue to engage with diversity and inclusion on a broader scale and for numerous reasons.

In respect to talent attraction and retention, there remains a significant gap at the partner-level at most Swedish law firms, which in turn sends signals to non-“straight, white male” employees about their future opportunities to progress and to bring their authentic selves to the office, regardless of e.g., race, disability, sexuality, religion, or socio-economic background. A failure to do so contributes to the risks of group think and confirmation bias.

There is also more work to be done in Sweden to encourage those from more diverse socio-economic backgrounds into the profession, as well as to encourage those who appoint arbitrators to try to focus more on diversity. Thanks in part to organizations such as the [Diversity Charter Sweden](#), which works to promote diversity in the workplace, progress is being made. However, there remains a lot of work to be done to ensure the future legitimacy of arbitration. Sweden cannot rest on its laurels and, importantly, clients are increasingly demanding measurable progress on this.

Litigation Funding

The next panel discussion featured some of the preeminent experts on litigation funding in Sweden, [Carl Persson](#) (Roschier), [Johan Skog](#) (Kapatens), [Rasmus Josefsson](#) (WERKS) and [Sandra Kaznova](#) (Hammariskiöld), moderated by [Jing Xu](#) (Cederquist). Litigation funding remains in effect unregulated in Sweden, although it was noted how quickly attitudes have developed from absolute no-no to widely accepted practice. The discussion also considered the advantages and disadvantages of clearer rules or guidelines, with many advocating that full transparency in respect to third party funders is generally to be desired.

Case Law Update

An update on Swedish and Nordic case law was delivered by [Magnus Pärssinen](#) (Wallin & Partners) and of international case law and legislation by [Emilio Timpanaro](#) (Gernandt & Danielsson). Among the numerous interesting updates included the Svea Court of Appeal's (the "Court") recent decision ([case no T 1356-18](#)) to set-aside in part a Stockholm Chamber of Commerce ("SCC") award in favour of a Russian steel plant operator on the basis that the arbitral tribunal exceeded its mandate. Of particular interest was another decision of the Court ([case no T 7158-20](#)), concerning the existence of a right to a physical hearing in arbitration. In that case, in respect to an award rendered during the pandemic, the party challenged the award *inter alia* because of the decision of the arbitral tribunal to hold a virtual hearing, to which that party had objected. In its decision, the Court has now confirmed that a party's right to request an oral hearing under Swedish law is "technology neutral", meaning that a virtual hearing is sufficient in Sweden, i.e., there is no right to a physical hearing.

Tribunal Secretaries

The penultimate panel of YAS Arbitration Day 2022 considered the role of the tribunal secretary and comprised [Denice Forstén](#) (Mannheimer Swartling), [Anna-Maria Tamminen](#) (Hannes Snellman), [Mushka Pistol](#) (Associate Judge of the Court of Appeal and Inquiry Secretary) and [Thomas Kolster](#) (Krogerus), moderated by [Erik Hedström](#) (Mannheimer Swartling). Discussion considered some of the "fourth arbitrator" criticisms of the tribunal secretary, whether officially and unofficially appointed. The panellists acknowledged the importance of being clear on where the line has been drawn and for all participants to understand the tribunal secretary's mandate. Jurisdictional differences and nuances were also considered in this respect, including an instance where counsel had mistakenly contacted a tribunal secretary to discuss the case. It was acknowledged that in Sweden and the Nordics, the role of tribunal secretary is generally well-understood and the benefits are clear, particularly in the case of more time poor arbitrators.

Green Arbitration

[Christoffer Coello Hedberg](#) (SCC) provided an overview of the SCC's green arbitration statistics, as well as the SCC's [Sustainability Commitment](#) to provide environmentally sustainable dispute resolution services. The SCC's commitment to making arbitrations greener was also discussed, with reference made to the [Campaign for Greener Arbitration's Green Protocols](#), which provide guidance on the changes that all arbitration participants and stakeholders can and should make to their practices. In summary, the main messages are "adopt clean energy, fly less and eliminate hard copy bundles" (for further reading, see [here](#)).

Dos and Don'ts from the Arbitrator's Perspective

The final panel of the day considered the dos and don'ts from the arbitrator's perspective and

featured insights from [Polina Permyakova](#) (Delphi), [Anina Liebkind](#) (Norburg & Scherp), [Kristoffer Stråth](#) (TM & Partners) and [Jerker Pitkänen](#) (Castrén Snellman), moderated by [Julia Nordgren](#) (Hannes Snellman). Top tips included to carefully draft a statement of evidence that accounts for each assertion and its evidentiary basis and to question every sentence in a submission, e.g., what is its purpose, what means does it serve?

One interesting point here contrasted the perspective of counsel, which must live and breathe its case, and of the arbitrator, for whom not all information about the case is essential to know. Instead, all roads should lead to Rome, i.e., all information provided should be focused on the relief requested. Again, the risks of confirmation bias and group think should be taken into account in this regard. It was also noted that it is crucial for an advocate to maintain their credibility before the arbitrator. One or two mistakes are excusable, but the impression that an advocate is acting in a deceptive manner is not. Also discussed were some of the nuances between the styles of the Nordic jurisdictions and others, in particular in southern Europe. When it comes to making the right decision in an individual case, as ever, “it depends”.

Conclusion

Following the concluding remarks of YAS President [Eric Johnson](#) (Cederquist), the YAS Prize for Best Arbitration Essay 2022 was awarded to [Alexandra Tamm](#) (Vinge) for her [winning essay](#) on the topic of challenging expert determinations arising from valuation clauses.

The YAS Arbitration Day 2022 showcased the talents and abilities of the Swedish arbitration community, which is working hard to care for the goose that lays the golden eggs. Among the day’s “golden” threads included a strong focus on increasing diversity and inclusion and correspondingly on reducing confirmation bias and group think. Consequently, the future looks bright for the legitimacy of arbitration in Sweden in the years to come. While there may exist certain differences between jurisdictions, the insights from the day confirm that Swedish and Nordic practitioners are pragmatic, innovative, forward focused, and driven to find legally correct and environmentally sustainable solutions.

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