Kluwer Arbitration Blog

Interviews with Our Editors: In Conversation with Sir David Williams

Sam Macintosh (Assistant Editor for Australia, New Zealand and the Pacific Islands) · Wednesday, January 22nd, 2025

Sir David Williams KC is an Associate Member of Bankside Chambers, Auckland, New Zealand. Sir David is a former Justice of the High Court of New Zealand, the High Court of the Cook Islands, and the Court of the Dubai International Financial Centre.

Since 2005, Sir David has been consistently praised as “one of the world’s outstanding commercial arbitrators”, and in recognition of his outstanding contribution to the development of arbitration law and practice in New Zealand and internationally, was awarded a Knighthood by Queen Elizabeth II in 2017.

More recently, Sir David was involved in several high calibre ICC, LCIA and SIAC arbitrations including two major international construction arbitrations where the amounts claimed exceeded US$1 billion.

Sir David, welcome to the Kluwer Arbitration Blog! We are privileged to have the opportunity to share with our readers the insights you have gained over a truly illustrious career.

1. ***Having sat as arbitrator in over 150 international cases, and presided over a range of different counsel, what advice would you give to emerging arbitration practitioners today?***

In a world of increasing global connectedness, I see that international arbitration is going to become more important than ever. This offers enormous opportunity for younger practitioners. Young lawyers coming through today are extremely bright and well trained.

The general advice does not change; try to get a role in a good firm, have faith in your skills, and work hard to improve them. I always encourage junior lawyers to take every opportunity presented to them and don't be afraid to ask for more advocacy opportunities. Senior practitioners are usually very willing to help those who are keen to progress.

I think that those just starting out in arbitration should not be scared to take a risk—it is often where the greatest reward is found. It might be moving firms or cities, it might be taking the lead on a cross-examination, it might be speaking up about a new argument or angle that no one else has considered. All of these things may lead to new opportunities or doors opening.

Importantly, find people you enjoy working with—collegiality is one of the best things about the arbitration community. Also find people you will learn from—take all educational opportunities as this will help you develop your skills.

In arbitration specifically, consider what the tribunal needs to resolve the issues—don't fall into the trap of thinking "more is more". Tribunals get burdened with so much information these days. It is more important to help guide the tribunal through your argument and to focus on the important points, than to produce voluminous and prolix submissions. Concise, focused submissions are likely to be more effective than a scattergun approach.

2. ***How has your New Zealand heritage shaped and influenced your worldview during the course of your career? And on the flipside, how do you feel that New Zealanders are perceived overseas?***

New Zealand lawyers are well trained in a broad range of law and work hard. There is no sense of entitlement, so lawyers expect to have to earn their progression through the ranks. Like me, many have not come from lawyer families, or privileged backgrounds. My father was a publican and I went through State schools. In New Zealand, this was not an impediment to a good education and gaining entry into law school, and I think that remains the case.

As a small market, we cannot specialise to the same degree as those in larger overseas markets. I see this as an advantage. We are not daunted by giving something a go and we have a good, broad knowledge base on which to build.

As a generalisation, New Zealanders are easy-going and respectful of different cultures and backgrounds. Our natural inclination is to be informal and treat people as equals. I think this is a

genuine advantage in an international setting.

Many of my former law clerks and tribunal secretaries have gone overseas and become very successful. As I said above, Kiwis work hard. They are well trained at law school and in the firms here. Their practice is broad so they go overseas with a range of skills, experience and perspectives. In my view, young New Zealand lawyers are able to hold their own against other lawyers from virtually anywhere in the world.

Bankside Chambers' Singapore presence is an example of the entrepreneurial spirit that is a typical feature of New Zealand life. Bankside is the first New Zealand or Australian chambers to commit to the Singapore market. I set up an office at Maxwell Chambers back in 2011, when no one else was doing so. That has now been carried on by a number of my Chambers colleagues in the new Maxwell Chambers suites. It helps that Kiwis love travel and are used to travelling distances.

3. ***According to the 2021 survey released by Queen Mary University of London ("QMUL Survey"), the five most preferred seats for international arbitration are London, Singapore, Hong Kong, Paris and Geneva (in that order). There have long been discussions about what New Zealand and Australia need to do to become hubs for dispute resolution in the Pacific region. What progress have you seen in these jurisdictions to encourage their use as international arbitration seats? What still needs to be done?***

It is fantastic to see that two of the top three most preferred arbitral seats are in the Asia-Pacific region. This demonstrates the real shift over the course of my career from a Euro-centric arbitral system to a truly global system.

While New Zealand and Australia are unlikely to become global hubs for international arbitration due to geographical distance, they can and do play an important regional role. New Zealand in particular has always had a close bond with the Pacific, both culturally and in the law, with Auckland having the largest Polynesian population of any city in the world.

When I was a young lawyer, I worked as counsel in the Pacific and assisted the Chief Justice of the Cook Islands on important cases. In later life, I helped draft the Cook Islands Arbitration Act and was a member of the High Court and Court of Appeal (including President of the Cook Islands Court of Appeal) for over 20 years. My colleagues have provided similar services in other Pacific States. This close legal connection makes New Zealand an ideal hub for international arbitration in the Pacific region.

As more investment flows into the Pacific, the likelihood of disputes arising is increasing. It is important that New Zealand invests in helping the Pacific build capacity to deal with those disputes—whether that is through training, co-counselling, offering an affordable and competent seat or by other means.

For all these reasons, New Zealand has an opportunity to be a leading hub for international arbitration in the Pacific, which I know the New Zealand ADR Centre and the Arbitrators' and Mediators' Institute of New Zealand ("AMINZ") are working hard to promote.

4. ***Similarly, the QMUL Survey revealed that the five most preferred arbitral institutions are the ICC, SIAC, HKIAC, LCIA and CIETAC. Is there scope for regionally-based arbitral institutions for complex international disputes, or should regional institutions target a niche of international cases?***

The Asia-Pacific is one of the fastest growing regional economies in the world. It is important that this region has appropriate institutions available to help resolve the inevitable disputes that will result from such a fast-growing economy.

Indeed, I think this is already the case with SIAC and HKIAC being such respected and preferred institutions. With the current growth rate, especially in the Pacific, there is much scope for other institutions and for those that specialise in disputes that may be particular to the region. There may also be scope to tailor processes in culturally appropriate ways. Understanding this is key to expanding arbitration in the region.

5. ***Drawing on your experiences as Chief Justice of the Cook Islands, how important is the effective implementation of alternative dispute resolution processes in small states?***

Capacity building in small states—both in traditional litigation and in alternative dispute resolution—is very important. Effective arbitration and ADR in any country relies on having competent legal counsel and independent judicial officers, systems and institutions in place.

While a first-class court system is important, I also see great potential for alternative dispute resolution in the Pacific, as many ADR processes (including mediation, facilitation and conciliation) are more aligned with traditional methods of dispute resolution. It should be remembered that many indigenous cultures have been effectively resolving disputes for thousands of years—often using mechanisms that do not sit comfortably with an adversarial system. ADR has more flexibility to incorporate some of these traditional elements and concepts (including deciding disputes in accordance with traditional custom / lore). This is an area that needs better exploration in the future and should be developed alongside the Western legal framework. In the Pacific, New Zealand could play an important role in promoting this.

6. ***You have also been involved in sports arbitration, including the Court of Arbitration for Sport ("CAS") case where Floyd Landis was disqualified as the winner of the Tour de France for drug offences. One of the major criticisms of the CAS (and the international arbitration field generally) is that there remains a lack of diversity in the appointment of arbitrators. What can the legal profession do to help promote diversity either as counsel, or fellow arbitrators?***

I have very much enjoyed my time working with CAS. Some of my CAS cases—including the Floyd Landis case—have been highlights of my career. They are fascinating cases and it has been a privilege to serve on CAS tribunals. Overall, diversity in international arbitration has improved significantly since I began practice. This is a welcome development.

It is important that people understand the value of diversity. As an arbitrator, it is helpful to have fellow members of the tribunal who approach things in different ways. This makes for meaningful debate. The best outcomes occur when people are intellectually honest and think independently about the issues raised by the parties. This does not detract from the collegiality of the tribunal if people are respectful and receptive to the views of others—if anything, it makes arbitral tribunals more collegial. I have had many wonderful and informative debates with fellow arbitrators over the years.

While true of all areas of the law, in sport it is particularly important that the athletes see themselves reflected in those who are making the decisions. This facilitates trust in the system and legitimacy. Diversity is an important element of this as the athletes are extremely diverse.

7. ***What changes, opportunities and challenges might institutional arbitration in New Zealand and in the Pacific Islands confront in the next ten years or so?***

There are not many institutional arbitrations in New Zealand. Two of my Chambers colleagues conducted a survey of New Zealand arbitration and found that over 95% of domestic arbitrations were ad hoc (i.e., not institutional). Domestic practitioners are less familiar with institutional rules and therefore tend to prefer to arbitrate under the Arbitration Act. However, I understand that the results from the second arbitration survey (to be released shortly) will show increased use of institutional arbitration, indicating that maybe parties and practitioners are becoming more comfortable with institutional arbitration.

Alongside unfamiliarity, cost is seen as a barrier to institutional arbitration. This is also the case for those in the Pacific Islands. This is likely a misnomer as the efficiencies brought by institutions may not be fully understood. However, it is incumbent upon all of us to ensure parties properly understand the benefits of both institutional and ad hoc arbitration so that they can make an informed choice.

Having said that, we have some excellent institutions in New Zealand that are very busy. The New Zealand ADR Centre is active in many areas of dispute resolution and is very successful. They also have fantastic hearing facilities which are used by courts and tribunals from around the Asia-Pacific region.

As I said earlier, it is also very important that New Zealand lawyers play a role in capacity building in the Pacific Islands so that they can get the best use out of their modern arbitration statutes.

8. ***What changes have you seen to the international arbitration scene since the beginning of your career? And how does that leave the area in the current climate?***

International arbitration has grown exponentially since I began practicing in the 1990s as an arbitrator. It is very gratifying to see this growth.

As mentioned above, one of the best changes is the diversity now seen amongst arbitrators and counsel. It is important that arbitration embrace practitioners from all over the world and who bring different perspectives to decision-making and advocacy.

I am less of a fan of the move towards more voluminous submissions and evidence that I have witnessed over the years. This is perhaps made worse by electronic filing, where lawyers have less incentive to consider carefully whether a document or an argument is really necessary. I think this is an area which could be much improved in the future. I do not know if artificial intelligence will make this better or worse, but I do think the profession will face a number of issues arising from this new technology that we will need to work hard to grapple with. All of this is really about cost and efficiency—I think we still have a long way to go here.

There has been much focus on investor-State dispute settlement ("ISDS") in recent years, but I have not seen any slowing of cases. I think ISDS will remain an important element of encouraging and facilitating foreign investment.

Despite these challenges, international arbitration is the gold standard for resolving cross-border disputes and I think this will only increase with continued global economic integration. The world is getting smaller, and international arbitration is a key element of ensuring continued global prosperity.

Thank you, Sir David for your valuable reflections. We wish you all the best! We would also like to thank Dr Anna Kirk for her assistance in organising this interview.

This interview is part of Kluwer Arbitration Blog's "Interviews with Our Editors" series. Past interviews are available here.

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