**YCAP 2021 SPRING SYMPOSIUM: From the Trenches: Arbitration 101**

On Monday May 3, 2021, YCAP, in conjunction with ICC YAF and WCCAS, held its Spring Symposium. The event was held virtually and was hosted by Arbitration Place. Over 60 young arbitration professionals were in attendance from across Canada and abroad. Following opening remarks by YCAP President Jessica Crow (Crow Arbitration, London UK), an articulate panel shared their war stories and provided insightful tips and advice related to different stages of the arbitral process. The panel was followed by the opportunity to participate in small group networking in breakout rooms.

**Opening Remarks and Introductions**

Jessica Crow provided opening remarks and introduced the esteemed moderator Julie G. Hopkins (Arbitrator, Western Arbitration Chambers). Julie G. Hopkins then introduced the seasoned panelists Annie Lespérance (Associate Investment Manager and Legal Counsel, Head of Latin America Group – Omni Bridgeway), Joanne Luu, (Partner, Burnet, Duckworth & Palmer LLP), Vasilis F.L Pappas, (Partner, Bennett Jones LLP) and Dan Urbas, (Arbitrator, Urbas Arbitral).

**Panel Discussion**

The moderator and panelists engaged in a lively conversation sharing tips and perspectives from their wealth of arbitration experience related to various procedural steps including: (i) appointing arbitrators; (ii) whether an arbitration practice is complemented by a litigation practice; (iii) preparing for the first procedural conference; (iv) incorporating oral discoveries; and (v) appointing experts.

The moderator Julie G. Hopkins asked Joanne Luu to describe the typical process she goes through as counsel when appointing an arbitrator.

Joanne Luu shared the factors she generally considers in this process which included: (i) whether the dispute requires any particular expertise; (ii) the schedule including whether the matter needs to be expedited for any reason; (iii) whether the individual is experienced in arbitration procedure; (iv) whether the dispute is international; (v) whether it is a black letter law or a fairness case, and which case her client has; as well as (vi) recommendations and past experiences.

Vasilis F. L. Pappas explained that it is especially important to appoint an arbitrator with experience with arbitration procedure in circumstances where counsel on the other side might be less experienced. He also added the importance of being mindful of the IBA Rules and the avoiding appointing the same arbitrators time and time again.

The panelists then discussed some recent trends including the need to consider different time zones, as well as increasingly appointing younger arbitrators.

In response to a question from Julie G. Hopkins, Annie Lespérance explained that there have recently been many changes to the rules of various arbitral institutions surrounding the need to disclose the existence of third party funding as well as who is providing it. She noted however, that generally the terms do not need to be disclosed.

The moderator, Julie G. Hopkins, then asked Dan Urbas about recent trends with respect to the terms of appointment for arbitrators.

Dan Urbas explained that sometimes counsel come to arbitrators with a draft, and other times the arbitrator will send terms to counsel. He indicated that generally the parties will enter into a joint agreement. In terms of fees, he has seen divergent approaches to cancellations, as well as that sometimes parties will pay for their own nominees and share the fees of the Chair.

The panelists discussed challenging arbitrators, and generally advised against it from a strategic perspective. Rather, a more subtle approach was recommended such as writing a letter raising the existence of any perceived impartiality.

Julie G. Hopkins asked the panelists whether a litigation practice complements an arbitration practice, as well as whether it presents any challenges.

In the discussion, the panelists generally agreed that it can be challenging in Canada to have a full international arbitration practice, and from their experience most practitioners have a split practice. This can however be positive since practitioners can borrow and bring skills from one to the other. Additionally, commercial litigation can provide the opportunity to gain skills as an advocate. The panelists did indicate that there is a difference in decorum and in the way practitioners practice. More specifically that commercial litigation is more focused on rules and deadlines and the rules of evidence whereas arbitration is less formal.

The moderator asked the panel to share some tips related to preparing for the first procedural conference.

Vasilis F. L. Pappas explained the importance of getting on the phone with opposing counsel prior, and where possible even putting together a draft procedural order in advance that can be discussed at the first procedural conference. He also recommended seeking client instructions in advance. He explained that the more detailed the understanding of the process the parties want, the more efficiently the case management conference can proceed. Further, the more detailed the procedural order is, the clearer the rules of the game are at the outset which can help avoid procedural disputes down the line.

Julie G. Hopkins asked Joanne Luu to share some tips for preparing witness statements.

Joanne Luu emphasized the importance of the witness statements sounding like the witnesses rather than legal arguments. In terms of her own process, she generally checks all the documents and essentially fact checks her witnesses engaging in a quasi-cross-examination where there are discrepancies. She also shows the witness several drafts, and ensures they review the final set of exhibits.

In response to a question from the moderator regarding the utility and import of oral discoveries in arbitration, Dan Urbas explained that insofar as oral discoveries are concerned, documentary discovery is optimal in the arbitration context. He explained that oral discovery should be reserved for circumstances where it is convincingly necessary.

The panel then moved to a discussion about experts. In response to a question from Julie G. Hopkins related to tribunal appointed experts, Annie Lespérance shared some of her own experiences and explained that there can be a tension between having the tribunal defer to their views and ensuring the panel tackles the issues for themselves. Vasilis F. L. Pappas echoed this sentiment and highlighted that expert advice may be needed in technical disputes, but when there is a tribunal appointed expert there is a risk that the tribunal may defer to their views which can be problematic especially when there is not a clear answer as among experts. He circled back to the first discussion about appointing arbitrators and suggested appointing arbitrators with technical experience if needed and where possible.

The panel then shared some practices they have found effective either by counsel or arbitrators. These included (i) forcing parties to agree on agreed facts and a list of issues to be determined before the arbitration; and (ii) decisiveness among arbitrators.

**Concluding Remarks and Networking**

Jessica Crow made brief concluding remarks thanking the panelists and Julie G. Hopkins for moderating such an interesting discussion, Arbitration Place for hosting virtually, and announced upcoming events in concert with London, Paris and Canadian Arbitration Week.

The attendees were then broken into three sessions of breakout rooms for the opportunity to network in small groups.

Prepared by Sarah Firestone (Associate, Osler, Hoskin & Harcourt LLP)