JOINT EVENT BETWEEN YCAP AND YOUNG ARBITRATORS SWEDEN

On Thursday, April 21, 2022, YCAP and Young Arbitrators Sweden ("**YAS**") jointly held an event focused on the arbitration landscapes in Sweden and Canada. The event was held virtually and was hosted by Arbitration Place. Young arbitration professionals were in attendance from across Canada, Sweden, and abroad. Madeleine Thörn (Associate, Norburg & Scherp, Stockholm), on behalf of YAS, and Eric Bédard (Partner, Woods, Montréal), on behalf of YCAP, provided a welcoming introduction to the work done by both organizations to promote interest in international arbitration among young practitioners. Following the opening remarks, an experienced and knowledgeable panel of speakers shared their insights and provided comparisons between the two jurisdictions in the context of curated topics. The panel discussion was followed by the opportunity to participate in virtual networking sessions in small breakout rooms.

The panel moderator, Artem N. Barsukov (Partner, Bennett Jones, Edmonton), launched the event and introduced the distinguished panelists, which consisted of two Swedish and two Canadian experts: Filippa Exelin (Associate, White & Case, Stockholm); Rachel Howie (Partner, Dentons, Calgary); Liz Roberts (General Counsel, Arbitration Place, Ottawa); and Annika Pynnä (Senior Associate, Roschier, Stockholm).

Laws Governing International Commercial Arbitration

The first discussion explored the main features of the laws governing international commercial arbitration in Canada and Sweden.

In Canada, the provinces and territories have their own separate arbitration legislation. Rachel Howie explained that these statutes largely follow the UNCITRAL Model Law – some directly annex the UNCITRAL Model Law (see *e.g.*, Alberta's *International Commercial Arbitration Act* and Ontario's *International Commercial Arbitration Act*) and others incorporate it directly within the provisions themselves (see *e.g.*, British Columbia's *International Commercial Arbitration Act*, which is consistent with the 2006 UNCITRAL Model Law). While there are similarities between the provincial and territorial statutes, there are also differences to be mindful of. For example, British Columbia's legislation expressly sets out that a party *can* be represented by a lawyer from another state, whereas other jurisdictions do not expressly permit this.

Annika Pynnä then shed light on the Swedish system and explained that it is more straightforward, and is focused on party autonomy. There is only one legislative instrument which applies to any arbitration, whether domestic or international, seated in Sweden: the Swedish Arbitration Act. This statute was enacted with regard to the different arbitration statutes governing worldwide, including the UNCITRAL Model Law. While the Swedish Arbitration Act did not adopt the UNCITRAL Model Law, it took considerable inspiration from it and follows it in most practical aspects. The Act itself is relatively brief, with few mandatory rules. Most issues are left to the parties to reach agreement on and, if they cannot agree, the tribunal is empowered to make a determination.

Institutional vs. Ad Hoc Arbitral Proceedings

The panel then provided their thoughts on the prevalence of both institutional and ad hoc arbitrations in each jurisdiction.

Annika Pynnä and Filippa Exelin confirmed that there is a very clear preference for institutional over ad hoc arbitrations in Sweden. Indeed, according to the Roschier Disputes Index (2021), only 2% of Swedish clients expressed a preference for ad hoc (including UNCITRAL) arbitration rules. This is attributable, in large part, to Sweden's sophisticated arbitration institute (the Arbitration Institute of the Stockholm Chamber of Commerce (SCC)), which is one of the world's leading forums for dispute resolution.

By contrast, Canada has a strong history of ad hoc arbitral proceedings. Liz Roberts explained that parties desire flexibility with respect to the choice of arbitration rules in Canada: some prefer the UNCITRAL rules, others have created their own, and some parties to domestic arbitrations have even adopted provincial court rules of civil procedure (despite this not being the most efficient approach). That said, there has been an observable increase in the use of institutional arbitrations in recent years. This is owing to more robust institutional arbitration rules in place, such as the new VanIAC rules and updated domestic arbitration legislation in British Columbia, among others. Further, parties are seeing the benefits and increased efficiency of institutional arbitration in circumstances where, for example, the institute is called upon as the appointing authority where the parties cannot agree on an arbitrator (as opposed to seeking a court order) or where the institute administers the funds related to the conduct of the arbitration (including the deposit), among other things.

Conduct of Arbitral Hearings

The panel moved on to address the typical conduct of arbitral hearings and the differences between the jurisdictions.

Filippa Exelin described the distinction between international and domestic arbitration proceedings in Sweden. International arbitration proceedings largely follow international standards, which are characterized by the use of witness statements, brief direct examination, and a focus on cross-examination. However, domestic arbitrations in Sweden are highly influenced by Swedish court procedures, which generally do not include witness statements. Rather, the spotlight is on the direct examination of the witness which tends to be longer and more detailed than its international equivalents.

Liz Roberts addressed the Canadian approach, and explained that arbitrations in Canada generally follow the English style and include procedural elements such as opening statements, presentation aids, written statements, brief direct examinations comprised of introductory questions (if any), thorough cross-examination, and closing statements which can be written and can, in many cases, include a supplementary oral advocacy component.

Recent Developments in Canadian and Swedish Markets

The panelists concluded the discussion with their insights on recent developments in their respective arbitration markets, and opportunities for cross-pollination.

While there have been many developments in both markets in recent years, one of the key focuses in Sweden has been towards having a more even gender distribution in the appointment of arbitrators. Sweden's SCC has worked successfully towards this goal and it was reported that 49% of the arbitrators appointed by the institute last year were women (though it was noted that there is still room for improvement in respect of party appointments).

As for Canada, it has seen an increase in the use of arbitration in creative ways. One interesting trend has been for parties in ad hoc arbitrations to contractually agree to conduct appeals by way of arbitration. Another is for parties in court proceedings to agree to carve out procedural issues for resolution by way of arbitration, to circumvent the existing backlogs in the courts.

Finally, there is a growing appetite for institutional arbitrations in Canada, particularly in light of the difficulties and delays encountered by parties seeking recourse in the courts. These challenges may tip the scales and make it more appealing to have administered institutional arbitrations in Canada. On that note, the panelists pointed out that this would be an interesting opportunity for Canadian practitioners to consider

recommending Sweden's SCC rules to their clients if they are looking for a neutral set of rules to apply to their arbitration.

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

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