

The Next Generation: what young and rising arbitrators need to know

The hybrid (in person/virtual) event took place on May 11, 2022 during the London International Disputes Week, and was supported by Young International Arbitration Group (YIAG), Campaign for Greener Arbitrations, Young Canadian Arbitration Practitioners (YCAP), Rising Arbitrators Initiative (RAI), Racial Equality for Arbitration Lawyers (REAL), International Dispute Resolution Centre (IDRC), Arbitra International, and Opus 2.

The event was moderated by Brian Kotick (MB Kemp, Arbitra International), and the panelists were Stephanie Collins (Gibson Dunn, Campaign for Greener Arbitrations), Jessica Crow (Arbitra International, YCAP), Rocio Digon (White & Case, REAL), Emily Fox (Herbert Smith Freehills, YIAG), and Alexander Leventhal (Quinn Emanuel, RAI).

Getting your first appointment as an arbitrator

The first round of discussion addressed how young practitioners can get their first appointment as an arbitrator. The panelists agreed that it happens organically, but focused on quality of work and networking as investments leading up to the first appointment. Ms. Fox explained that being a successful and reliable junior or mid level associate and getting exposure to as many matters as possible will eventually lead to one's first appointment. When Ms. Fox is appointing young arbitrators, she considers people who she has seen do well at work.

Ms. Crow recommended investing in your peer network, taking the opportunities to be known outside of your firm, and developing relationships with institutions. She suggested that institutions are often sources for young arbitrators' first appointments, so participating and standing out in national committees of institutions such as the ICC would be a good investment. Ms. Crow also recommended that aspiring arbitrators get themselves on as many rosters as possible.

Mr. Kotick asked the panel whether experience as a tribunal secretary is a valuable experience for getting one's first appointment. Ms. Digon explained that the role is very valuable, because it allows one to study the arbitration process, critically view counsel's submissions, see the deliberations, and engage in conversation with a tribunal member(s). Ms. Crow added that if one does not have experience as an arbitrator, experience as a tribunal secretary would be valuable and sometimes sufficient experience when applying for institutional rosters.

Managing your first appointment: resources you can consult

The next round of discussion addressed what resources young arbitrators can consult when they are faced with uncertainty or fear during their initial arbitrator appointments. The panel agreed that a mentor is a great resource to ask questions and get practical tips. Mr. Kotick then asked the panel where they find mentors.

Ms. Digon suggested that the first resource is one's immediate superior, which may be a partner in their firm. She added that partners from one's previous firms may sometimes be even more impartial resources, so she suggested that lawyers keep in touch with them, and not burn bridges.

Mr. Leventhal highlighted the in-person community approach to mentorship at RAI. At RAI's events, young arbitrators can get to know people facing similar issues in their appointment, and feel comfortable approaching them informally.

What counsel consider when appointing rising arbitrators

Mr. Kotick asked the panel about their experience putting forward rising arbitrators for nomination, and the considerations that go into the selection process. Ms. Collins admitted she has not always been successful nominating a rising arbitrator, but noted that it is important to have a profile, to be affiliated with organizations, and to have a network. That way, counsel can ask about the rising arbitrator to their network. Other considerations are whether the rising arbitrator is working for a large firm, and if so, how the appointment is going to impact their time. Ms. Collins noted that the advantage of a rising arbitrator is that they are keen to impress, and more likely to make timely decisions.

The panel agreed that it is common to receive pushback about appointing rising arbitrators. Mr. Leventhal suggested that this may come from clients and firms alike. When there is a high stakes case, the more senior partners will likely make a call on the arbitrator appointment, and older partners are inclined to choose someone who they have had experience with—someone who is likely not so young. Likewise, clients often want to work with an arbitrator who has a reputation, or with whom the firm has experience.

Ms. Crow suggested that while these concerns are genuine, the next generation of counsel as well as the decision-makers on the client side will have different priorities. She gave the example that a general counsel she worked with requested that half of the proposed arbitrators be female.

The considerations differ for various types of disputes. Ms. Fox stressed that the idea of diversity in panels should go hand in hand with thinking about the kind of case where it makes sense to appoint a younger arbitrator. For example, disputes of lower value, where parties may not be sophisticated, or may not be represented by counsel may be ideal for the appointment of a rising arbitrator.

Finally, Ms. Crow and Ms. Fox encouraged rising arbitrators to take the leap if they are considering shifting from a large firm to solo practice. They agreed that conflicts do prevent appointments in practice, and they have seen many young arbitrators get more appointments after transitioning to solo practice.