Looking at the Future of Arbitration in New Zealand: What Opportunities are Available for Junior Practitioners?

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I INTRODUCTION

Like young people, arbitration is dynamic and ever evolving. It has become a staple in resolving disputes globally and its growth shows no sign of stopping. As a form of alternative dispute resolution (ADR), arbitration offers parties many advantages including confidentiality, cost-efficacy, award enforceability and speed. Yet, despite arbitration's well-documented benefits to its users, comparatively little attention has been directed to the perks arbitration provides to its practitioners. This, combined with a general lack of exposure to arbitration in legal education, is perhaps why the typical New Zealand law graduate leaves law school with only a surface-level understanding, if any understanding at all, about an entire field of common legal practice. While some graduates do go on to learn more about arbitration in their professional roles, this blind spot is incongruous with arbitration having already become a key part of commercial legal reality.

In this paper, I seek to provide information to fill in this blind spot and to encourage more junior practitioners to learn about and consider practising in arbitration. As a field, arbitration not only fosters the development of crucial lawyering skills such as drafting, negotiating, and managing and representing clients, but it can also lead to opportunities overseas that can further enhance these skills. Should New Zealand practitioners grasp these opportunities, they may bring their skills and education back home and contribute to the country's expanding international reputation of being a reliable dispute resolution hub.[2] Following in the footsteps of New Zealand's leading international arbitrator, Sir David A R Williams QC, I hope to

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2 See New Zealand Law Society (NZLS) "Experienced arbitration lawyers aiming to make New Zealand a Pacific arbitration hub" (30 August 2019) <www.lawsociety.org.nz>.

see many up-and-coming young lawyers who will be just as dedicated to arbitration's capacity of satisfactorily resolving disputes and teaching excellent advocacy.

By way of full disclosure, I was Sir David's final summer clerk, a position I held over the 2018–2019 summer. I assisted with managing Sir David's caseload by carrying out legal research and proofreading draft awards. In the same year I became an inaugural recipient of the AMINZ-AUT Arbitration Young Practitioner Scholarship. While I could not have possibly appreciated it at the time, I had been at the perimeter of two eras of arbitration in New Zealand: one, the era Sir David led with his life's work, and two, the era emerging. I am grateful for all Sir David taught me in the short period I worked for him: institutional knowledge, analytical skills and tidbits on how to be a successful lawyer,[3] all of which I will take into my future work in this new era. Just as Sir David put the ladder back down behind him, I seek to do the same in this paper, in which I examine just some of the opportunities available to junior practitioners who similarly wish to get a foothold into the arbitration world.

In Part II, I begin by describing what arbitration is and why it has become so popular as a form of ADR. I then give three reasons in Part III for why more junior practitioners, especially those who already work in litigation and dispute resolution, should consider arbitration. In Part IV, I canvas some of the international opportunities available for junior practitioners to gain exposure to and experience in arbitral practice and procedure. I shift focus in Part V to look at the available domestic opportunities. Part VI concludes.

II WHAT IS ARBITRATION AND WHY IS IT SO POPULAR?

In a paper aimed to inspire and encourage junior practitioners to get more involved with arbitral work, it is only natural to begin by describing what arbitration is and why it has become so popular as a form of ADR.

3 To this day, I still have the printout Sir David gave me of Felix Frankfurter's "Advice to a Young Man Interested in a Career in the Law" from Ephraim London (ed) *The World of Law II: The Law as Literature* (Simon and Schuster, New York, 1960) 725. The advice in the piece, to "[s]tock your mind with the deposit of much good reading", is apt. I hope this paper will make for good reading to a young person interested in a career in arbitration.

Arbitration in a nutshell

Arbitration is a dispute resolution process whereby parties agree to submit their dispute to an arbitrator. An arbitrator is a decision-maker who performs adjudicatory functions to identify and resolve the issues between the parties and ultimately render a binding decision (the award) on them. Arbitration is a consensual process: parties must agree to arbitrate before the process can begin and can also choose who their arbitrator will be. If parties cannot agree on an arbitrator, one will be appointed for them in accordance with the parties' arbitration agreement.[4]

In New Zealand, domestic arbitrations, that is, arbitrations between parties whose places of business are situated in New Zealand, are by default governed by schs 1 and 2 of the Arbitration Act 1996 (the Act).[5] The schedules provide rules on how arbitrations commence and are to be conducted. The parties are free to determine the number of arbitrators to decide their dispute[6] and the arbitrator(s) shall decide whether to hold oral hearings to take evidence or hear oral argument.[7] In arbitrations with more than one arbitrator, usually a panel or "tribunal" of three arbitrators, the panel will be made up of one arbitrator appointed by each party, with the third arbitrator (the chair or president) appointed by either the two party-appointed arbitrators or an appointing body.[8]

After the arbitrator or tribunal is appointed, the process of formally resolving the dispute between the parties can begin. The specific process will differ between arbitrations, as parties are free to agree on the procedure that the tribunal will follow.[9] Generally, however, arbitrations will begin with the formal exchange of written statements of claim or defence.[10] Whether or not the arbitration proceeds to an oral hearing is another decision for the parties, who can agree to resolve their dispute on the documents alone.[11] Whatever procedure is agreed upon, the tribunal must follow natural justice principles by treating the parties equally and giving each party the full

4 David A R Williams and Amokura Kawharu *Williams & Kawharu on Arbitration* (2nd ed, LexisNexis, Wellington, 2017) at [1.1.1]. See also Arbitration Act 1996, sch 1, arts 10(1) and 11(2).

5 Arbitration Act, s 6(1). Clause 1(3) of the first schedule defines when an arbitration is "international" for the purpose of the schedule's application.

6 Arbitration Act, sch 1, art 10(1).

7 Arbitration Ac, sch 1, art 24.

8 Arbitration Act, sch 1, art 11(3)(a).

9 Arbitration Act, sch 1, art 19.

10 Arbitration Act, sch 1, art 23.

11 Arbitration Act, sch 1, art 24. This option is generally used by cost-conscious parties, and suitable for disputes that are relatively simple to decide.

opportunity to present its case.[12] Parties must also cooperate with each other and agree to arbitrate "in good faith".[13]

Once an award has been rendered, it is binding on the parties. If the parties do not voluntarily comply with it, either party may apply in court to enforce the award.[14] The court will then enter the terms of the award as a judgment unless there is some reason to decline recognition or enforcement.[15] A high standard is required for the latter to happen, so it is rare, and awards are enforced the great majority of the time.[16]

Advantages of arbitration

1 Party autonomy and consent

As mentioned, arbitration is a consensual process, which pertains to its popularity as a form of ADR in addition to being a quicker, more cost-effective, and confidential process.[17] As opposed to the imposing nature of litigation where proceedings can be unilaterally served on a party, effectively forcing them to come to court, the consensual nature of arbitration enables parties to feel like they can contribute directly and meaningfully to the resolution of their disputes. In this way, arbitration respects party autonomy by involving the parties as drivers, and not passengers, in the dispute resolution process.

There are many ways in which party autonomy manifests in arbitration. Amongst other things, parties can appoint their own arbitrator, contribute to the composition of the arbitral tribunal and choose the procedure they want to follow. Parties are "not bound by strict rules of evidence" if they do not want to be, and can agree to "expedited procedures" if they desire a speedy outcome.[18]

All the above aspects facilitate party autonomy and empower parties to play an active role in the arbitration. Thus, parties can "fashion their contractual relations based on their personal preferences".[19] Hence, one of the reasons arbitration has become so

12 Arbitration Act, sch 1, art 18.

13 Williams and Kawharu, above n 4, at [11.2.3].

14 Arbitration Act, sch 1, art 35. See also High Court Rules 2016, r 26.22.

15 Arbitration Act, sch 1, arts 35 and 36.

16 See, for a discussion of the "high threshold" for refusing enforcement of an award on public policy grounds, Amokura Kawharu "The Public Policy Ground for Setting Aside and Refusing Enforcement of Arbitral Awards: Comments on the New Zealand Approach" (2007) 24(5) J Intl Arb 491 at 492.

17 See generally Williams and Kawharu, above n 4, at [1.1.9].

18 Williams and Kawharu, above n 4, at [1.1.9(a)].

19 Moses Oruaze Dickson "Party autonomy and justice in international commercial arbitration" (2018) 60(1) IJLMA 114 at 115.

popular as a form of ADR is because it gives parties the ability to control how their disputes are decided.

2 Cost and efficiency

Another key advantage of arbitration is its cost-effectiveness and speed compared to traditional litigation. Parties enjoy considerable flexibility in choosing various aspects of how their arbitration is conducted. Arbitrations can be completed quickly and at a relatively lower expense, even though it involves different types of costs to those in litigation, such as the requirement that parties must pay the fees and costs of the arbitral tribunal.[20]

Moreover, as opposed to litigation where fixture dates at courts must be applied for in advance and are subject to availability,[21] arbitrations can generally be held anywhere, do not subject parties to case backlogs and can be completed more quickly.[22] Arbitration's relative speed and efficiency have been demonstrated most clearly in 2020, where despite the restrictions on court operations imposed by COVID-19, there was a global rise in the number of arbitrations conducted.[23] Major international arbitration centres, such as the London Court of International Arbitration (LCIA), reported a 10 per cent increase in the number of arbitrations it administered compared to 2019, which itself had already been a record year.[24] The International Chamber of Commerce (ICC) reported a similar increase[25] and the Hong Kong International Arbitration Centre (HKIAC) recorded double that rate.[26] The flexibility of arbitration, which contributes to its relatively low cost and efficiency, is another reason why it has become so popular as a form of ADR.

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20 Williams and Kawharu, above n 4, at [1.1.9(g)].

21 See, for example, High Court Rules, r 7.33.

22 Williams and Kawharu, above n 4, at [1.1.9(f)].

23 See, for example, Letter from Helen Winkelmann (Chief Justice) to New Zealand legal practitioners regarding court operations at Alert Level 4 (25 March 2020); and The Lord Burnett of Maldon "Review of court arrangements due to COVID-19, message from the Lord Chief Justice" (media release, 23 March 2020).

24 London Court of International Arbitration (LCIA) "Record number of LCIA Cases in 2020" (20 January 2021) <www.lcia.org>.

25 Compare International Chamber of Commerce (ICC) "ICC announces record 2020 caseloads in Arbitration and ADR" (12 January 2021) <www.iccwbo.org>; and ICC *ICC Dispute Resolution 2019 Statistics* (DRS 901 ENG, 2020) at 9.

26 Herbert Smith Freehills "Rise in arbitration cases in 2020 despite reduced number of in person hearings due to coronavirus pandemic" (3 March 2021) <www.hsfnotes.com>.

3 Confidentiality and privacy

Arbitration is also a confidential and private process. Hence, it is an attractive form of dispute resolution, particularly for parties concerned with their reputations or who otherwise do not want to broadcast their disputes to the world.[27] First, arbitration is confidential in that all who are involved agree not to disclose to third parties information about the proceedings or the final award.[28] Secondly, arbitration is private as the proceedings are not open to the public,[29] unlike in litigation where the principle of open justice means that virtually anyone can access and learn details about the dispute.[30]

For commercial parties, maintaining confidentiality and privacy is a key advantage: the ability to resolve disputes privately minimises the likelihood of negative publicity surrounding the events which are the subject of the dispute from transferring to the parties themselves.[31] Confidential proceedings also ensure that sensitive commercial information does not fall into the hands of competitors, in addition to reducing external interference from the media or public opinion that could make it more difficult to reach a satisfactory resolution.[32] Similarly, for smaller, individual parties like those involved in family trust disputes, the arbitral procedure means that private information such as what transactions have taken place between the parties, and the total value of the trust's assets and liabilities, can remain private.[33] More importantly, in family disputes where children are involved, the confidentiality and privacy of arbitration better protect the wellbeing of children.[34]

For the above reasons, confidentiality and privacy have been vital to arbitration's success, compounded by its flexibility, cost-efficiency and speed. Having described what arbitration is and some of the reasons why it has become so popular as a form of ADR, the next Part discusses why more junior practitioners should be considering doing work in it.

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27 Bernado M Cremades and Rodrigo Cortés "The Principle of Confidentiality in Arbitration: A Necessary Crisis" (2013) 23(3) Journal of Arbitration Studies 25 at 26.

28 Williams and Kawharu, above n 4, at [13.2].

29 Williams and Kawharu, above n 4, at [13.2].

30 See generally JJ Spigelman "Seen to be Done: the Principle of Open Justice" (2000) 74(6) ALJ 378.

31 Cremades and Cortés, above n 27, at 26–27.

32 Cremades and Cortés, above n 27, at 27.

33 Linda D Elrod "The Need for Confidentiality in Evaluative Processes: Arbitration and Med/Arb in Family Law Cases" (2020) 58(1) Family Court Review 26 at 31.

34 Elrod, above n 33, at 28.

III WHY SHOULD MORE JUNIOR PRACTITIONERS CONSIDER ARBITRATION WORK?

There are at least three reasons why more junior practitioners, particularly litigation and dispute resolution lawyers, should consider doing more arbitration work. First, as arbitration is growing domestically and internationally both in terms of uptake and scope, work in the field is almost guaranteed to be challenging, dynamic and fulfilling. Secondly, as the skills and knowledge gained through arbitration are internationally transferable, working in arbitration opens up opportunities overseas that can further enhance those competencies and even lead to a specialist career in the area. Finally, as many junior practitioners begin and graduate law school with altruistic notions of making the world a better place, I like to think that New Zealand graduates who go on to receive training overseas might come back and use their newfound expertise to contribute to better dispute resolution processes here and help the country build its own international reputation as a reliable dispute resolution hub.

Challenge and dynamism

As alluded to in the Introduction, arbitration is not going anywhere. Its growing popularity[35] means that opportunities to get involved with arbitral work, whether as counsel, arbitrator or tribunal secretary,[36] are not only constantly available, but the nature of the work is perpetually changing. The evolution of arbitration as a form of ADR[37] means that a career in arbitration will be challenging and dynamic, thus making it incredibly fulfilling and one reason why more junior practitioners should consider getting more involved with it.

To illustrate the point of arbitration's unwavering evolution, the use of arbitration is not the only aspect of its expansion; so, too, is its scope. Entire legal areas previously thought to be unsuited to arbitration are now common specialities in the field. This is demonstrated by arbitration's progression from its humble beginnings rooted in the context of merchant-trader disputes in medieval England, through to its present capacity dealing with employment and

35 As explained for the reasons given and illustrated by the statistics in Part II.

36 The role of the arbitral/tribunal secretary is to assist the arbitrator(s)/tribunal to resolve the dispute effectively and efficiently. See, for example, New Zealand Dispute Resolution Centre *ECA45 Arbitration Rules 2018 Revision* (2018), r 19.13.

37 See Williams and Kawharu, above n 4, at [1.2.1], where the authors state that arbitration has been practised in various forms since antiquity.

competition law disputes.[38] In particular, arbitration in the area of trusts law has grown to be so prominent that it has called for an international move towards greater regulation of trusts arbitration in national legislation.[39] In New Zealand, this move culminated in the passing of the Trusts Act 2019, which came into force in January this year.[40] The ADR subpart of the Trusts Act specifically provides for the arbitration of trust disputes between trustees, beneficiaries and third parties.[41] Elsewhere in the world, arbitration continues to grow as clients from various sectors continue to seek faster and more flexible dispute resolution methods, such as within family law,[42] environmental law,[43] and even student loan dischargeability.[44]

The expanding scope and use of arbitration have thus made it a dynamic field and consequently a rivetting one to work in. The challenge for arbitral practitioners of the future is to ensure that arbitration can remain flexible enough to adapt to new legal areas without compromising on its core values of respecting party autonomy, confidentiality and efficiency.[45] The chance to play a part in resolving challenges like these, which have the potential to influence the entire dispute resolution industry, as well as the inherent difficulties in settling important issues between disputing parties generally, is what makes a career in arbitration so fulfilling. I encourage all junior practitioners, and especially young litigators, to consider doing arbitration work for this reason.

International opportunities

Working in arbitration is not only attractive because of the nature of the work, but because it can lead directly to international opportunities where a junior practitioner can further enhance their skills and potentially move into a specialist arbitration career. Therefore, for a junior practitioner seeking an international career or to maximise their

38 Williams and Kawharu, above n 4, at [1.2.1]–[1.2.2], [7.2.5] and [7.2.8].

39 Williams and Kawharu, above n 4, at [7.2.12], citing SI Strong and Tony Molloy *Arbitration of Trust Disputes: Issues in National and International Law* (Oxford University Press, Oxford, 2016).

40 Trusts Act 2019, s 2(1).

41 Sections 142–148.

42 Wendy Kennett "It's Arbitration, But Not As We Know It: Reflections on Family Law Dispute Resolution" (2016) 30 IJLPF 1.

43 Kate Miles "Arbitrating climate change: Regulatory regimes and investor-state disputes" (2010) 1(1) Climate Law 63.

44 Amir Shachmurove "Arbitrability of Student Loan Dischargeability" (2019) 38(8) American Bankruptcy Institute Journal 18.

45 See, for an analysis of the challenges presented by the Trusts Act 2019, John Walton "Arbitration of Trusts Disputes: Are we there yet?" (8 May 2019) New Zealand Law Society <www.lawsociety.org.nz>.

potential, working in arbitration is the perfect avenue for such aspirations and more.

First, arbitration teaches an array of useful lawyering skills, including written and oral communication, negotiation, problem-solving, critical thinking, and managing client relationships. This is true of domestic arbitration, but it is even more so of international arbitration where there is the added complexity of working with parties who are based in different parts of the world and who may not share the same legal tradition.[46] Additionally, there are usually higher stakes involved in international arbitration. Disputes that cross jurisdictional lines can concern hundreds of thousands, if not hundreds of millions of dollars.[47] These distinctions between domestic and international arbitration mean that while the above skills are fostered through resolving domestic disputes, those skills can be taken to the next level when settling international ones.

Secondly, while it is not strictly necessary to practice international arbitration by going overseas, certainly there are more opportunities to do so in places with well-established international arbitration centres such as the ICC in Paris or the HKIAC in Hong Kong. Fortunately, the uniform nature of arbitration rules in many locations worldwide means it is relatively easy for domestic arbitral practitioners to transfer their skills and expertise if taking up roles at these institutions.[48] The arbitration law many countries have adopted is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration 1985, with its 2006 amendments (the Model Law).[49] The Model Law is "designed to assist States in reforming and modernizing their laws on arbitral procedure" and "reflects worldwide consensus on key aspects of international arbitration practice having been accepted by States of all regions and the different legal or economic systems of the world".[50] In New Zealand, for example, sch 1 of the Act "correspond[s], for the most part, to the provisions of the Model

46 See generally Pieter Sanders "The birth of the School of International Arbitration" in Julian D M Lew (ed) *Contemporary Problems in International Arbitration* (Springer, London, 1987) 9 at 10.

47 For example, in the investment arbitration of *Methanex Corp v United States of America*, Methanex Corporation claimed compensation of 970 million USD together with interests and costs: *Methanex Corp v United States of America (Final Award)* V V Veeder, J William F Rowley, W Michael Reisman, 3 August 2005 at [1].

48 I discuss internship opportunities at major international arbitration centres in Part IV.

49 United Nations Commission on International Trade Law [UNCITRAL] *UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006* (Vienna, 2008); and UNCITRAL "Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006" <www.uncitral.un.org>.

50 UNCITRAL "UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006" <www.uncitral.un.org>.

Law".[51] This signifies that domestic arbitral practitioners can readily pursue roles in arbitration overseas for which their existing skillset and expertise are directly relevant.

Therefore, for junior litigation and dispute resolution practitioners in New Zealand seeking an international career, overseas experience to maximise their potential in terms of skills gained and experiences learned from, getting involved with arbitral work is certainly worth considering. Not only will one be able to work in a challenging and dynamic field, but one may also be able to play a key part in resolving complex, international disputes. The international opportunities arbitration offers thus enable its practitioners to make a mark on the world.

Giving back to New Zealand

The third reason more junior practitioners should consider working in arbitration is because of the potential to contribute to New Zealand's expanding international reputation of being a reliable dispute resolution hub. I believe that many law students decide to study law to make a difference and that this initial sense of altruism does not dissipate during the law school experience. By the time students become graduates and then junior practitioners, I like to think that they are just as, if not more, willing to give back to the communities that they have studied about and worked in. While there are many ways of doing this, one is to choose a career in dispute resolution and to, within that career, also engage in work that improves New Zealand's dispute resolution systems.

Both those who receive their education and training domestically, and those fortunate enough to study and train overseas and come back, play equal parts in the above endeavour. However, for the purposes of this section, I want to focus mainly on what overseas-trained practitioners can provide. As explained in the previous section, overseas opportunities are more likely to expose arbitral practitioners to bigger and more challenging arbitrations. Additionally, these opportunities are more likely to expose arbitral practitioners to well-established systems, time-tested procedures and case management techniques, all of which are designed to manage a large number of arbitrations at the same time. Arbitral practitioners who have worked overseas using these systems can bring back knowledge of such procedures and their workflows to contribute to New Zealand building

51 Arbitration Act, sch 1.

its own best practice.[52] Over time, this will help advance the country's already excellent international reputation in dispute resolution and grow its expanding reputation as a reliable dispute resolution hub, particularly in the Pacific region.[53]

Therefore, I argue that more junior practitioners should be considering working in arbitration because it can directly lead to international work and learning opportunities. The benefits of New Zealand graduates and arbitral practitioners bringing back the skills and knowledge they gain from such opportunities enable them to build the country's international reputation in dispute resolution generally. In this Part, I also argued that arbitral work will likely be dynamic and filled with challenges as arbitration's use and scope grows. This, in my opinion, is why working in arbitration will be very fulfilling.

IV INTERNATIONAL OPPORTUNITIES FOR JUNIOR PRACTITIONERS

What opportunities are there then for junior practitioners to gain early exposure to arbitration, in addition to any training they can access through litigation firms? In this Part, I examine some of the international opportunities available to junior practitioners curious about expanding their knowledge and skills in arbitration and who may be looking to gain a further foothold up into the field.

Young arbitration practitioner groups

Young arbitration practitioner groups have formed worldwide to provide professional support, mentorship and networking opportunities for junior practitioners interested in arbitration and who may be embarking on arbitration careers. These groups are a relatively new phenomenon and have formed primarily in places with an established arbitral institution and where practice and demand for arbitration have reached critical mass. Membership of these groups is generally open to practitioners below the age of 40 and is usually free of cost.[54]

52 For a non-exhaustive list of New Zealanders who have spent time overseas and who have now come back to New Zealand and are using their skills to grow arbitral practice here, see NZLS, above n 2.

53 See, for example, NZLS, above n 2, where former President of the Arbitrators and Mediators' Institute of New Zealand [AMINZ], Royden Hindle, describes New Zealand arbitrators as having "an excellent overseas reputation".

54 See, for example, LCIA "Young International Arbitration Group (YIAG)" <www.lcia.org>.

One of the first young arbitration practitioner groups was the LCIA's Young International Arbitration Group (YIAG) in 1997.[55] The aims of YIAG are "to promote the understanding and use of international arbitration law and practice by providing opportunities for its members to exchange views on topical issues in international commercial arbitration".[56] These opportunities include events on selected topics and issues in arbitration and conferences and symposia on the same, which provide members with platforms to learn and meet others in the profession. In line with their sponsoring institutions' work, membership of these groups is open to "students, practitioners and younger members of the arbitration community" from all around the world. Since its establishment in 1997, YIAG now has over 10,000 members in more than 140 countries.[57] Other international young arbitration practitioner groups include Young ICCA,[58] Young ICSID,[59] HK45,[60] the ICC's Young Arbitrators Forum (YAF),[61] and the Young Practitioners Group of the Asian International Arbitration Centre (AIAC).[62]

The benefits and opportunities provided by membership of these groups are huge. As above, members can attend events, both in person and online, to learn about topical issues in arbitration, hear from experts in the area, and network with other young professionals.[63] Moreover, some young practitioner groups, such as the Chartered Institute of Arbitrators' Young Members' Group, host annual conferences, training days and workshops to develop their members' expertise and dispute resolution skills.[64] Many also run essay-writing and mooting competitions in which junior practitioners can compete and receive valuable feedback on their work.[65] Some

55 LCIA "Young International Arbitration Group (YIAG)", above n 54.

56 Above n 54.

57 LCIA "Young International Arbitration Group (YIAG)", above n 54.

58 Formed in 2010 under the auspices of the International Council for Commercial Arbitration [ICCA], with its headquarters in The Hague: Young ICCA "Celebrating 10 Years of Young ICCA" <www.youngicca.org>.

59 Formed in 2012 under the auspices of International Centre for the Settlement of Investment Disputes [ICSID], with its headquarters in Washington, DC: ICSID "About ICSID: Young ICSID" <www.icsid.worldbank.org>.

60 Formed in around 2012 under the auspices of the HKIAC: HKIAC "HK45" <www.hkiac.org>. My thanks to my dear friend Alex Chun Hei Chan, an alumnus of the Chinese University of Hong Kong, for this information.

61 With its headquarters in Paris: ICC "Young Arbitrators Forum (YAF)" <www.iccwbo.org>.

62 Formed in 2017 under the auspices of the AIAC, with its headquarters in Kuala Lumpur: Jose Rizal "Young Practitioners Group under the auspices of AIAC" AIAC <www.aiac.world>.

63 See, for example, ICC "Search results for tag YAF events" <www.2go.iccwbo.org>; and HKIAC "HK45 — Events" <www.hkiac.org>.

64 See, for example, Chartered Institute of Arbitrators "Young Members Group" <www.ciarg.org>.

65 See, for example, Singapore International Arbitration Centre [SIAC] "YSIAC Writing Competition 2020" <www.siac.org.sg>.

groups also provide publication opportunities for their members, thus enabling them to start making a name for themselves in the international arbitration community.[66]

As membership of young arbitration practitioner groups is generally free, there is effectively no downside to signing up and attending some introductory events. Although some background knowledge in arbitration is recommended, it is certainly not compulsory to get value out of an informational webinar. My recommendation is to try it — you never know what you will miss if you do not, and you may even start considering a new line of work after it!

Internships

Just about all the major international arbitration centres globally offer internships available to junior practitioners from all around the world. Whereas some institutions reserve internships exclusively to affiliated members of their young arbitration practitioner group,[67] it is more common for internships to be offered generally to graduates and entry-level practitioners interested in arbitration and international dispute resolution. For example, the ICC, SIAC and HKIAC all offer three-to-six-month internships to recent graduates and junior practitioners.[68]

Internships provide practitioners with the opportunity to work for an international organisation on projects involving complex issues and multi-jurisdictional stakeholders. For this reason, they are apt at exposing practitioners to how the organisation functions, what type of work it engages in, and what working in the field of international dispute resolution is like. Just as importantly, internships at major arbitration centres enable junior practitioners to connect with arbitration leaders and experts from across the globe, given the international nature of the work as well as its clients.[69]

Of course, internships being available for junior practitioners to apply for is one thing, but being able to have the resources to consider seriously applying for them in the first place is another. As

66 My first publication was in *Arbitration*, the academic journal of the Chartered Institute of Arbitrators. See, for interest, Diana Qiu "A Comparative Analysis of the Approaches used to determine the Four Laws of Commercial Arbitration" (2020) 86(1) Arbitration 50.

67 As the LCIA did prior to 2020: LCIA "Changes to the LCIA Internship Programme" (18 October 2019) <www.lcia.org>.

68 ICC "Internship Opportunities" <www.iccwbo.org>; HKIAC "Internship Programme (Legal)" <www.hkiac.org>; and "SIAC Professionals' Internship Programme" MyCareersFuture <www.mycareersfuture.gov.sg>.

69 See generally Ash Stanley-Ryan "Hong Kong internship broadens horizons" (3 July 2018) Asia New Zealand Foundation <www.asianz.org.nz>.

these internships are overseas, the financial investment required to pursue them does reduce the number of qualified candidates who will decide to apply for them. Fortunately, New Zealand has many initiatives that can provide financial support. To name just two of them, the Prime Minister's Scholarships for Asia and Latin America cover the costs relating to internships in Asia, such as return flights and a contribution towards living, accommodation, visa and insurance costs.[70] Similarly, the Australian and New Zealand Society of International Law offers funding under its Internship Support Program to support persons undertaking unpaid internships at international organisations overseas.[71] Junior practitioners interested in potentially pursuing an internship at a major international arbitration centre should look to these places, as well as others,[72] for support.

To conclude, there are two main international opportunities for New Zealand-based graduates and junior practitioners to gain exposure to and experience in arbitration. One is by becoming members of a young arbitration practitioner group and taking advantage of the free educational events and networking opportunities they offer. Another is by applying for internships at international arbitration centres in key cities around the world. In the next Part, I turn to examine some of the domestic opportunities available for junior practitioners to develop their knowledge and skills in arbitration.

V DOMESTIC OPPORTUNITIES FOR JUNIOR PRACTITIONERS

In New Zealand, there are at least two ways in which junior practitioners can gain exposure to arbitration in addition to any training they may already access through their litigation and dispute resolution work: first, by becoming affiliate members of the Arbitrators and Mediators' Institute of New Zealand (AMINZ); and secondly, by coaching the Willem C. Vis International Commercial Arbitration Moot (the Vis Moot).

70 New Zealand Education "Prime Minister's Scholarships for Asia and Latin America" <www.enz.govt.nz>.

71 Australian and New Zealand Society of International Law "Internship Support Program" <www.anzsil.org.au>.

72 For example, some ad hoc financial assistance from law firms or barristers' chambers.

AMINZ Membership and Scholarships

1 AMINZ Membership

Recent graduates and junior practitioners can gain general exposure to arbitration and dispute resolution via membership of AMINZ, a national organisation that supports and promotes dispute resolution in New Zealand. Amongst many other things, AMINZ "provides education and training to existing and intending professionals working in dispute resolution", "provides the network, both real and online, by which members stay in touch" and "runs events" that are aimed at developing dispute resolution professionals and promoting ADR.[73] Affiliate membership of AMINZ is $229 annually and is open to practitioners who are just starting out in dispute resolution. An affiliate membership subscription provides the following benefits:[74]

- Networking opportunities with experienced, working professionals in dispute resolution.
- Access to the database of information held in the members-only part of the AMINZ website.
- Discounted rates to all AMINZ events, including training, networking events and the annual conference.
- Regular emails, newsletters, and notices updating readers on matters of interest to dispute resolution professionals.

AMINZ runs regular online and in-person events in major cities in New Zealand.[75] It also organises an annual three-day conference around the middle of the year, where members meet to learn about developments in dispute resolution, hear from keynote speakers, and socialise and connect with each other.[76] The annual conference is enthusiastic about welcoming new members, and there is almost always a social event dedicated to first-time conference attendees.[77] In these ways and more, signing up for affiliate membership of AMINZ opens up a plethora of opportunities for junior practitioners to gain a foothold into the domestic arbitration and the ADR scene.

2 AMINZ Scholarships

Additionally, AMINZ launched its inaugural AMINZ Scholarship this year. The Scholarship is awarded by the AMINZ Diversity Committee

73 Arbitrators' and Mediators' Institute of New Zealand [AMINZ] "About AMINZ" <www.aminz.org.nz>.

74 AMINZ "Affiliate Membership" <www.aminz.org.nz>.

75 AMINZ "Upcoming Events" <www.aminz.org.nz>.

76 AMINZ "AMINZ Conference 2021" <www.aminz.org.nz>.

77 See the "Newbies Event" on AMINZ "General Information" <www.aminzconference.org>.

and is designed to "support, encourage and provide learning opportunities for potential future leaders in dispute resolution" and to "[p]romote diversity in AMINZ, and in dispute resolution".[78] Recipients — two each year — are allocated a senior AMINZ member as a dispute resolution mentor and are able to observe an arbitration or mediation for a minimum of six days. Recipients also receive free AMINZ membership at the affiliate level for two years and up to $2,500 by way of reimbursement for costs incurred for attending AMINZ-related events.[79]

The Scholarship thus provides junior practitioners interested in arbitration or mediation with unique opportunities to access mentorship from experts in the field, on top of observing an arbitration or mediation at an early stage in their careers. The Scholarship also facilitates chances for recipients to connect with others in the industry, expand their networks, and improve their expertise. Furthermore, the Scholarship is consciously aimed towards improving diversity and representation in New Zealand's dispute resolution sector. This focus ensures that the most talent can be accessed and not overlooked, which is also consistent with diversity initiatives taken by major arbitration institutions overseas.[80]

For those interested in applying, applications for the AMINZ Scholarship close in mid-March each year.[81] Applicants do not have to be existing AMINZ members. The Scholarship is a valuable domestic opportunity for junior practitioners to learn more about the practice and procedure of arbitration and improve their skills and expertise in the field.

3 AMINZ-AUT Arbitration Practitioner Group

Finally, there is the AMINZ-AUT Young Arbitration Practitioner Group, New Zealand's first arbitration group for junior arbitral practitioners. It was formed in 2018 by AMINZ in association with AUT Law School and exists to "nurture young practitioners" in arbitration by providing professional support and guidance.[82] Since its formation, I understand that the Group has been trying to further establish itself, determine its strategic direction, and attract new members. As it continues to do those things, I suggest junior practitioners keep an eye out for opportunities to become members, as

78 AMINZ "The AMINZ Scholarships — Rules" (2021) <www.aminz.org.nz>.

79 AMINZ "AMINZ Scholarships" <www.aminz.org.nz>.

80 See, for example, ICC "Diversity in arbitration" <www.iccwbo.org>.

81 AMINZ "The AMINZ Scholarships — Rules", above n 78, at [3].

82 AMINZ "AMINZ and AUT Law School welcome a young practitioner group" (press release, 19 July 2018).

it will undoubtedly serve as an excellent starting point to one's arbitration career in New Zealand.

Coaching the Willem C Vis International Commercial Arbitration Moot Competition

Each year, around 380 teams from universities around the world compete in the Vis Moot. While students compete, New Zealand teams constantly look for junior practitioners to coach them, guide them through the issues raised by the moot problem, and mentor them in developing their advocacy skills. Participating in the Vis Moot not only benefits students immensely; it rewards coaches, too. As a coach myself,[83] I can speak volumes about what the experience has taught me about my own leadership and mentorship style, the way I think about structuring and developing arguments, my time management and organisational skills, and my knowledge of contemporary issues in commercial arbitration. I encourage all junior practitioners, especially those working in the litigation space, to consider coaching or volunteering to guest judge a Vis Moot team. The students — driven, motivated individuals — are always incredibly grateful for your time and practical experience, and you would play a part in raising the next generation of advocates.

The Vis Moot is the world's largest and most prestigious mooting competition in private international law.[84] It is held annually in Vienna, Austria, although it has been held fully online for the past two years. As its name suggests, the Vis Moot focuses on international commercial arbitration, as well as international commercial law.[85] The purpose of the Vis Moot is primarily educative. Its mission is:[86]

> ... to foster the study of international commercial law and arbitration and provide a practical training to students for resolving international business disputes. The business community's marked preference for resolving international commercial disputes by arbitration is the reason this method of

83 I coached the University of Auckland Vis Moot team that competed in the 28th Vis Moot in 2020–2021 alongside Jovana Nedeljkov.

84 Measured by the number of teams that compete. In 2021, 385 teams competed from 80 different jurisdictions, involving over 2,500 students: Willem C Vis International Commercial Arbitration Moot (Vis Moot) "The 28th Vis Moot in Numbers" <www.vismoot.org>. The only larger global mooting competition is the Phillip C Jessup International Law Moot Court Competition, in which 533 teams competed in 2021: International Law Students' Association *2021 Jessup Global Rounds Full Team List (Alphabetical Order)* (2021).

85 Sir David is an ardent supporter of the Vis Moot. He is a regular guest judge for the University of Auckland Vis Moot team, including my own team when I competed in 2018–2019, and the team I coached in 2020– 2021.

86 Vis Moot "About the Moot" <www.vismoot.org>.

> dispute resolution was selected as the clinical tool to train law students.

Preparation for the Vis Moot begins as early as October in the year preceding the actual competition in Vienna, when the problem is released.[87] The problem typically centres on a dispute arising out of an international contract for the sale of goods, which is to be resolved at arbitration. After the problem is released, teams will focus on researching the four issues raised in it: two of which will concern arbitral procedure and the remaining two concerning the merits. The team's first set of written submissions, those on behalf of the claimant, are due in early December, and the second set of written submissions, those on behalf of the respondent, are due in January. After that, teams will begin preparing for the oral rounds by engaging in a rigorous schedule of trainings and practice moots until late March/early April, when the competition officially kicks off.

As well as the competition in Vienna, the Vis Moot is known for having an extensive pre-moot circuit. International arbitral institutions and law schools worldwide will organise practice moot competitions in which teams regularly compete to receive feedback and hone their arguments in the lead-up to the actual competition in Vienna.[88] Teams can begin competing in pre-moots as early as February, just a few weeks after the submissions for the respondent are due. While teams can win and place at pre-moot competitions, the results do not affect the outcome in Vienna, despite usually being indicative of likely success there.

New Zealand teams have traditionally performed well in the Vis Moot. To my knowledge, only two of New Zealand's six law schools have competed.[89] The University of Auckland has regularly competed in the Vis Moot since 2014, when it placed in the top eight of over 300 teams in the competition.[90] The best an Auckland team has done was to place third in 2016 out of 311 competing teams.[91]

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87 Vis Moot "Dates and Deadlines" <www.vismoot.org>.

88 For a non-exclusive list of these pre-moots, see Vis Moot "Pre-Moots" <www.vismoot.org>.

89 No New Zealand law school has ever competed in the Willem C Vis East International Arbitration Moot [the Vis East Moot], which runs in parallel with the Vis Moot in Vienna. The Vis East Moot is set in Hong Kong, the arbitration hub of Asia, and provides teams from the region the opportunity to take part in all the advantages of the Vis Moot in Vienna, without travelling too far from home: Vis East Moot Foundation "About" <www.cisgmoot.org>. In the future when overseas travel is permitted once more, New Zealand teams could consider competing in the Vis East Moot to save on travel costs, thus enabling a greater number of New Zealand teams to participate.

90 "Auckland team reaches quarter finals [in] one of the world's largest mooting competitions [sic]" (1 May 2004) Auckland Law School <www.law.auckland.ac.nz>. My thanks to Jovana Nedeljkov for directing me to this link.

91 "Team sets new record in Willem C Vis Moot" (15 April 2016) Auckland Law School <www.law.auckland.ac.nz>.

Auckland teams consistently, with few exceptions, break into the knockout rounds of the Vis Moot.

However, the best results that a New Zealand team has achieved in the Vis Moot have come from the Victoria University of Wellington (VUW). A VUW team won the competition in 2009.[92] Before that, VUW teams placed second in 2004, and third in both 1998[93] and 2008. As with Auckland, teams from VUW also consistently reach the knockout rounds of the Vis Moot, staking their claim as one of the best-performing teams in the competition.

Having competed in and coached Vis Moot teams, I can personally attest to the value it provides to students. As with mooting generally, the Vis Moot exposes students to a rigorous schedule of research, submissions writing and oral advocacy training. Through intense practices and workshops organised by coaches, who have often been through the same process themselves, students learn an array of skills that stay with them when they begin their professional lives after law school. These skills include, but are certainly not limited to, argument formulation, legal research and writing, thinking on one's feet, and public speaking. In terms of knowledge gained, students and coaches learn about the practice and principles of international commercial arbitration and contemporary issues in the area.[94] More strikingly, unlike domestic mooting competitions, participating in the Vis Moot encourages teams to make international friends and to connect with arbitral practitioners from all around the world. In this way, the Vis Moot is not only an excellent training ground for students — potential junior litigation and arbitration practitioners — but it also springboards them into the world of international arbitration through each new person they meet. The same applies to coaches, who will connect with other teams' coaches and who themselves are often junior practitioners working in various capacities.[95]

Junior practitioners should reach out to their local law school to get involved with coaching or guest judging a Vis Moot team. At the University of Auckland, coaches are typically involved with team selection, which usually happens in October each year before semester

92 "Going to the Vis Moot" *V.Alum 2018: Law Alumni Magazine* (Wellington, 2018) at 38–39.

93 The first year it competed. My thanks to Professor Petra Butler for this information.

94 One of the issues in the 2020–2021 Vis Moot problem was the legitimacy of conducting fully remote arbitral hearings against the backdrop of the COVID-19 pandemic: Association for the Organization and Promotion of the Willem C Vis International Commercial Arbitration Moot "The Problem" (2020) at 51.

95 I am grateful to Fergus Whyte, my friend and former coach of the University of Edinburgh Vis Moot team who I met while competing in the 26th Vis Moot in 2018–2019, for his considerable expertise and for guiding me along my own coaching journey.

two exams and involves a mini trial moot and short interview. At this stage, it is unclear whether the 2022 Vis Moot will be held online. If it is, the reduced registration and eliminated travel costs will make participation very accessible, meaning that law schools who have not historically participated in the Vis Moot may now be able to do so. I strongly urge junior practitioners who have the time and interest to put together a team to do so and to enter. The skills, knowledge and reflections you will gain, and especially the new friends you will meet, make all the months of preparation worth it.

There are many domestic opportunities for junior practitioners to gain exposure to arbitration. In this Part, I have described just two of these opportunities: first, by becoming members of AMINZ; and secondly, by coaching the Vis Moot. I believe these opportunities are valuable not only for developing skills and knowledge about arbitration generally, but also for learning about an area of law and legal practice that is dynamic, expanding and filled with possibilities.

VI CONCLUSION

Looking to the future of arbitration in New Zealand, it is likely the field will continue to grow. After all, it offers parties distinctive advantages over traditional litigation in resolving disputes, including flexibility, cost efficacy, confidentiality and speed. The burgeoning use and scope of arbitration mean practice in it will likely present challenges, the solutions to which will enable the field to advance, and thus the journey towards devising those solutions will be fulfilling. But that is only one reason why more junior practitioners should be considering doing more work in arbitration. Other reasons include the direct pathway such work can lead to opportunities overseas that can further enhance key lawyering competencies. That, as well as the chance to build New Zealand's own dispute resolution community, is why arbitral practice will be rewarding. For future research in this area, it may be interesting to explore the success of New Zealand practitioners working in arbitration roles overseas, how many come back, and how easy or difficult it is for them to continue practising in arbitration here.

There are a number of international and domestic opportunities available for junior practitioners to gain skills and exposure to arbitration. Internationally, membership of young arbitration practitioner groups provides practitioners occasions to learn about topical arbitration issues and connect with like-minded young

professionals overseas. There are also internships at major international arbitration centres that enable junior practitioners to do the same. Looking closer to home, I have suggested that junior practitioners can access the above benefits by becoming affiliate members of AMINZ, New Zealand's national dispute resolution body, as well as coaching or guest judging a Vis Moot team.

Overall, I hope this paper can inform junior practitioners more about opportunities in arbitration that they may not have previously known existed. Looking at the opportunities together, one common trend is apparent: a steadfast commitment to mentorship, development, and nurturing the next generation of arbitration practitioners. For myself, I will always be grateful for the mentorship Sir David provided me. In like fashion, I hope this paper can nudge more junior practitioners to consider arbitration, which may be different from their regular work and may be surprisingly invigorating.