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MESSAGE FROM THE EDITORS

Dear Friend and Colleague,

Welcome to the third issue of the Racial Equality for Arbitration Lawyers (“R.E.A.L.”) Newsletter! It is often said that the third time’s the charm . . . but let’s get R.E.A.L. . . . this Newsletter is like the finest wine: it only gets sweeter with time!

As we approach the end of this calendar year, it is a great time to reflect on the prior year, recognize opportunities for improvement and growth, and (more importantly) appreciate our blessings and everything we’ve overcome to date. To say that these past few years have been difficult would be an understatement. And it is a reality that many will continue to face challenges. But as the great Nelson Mandela once said, “Do not judge me by my success; judge me by how many times I fell down and got back up again”.

As we sit here today with you, we are in awe of how far R.E.A.L. has come and how much R.E.A.L. has accomplished — all because of YOU and your support. YOU are a blessing to R.E.A.L. and a pivotal player in helping bridge the racial diversity gap. R.E.A.L. looks forward to your continued support in furthering its upward trajectory into the coming year and beyond.

This issue of the R.E.A.L. Newsletter features a #REALSpotlight on three incredible arbitration practitioners from the South-East Asian Region; an article created in collaboration with Careers in Arbitration on the different pathways to build a career in this industry; short reflections from three R.E.A.L. Scholarship recipients; updates on the work of R.E.A.L.’s Committees; and . . . wait for it . . . almost . . . your favorite . . . #R.E.A.L.Trivia!

As always, we are tremendously grateful that you are a part of R.E.A.L.!

We wish you and your loved ones a very happy holiday season and a peaceful and prosperous New Year.

Please consider contributing to the next issue! If you are interested in submitting content or providing feedback on the R.E.A.L. Newsletter (or the R.E.A.L. Blog), please feel free to contact us at newsletter@letsgetrealarbitration.org.

Forever thankful,

R.E.A.L. Newsletter & Blog Committee
One of the many inspiring aims of R.E.A.L. is to create a platform for access to knowledge in international arbitration. In furtherance of this aim, the R.E.A.L. Newsletter & Blog Committee will be featuring a regional interview series - #REALSpotlight – in its upcoming newsletters. In this series, arbitration practitioners from selected regions across the globe will be sharing insights on their career journeys and the latest trends in their relevant jurisdictions. This interview showcases three (3) well-regarded practitioners from South-East Asia – Sitpah Selvaratnam (“Sitpah”), Simon Barrie Sasmoyo (“Simon”), and Earl Rivera-Dolera (“Earl”) – all of whom are at different stages in their international careers. Excerpts from their interview can be found below.

1. **What inspired you to become a lawyer? If not a lawyer, what would you have been?**

   **Sitpah:** A default-setting resulted in me becoming a lawyer! I couldn’t see myself as any other professional. In fact, I couldn’t see myself as a lawyer back then. I thought a lawyer had to be flamboyant and witty, and I certainly was not at 18. I am so glad that the law claimed me though; I love the thought process of the law. If not a lawyer, I guess I may have become an artist, and if the choice is made now, a coach and counsellor.

   **Simon:** My mother was the first person who suggested that I should become a lawyer, probably due to the fact that I am argumentative. I then followed up to this idea and went to law school. Law school provided me with various programs to nurture this trait, including moot court and debate competitions.

   **Earl:** I was inspired by detective stories I had read as a kid. On hindsight, I might have had the subconscious desire to become a detective but eventually found lawyering to be a safer option in my parents’ view. Having been born and raised in a developing country, parents tend to steer their children to safer career pathways, e.g. being a lawyer, doctor and other “titled” degrees. I was also born during a tumultuous period in terms of the political and economic landscape of the Philippines. It was indoctrinated in me early on that I have to
go with a career where I will be respected, having no relevant connections to “make it in life” so to speak.

If not a lawyer, I might have ventured into the arts, something to do with music, which was something not practical at all at the time where the platform available entails having not only the talent but also the connections and the clout.

2. **Why did you choose to pursue a career in international arbitration?**

**Simon:** I fell in love with international arbitration ever since I joined arbitration moots in law school. I chose to remain in arbitration because it allows me not only to assist corporations, but also to benefit public interests. This is particularly evident in investor-state arbitration which typically deals with matters concerning State policy in areas of public interest, such as water, energy, and electricity.

**Earl:** By coincidence. I was a trailing spouse following my spouse’s work assignment in Singapore. I took a master’s degree and I was fascinated by the practice of international arbitration. I’d like to think I made some (good) impression on my professor who offered me to join his arbitration-focused chambers thereafter in Singapore, and the rest, as they say, is history. I’ve been in the international arbitration space for more than a decade now.

**Sitpah:** I was co-opted into the committee of the Malaysian chapter of the Chartered Institute of Arbitrators (“CIArb”) sometime in 2004/5 because of my involvement in admiralty law and with the shipping industry. I had by then been counsel in a domestic arbitration before an international panel of arbitrators and found that experience invigorating. The combination of events prompted me to pursue the Diploma in International Commercial Arbitration at Keble College, Oxford; organised by the CIArb. The course excited me. The boundaries between civil law and common law faded, and there were so many fascinating concepts - applicable laws, confidentiality, party autonomy, natural justice, public policy. I enjoy unravelling interlacing principles. In short, because there is never a dull case in international commercial arbitration.

3. **What has been the most memorable experience in your arbitration career to date?**

**Earl:** Attending a hearing in a country where a bombing incident had happened a few weeks before the hearing, just a few minutes’ drive from the hearing venue. While the bombing incident was not related to the case but because the case involved State-owned entities, the parties provided security protection for any foreign citizen attending the hearing.

**Sitpah:** Attending a hearing as lead counsel and oral advocate where the language of arbitration is foreign to me. My colleague who was supposed to undertake the oral advocacy in the language of arbitration, had not been allowed to attend the hearing due to the pandemic-related restriction of travel. I was grateful to our team who stepped up and acted as translator for me in the course of the hearing.

**Sitpah:** I guess it must still be my appearance as second chair counsel in an arbitration before a very eminent international panel of arbitrators, almost 20 years ago, in a high-value bonds dispute. I observed with much interest how the Tribunal perceived Asian witnesses, and how they conducted themselves with counsel. I was given a to-
-tally unexpected opportunity to cross-examine a witness, and present oral submissions before this Tribunal. My hands and heart went cold with nerves, when I was invited impromptu to present oral submissions. The commendation I received privately from members of the Tribunal, as we shook hands at the completion of the oral hearing, instilled in me a tremendous amount of confidence and courage. I cannot forget that.

Simon: I am blessed to have unique arbitration cases that constantly involve matters of public interest. If I must pick a case, it has to be the one where I was involved in a team that managed to obtain a favourable arbitral award conferring retirement funds for thousands of retirees. I had to deal with human emotions and a high-stakes arbitral proceeding since I knew if I failed, the ex-employees would suffer as they were depending greatly on those funds.

4. In your opinion, what sort of cross-cultural differences should practitioners be aware of when second-chairing or otherwise participating in arbitral proceedings in South-East Asia?

Simon: Lawyers should be aware that there is a tendency for many arbitration practitioners in South-East Asia to be too respectful to a Senior Counsel and more senior arbitrators. They sometimes tend to shy away from confronting their seniors’ arguments with the true facts and evidence, hence sacrificing the quality of the entire arbitration proceedings.

Also, a misplaced sense of togetherness or informality amongst practitioners in South-East Asia sometimes becomes a real issue. For instance, I was involved in an arbitration case where in cross examination hearing, an arbitrator spoke in his native language out of empathy toward a struggling witness (who had the same nationality as the arbitrator). However, this was done at the expense of not adhering to the agreed language and excluding the rest of the proceedings’ participants from the important discussion.

Sitpah: To begin, South-East Asia comprises about 11 countries with diverse cultures, religions and legal systems, and are in varying stages of economic and political development. There are cross-cultures simply within South-East Asia! Arbitration is about people, and understanding the people behind the dispute is integral to doing them, and the dispute, justice.

There is a wide spectrum of arbitration users in South-East Asia – some very familiar with, and others more unknowing, of the system. The level of exposure to arbitration may make the process alien. Compliance with directions may therefore be patchy,
without meaning to be evasive or delinquent.

Comprehending the level of barrier the language of the arbitration presents, including the competence and accuracy of translation services, is important. Even accents and enunciation can present difficulty in understanding a question posed, or an answer given.

The cultural deference to authority may translate to reticence in providing answers. Humility, especially in body language, shouldn’t be too quickly misconstrued as ignorance of the subject matter, or the lack of credibility.

Expectation that a nominated arbitrator is a spokesperson of a party is not uncommon, and clear explanation of the prohibition against unilateral communication with a member of the Tribunal, and the neutrality of all members of the Tribunal, may be required.

**Earl:** To note the key differences in practice and culture between civil law and common law jurisdictions, and the various level of debate and discourse as well. Some jurisdictions tend to take a more courteous or polite approach, others prefer a more aggressive approach. If bordering rude for the latter, the arbitrators tend to then take a decisive stance against rude behavior. It’s also important to note the differences in “relevant and material” evidence. For a few jurisdictions, counsel tend not to check anymore the authenticity of documents giving more room for parties to “make” or forge ante-dated documents and present them in the arbitration. It is most especially common in jurisdictions where the rules on perjury may not be that robust.

5. **What sort of challenges, if any, did you encounter when trying to get your first break in international arbitration? What steps did you take to address and/or overcome these challenges?**

**Earl:** The challenge is continuing. Just about last year, in one hearing, the opposing side addressed me as “You, young lady...”. Of course, we won that case by a landslide.

Also, I lost arbitrator appointments, not at all a unique situation for me alone, and then we’ll hear from the market that another person was appointed, who would almost always be just of the same age as I am and similar number of years’ experience, but most commonly would tend to be a citizen from a major hub for arbitration or a major hub for the legal profession.

There are also victories of course which often trump the lost opportunities above.

**Simon:** International arbitration is still largely dominated by certain group of people who have known each other for a long period of time. Newcomers tend not to be afforded sufficient opportunities to be involved in arbitration. On these challenges, I focused on performing and maintaining integrity to attain the best result in the cases I was trusted to handle. Outside of work, I increased my involvement in arbitration organizations such as CIArb where I can work together with established attorneys. In these ways, I was able to build connections with them and then slowly became accepted in the community.
Sitpah: I had 3 strikes against me – gender, ethnicity and nationality. Being female, of Indian ethnicity and from a country lesser known and developed, posed challenges. I was not on the A-List; not from the natural pool of lawyers to be chosen as arbitrator or to be engaged as Counsel for international arbitration.

I realised fairly early on that I had to stand out in domestic litigation in a particular field. That would allow me to migrate into the international sphere, as a leader in a particular commercial sector of my country. My pond was small, and I needed to become a fairly big fish in it to secure international recognition.

I involved myself in domestic and international associations and organisations – the IPBA, IADC, shipping and arbitration committees, which kept me connected with what others were doing elsewhere in the world. It also afforded me visibility.

More importantly, giving to society is a remarkable way of receiving abundance.

I realised that my country offered neutrality to disputing parties, and I benefited from that.

With passion and sound work ethics, integrity and independence, I guess I set out to differentiate and create a brand for myself. The process of reflection and self-improvement never really ends, to make the environment better for us and others.

Earl: In areas of practice with a cross-border element, not just in the legal profession, it is important to gain education and experience outside the home jurisdiction. This invariably opens up the mind, the network of connections, the pool of mentors. It also opens up the mind to new ways of thinking, best practices and the level of advocacy that may not be available in the home jurisdiction.

If the opportunity knocks to join and practice international arbitration, learn, read, ask questions as much as you can in the process.

When I first started working in international arbitration, my responsibilities include thinking ahead of arbitrators, weighing materiality and relevance of evidence from the parties, and attending tribunal deliberations. I was vigorously taking down notes in the process. I still go and dig those notes whenever the relevant issue corresponding to those notes arises.

Sitpah: Spending 5 years in the United Kingdom reading law, and more than 4 years on the ICC International Court of Arbitration, gave me great exposure to the many ways of viewing life and handling disputes, and the subject matters that come under dispute. It also allowed me to understand practices in other countries, and in turn made me more acceptable and understood by others.

The skills and understanding I gathered from abroad enabled me to help grow and better support local industries and institutions, through trainings workshops and platforms for law reform. In a way, this got
me recognised as a thought leader. With greater recognition, comes more appointments.

7. **Simon** – you have had the opportunity to participate in mooting competitions throughout your university life. How did you use the mooting skills you acquired to forge an arbitration career in the South-East Asia?

**Simon:** Yes, in my early university years, I participated in the Asia Cup in Japan, and the International Humanitarian Law moot in Hong Kong. In the last two of my university years, I competed in the Willem C. Vis moots in Vienna, Austria. From these moots, I learnt the importance of advocacy skills, understanding the different views of people from diverse nationalities, and the need for persistency. These skills served in the foundation of my career as they are directly relevant to succeeding in actual arbitration cases.

8. **You are all actively involved in promoting alternative dispute resolution across South-East Asia. What changes to the arbitration landscape have you witnessed during your time and what more do you think needs to happen ensure arbitration thrives in South-East Asia?**

**Sitpah:** So much has changed in my country of residence and in South-East Asia in the 30 years I have been in practice in Malaysia. Arbitration is now embraced as a significant, if not dominant, form of dispute resolution. It wasn’t so in the 1990s. Mediation too is fast growing.

Singapore has surged ahead as a leading seat, and has generated the Singapore Convention, the Party Representative Ethics, and more. Arbitration centres in Malaysia, Indonesia, Thailand, Vietnam have become more active.

The number of arbitration practitioners and arbitrators of this region have grown tremendously with continuous training, especially from CIArb and arbitral institutions.

There are greater opportunities for women and younger practitioners to be appointed in arbitration now, following the magnificent international initiatives at promoting awareness in the fairness of diversity and equal representation.

Arbitral laws have improved, and the enforcement of awards made easier. Courts’ support is more balanced, with less interference. The value of claims that are referred to arbitration is much larger, signifying confidence in the process.
There is much more to be done though, to ensure greater uniformity within South East Asia, including the approach to the empanelment of foreign arbitrators and the requirement for work permit; and in the understanding of arbitration norms towards meeting expectations of the international business community. I would also like to see all arbitrators who sit as Tribunals in South-East Asia exercise the same independence and professionalism as when they sit in the Western world.

**Earl:** There are more contracting parties who are aware of arbitration as a dispute resolution mechanism alternative to court litigation, where they have autonomy in their choice of the elements necessary in arbitration. Suffice to state that more contracting parties trust the process even from countries where mediation or litigation is the default dispute resolution mechanism.

Courts and arbitration must complement each other, as international best practices continue to advocate. I would propose continuing training requirements for judges not just in the big cities but also in the remote areas in developing economies, or in any areas where the court’s jurisdiction may be engaged such as interim relief applications, setting aside of arbitral awards, petitions for recognition and enforcement of arbitral awards.

**Simon:** The arbitration landscape is changing. Lately, third party funding is becoming popular in the region, and it can potentially become a double-edged sword if not regulated carefully. In short, proponents to this concept assert that it can help a party overcome the financial burden of resolving disputes through arbitration. However, on the other hand, it triggers different risks including arbitrator’s conflict of interest, breach of confidentiality, and the question of whether it is the party or financier who will decide the arguments.

**9. What are your thoughts on racial equality in arbitration for current or aspiring practitioners from South-East Asia?**

**Sitpah:** This is a bigger problem. We are just about getting to grips with gender parity. I suspect it will be a while longer before we see racial equality in arbitration. It cannot easily be forgotten that some racial inequities are entrenched in South-East Asia, whether demarcated by religion or race.

There are also different levels of racial inequality at play. As a remnant of the colonial past, expertise from the Western is often considered superior in South-East Asia, whether in choosing seats, arbitration counsel or arbitrators. In seats within South East Asia, Caucasian practitioners or arbitrators have an edge in appointment popularity over their native South-East Asian counterparts.

Within South-East Asia communities, there remain traces of racial polarization in the selection of counsel and arbitrator, possibility due to familiarity and to some extent, trust.

Until mindsets change, and that involves matters of the heart too, and the level of experience become more equal which in itself is a circuitous conundrum, racial inequality will persist.

**Simon:** Racial equality is needed not only by practitioners from South-East Asia, but also by the arbitration industry as a whole. In fact, safeguarding racial equality for these practitioners will bring advantage to arbitration.

Granted, the rate of South-East Asian practitioners involved in arbitration is increas-
-ing, however the industry is still dominated by certain groups of people (either as arbitrator or counsel). The business community may have less trust in the arbitration forum if this circumstance persists. This is because, businesses generally view that an ideal dispute resolution forum should have a balanced composition for them to feel well represented (in every aspect, including race). Hence, ensuring racial equality for practitioners in arbitration is crucial as it will benefit both the industry and the broader community.

*Earl:* From my point of view, a vast majority of full-time arbitration practitioners in SEA do not come from SEA or were not born in SEA, save perhaps for the exception of Singaporean practitioners in Singapore. Perhaps some (not all, of course) contracting parties still prefer a counsel or arbitrator coming from a major hub of arbitration. REAL and its important work are taking great strides in continuing this dialogue and advocacy. I very much look forward to the day when there is no need to continue this dialogue because racial equality has become the norm, rather than the exception.

10. **What role do you believe organisations such as R.E.A.L. can play in bridging the racial diversity gap in international arbitration?**

*Simon:* The racial diversity gap can hinder one’s prospect to be fully involved in international arbitration. The gap is amplified by different factors, including different levels of competence and networks – probably due to lop-sided access to develop both factors. If disadvantaged practitioners can substantially improve these two, then the racial gap may be greatly reduced.

*Sitpah:* R.E.A.L. can play a very important role in raising awareness as to the palpable existence of racial inequality. Awareness draws the matter out from sub-conscious determination, to conscious consideration. Articulation of the issues can impact behavioural patterns significantly. Just as the ERA Pledge has made appreciable strides in gender diversity, REAL can do much to adjust racial inequality in arbitration.
Statistics can be a powerful tool. Most institutions provide geographical statistics; of the geographical location from which arbitrators are appointed, but not the ethnicity of such arbitrators. Geographical diversity is good, but it does not equate to racial diversity. Calling for racial statistics, though it may not always be easy to identify, may prove helpful.

11. In your opinion, in addition to legal writing and analytical skills, what other skills are necessary to succeed in international arbitration?

**Earl:** I look for someone who is relentless, a can-do attitude despite what may be lacking in regulatory framework in the practice so long as we practice within the limitations of the law. It is an edge to have the skill of speaking the language of the clients, and to have that skill of foresight of thinking ahead what the opponent could raise as issues in the arbitration.

Of course, I cannot deny the trend that most of my female colleagues with whom I’ve started with have left private practice. That is such a pity to the practice. I understand the various reasons though which have continued to plague the legal profession that leads to this trend of female lawyers leaving private practice upon reaching mid-level or senior level stage.

**Sitpah:** Brevity, clarity, and simplicity help for they cut across language barriers and communicate more neutrally.

Developing the skill of staying focussed on finding solutions, regardless of the aggravating circumstances, is important.

Being decisive and comfortable in handling
12. **What is your one go-to tip for young practitioners who are keen to network at arbitration events?**

**Simon:** Build rapport with people prior to attending networking events, for instance initiating written correspondences or request to have informal meetings. That way, when young practitioners actually meet the persons again in the event, he/she can avoid or at least greatly reduce awkwardness. Then, one can build real, and hopefully lasting connections.

**Sitpah:** Network to build friendships, especially amongst peers. They will soon, if not already, be leaders and influencers who will value your sincerity and authenticity. Don’t hesitate to approach seniors with friendly confidence.

**Earl:** Build your competence in the area of international arbitration while networking at the same time. It becomes so obvious in networking events when someone has no idea what they are talking about. I don’t believe in “fake it ‘till you make it”. Sometimes the first impressions that you make in networking events could last long. Ask good, stimulating questions in panel discussions.

Of course, avoid becoming one of those who ask questions in public to simply market themselves and their practice. Do avoid becoming one of those “man/womansplaining” the panelists or others masquerading as asking questions.

13. **What advice would you give young practitioners (particularly those from diverse backgrounds) who are looking to develop a career in this field?**

**Earl:** To be honest, look for opportunities outside your home jurisdiction, in jurisdictions where there is a robust framework for international arbitration and are deemed to be major hubs for legal practice, especially if one’s home jurisdiction is not a capital-exporting but a capital-receiving country. Capital-exporting countries tend to have a mature legal system and have therefore more opportunities to practice international arbitration, and better training ground for the practice. You may then have the option to return to your home jurisdiction when you reach mid-level or senior level stage and bring international best practices and standards into the practice in your home jurisdiction. Clients from your home jurisdiction will then not need to look for counsel or arbitrator overseas or from mature hubs for arbitration. It will be difficult, challenging but not impossible. To manage expectations, it will not be all sunshine and roses

**Simon:** Fortify strong foundations: improve communication skills, maintain integrity, be decisive, perform consistently, and acquire at least two languages. For languages, it is good to acquire them as early as possible.

**Sitpah:** Equip yourself with skill and knowledge; have a clear vision of what you want to experience; identify what action steps you can take towards realising that vision; and believe in yourself – work at your mental and emotional health (in addition to your physical health) to sustain a happy outlook to life.
You will then attract the realisation of your vision!

*About our interviewees*

**Sitpah Selvaratnam** is an Advocate & Solicitor of Malaysia; Barrister-at-Law, Lincoln’s Inn; and an International Arbitrator. She was a founding partner of the law firm Tommy Thomas, established in 2000. Sitpah is a Court Member of the International Court of Arbitration of ICC. She is also a Court Member of the Permanent Court of Arbitration. Sitpah holds a LLB from the University of Wales; a LLM from the University of Cambridge, and a Diploma in International Commercial Arbitration conferred by the Chartered Institute of Arbitrators. She is regularly appointed by arbitral institutions, parties and co-members of Tribunal as Arbitrator in international, regional and domestic references on commercial, international trade, commodities and shipping disputes, including shareholder disputes, claims for unjust enrichment, demurrage, non-delivery and non-acceptance of cargo, disputes over the sale of businesses, ship repair agreements. Sitpah has practiced law in Malaysia since 1991, focused on corporate insolvency, commercial and shipping litigation and disputes. She has testified as expert on Malaysian maritime, commercial and banking laws in foreign proceedings and international arbitration.

**Simon Barrie Sasmoyo** is a partner at Assegaf Hamzah & Partners in Indonesia, a member firm of Rajah & Tann Asia. He graduated from the University of Indonesia with a bachelor of law degree in 2010. Simon has extensive experience in both commercial arbitration and litigation. In the arbitration field, he is currently involved in proceedings before the Singapore International Arbitration Center (SIAC) arising out of a breach of contract between an Indonesian-owned energy company and Indonesian-owned consultancy company. Prior to this, he represented an Indonesian energy company in proceedings before SIAC, and was also involved in arbitration proceedings before the Hong Kong International Arbitration Centre (HKIAC). In Indonesia, he has appeared in a number of cases before the Indonesian National Arbitration Board (BANI). Additionally, Simon co-authored the Indonesian chapter of Asia Arbitration Guide 2011 (2nd ed., Respondek & Fan), and has assisted in the writing of a number of scholarly articles on arbitration that appeared in international publications.

**Earl Rivera-Dolera** is the Head of International Arbitration Practice of Frasers Law Company. She has acted as counsel, tribunal secretary, and arbitrator and has advised as an expert in arbitration proceedings. She has been involved in arbitral proceedings seated in Asia, Africa, Europe, United States, and Australasia in a Singapore-based arbitration chambers with prominent international arbitrators under the auspices of ICC, SIAC, LCIA, JCAA, KLRCA (now AIAC), SCMA, AMTAC, HKIAC, VIAC, ICDR/AAA, BANI, ICSID and ad hoc arbitrations with total claims of around US$7.2 billion. Earl has also acted as arbitrator under the various rules of major arbitral institutions with seats of arbitration in Japan, Singapore, India, the Philippines, Indonesia, Hong Kong. She has had experience in various capacities in more than 170 arbitrations under the rules of major arbitral institutions. Earl is a qualified and admitted Solicitor, England and Wales, Attorney-at-Law in New York and Texas State and the Philippines and a registered foreign lawyer in Vietnam.
Arbitration has increased its relevance in recent decades as a means of resolving international and domestic disputes. Thus, the number of arbitration practitioners and academic research has also grown substantially. However, international arbitration faces a big challenge, namely: the lack of racial equality.

Admittedly, people of certain racial groups or originating from certain regions are still underrepresented in international arbitration, and this is partly since these individuals, in their formative years as professionals, have little exposure to the opportunities that exist in the field of international arbitration. In other words, they have little or no access to arbitration conferences and networking events, as well as to education, internship opportunities and arbitration career advice.

In this regard, organizations such as R.E.A.L. have within their strategic goals to focus on racial equality and representation of other unrepresented groups in international arbitration, to create a platform to recognize and address issues of systemic discrimination and implicit bias in international arbitration, among others.

One means by which REAL works to achieve these goals is through the REAL Mentorship Program, which was recently launched. Through this program, mentees and mentors can exchange experiences and get to expand their professional and social contacts. Additionally, the program poses a great opportunity for mentees to receive career advice and identify training, research, and education opportunities.

But how does the program work? Mentees and mentors are divided by groups, each of has up to four mentees and one mentor. Then, the mentor organizes up to six online meetings with its mentees and other activities that the group finds relevant. Further, the mentor may hold individual meetings with a mentee and engage in other activities, such as co-authoring an article with shared credit.

Therefore, the REAL Mentorship Program is a platform that provides some tools for young practitioners from racially underrepresented groups to receive guidance and become increasingly involved in the field of arbitration. Thus, it is important for teachers and professionals to spread the word about the platform to achieve a diverse arbitration arena.
#REALTIPS: EXPLORING CAREERS IN ARBITRATION

A collaborative article by R.E.A.L.’s Newsletter & Blog Committee and Careers in Arbitration

As a law student, the first time you hear the buzz word “arbitration” tends to be when you come across an email or flyer on campus that invites you to participate in a moot or when you see a post for an internship in an arbitration team through your budding network on LinkedIn.

Alternatively, as a legal practitioner, you may first encounter arbitration through an informative webinar, colleagues in the practice area who share exciting stories about their work, or by virtue of your expertise somehow landing you in the midst of an arbitration, be it as a part of the counsel team or even peripherally. From that moment on, many budding and experienced practitioners are inspired by the international and diverse nature of arbitration and fascinated by this distinct legal career path.

But what options are open to those embarking upon a career in arbitration? The purpose of this article, created in collaboration with Careers in Arbitration, is to shed light on various arbitration career paths.

Arbitration Lawyer

The most obvious path is practice as an arbitration lawyer. Depending on your jurisdiction and choice of employer, this may involve purely arbitration or arbitration-related advisory work, or a mixture of arbitration, litigation and general disputes work.

Arbitration lawyers require a unique skill-set that allows them to thrive in high-paced and time-critical environments. Great communication, drafting, research, and teamwork skills, attention to detail, a project management mindset, the ability to think analytically and client management skills are all required. Additionally, arbitration lawyers may have expertise in negotiation, and other methods of dispute resolution.
Most importantly, given that arbitration is a process for resolving disputes, arbitration lawyers must master the substantive area or areas of law in which they practice, ranging from construction and corporate law, to energy, investment, and IP law, or more exotic specialisms such as space law.

Becoming an arbitration lawyer takes a lot of work as opportunities to practice are limited, the career is demanding, and there is an increasing interest in this legal practice area. However, for budding law students and junior lawyers without a plethora of practical experience, the key to success is to be persistent in your efforts and broaden your visibility.

To maximise your prospects of success, build a network by participating in arbitration events, and engaging with organisations that promote career development in arbitration and/or are targeted towards students and/or young practitioners. If practical, you may wish to consider a career or pursue educational opportunities outside your home jurisdiction.

Build your theoretical knowledge by undertaking postgraduate courses focusing on both substantive areas of law and arbitration practice and procedure, and develop your drafting skills and personal profile by publishing articles and blog posts related to arbitration.

Whenever possible, engage in opportunities to build practical experience, such as interning at an arbitration practice or participating in mooting competitions such as the Willem C. Vis and FDI Moots to develop your written and oral advocacy skills.

For those with inquisitive legal minds who do not wish to practice, consider pursuing a career in academia. For junior lawyers and postgraduates, the entry route typically involves completing a Doctor of Philosophy (PhD) on a topic related to arbitration and seeking lecturing or teaching opportunities during or after completing your PhD.

This career path focuses on contributing to the academic world by publishing and conducting research. Many academics also act as legal or subject matter experts in arbitral proceedings or sit as arbitrators.

To succeed in a career in academia you will need a passion for teaching and imparting knowledge, intellectual ability and a dedication to the pursuit of academic work, excellent research and writing skills, and well-developed communication, organisation, time management and teamworking skills.
Institutional Work

An alternative, rewarding career path in arbitration is to work for an arbitral institution. Ask anyone who works at an arbitral institution and they will tell you that “no one day is the same”!

Depending on your role working at an arbitral institution typically involves undertaking a mixture of case management work and institutional project work.

On the case management front, you will be expected to manage a large case load of arbitration matters of varying degrees of complexity, with disputes arising from a broad range of industries. You will be the liaison between the arbitral institution, the parties and the arbitrators and will need to ensure adherence to the institution’s rules, oversee the filing of submissions and the payment of deposits, and keep on top of changes to the procedural timetable.

You may also have the opportunity to provide tribunal secretary services, assist the tribunal with navigating the institution’s rules and attending to procedural queries and issues, and participate in the review and / or scrutiny of the final arbitral award.

With respect to institutional projects, actual projects vary from institution to institution. However, you will be expected to play a proactive role in organising and participating in conferences and events, draft publications on behalf of the institution, deliver lectures or training sessions, and assist with the development of institutional policies and guidelines. As an ambassador of sorts for your institution, you will also play a role in building the institution’s network and its regional and / or global footprint.

The skills required to succeed in this role include having a solid grasp of arbitration practice and procedure, including your institution’s rules. Strong communication and writing skills, a desire to network, and excellent interpersonal, organisational, teamwork and time management skills are all essential.

Institutional opportunities are generally advertised on institutions’ respective websites, as well as being shared more broadly on social media platforms such as LinkedIn. You can also find many such roles on Careers in Arbitration.
Tribunal Secretary

In many jurisdictions, it is possible to work as a judicial clerk or associate in order to acquire first-hand experience of how courts operate and judges manage matters. The equivalent role in the field of arbitration is that of tribunal assistant or secretary.

A tribunal secretary is usually a junior arbitration practitioner, or a budding arbitrator, who works under a seasoned arbitrator and supports them throughout the arbitration proceedings. This experience provides a clear understanding of what will be expected of you as an arbitrator and will develop your awareness of the skills required of an arbitrator.

There is a debate in the industry on the scope of work that a tribunal secretary may undertake without usurping the role of the arbitrator. For this reason, arbitrators typically seek the consent of the parties and/or their counsel before appointing a tribunal secretary. Typical tribunal secretary tasks include liaising with the parties to organise procedural meetings and following up on submission deadlines, drafting procedural orders, managing documents filed throughout the proceedings, undertaking legal research, and addressing ad hoc requests made by the tribunal.

Tribunal secretaries must have strong organizational, communication, teamworking and time management skills. Independent tribunal secretaries who operate their own businesses require strong business development and networking skills.

Certain arbitral institutions have courses that help individuals prepare to become a tribunal secretary and become empanelled with that institution as a tribunal secretary.

There is, however, no guarantee that you will receive an appointment. It is also possible to secure a role as a tribunal secretary by proactively reaching out to arbitrators you wish to work with and explaining why you are a suitable candidate, or by applying for advertised roles at arbitrators’ chambers.

Arbitrator

An arbitrator manages cases from referral through to resolution. Their responsibilities range from procedural management of the arbitration process to the evaluation of each side’s legal and factual arguments, the interpretation and application of relevant laws, and ultimately the drafting of interim and/or final awards.

Sitting as an arbitrator requires the development of certain skills and competences, and for most, it is a second career of sorts. Many arbitrators have years of experience as counsel, in academia, or as an industry professional. Aside from having a strong grasp of the area of law and/or industry in which they practice, arbitrators must possess sound judgment, and strong decision-making and time management skills. A proper understanding of arbitration practice and procedure must be supplemented by well-developed communication, cultural awareness, and drafting skills.

There are different pathways to becoming an arbitrator. Although appointment in ad hoc arbitrations may not be subject to such requirements, most arbitral institutions
have empanelment criteria that prospective arbitrators must meet, which may include a certain level of industry experience as counsel or in academia, and potentially membership or fellowship of a recognised body such as the Chartered Institute of Arbitrators. For industry professionals, it is important to be able to demonstrate a sound understanding of the law, whether by completing professional qualifications, or otherwise.

For junior practitioners and budding arbitrators, take your time. Build a strong network in the arbitration community, obtain professional qualifications and participate in professional skills workshops to help you build the skills that arbitrators require. Hone your hearing management skills by volunteering to sit as an arbitrator in moot ing competitions and take advantage of any opportunities to act as tribunal secretary or shadow practicing arbitrators that may be available to you to gain a better understanding of what the role involves.

In addition, make sure that you research opportunities to sit in domestic consumer and/or court-appointed arbitrator schemes in your jurisdiction. There is no substitute for experience, and such schemes may give you your first opportunity to sit, which will ultimately help you to secure international appointments in the future.

**Conclusion**

It would be remiss of us not to mention that the career paths outlined above do not exist in isolation. You will come across many practitioners who have followed different paths but, over time, choose to veer more heavily into one or the other. Ultimately there is no distinct route to entering the world of arbitration. Every arbitration practitioner follows their own path. Some focus on arbitration from the start of their careers and built capacity by pursuing arbitration-focussed professional development programmes or enrolling in postgraduate programmes with a focus in arbitration. Others, equally resolute, developed years of expertise in an area of law such as corporate and commercial law, trade and investment law, or a method of dispute resolution such as litigation, and found their career path merged with arbitration. Our key message is that if you are resolute about your goal to succeed in arbitration then developing relevant skills and expertise, and embracing opportunities to build a network in the arbitration community can be key stepping-stones towards a successful arbitration career.

**Good luck!**
REFLECTION ON ATTENDING LONDON INTERNATIONAL DISPUTES WEEK

By Charles Ho Wang Mak

The R.E.A.L. Scholarship I received allowed me to, from May 9-13, 2022, attend the London International Disputes Week.

Members of R.E.A.L. represent various racial platforms in various legal jurisdictions and access a wide range of information, activities, and mentoring via the community. R.E.A.L.'s Scholarship Program is one of its most unique and well-received initiatives.

"Dispute Resolution-Global, Sustainable, Ethical?" was the theme of this year’s London International Disputes Week. London International Disputes Week examined the future of dispute resolution and its position in the post-pandemic world via a series of physical and digital events. The event culminated with a two-day conference at Central Hall Westminster, where prominent practitioners, judges, arbitrators, and others from the dispute resolution sector discussed pressing issues affecting their clients.

The London International Disputes Week discussed the future of dispute resolution and its role in the business world in light of the growing importance of environmental, social, and governance concerns. Topics on cyber and crypto concerns and the increase of class actions as examples of how the nature of international commerce and disputes is changing were explored. Distinguished members of the judiciary, the U.K. government, and others delivered keynote presentations during the week. As we "follow the disputes sun" from Asia to the United States West Coast, London International Disputes Week included, for the first time, a day devoted to discussing dispute settlement across many jurisdictions.

Since I was able to attend London International Disputes Week, I now have a better understanding of the challenges that are currently being encountered by those working in the area of international arbitration. The discussion during the conference was both stimulating and educational. Inspiring and informative speakers in the field of international arbitration are invaluable assets, and I am happy for the chance to hear their perspectives.

The R.E.A.L. Scholarship programme provided me with a memorable opportunity to connect with professionals all across the globe. As a three-time recipient of a R.E.A.L. Scholarship and a member of R.E.A.L., this honour means a lot to me. International arbitration cannot progress without racial equality, diversity, and inclusion. With the help of these scholarships, I could further my education and advance my career in international arbitration. I learned more about the intersections between international arbitration and other fields.

About the author
Charles Ho Wang Mak is a PhD Candidate in law and a Graduate Teaching Assistant at the University of Glasgow, a Fellow of the Centre for Chinese and Comparative Law at the City University of Hong Kong, an Honorary Fellow of the Asian Institute of International Financial Law at the University of Hong Kong, a Research Affiliate at SovereignNet at The Fletcher School, Tufts University, and a Research Associate at China, Law and Development Project at the University of Oxford. He holds degrees from the University of Sussex in England (LL.B. (Hons.)), The Chinese University of Hong Kong (LL.M. in International Economic Law), and the City University of Hong Kong (LL.M. Arb.D.R. (with Credit)). He is a Fellow of the Chartered Institute of Arbitrators (FCIArb), the Hong Kong Institute of Arbitrators (FHKIArb), the Arbitrators and Mediators Institute of New Zealand (FAMINZ (Arb/Med)), the Asian Institute of Alternative Dispute Resolution (FAIADR), and the Royal Asiatic Society of Great Britain and Ireland (FRAS).
I was very fortunate to be selected to be one of the three R.E.A.L Scholarship recipients dialling into the London International Arbitration Week 2022 (“LIDW22”) held between 9 May 2022 and 13 May 2022. LIDW22 is a two-day hybrid conference held at Central Hall Westminster, followed by a series of events centred around the theme “Dispute Resolution – Global, Sustainable, Ethical?”.

I applied for a R.E.A.L Scholarship specifically because this year’s LIDW featured an inaugural one-day discussion around dispute resolution practices across various jurisdictions, which led to conversations around how the industry can adapt, evolve and progress in light of current global challenges. The theme of diversity in international arbitration, which was spearheaded in the session “How can London improve its attractiveness/standing and diversity in arbitration proceedings involving African treaties/parties?” also attracted me, as I also wished to further understand how obstacles to diversity can be experienced and overcome amongst by practitioners from different countries and backgrounds.

Following the event, I can confidently say that I gained a clearer picture of contemporary trends across Global North and Global South jurisdictions. This was of particular value to me as it helped fast-tracked a multi-jurisdictional understanding and awareness of the best practices in dispute resolution. Particularly, how London serves as an international disputes hub for Indian and East Asian disputes that lends to a more sophisticated comparative perspective on the value-added in a case administered or handled by leading Asian jurisdictions including Hong Kong or Singapore.

It was also eye-opening to hear Professor Emilia Onyema (SOAS, University of London) and Michael Sullivan QC (One Essex Court)’s anecdotes regarding the various cultural and practical challenges in conducting an arbitration case from a practitioner’s perspective and from an African party/client’s standpoint. The valuable insight from these “war stories” has encouraged me to think about methods in achieving more diversity in international arbitration.

As many former R.E.A.L Scholars have already expressed, the true value of the R.E.A.L Scholarship program lies in the forging of lasting relationships with fellow R.E.A.L members and the global network of early to mid-career professionals following the event. In my case, I was able to benefit from the networking opportunities as it was through this event that I connected with a fellow R.E.A.L Scholar who also attended LIDW22 virtually, which culminated in a joint paper submission to a conference organised by SGH Warsaw School of Economics and the University of Szeged this July.

REFLECTION ON ATTENDING LONDON INTERNATIONAL DISPUTES WEEK

By Roslyn Lai
As a two-time beneficiary of the R.E.A.L Scholarship programme (Moot Alumni Association premium membership in February 2022, and LIDW22 ticket holder in May 2022), I have definitely noticed an increased knowledge and expertise in international arbitration, which has opened doors in relevant and meaningful ventures. For this reason, I am both grateful and inspired by the hard work the R.E.A.L community has invested in organising and managing an international platform that seeks to address the issue of systematic discrimination and lack of accessibility experienced by underrepresented and unrepresented groups in this space.

About the author
Roslyn Lai is an LLM candidate at Tsinghua University (Young ICCA scholar), having completed the Postgraduate Certificate in Laws at the University of Hong Kong and a law degree at Lancaster University (United Kingdom). She has completed internships at the arbitration group of an international law firm and at Hong Kong International Arbitration Centre. Roslyn currently serve as an editor at the Asia-Pacific Legal and Technology Association and as a research assistant for an independent arbitrator based in Singapore.
REFLECTION ON ATTENDING THE YIAG-LCIA SYMPOSIUM

By Nicole Alvarez Barreno

On 5 May 2022, I was travelling from Ecuador to the UK to attend the graduation ceremony of my LLM at the University of Sheffield that was cancelled due to Covid-19. Around the same time, Racial Equality for Arbitration Lawyers (R.E.A.L.) allowed me to make the most of my time there, granting me a scholarship to attend the Young International Arbitration Group (YIAG) Symposium organised in Tynney Hall on 6 May 2022, which was a delightful session and discussion about global developments contributing to current arbitration issues based on different international perspectives.

The format of the Symposium consisted of attendees submitting questions to the speakers prior to the event and the speakers presenting their arguments based on the questions. I considered it to be a format that made the event more dynamic, as it encouraged audience participation by asking new questions, and giving practical examples of their experiences, thus most of the attendees spoke at the event. The YIAG Co-Chairs and moderators of the event were Manish Aggarwal from Three Crowns LLP (London), Oleg Todua from White and Case LLC, (Dubai), and Myfanwy Wood from Ashurst LLP (London), who provided brilliant insights into the topics discussed.

During the Working Sessions the first questions were about arbitral appointments, Richard Trinick from Three Crowns LLP (London), asked if there is an age limit for arbitrator appointments, and the moderators answered that most people agree that the age limit should not be applied because it is discriminating. As an example, the case of Consortium v. Middle Eastern State-Owned Entity administered by ICC was mentioned, where the president of the tribunal was challenged by the respondent based that the fact that his age was 76 years old. The court rejected the respondent’s challenge stating that the sole consideration of his age is discriminatory.

One of the outstanding questions was related to witness evidence, Duran Ross from Hausfeld (London), Richard Trinick, Tom Walmsley from Addleshaw Goddard (London) and Belinda Mc Rae from Twenty Essex, submitted questions about the impact of Practice Directions 57 AC English courts, which came into force in April 2021 and apply to witness evidence at trials in the Commercial and Property Courts. The questions concerned whether the Practice Directions are applicable to arbitration. The answers varied – one of the attendees described his experience in practice with the new guidelines; others were in favour of their application in international arbitration. Another opinion was that they should be part of the arbitration rules, as they signify a positive change to avoid errors by witnesses. On the other side, one speaker disagreed as he pointed out that the accuracy of the witness statement can be determined at the time of cross-examination.

The last topic was about English Arbitration Act, Benjamin Mackinnon from Clifford Chance (London) questioned if the English Courts and the Arbitration Act 1996 are really pro arbitration or should be less reluc-
tant to intervene. The moderators answered that according to the Commercial Court Report 2019-2020 issued by The Judiciary of England and Wales, indicates the number of challenges to arbitral awards. It demonstrates that there were 19 challenges made under Section 67, 28 challenges made under Sections 68, and 37 challenges made under Section 69. However, the outcome reflects that 2 applications were successful under Section 67, 2 were successful under Section 68, and 4 were successful under Section 69, which signifies that the courts do not intervene excessively.

Regardless of the jetlag of being newly arrived in the country, I was able to learn from all the arbitration practitioners, and enjoy the beautiful venue, the miraculous sunny day, and the networking sessions. With the support of the scholarship granted by R.E.A.L., I had not only the possibility to go to the Symposium but also the chance to meet amazing professionals from all over the world, and make new friends, who then invited me to visit their offices and share our experiences. I hope to have the occasion to meet them again very soon and to continue to contribute to R.E.A.L.

Please note that this report does not summarise everything that was said at the event and contains my opinions and top takeaways.

About the author
Nicole Alvarez Barreno is an associate of Quevedo & Ponce law firm and a qualified lawyer in Ecuador. She obtained her LL.M. in Commercial and Corporate law at the University of Sheffield in 2020 and her law degree at Universidad Católica Santiago de Guayaquil in 2019.
#REALINSIGHTS – UPDATES FROM OUR COMMITTEES

As we approach the end of 2022, it’s time to reflect on the recent initiatives of R.E.A.L.’s committees that have worked tirelessly in promoting racial equality in arbitration as well as strengthening access to arbitration events and initiatives.

The Community Building, Networking & Scholarships Committee has been spearheading the R.E.A.L. Scholarship Program which continues to be a popular initiative that has seen several students and practitioners from around the world access some of this year’s most coveted arbitration conferences and courses.

The Pipelines Initiatives & Mentorship Committee proudly launched the R.E.A.L. Mentorship Program. This program provides a platform for mentees and mentors to exchange experiences and expand their professional and social contacts. It poses a great opportunity for mentees to receive career advice, whilst identify training, research, and education opportunities. A short write-up on the Mentorship Program is featured as part of this Newsletter.

The Newsletter & Blog Committee has just released the third edition of the R.E.A.L. Newsletter (this one!)! This edition once again aims to promote racial diversity by showcasing arbitration practitioners in the South East Asian region as well as featuring reflections from R.E.A.L. Scholarship recipients. The committee is also working towards the launch of the R.E.A.L. Blog in 2023 so watch this space!

The Conferences & Events Committee has recently launched several initiatives. It recently launched a podcast series titled “REALogue: a REAL Dialogue on racial equality in international arbitration”. The podcast series will contain 6 episodes with the purpose of providing a platform for the guest speakers to discuss their own conceptions of diversity in the field (and beyond), and their ideas for what we can do, individually and collectively, to foster a more diverse environment in arbitration. The short format of the series is intended to encourage an informal / relaxed discussion. Other initiatives include the second edition of #REALtalks on diversity held on 5 December 2022 as part of the LLM in International Commercial Arbitration Law (ICAL) at Stockholm University and the organization of R.E.A.L’s Annual Conference to held on R.E.A.L’s 2nd Anniversary in January 2023.

The Academic Council of R.E.A.L. has recently prepared brief reports on the racial diversity in arbitrator appointments in the main arbitration institutions located in different regions of the world. On the basis of these findings, the committee is currently working on a comprehensive report that has the objective of comparing different practices around the world. The Academic Council has also started interviewing different arbitral institutions in order to discuss this issue and to understand further the possible challenges that need to be overcome for guaranteeing a racially equal and diverse international arbitration practice. It aims to discuss these results within the framework of an online event in order to raise the awareness for this cause.

Stay tuned for more updates on all our exciting events and initiatives!
R.E.A.L. ARBITRATION TRIVIA

Test your arbitration knowledge with the following R.E.A.L. Arbitration Trivia Questions!

Send your responses to newsletter@letsgetrealarbitration.org and the first five (5) correct responses received will be recognized in the next R.E.A.L. Newsletter.

Questions:

- What is the latest country to sign the New York Convention?
- This year’s ICCA Congress was held in Edinburg. When and where is the next ICCA Congress scheduled to take place?
- Which institutional investment arbitration rules allow for drawing of adverse inferences?
- Under which of these rules is arbitrator fees calculated by hourly rates of each arbitrator – (a) ICC Rules, (b) SIAC Rules, (c) HKIAC Rules and (d) LCIA Rules?
- How many countries have signed and ratified the Singapore Mediation Convention as on date?
- Do ICSID Rules allow for emergency arbitration?

Answers to Issue #2 Trivia

1. Ecuador.
2. ICSID.
3. Pakistan and Germany.
4. 18 January 2022.
5. Fali Nariman.
R.E.A.L. — Racial Equality for Arbitration Lawyers

Incorporated in the State of New York as a 501(c)(3).

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