# 4th IATC Conference (the "Conference")

## Hong Kong

## 8-9 April 2024

### Conference Report

*Jointly prepared by Angel Wong, Sam Chow and Gavin Choi*

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## A. Introduction

1. First and foremost, let us begin by expressing our gratitude to the Bar Association for subsidising our registration fees for such an informative and enlightening conference. Not only have we learnt a substantial amount at the Conference, it also provided us with valuable networking opportunities with advocates and judges from many jurisdictions. It was a thoroughly meaningful experience from which we have benefitted greatly.

## B. Session 1: Powering Excellence: Insights from High Performance Individuals

2. Following the extremely informative Keynote Speech by The Hon. Chief Justice Cheung, GBM, the first session called for the highest degree of participation from the audience. We were asked to complete two tasks: (1) talk about something we were passionate about in a dispassionate manner and (2) talk about something we were dispassionate about in a passionate manner.

3. Sam talked about his passion for dragon boat racing and while he tried to stick to the task at hand, his passion got the better of him and despite his best efforts, the subject matter could not be contained dispassionately. Gavin talked about his lack of passion for mathematics and while he tried to inject as much passion into the subject as possible, he found himself at a loss for words in next to no time.

4. The activity revealed two interesting aspects. Firstly, when attempting to speak passionately, one would subconsciously employ the use of hand gestures in an almost physical attempt to bolster the content of their speech. This was accurately observed and quickly addressed by the speakers as a natural reaction when we attempt to add greater force into what we are communicating.

5. Secondly, this activity tied in to the speakers' key themes: that of mindset and the psychological aspect of excellence. Mindset is of paramount importance and is such that no matter how dispassionately we may speak about something which we are passionate, and no matter how passionately we attempt to talk about a subject which we dislike, we are ultimately betrayed by our mindset and are unable to reverse the status quo.

6. This tied neatly into what the speakers were trying to impart to us – that we ought to make the other person more important and that it was not about us. Therefore, we must aim to shift the focus away from ourselves in order to truly affect the person to whom we are communicating.

## C. Session 2: Cross-Border Arbitration: Handling multi-jurisdictional issues and cultures; pitfalls

7. This session explored the cultural differences in arbitration advocacy. This may pose difficulties for advocates when dealing with witnesses from different cultures. An example which highlighted such a potential problem was that of Thai culture where it is considered rude to answer directly. Therefore, this may give rise to a scenario in which a Thai witness gives a long answer to hint his position in order not to appear impolite. However, this may inadvertently lead the tribunal to draw an adverse inference as they may interpret this as the witness being evasive. In order to address this kind of cultural differences, the speakers pointed out that this should be brought to the attention of the tribunal to minimise and eliminate misunderstandings.

8. The speakers also reminded us of the fact that there are occasionally translation issues as some text may find themselves lost in translation as some languages simply do not have the exact counterpart word for a particular term. This is especially true for legal terminology where the wordings can be an original product of the language itself or by reason of the jurisdiction.

9. Nevertheless, the cultural differences are more prevalent in the procedural aspect as opposed to the substantive aspect and Model Law, which provides a standard for countries to adopt, creates a large degree of uniformity.

10. The English style of arbitration advocacy is one of textual contractual interpretation. Pleadings and memorials are used and though there is no precept they are now expected to be in great detail. Full statements of the case are more common and it may be typical to traverse every allegation. Also, requests for clarification are more likely to be accepted. As regards production of documents, there is a narrower approach compared to litigation and the cut off for production is likely to be enforced. As regards witnesses, it is intended that the statements set out the evidence and this will replace examination-in-chief.

11. The Hong Kong style of arbitration advocacy is not largely different to the English style as Hong Kong has inherited the English common law system. Pleadings and memorials are different in name only though memorials can be confusing as they may contain hundreds of pages. As regards discovery, the common law approach demands that all relevant documents must be disclosed whereas this is starkly contrasted by the civil law approach in which the document cannot be produced if it is adverse to the client's case

and disclosure would even constitute a breach of duty. Witness statements have become lengthier and this poses issues for the legal team as a witness may be unable to remember its contents and/or understand concepts if there are simply too many to handle.

12. The Malaysian style of arbitration advocacy involves setting out the preliminaries at the start in order to manage expectations. Business norms may dictate informality and it is a fact of Malaysian business affairs that there may be a complete lack of documentation as the perspective that keeping documents can be interpreted as rude will mean that parties will simply not be inclined to use documents.

13. Cultural differences were touched on again in the context of mannerisms. A speaker shared an example of an Indonesian witness who was wont to smiling simply by being polite but was dangerously close to being misinterpreted as a mocking gesture or not taking proceedings seriously.

14. As for China, it is enthusiastic towards the common law approach in arbitration. As regards production and discovery, there is no established procedure and the court has the power to request documents at will though this is rarely exercised and even if so, would only be for specific documents. Memorial-style pleadings are used and they tend not to be lengthy at around 10-20 pages. In fact, due to the heavy caseload, there is no tolerance for lengthy memorials and thus there is no incentive to make it lengthy. It is also not uncommon to introduce new arguments during the later stages of proceedings. There is also less weight attached to witness statements compared with documents as they are effectively considered submissions of the legal representatives where arguments may even be made.

## D. Session 3: Effective Witness Handling in Arbitration

15. Ethical considerations largely dictate the degree to which witnesses may be prepared. The United States is a somewhat extreme example as advocates are expected to train their witnesses with a high degree of a preparation. This is done through repeated mock trials. Not doing so could even amount to professional negligence.

16. In Singapore, witnesses may be prepared so long as the evidence is ultimately their own evidence. The lawyer cannot supplant or supplement the evidence, the preparation cannot be too lengthy or repetitive such that it could be considered drilling, and the preparation should not be done in groups to prevent the witnesses from being influenced by answers from other witnesses.

17. The tribunal's expectations of witnesses are for them to be truthful, accurate and relevant. As regards expert witnesses, they are expected to help the tribunal make sense of the circumstances of the case so they should approach their role like a teacher. When providing specific guidance to witnesses, they are reminded that their role is to give

evidence and thus there is no need to be the lawyer. They ought to be reminded not to think ahead and simply answer each question without attempting to anticipate the conclusion. When facing cross-examination, they should also be reminded not to be drawn into arguments with the opposing counsel because (1) they may inadvertently give away certain points and (2) they are never going to win arguing against someone who argues for a living. Also, witnesses ought to limit their answers to "yes" or "no" and not offer any additional information.

18. As regards tips for advocates during cross-examination, instead of putting one's case, one should endeavour to positively suggest the existence of another version in order to challenge the witness to contradict it. A particularly useful point that can also be deployed in litigation as well as arbitration is building a commentary record in the court transcript where possible. This may involve making it known that the witness is taking a fair amount of time to think about their answer or pointing out that the witness is reading from a particular source before answering the question. This will paint a more complete picture in the event the case goes to appeal and the transcript is read. The 3C's to remember were: Capture, Clarity, Confirm.

19. A comparative study on taking evidence identified that the IBA rules apply to common law and the Prague Rules apply to civil law. In practice, however, there is a blurred application of IBA and Prague rules.

## E. Session 4: Written Advocacy

20. The Hon. Mr. Justice Russell Coleman provided many useful tips for written advocacy that is relevant for both litigation and arbitration. It is easy to forget that the Skeleton simply identifies the bones of what will be said and thus should not be too lengthy. Judges/arbitrators make their own notes on the submissions so it would be useful to leave wide margins to make it easier for them to do so.

21. It was also interesting to hear that judges may have a tendency to read the shorter submission first, and not necessarily the applicant's submission, so this would give one party a head-start to influence the judge. Only one of bold, italics or underlining ought to be used so as not to confuse the judge into thinking they carry differing degrees of significance. Chronology and tables are encouraged but must be accurate and fair.

22. Judges also appreciate simplicity of expression and rarely seen idioms such as "procrustean bed" should be avoided as it would serve only to confuse the tribunal. Another useful tip was to place the draft in a drawer before returning to read it as one would then be more likely to read it as a reader rather than as a drafter.

## F. Gala dinner

23. The Gala Dinner at City Hall Maxim's Palace provided an excellent opportunity for the participants to get to know each other further on top of the coffee breaks place between the conference sessions. Following the interesting and thought provoking evening speech by the Hon. Geoffrey Ma, GBM, we seized the opportunity to socialise with the Malaysian and South African delegates sitting around us. It was an enjoyable evening where we talked about our legal practice and the living experience in our hometowns.

## G. Session 5: Expert Hot-tubbing: Advocacy in Dealing with the Cross Fire

24. The second day began following another insightful keynote address by The Hon. Paul Lam, SBS, SC, JP. The concept of hot-tubbing was eye-opening given that it involves experts giving evidence at a joint conference in the presence of their contemporaries. This undoubtedly provides an extra dimension for advocates as they would be required to deal with experts on opposing sides simultaneously.

25. Needless to say, there is a certain skillset that would be desirable when selecting an expert in order for them to effectively advance the client's case. They must be technically adept in their field, must have the qualities of a teacher such that they have the skills to break down complex and technical ideas for lay persons who do not share their level of technicality. They must be assertive to the extent that they are not overtalked by the opposing expert making it appear that they have a weaker stance. They must have the ability not to sound like a hired gun in order to remain independent in the eyes of the tribunal.

26. In general, the speakers warned that over-eager experts have a greater tendency to get tangled up in legal propositions with opposing counsel and thus they must be reminded not to go outside their sphere of expertise and to contain the ambit of their discussion. There also tends to be a feeling that women are more adept at explaining complex concepts whereas men can have the propensity to be more confrontational and this should certainly be taken into account.

27. As regards preparation, it was suggested that the experts themselves draft the questions they want to be asked in order for them to construct an answer. There are also occasions where a joint report is produced in which case it would be useful for the experts on both sides to meet beforehand to agree on certain issues and facts. Joint reports can be efficient as it would reduce the time spent on aspects that can be agreed at the outset by both sides.

28. As regards protocol, the arbitrator typically leads the discussion, guided by the key issues of the case. One expert will summarise his position on one issue and will be questioned by the other expert. Different issues will be explored and the questioning will go back and forth between experts with the arbitrator interjecting when necessary. However, due to the inherently informal setting of hot-tubbing, it is imperative that

there exists a certain degree of control in order to ensure the procedure is manageable and the success of hot-tubbing largely depends on the robustness of the tribunal. The speakers warned that if many different views combined with a weak tribunal will be recipe for disaster as experts simply end up talking over one another and no real progress can be made.

29. Nevertheless, when faced with chaotic hot-tubbing, an assertive expert established by the advocate as reasonable could prove to be the difference as the tribunal could look to them to help guide the tribunal navigate through the chaos. Therefore, if a cooperative and friendly attitude is projected, that expert could establish themselves as being indispensable to the tribunal and their views would likely carry greater weight than the other expert(s).

30. In summary, advocates have 5 major points to bear in mind:

    a. Assist the expert in telling the client's story and at the same time build on strengths, neutralise deficiencies while also highlighting the weaknesses of the opposing party.

    b. Eliminate surprises by anticipating them in advance.

    c. Protect the expert where required.

    d. Do not engage with the expert and simply allow them to perform their role.

    e. Ensure that the expert has sufficient time to summarise their position.

31. Virtual hot-tubbing may also become more relevant in future and with it comes changes in dynamic. The remote aspect allows advocates to consider different presentation formats whereby audio and visual aids can be employed in different and perhaps even more dynamic ways.

## H. Session 6: Tips from the Tribunal – What Arbitrators really want

32. One particularly important reminder was that the rule in *Browne v Dunn* does not apply and therefore there is no need to put the case to the opposing witness. Aside from this issue, many of the pointers are equally applicable to litigation as well as arbitration. For the opening, this included making it structured, using the time economically and to remember to use reinforcement rather than repetition as a tool of persuasion. There was a nice reminder that the opening is essentially an opportunity to say what the client's story and to set out how that story will unfold. As regards the closing, it would be advantageous to make in interesting so as to maintain the focus of the tribunal.

33. Qualifying the expert is also of great importance in order to reassure the tribunal that he is credible, reliable, independent and impartial. The speakers made a point that independence and impartiality are different by reason of the fact that the expert may not be impartial due to a previous stance they might have taken.

34. It is also worth remembering the minor occasions at the arbitration that may later be of significance, such as coffee breaks where a lot of people can be conveniently gathered together and where, if their guard is down, it may be easier to get them on the same page.

## I. Session 7: A Tale of 3 Cities – Arbitration Opportunities in the PRC

35. Members of the Shenzhen Court of International Arbitration extend across 6 roles: decision-maker, arbitrator, mediator, expert witness, counsel and tribunal secretary. Established in 1983, it symbolises China's reform in the 1980s and has developed with incredible pace. It was the first arbitration institution in China to accept investment arbitration cases and its panel of arbitrators covers 114 countries and regions with its services reaching 137 countries and regions.

36. As regards the China International Economic and Trade Arbitration Commission, it has a history of almost half a century and has conducted almost 30,000 arbitration cases involving parties from more than 100 countries and regions and its awards have been recognised and enforced in 159 countries and regions. There has also been growing acceptance of its awards as none had been set aside in 2023.

37. The Shanghai International Arbitration Centre was established in 1988 and, like the SCIA, has developed rapidly, with its arbitral awards being recognised and awarded in over 50 jurisdictions. It also has a panel of more than 1400 arbitrators from 80 countries and regions.

## J. Conclusion

38. The Conference was an immensely rewarding experience, with its topics ranging from insights into high performance individuals to the mechanics of the arbitration process and advocacy. Not only have we acquired a vast amount of knowledge in the nature of arbitration, the skillset in various aspects will no doubt be easily transferable to our practice as advocates in litigation as well. We have, too, felt a deep sense of unity and passion of the IATC from the introductory to the concluding remarks.

39. Once again, we thank the Hong Kong Bar Association for this valuable experience.

Dated this 28th day of May 2024

Angel Wong, Sam Chow, Gavin Choi

**Report on**
**The 4th International Advocacy Training Council (IATC) Conference 2024**

INTERNATIONAL ADVOCACY TRAINING COUNCIL
4th IATC Conference
"Advocacy in Arbitration: Bridging Borders - Enhancing the Rule of Law"

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| **Conference Title:** | Advocacy in Arbitration: Bridging Borders, Enhancing the Rule of Law |
| **Dates:** | 8th to 9th April 2024 |
| **Location:** | The Murray Hotel, Hong Kong |

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The 4th IATC Conference, a two-day intellectual feast that took place on 8th to 9th April 2024, was a fantastic opportunity to network with industry professionals, discover the latest trends, and gain insights into the future of arbitration. It was a well-crafted event that brought together a distinguished assembly of legal professionals and thought leaders to delve into the art and science of advocacy in arbitration. The Conference's theme, "Advocacy in Arbitration: Bridging Borders, Enhancing the Rule of Law", resonated deeply with the attendees, as it underscored the pivotal role arbitration plays in the global legal landscape.

The Conference was officially inaugurated with a delightful welcome from the Honourable Mr Justice Russel Coleman, setting the stage for the profound discourse that was to follow. The Honourable Chief Justice Andrew Cheung then took the podium, delivering an impactful address that resonated with the gravity of the influence of arbitration on reinforcing the rule of law across borders. The Chief Justice emphasized the universality of the importance of advocacy and noted the evolution of advocacy training, which has transitioned from an innate talent to a skill set that is now systematically taught and refined. The Chief Justice's observations on the distinctive aspects of arbitration advocacy, including the private and consensual nature of arbitration, the perceived reduction in formality, the use of technology, cultural differences, and the broader scope of arbitration advocacy that extends beyond oral performance to include strategic

decision-making and cost management, evidently serve as a reminder that while the core principles of advocacy remain constant, the modes of delivery and the procedural contexts are subject to change. The call to action for continuous learning and adaptation is both inspiring and necessary for legal professionals seeking to excel in arbitration advocacy.

The Conference featured a series of seminars and panel discussions covering a wide range of topics relevant to arbitration advocacy. These highly interactive sessions were designed to challenge conventional wisdom, share innovative practices, and explore emerging trends within the field. It is observed that there was a conscious effort to include perspectives from various backgrounds in the array of prominent speakers and topics covered, enriching the discourse and ensuring a well-rounded exploration of the Conference's theme. The following are some key takeaways from some of these excellent presentations.

On the challenges of cross-border arbitration, a panel of experts dissected the complexities of cross-border disputes, emphasizing the importance of understanding different legal systems and cultural practices. It was a reminder that effective advocacy requires not just legal acumen but also cultural intelligence. Another session on dispute resolution technology explored the latest technological advancements and their application in arbitration. From virtual hearings to blockchain evidence, the discussion underscored how technology are not just enhancing efficiency and transparency in dispute resolution but are redefining it.

The ingeniously named "Dance with the Tribunal" seminars were a trilogy of tactical brilliance. The first act unveiled the art and strategies of witness examination, where meticulous preparation meets the agility of thought. The second act emphasised on the power of clear and concise written advocacy, offering invaluable tips and tricks to craft compelling arguments that resonate with arbitrators. The third act, chaired by our former CJ the Honourable Geoffrey Ma saw seasoned arbitrators share their insights, providing attendees with invaluable guidance on navigating the expectations of an arbitral tribunal.

The Hot-tubbing seminar was a delightful deep dive into the innovative practice of concurrent expert testimony, presented in the very format it

champions. It was both an exploration and a revelation of how this approach can lead to a more efficient and focused resolution of complex disputes. The final session on the arbitration opportunities in the Mainland shed light on the dynamic and growing landscape of dispute resolution in the region by covering practical knowledge on the legal frameworks and market-specific considerations.

The series of practical and engaging seminars and panel discussions left a profound impact on attendees, prompting reflections on the evolving landscape of arbitration advocacy. The candid feedback from seasoned judges, arbitrators and practitioners was not just informative but was also transformative, providing a rare opportunity for reflection and self-improvement and encouraging attendees to reflect on their approach to advocacy and dispute resolution. The Conference also provided ample opportunities for networking and relationship-building. Attendees revelled in the chance to connect with like-minded peers, exchange ideas, and forge professional bonds. The Gala Dinner was likely a highlight of the Conference, where the inspiring words of the Honourable Geoffrey Ma on the need for reasoned approach in arbitration mingled with the clinking of glasses and hearty laughter from our international brethren.

Attending the conference was certainly an enriching experience. The insights shared by judges, arbitrators, and advocates from different jurisdictions were invaluable, and the Conference certainly provided a refreshing perspective on transferable skills and core values of advocacy, applicable to both courtroom and arbitration settings. Heartfelt thanks are extended to the Conference organizers, the sponsors and all participants for their contributions to the success of the Conference and for this invaluable opportunity to be part of this journey of insights, conversations, and connections.

4th June 2024

Dan Leung

Barrister at Erik Shum's Chambers

(Prepared by: Mr. Chris Fong)

**4th IATC Conference 2024 – Conference Report**

1. The 4th IATC Conference 2024 – Advocacy in Arbitration: Bridging Borders- Enhancing the Rule of Law (the "**Conference**") was hosted in Murray Hong Kong on 8th April 2024 and 9th April 2024 by the International Advocacy Training Council Ltd ("**IATC**"). Numerous seminars were held with distinguished moderators and speakers not only from Hong Kong but also overseas, including common law and civil law, jurisdictions.

2. IATC invited the participants and speakers to a Welcome Drinks Reception on the Sunday before the official commencement of the Conference (i.e., 7th April 2024). At that night, I had the privilege to meet practitioners from, for instance, the UK, South Africa, and Malaysia.

3. It was certainly a good opportunity for us to greet our overseas learned friends, to exchange ideas, and to share experiences. We exchanged our views on various matters, including the procedures in relation to injunctions and stay applications amidst ongoing or intended arbitral proceedings, and the views on single joint expert and hot-tubbing.

4. On 8th April 2024, after a brief welcome and introduction by the Hon. Mr. Justice Russell Coleman and Mr. Brendan Navin Siva, a keynote speech was delivered by The Hon. Chief Justice Andrew Cheung, GBM. He stressed the importance in upholding the rule of law, and the city's important role in being an international arbitration hub. It is a particular timely reminder, especially for the young bars, to always do our best to pursue justice.

5. The Conference then proceeded to the 1st session on "*Powering Excellence: Insights from the High Performance Individuals*". The session was chaired by Mr. Darren Lehane, SC from Ireland with Dr. Jevon Groves (performance coach) and Mr. Nick Atkinson (rugby coach) as speakers.

6. This 1st session showcased the mind set and psychological aspects of performance at high levels from the viewpoint of a coach of elite athletes and an actor. Among other things, we were told to remember that the focus shall not be on the advocate, but on the audience only, which is firstly the judge, and secondly the client. The focus needs to be shifted away from us.

7. After a short break, the Conference resumed with the topic on "*Cross-Border Arbitration: Handling multi-jurisdictional issues and cultures; pitfalls*". This 2nd session was chaired by Mr. Samuel Chacko from Singapore with a panel of speakers from diverse jurisdictions, including Ms. Leigh-Ann Mulcahy, KC from the UK, our own Dr. William Wong, SC, JP, Mr. Dhinesh Baskaran from Malaysia, and Mr. Lei Shi from China.

8. This 2nd session compared the US, Chinese and English styles of arbitration advocacy. The panel discussed, *inter alia*, the pros and cons of adopting the narrative, pleading and hybrid memo styles. Towards the end of the session, the issue of cultural awareness was raised by some participants. The panel reiterated that it is important for us as advocates to understand the cultural backgrounds (and applicable legal traditions) of clients, tribunal members, and opposing parties, as these would certainly have an immense impact on their respective thought processes and perspectives.

9. After lunch, the Conference went onto Parts I and II of the series on "*Dance with the Tribunal*" (there was also Part III on the next day). The topic of the 3rd session was "*Effective Witness Handling in Arbitration*". It was chaired by Mr. Jose-Antonio Maurellet, SC whereas the 4th session was on "*Written Advocacy*" and was chaired by Mr. Neil Mackenzie, KC from Scotland.

10. In the 3rd session, the panel shared with us their thoughts on how to prepare and handle witnesses. It is important to understand that witness handling does not simply happen during the trial hearings, but way before that, from the first client meeting, the initial instructions taking, through to the drafting of witness statements. Among all other useful tips, Mr. Joseph Liow from Singapore illustrated with us his technique, namely the "*Palm of Cross-Examination*". Let's all remember to avoid the middle finger!

11. In the 4th session, The Hon. Mr. Justice Russell Coleman reminded us that written advocacy does not simply mean submissions to the Court but starts from the very first letter that we send to the opposing party. On the other hand, Mr. Andrew Chiew from Malaysia and The Hon. Mr. Justice David Unterhalter from South Africa echoed on the point that submissions to the Court shall be written in an unpassionate, objective, and almost uninterested manner. We were suggested to avoid adjectives but to put together the facts and laws that allow the tribunal to make an informed and fair decision.

12. The first day of the Conference was concluded with a Gala Dinner where The Hon. Geoffrey Ma, GBM gave his speech. He drew references to past cases and illustrated with us the ever-changing cultural and judicial environment. The then authoritative judgments from well-reputed justices may be seen as

outrageous through the lens of today's perception of equality. We were urged as practitioners to always stand up for justice and contribute to society.

13. On 9th April 2024, the second day of the Conference started with a keynote speech delivered by The Hon. Paul Lam, SBS, SC, JP, Secretary for Justice. He again greeted our learned friends from overseas and invited them to bring the message back that Hong Kong has long-established infrastructures, as a well-developed hub for international dispute resolution and with a strong independent judiciary. The city provides legal solutions and platforms that encourage international investments and transactions, whereas its policies favour arbitration and mediation as alternative dispute resolution which could be fully utilised by business partners and commercial parties over the world.

14. The Conference then proceeded to the 5th session on "*Expert Hot-tubbing: Advocacy in Dealing with the Cross Fire*". The session was chaired by The Hon. Justice Dato' Mary Lim, FCJ from Malaysia with Ian Robertson, SC from Australia, Gananathan P from Malysia, and Mr. Francis Goh from Singapore as speakers.

15. Acknowledging the specialised nature of arbitrations, this 5th session discussed the procedure of "*hot-tubbing*", whereas a joint conference of experts would take place during the hearings. As such, a different brand of advocacy to deal with experts on opposing sides at the same time would be required. For instance, it was suggested that advocates would best assist the tribunal by facilitating a discussion among the experts themselves effectively, rather than cross-examining the opposing sides' experts in the usual way. Throughout the session, the speakers were also invited to share their favourite

moments in their practices. They also kindly shared with us their lives outside law and work.

16. The Conference then went onto the 6th session, which was also Part III of the series on "*Dance with the Tribunal*". This session was chaired by The Hon. Geoffrey Ma, GBM with a panel of speakers comprising seasoned arbitrators, including Mr. Anthony Neoh, QC, SC, JP, Ms. Winnie Tam, SBS, SC, JP, and The Hon. Paul Heath, KC from New Zealand.

17. In this 6th session, the panel shared with us "*Tips from the Tribunal – What Arbitrators really want*". We were advised to state the law in simple terms and relate them to the stories in the opening statement. There shall also be opening sentences that hit on the case. An introduction of the stories with characters, conflicts, and possible resolutions would help the tribunal to quickly grasp the essence of the parties' cases. As to closing, the aim shall be to "*give a roadmap of why I should win*" and all the works in between, including witness handling and presentation of evidence, shall have that roadmap in mind and work towards that goal. Further, we were reminded not to "*open your case so wide that you can't close it*".

18. After lunch, the Conference proceeded to the last session on "*A Tale of 3 Cities - Arbitration Opportunities in the PRC*". This 7th session was chaired by Mr. Jonathan Chang, SC with a panel of speakers all from China. They were Ms. Huawei Sun from Beijing, Mr. Edward Liu from Shanghai, and Dr. Liu XiaoChun from Shenzhen.

19. The speakers in this 7th session brought with them statistics regarding the use

of arbitration and their effectiveness from their respective areas and institutions in recent years. These demonstrated the increasing use of arbitration as a dispute resolution mechanism in China. As illustrated by the speakers, the laws in China have also evolved, for instance to facilitate the practice of asset preservation in arbitral proceedings (a procedure similar to Mareva Injunction, although the applicable principles and tests are quite different). Moreover, the relatively proactive role of judges (and therefore the resulting expectation towards the tribunal members) in the civilian culture was compared with arbitrators who received traditional common law training.

20. Towards the end of the Conference, Mr. Brendan Navin Siva from Malaysia, also the outgoing chairman of IATC, and Mr. Victor Dawes, SC delivered the closing remarks. The new chairman, Ms. Anna Annandale, SC, announced the next conference to be held in two years' time. Of course, the Conference could not end without "*IATC Success! IATC Success! IATC Success!*"

21. It was an inspiring experience to participate in the Conference and I thank the Bar Association and the Young Barristers' Committee for the generous subsidies. I am also grateful to have met and learnt from practitioners practising in other jurisdictions all over the globe.

Dated 6th June 2024.

# Report on the 4th IATC Conference 2024

8 - 9 April 2024

The Murray Hotel, Hong Kong, China

**By Ray Yip and Christina Li**

1. The 4th IATC Conference 2024 took place on 8th and 9th of April for two consecutive days at the Murray Hotel of Hong Kong. We are truly grateful for the opportunity to attend this meaningful event with the sponsorship of the Hong Kong Bar Association.

## A. Overview

2. The theme of this year's Conference is 'Arbitration as a universal language for both civil and common law jurisdictions', focusing on the advocacy skills required.

3. This two-day event has attracted around 200 local and international participants from the dispute resolution community mostly from the Common law jurisdictions including Malaysia, India, South Africa, Australia, Ireland and the UK etc, as well as representatives from certain Civil Law jurisdictions like Mainland China, discussing traditional as well as trending topics on international arbitration.

4. The two-day conference kicked off with an inspiring session on how to maintain high level performance, bestowing upon the participants a motivating slogan "IATC, success!". Practical experience and information on different aspects of arbitration were shared with the participants in the sessions followed. We learned about the expectations of the tribunals, skills and tips on how to prepare for and deliver a case in an arbitration, the challenges and difficulties that arbitrators might face etc. All the sharing enabled us to have a more in-depth understanding of how arbitration process should work.

5. A series of panel discussions had been held to share views and experiences on the art of advocacy, the difference of proceedings in arbitration applying Common Law or Civil Law traditions, issues of cultural difference in the course of examining expert witness and general witness, the points to note in preparing paper submission, the use of AI and the recent developments of arbitration in China etc. The insightful information provided by the speaking guests is practical and inspirational for junior practitioners.

6. A pre-conference reception and a gala dinner were arranged for participants and some distinguished local guests were invited to join the networking events. The atmosphere was joyous. These social events significantly enhanced personal connection among the participants and local guests too.

## B. <u>The conference and reflections</u>

6. During the conference, the 7 sessions covered a wide range of interesting topics in advocacy. The following set out the key takeaways from some of the speakers that we feel particularly inspiring:

7. As a keynote speaker Cheung CJ first talked about what 'effective advocacy' was, which in his opinion should enhance public confidence in rule of law. He then highlighted the importance of effective advocacy in arbitration proceedings. He averred that although arbitration was an agreement-based procedure and form of procedure shall determine the process, effective advocacy in court would usually apply in arbitration procedures which should include clear reasoning and arguments, maintaining professionalism and extending to details such as speaking clearly with appropriate speed and volume as the fundamental skills of good advocacy. He pointed out that there are increasing needs for arbitration as a dispute resolution procedure in the last 20 years and effective advocacy has become a significant theme in arbitration procedures as well.

8. He further elaborated the difference between court and arbitration advocacy. As arbitration procedures are less formal than court procedures, manner of expression may vary according to the settings. As arbitration procedures were less formal than court procedures, manner of expression may be varied according to the settings, for example, when addressing the adjudicators an advocate's tone which were too formal or too causal may both to be put at risk. In addition, introduction of technology such as remote hearing had a longer history in arbitration which might have different forms of interaction from a physical court proceeding.

9. The other aspects of difference may include the international nature of arbitration which often involves representatives who are not necessarily speaking the same language or trained in the same legal tradition. Given the different cultural backgrounds, there are much greater number of variables that may influence how advocates should approach the panel and how representatives from different legal traditions may view procedural matters. Simultaneous interpretation in arbitration proceedings may add complications to the difference in cultures and legal traditions, the use of languages and training of witnesses which are acceptable in one legal tradition might not be acceptable to the other.

10. He advised that participants should not assume certain court procedures would be equally available in arbitration procedures. Taking discovery as an example, where cross border arbitration procedures are involved, arbitration tribunals are more reluctant to conduct discovery proceedings than a local court may do. These are the variable factors that participants in an arbitration should bear in mind.

11. As a concluding remark he pointed out that the growing importance of arbitration requires a high standard of advocacy which is equally applicable in court and arbitration procedures.

**Major discussion on Day One:**

12. As a panel speaker William Wong S.C. shared his experiences and insightful views as a senior litigator. He pointed out that cultural difference was a common scenario

in international arbitration which may affect understanding. It was important for representatives to know both their own case and the opponent's case, concentrate on the key points and provide succinct presentations to their tribunal.

13. In the panel discussion the speakers talked about the difference between Pleadings and Memorials in arbitration proceedings. It was said that the difference was more than the name and it was to be aware that Memorials style might cause confusion to Common Law practitioners.

14. There was also discussion on the procedure of common discovery. It was routine in common law practice for full and frank discovery but in other jurisdictions it may be proper for lawyers not to disclose information that may hinder a client's case.

15. Witness statement is another focus. It was said that the content of witness statements is getting longer and longer nowadays, and the overly lengthy statement may produce counter effects. If the witness statement is too long and complicated, the witness might not remember what was written in cross-examination and thus gave answers at court that at the worst case contradict with the witness statement.

16. In session 3, the theme was effective witness handling in arbitration. Matters to be aware of in preparing witnesses for cross-examination, especially those involving expert witnesses, were discussed. Participants were reminded to ask the expert witness to repeat the key conclusion after all examinations.

17. The theme in session 4 was related to written advocacy. Speakers shared their views from the basic matters like the use of format and word size, necessity to leave space and margin, and consistency in highlighting format to the more tactical approach of avoiding repetition, minimizing complicity and lengthy citations, putting the case or theory as early as possible. In respect to citing authority, it was reminded that quoting paragraphs and page numbers is appropriate. The aim of written submission is to assist the judge in finding the answers. Simplicity is the key.

**Major discussion on Day Two:**

18. Secretary for Justice Mr. Paul Lam S.C. delivered an opening speech on Day Two. The theme of the speech was highlighting arbitration as a hybrid of civil and common law tradition and promoting the benefit of HK to be a Center for International Arbitration.

19. The Conference continued with session 5 discussing the 'hotubbing' of expert witnesses. Panel speakers agreed that it was important for practitioners to follow the protocol and maintain control of process, make good point of their own expert witness, eliminate surprise and protect their witness. It was reminded that representatives should not engage everything come through from expert witness and remember to ask tribunal's leave to adopt expert witness.

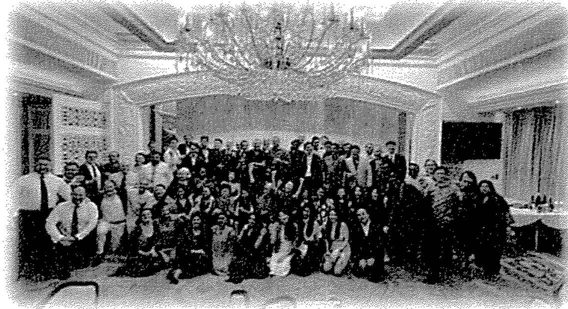
20. In session 6, the major theme was opening submission. Speakers advised that representatives should narrow down the issues, not to waste time on things which had been agreed by every party, bring the attention of the tribunal on disputed issues only. Time is of the essence. Arbitration proceedings are expensive, and representatives should not overrun. The essence of opening is to keep it simple and keep it brief.

21. The final session focused on the development of arbitration in China, with representatives from SCIA and CIETAC respectively provided introduction of their institutions and vision of development which were appealing to the audience.

**Conclusion**

22. The two-day conference extends our vision in respect to international arbitration which often involves multiple jurisdictions with different legal traditions. The insightful views and rich experiences of the speakers are beneficial to us junior practitioners.

23. Finally, we are thankful to the Hong Kong Bar Association for their generosity in providing us subsidies of the conference expenses.



**Ray Yip**

**Christina Li**