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INSIDE ARBITRATION: SPOTLIGHT INTERVIEW - DANIEL WALDEK

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Legal Briefings

Dan is an arbitration lawyer, based in our Singapore office for over a decade. He specialises in construction and engineering disputes in the infrastructure and energy sectors. Dan has a reputation as an up-and-coming advocate and also accepts arbitrator appointments, which gives him a great opportunity to see other advocates in action.

Dan, congratulations on your promotion to the partnership. You qualified in 2009. How has the practice of law changed since you started?

There have been two big changes. First, the influence of technology. The pace of change has been incredible. I was part of the first generation of lawyers to have BlackBerries, which were revolutionary at the time. Now we're all using smartphones, not only for calls and emails, but for hearings. This also means lawyers and clients can access each other round the world and round the clock. Technology has impacted almost every aspect of commercial law, from contract automation to document production. Whatever the pros and cons, we are in an entirely different world.

The second change is cultural. At the beginning of my career, before the financial crisis of 2008, the professional world accepted a wide range of behaviours that are not remotely acceptable now. These days all big law firms, and HSF in particular, put a huge emphasis on how we look after our people. That simply wasn't on the radar when I started. We can – and must – do more, but the profession has made great strides.

You have two young children. If they become lawyers, how will the practice of law have changed?

I have twin boys, Rafi and Asher, who are three and a half. By the time they join the working world, I suspect there will be fewer lawyers in private practice. Those working in law firms will be ever more specialised in niche fields or different ways of lawyering. We are already seeing the beginnings of this, with the likes of HSF's Alternative Legal Services and other areas of legal operations. Managing data and technology will be a bigger part of the practice; pure lawyering as we think of it may be required less.

Also, more lawyers will work in-house. Increasingly, large companies will continue to develop extremely specialised, sector-specific, legal teams. This will lead to a greater reliance by in-house lawyers on technology-based solutions for business-as-usual lawyering. Things like standard supply contracts, employment agreements and terms and conditions are already being produced using artificial intelligence. By the time my kids start work, I think it will be the exception for that kind of work to be done from scratch by humans as opposed to machines.

Your time in Singapore has coincided with its evolution from a competitive regional seat to global arbitration powerhouse. What makes Singapore such an attractive place to arbitrate?

The Singapore success story reflects foresight by its government over many years. It is the result of a clear policy goal backed up by effective legislation which is regularly reviewed to keep pace with global best practice. The last decade has seen Singapore's International Arbitration Act amended a number of times to ensure it reflects all the latest developments that facilitate the arbitral process. The law is backed by a world-class judiciary, which applies it with regard to the ultimate goal of keeping Singapore one of the world's leading seats. A lot of this comes down to minimal intervention by the courts and deference to the arbitral tribunal wherever possible.

Set against all of this is Singapore's development as a hub for business and legal services in Asia more generally. Again, that is the result of a considered government strategy, supported by business-friendly regulation. These are all factors making it a powerhouse on a global level.

You have a focus on construction, energy, and infrastructure. What kind of disputes are you seeing? And what do you expect in the next few years given the aftermath of the pandemic and the current situation in Ukraine?

We will continue seeing large and complicated construction disputes arising out of projects. The commercial, legal, and political environment in which these projects are designed, procured, and built is increasingly complex. Overlaid on that is the global transition to cleaner energy. How you design renewable energy projects, where you locate them, and ensuring they are built sustainably are all challenges for the sector. There is a greater degree of uncertainty at the design stage, which can ultimately lead to disputes.

A contractor designing a large liquified natural gas plant in a coastal area may need to make complex predictions about the climate and sea levels over next 25 years to factor into the design basis. If the contractor gets that materially wrong, it could have catastrophic effects on the life of the project and the surrounding community and lead to culpability on a major scale.

Covid will also have an impact. In the next two-to-three years, we will see projects that have been heavily impacted by Covid delays reach the final stages of completion and closeout. Deals made on a 'less-than-official' basis because of Covid may be challenged in proceedings. Some may be unwound. Everyone recognises Covid had an impact on industry, in terms of delay, cancellation, and other unforeseen consequences. However, assessing the exact nature of that on a specific project may lead to a dispute. This will be a widespread issue for everyone involved in major projects over the last few years.

How do you think it benefits clients to have their advisers doing the advocacy as well?

I think it adds value in two ways. First, the advocate is steeped in the detail of the matter from the outset. He or she can bring a viewpoint to the entire way you manage the case, bearing in mind how he or she will ultimately present that case at the hearing. It also achieves cost and productivity efficiency because we are a single service provider. Clients of our arbitration practice get a cradle-to-grave service from lawyers who are accountable for the whole dispute. The arguments I make, and the way I make them, reflect on the firm and its values, which I see as no-nonsense and down-to-earth.

It's a very rewarding part of the job to help my client from the earliest stages of a case, building the strategy and understanding all the details, right to the culmination of presenting that case to a tribunal. There is nothing like the adrenalin rush.

Having said that, I once had a different kind of adrenalin rush while acting as advocate. An expert witness almost collapsed on the stand – I thought he was in cardiac arrest as a result of my cross-examination. I was afraid I might have killed him! Thankfully, it turned out he recently had back surgery and experienced a spasm. He made a full recovery.

Singapore recently allowed lawyers to charge success fees for arbitration work, after legalising third-party funding in 2017. How will these developments impact your clients?

The new rules make it possible for clients to share risk with their lawyers or a third-party funder in an appropriate and regulated way. Conditional-fee agreements and litigation funding are highly sophisticated tools for managing cost risk. They allow clients greater flexibility in how to deploy their capital. This is something clients have been able to do in other jurisdictions for many years, and it's something they actively want.

There's also an important access-to-justice element. This is relevant in the construction sector where contractors with good claims might be experiencing cash flow issues preventing them bringing claims because they can't pay the legal fees.

Construction disputes are notoriously long and complex. What techniques are available to help parties resolve them with less expense?

Construction disputes benefit greatly from arbitrators who are active, engaged, and fully read-in from the beginning of the case. Parties often plead very generally at the beginning, deferring their more detailed cases to later when they present expert evidence. Tribunals who challenge the parties to articulate their cases clearly and effectively at an early stage can help narrow the dispute and test the case, saving time and money. Questioning parties at an early stage helps narrow the issues and test the case. Arbitrators who adopt a more inquisitorial approach really force the parties to make cases in a tight way. This benefits the parties on both sides.

What do you do to relax?

Before Covid, skiing. I skied from a young age and years ago I also did a ski season in Whistler, Canada working with their on-mountain racing events team. The endless days of powder were unforgettable.

Obviously, being stuck in Singapore during Covid didn't provide much opportunity to ski! But I started running a lot more, both to stay fit and to find some mental space to relax. The other thing I love and never get enough time to do is cooking. I love food and everything that goes with it – hence the need to run.

At the end of the day, my family comes above everything. I couldn't do my job without my incredibly supportive wife, Lisa, and my amazing kids. They are what I get out of bed for. They put everything else into context.

Listen and watch the interview [here](#).

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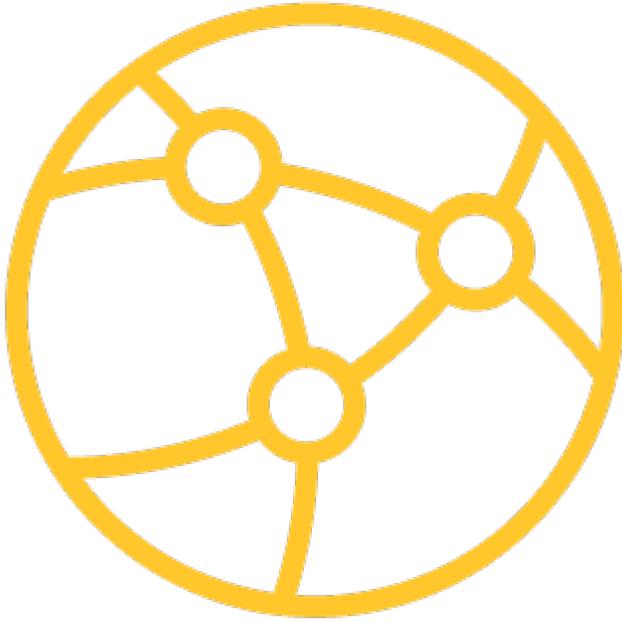
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