Provisional Programme

AMINZ – ICCA International Arbitration Day
Making Arbitration Work in a Changing World: A Pacific View

Sponsored by Bell Gully

Thursday 19 April

4.00 – 5.30pm	**Young ICCA: Skills Training Workshop "Careers in Arbitration – An International Perspective** **With Sir David A R Williams QC, Katie Chung, James Herbert, Tim Lindsay and Dr Anna Kirk** This event is a rare opportunity for practitioners to participate in a career development discussion with international arbitration specialists in an informal setting. The panel discussion will cover career development and advice for those hoping to practice international arbitration, with plenty of opportunity for direct interaction with the panelists. It is aimed at practitioners below partner level Sponsored by Bankside Chambers
7.30pm - onwards	**Conference launch** Gibbston Valley Winery Casual wine and food experience at Gibbston Valley Winery with traditional Māori welcome Sponsored by Chapman Tripp

Friday 20 April

Morning Session One
Introduction AMINZ President and Event Chair, **John Walton**

Welcomes

Her Excellency, the Rt Hon. Dame Patsy Reddy GNZM QSO, Governor-General of New Zealand
International law, the Rule of Law and the importance of solving international disputes peaceably

Donald Donovan
From Sydney's "Evolution and Adaptation" to Queenstown's "Changing World"
The 2018 Congress highlights arbitration as a "living" organism which has proven adaptable in the past to new substantive and practical challenges. Today it is under attack from various quarters and will need to demonstrate its adaptability again. These issues will be explored in Sydney and enlarged upon in Queenstown with its Pacific view of a changing world.
This keynote presentation from ICCA's President, Donald Donovan will draw together the lessons learnt from Sydney and explore future challenges.

Keynote

Daniel Kalderimis
Commentator: Lucy Reed

International arbitration in a ~~Brave~~ Uncertain New World
The so-called 'third wave' of economic globalisation, said by commentators to have begun in the 1980s, appears to be turning to an ebb tide. International arbitration's astonishing success as a preferred system to resolve both commercial and investment disputes, has ridden that wave. If the wave does ebb, architects and practitioners of international arbitration need to think critically about what lies next. Is it more of the same? If not, what will it be?

This keynote address will conduct a thought experiment to explore those questions. It will have three main themes. First, the pressing issues of the next century will give rise to new forms of dispute for which international arbitration is well suited. That is because it will not be easy for the international community to build or adapt permanent international dispute resolution institutions during an ebb tide. Secondly, international arbitration needs to rediscover and reassert its identity as an adaptable and efficient dispute resolution system for all international issues, including those that do not primarily concern commerce and investment. Thirdly, the route to greater opportunity lies in building greater understanding and trust amongst communities of interest.

This requires increased engagement and transparency. It also requires a degree of modesty. Although international arbitration has in some quarters been lauded as an instrument of *progress*, the system's true adaptability – and possibly its future success – comes from it being widely understood and accepted as nothing more, nor less, than a consensual and effective dispute resolution *process*.

Morning tea

Morning Session Two

Panel Discussion

Speaker and Convenor: Wendy Miles QC

- **Prof. Catherine Iorns**
- **Judith Levine**
- **Nicole Smith**

Climate Change Disputes and the Rights of Affected Populations: What's the fuss: What are the challenges and issues that we are confronted with?
The Paris Agreement on Climate Change is a game-changer in the government and business response to climate change. Increasing 'green' investment opportunities and rising carbon emissions regulation are catalysts in a rising tide of climate change related disputes now being filed by and against states and corporates. Arbitrators and mediators will be increasingly engaged in disputes related to climate change with commercial, international, constitutional and public law elements, and in all of these there are climate specific considerations that will be prescient. One major consideration will be the impacts of climate related dispute resolution on states' Paris Agreement commitments and on affected populations dealing with the impacts of climate change. Panellists will discuss the range of current climate related disputes involving governments and corporates, the potential for dispute resolution between states under the Paris Agreement, and the newly formed International Chamber of Commerce Task Force on Climate Change Related Disputes. Panelists will take the temperature of this issue in the New Zealand context, including the recent High Court decision in *Thompson,* a challenge to New Zealand's international climate targets, the increasing discussion of climate refugees and climate visas, and the live Waitangi Tribunal claim regarding climate change, all of which are receiving deserved international attention.

Lunch

R Afternoon Session One

Keynote
Chair: Simon Foote
Hon Christopher Finlayson QC
Assoc Prof Amokura Kawharu

Treaty of Waitangi and resolution of indigenous disputes: A global model
In 1840, the indigenous Maori of New Zealand entered into the Treaty of Waitangi with the British Crown. Amongst other things, the Treaty guaranteed the protection of Maori property. In recent decades, New Zealand has been endeavouring to resolve Maori claims for breach of the Treaty, notably for wrongful taking of Maori land during New Zealand's colonisation. These claims are being addressed through various means, including direct negotiation between Maori and the Crown (represented by the New Zealand Government), and through inquiries before a standing commission of inquiry known as the Waitangi Tribunal. Proposed and actual Treaty settlements have sometimes given rise to further disputes in the form of cross claims by different Maori tribes and interests to the same land. Disputes arising from these cross claims are sometimes resolved through an arbitration process. This has given rise to issues such as the arbitrability of indigenous land claims, the scope of application of the fundamental arbitration principle of arbitrator neutrality, whether indigenous custom can be classified as "law", and the extent of reasoning required in awards based on custom. There are parallels to these issues in international commercial arbitration. In this respect, solutions found in international commercial arbitration may inform how the issues may be resolved in the indigenous disputes context, and vice versa. The two speakers in this session will address both the imperative and approaches for resolving indigenous claims and the arbitration specific issues that have arisen in the New Zealand setting.

Panel

Panel Chair: **Polly Pope**

Answers to thorny issues

Sophie East: Gender equity and international arbitration: what's happening and why?

A research-based analysis of what has occurred internationally over the last 25 years and a look to the future. Sophie East will consider the records of some of our most important arbitral bodies and look at trends and for the future. She will also consider to what extent gender equity matters in international commercial arbitration.

James Hosking: Do we need emergency arbitrators?

Ten years since the AAA/ICDR first adopted an emergency arbitrator mechanism and with all the major institutions now having some form of emergency arbitrator regime, where do we stand? A brilliant innovation or a bad idea that undermines the integrity of the arbitral process?

While emergency arbitrations are popular, they have spawned many of the thorny problems that their critics predicted at the outset. Do emergency arbitrations place the respondent in an impossible position to respond meaningfully on an expedited basis? Can the parties truly predict the outcome of an application for emergency relief divorced from the strictures of civil procedure? Is there a place for ex parte applications? Does the existence of the mechanism, as an English court has found, prevent a party from seeking court-ordered interim relief? Is the emergency award/order even enforceable? Having sat as an emergency arbitrator and as Co-Chair of the ICC Task Force charged with reviewing the emergency arbitrator mechanism, James gives his personal insights. In short, he argues that emergency arbitrations may have little appeal where the parties can rely on a healthy court system to obtain emergency relief. But without that luxury, emergency arbitrations offer an important—if unpredictable—remedy to a real problem. The focus should be on how to make emergency arbitrations work better.

Neil Kaplan CBE QC SBS: Should we restrict challenges by having an indemnity cost rule?

As avenues of appeal from arbitral awards have been cut off aggrieved parties now routinely challenge the arbitrators and the process. Some courts have attempted to create a disincentive to meritless applications by ordering the unsuccessful party to pay costs on an indemnity basis. Hong Kong has led the way and some jurisdictions have followed suit. Some have not (the State of Victoria is a classic example). This part of the session will consider whether, apart from ensuring that applications to enforce under the New York Convention are dealt with promptly (not always the case), courts should follow the Hong Kong approach. Will it make a difference? Is it a hollow gesture?

Sir David A R Williams QC: Confidentiality – is it a necessary evil?

Details to come

Afternoon tea

Afternoon Session Two

Panel **Korero – A Touch of Kiwi** **John Walton: Should appeals be abolished and the AMINZ Arbitration Appeals Tribunal** Clause 5 of Schedule 2 to the NZ Arbitration Act 1996 provides, by default, for appeals from arbitral awards on questions of law. This is a provision which the parties can, in the case of domestic arbitrations, opt-out of or, in the case of international arbitrations, opt-in to. This session will consider the various arguments in favour of and opposed to retaining this right, the alternative of appealing to the AAAT and the reality of exercising such rights of appeal. **Jeremy Johnson: Arbitration of Trust Disputes** The discussion will explore the suitability of New Zealand as a seat for arbitration of trust disputes in light of the reforms proposed by the Arbitration Amendment Bill. This will include consideration the effect of the Arbitration Amendment Bill, what type of trust disputes can be arbitrated, how trust disputes may be arbitrated in New Zealand and the use of New Zealand and overseas-based arbitrators for such disputes. **Hon Justice Gerard van Bohemen**: **New Frontiers on Resource Conservation / Environmental Protection in Antarctica and the Pacific?** *Details to come*	
Closing Keynote **Sir Bernard Rix: Where are we at now?**	
7.30pm onwards	**Gala Dinner at Mount Soho Winery** **Sponsored by Debevoise & Plimpton** With MC, **John Walton** and after dinner speaker **Audley Shepherd** A gourmet dining experience with boutique wines.