

ReSolution: In Brief

Auckland law students reach world finals of mediation advocacy competition.

Months of training and strong performance under pressure has earned a University of Auckland team silver place at this year's International Commercial Mediation Competition in Paris.

The competition, run by the International Chamber of Commerce, requires students to resolve complex cross-border business disputes through mediation. 65 university teams from over 50 countries gather in Paris to work with top international commercial mediators during 147 rigorous and fast-paced mock mediation sessions over six days. Students are required to represent one party in each dispute, quickly developing a theory of the case, analysing the client's core interests, objectives and alternatives (BATNA/WATNA) and then executing a realistic negotiation strategy in the mediation itself.

The Auckland Law School team of Michael Greenop, Honor Kerry, Ana Lenard and Andrew Yan Feng Lee, together with coach Nina Khouri, defeated teams from the United States, Germany, Brazil and India to qualify for the final rounds.

The team then beat New York's Cornell University in a pro-athlete IT and sponsorship dispute to advance to the semi-finals and Melbourne's Monash University in an international gemstone insurance dispute to advance to the Grand Final at La Maison du Barreau, the headquarters of the Paris Bar Association. The team was then narrowly defeated by the University of New South Wales, in a final problem involving an international sale of goods dispute.

"This is a major achievement," says Dean, Professor Andrew Stockley. "All four members of our team, coached by Nina Khouri, performed incredibly well to end up as

runners-up of this prestigious competition.

"I got to see the team compete in the final elimination round stages and was delighted to see them represent the Auckland Law School so magnificently."

Andrew Yan Feng Lee, who with Ana Lenard represented the Auckland team in the final, says "The competition, especially in the final rounds, gave me an opportunity to really challenge myself beyond what I thought I was capable of, physically, mentally, and emotionally, and the numerous times I stepped outside of my comfort zone and pushed myself revealed the type of person that I can be."

Coach Nina Khouri said, "The thing that I am most happy about after watching the final round is that it was fun as well as a test of technical skills.

"There were some really realistic negotiations – the approach we call the steel fist in a velvet glove - and I am very proud of all the students."

This is the competition's biggest year yet, with organisers calculating that there were 25,845 hands shaken and 48,100 people reached via Facebook over the course of the event.



Australian government wins plain packaging case against Phillip Morris Asia in the first investor-state dispute brought against Australia.

The Australian federal government has won its case against tobacco giant, Philip Morris Asia, which challenged Australia's plain packaging legislation under the Australia–Hong Kong Investment Promotion and Protection Agreement (IPPA) of 1993. Australia's IPPA with Hong Kong provides for an investor–state dispute settlement (ISDS) mechanism under which foreign investors can sue host states directly and seek monetary compensation if their profits have been hurt by the introduction of undue regulatory measures.

Australia's plain packaging laws were introduced by Julia Gillard's Labor government in 2011. The laws banned tobacco companies from displaying their distinctive colours, brand designs and logos on cigarette packs.

In 2012, the Australian high court rejected a domestic challenge against the laws brought by major tobacco companies.

Philip Morris Asia Limited launched its challenge against the Australian government in 2011, seeking to rely on an argument that the ban on trademarks breached foreign investment provisions of Australia's 1993 Investment Promotion and Protection Agreement with Hong Kong.

The arbitration hearing began in early 2015 in Singapore and on 17 December 2015, the three-member arbitral tribunal at the Permanent Court of Arbitration ruled that Philip Morris had no jurisdiction to bring the case against Australia. This means that Australia's plain packaging laws, which ban all branding from cigarette packets, will remain in force.

The case exposes many of the misconceptions opponents of ISDS proceedings have. Claims that such proceedings are secret are clearly misconceived. Procedural orders 1-16 are available online and the Permanent Court of Arbitration will publish the decision on its website once issues regarding confidentiality www.nzdrc.com

have been resolved. The equivalent ISDS clause contained in the Trans-Pacific Partnership Agreement (TPPA) goes further. It has very far-reaching and specific provisions requiring disputes to be resolved transparently.

While Australia is the first country in the world to implement tobacco plain packaging laws, the verdict against Philip Morris may encourage many other countries to implement anti-tobacco measures within their jurisdictions. New Zealand is expected to pass the Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill early this year. France, Ireland and the UK have also announced their plans to introduce similar measures. The inclusion of the tobacco 'carve-out' in the negotiated text of the investment chapter of the TPPA is viewed by many as another major victory for public health.

Gary Born Named International Arbitration "Lawyer of the Year" by Best Lawyers for the Third Consecutive Year



Gary Born "Lawyer of the Year"

Chair of the International Arbitration Practice at Wilmer Cutler Pickering Hale and Dorr LLP, Gary Born has been named London "Lawyer of the Year" for international arbitration by Best Lawyers for the third consecutive year. Best Lawyers honours a single lawyer in all major practice areas and regions as "Lawyer of the Year," based on peer-review assessments. The

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award reflects the high level of respect a lawyer has earned for excellence, professionalism and integrity. In addition, Partners Steven Finizio and Franz Schwarz were selected for inclusion in the latest edition of the Best Lawyers in the United Kingdom guide.

Mr Born has served as counsel in over 650 international commercial and investment arbitrations, including several of the largest arbitrations in ICC and ad hoc history. Among other accolades, Mr. Born received the Global Arbitration Review inaugural "Advocate of the Year" award and the Client Choice award for "Best International Arbitration Practitioner" in 2012 and 2014. He is one of only two practitioners globally and the sole practitioner in London to achieve "starred" status for international arbitration in Chambers and Partners' guides.

Mr Born has published a number of leading works on international arbitration, international litigation and other forms of dispute resolution, including *International Commercial Arbitration* (Second Edition, Kluwer 2014), the leading treatise in the field. December 2015 saw the publication of the second edition of *International Arbitration: Law and Practice* by Mr Born. This 500-page book provides a concise overview of the legal principles and practice of international arbitration, including thoroughly revised and expanded discussions of international arbitration agreements, international arbitral procedures and international arbitral awards. The book also covers international investment arbitration, including a discussion of the ICSID Convention and issues arising under bilateral investment treaties, and state-to-state arbitration. The book is available to order from Kluwer Law International.

Mr Born is an Honorary Professor of Law at the University of St Gallen, Switzerland and Tsinghua University, Beijing, and teaches regularly at law schools in Europe, Asia, and

North and South America. He is President of the Singapore International Arbitration Centre Court of Arbitration.

Mr Born will be visiting New Zealand in March. Among other engagements, he will be attending the AMINZ conference in Queenstown where he is presenting a session titled 'The Rainbow Warrior – a case for mediation and arbitration'.

New role for Lucy Reed in Singapore

The global co-head of international arbitration and public international law at Freshfields Bruckhaus Deringer, Lucy Reed, is to retire from the firm at the end of April and take up a role as director of the Centre for International Law at the National University of Singapore.



Lucy Reed

New Arbitration Rules in the Supreme Court of Victoria

The Supreme Court (Chapter II Arbitration Amendment) Rules 2014 came into operation in the Supreme Court of Victoria, Australia, on 1 December 2014.

The Rules provide comprehensive rules for the making of applications to the Court in both international commercial arbitration and domestic arbitration matters. The rules cover both interlocutory applications and enforcement issues. They provide clear guidance for practitioners on applications such as stay of proceedings in support of arbitration, enforcement, referrals to arbitration, issue of subpoenas and appeals.

The Rules include a set of forms for use in the Court.

New Singapore International Mediation Institute

A New Singapore International Mediation Institute has been established to set world-class mediation standards in Singapore and the region.

The Singapore International Mediation Institute (SIMI), which is housed at the National University of Singapore (NUS) Faculty of Law, was officially launched today by Ms Indranee Rajah, Senior Minister of State, Ministry of Law and Ministry of Education. The launch event was attended by about 100 local and international lawyers, regulators and academics.

The creation of SIMI was the fruit of a recommendation by the International Commercial Mediation Working Group, which was appointed by The Honourable the Chief Justice Sundaresh Menon and Singapore's Ministry of Law (MinLaw).

SIMI is a non-profit organisation founded by NUS with support from MinLaw. The Institute also shares a partnership relationship with the International Mediation Institute (IMI), a non-profit public interest initiative to drive transparency and high competency standards into mediation practice across all fields, worldwide.

SIMI's operations will run independently from NUS and its role includes setting world-class standards of mediation, providing impartial information about mediation, helping parties make basic decisions about mediation, and to increase awareness and promote the use of mediation.