international reputations, Ms Green says there are also many lawyers who are advocates in arbitration.

"We really can provide the full package here. It's not just a solo arbitrator with international experience. We've got very sophisticated lawyers who have been working in this area for a long time who are on the ground. And, while we can administer an arbitration from New Zealand, it doesn't necessarily mean that we must have a New Zealander as the arbitrator."

Recently, the NZIAC signed a memorandum of understanding with Argentina's Chamber of Commerce. That organisation was specifically looking for a relationship that would support them in providing private dispute resolution through arbitration or mediation services.

"That's indicative of what's happening at the moment. People are looking for alternatives. They came to us. It was not an opportunity that we sought. The New Zealand profile is on the rise which is really encouraging," she says.

The potential economic benefits

More arbitrations are likely to provide economic spinoffs for New Zealand. After all, people need accommodation and it is likely they might want to see some of this country while they're here on business.

In 2012, "Arbitration in Toronto: An Economic Study", by Charles River Associates was published. It analysed the impact of 425 arbitrations carried out in Canada that year.

It found domestic arbitrations brought CA$370,000 into the Canadian economy and international arbitrations CA$1.7 million. Respectively, that is NZ$430,000 and NZ$1.9 million – providing some insight into what could be achieved in New Zealand. ■

ALTERNATIVE DISPUTE RESOLUTION

Arbitrations and Proportionality

BY **ROBERT FISHER QC**

A feature of arbitration is the opportunity to tailor the procedure to the particular dispute.

In choosing the procedure, fairness and efficiency are obviously to the forefront. But equally important is proportionality. Proportionality pegs the time and cost of an arbitration at a level that will be economic for the parties having regard to the magnitude of their dispute. It would not be economically rational to stage a successful arbitration at a cost which turned out to exceed the sum at issue. Clients prepared to litigate "for the principle of the thing" are to be applauded. Sadly, their enthusiasm usually wanes on seeing the bill.

It follows that at the outset of an arbitration some form of triaging is required to ensure that the procedure to be followed will not be out of proportion to the value of the dispute. The chosen arbitrator will usually suggest the best procedure after considering the nature of the dispute and the amount at stake. Alternatively, the parties may submit their dispute to a dispute resolution institution with rules which distinguish between different kinds and levels of dispute. The New Zealand Disputes Resolution Centre is an example of such an institution (*https://www.nzdrc.co.nz/*).

The table which follows sets out to match the choice of procedure to the value in dispute. It includes suggestions as to the level of arbitrator fees that would be perceived as economic from the parties' viewpoint. This includes the proposal that for modest to medium level disputes the arbitrator's fee should be fixed. The parties can then decide in advance whether the game is worth the candle. That concern recedes as the amount in dispute grows – hence the suggestion that above a certain level the fee can be based on an hourly rate. Of course, in practice fees vary greatly from one arbitrator to another.

The tick-marks in the "Up to $50,000" column of the table produce an expedited approach to modest claims. Sequential filing of evidence and submissions from each side by email is followed by an emailed right of reply for the claimant, and then a

	Amount in dispute			
Steps required	**Up to $50,000**	**$50,000 to $250,000**	**$250,000 – $750,000**	**$750,000 + or company or trust involved**
Follow simple rules instead of preliminary conference	☑			
Procedure is adopted at preliminary conference		☑	☑	☑
No orders for further disclosure	☑			
Any orders for disclosure will be made after written submissions		☑		
Any orders for disclosure will be made after one or more conferences			☑	☑
Sequential filing of evidence and submissions by each party	☑	☑	☑	☑
Arbitrator gives award after reading the material provided by the parties	☑	☑		
One day hearing with party time limits			☑	
Conventional hearing with evidence and submissions				☑
Total arbitrator's fee including award	$5,000	$10,000	$20,000	$400 – $800 per hour
Plus issues conference if sought	$2,000	$5,000	$5,000	$400 – $800 per hour

decision from the arbitrator based on the written material. The arbitrator's fee is $5,000.

In my experience expedited procedures of that kind work well in practice despite assumptions to the contrary by much of the legal world. For example, it is the process used by the Domain Name Commission (DNC) to resolve disputes over the right to use domain names (*https://www.dnc.org.nz/resource-library/policies/65*). Under the DNC rules, the dispute is referred initially to mediation and, if that fails, to "experts" for a binding determination. The complainant and respondent file their evidence and argument sequentially with a right of reply for the complainant. The body of the complaint and response cannot exceed 2,000 words. Strict time limits apply. The expert's written decision, with reasons, must be given within 10 days of receiving the material. The expert receives a fixed fee of $2,000. The process has worked well over the 13 years since it was introduced.

The table above goes on to suggest more elaborate procedures where more is at stake. For example, where the claim is in the $250,000 to $750,000 category, a detailed timetable is set at a preliminary conference; defended disclosure applications are determined in further conferences; and there is a hearing. Even there, however, the hearing is limited to one day and time limits govern each party's presentation. Above $750,000 those constraints no longer apply.

In every case the procedures suggested in the table amount to no more than the default which applies unless the parties or arbitrator seek otherwise. Further, the table does not purport to set out the detailed process for larger or more complex arbitrations. These will be the subject of a further article. ■

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