

Q&A With Crowell & Moring's Ian Laird

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Ian A. Laird is co-chairman of Crowell & Moring's international dispute resolution group and an adjunct professor at Columbia University School of Law and Georgetown University Law Center. He represents a range of clients in international arbitration proceedings involving disputes between corporations and foreign sovereign governments. Laird is best known for being lead counsel for Khan Resources Inc., which recently secured a \$100 million international arbitration award against the government of Mongolia (in March 2015).



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As a former chief of staff to a Canadian cabinet minister and a senior political aide to the Ontario minister of energy, Laird has run political campaigns and understands the intimate workings of government and politics, as well as their impact on industry. For more than 15 years, Laird has counseled parties in investment arbitrations under the provisions of NAFTA, CAFTA-DR, the Energy Charter Treaty, and other international investment agreements, typically applying the arbitration rules of ICSID or UNCITRAL.

A long-time Washingtonian with extensive experience representing Fortune 500 clients, Laird advises corporations on geopolitical concerns when their investments face challenges overseas. He works primarily with clients involving issues in the energy and natural resources sector — such as power generation, oil and gas, and mining.

Q: What attracted you to international arbitration work?

A: My area of focus, international investment arbitration, is a cross-over of the procedure and practice of international commercial arbitration with politics and international law elements associated with dealing with sovereign states.

Having grown up in multicultural Toronto, with friends who were first and second generation kids from many cultures (Greek, Estonian, Korean, Indian and Chinese), I became very comfortable with diversity and a global viewpoint. Before law school, I worked in politics and government in Canada (as a campaign manager and ministerial assistant), and this helped guide my interest in law and politics. The first politician I worked for, the honorable Bob Wong, was the first Chinese-Canadian cabinet minister in Canada.

My interest in international law and politics was inspired by my grandfather who was an ardent supporter of the League of Nations when he was a young lawyer in the 1930s in Windsor, Ontario,

Canada. Across the river from Detroit, Windsor was a cross-border world at the center of the most active and successful international economic relationship in the world. The influence of both my grandfather and father (who was shaped by this extraordinary environment on the border, and also encouraged my interest in politics) made international law and arbitration a natural path for my legal career.

Q What are two trends you see that are affecting the practice of international arbitration?

A: The first trend is a sociological one — despite accusations of being a closed, tight knit community, or as some might negatively term it, a “clique”, the fact is that the practitioners of international arbitration are becoming increasingly diverse and not restricted to being North American or European. I am particularly impressed with the passionate interest of international students from my LL.M. classes at Georgetown and Columbia law schools (where I am an adjunct professor) in international arbitration. It is seen by young people as the future of international dispute resolution.

The second relatively recent trend impacting international arbitration practice is the growth of third-party funding sources and the ability of law firms like Crowell & Moring to give alternative fee arrangements (or AFAs) to clients seeking value. The interesting element of this trend is that claimants and law firms are forced to take a much earlier assessment of cases, forcing out bad cases and allowing good cases to proceed. Allegations that litigation funding leads to unmeritorious cases is simply inconsistent with how funding and AFA’s work in practice. Funding and AFAs support the rule of law as it allows clients to place their disputes on a solid financial footing and give them the ability to prosecute long and complicated cases to their end, without worry of time and money forcing a premature end to cases.

Q: What is the most challenging case you’ve worked on and why?

A: Our recent successful arbitration on behalf of Canadian mining company, Khan Resources, against the government of Mongolia (Permanent Court of Arbitration, Case No. 2011-09) was incredibly challenging. As first chair, I led a talented team of Crowell & Moring attorneys against a leading international firm, which applied every effort in defeating our client’s claims.

The case was launched in 2011 and proceeded through two phases of arbitration, survived a vigorous jurisdictional challenge and resulted in a \$100 million award for Khan in 2015. The complexity of the case and subject matter made the dispute particularly difficult. For example, the claim was brought under three jurisdictional bases — under a JV agreement, an international treaty (the Energy Charter Treaty) and the domestic Foreign Investment Law. The applicable law was a mix of Mongolian law and international law. Luckily, the UNCITRAL Arbitration Rules were common to both the treaty and the contract and allowed us to proceed on a single procedural basis.

The subject matter of the dispute concerned the expropriation of mining licenses for a world class uranium mine in the northeast portion of Mongolia. We needed to become experts, not only in the specialized world of uranium mining, but in the multifaceted regulatory regime found in Mongolia. We worked closely with local attorneys and legal experts in Mongolia to make sure we were conversant with the system and could explain it clearly to the Tribunal (none of whom were Mongolian lawyers). The damages issue was also particularly difficult and there were two teams of experts for each party.

Q: What advice would you give to an attorney considering a career in international arbitration?

A: I regularly advise young attorneys and law students who want to build an arbitration career to first seek the best work experience they can in advocacy — writing, researching and speaking as much as possible. This may not be with a firm strongly specialized in arbitration. Because international arbitration is a specialized practice, there can be limited opportunities for jobs for students. However, it can be an excellent area of focus for developing attorneys who want to distinguish themselves from their contemporaries and grow their expertise. Fundamentally, it is critical to get a solid disputes grounding. I also advise international students that the advocacy training they can receive in a U.S.-based firm is inevitably of a higher quality than is found in Europe and most of the world. After the U.S., certainly the U.K. has excellent advocates, and that is a big reason it is a leading center for international arbitration.

One element of arbitration practice that distinguishes itself from litigation is the higher level of networking events that occur, usually sponsored by the major bar and arbitration organizations. There are regular opportunities for younger attorneys to network through “young arbitration practitioner” organizations through the major arbitral institutions. I founded one such organization myself in Canada over 10 years ago (which is still going strong — see www.ycap.ca).

Another feature of international arbitration is that there is a demand for practitioners with academic background — attorneys interested in writing and teaching at the major schools. There is a high appetite for such courses at the major law schools around the world. I also recommend that young practitioners look to write early in their career and establish their expertise in the field.

Q: Outside of your firm, name an attorney who has impressed you and tell us why.

A: One of the most impressive people I have met in the international arbitration field is Professor Don Wallace — he is an Emeritus Professor at Georgetown University Law Center and Chairman of the International Law Institute. After a 50-year legal and academic career, most people would slow down in their 80s, but Professor Wallace continues a schedule of work that would daunt a man 50 years younger. He has been a leading figure in the international law field, as well as in international investment arbitration, in the United States and here in Washington, D.C. I had the privilege of co-editing a Festschrift in his honor titled, "Revolution in the International Rule of Law: Essays in Honor of Don Wallace, Jr." (Juris, 2014), and learned of the broad range and depth of his work, and the cutting edge of revolutionary developments on which his career has followed. As a co-director of the International Investment law Center at the ILI, I have had the additional privilege of working with Don on many projects that help bring to life the core credo of the ILI of promoting the rule of law all around the world. He is an example of how international law, and international dispute resolution, can ultimately help to improve lives.

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