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Canadian lawyers have an edge in international arbitration, says Ian Binnie

Ian Binnie was quoted in the Law Times article *Canadian lawyers have an edge in international arbitration, says Ian Binnie* on November 27, 2019. The article is based on Ian's recent panel discussion at the inaugural Canadian Litigation Forum on the current landscape of international arbitration.

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"The lawyers here in Canada do as good — or better — a job, at really a fraction of the price. So, I think those of you who are dealing with the client end of things: There's a great deal going for Canada. And the Canadian law firms ought to be pushing harder," said Binnie, speaking on a panel at the Canadian Litigation Forum on Nov. 26 in Toronto.

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"So, they are looking into different centers: London, Washington, New York, and Toronto," said Binnie. "And the figures are quite startling as to the economy with which one of these giant arbitrations can be managed in Toronto versus these other jurisdictions, including the legal fees."

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"I don't think this investment tribunal under CETA is going to be very good, because I can't imagine the caliber of person who's prepared to sit on a nation trade tribunal that might take 10 years to get up and running," said Binnie.

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International arbitration is unique in that it brings players from different cultures and legal systems to agree on one set of rules, says Binnie.

"You'll get very interesting cultural conflicts among the three on the arbitration panel, and the law firms involved, all of whom are not infrequently from quite different jurisdictions," said Binnie. "There was one where the lawyer for the government in Laos was a professor of law in Beijing. Americans were presented by a British firm. One of the arbitrators was Belgian and the other French, and there was a parallel proceeding where the chair of the arbitration panel was Spanish."

The Laotian case raised issues about how different jurisdictions

view cross-examination, said Binnie. While common law lawyers may view cross examination as the “centerpiece” of fair process, continental lawyers may view it as a waste of time, and want to restrict cross examination to documents already on the record, he said.

“If you're either acting as counsel or you're acting as the arbitrator, it's a good idea to get your lines open before the arbitration begins, otherwise there can be a lot of very unpleasant surprises,” Binnie said.

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