44th Alexander Lecture

Technology, Transparency, and Diversity:
Existential Challenge or Basic Hygiene

Chartered Institute of Arbitrators
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E ngaa mana, e ngaa reo, rau rangatira maa. Tena koutou, tena koutou, tena koutou, katoa. E ngaa tini mate. Haere, haere, moe mai raa. Kia ora, huihui tatou katoaa.

In the language of the first people of Aotearoa – now better known as New Zealand – I have just acknowledged the spirits of those who have gone before us, honored the land on which we meet, welcomed you to this gathering, and thanked you for allowing me to speak.

As Ambassador, I began my public remarks with this traditional Maori welcome because of the depth of meaning conveyed in those few words.

I do so now because it is important to remind ourselves that we are not *sui generis* or exceptional singularities. We each fit into a broader context and a long progression of people who blazed trails before us. We cannot credibly speak ourselves without first acknowledging them and understanding their work.

I thus recognize John Russell Willis Alexander CBE, in whose honor this annual lecture is named. A fervent advocate of the Chartered Institute of Arbitrators, Commander Alexander served for 40 years on the Institute's Council and for 4 years as its president. He established this lecture series in 1974 as a mechanism to keep the Institute at the forefront of thought leadership in the field of arbitration.

I also note that I follow in the august footsteps of 43 prior Alexander Lecturers, starting with Lord Justice Denning, one of the most celebrated English jurists of the 20th Century.

On a purely personal note, I am delighted to be here in Atlanta with you and honored to be delivering the 44th Annual Alexander Lecture before such a distinguished audience of esteemed arbitrators and advocates from around the world. Thank you to Bloomsbury Square and the North America Branch for inviting me to speak. Thank you, Mr. Secretary General, for the gracious introduction. And, of course, thank you to all of you for interrupting cocktail hour to attend this evening.

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To honor Commander Alexander's intention, I have decided to speak about three matters with which I have wrestled in each facet of my career – as advocate, part-time academic, chief executive, diplomat, and arbitrator -- the issues of Technology, Transparency, and Diversity.

That may sound like an odd collective, but it is not. Each of the three is a disruptor, as we say in California, a paradigm-shifting dynamic that can be embraced or resisted but *not* ignored. Taken together, they bring us arbitrators to a distinct evolutionary fork in the road with choices to make.

Each of the three issues is often framed in terms of existential challenge, a tearing at structural fibers that hold the field together, a threat to what arbitration has been and should be. Is not it more appropriate, though, to view Technology, Transparency, and Diversity as matters of hygiene – of sensible practice – to be embraced, harnessed, and woven into the fabric of the profession to insure its long-term health and adaptability? We'll see.

Rather than catalog the voluminous scholarship in these areas, I will this evening identify inflection points and potential steps forward, as well as raise questions intended to help focus future discussion. After all, Commander Alexander established these lectures to stimulate thought, not to serve up tidy answers.

TECHNOLOGY.

Technology is a vast territory in terms of arbitration practice. There are blockchain and crypto-contracts (or smart contracts), cybersecurity risks, new facilitative tools, and so much more. For tonight's purposes, however, I will narrow the topic to what I see as the most significant challenge posed by technology.

The rapid evolution of technology exposes what is perhaps arbitration's true Achilles Heel – human involvement in evaluating evidence and making decisions. We ourselves may be, and likely are, the flaw in the system.

All forms of dispute resolution are algorithmic, *i.e.*, they are processes of collecting, organizing, and evaluating inputs to produce an outcome per certain rules. Such functions would seem to fall within the competitive advantage of machines, which are designed *not* to skim, favor, or tire, but simply – and relentlessly – to compute. If computers are already autonomously navigating spacecraft and diagnosing disease, what's next?

As a step in the evolution that I see ahead, I have been particularly intrigued by ODR – online dispute resolution – after encountering it several years ago on e-Bay. Simply put, ODR involves procedural and decisional rules programmed into algorithms, questions posed online to collect information from parties, a dialogue module that probes inconsistent or possibly erroneous inputs, and a module that summarizes issues and suggests settlements.

The online dispute resolution systems at eBay and PayPal reportedly process – *i.e.*, resolve – in excess of 65 million cases per year, most of them without third-party human intervention. The team that built those systems has founded a company called Modria to market cloud-based decisional platforms to other businesses and to courts.

Modified online dispute resolution is already in use in the legal sector, as a "fourth party" to narrow and focus issues rather than to fully replace the human decision-maker. For now. Modria software is being used in Ohio to resolve tax assessment disputes and in Michigan to facilitate resolution of traffic disputes. In the Netherlands, ODR is being used to expedite divorce proceedings. There are ongoing online dispute resolution pilot projects in India and the European Union. In the United Kingdom, the Lord Chief Justice has asked Parliament to fund creation of Her Majesty's Online Court, intended to resolve all claims worth less than £25,000.

Of course, you may object that it is simply not possible to embed in algorithms the cognitive abilities of Jan Paulson, or the experiential judgment of Neil Kaplan, or Teresa Cheng's ability to organize and decide complex cases with dozens of claims. I submit, however, that your objection may well be misplaced. Technology is evolving more rapidly than are we.

Which brings me to AI (artificial intelligence), more appropriately referred to as SI (synthetic intelligence) because there is nothing "artificial" about where the technology is heading.

The concept is not new. In 1970 – years before the sale of the first, rudimentary Radio Shack computer – Bruce Buchanan and Thomas Headrick published a paper titled "Some Speculation About Artificial Intelligence & Legal Reasoning." Since then, there has been transformative synthetic intelligence work on a variety of fronts, including on case-based reasoning and multi-agent systems.

Case-based reasoning systems collect and rely on past experiences, decisions, and data to determine outcomes in new situations judged similar to prior ones. Multi-agent systems are distributed computational models which can incorporate virtues such as benevolence and veracity into their decisional programming.

And then there is what has been called the Semantic Web. First posited in 2001 in a paper by Tim Berners-Lee (the father of the World Wide Web), the Semantic Web describes ontology-based methods that allow machines actually to understand the meaning of information on the Web, rather than simply to locate and sort it. Think about that. Machines that are not only faster and more accurate than are we but also more comprehending, intuitive, and ethical. Think about the great possibilities and dire disruptions that such technology would create.

Also, keep in mind Moore's law, named for Intel founder Gordon Moore, who observed that computing power doubles every two years or so.

To make that point more tangible, the one cellphone in your pocket tonight has significantly more computing power than did all of NASA's facilities combined in 1969, when

humans sent astronauts to walk on the Moon. In the fraction of a lifetime since the Moon landing, we have developed machines that respond to voice commands, drive vehicles, make investment decisions, and perform surgery. I suggest, respectfully, that it would be hubris of the highest order to think that dispute resolution is the one area in which technology cannot challenge its creators' superiority.

Still, you may object, humans are uniquely positioned to determine when other humans are lying – a key element of deciding disputes. Most studies, however, indicate that people are able to detect 50% or fewer of the lies they are told. I see immense potential for using cognitive neuroscience to significantly improve on such disappointing human performance.

The current polygraph poses challenges because it measures physiological responses to interrogation which must be interpreted humans and which might be produced by innocent anxiety rather than deception. Functional magnetic resonance imaging (fMRI), however, measures veracity-related changes in the brain itself, rather than mere surface effects. Recent studies have found that fMRI detection of deception is accurate within the range of 76 to 99%. Although I have yet to find a case in which a court admitted magnetic resonance imaging evidence, I emphasis "yet."

And there's so much more to look forward to, including virtual reality advancements that allow hyper-realistic digital reconstruction of events from documents and testimony and the virtual placement of a human decision-maker into that simulation for better viewing and analysis.

Stepping back slightly from technology as a tool, I would also note the importance of recognizing the accelerating evolution in the substantive content of the disputes we arbitrators hear. The bulk of my own work as an arbitrator has involved disputes over intellectual property and technology in the biotech, pharma, telecom, computer, imaging, and entertainment sectors. I have seen explosive growth in such cases, as well as parties and counsel increasingly insisting on arbitrators with existing fluency in the particular technologies at issue.

It is in our best interests to study innovation, to position ourselves to adapt more fluidly to the expectations of tech-savvy consumers, and to engage fulsomely on the issue of how – *not* if – new technologies are incorporated into our profession.

For those persistent skeptics among you, I draw your attention to the conclusion of a Western Union internal memo from 1878 that I think well captures how your position might appear in hindsight: "This 'telephone' has too many shortcomings to be seriously considered as a practical form of communication. The device is inherently of no value."

TRANSPARENCY.

Quite unlike technology, the issue of transparency confounds me a bit, for two reasons.

First, commercial arbitration is a creature of contract, an exercise of choice, and it would appear to me that if parties desired "transparent" proceedings they would opt to litigate in open court or to craft their clauses to admit whatever daylight they desire. They do not do so, however, which suggests that the choice to arbitrate is in fact an affirmative choice to forgo – or to evade, depending on your point of view – transparency.

Second, discussions of transparency too often jump forward without defining terms and parameters. If we do not parse the concept carefully, we talk past each other. We risk applauding small concessions to good hygiene while overlooking serious challenges to process integrity.

Therefore, my remarks this evening about transparency will be largely focused on framing the issue and on suggesting definitional parameters that might facilitate future discussion.

In my view, analysis of transparency is best conducted in multi-dimensional space, with reference to three distinct axes:

1. Object: What exactly is it that we want to open to view?

2. Degree: How much visibility do we want?

3. Access: Who gets to see?

The first axis is the most important, I submit. What is the object or target of the transparency impulse?

An excellent panel at last year's Vienna Arbitration Days made a strong contribution by articulating three categories of transparency:

1. Organizational Transparency – defined as uncloaking institutional case management and decision-making.

2. Legal Transparency – defined as publishing awards.

3. Transparency of Proceedings – defined as opening hearings and other proceedings to the public.

The Vienna articulation is a very useful start, but I would suggest that analysis becomes more focused and more productive if we parse a bit further. Rather than three, I would submit that there are seven distinct potential targets of transparency in arbitration:

1. Outcome – the final section of the award, where the relief granted (or not) is set forth.

2. Reasoning – the path taken to decide a final award, which involves both the articulated reasoning in the award and the underlying deliberations of the tribunal.

3. Proceedings – the process run by the arbitrators once appointed. Unlike the Vienna articulation, however, I do not limit this issue to "visibility to the public."

4. Case management – the full panoply of administration and decision-making by any arbitral institution involved, as stated in the Vienna articulation.

5. Process data points – various descriptive markers, including but not limited to (a) the cost of arbitration, (b) the time to award, (c) the demographics of the prevailing and losing parties, and (d) the demographics of the arbitrator(s).

6. Arbitrator selection – the process that leads to the seating of a tribunal, including communications during that process and the relationships among those involved.

7. Arbitrator performance – including process competence, substantive competence, and disciplinary history.

Outcome. Reasoning. Proceedings. Case management. Process data points. Arbitrator selection. Arbitrator performance.

Each of those aspects of the process of arbitration needs to be analyzed and judged separately, as there are different balances to be struck in each area. Transparency is not a binary toggle. No *one* approach fits all aspects of the complex process of arbitration. By rejecting toggle analysis, we reframe transparency from an existential threat to confidentiality into a series of hygiene decisions that enhance the public perception and future prospects of our sector.

If the first axis of analysis is Object of transparency, then the second axis of analysis is Degree of transparency. Again, briefly, there is no single toggle, although one might usefully frame Degree as a dimmer switch, with the precise setting wholly dependent on other factors.

Which brings me to the third analytic axis – Access. Whatever the *target* and *degree* of transparency, the fundamental question of *who* gets to see or know remains. As with so much else in life, "what" and "how much" cannot be answered without reference to "who."

I would suggest that there are five categories of stakeholders to consider in our Access analysis, listed perhaps by degree of "ownership" of the process.

1. Disputants – on whose agreement the arbitration is founded and who in most respects are the owners and core stakeholders in the process. Failure to recognize

the primacy of the parties will lead to conclusions that are counter-productive or simply not viable.

2. Arbitral institutions – entities formed to organize and facilitate the mechanics of arbitration. A half dozen of these institutions are the most visible and influential stakeholders in the sector, and they are in many ways the key gatekeepers and pressure points of transparency.

3. Arbitrators – persons (for now) engaged for a particular purpose by the disputants. We arbitrators are visible and influential stakeholders, but we must remind ourselves that arbitration is not for or about us, and that we are subjects rather than arbiters of transparency.

4. The State – sovereigns which permit and often affirmatively encourage commercial parties to opt out of public dispute resolution systems. Failure to recognize that our sector exists and thrives because of sovereign forbearance risks provoking a deep, existential threat of the nature now manifesting in investor-state arbitration.

5. ADR-focused publications, journalists, and academics – observers, analysts, and reporters on arbitration. One might argue whether these entities are actually stakeholders in how commercial parties resolve disputes among themselves, but they are certainly part of the arbitration ecosystem, with meaningful influence over the behavior of other organisms in that ecosystem.

Disputants. Arbitral Institutions. Arbitrators. The State. Commentators.

We can only discuss transparency in a productive, focused way if we are clear on which cohort's degree of access or visibility is at issue.

You will note that I have omitted from my articulation two obvious cohorts -- counsel and the public. I do not consider counsel separately because counsel stand in the shoes of their clients.

With respect to the public, it may indeed be in the public interest to reveal certain of the information now locked behind the iron gates of commercial arbitration, but the point of access for such public interest is, I would submit, the state, given the foundational fact of the state's forbearance of private ADR. As we have seen in the United States with consumer, employment, and certain securities cases, there are political processes available to induce the state to revise its forbearance and to serve the public's interests, however defined, in appropriate resolution of supposedly private disputes.

To summarize, I submit that transparency is most productively approached in three-dimensional analytic space, plotted by Object, Degree, and Access – *i.e.*, who should see what and to what extent.

Given the many facets of arbitration and the diversity of stakeholders, there cannot be a single, general discussion of transparency. There must be numerous, narrowly focused discussions about specific areas of concern. Such proliferation of points of discussion actually simplifies rather than complicates framing, speeds rather than slows analysis, and increases rather than decreases the likelihood that arbitration will evolve in a useful and sustainable manner.

Before moving on, let us return to two of the seven objects of transparency that I mentioned at the start – process data points and arbitrator performance – now that a more robust analytic framework is in place.

With respect to data point transparency, I submit that it would advance the interests of *all* stakeholders if institutions routinely collected, collated, and publicly released annual data on (a) cost of arbitration, (b) time to award, (c) demographics of prevailing and losing parties, (d) demographics of arbitrators who heard cases during that year, and on certain other matters.

Without in any way compromising confidentiality, such data would feed scholarship, catalyze evolution of best practices, identify current and future challenges, and help potential disputants be more savvy consumers of arbitration services. Certain institutions, including the ICC, have already made strong strides in that direction and should be both applauded and encouraged to do more.

With respect to arbitrator performance, I believe that we pay too little attention to the risks posed by the three foundational "noes" of arbitrator practice – no licensing, no clear performance standards, and no perceived accountability.

Over my quarter century in the field, I have encountered utter brilliance but also neutrals well below any minimally acceptable level of competence and attentiveness. I have seen problematic neutrals discreetly buffered by co-arbitrators, privately redirected by arbitral institutions, or simply extruded over time, much like the mafia quietly burying a body in the desert at night.

Such discretion, however, denies parties information directly relevant to the most important decision they will make – selection of an arbitrator – and weakens our profession by creating an impression of protective tribalism. This dynamic will pose even greater long-term challenges as the sector continues to expand, and as institutions and neutrals proliferate. I submit that those challenges are best addressed through greater transparency constructed from within our profession.

DIVERSITY.

Now let us switch gears and talk about the third and final topic on tonight's agenda. I come to diversity at the end of my remarks, *not* because it is the least important of the three topics at hand, but because it is the *most* important to the health and legitimacy of our profession. Why?

Because research across multiple fields clearly establishes that diversity produces strength and adaptability. Lack of diversity breeds weakness and brittle vulnerability. Full stop.

I submit that diversity is not primarily a political or intellectual debate about fairness or equity – concepts with subjective, situational definitions and open to often unproductive debate. Rather, diversity is a practical, organic, operational imperative. It is necessary. It is natural.

The evidence is all around us. Vibrant ecosystems are always diverse. When their diversity diminishes, they degrade, stagnate, and eventually collapse. Professional systems are no different. When I was a practicing attorney, our most successful case teams comprised different varieties of people, from multiple locations. When I was a diplomat, our most difficult challenges sorted more successfully when I convened teams from a diverse array of agencies and backgrounds.

Why? Because you get better results when different skills, perspectives, approaches, instincts, life experiences, and priorities are brought to bear on a single task, puzzle, or mission.

Therefore, my approach to diversity this evening is quite different from my approach to the earlier two topics. I see technology as an adaptive engineering challenge, and transparency as a definitional exercise. I approach diversity as a call to harness and mobilize difference, to build a more vibrant professional ecosystem in which all can participate and contribute fully with the force of their distinct backgrounds and experiences.

I start, as a lawyer must, by defining key terms, of which I see three.

First, I submit that the use of the word "diversity" is unhelpful. "Diversity" is a static concept – a snapshot that captures a point in time – dependent on someone with the privilege and power to define what *should* be visible in that snapshot.

Diversity is a vase of flowers, arranged by those who own the vase according to their own particular aesthetic preferences. Neither the flowers in the vase nor the foliage omitted as insufficiently pleasing have a say in the selection process.

A far more useful term than "diversity," I would submit, is "inclusion" or "inclusiveness." In its common usages, inclusion implies action – and not just the fleeting action of taking or admiring a snapshot. Inclusion implies ongoing, broad-spectrum effort by all players to create an environment in which diversity can grow organically, be sustained and propagated, and be fully mobilized on its own terms.

Inclusion is not a pretty vase of flowers. Inclusion is the arduous work of clearing, fertilizing, and irrigating fields so that any who wish can take root, grow, and thrive, even if they are not aesthetically pleasing to those who currently manage the landscape.

Moving to my second definitional assertion, if we talk of inclusion rather than diversity, it perhaps becomes clearer what kinds of common activities might not serve our profession's long-term goals.

I would submit that if one is focused largely on attracting appointments to one's own calendar, one's behavior might be better described as careerism rather than inclusion.

If one is focused on steering appointments to one's friends, one's behavior might be better described as cronyism.

If one is focused on generating work for folks just like oneself, one's behavior might be better described as tribalism.

And if one accommodates certain new entrants because they are now wealthy and powerful, one's behavior might be better described as mercantilism, rather than inclusion.

Of course, there is value in diversification as side-effect even if one's motivation is less holistic or admirable than broad-based inclusion. My point is simply that motivations drive and distort behavior, and motivations must therefore be subjected to honest self-reflection.

Privilege attaches in all sorts of ways and to various points of personhood. We strengthen our profession if we are aware of our own privilege, however minor it might seem to us, and if we are circumspect in how we deploy such privilege against others – directly or indirectly – for competitive advantage.

My third, and related, definitional point is that the words we use should be chosen to reinforce the core message of broad-based inclusion. For example, I would suggest retiring the phrase "pale, male, and stale."

Not that it isn't searingly accurate in certain contexts. *It is.* Not that it doesn't nicely crystalize a certain subset of what is wrong with the current diversity snapshot. *It does.* And not that its use at conferences by panelists who are themselves "pale, male, and stale" doesn't signal engaging self-deprecation or even "wokeness." It just ***might.***

Just maybe, though, the phrase also conveys a misleading definition of the problem, or the counterproductive message that vase owners should just pick a few more flowers of a certain type. That is not, I would submit, the right goal.

So, having said all that, how do I suggest we proceed?

Well, since I am following in the truly esteemed footsteps of Lord Justice Denning, the first Alexander Lecturer, I thought I would turn to him for guidance.

In 1982, the Lord Justice wrote, "The underlying assumption is that all citizens are sufficiently qualified to serve on a jury. I do not agree." He lamented that "the English are no longer a homogeneous race" and that "black, coloured and brown" people cannot always be trusted to weigh facts and apply law fairly.

That did not seem particularly helpful for our purposes, so I looked further. In Parliamentary debate he referred to gay folk as a "present evil," and as recently as 1990 he argued that homosexuals posed too great a risk to public safety and the rule of law for them to be allowed to serve as judges. Again, that does not seem to chart a useful path toward inclusiveness.

So, in 2018, how do we proceed?

Before I offer a few suggested answers as my final item of the evening, I should address the elephant in the room. Here before you stands yet another "pale, stale male" talking about diversity. Having been propelled into my 50's despite valiant resistance, I assume that I qualify as stale, and I am certainly pale and male.

Despite those impediments, and despite the layers of privilege in which I am wrapped, I would suggest that all is not what it may seem if one just goes about arranging flowers in vases.

Last week, for example, I celebrated my 29th wedding anniversary with my spouse, an African American man. Do those facts change how you view me? Do they alter your reaction to the points I am making? I don't presume to speculate about your answers. I *will* say, though, that my life in big-firm law practice, politics, diplomatic service, and neutrals practice as a matter-of-factly out gay man in an interracial marriage has afforded me a useful vantage point – and has very much shaped my views on inclusion.

From that vantage point, I suggest that we as a profession consider the following four strategies for cultivating true inclusiveness.

First, we must collect and publicize appointment statistics on a comprehensive array of arbitrator demographics.

There is a direct and powerful link between transparency and inclusion, with the former being a jet engine to propel the latter, as a variety of scholars including Catherine Rogers have recognized. We cannot clearly see our starting point, we cannot measure progress, and we cannot evaluate the effectiveness of our tactics unless we collect and publish relevant data annually.

The progress being made on gender representation is, I submit, largely attributable to work of folks such as my friends Lucy Greenwood (with The Pledge), Louise Barrington (with Arbitral Women), Susan Franck (with her empirical scholarship), and others who harness the power of public data.

Certain institutions, notably the ICC and ICSID, are to be commended for collecting and publishing certain annual data. I would submit, however, that there eight or ten demographics to be collected and published, not just two or three. It would seem to be a relatively simple matter for all of the leading institutions to agree on those demographics and to ensure that the information is collected by means of simple box-ticking on a form when an arbitrator is appointed or confirmed.

This is where the process of inclusion starts – with meaningful transparency and institutional commitment.

In that vein, I will mention a few particularly interesting statistics. As I noted, I am the 44th Alexander Lecturer. After a review of the substantial but somewhat incomplete records at Bloomsbury Square, I am advised that *all* 44 Alexander Lecturers to date appear to have been male as well as what anthropologists would call Caucasian. The first 43 appear to have identified, at least publicly, as heterosexual. It looks as though there is some work to be done, does it not?

Second, we must commit meaningful resources to capacity building (as distinct from marketing) in under-represented communities.

Again, certain institutions – including but not limited to the Vis Moots, the ICC with its Young Arbitrator Forums, JAMS with its Weinstein Fellowships, and the ICDR with its Young & International program – are already creating access and building skills and networks in younger generations. Groups such as Arbitral Women and the Pledge are doing superb work on gender. The Alliance for Equality in Dispute Resolution is effectively raising awareness of challenges in ethnic and geographic inclusion through its network of Alliance Ambassadors. Our own Chartered Institute consistently devotes resources to opening access, building skills, and forging networks in under-represented geographic regions.

Those are just a few examples of the many individual good works and inclusiveness projects scattered across the arbitration landscape. We do not, however, have a comprehensive, coordinated plan for cultivating a broadly inclusive professional field. Given the commercial, competitive, crowded nature of our sector, that would be a tall order to fill, I admit.

Because of its geographic reach, charitable charter, non-competitive posture, and long history of commitment to excellence, I would submit that the Chartered Institute of Arbitrators is uniquely well positioned to confront that challenge – and to consider, germinate, and propagate best practices on inclusion. I would strongly suggest that we commit to doing so. Simply making the effort would send a powerful and empowering signal, perhaps starting with the selection of the next Alexander Lecturer.

Third, we must stop ignoring inconvenient, unprofitable, or unpopular diversity factors.

I will not belabor this important point. I note simply that responding to gender inclusion concerns and deploying resources to East Asia are, at root, smart business decisions, given how C-suites and regional economies are evolving.

Building an inclusive profession requires commitments that may not be as obvious, and not as obviously lucrative, including with respect to racial and ethnic minorities in societies that are not majority white, with respect to national and sub-national geographic areas in which current arbitration flows are light, with respect to LGBTQ people, and in other areas in which doing *right* does not yet equal doing *well.*

I note that I have had conversations at three arbitral institutions about collecting self-reported data on LGBTQ status and been politely waved off. That is a sign of commercial flower arranging, not commitment to inclusion.

Fourth, we must recognize and address the pay-to-play dynamics in neutrals practice. As with data collection, I view this imperative as foundational.

Developing the necessary skills and experience, building vibrant networks, and raising and maintaining one's visibility all involve enormous commitment of resources. It is no coincidence that so many of the successful players in our field are (or were) affiliated with profitable law firms with access to generous marketing budgets.

Frequent conference attendance and conference travel are essential and resource intensive. Too many speaking slots at too many conferences involve sponsorship payments to the organizing entities. Some "top" practitioner lists require sponsorship or membership payments. Other rankings can be and *are* heavily influenced by the extensive advocacy work of large law firm marketing staffs.

Players who can expend the resources to navigate onto the boards of certain institutions benefit immensely from the subsidized travel, networking, and influence mechanisms that such positions provide, which is why they often cling to them so tenaciously. Certifications and credentials, whether from universities or professional institutions, involve significant cost. And so on.

Please do not misunderstand. I am not saying that any of that is corrupt or necessarily untoward.

What I *am* saying is that pervasive pay-to-play infrastructure poses a significant bar to entry and success. It amplifies and concentrates existing privilege. It inhibits and constrains inclusion efforts to a far greater degree than one might imagine.

Initial socio-economic class status is a core and cross-cutting inclusion challenge. It complicates and retards the work being done on other diversity issues. And, unfortunately, our sector appears not to be focused on it in an appropriately serious way.

CONCLUSION.

So, with more questions raised than answers given, I sprint to a conclusion.

Considered individually, technological advancement, pressure for greater transparency, and acceleration of constituent diversity each poses a meaningful challenge to the way in which arbitration has been practiced from its inception, whether dated to Ancient Greece, to Bronze Age Egyptian funerary trusts, or to the English guilds of the Middle Ages.

When the three dynamics are viewed together, the challenge may appear overwhelming, indeed existential, as though something alien and invasive were tearing into the ecosystem.

I submit, however, that there is nothing alien, invasive, or existential about the three topics we are discussing this evening. They are natural, inevitable, and ultimately cleansing dynamics -- necessary enhancements in professional hygiene. They only become existential threats if we refuse to adapt until decisions are imposed on us by outside forces.

I submit that the best way to adapt to the future is to predict it far enough in advance. And of course, as legendary management consultant Peter Drucker stated, "The best way to predict the future is to create it."

That is my core message for the Chartered Institute and our fellow arbitration travelers in the year 2018 about the path forward on technology, transparency, and diversity. Embrace and advocate the inevitable. Study and develop fluency in the emerging dynamics. Lead – don't just observe – the debate. Reach for the steering wheel, not the hand break.

Doing so is guaranteed to make *all* of us stronger, better, and more successful. Full stop.

Kati ake i konei, mata atua kotou e manaaki. That is a traditional Maori closing which means, loosely, "Please forgive me for speaking too long, and praise God that I am now going to stop talking and sit down."

Thank you for listening.

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