

Experience

speaks volumes



What are key factors when considering moving all or part of a dispute from court to arbitration?

Confidentiality is a key one. Often disputes among family or close business partners are better decided behind closed doors, which arbitration provides. Another is a chance to choose the arbitrator rather than taking chances with a judge being assigned with little familiarity of the particular subject matter. Another may be speed if the court case is on a list taking one or more years to be reached for trial.

Reflecting on your own experiences over the years, what advice would you offer to today's arbitration counsel?

Advocacy before an arbitrator, or a panel of arbitrators, involves the same skills that are required in a court trial. You can expect the evidentiary rules to be the same and applied the same as in a court, particularly before an experienced arbitrator. The procedure can be perhaps a little more tailored than in court, and arbitrators are keen on finding the most expeditious way of resolving the case. Some issues such as costs are different from the court rules. Becoming familiar with arbitration through texts on arbitration is worthwhile.

What are important considerations for counsel arbitrating disputes in the commercial, construction, energy, and other areas of dispute?

Choose good expert witnesses who can be objective and stand-up to cross-examination. Remember that the arbitrators chosen will have had experience in the particular field, and will be quick to spot a less than objective or partisan expert or an expert who is testifying beyond his or her field of expertise. Consider this carefully when qualifying your expert.

Q&A SERIES

Frank Newbould, K.C.

Arbitrator

The Honourable Frank J.C. Newbould, K.C., was appointed to the Ontario Superior Court of Justice in 2006. Prior to his appointment on the bench, he was a partner at Borden Ladner Gervais in Toronto with broad litigation and arbitration practice involving corporate and commercial disputes, among many other areas. As a Member Arbitrator, a shortlist of topics involved in his appointed arbitrations are energy projects, partnership and shareholder disputes, construction and engineering design, real estate development, and ground lease disputes.