

Experience

speaks volumes

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

Defendants – not only plaintiffs – benefit from moving to arbitration, resolving disputes sooner, and saving legal costs. They can get on with their business, be productive, and get a contingent liability off their books. They can get on with life without the dispute hanging over them. Defendants will save the cost incurred each time their lawyer needs to “pick up the file to get back into it”. An earlier resolution avoids the defence getting worse (witnesses forget, move on, and/or lose any desire to work on an old problem, or die). If there is a good defence, why delay? If there isn't good defence, settle – defendants usually get a better settlement before the plaintiff incurs more costs. In arbitration, a defendant has a say in choosing the decision-maker. It is more efficient and less costly: one tribunal case manages throughout, hears all motions, and hears the ‘trial’. Also, arbitration reduces the adverse publicity risk.

Reflecting on your arbitration experience, what is your advice to counsel doing an arbitration?

Arbitration advocacy – like all advocacy – is about persuading your tribunal. But some things are different. You have the same “decider” from start to finish. You only get one chance to make a first impression. You are presenting your case from Day 1. Your “decider” may have subject matter familiarity / expertise and thus a shorter learning curve. Often your client is more “visible” (e.g.: attending case management conferences), which can be an advantage. Being cooperative and constructive throughout pays dividends. Generally, tribunals expect timeliness, focus, and efficiency. Direct evidence usually is written. Hearings often are shorter and more focused.

What are important considerations for counsel arbitrating corporate disputes?

Your wisely chosen arbitral tribunal will be familiar corporate disputes, the business-financial world, business conduct, corporate documentation, commercial reasonableness, relevant law, business valuation, and measures of damages. This means counsel, fact witnesses, and experts can “cut to the chase”: pleadings, document production, evidence, and all submissions can be more focused.



Q&A SERIES

The Honourable Barry
Leon, FCI Arb

Arbitrator

Barry, served as the Presiding Judge of the BVI Commercial Court from 2015 to 2018. He is an experienced Arbitrator and Mediator, specializing in corporate and commercial disputes, contract issues, shareholder and business breakups, joint ventures, employment, insurance, intellectual property, technology, expropriation, natural resources, and construction conflicts. Barry was Chair of the Arbitration Committee of ICC Canada and is a Fellow of the Chartered Institute of Arbitrators (FCI Arb). He is also an International Mediation Institute (IMI) Certified Mediator and a Fellow of the International Academy of Trial Lawyers. In 2012, Barry was shortlisted by Global Arbitration Review for its ‘Best Prepared’ Arbitrator award.

ARBITRATION PLACE

An all-encompassing approach