

Experience

— speaks volumes —

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

Speed and efficiency are the main drivers of movement from court to arbitration, especially in light of the continuing backlog the courts are facing.

Case Management Arbitration is a woefully underutilized tool designed to facilitate the faster progression of court cases from pleading to setting down for trial. Under CMA, the parties jointly appoint a case management arbitrator to determine all interim procedural matters that would otherwise require a motion date or case conference before the courts.

By outsourcing interim matters to an arbitrator who is not beholden to the court's heavily restricted schedule, parties can move forward more expeditiously and avoid duplicative legal fees incurred for counsel re-ramping when matters grind to a halt to wait for a long-deferred court date, and then heat up again many months later.

Once all interim steps are determined, and the case is ready to be heard, the parties can set down for trial before the court. Pro tip: to obtain even quicker trial dates, parties can set down as soon as pleadings close and, with the assistance of an experienced case management arbitrator, they can work backwards from the trial dates to backfill the interim procedural matters in the interval between the close of pleadings and those first available trial dates.

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

Arbitration moves fast, and counsel needs to move with it. Critical dispute analysis needs to occur from the outset to determine the most expedient procedural framework, and to identify which procedural safeguards are mission critical to a fair hearing.

Procedural decisions must make sense for the specific dispute in question, and the evidentiary needs of that hearing. Procedure is set at the First Procedural Meeting with the Arbitrator. Sometimes, particular rules or processes are set out in the arbitration clause or agreement to arbitrate itself. More commonly, the parties work with the Arbitrator to determine the procedure on an ad hoc basis. Even where certain rules are invoked in the clause, they may not make sense for the particular dispute before you, in which case parties should confer about the possibility of consent amendments to the clause or waivers of certain provisions thereof. Remember, parties can always vary the terms of an arbitration clause, or enter into a post-dispute agreement to arbitrate, themselves on consent.



Q&A SERIES

Megan Keenberg

Arbitrator

Megan Keenberg, C.S., Q. Arb., Q. Med., joined Arbitration Place's inaugural NextGen Roster of arbitrators in 2021 and advanced to the Main Roster in 2022. She brings a fresh perspective and pragmatic approach to mediation and arbitration, leveraging her extensive experience as a commercial litigator, business acumen as an entrepreneur, and people-reading skills as a professional actor. Megan's unique background provides her with sharp insights into the human factors behind business decisions and a keen ability to assess credibility, motive, and underlying interests. As an arbitrator, Megan is committed to ensuring process efficiency and cost-effectiveness. She is a pioneer in Case Management Arbitration, helping litigants move their cases forward more expediently than traditional court timelines allow. As a mediator, she redefines and views disputes in ways that uncover creative, win-win settlement opportunities. Her innovative and rigorous approach to dispute resolution has made her the preferred neutral for many leading practitioners and litigants.

ARBITRATION PLACE

An all-encompassing approach