

*Western Canada Commercial Arbitration Society  
Hot Topics # 2*

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# Scenarios

1. Party A is arbitrating a matter for the first time with Party B and Party A believes Party B may have already arbitrated the exact same issue under an identical agreement with a third party. Under ADRIIC Rule 4.13. Party A asks you to direct Party B to produce any such decisions it may have in its possession as relevant documents. Do you order its production?
2. Party A is arbitrating a matter with Party B and in response to the Claim Party B alleges *Res Judicata* based on a prior arbitration award between Party A and Party B on the same contractual provisions Party A pleads in the present case. Party A denies that is the case and Party A believes Party B may have already arbitrated the exact same issue under an identical agreement with a third party. Under ADRIIC Rule 4.13 Party A asks you to direct Party B to produce any such decisions that Party B may have in its possession. Do you order production?

## *Scenarios*

3. Under scenario 2 you have ordered production of any other decisions that Party B had in its possession. Party A now proffers 2 of those decisions at the hearing. Do you admit those decisions and if so, as what?
  
4. Under scenario 2 you have ordered the production of any other decisions that Party B had in its possession. Party A advises that one of those decisions is merely a statement that the third party is entitled to damages of x amount, as the parties to that prior arbitration specifically asked the Panel not to issue any reasons, only an award of damages. Party A now asks that the materials from the arbitration proceedings related to that award be produced to give the necessary context to the award. Do you make such an order?

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## ADRIC Arbitration Rule 4.13 Producing Documents

[4.13.1](#)

[4.13.2](#)

[4.13.3](#)

[4.13.4](#)

[4.13.5](#)

[4.13.6](#)

[4.13.7](#)

## 4.13.1

Unless the Tribunal orders otherwise, ... a party must deliver to the other parties a list of all Documents available to it on which it relies, including publicly available Documents.

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## 4.13.2

On request, a party must deliver electronic copies of any Documents it lists under Rule 4.13.1.

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## ADRIC Arbitration Rule 4.13 Producing Documents

[4.13.1](#)

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## 4.13.3

A party may deliver to any other party a Request to Produce.

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## ADRIC Arbitration Rule 4.13 Producing Documents

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# 4.13.4

A Request to Produce must:

(a) contain a description:

i. identifying each requested Document;

or

ii. giving sufficient detail (including subject matter) of a narrow and specific requested category of Documents that a party reasonably believes to exist...;

(b) explain how the Documents are relevant to the case and material to its outcome;

(c) state that the Documents are not in the possession, custody, or control of the requesting party or state why it would be unreasonably burdensome for the requesting party to produce the Documents; and

(d) state why the requesting party assumes the Documents are in the possession, custody, or control of another party.

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## 4.13.5

The party to whom a Request to Produce is delivered must produce all the requested Documents in its possession, custody, or control that it does not object to producing. The party must deliver the Documents to the other parties and, if the Tribunal orders, to the Tribunal.

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## ADRIC Arbitration Rule 4.13 Producing Documents

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## 4.13.6

If the party to whom the Request to Produce is delivered objects to producing some or all of the requested Documents, it must state its objection in writing to the Tribunal and the other parties. The reasons for objection must be one or more of the following:

- (a) lack of sufficient relevance to the case or materiality to its outcome;
- (b) legal impediment or privilege under the legal or ethical rules the Tribunal determines apply;
- (c) unreasonable burden to produce the requested Documents;
- (d) loss or destruction of Document(s);
- (e) commercial or technical confidentiality;
- (f) special political or institutional sensitivity (including Documents that have been classified as secret by a government or a public international institution);
- (g) considerations of procedural economy, proportionality, fairness, or equality of the parties; or
- (h) not satisfying a requirement of Rule 4.13.4.

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## 4.13.7

A party may ask the Tribunal to rule on an objection. The Tribunal must, in consultation with the parties, consider the Request to Produce and the objection. The Tribunal may order the party to whom the Request to Produce was delivered to produce Documents in its possession, custody, or control if the Tribunal determines:

- (a) the issues the requesting party wants to prove are relevant to the case and material to its outcome;
- (b) none of the reasons for objection under Rule 4.13.6 applies; and  
the Request to Produce satisfies the requirements of Rule 4.13.4.

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# ICDR Rule 21.5

The tribunal may condition any exchange of information subject to claims of commercial or technical confidentiality on appropriate measures to protect such confidentiality.