

Western Canada Commercial Arbitration  
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# Key Considerations from the Arbitrator's View

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# Observations of the ICDR and ICC Developments

- ▶ Both Arbitral Institutions Making Great Strides in:
  - ▶ Diversity Efforts
  - ▶ Reducing Cost and Time
  - ▶ Disclosure and Transparency

# Diversity Efforts

## ▶ General Observation

- ▶ Proven in various psychology studies that a diverse group of individuals will collectively think and discuss options more thoroughly than a homogenous group of individuals due to the differences in individual differences whether that be due to gender, race, or ethnicity.
- ▶ Diversity broadens the pool of arbitrators thus reducing work load on the “most wanted” group of arbitrators.
- ▶ As societies move towards more gender-equality laws and cultures, the arbitration industry must mirror its clients and the societies that it serves and help advance the profession.
- ▶ Increases opportunities for women and offers role models to encourage more women to enter the arbitration profession.

# Reducing Time and Cost

- ▶ White & Case/Queen Mary Survey highlighted Cost, Lack of Arbitrator Efficiency and Lack of Speed as 3 of the top 4 concerns with arbitration
  - ▶ Given the complaints by parties, question is why?
    - ▶ Often goes to arbitration selection -most important decision parties can make
    - ▶ Arbitrators often “overbooked”
  - ▶ Both ICDR and ICC looking at ways to reduce in rules
    - ▶ Turn around of awards once close of hearing required within a set time
    - ▶ ICDR-Limits and discouragement of discovery
      - ▶ Canada Courts disfavor-similar to NSW in Australia
    - ▶ Expedited Rules
    - ▶ Emergency Arbitrator Rules

# Disclosure and Transparency

- ▶ Number one reason for award vacatur is failure to disclose
- ▶ ICDR and ICC offer their own aspects of how to resolve
  - ▶ ICDR requires detailed disclosure requirement
  - ▶ Parties can object and raise issues to ICDR with resolution thru ARC Committee
- ▶ ICC now publishing names of its arbitrators on its website
  - ▶ Will give insights as to number of arbitrations
    - ▶ Even if arbitrator agrees to award turnaround time, question as to the attention being spent on particular cases and how that affects the decision-making process
  - ▶ Will give insight as to “diversity” of arbitrators appointed
- ▶ ICDR has a list of its Energy Arbitrators
  - ▶ Provides parties with enhanced confidence over an arbitrator’s qualifications

# Questions for the Institutions

## ▶ Increase in Number of Cases

- ▶ ICDR has Technology and Insurance as the largest increase in type of cases-Energy is third
- ▶ ICC has Construction as its largest sector and Energy number 2
- ▶ Both show Energy as an increasing area being arbitrated
  - ▶ What types of energy cases are being filed?
  - ▶ Who are the typical filers?
  - ▶ What is the average size of the claims being submitted in the Energy Sector
- ▶ Given the answers to these questions-do the ICDR and ICC see the recent developments assisting in the Energy cases and if so, how?

## ▶ Appeals

- ▶ Controversial
- ▶ AAA Commercial Rules have
- ▶ What is the opinion of both institutions as to whether ability of appeal will increase or decrease parties' favor towards arbitration and will they use it if made available?
  - ▶ If so, how best would such a process work? Another panel of arbitrators-similar to AAA model?

# Arbitral Institutions Vs. Ad-Hoc Arbitration

## ▶ Pros

- ▶ Specialized arbitral institution administers the arbitration process including financial aspects and arbitrator compensation
- ▶ Each institution provides a set of procedural rules
- ▶ Institutions may provide predictability before a local court
- ▶ Review of draft awards
- ▶ Ability to independently deal with issues of disclosures and challenges
- ▶ Vetting of and assistance with arbitrator selection

## ▶ Cons

- ▶ Administration and time to deal with issues
- ▶ Perceived added cost

- ▶ Both institutions addressing cons with new developments