

The 2019 ICC Commission Report touches on a whole range of issues with party appointed experts in construction arbitration.

But the devil is in the detail...



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# Witness and Expert Evidence – An Arbitrator’s Perspective

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## Key Issues for Party Appointed Experts

Two methods of expert appointment:

- Tribunal Appointed Experts
- Party Appointed Experts



The majority of experts now deployed in international arbitration are party appointed.

Areas of Expertise

Identification of Experts

Common Issues within Disciplines

Common Data Sets

Joint Reports First?

Early Tribunal Interaction

Hot Tubs

Assistance with the Award

# Witness and Expert Evidence – Expert Hot Tub

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# The Value of Joint Expert Reports

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What are some benefits of, and issues with, different approaches to producing expert reports?

When is it most effective to produce a joint report?

How might views on joint reports vary between quantum, and delay and disruption experts?

# Data and Disclosure

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What value do common data sets have for experts on both sides?

What input should experts have on document production requests?

Do experts feel empowered to seek the disclosure of necessary documents?

# The Role of the Tribunal

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What can tribunals do better to make experts' work more valuable for parties and the tribunal?

What is the role and value of proactive case management e.g. setting rules of engagement for experts?

How can the tribunal ensure first time experts are not overly influenced by lawyers to adopt extreme positions?

# Independence

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Should we distinguish experts involved in the preparation of claims from those giving expert evidence or is it possible/desirable to have a truly independent expert witness involved in both aspects?