

Masterclass on Arbitral Advocacy

Advocacy and the Role of the Hearing

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Persuading the Tribunal as to...

- What happened/what is the situation?
- What consequences should flow from this?

Fact Evidence

- Documents (contracts, meeting notes, technical diagrams)
- Fact Witness (Statements and Testimony)

Expert Evidence (technical, quantum, law)

- Expert Reports
- Expert Witness Testimony

Counsels' submissions (written and oral)

Occasions

- Correspondence/Written submissions
- Procedural and Preliminary Meetings
- Hearings

The heart of the common law process

- The central occasion for ventilating issues of fact and law
- Decisive and cathartic

But costly

- Requiring precious in-person time
- Requiring many pre-hearing procedures
 - to avoid surprise
 - to address contingencies

Tribunal-led procedure

- Identifying issues of fact and law that require episodic meetings
- Some meetings require witnesses
- Fact-witness evidence is of secondary relevance

Lessons from the Civil Law?

- Oral testimony is just one way of advocating the facts
- Oral argument is just one way of advocating the law

Hence

- the Hearing need be but one of many important occasions for advocacy

Tribunal engagement can streamline the process by encouraging the use of many ways of advocating

- documentary evidence,
- witness statements, and
- written submissions

Each of these can serve as an integral feature of the arbitral process (and not just as a means of preparing for the Hearing)

Precious hearing time can and should be reserved for

- critical witness testimony
- consolidating submissions
- confirming tribunal understanding



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