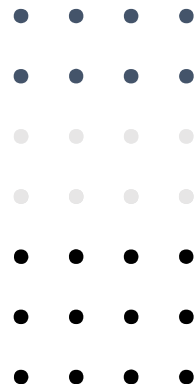


Procedural Innovations on the Horizon



SCA Conference Sicily
Sunday 12 May 2024

Professor Doug Jones AO
and
Professor Janet Walker CM
www.dougjones.info
www.janet-walker.com



Overview

How should the arbitration space manage:

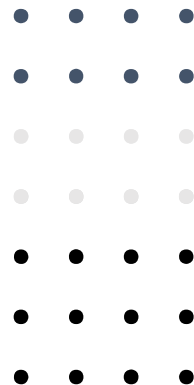
- i) Expert Evidence
- ii) Disclosure of Documents
- iii) Case Management Conferences



Dispute Resolution Forums

Considered:

- Arbitral Tribunals
- Specialized Courts (e.g. **TICC** list, Singapore International Commercial Court)



Expert Evidence – A Double Edged Sword

Role of Experts

- ▶ Technical
- ▶ ‘Analysis’ (e.g. quantum experts)
- ▶ Legal Experts

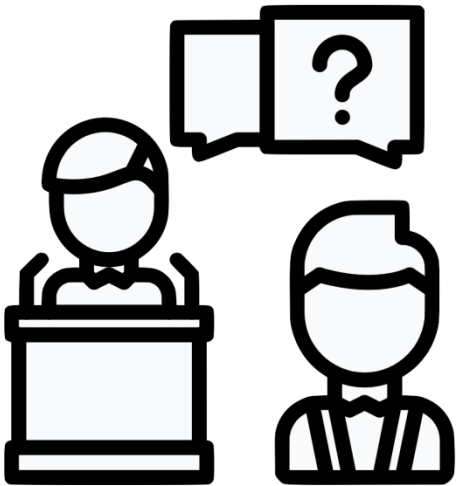
Challenges

- ▶ Managing Delay
- ▶ Exorbitant Costs
- ▶ Excessive volume

Solutions

- i) Early-Stage Procedure
- ii) ‘Hot tubbing’
- iii) Post-Hearing Expert Access Protocol
- iv) Methods of Appointment

Managing Expert Evidence: Early-Stage Procedure



- 1) Determination of key issues by tribunals and parties – conflict and competency challenges tackled early
- 2) Common list of questions
- 3) Deferral of reports until evidence available – collaboration based on common data set
- 4) Joint reports: informal discussion, ‘without prejudice’ drafts
- 5) Individual reports on disagreements only
- 6) Reply reports

Managing Expert Evidence: 'Hot Tubbing' and Post-Hearing Expert Access Protocol

Hot-Tubbing

- Concurrent vs linear expert evidence: repetition, accuracy, accountability
- Timing the hot tubbing correctly: avoiding too little too late

Post-Hearing Expert Access Protocol

- Agreement between the tribunal, parties and relevant experts *after* the main hearing to calculate figures
- Calculations provided to parties with final award

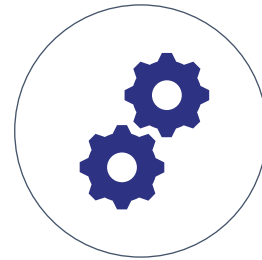
Methods of Appointment

- Comparing Tribunal vs Party appointment
 - Adversarial vs Civil influence
 - Removing Sources of Bias (renumeration)
 - Management of experts easier under Tribunal Appointment
 - Respecting party autonomy?
- SICC Rules
 - Emphasis on permission and oversight
 - SICC must consider
 - (i) Whether evidence will contribute *materially* to resolution
 - (ii) Whether can be resolved by other means

Disclosure of Documents – A Common Source of Delay

Dominant Frameworks

- IBA Rules & Redfern Schedules
- Inadequate in isolation



Suggested Improvements

- Collaboration and early conferral between parties
- Reigning in experts' disclosure requests: identifying common positions, proportionality
- Revisiting disclosure as issues emerge

Disclosure of Documents – SICCC *Rules*

O 12 r 1 – disclosure limited to documents parties intend to rely on

O 12 r 2 – can be served on any person & requesting party must outline inter alia how documents are relevant and material to their case

Discretion to order alternative modes of disclosure

Disclosure

Authors' Suggestions

Drawing from SICCC

Identification and Management of Issues – Midstream CMCs

Purpose

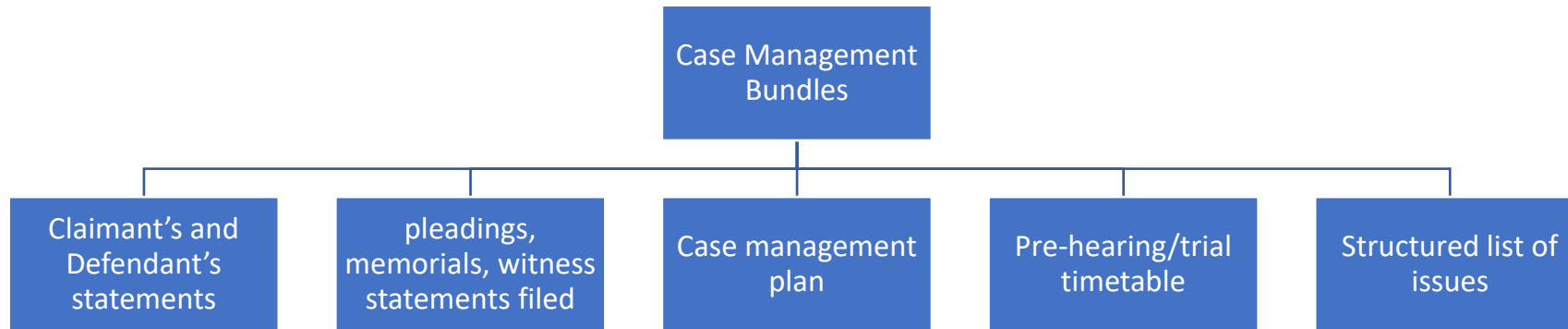
- ▶ Informing the tribunal
- ▶ Understanding materiality and proportionality of documents disclosed
- ▶ Avoiding blind spots through engagement between parties, tribunals – even witnesses

Suggestions

- ▶ Tabulation of information: live document
- ▶ Remain flexible in timing and frequency: weigh up added time and cost of CMCs

Midstream CMCs – SICCC Framework as a model for the arbitration space?

Rules clarify what parties should agree upon before CMC: matters discussed, identifying real issues, Case Management Bundles



Midstream CMCs

Authors' Suggestions

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www.dougjones.info



Professor Janet Walker CM
www.janet-walker.com