

How to Prepare for Arbitration

- 1) First, **read your Contract** and assure you follow the requirements in the Arbitration Clause.
 - a) **Notify the Tribunal** in writing that you want to file for arbitration.
 - b) Carefully follow the rules and procedures of the Tribunal, paying particular attention to notice requirements.
 - c) **Begin steps 2-8 at once.** Procrastination is an ally to the opposition. Therefore, start preparing your case as soon as a problem is recognized or identified.
 - d) Select your **choices for arbitrator** from the list provided by the Tribunal and notify the Tribunal as quickly as possible.
 - i) Exclude anyone with whom you have prior dealings or personal knowledge
 - (1) Or at least disclose the true facts of the potential conflict of interest and request that your opponent review and agree to that arbitrator.
 - (2) Do NOT contact any potential arbitrator on the list. That would be a breach of neutrality.
 - ii) Expect that any arbitrator will be truly neutral and unbiased. Therefore, look for those persons whom you feel are most likely to:
 - (1) Have relevant experience and knowledge of your particular circumstances and issues.
 - (2) Appropriate fee schedule.
 - (3) Appropriate site or location availability.
- 2) Thoroughly **research all documentation** related to the dispute.
 - a) Keep originals in a safe place. Work with copies.
 - b) Do not rely on memory. What is remembered today may be lost tomorrow.
 - c) Collect and organize photos and videos of the event, scene, damage or injury. If you have not already made a photographic or video record, do it now.
- 3) Reconstruct in writing – as objectively as possible – a **brief narrative** of the events leading to the dispute.
 - a) This should be a one- or two-page synopsis, concisely stating the overall case as you believe it at this point (you will likely refine this statement later).
 - b) Be absolutely honest.
- 4) Start (or continue) a **diary**.
 - a) Record names, dates, phone numbers, addresses, email addresses and the substance of conversations.
 - b) Use computer software wherever possible (ACT!, Outlook, Goldmine).
 - c) Remember the five “W’s” – Who, What, Where, When and Why.
- 5) Draft a **list of issues** to be decided.
 - a) Review these issues with a fresh mind after reviewing all documentation.
 - b) Issues are different from facts. Don’t confuse them. Group the facts of the dispute into over-arching issues.
 - c) Have you missed some issues? Look again at the facts of the dispute.
 - d) Are some issues only emotionally relevant? Anger and other emotions can make molehills into mountains. Weed out the “little”, less relevant issues.

- 6) Sort the documentation (#2 above) according to issues (#5 above).
- 7) From your diary and documentation, draft a **timeline** of the dispute. What was done when, by whom?
 - a) Arrange it chronologically.
 - b) Your timeline helps to tell the story and to put the facts and issues into perspective.
- 8) **Re-examine** your case for weaknesses, asking questions.
 - a) Did I do or not do something that might have contributed to the dispute?
 - b) What percent of the problem might an arbitrator possibly consider to be my fault?
 - c) You may want an uninvolved 3rd party to help with this step: an experienced, clear-thinking friend or an advocate (consultant or attorney).
 - d) Remove extraneous issues and documents. Clean up the case. Boil it down to the clear, clean, strong points.
 - e) All of the foregoing have helped to establish and explain the “merit” of the case.
- 9) Now collect your records of **costs and damages**.
 - a) This will become your explanation of the “quantum”, that is, I have proved merit (“I was damaged...”) and now I will show quantum (“...and here’s how much.”)
 - b) Obtain bids or copies of receipts to validate repair or replacement claim.
 - c) Don’t overlook hidden costs such as extended overhead, lost wages, etc.
- 10) Perhaps look up applicable case law (court decisions) relevant to your circumstances.
 - a) The arbitrator is not necessarily bound by court decisions, but may find them helpful guidelines, particularly if a decision could easily go either way.
 - b) You will want to know if prior court decisions are *NOT* in your favor. Perhaps you want to try again to mediate this case to achieve the best possible settlement.
- 11) **Keep updating** your diary and documentation, including additional photos if there are changes you need to show.
- 12) Decide **who should present your case** in the arbitration.
 - a) Analyze your capability to represent yourself effectively under stressful conditions.
 - b) Would it be better to have a professional advocate help present your case?
 - i) A trained consultant
 - ii) An attorney
 - c) The narratives and documentation you have prepared (above) will allow you to quickly bring a 3rd party up to speed on your case (and save you money).
 - d) Find out who will represent the other party. Are there equal presentation skills on both sides?
- 13) Now **nail down the exact case you plan to present at arbitration and how you will deal with the opposing party’s defenses and counter-claims.**
 - a) With your advocate (if you choose to have one):
 - i) Refine the thesis of your case – clear, clean, concise.
 - ii) Determine what evidence and documents you will use to effectively prove your case
 - (1) Re-examine each piece of evidence for its strength and relevance.
 - (2) Assure you have all critically needed evidence (such as an invoice, letter or bid). Usually, you will *NOT* have an opportunity to present evidence *AFTER* the hearing.

- (3) Strike a balance: too much evidence can be just as damaging as too little.
- (4) Prove your point and move on. Don't beat the proverbial dead horse.
- iii) Determine what evidence and documents OTHERS may possess which you need for your case
 - (1) Will they release them to you?
 - (2) Will a subpoena be required? That may not be available if the arbitration is very informal.
 - (3) Notify the Tribunal's case manager early if a subpoena is required.
- iv) Determine if any inspections or tests are needed and make arrangements immediately.
- v) Determine if witnesses are needed, and make sure they are aware of the date, time and place of the hearing.
- vi) Determine if an interpreter is needed, and make sure they are aware of the date, time and place of the hearing.
- vii) Evaluate your alternatives and your risk in "taking this all the way". Are you prepared to accept a decision that is *NOT* in your favor. Consider another attempt to negotiate or mediate, if you feel your case is weak.
- b) Prepare a **witness list** with a brief summary of what testimony each witness will offer.
- c) When directed by the Tribunal: exchange your evidence with the opposing party.
 - i) Failure to produce evidence in advance is not necessarily fatal to your case, but may be viewed by the arbitrator in a negative light. You do not want to appear deceitful or incompetent.
 - ii) Mark your exhibits as directed by the Tribunal. For example, you may number your pages 1.01, 1.02, 2.02, etc. or A.01, A.02, B.01, etc. If the Tribunal does not offer instruction on this point, ask.
 - iii) Examine your opponent's evidence very carefully.
 - (1) Is it convincing?
 - (2) Does it contradict your case?
 - (3) What are the weaknesses?
 - (4) What questions should be asked of your opponent? *Write them down.*
 - (5) How does the opposing evidence affect the strength of your case?
 - (6) What can be done to effectively rebut your opponent's evidence and positions?

14) Arrive at the hearing ahead of time and in top condition.

- a) Get plenty of rest the night before the hearing.
- b) Don't consume alcohol or large meals the night before the hearing. Stay lean and clean to keep a clear head.
- c) Consider driving to the hearing site the day before, to assure you know how to get there and how long to allow for drive time during "rush hour".
- d) Avoid drinking too much coffee or tea prior to the hearing.
 - i) You don't want to be jittery.
 - ii) Though the arbitrator will probably indulge your need for biological breaks, you want the other party to appear to be the basket case, not you.
- e) Take a "sports bottle" of water and a couple of throat lozenges into the hearing room with you. You can overcome dry mouth or a "frog in the throat".