Kluwer Arbitration Blog

So, You Think You Know Arbitrators? Test Your Knowledge with Arbitrator Intelligence's Arbitrator Perspectives Quiz

Catherine A. Rogers, Fahira Brodlija (Arbitrator Intelligence) · Thursday, March 24th, 2022 · Arbitrator Intelligence

Arbitrators make many decisions that affect the outcome of a case. The most obvious decisions are, of course, their decisions on the merits. But arbitrators also make a host of other procedural and case management decisions that can affect the outcome of a case. Procedural and case management decisions may include rulings on briefing and hearing schedules, interim measures and security for costs, document production, bifurcation or trifurcation, proposed settlements, awards of costs and fees, and (if they are party-appointed arbitrators) the choice of presiding arbitrator.

Despite the fact that they may affect the outcome of a case, arbitrators' perspectives on these various procedural and case management issues often elude standard forms of research. Procedural and case management issues are not generally detailed in published awards. Apart from a few, arbitrators only rarely have publications about their views on these issues.

In the absence of any public sources, parties and counsel usually have to guess at arbitrators' case management predilections. To aid in this guessing game, parties and counsel often rely on proxies for their desired procedures. For example, parties and counsel rely on arbitrators' legal background (i.e., common law or civil law training and background) or their nationality to guestimate arbitrators' views on various issues.

These guesses based on legal training and background may have been reasonably good indicators *yesteryear*. But today, the internationalization of legal education, the popularity of LLM degrees, and extended foreign posts for practicing lawyers mean that arbitrators often do not have a clear national identity or legal culture. Instead, arbitrators' legal culture is often an amalgam of many legal traditions, with significant influence also from their own experience as an international lawyer or arbitrator. As a result, nationality and initial legal training are no longer accurate indicators of arbitrators' approach to procedural issues.

If not publicly available or readily discernible from an arbitrator's background, how do parties and counsel obtain information about an arbitrators' case management and procedural propensities? When publicly available sources run out, parties and counsel rely on word of mouth referrals from friends and colleagues or (more rarely) interviews with arbitrators. These sources also have significant limitations, however.

As the pool of arbitrators expands, networks can run short. Meanwhile, ethics rules prohibit all but

the most perfunctory questions in arbitrator interviews. Questions about procedures in the case are definitely off-limits. As a result, parties and counsel are often forced to appoint, or agree to the appointment of, arbitrators about whom they have little concrete information about how they will manage important procedural issues in the case.

That is where Arbitrator Intelligence comes in. Arbitrator Intelligence has pioneered revolutionary new tools to enable parties and counsel to consider detailed, concrete information about arbitrators' procedural experience and past rulings.

One way Arbitrator Intelligence facilitates this information is by curating the global exchange of feedback about arbitrators. This feedback is collected from counsel and parties who have appeared before them, on a confidential and anonymized basis. Importantly, Arbitrator Intelligence collects this information globally either through an online submission form or an interview with our experienced researchers. With access to this information, parties and counsel are no longer limited to their personal and professional networks and they no longer have to guess.

Now, the feedback provided by parties and counsel can be supplemented with insights *directly from arbitrators themselves*. Through Arbitrator Intelligence's new Arbitrator Perspectives Survey, arbitrators answer questions on issues that parties cannot generally obtain from publicly available sources or referrals. These answers address precisely the kinds of issues parties and counsel use to decide which person on their shortlist they should appoint to the arbitral tribunal.

Arbitrators' Survey responses are made publicly available on Arbitrator Intelligence's website free of charge. The standardized nature of the Survey questions makes it possible for parties and counsel to compare perspectives among different arbitrators.

Since the launch of the Arbitrator Perspectives Survey just a few months ago, a wide range of arbitrators with diverse backgrounds and wide-ranging experience have submitted responses. We found that some of the responses confirm our assumptions about arbitrators, but others surprised us. Responses to date clearly indicate, as explained above, that national legal culture is no longer a reliable proxy.

To see how well you can anticipate arbitrators' responses, take our Arbitrator Perspectives Quiz and e-mail your responses to info@arbitratorintelligence.com before **29 March 2022**. Answers and readers' estimates will be posted on 31 March 2022.

Arbitrator Perspectives Quiz

(based on all responses to the Arbitrator Perspectives Survey collected as of 24 March 2022)

1. Which considerations did surveyed arbitrators most frequently identify as important when selecting a chairperson?

a. previous experience as a chairperson

b. legal training in the law of the seat

c. reputation for specific experience in the relevant industry

d. reputation for being collaborative and/or good at managing conflicts within the tribunal

e. ability to manage technology effectively

f. diversity

g. no known connections to co-arbitrator appointed by the other party(ies)

h. reputation for making extensive disclosures

i. personally sat on another tribunal or worked with in some professional context

j. known for being efficient

k. similar views on procedures and case management

2. What percentage of surveyed arbitrators consider it *inappropriate* for tribunal secretaries to draft the *factual background* section of an award?

a. less than 25%

b. between 26 and 50%

c. between 50 and 70%

d. more than 90%

3. Is there a difference in the rate of civil law and common law trained arbitrators surveyed who consider it appropriate, as a general matter, for arbitral tribunals to encourage and/or facilitate amicable settlement?

a. There is no difference, both consider it appropriate as a general matter

b. There is no difference, both consider it inappropriate as a general matter

c. More civil law than common law based arbitrators surveyed consider it appropriate

d. More civil law than common law based arbitrators surveyed consider it inappropriate

4. Among surveyed arbitrators, which three techniques were the most popular for maintaining efficiency in arbitral proceedings? (pick 3)

a. Establishing and sticking to strict timetables

b. Early resolution of particular issues

c. Bifurcating or trifurcating proceedings

d. Limiting document production

e. Limiting the number of hearing days

f. Conducting hearings online when appropriate

g. Imposing page limits on party submissions

h. Requiring parties to submit binders of the most relevant documents or “hot documents”

i. Staying in frequent communication with co-arbitrators

j. Case management conferences when needed to fine tune proceedings conducting hearings online when appropriate

k. Requiring a Redfern Schedule

5. What percentage of surveyed arbitrators would be inclined, when otherwise appropriate, to order online hearings despite one party’s objection?

a. less than 20%

b. between 21 and 30%

c. between 31 and 40%

d. between 41 and 50%

e. more than 50%

6. What percentage of surveyed arbitrators from common-law and civil-law backgrounds believe that e-discovery is appropriate in some cases (backgrounds based on whether the arbitrator’s primary law degree is from a civil law or common law jurisdiction)?

a. approximately 30% of arbitrators, most of whom have common-law backgrounds

b. approximately 40% of arbitrators, most of whom have civil-law backgrounds

c. approximately 50% of arbitrators, most of whom have common-law backgrounds

d. approximately 60% of arbitrators, equal parts common-law and civil-law backgrounds

e. slightly more than 60% of arbitrators, equal parts common-law and civil-law backgrounds

7. Do arbitrators with a civil-law background (meaning arbitrators whose primary law degree is from a civil law jurisdiction) ever consider it appropriate to grant production of broad categories of documents based on general statements about materiality and relevance?

a. Yes, but less than 10% of surveyed arbitrators

b. Yes, but only 11-20% of surveyed arbitrators

c. Yes, but only 21-40% of surveyed arbitrators

d. Yes, more than 40%

8. What percentage of surveyed arbitrators with civil-law backgrounds (meaning arbitrators whose primary law degree is from a civil law jurisdiction) believe that arbitrators should generally refrain from asking questions?

a. none

b. less than 30%

c. more than 50%

d. all arbitrators

9. What percentage of surveyed arbitrators believe that arbitrators may appropriately interrupt counsel presentations or witness testimony with questions?

a. Less than 10%

b. More than 10 but less than 20%

c. More than 20 but less than 50%

d. More than 50 but less than 75%

e. More than 75%

10. Which of the following were most frequently identified by surveyed arbitrators as a reason to allocate costs and fees in a manner that is different from the way they would ordinarily consider allocating costs and fees?

a. Other tribunal members have different starting assumptions or preferences

b. The parties are from jurisdictions that have different starting assumptions

c. The parties make compelling arguments based on the parties' agreement

d. The law of the legal seat has a different tradition

e. The outcome of the case was a decisive victory for one side

f. The outcome of the case

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