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Huberman shares effective commercial arbitration tips



Toronto mediator and commercial arbitrator [Marvin J. Huberman](#) recently chaired a primer on arbitration for litigators and shared with attendees what makes for an effective commercial arbitration.

Huberman, who also presented and moderated a panel at the Law Society of Upper Canada CPD program, says attendees gained a solid understanding of procedure and substantive law in the area of arbitration, in order to make the pre-hearing and the hearing more efficient and cost-effective, and optimize the chances that a client's dispute will be heard in a fair way, with durable results.

In Huberman's opening presentation, he discussed what an effective commercial arbitration looks like.

"Arbitration can be a highly effective commercial dispute resolution process," he says. "It has tremendous potential to resolve disputes in an effective, efficient, economical, fair and impartial manner."

However, he says, many circumstances must combine to make it effective, including:

- Informed and consenting parties who understand the advantages and disadvantages, and the techniques and concepts of arbitration;
- Respect for, and a healthy attitude towards, ADR and its goals, values, principles and

challenges;

- Clear and robust arbitration clauses and agreements that: address what is and what is not arbitrable, contain “fair and reasonable” provisions, and include signatures of authorized representatives of the parties who understand what is being agreed to;
- Selection of high-quality arbitrators who understand and can effectively perform their multifaceted roles, ethical obligations, powers and limitations;
- A fair process that is truly responsive to the needs, interests and objectives of the disputing parties that begins with the pre-arbitration phase and continues through the arbitration hearing and post-arbitration stages; and
- Selection of the right forum or venue for the arbitration.

“Above all, effective commercial arbitration is all about shaping and controlling the entire arbitral process through arbitral management,” he says. “As ADR guru and Harvard Law professor Frank Sander said, ‘One must fit the forum to the fuss.’”

Huberman notes one should analyze the particular dispute and then find the appropriate forum to assist in facilitating resolutions.

“The correct process for the specific dispute and the particular disputant must be selected,” he says. “An appropriate neutral expert, an arbitrator trained in ADR should be retained in order to custom-tailor the process and explore creative approaches to dispute resolutions to maximize the chances for optimal innovation and neutrally beneficial solutions having regard to the three Ps: the people, the problem and the process.

“Once combined, these circumstances will maximize the chances of achieving the goals of ADR, which is a faster, cheaper and better dispute resolution process than traditional, adversarial litigation in court,” he adds.

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