



# EFFECTIVE ADVOCACY AND MANAGEMENT IN ARBITRATION

## PART 3 – THE EFFICIENT HEARING

# TOPICS

---

- A. Williams' Background
- B. Introduction
- C. Why do we arbitrate?
- D. Examples of Not Achieving the Goals
- E. Process
- F. Planning
- G. Civility
- H. Cost Efficient
- I. Conclusion

# WILLIAMS' BACKGROUND

---

- Therapist
- Experience as an arbitrator, mediator and counsel

# INTRODUCTION



# HOW DO WE GET TO ARBITRATION?

1. Legislation requires arbitration
  - a. UMP through ICBC
2. Legislation provides a choice
  - b. Strata Property Act
3. Contractual requirement

# WHY DO WE ARBITRATE?

## Goals:

1. Speedier process than court
2. More flexible than court
3. Adopt Rules
4. Choose the adjudicator(s)
5. More finality
6. Potential ongoing business relationship

# HOW DO WE DEFINE “EFFICIENT”?

1. Less costly



# ACHIEVING THE GOALS

1. All efforts in the hearing should be focused on a process that will achieve the goals noted







# EXAMPLES OF NOT ACHIEVING GOALS

1. Bird Poop case ***Blackmore v. Owners, Strata Plan VR 274***, 2004 BCSC 1121
2. Special costs ***Hunt v. LMS*** 2556, 2015 BCSC 2412
3. Case - ***Sattva Capital Corp. v. Creston Moly Corp.***, 2014 SCC
4. What can we learn from mistakes?

# PROCESS



# Process

1. The arbitrator must run the process, not the parties or their legal counsel
2. Counsel-represented vs. self-represented parties
  - i. See BCICAC article
3. Adopt a process in the pre-hearing conferences and follow them
  - i. Determine how interim applications will be addressed
  - ii. Agree on the Rules that will frame the arbitration and follow them

# Process (cont'd)

- iii. Determine how parties will communicate with the arbitrator(s) and each other
- iv. Who can attend
- v. Opening statements
- vi. Closing arguments
- vii. Subpoena of witnesses
- viii. Witness statements
- ix. Expert reports and evidence
- x. Site “visits”

# Process (cont'd)

- xi. Agreed statement of facts
- xii. Agreed statement of issues
- xiii. Production of documents/exhibits
- xiv. Arbitrator(s) fees and expenses

# PLANNING



# PLANNING

---

1. Pre-hearing conference(s)
2. See sample agenda





# CIVILITY

# Civility

---

1. Courteous
2. Agreeing in advance if parties wish to be addressed formally or informally
3. Rhetoric limited to openings and closings

# COST EFFICIENT



# Cost Efficient

1. One or three-person panel
2. Adoption of responsive rules
3. Dealing with self-represented parties
  - a. Need to communicate the difference between giving evidence and presenting and questioning witnesses
  - b. Need to communicate the differences between giving evidence, presenting and questioning witnesses, and making submissions



Conclusion

# CONCLUSION

---

**Arbitration can successfully meet its goals if the arbitration hearing is well-planned and well-run**

**Presented by: Patrick Williams**  
**T: 604.643.3171**  
**E: PWilliams@cwilson.com**

These materials are necessarily of a general nature and do not take into consideration any specific matter, client or fact pattern.

**THANK YOU – ANY QUESTIONS?**

