



# Family Law Arbitration

Procedure and Advocacy  
Making the process work  
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**John G Walton**

Commercial Barrister and Mediator

**-BANKSIDE**CHAMBERS



# Introduction

- ▶ Selection of arbitrator
- ▶ Preliminary Conference
- ▶ Pleadings and disclosure
- ▶ Hearing
- ▶ Award



## Selection of arbitrator

- ▶ It is permitted, and often preferable, to interview your proposed arbitrator (see CIArb guidelines on interviewing arbitrators).
- ▶ Consider appointment by agreement between counsel rather than having appointment made by an institution.
- ▶ Family law arbitration is reasonably specialised, though not exclusively so.
- ▶ A number of institutions have lists of arbitrators, though take care over claimed specialisations!
- ▶ Failing agreement, AMINZ will make the appointment under article 11 of Schedule 1 to the Arbitration Act.



# Preliminary Conference

- ▶ *Parties* – is there a trust involved? From January 2021, the Trusts Act 2019 has its own procedures for the arbitration of trusts disputes.
- ▶ *International* – easily triggered, see article 1(3) of Schedule 1 to the Arbitration Act 1996 – Schedule 2 may not apply, save by agreement.
- ▶ *Jurisdictional issues* – consumer arbitration agreement under section 11? Remember the limitations on the arbitrability of family disputes.
- ▶ *Agreement to arbitrate* – any applicable rules, agreements under Schedule 2 of the Arbitration Act (eg, appeals?).
- ▶ *Emergency arbitration* – available where interim measures required (eg, procedural or Mareva injunctions and Anton Pillar orders).
- ▶ *Ongoing mediation* – the Acorn Farms case.



## Preliminary conference cont'd

- ▶ *Timetabling* – exchanges of pleadings, disclosure of documents (requirements for discovery orders?), interim measures, hearing.
- ▶ *Issues* – counsel to agree issues in dispute (issues conference (or Kaplan opening)).
- ▶ *Experts* – party or tribunal appointed.
- ▶ *Costs* – clause 6 of Schedule 2, AMINZ Guidelines, lie where they fall or indemnity?



# Pleadings and disclosure

- ▶ Not litigation – High Court Rules and Evidence Act do not apply.
- ▶ Memorial style points of claim, points of defence and counterclaim, and points of defence to counterclaim.
- ▶ Agreed bundle of documents, avoiding necessity for orders for discovery.
- ▶ Agreed bundle of authorities.
- ▶ List of issues to be determined – Kaplan opening?



# Hearing

- ▶ *Opening submissions* – before the hearing
- ▶ *Pre-hearing conference* – witnesses, time allocations, beware of cross-examination.
- ▶ *Evidence in chief* – tricks and traps.
- ▶ *Experts* – hot tubbing or tribunal appointed, briefs, defining issues, controlling the experts (Code of Conduct does not apply, but is relevant).
- ▶ *Closing submissions* – final day of the hearing.



# Award

- ▶ *Further submissions* - the missing case or issue and equal treatment under article 18 of Schedule 1
- ▶ *Consent awards*
- ▶ *Reasons* – the *Ngati Hurungaterangi* case
- ▶ *Timing* – strike while the iron is hot!
- ▶ *Costs submissions*
- ▶ *Appeals and setting aside*