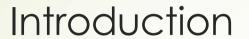
Family Law Arbitration Procedure and Advocacy Making the process work 4 October 2019 John G Walton -BANKSIDE CHAMBERS



- 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 crossexamination.
- 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