

***An Arbitrator's Review of the CCA Guide to Best Practices in Commercial Arbitration
(Fourth Edition) -- 5/23/18***

The College's Guide to Best Practices (Fourth Edition) is an impressive desk top reference written by premier arbitrators for advocates and other arbitrators. I personally know the majority of the editors and contributors who are reporting their experiences, knowledge and insights from the field of play rather than from an academic perspective. The twenty chapters, and two excellent Guidance Note Appendices cover the nuts and bolts of arbitral practice in a clear and concise manner in over 600 pages of content.

The Guidance Notes help arbitrators navigate the technology and culture of the information age. Arbitration demands confidentiality yet so much of the processing of a case involves electronic means and a dependence on computers and the internet. Scheduling, motions, submissions of documents, especially briefs, relies primarily, if not solely, upon the internet. The Note entitled Security of an Arbitrator's Electronic Information provides over a dozen tips and discussions on the why and how of maintaining state of the art protective measures. This is extremely useful since most of us experienced arbitrators grew-up in a non-digital world and are late comers to the digital revolution. Likewise, the Arbitration and Social Media Guidance is a straightforward and useful exploration of arbitrator involvement with social media. The Book advocates Best Practice Principles addresses some thorny communication issues which may have impact upon the perception by the parties and public concerning arbitrator impartiality and duty to maintain confidentiality.

The book is well-organized for practitioners with each of the chapters focused on a specific aspect of arbitral practice. Chapter 2 raises issues, and best practices, pertaining to what I generally refer to as "pre-hearing considerations" such as selection of arbitrators, disclosures, and disqualification, while Chapter 3 delves into the role of Nonneutral, or partisan, arbitrators. Chapter 4 explores the issue of fees and expenses, including when "sore losers" intentionally fail to pay the arbitrator ruling against them. Chapter 5 reviews the complex issues of jurisdiction and arbitrability, waivers, and class claims. Chapter 6 provides a detailed roadmap for case management tips and issues raised in pre-hearing conferences such consolidation and joinder, as subpoenas, evidence, hearing logistics, choice of law, and encouraging mediation and settlement. Motions are covered in the 20 pages of Chapter 7. Chapter 8 on Discovery is an excellent, well-written and comprehensive review of discovery issues on the micro level—what does an arbitrator do, when and why. E-Discovery is covered in Chapter 10, including a step-by-step model for managing the e-Discovery process. A whole chapter, although less than 20 pages, is devoted to the question of the participation of nonparty witnesses, including by deposition or remote means.

The hearing itself is dissected in the 45 pages of Chapter 12, including effectively dealing with closing the hearing and the filing of briefs. Chapter 12 addresses not only the issuance of the award but the complex subject of interim awards and nonfinal substantive interlocutory arbitral decisions. Best practices for remedies, including punitive damages, attorney fees, interest, and sanctions are also included in Chapter 12. The title of Chapter 13 is Postaward Matters. A

concept not personally familiar to me, Emergency Arbitrators, is tackled in the over 80 pages of Chapter 14.

An area not readily familiar to the less experienced arbitrator is the subject of intratribunal relations covered in Chapter 15. There is an excellent, and concise, treatment of what happens between the three or more arbitrators serving as a board or panel. These insights are not readily available elsewhere and can only credibly be expressed by authors who practice in these tribunals on a regular basis. My own experience is that it is far different being one of three impartial arbitrators than serving alone. I personally like the expertise and insight brought into the room by the other two arbitrators, especially if they are of diverse gender or backgrounds. Some topics are raised that I have never seen in print elsewhere, such as sections on inappropriate conduct of an arbitrator. Similarly, the sections on insights into the deliberative process are invaluable for both arbitrators and advocates. This is where the book clearly breaks new ground and differs vastly from an academic article or polemic based upon extrapolation and speculation based upon few facts and little experience. There is also an excellent chapter on Hybrid processes where the neutral wears multiple hats, such as acting to mediate part of all of the case. Again, these are based upon field experiences which are not easily captured and recounted in an educational and useful manner.

There are chapters on class action arbitration, including some treatment of the US Supreme Court line of cases before the decisions issued in May of 2018 declining to void the prohibition of consolidated or class action claims in employment and other arbitration. There is also a separate chapter devoted to construction arbitration and two chapters addressing international proceedings.

Whether you are an arbitrator, advocate or educator, this book is a must to have for anyone spending any significant amount of time involved with commercial arbitration.

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(Reviewer notes that he was a charter member of the College for a couple of years when it was created but was not active and is not a member or otherwise affiliated with the organization.)