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Making Expert Evidence Usable in International Commercial Arbitration

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Abstract

Competing expert reports may leave an arbitral tribunal unable to determine whether a difference in conclusions arises from contested facts, technical methods, or access to information. This doctrinal study examines how international commercial tribunals can make party-appointed expert opinions comparable while preserving each party's opportunity to present its case. It draws on arbitration instruments, judicial decisions, specialist scholarship, and procedural justice research. The analysis develops three criteria for procedural design: identifying the premise that matters, providing a practical opportunity to challenge it, and explaining how the tribunal resolved the challenge. Two Singapore appellate decisions illustrate the legal boundaries of procedural discretion. A hypothetical construction dispute then shows how a focused comparison can isolate the effect of a disputed factual assumption. The article proposes a Ciarb branch pilot to assess how practitioners apply the framework in simulations. The proposal provides a basis for evaluation in practice.

Keywords: international commercial arbitration, party-appointed experts, procedural fairness, case management, expert evidence

الملخّص

قد تُفضي تقارير الخبراء المتعارضة إلى عجز هيئة التحكيم عن تحديد ما إذا كان الاختلاف في النتائج ناشئاً عن وقائع متنازع عليها، أو عن مناهج فنية، أو عن تفاوت في الوصول إلى المعلومات. تتناول هذه الدراسة الفقهية الكيفية التي يمكن بها لهيئات التحكيم التجاري الدولي أن تجعل آراء الخبراء المعيّنين من قِبل الأطراف قابلةً للمقارنة، مع الحفاظ على حق كل طرف في عرض قضيته. وتستند الدراسة إلى صكوك التحكيم، والأحكام القضائية، والأدبيات الفقهية المتخصصة، وأبحاث العدالة الإجرائية. ويُطوّر التحليل ثلاثة معايير لتصميم الإجراءات: تحديد الفرضية ذات الأثر الحاسم، وإتاحة فرصة عملية للطعن فيها، وبيان الكيفية التي فصلت بها الهيئة في هذا الطعن. ويوضّح حكمان صادران عن محكمة الاستئناف في سنغافورة الحدودَ القانونية للسلطة التقديرية الإجرائية. ثم يبيّن نزاعٌ افتراضي في مجال الإنشاءات كيف يمكن لمقارنةٍ مُركَّزة أن تعزل أثر افتراضٍ واقعي متنازع عليه. ويقترح المقال تجربةً تجريبية في أحد فروع المعهد المعتمد للمحكّمين (Ciarb) لتقييم كيفية تطبيقِ الممارسين لهذا الإطار في عمليات محاكاة. ويوفّر هذا المقترح أساساً للتقييم على أرض الواقع.

Making Expert Evidence Usable in International Commercial Arbitration

Imagine that two delay experts agree on when a construction project finished but disagree by 40 days on the delay attributable to a design change. Each report is internally coherent. One expert assumes the contractor could resequence the work. The other assumes the site could accommodate

only one crew in the affected area. The tribunal can read both reports carefully and still miss that a disputed fact, rather than a difference in scheduling expertise, explains much of the gap. An extra round of reports may simply give both experts more room to defend their starting points.

A tribunal should be able to explain what an expert opinion depends on, how the parties were able to test it, and why the tribunal gave it weight. Those tasks start well before the hearing. Ciarb's 2026 work on party-appointed experts calls for earlier engagement and clearer procedural direction adapted to the case (Chartered Institute of Arbitrators [Ciarb], 2026). This article turns that direction into a practical sequence that a tribunal can use to structure the first discussion about expert evidence and revisit when reports arrive.

Statement of the Problem

International commercial arbitration gives tribunals considerable room to organise technical evidence. That flexibility can obscure a basic problem. The parties may exchange full reports, participate in a hearing, and still be unable to identify which assumption accounts for the difference between the opinions. Conversely, a tribunal that attempts to expose that assumption may impose a common scenario before one party has the records necessary to assess it. The problem is therefore how to make competing opinions intelligible while preserving each party's practical opportunity to contest the matters on which the award may depend.

Research Questions

1. How do the parties' procedural agreement, the law of the seat, and applicable evidentiary rules shape a tribunal's authority to organise party-appointed expert evidence?
2. How can procedural justice theory inform the timing and design of opportunities to challenge a material expert assumption, method, or inference?
3. What criteria can tribunals use to choose among written comparisons, expert conferences, and oral examination, and how could Ciarb evaluate those criteria in practitioner training?

Significance of the Study

The study connects three decisions that are often treated separately. The first concerns which technical questions merit expert analysis. The second concerns how parties can test the answers. The third concerns how the tribunal explains the weight it assigned to those answers. Treating these decisions as related helps counsel identify the evidence needed to challenge an opinion and helps tribunals distinguish disputes requiring specialist judgment from disputes that turn on the factual record. For professional education, the framework supplies observable tasks that facilitators can assess without access to confidential case files.

Method and Scope

This doctrinal and practice-oriented analysis examines when a tribunal should intervene in the preparation, comparison, and testing of party-appointed expert opinions. The sources include the UNCITRAL Model Law, the New York Convention, the IBA Rules on the Taking of Evidence, professional guidance, and selected journal scholarship. The analysis first distinguishes binding procedural authority from guidance and then applies those distinctions to a hypothetical

construction dispute. The hypothetical illustrates the proposed procedure and supplies no empirical evidence about its effects.

Theoretical Framework

Procedural justice theory distinguishes the fairness of a process from satisfaction with its result. In a laboratory study, Lind et al. (1990) found that opportunities to express a view influenced participants' fairness judgments, with participation before the decision having a stronger effect than participation afterwards. Their experiment concerned goal setting among students. Its relevance here is conceptual. The timing of participation matters when the decision maker can still use what the participant says. Applied to expert evidence, this suggests inviting comment before a tribunal settles a consequential modelling assumption, particularly when a response would require access to data or additional analysis.

Colquitt (2001) distinguished procedural justice from informational justice in studies conducted in university and employment settings. The distinction helps explain why an opportunity to speak and a comprehensible explanation serve different functions. A party may have been heard but remain unable to see whether the tribunal understood its objection to a model. Equally, an explanation in the award cannot supply a prior opportunity to test an assumption. In this article, the distinction informs two separate design criteria. The parties should have a workable opportunity to challenge consequential technical premises, and the award should explain how the tribunal resolved the material challenges.

These studies inform the questions I ask about arbitral procedure. They do not establish how arbitration users would respond to the proposed framework or determine whether a court would find a breach of due process. That legal inquiry depends on the governing instruments and the procedural record. The framework therefore uses three observable criteria for analysis. The parties should be able to identify the premise that matters, respond before the tribunal relies on it, and follow the tribunal's explanation of its conclusion. Each criterion can be considered separately when assessing a procedural order or designing a training exercise.

Expert Evidence as a Problem of Procedural Design

A tribunal cannot evaluate a technical opinion merely by deciding that the expert is qualified and appears independent. A qualified engineer can reason soundly from an inaccurate site record. An independent accountant can apply a defensible valuation method to a forecast that assumes away the very commercial risk the tribunal must assess. An opinion can also become difficult to evaluate because its underlying data are held by a third party or because a calculation is accessible only in proprietary software. These problems call for different procedural responses. A tribunal that treats all three as questions of credibility may expend hearing time testing the expert's demeanour when the real work lies in establishing which evidence supports the inputs.

The central claim of this article is that the tribunal should preserve a traceable connection between the decision it has to make and the specialist judgment it receives. Traceability has three practical consequences. The parties can identify which part of the opposing opinion they need to answer. The tribunal can distinguish what it must decide from what it can reasonably ask the experts to analyse. The award can explain the path from evidence to conclusion with enough specificity for the parties to understand what happened to their competing accounts. This argument concerns the design of the proceeding and the explanation of the result. It leaves the merits standard, burden of proof, and the substantive measure of recovery to the applicable law and issues in the case.

Three design choices matter when a tribunal intervenes. It should begin by identifying the problem it needs to solve. A joint statement makes sense, for example, when two reports use different assumptions and the tribunal cannot tell how much those assumptions affect the result. The work should then match the stakes. Resolving an arithmetic discrepancy may take a brief exchange, while testing a disputed scientific model may require access to the underlying data and a hearing. Finally, the tribunal should know when to stop. Once the parties can identify and test the disagreement, further expert work may add little. If the only unresolved question is whether a site manager's account is credible, the next step belongs to the tribunal.

The source selection is purposive. The instruments define the procedural framework, the scholarship explains competing approaches to evidentiary discretion, and the professional guidance shows how particular techniques can be implemented. The analysis evaluates those techniques by asking whether they expose a material disagreement, allow each affected party to respond, and give the tribunal a defensible basis for choosing between opinions. Compatibility with the governing framework and effectiveness in practice are separate questions. The first can be examined through doctrinal analysis. The second requires evidence from proceedings or a carefully designed evaluation. Practitioner views can help identify problems worth investigating, while a comparison of outcomes would require a different research design.

The Authority to Intervene and Its Limits

The Seat and the Parties' Procedural Agreement

The UNCITRAL Model Law provides a useful starting point because its provisions make the relationship between party choice and procedural discretion visible. Article 19 gives effect to the parties' agreement on procedure subject to the Model Law and provides a residual discretion in the absence of agreement. That discretion extends to determining the admissibility, relevance, materiality, and weight of evidence. Article 18 imposes equal treatment and protects the opportunity to present a case. Read together, the provisions support tailoring while placing the practical ability to participate at the centre of that exercise. The enacted law of the seat and the terms of the parties' agreement must be checked before the tribunal translates these propositions into an order (United Nations Commission on International Trade Law [UNCITRAL], 2006, arts. 18–19).

The timing of the intervention matters. At an early conference, the parties can explain how a proposal might affect their plans before incurring the cost of a report. After reports are exchanged, an apparently modest change in scope can require new instructions, data, or expert availability. An order that sounds symmetrical may have materially different effects if one expert already has access to the project database and the other must reconstruct it from exported files. Equal treatment in this setting calls for attention to what the parties can actually do with the time and information they have. It does not require identical remedial steps when the barriers to participation differ.

Article 24 adds useful detail. Subject to any contrary agreement, the tribunal decides whether to hold hearings or proceed on documents, while the provision also addresses a party's request for a hearing and the communication of material supplied to the tribunal. Expert reports and other evidentiary documents on which the tribunal may rely are among the materials addressed by the communication requirement. Article 26 separately deals with experts appointed by the tribunal and contemplates an opportunity for the parties to question such an expert at a hearing in the circumstances it specifies (UNCITRAL, 2006, arts. 24, 26). Those provisions are reminders to check the procedural source of the power being exercised. A power to organise competing party reports does not automatically answer how a tribunal may obtain and use technical assistance of its own.

Institutional rules, terms of reference, and prior procedural orders may supply additional detail. Parties may already have agreed how evidence will be exchanged, whether expert reports will be simultaneous, or how the hearing will be conducted. A tribunal should identify those commitments when seeking comments on a different procedure. Even where it has room to act, a reasoned discussion can reveal that a proposed change has an overlooked consequence. Sequential reports, for example, may be useful when the respondent needs to understand the claimant's model before instructing an expert, while simultaneous reports may help surface each expert's initial position before either reacts to the other. A timetable should follow the purpose of the exchange and the structure of the claims.

Soft Law and Professional Guidance

The IBA Rules offer a vocabulary that can be incorporated into a procedural order or used as a reference in the manner agreed or directed for the case. Article 5 addresses party-appointed experts, the contents of their reports, and meetings between experts. Article 8 gives a framework for presenting and questioning evidence at the hearing, and Article 9 addresses the tribunal's treatment of evidence (International Bar Association [IBA], 2020). These provisions are useful because they allow the tribunal to build on familiar practices. For example, a direction to identify the information relied upon can be made operational by asking the experts to point to the precise tab, version, or schedule entry that controls the result.

The value of this vocabulary is conditional on the procedure adopted. A direction borrowed from the IBA Rules should be introduced with enough explanation for participants from different traditions to understand what it requires. Counsel may disagree about whether an expert meeting is intended to produce concessions, record technical agreement, or identify the reasons for continued disagreement. If the order leaves the purpose implicit, an expert who approaches the meeting as a candid professional exchange may be at a disadvantage against one who approaches it as a negotiation. The tribunal can reduce the mismatch by specifying the agenda, whether anyone else may attend, the permitted use of communications, the status of the joint statement, and how unresolved matters will be put to the experts.

The proposal also has a history. Jones (2008) examined Ciarb's protocol for party-appointed experts and discussed independence declarations, expert meetings, and concurrent testimony as ways of improving practice. Ciarb's witness conferencing guidance subsequently described several possible formats, including tribunal-led and counsel-led approaches (Ciarb, 2019). These sources matter because they establish that the principal procedural tools are familiar. The contribution here is to connect the choice of tool to an explicit diagnosis of the disagreement and to carry that diagnosis through to the award. An expert conference, on this account, earns its place when it makes an identified conflict easier to test.

Review and Enforcement

The possibility of post-award review explains some reluctance to limit expert evidence. Article 34 of the Model Law identifies circumstances in which an award may be set aside, including inability to present a case and specified departures from the agreed procedure or applicable framework. Article 36 contains related grounds at the recognition and enforcement stage (UNCITRAL, 2006, arts. 34, 36). Article V(1)(b) of the New York Convention likewise addresses circumstances in which the party opposing recognition or enforcement lacked proper notice or was otherwise unable to present its case (Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, art. V). How those provisions apply depends on the relevant jurisdiction and record.

Berger and Jensen (2016) describe the costs of granting weak procedural requests out of fear of judicial intervention. Their account supports using discretion deliberately, while Godhe (2025) draws attention to the duties that inform a tribunal's choice when evidence may be excluded. Taken together, these accounts suggest that tribunals should pay particular attention to the consequences of a ruling for a party's case. The same page limit can be an ordinary efficiency measure in one proceeding and a serious obstacle in another. A reasoned ruling can identify why the evidence is sought, how it bears on a live issue, and what alternatives are available. The quality of that reasoning is important even when the tribunal expects limited judicial review.

Define the Question Before Commissioning the Answer

Lew (2023) situates evidence within the tribunal's task of resolving the facts and legal questions that remain in dispute. Applied to experts, that starting point suggests a simple question for the first case management conference. Which decision would be harder to make without specialist judgment? A tribunal considering delay may need help assessing the effect of a design change on the critical path. It may be able to establish when an instruction was issued from the correspondence and witness evidence. Keeping those questions distinct helps the tribunal see where technical analysis adds value.

Counsel can identify the disputed issue, the discipline required, the decision the opinion will inform, and the material the expert is expected to use. The tribunal should hear both parties before setting the scope, especially if a proposed limit could remove a viable way to prove a claim or defence. Where access to records remains uncertain, the initial order can set a date to revisit scope. That allows the tribunal to give direction early while leaving room for a party to show why the eventual evidence warrants a change.

Make Competing Opinions Comparable

A short comparison can expose differences buried in two lengthy reports. For each material question, the experts can identify their conclusion, the assumptions that drive it, the sources they used, and how sensitive the result is to a plausible change in a disputed assumption. Where possible, the tribunal can ask both experts to address the same factual scenario while leaving each free to defend a different method. The comparison works best when the underlying reports and relevant source materials are available to both sides.

In the delay example, the experts could be asked whether their results change if only one crew could work in the affected area. If the estimates then converge, the hearing can focus on whether the site actually had that constraint. If the estimates still differ, the joint statement can identify the remaining disagreement, such as how each expert treated concurrent delay. Each expert should be able to record a separate view in their own words. The tribunal can then decide whether targeted questioning would resolve more than another exchange of written reports.

A joint statement can itself become expensive when the issues are numerous or the experts lack access to a common record. It earns its place when it isolates questions the tribunal is likely to decide. A single disputed calculation may need only a marked-up spreadsheet and short replies. A technically complex claim may justify a meeting with an agreed agenda, a statement identifying unresolved issues, and questioning at the hearing. In either case, ask for the least burdensome comparison that will let the tribunal understand the difference and the parties challenge it.

Preserve a Fair Opportunity to Test the Evidence

Articles 18 and 19 of the UNCITRAL Model Law pair equal treatment and a full opportunity to present a case with authority to manage procedure within the applicable framework (UNCITRAL, 2006). The law at the seat, the parties' agreement, and applicable rules govern the tribunal's powers in any particular case. Berger and Jensen (2016) examine judicial deference to procedural judgment and argue that fear of a challenge can encourage tribunals to grant requests that add needless delay. Godhe (2025) shows why evidentiary decisions still require attention to several tribunal duties, including due process, effective procedure, and enforceability.

Consider a late request to submit a revised damages model. The tribunal can ask what prompted the revision, which issues it affects, and what the other party would need to answer it. If a document produced late changed an important input, limited supplemental evidence and time to respond may address the problem. If the revision introduces a new theory after the evidentiary hearing, the tribunal may face a different balance. A short ruling can record the issue, the parties' positions, the practical consequences, and the reason for the chosen course. The ruling should reflect the circumstances that made the request difficult.

The same discipline matters when writing the award. Fortese (2026) examines how indiscriminate reuse of material from submissions and other case documents can compromise the integrity of arbitral reasoning. A tribunal that adopts an expert's model should explain in its own reasoning which assumptions it accepts, how it dealt with the material challenge, and how the model informs the result. If the tribunal is considering reliance on a decisive technical premise the parties have had no meaningful opportunity to address, it should consider inviting focused submissions under the applicable framework before relying on it.

Judicial Decisions on the Opportunity to Present Evidence

In China Machine New Energy Corp. v. Jaguar Energy Guatemala LLC (2020, paras. 87–104), the Singapore Court of Appeal examined whether the cumulative effect of restrictions on access to documents and the conduct of production deprived a party of a reasonable opportunity to present its case. The court assessed the tribunal's procedural choices in their context and dismissed the challenge. The decision provides a useful lens for technical evidence. Whether a party can respond to a model depends on more than the nominal number of days allowed. Access to the documents, the usability of the data, and the practicability of obtaining expert assistance may all affect what the party can do within that period.

CBS v. CBP (2021) illustrates a different boundary. The Singapore Court of Appeal upheld the setting aside of an award where the arbitrator declined to hear the buyer's witnesses in the circumstances of that case. The dispute concerned witness gating and the applicable rules. Its relevance to party-appointed experts lies in the consequences of a procedural limit. Narrowing oral testimony to a disputed technical point differs materially from denying a party a practical way to introduce and test evidence on which its case depends. Read together, the decisions support recording what evidence was sought, why it mattered, what alternative remained available, and whether that alternative could actually be used.

From the First Conference to the Award

Instructions and Independence

The point at which an expert is instructed is a natural place to distinguish a question from its premises. Counsel may ask a quantum expert to calculate lost profits on the assumption that a contract would have been renewed. The expert can transparently perform that task while the tribunal remains free to reject the renewal assumption. Trouble arises when the assumption disappears into a financial model and is later presented as a specialist finding. A clear instruction can identify which premises are supplied by counsel, which are drawn from the evidence, and which the expert has independently assessed. This distinction is especially valuable when the same report contains both calculations and opinions about industry practice.

Independence has a related practical dimension. A declaration can make an expert's role explicit, a benefit identified in the discussion of Ciarb's earlier protocol (Jones, 2008). Its value increases when the expert can show how they handled facts or assumptions that weakened the instructing party's position. An expert might disclose that one set of production records was incomplete, explain the resulting uncertainty, and give a range rather than a single figure. The tribunal should be able to assess that choice without relying solely on the declaration. Conversely, a report that rigorously explains its limits deserves to be evaluated on its reasoning even when the expert was engaged and paid by a party.

Procedure should also recognise the division between expert assistance and legal advice. Counsel can help define the issues and communicate assumptions; the technical opinion remains the expert's. A direction requiring access to the foundation for an opinion should be precise about which materials are needed. It should provide a route for resolving privilege, confidentiality, and data protection objections under the applicable framework. The opposing party ordinarily needs the basis of a calculation to challenge it. That practical need does not resolve every question about access to drafts or communications. A tribunal can consider targeted disclosure, agreed extracts, redacted working files, or secure inspection where those mechanisms preserve a fair ability to test the opinion.

Reports That Show the Work

A useful report identifies the method at the level needed to examine its application. Naming a recognised methodology is only the beginning. A delay opinion may use a familiar scheduling technique while depending on choices about the reliability of programme updates, the dates of relevant events, and whether the baseline reflects the work actually undertaken. A damages opinion may use discounted cash flow while depending heavily on the forecast period, renewal prospects, and terminal value. The tribunal can ask the expert to distinguish methodological choices that are conventional in the field from choices that require a judgment about this record. That distinction gives cross-examination a specific target.

A practical comparison can use a brief entry for each material disagreement. The entry can identify the question, each answer, the sources relied on, the assumption or method that separates the answers, and the consequence for the result. Where a model is involved, the comparison should point to the relevant version and inputs. The parties and tribunal should be able to tell whether two reported figures were calculated before or after an agreed correction. A spreadsheet with hidden links, broken formulas, or inaccessible data may require an explanation or a usable export. The remedy should be designed around the actual barrier to examination and the governing procedural protections.

The format should also allow an expert to explain why the other side's proposed comparison is misleading. A common assumption may make sense for isolating the effect of one variable, but an expert may consider it technically implausible or incompatible with the rest of a model. A joint statement can record the result as a conditional exercise and preserve the reservation. This avoids a false appearance of agreement while still giving the tribunal a useful sensitivity test. The point of comparison is to understand which differences matter, including cases in which the opinions are premised on fundamentally different accounts of how the underlying system works.

Designing a Hearing Around the Remaining Disagreement

Concurrent evidence can help when two experts need to answer the same technical question and the tribunal would benefit from immediate clarification. Sequential examination may be more suitable where one expert disputes the provenance of data used by the other, or where a challenge needs a sustained line of questioning before a reliable comparison is possible. A mixed format can preserve both advantages. The tribunal could allow short separate examinations on the reliability of records, then convene the experts on two specified modelling differences. Ciarb's guidance recognises variation in conference format and in who leads the questioning (Ciarb, 2019).

The design should include participation details. Experts can be told when they will receive the agenda, who will put questions, how they may respond to one another, and when counsel may follow up. If interpretation is needed, simultaneous exchanges can become hard to track. The tribunal can slow the exchange, take questions one at a time, and require common references to demonstratives and transcript pages. Differences in confidence or fluency should not obscure the technical record. A tribunal chair can invite the quieter expert to explain a reservation, check that both experts have addressed the same question, and stop an interruption that would prevent a complete answer.

A tribunal with technical experience can use its knowledge to identify ambiguities and ask better questions. A different issue arises when it supplies an evidentiary premise that neither party had a fair chance to address. Suppose an arbitrator knows from industry experience that a certain scheduling convention can distort apparent criticality. A question about whether the convention was used can clarify the reports. An award that relies on a newly constructed model incorporating undisclosed assumptions poses a more serious procedural problem. When the tribunal sees a potentially decisive alternative, it should consider putting the issue to the parties in terms specific enough for them to respond under the applicable framework.

A Worked Example Across the Proceeding

Return to the delay dispute. Assume that the contractor claims 60 days of compensable delay and the employer's expert attributes 20 days to the same instruction. At the first conference the tribunal learns that both experts expect to rely on weekly programme updates, but the contractor also holds daily access logs. The tribunal asks the parties to address access to those records and whether the experts should calculate two scenarios, one with a single working crew and one with concurrent crews. It reserves decisions on concurrency and compensability. The resulting instruction makes the technical task intelligible without deciding whether either scenario reflects the facts.

The reports identify a second difference. On a single-crew assumption, the contractor's expert estimates 60 days and the employer's expert estimates 52. On a concurrent-crew assumption, they estimate 25 and 20 days. These figures are illustrative. Their significance is that the original gap of 40 days shrinks sharply when the crew assumption is held constant. A short joint statement can record why eight days remain under the first scenario and five under the second. It can also identify

whether both calculations account for the same activities and whether the experts applied different treatments to another event that occurred during the affected period.

At the hearing, site witnesses can address physical access and actual working patterns. Experts can address what each pattern would mean for the programme. If the records suggest that the constraint applied only during part of the relevant period, the tribunal can ask whether an intermediate calculation is feasible and what inputs it would require. If the answer requires a new analysis, the tribunal can invite submissions on the need for that work and the timetable for testing it. The process keeps the tribunal from having to choose an entire report when only a few inputs determine the difference.

The award might then explain why the tribunal accepted a single-crew constraint for specified weeks, which programme records supported that finding, and why it preferred one expert's handling of the remaining activities. If it accepts part of each opinion, it should explain how those parts fit together. Two calculations can be individually sound but incompatible because they use different baselines or define the relevant period differently. The tribunal should verify that any combination uses consistent premises and that the parties had a fair chance to address the reasoning that drives the result. Fortese's (2026) analysis of drafting shortcuts reinforces the need for the tribunal to take responsibility for the reasoning it adopts.

Objections and Boundary Conditions

Cost, Tactical Use, and Unequal Resources

The strongest practical objection is that each new protocol risks becoming another layer of work. A joint statement can become a second report, and a procedural hearing about expert scope can become a preview of the merits. This objection has force because the cost of preparing a comparison is incurred before anyone knows how much hearing time it will save. A tribunal should define a decision that the proposed work will help it make, limit the questions accordingly, and revisit the direction if the burden becomes disproportionate. A short explanation from both experts may be sufficient where the documents already expose the source of disagreement.

A party may also use early scoping to constrain an opposing expert before the relevant material is available. The answer is to keep scope provisional where necessary and make the criteria for revision clear. A request should identify the newly available material, the question it changes, and the proposed opportunity for response. The tribunal can distinguish a justified expansion from an attempt to reopen issues after seeing the opposing report. A narrow revision may require a few pages and a limited reply. A new methodology that changes the theory of loss may require a different timetable or ruling. Godhe's (2025) discussion of competing duties provides a framework for explaining such differences.

Resource imbalance adds another complication. A party with extensive technical support can produce multiple scenarios cheaply, while a smaller party may need to commission work for each one. The tribunal can ask which scenarios genuinely test a decisive premise and whether a shared neutral data extract would reduce duplicative work. This does not settle who bears the burden of proving a proposition. It helps ensure that a procedure intended to expose assumptions does not instead reward the party able to generate the largest number of models.

The Risk of Premature Consensus

An expert meeting can create pressure to agree, particularly when one expert is more senior or more comfortable in the language of the arbitration. An apparent consensus may conceal a

reservation about data quality or the conditions under which a result is valid. A joint statement should therefore allow qualified agreement and separate statements of disagreement. A tribunal can ask whether the experts agree on the result, on an assumption for the purpose of a sensitivity exercise, or simply on the description of the difference. Each form of agreement has a different evidentiary consequence.

There are also disputes in which comparability is genuinely limited. Two technical methods may answer different questions or operate at different levels of aggregation. Forcing both experts into a common table can flatten an important methodological disagreement. The tribunal can ask first what each method estimates, when it is appropriate, and what observations would count against it. A comparison of scope and limitations may then be more informative than a comparison of outputs. This is one reason to treat the framework as a set of procedural choices rather than a standard form to be used in every case.

A Branch Pilot for Ciarb

Ciarb could invite interested branches to run a short simulation for arbitrators, counsel, and experts. Each group would receive the same fictional reports and a common task. It would draft an expert agenda, identify the questions that need testing, and rule on a late request to revise an opinion. A facilitator could then compare the groups' procedural choices and ask which would give a party a practical chance to answer, including where records are difficult to obtain or experts need to work across languages.

Ciarb could ask participating branches to agree on a modest budget and report after six months. Each branch could adapt a shared scenario, a model expert agenda, and sample procedural directions to local practice. The evaluation would ask whether participants can identify the decisive assumption, design a workable response opportunity, and explain their procedural ruling. A later voluntary follow-up could ask which materials practitioners used and how they adapted them. Simulations and anonymized feedback would support that assessment without collecting case documents. A claim about shorter proceedings or lower cost would require evidence from practice.

Multi-party proceedings require particular care. A common expert agenda may look straightforward when the claimant and respondent each retain one specialist. It becomes harder to administer when an employer, contractor, and subcontractor dispute the same event but advance different accounts of responsibility. An expert meeting framed around the two largest claims can inadvertently omit the premise that matters to the third party. Before directing a joint statement, the tribunal can ask each participant to identify the findings that could affect its position and the evidence it needs to answer them. It can then group issues by technical question while preserving distinct factual scenarios. If two parties share an expert on one issue, the tribunal should clarify the scope of that engagement before treating an apparent agreement as common to all participants. The resulting procedure may be longer than a bilateral conference, but it makes visible whose position each opinion addresses and who needs an opportunity to respond.

Evaluating the Proposal in Practice

A training pilot should separate feasibility from effectiveness. Feasibility concerns whether branches can run the exercise, whether the materials work across legal and linguistic settings, and whether facilitators can apply a common scoring rubric. Effectiveness concerns whether participants improve their ability to identify a decisive disagreement, choose a proportionate procedure, and preserve a response opportunity. The simulation can test these skills by giving participants an initial

set of reports and a second problem with different facts after the exercise. Responses can be assessed against criteria published in advance, with room for different defensible rulings.

A voluntary follow-up could ask practitioners to describe which part of the approach they adapted, what procedural problem prompted its use, and what practical obstacle they encountered. Feedback should avoid party names, case numbers, confidential facts, and report excerpts. A response from a participant who found the tool useful establishes that the participant perceived value. It cannot establish what would have happened in the same case under another procedure. Self-selection, differences in dispute complexity, and variation among tribunals would complicate any inference about time or cost. If a later evaluation aims to address those questions, it should define its outcomes and comparison strategy before collecting information.

The institutional case for a modest pilot rests on that distinction. A branch can test whether practitioners understand the materials and can use them in a simulation without claiming that the procedure improves outcomes in every case. The Institute can use the results to revise the materials, identify contexts where the procedure creates extra work, and decide whether further evaluation is justified. A useful first report would say what participants could do after the exercise, which steps they found difficult, and what modifications are warranted. That is a concrete accountability mechanism for a professional body whose influence comes through education, guidance, and the exchange of practice.

Conclusion

The practical test comes when two credible opinions point to different awards. Can the tribunal explain why the experts disagree, show that the parties had a fair chance to address the difference, and identify what the award ultimately depends on? An early expert agenda, a focused comparison, and a reasoned ruling on contested evidence can make those questions answerable. Each step should serve a live issue and take account of the parties' actual ability to participate. A branch pilot would allow Ciarb members to practise these choices and identify where the tools need to change before wider use.

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