



#5QUESTIONSWITHMAXWELL

JUDITH GILL KC

Independent Arbitrator



1. You are one of the few arbitrators who prefer not to receive any hard copies of your hearing bundles. What is the reason for your shift from hard to electronic copies?

It was largely a matter of self-interest because I realised that I could work more efficiently with electronic documents. For most of my career as counsel I was wedded to paper and didn't think I could ever live without all those highlighters and multicoloured sticky tags. I also used to think that I was better able to create a mental picture of documents from hard copies.

When my role changed to that of arbitrator, I gradually developed a different perspective because I increasingly found it more efficient to use electronic versions of documents.

“ I discovered the Apple Pencil which made a huge difference because I found I could mark up electronic documents with highlights, text and even the same sort of manuscript notes and observations I used to put on paper copies. Importantly, I could do all this on my ipad, which has a big enough screen (12.9”) ”

to feel similar to the size of A4 paper, but without either the weight and inconvenience of hard copy bundles or the eyestrain of A5 bundles. So there's no more balancing multiple bundles for cross-referencing on your lap when you are travelling, because it takes just a few clicks to pull up the other document(s) required. Also, the PDF app I use allows me to word search, scroll very quickly through thumbnails, isolate only annotated pages and much more. When I have finished working on a document, it's a simple process to save the highlighted and annotated version to my desktop which is then backed up to a secure server in Switzerland.

Apart from the obvious increased convenience and savings in not having to transport hard copy files across the world and back at great expense to the Parties, I also found that the electronically filed

“ annotated version of documents were easier to keep track of, especially where for one reason or another the Parties end up sending multiple duplicate copies of the same document. ”

This happens very frequently in the course of pleadings, interlocutory applications and of course when a pristine new version of the same document is presented in the hearing bundle. Of course, in theory one could maintain the original annotated paper version too, but for me at least an electronic filing system with folders and sub-folders for each case is in practice a far more reliable system for retrieving documents I have previously worked on rather than hunting for the original hard copy among what in some cases is a mountain of paper.



I would also say that the more I have embraced electronic working, the easier it has become. I may not have the same mental picture of a physical page that I did with hard copies, but I have a similar recall of annotations or expressions and they are generally easier and quicker to find on electronic documents because instead of flicking through pages I use a quick search function which – if you know what you are looking for – can be really effective (although it cannot in my view be relied upon as a substitute for a thorough read of the (electronic) documents in the first place).

2. What are some Green Protocols or initiatives you have incorporated into your work as an arbitrator?

1

First, I make sure counsel understand I don't want hard copies of anything unless there is a genuine reason why a hard copy is required e.g., in the case of large scale plans or maps having the full-size version may be more useful.

2

I avoid unnecessary travel whenever possible.

3

I utilise my reusable coffee cup, water bottle and cutlery.

This short list is a work in progress and it is to some extent aspirational in that I don't always manage fully to implement these protocols, but I believe it is important for me to try. For those who think taking your own cutlery is going too far, it stemmed from a recent hearing stretching over three weeks with some 50 participants. Lunch was provided every day with packs of single-use plastic cutlery wrapped in yet more plastic. I felt strongly that there had to be a better way.

3. What are some of your must-have technology devices during a hearing?

“ Just two: my laptop and iPad.”

That's all I need, even if we are not provided with a separate screen for the transcript. Depending on the set up for the case, I will often put the live transcript and exhibit being presented in split screen on my laptop and use the I-Pad to toggle between PowerPoint slides or witness evidence and my personal notes. But sometimes I will mix it up and do notes in a word document or view presentation slides on the laptop.

“ I find annotation of pleadings and witness statements easier on the iPad and use a separate app for taking notes ”

that allows me to type them or just write in manuscript with the Apple Pencil. The great thing is it has a feature which allows you to move any notes up or down the page, so if I want to move them or perhaps insert a fresh section, it's easy to shift things around. This is very helpful when taking notes in hearings. Of course, MS Word and others can do that with typed text, but being able to do it with manuscript notes is particularly helpful and is something you obviously cannot do with pen and paper. Again, these notes are all stored electronically, and I do this individually for each arbitration, so I can go back and easily find the relevant notes for any case even if they were made a year or so earlier.



4. What are your future sustainability goals as an arbitrator? Are there specific areas or issues you plan to focus on, and what outcomes do you hope to achieve?

My overall sustainability goal both as an individual and in the context of my arbitrations is to

“be mindful of the impact of my actions on the environment and to do the best I can to be efficient and avoid unnecessary waste. I believe this can ultimately benefit the parties and is consistent with the duties of an arbitrator.”

As regards a focus for the future, two things come to mind. First, I need to work harder to optimise my travelling. During Covid we all became familiar with remote working and in the post-pandemic world it is common for shorter hearings, especially those dealing with procedural matters, to be conducted virtually. I think however that it is unrealistic to contemplate international arbitration without the need to travel, and in my view the hearing of substantive issues, whether at an interlocutory stage or final hearing, and even tribunal deliberations, may be more effective if done in person. That said, I plan to try harder to achieve greater synchronisation in scheduling my work commitments and to keep a degree of flexibility in my personal travel to avoid criss-crossing the globe any more than is necessary.



Second, the digital, paperless arbitration that I see as the way forward will only work if we manage to stay on top of technological developments and learn to deal with the cyber security issues that arise. Governments, businesses, and law firms all have huge budgets and vast resources to ensure their information and systems are protected. Arbitrators are often sole practitioners or members of relatively small groups with limited technical support. We are the weakest link. So, while not in itself strictly a sustainability topic, I think keeping as up to date as possible with how to protect against these threats must be an important goal. There are several resources available, but for those wanting an easy-to-follow starter course I would suggest some of the excellent online training provided by the AAA. In a recent case my fellow arbitrators and I were required by the Parties to certify that we had completed this training at the outset of the case, and I think it is fair to say we all felt we had learned something from it.

5. What are 3 actionable steps arbitrators can take to make their next arbitration more green?

1 Consider with the Parties whether gathering in person is necessary

or, even if it is for some participants, whether a hybrid arrangement would be more efficient. Fortunately, as previously noted, in the post-Covid era, there are far fewer procedural hearings in person, at least where international travel is required. However, for substantive hearings, especially in investment treaty cases, there can sometimes be a vast number of attendees. In one of my cases the Respondent alone had 75 named attendees, some of whom never even stepped inside the hearing room but sat in a room down the hall set up with a video screen. In cases such as this, there will likely be some non-speaking participants who would happily join remotely and as arbitrators I think we should encourage that by raising the possibility of a hybrid hearing and making clear that we consider this to be an acceptable and sensible approach.

2 Be more proactive about discouraging excessive printing, especially repetitive printing of the same documents over and over again, e.g., for use in cross-examination of different witnesses.

Increasingly, document management service providers display relevant materials on screen for all participants including witnesses, who then give evidence using those electronically displayed documents. There is sense in having a single hard copy set of documents available, in case for example the witness wants to look at the whole document for context and scrolling up and down is impractical. However individual tailored witness bundles are in most cases unnecessary and duplicative.

3 Take the time to investigate the tools available for more effectively managing your practice and give them a try, with a view to gaining confidence in working digitally.

Of course, what we really need is a forum for arbitrators to share experiences and tips. I have learned by talking to people and trying things out, but for example it took four attempts with different apps for me to find a time recording system that I was happy with. I really like the apps I now work with, but other arbitrators I know prefer different ones and I am sure there are some great alternatives available that I have yet to encounter. Ultimately, we all have to see what works best for us, but there are some excellent tools available with practical functionality that can really make life easier for the busy arbitrator, so it is worth exploring.

