How family law arbitrators make decisions and how to help them make the decision you want

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Introduction

At law school, they teach you that the job of judges is to decide what the facts are, decide what the law is, and then decide the outcome of a case by applying the facts to the law.

Sounds simple enough, doesn't it?

It's actually not that simple at all. The people involved in a case rarely agree on the facts or the law, and even if they do agree there are always shades of meaning and interpretation that have to be explored and, usually, argued about.

Deciding how to best present the facts and the law at trial, to convince the judge that their clients are right, is the sort of thing that keeps lawyers up at night. And lawyers know how the court system works and are trained in the sort of legal analysis that the court system requires. If arguing a case is daunting to lawyers, it's even worse for people who don't have the benefit of three years at law school, a one-year apprenticeship and years' worth of experience in court. Going to court can be terrifying.

Arbitrators have much the same role as judges, except that arbitrators do their jobs in office boardrooms, hotel conference facilities and community centres rather than a courtroom, and aren't as tightly bound by rules of procedure and rules of evidence the way judges are. Even though arbitration is less formal and has fewer rules than going to court, it's still hard for people without lawyers to present and argue their case.

This guide tries to explain how arbitrators think and how they make decisions, to make it a bit easier for people without lawyers to present and argue their cases. We'll start by talking about arbitration and how arbitration is different than going to court, and then move on to how the people involved in a case prepare their case and explain the facts and the law to the arbitrator.

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We'll finish with a discussion about how arbitrators decide what the facts are, decide what the law is, and apply the law to the facts.

Resolving legal disputes

There are two ways to resolve legal disputes. The people involved in the dispute, the parties, can negotiate and try to find a resolution to which they all agree. Or, the parties can ask someone else to make a decision for them.

There are advantages and disadvantages to each of these basic alternatives.

It can be hard to find a resolution to a legal dispute to which everyone agrees. It takes a lot of work, a lot of speaking and a lot of listening. It also requires flexibility and compromise, because no one ever gets all they want and lots of people find it really hard to accept anything less than their ideal outcome, especially when emotions are running high.

However, when people are able to resolve their disputes by agreement, they will have saved a ton of time and a ton of money compared to the alternative, and research shows that disputes that are resolved by agreement are more likely to stay resolved. It's also good to let the people involved in a dispute decide for themselves how their dispute should be resolved rather than leaving the decision to a stranger.

When people ask someone else to resolve their legal dispute for them, they lose the power to make decisions about their dispute. While the dispute will certainly be resolved – something that is never guaranteed when people try to work out a resolution for themselves – the people involved in the dispute are rolling the dice. You can never be absolutely sure what the outcome of a hearing or trial will be. You might be delighted with how things turn or you might not, and that's why presenting and arguing your case is so important and so stressful.

You've heard of the usual ways people resolve their disputes by agreement, negotiation and mediation. Negotiation is something people do on their own, without much help from anyone else except maybe lawyers. In mediation, the parties hire an independent person who helps them talk to each other, identifies underlying issues and suggests options for settlement. Mediators don't have the power to make a decision resolving the dispute. Deciding if and how to compromise is always up to the parties.

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Arbitration and going to court are the ways people get someone else to make a decision for them. Going to court to resolve a legal dispute is called litigation.

Arbitration and litigation

When people litigate a dispute, the person they are asking to resolve their dispute is a judge. Litigation is how we see legal problems handled on television and in movies, mainly because it's easy to make sure that the stakes are high and that the drama is intense. I don't think we're ever going to see a prime-time show about mediation.

When people arbitrate a dispute, the parties hire an independent person, an arbitrator, to make a decision resolving their dispute. Arbitration is a lot like court, because arbitrators are required to be fair, neutral and firm just like judges, but this and the arbitrator's decision-making function are where the similarities end.

The court system is designed to resolve all kinds of legal disputes between all kinds of parties. Litigation is a one-size-fits-all business. Whether it's one bank suing another bank, someone who was in an accident suing an insurance company, or separated parents suing each other, the same processes and the same procedures apply.

The courts are governed by strict procedural rules that manage every step in the litigation process. (In general, the rules of our provincial courts are relatively short and easy to understand, while the rules of our superior trial courts, the Supreme Court in British Columbia and the Court of Queen's Bench in Alberta, are lengthy, incredibly complex and hard to understand.) Judges, court staff and the people involved in a case have very little discretion about how the rules of court are interpreted and applied.

The courts are also governed by strict rules of evidence that control how parties talk about the facts of a case and the sort of facts that judges are allowed to consider. These rules are partly found in legislation, like the provincial and federal *Evidence Acts*, but are mostly found in the case law, the vast collection of decisions made by judges over hundreds of years. The rules in the legislation are relatively easy to find and understand, but the rules in the case law are not. In fact, one of the most important decisions about evidence was made more than a hundred years ago, in an English case called *Browne v Dunn* that was decided in 1893!

Arbitration is a bit different.

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Arbitration	Litigation
The arbitrator is a family law specialist selected by the parties.	The judge is a generalist assigned to the parties by court staff.
The arbitrator is paid by the parties.	The judge is paid by the government.
Arbitrations are private and the arbitrator's decisions are confidential.	Court files, applications, trials and the judge's decisions are public. Decisions are often published on the internet.
Arbitration processes can be designed and adapted to suit the needs of the parties, the importance of the issues in dispute, and the parties' budgets.	Litigation processes apply to all parties in all kinds of legal disputes and can't be changed.
Hearings in an arbitration can be booked as soon as the parties and the arbitrator have time in their schedules. Week-long hearings can usually be booked in a matter of months.	Trials are booked by court staff based on the availability of judges and courtrooms. The courts are so busy that week-long trials may not be available for one or two years, or even longer.
Arbitrators and the parties are not bound by the rules of evidence. Fairness is what counts in arbitration.	Judges and the parties are bound by the rules of evidence found in the legislation and the case law.
Arbitrators may make decisions by applying the law, or the parties can agree that their arbitrator will make a decision instead on the basis of fairness and equity, on grounds of conscience, or even on religious principles.	Judges make decisions by applying the law.
The parties can decide, in advance, whether and how the arbitrator's decision can be appealed.	Judges' decisions can always be appealed.

There some important similarities between arbitration and litigation as well:

1. both processes will resolve a legal dispute, and neither relies on the parties to reach an agreement on their own;

2. arbitrators and judges decide cases by listening to information about the facts and arguments from the parties about what the outcome of their case should be;

3. the results of both processes are legally binding on the parties, subject to the results of any appeal (in fact, arbitrator's decisions are enforced as if they are court orders);

4. the parties can be represented by lawyers in both processes; and,

5. both judges and arbitrators can make costs awards when a case is finished.

Arbitration processes

The flexibility of arbitration is one of the most important benefits of this dispute resolution process compared to going to court. Arbitration is so flexible that the process of getting from the start of a case to the end can be handled in dozens of different ways, depending on the parties' means, the complexity and importance of the issues, and the value of the things in dispute.

In general, arbitration works like this, in this order.

A. The parties meet with the arbitrator at a planning meeting to talk about the legal issues, the procedures they will use before the arbitration hearing and during the hearing itself, and how the arbitrator will make their decision.

B. The person starting the case, the claimant, prepares their claim. The claim is a document that summarizes:

   i) the important facts of the case, from the claimant's perspective;

   ii) the awards the claimant wants the arbitrator to make; and,

   iii) the law that supports the awards the claimant is asking for.

C. The person or people on the other side of the case, the respondents, prepare their response to the claimant's claim. A response is a document that summarizes:

   i) the important facts of the case, from the respondent's perspective;

ii) the awards the claimant is asking for that the respondent will agree to, or will agree to on conditions, and the awards the claimant is asking for that the respondent objects to;

iii) the awards the respondent wants the arbitrator to make; and,

iv) the law that supports the awards the respondent is asking for.

D. The claimant prepares a reply to the respondents' responses. A reply is a document that summarizes the awards the respondents are asking for that the claimant will agree to, or will agree to on conditions, and the awards the respondents are asking for that the claimant objects to.

E. The claimant and the respondents then go through a process where they exchange information and documents that are important to the legal issues in the case. In court, this process is called "discovery and disclosure."

F. The parties work together to prepare a written summary of the facts they all agree are true, called a statement of agreed facts.

G. The claimant and the respondents meet with the arbitrator at a hearing. At the hearing:

i) the parties give the arbitrator their statement of agreed facts;

ii) the claimant presents an opening argument telling the arbitrator about the evidence they will hear and summarizing the awards the claimant wants the arbitrator to make;

iii) the claimant presents the evidence supporting the awards they want the arbitrator to make and their position on the awards the respondents want the arbitrator to make (more about evidence later);

iv) each respondent, in turn, presents an opening argument telling the arbitrator about the evidence they will hear and summarizing the awards they want the arbitrator to make;

v) each respondent, in turn, presents the evidence supporting the awards they want the arbitrator to make and their positions on the awards the claimant wants the arbitrator to make;

vi) the claimant presents a closing argument telling the arbitrator about the evidence they have heard, and any problems with the respondents' evidence, and providing a detailed description of the awards the claimant wants the arbitrator to make; and,

vii) each respondent, in turn, presents a closing argument telling the arbitrator about the evidence they have heard, and any problems with the claimant's evidence (and sometimes problems with the evidence presented by the other respondents), and providing a detailed description of the awards the respondent wants the arbitrator to make.

H. The arbitrator then goes back to their office to think about the parties' evidence and arguments about the law, and prepares a written award describing their conclusions about the evidence, the law and the outcome of the case. The arbitrator then sends each party a copy of their award.

I. The parties each have a certain amount of time, usually between 15 and 30 days after receiving the award, to ask the arbitrator to correct any errors, like typos and math mistakes, in their award or to address any legal issues the arbitrator left out of their award.

There are plenty of alternatives to this basic process. For example:

1. if everyone agrees on the facts and the only thing they disagree about is the law, the parties could ask the arbitrator to make an award based on only written or oral argument, without any evidence at all;

2. if everyone agrees on most of the facts, the parties could agree that all of their evidence will be given to the arbitrator in writing, in the form of written statements called affidavits;

3. if everyone agrees on most of the facts, the parties could also agree that some of their evidence will be given to the arbitrator through affidavits and that only a few people will be asked to come to a hearing to give oral evidence; or,

4. if everyone agrees on just some of the facts, the parties could agree that people will give oral evidence at a hearing, but only for a limited amount of time.

You will decide how your arbitration process works at the planning meeting.

Preparing for arbitration

You are coming to arbitration, or to court, to try to get a decision that gives you as much of what you want as possible. There's a bit more to this than just presenting your take on the facts and your arguments about the law to the arbitrator. Before you do anything else, you have to really think about the awards you want the arbitrator to make.

The awards you're looking for will play a critical role in choosing the facts you present to the arbitrator, because not every fact is important, and on the arguments you need to make, because the law sometimes requires you to meet specific legal tests or address specific legal criteria.

Deciding what you want

The first step in making decisions about the awards you want should probably include speaking to a family law lawyer for some legal advice. You don't need to hire the lawyer for anything more than their advice at this stage, but the lawyer will be able to:

1. explain the law, including any legal tests or legal criteria that are relevant to your case;

2. identify which of the awards you're looking for are reasonable and possible, and which are unreasonable and impossible; and,

3. give you a good idea of the range of likely outcomes in your case based on their knowledge of the law.

I can't emphasize enough how important it is to get advice from a lawyer before you start the arbitration process. You are far more likely to get what you want if you can stay out of the rabbit hole and focus your efforts on awards that fall somewhere within the range of likely outcomes.

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Once you've spoken to a lawyer, you'll probably wind up going back to the drawing board and spending some time reconsidering the awards you want the arbitrator to make. You may have heard of the SMART approach to setting goals. (This is an acronym that first emerged in the early 1980s in the context of project management.) Although the definition of "SMART" changes depending on the subject, here's my version to help you plan for arbitration.

	Do…	**Don't…**
Specific	Be specific about exactly the awards you want the arbitrator to make. For example, "I'd like to have parenting time every other week, from Friday after school to Monday at the start of school."	Ask for fuzzy, vague awards that read like a wish list. For example, "I'd like more parenting time than I have now" or "I want to play a bigger role in our child's life."
Measurable	Be sure that you will be able to tell whether the awards you are asking for are being followed. Parenting schedules, property transfers and support payments are good examples of awards you can track.	Ask for awards that you can't be sure are being followed. For example, "I want the other party to better support my relationship with our child."
Attainable	Ask for awards that are within the range of likely outcomes. For example, you should probable agree to pay spousal support if your ex is clearly entitled to receive it.	Ask for awards that are unlikely and way outside the range of likely outcomes. For example, saying that your ex should pay spousal support to you because your ex had an affair while you were together.
Realistic	Ask for awards that are practical and doable, that you know you and your ex will be able to manage.	Ask for awards that are impractical and unsustainable. For example, asking to have your child for a midweek dinner when you and the other parent live 90 minutes away from each other.

Time-limited	Ask for awards with deadlines and due dates. For example, "I'd like support to be paid starting on the first day of next month" or "the cottage should be transferred to me no later than three months after the award is made."	Ask for awards with no deadline for action to be taken. For example, asking for an award that your RRSPs be divided without saying when that should happen.

Listen carefully to the advice your lawyer gives you and adjust the awards you plan on asking for as needed. There's no point in spending time, effort and money pursuing an award that you have little or no chance of getting.

Understanding the law

Now that you've decided on the awards you want to get, the next step is to look at the law, assuming that the arbitrator will be making their decision according to the law instead of on grounds of fairness, grounds of conscience or religious principles. What you're especially looking for are any legal tests you have to meet and any legal criteria you have to address.

For example, to get child support, you have to meet a legal test and prove that:

1. you are a parent, a stepparent or a guardian of the children;

2. the children are eligible to benefit from the payment of support, which means that they are under the age of majority or are older and unable to support themselves because of an illness or because they're going to school; and,

3. you are entitled to receive child support, because the children live with you most of the time or because you and your ex each have them for more than 40% of their time.

(There are more things you may have to prove, of course. This is just an example of a simple situation.)

To give another example, decisions about children's parenting arrangements are always made considering only their best interests. The federal *Divorce Act*, Alberta's *Family Law Act* and British Columbia's *Family Law Act* all include long lists of legal criteria that the arbitrator will

have to think about when making decisions about the children's best interests. These include factors like:

1. the children's needs;

2. the children's relationships with you, your ex, their siblings and the other important people in their lives;

3. the history of the children's care;

4. your willingness to support the children's relationships with your ex, and your ex's willingness to support the children's relationships with you;

5. the children's views and preferences;

6. your plans for the children's care in the future; and,

7. the presence of family violence and its impact on the children.

If your legal dispute involves parenting after separation, it's extremely important that you read and understand the list of best-interests factors that applies to your case.

Sometimes the tests and criteria you'll need to address are found only in the case law, not in the legislation. A good example of this is the case of *Gordon v Goertz*, a decision of the Supreme Court of Canada from 1996 that is used in Alberta to decide what should happen when a parent wants to move away after separation. Another example that combines a test from the legislation with a test from the case law is the case of *Miglin v Miglin*, a Supreme Court of Canada decision from 2003 that talks about spousal support and why someone might be entitled to receive it.

All of this means that you'll probably need to do some research. You do *not* want to find yourself overlooking or unable to address a critical legal test at your arbitration hearing.

One of the best places to find legislation and case law is the website of the Canadian Legal Information Institute, at www.canlii.org. There you can look up legislation and find case law using the website's search function. You can find more information, presented in an easier to understand form, at university and courthouse law libraries. Law libraries often have books that

actually explain the law rather than just giving you legislation and cases to read. The librarian will be able to help you find these books.

Gathering evidence

Once you've got a handle on the law that applies to your situation, and the legal tests and legal criteria you need to address, you need to begin gathering the facts that are relevant to those tests and criteria. The facts you present to the arbitrator are called evidence.

You'll know most of the important facts already, and you'll be able to tell the arbitrator all about those facts. However, it's always good when you can back up an important fact with a document, especially when you and your ex disagree about that fact!

Say, for example, you're worried that your children are often late or absent from school when they're with your ex. You can tell the arbitrator about this, but it's even better if you have copies of the children's school records or report cards that say the dates the children were late or absent. Or, say you received a car from your father's estate after his death which you think you should be able to keep. You can tell the arbitrator about this too, but it's better if you can also show the arbitrator a copy of your father's will or a letter from your father's executor about the car.

There will also be some facts that only your ex knows and some documents that only your ex has or is able to access. Likewise, there will be facts that only you know and documents only you have or can access.

In Canada, we don't arbitrate – or litigate – with cards up our sleeves. Each of the people involved in a legal dispute has an obligation to provide the other people with information and documents that are important to the issues in the dispute. In Canada, we arbitrate with our cards on the table, and the cards are face-up so that everyone can see them.

In court, the process for exchanging information and documents is called discovery and disclosure, and the rules of court provide a lot of direction about how discovery and disclosure is supposed to happen, and about the consequences if it doesn't. Your arbitrator will work with you and your ex to talk about the information and documents that need to be exchanged, but be warned! If you don't share the information and documents that are important to the issues in your dispute, the arbitrator can make an "adverse inference" against you when they are

making their decision. This is a decision about the facts that the arbitrator can make if you fail to provide evidence about those facts.

Here's an example that explains both discovery and disclosure and the adverse inference. The amount of child support that someone has to pay is based, usually, on their income. As a result, a person who may be required to pay child support needs to provide information and documents that are relevant to their income and help to explain their income. For someone who is an employee, this includes:

1. income tax returns, usually for the last three years, complete with all of the usual attachments, T-slips and schedules;

2. the notices of assessment and notices of reassessment received from the Canada Revenue Agency, usually for the last three tax years; and,

3. the person's most recent paystub showing their current pay rate and earnings to date, or a letter from their employer with this information.

(People who are self-employed or work for their own company have to provide a lot of other information as well.) This sort of discovery and disclosure is pretty normal, and your arbitrator will work with you to decide what information and documents need to be exchanged. However, if someone who is responsible for paying child support refuses to provide information about their income, the arbitrator can make an adverse inference against that person and decide what their income is without evidence… and the decision is usually for an amount that's much higher than the person would prefer.

If you have any concerns about getting information and documents from your ex before the arbitration hearing, you should speak to your arbitrator. These issues are normally discussed at a planning conference held long before the hearing. But if you realized that you need additional documents or if your ex isn't complying with their obligation to exchange documents, you will usually be able to apply to your arbitrator for order about the documents you are missing. You may also, depending on the rules that were agreed to at the planning conference, be able to ask for orders that your ex:

1. provide you, before the hearing, with written answers to a list of questions you prepare, called "interrogatories;" or,

2. be required to provide you with oral answers to questions you ask before the hearing, called an "examination for discovery" or a "questioning."

Here's the sort of evidence you should be gathering for your arbitration hearing. You should be looking for information and documents that:

1. help address the legal tests, whether from the legislation or the case law, that relate to the legal issues in your case;

2. help address the legal criteria, from the legislation or the case law, that relate to the legal issues in your case; and,

3. relate to any other important facts in your case, especially those facts about which you expect that you and your ex will disagree or have different recollections.

Getting organized

At this point, you'll find that you've accumulated a pretty big pile of paper and electronic documents. You'll have printouts of the case law and printouts of the legislation, as well as copies of all kinds of documents, from report cards, to educational assessments, to income tax returns to the contract for the purchase of the family home. You may even have things like academic articles about parenting after separation, children who resist seeing a parent, family violence, or substance use and abuse.

Now you need to organize everything.

You're going to want to organize all these documents to make them easy to find during the arbitration hearing, to make them easy for the arbitrator to understand, and to help you when you're preparing your written or oral evidence and your opening and closing arguments. This may seem like a lot of work, but it's worth it. It'll make your life much, much easier.

Case law and legislation are what lawyers call "authorities." These are best handled by putting them into a binder, with each case or each piece of legislation separated by pages with numbered tabs that stick out. The tabs lawyers typically use are numbered from 1 to 100, and are sold by stationery stores. Tabs numbered from 1 to 15 are available from places likes Staples and Grand & Toy, but the stick-on kind will do just as well. The tabs I use look like this:

The binder with all of the documents, a normal three-ring binder, is called a "book of authorities," and you can have as many authorities and as many books of authorities as you need. However, you'll need to make one copy of *everything*, arranged identically, for:

1. yourself;

2. each of the other parties; and,

3. the arbitrator.

Since books of authorities can kill a lot of trees, you can decide to prepare an electronic book of authorities instead. Many programs used to make PDF documents will let you assemble multiple documents into a single electronic file, with each document marked with an electronic "bookmark." Or, you can put all of your authorities into a folder on a thumb drive or a cloud-

based server like Dropbox or Google Drive. Just make sure that each file is clearly named and organized so the that the other parties and the arbitrator know what they're looking for.

The other "book" you're going to want to make is a book of documents. Just like you'd expect, the book is a binder with all of the documents you are going to use when you're providing your written or oral evidence and your opening and closing arguments. Just like books of authorities, each document should be separated by pages with numbered tabs that stick out, and you can have as many documents and as many books of documents as you need. You'll need to make one copy of everything for:

1. yourself;

2. each of the other parties;

3. the people who will be giving oral evidence at the hearing (a single copy that everyone can share will do); and,

4. the arbitrator.

You'll want to organize your book of documents carefully. You could, for example, group all of the documents relating to the children together, and take the same approach with all of the financial documents, the documents about property, the documents about loans and other debts, and so on. In general, it's helpful to put things in chronological order within each group too. That way, your ex's tax return for 2018 is followed by their returns for 2019 and 2020, and your child's report cards for Grade Three are followed by their report cards for Grades Four and Five. You get the idea.

Like books of authority, books of documents can also be provided in electronic form. When you are putting these together, however, make sure you've included all of each document! You don't want to discover at your hearing that you've scanned only one side of a double-sided document, or that you've scanned a legal-size piece of paper using the setting for letter-sized pieces of paper.

Presenting your case

Your goal when you are presenting your case is to convince the arbitrator to make a decision that is as close to the awards you are looking for as possible, and you need to make it as easy as

possible for the arbitrator to make that decision. Partly this comes down to the law and how well the information and documents you present address the legal tests and legal criteria that apply to the legal issues. But it also helps when you present your evidence and your arguments in a way that is clear and concise, tells a compelling story and is convincing.

Opening arguments

Opening arguments are short statements that the claimant or a respondent may make before they start presenting evidence. They're not always necessary, but think of them as setting the stage for the evidence the arbitrator is about to hear. They help the arbitrator get an idea about what's to come and can help the arbitrator focus on the important parts of what the people who are going to be giving evidence will say.

There are no rules about what can and can't be in an opening argument. You won't need to get too much into the legal issues, other than to provide a summary, because the issues will have been discussed at the planning meeting and the arbitrator will know what the case is about. It might be useful to talk about these points.

A. The awards you are asking the arbitrator to make, in a summary form, and the key reasons why you're asking for those awards, for example:

   "I'm asking for an award that I be allowed to move back to Saskatoon with our daughter because I've been accepted to law school at the University of Saskatchewan, and that's where my family lives, and I'll need their help and support while I'm going to school."

   "I'm asking for an award that the respondent pay child support to me, and that income be imputed to her because I believe that she underreports the income she gets from her restaurant."

B. The legal tests and legal criteria you're going to address, for example:

   "In order to be able to move to Saskatoon, I will show why the move is in my and my daughter's long-term interests and in my daughter's best interests overall. I will explain how this move will have only a small impact on our daughter and her relationships with the important people in her life, as well as my proposal for how my ex's relationship with our daughter can be maintained."

> "I will show that my ex consistently understates the income available to her from her restaurant, that she receives benefits from the company that she writes off against her restaurant's income, and that her lifestyle is beyond what she should be able to afford based on the income she reports."

This will help the arbitrator to be alert for information about the tests and criteria that apply to the legal issues when they are listening to oral evidence.

C. Your response to the awards the respondents are asking for, in a summary form, and the key reasons why you agree with or object to those awards, for example:

> "I disagree with my ex's request for an award that I compensate her for half of the value of my car. That car came to me from the estate of my father, and, as an inheritance, it is excluded from the family property to be divided."

> "I disagree with my ex's request for an award that we share our son's time equally. Our son has been consistently late for school when he has been with his father. He missed ten whole days from school last semester as well. I would consider agreeing to shared parenting time if my ex is prepared to agree that our son must be at school on time, every day he is with him, unless he is sick."

D. You might also provide a description of the people who will be coming to give oral evidence and what you think those witnesses are going to have to say about the legal issues in your case.

> "We will hear from Gurpreet Singh, our son's homeroom teacher about our son's progress in school, how I have been engaged in our son's schooling and have attended all parent-teacher interviews, and about how often our son has been absent from or late to school."

> "We will also hear from Brenda Brown, the manager of my ex's restaurant, about the restaurant's income and corporate financial statements."

Remember, you want to make it as easy as possible for the arbitrator to understand the legal issues, understand your case, understand the evidence they are going to hear, and understand how the evidence they hear relates to the legal issues in your case.

Presenting evidence

The evidence you present, if you're going to present any evidence at all, will consist of oral or written evidence of yourself and of other people who have direct, personal knowledge of facts relating to the legal issues in your case. The people who provide oral or written evidence are called "witnesses."

Written evidence will be provided through affidavits. An affidavit is a document in which you or your witness writes down the things they have to say about the facts that relate to the legal issues in your case, usually in a chronological narrative form, like a story. The witness will also swear, affirm or promise that the information in their affidavit is accurate and true. Documents can be attached to an affidavit that the witness identifies in their affidavit. These documents are called "exhibits," and they are numbered by letters. The first exhibit is called "Exhibit A," the second is called "Exhibit B" and so on.

There are usually three parts to a witness's oral evidence.

First, the witness provides their "evidence in direct," which is the part where you tell the arbitrator about the facts or where you ask your witnesses questions about the facts. In general, you're supposed to ask your witnesses open-ended questions rather than questions that contain their own answer, called "leading questions." Here are some examples.

Open-ended questions	Leading questions
"Do you own a car?"	"You own a 1975 Ford Pinto, don't you?"
"What is your annual income?"	"Your current income is $63,425 per year?"
"Did you make the appointments for the children's parent-teacher interviews?"	"The only person that made the appointments for the children's parent-teacher interviews was me, isn't that right?"

Expect your ex to object if you ask your own witnesses leading questions. You should also expect your ex to object if you ask your witnesses questions about things that don't have at least some connection to the legal issues. If the only legal issue is about how property should be divided, questions about your ex's terrible parenting skills are irrelevant.

The questions you ask your witnesses can also concern the documents in your book of documents. You'll want to make sure that you have one witness, including yourself, who is able to identify each of your documents.

This aspect of the process is why it's so important to organize your book of documents. You want to be able to get your witness not just to the right document but to the specific portion of the document. You might, for example, say something like: "I would like to refer you to the document at Tab 6 in Volume 2 of the claimant's book of documents, and if you could please turn to page three of that document and read the second paragraph from the top." This is also why all of the copies of your books of documents have to be identical. Everyone is going to want to look at the document you are asking the witness to review.

Next, your ex can ask the witness their own questions, called a "cross-examination." Unlike you, your ex can ask your witnesses leading questions. When it's your turn to cross-examine your ex's witnesses you'll want to ask questions that support your case and challenge the witnesses' truthfulness or credibility. You'll be allowed to use leading questions too.

You can also ask your ex's witnesses questions, and you can use the documents in your book of documents and those in your ex's book of documents.

Finally, when your ex is done, you can ask your witness a few more questions, called a "redirect." You can ask your witness questions about new things that came up during their cross-examination but not about things that didn't.

The evidence you present will also include the documents you have put together in your book of documents, once you or another witness given oral evidence has identified them. These documents, when a witness has identified them, are called "exhibits," just like the documents that are attached to affidavits, and they are numbered with numbers. The first exhibit is called "Exhibit 1," the second is called "Exhibit 2" and so on.

Closing arguments

When the claimant and all of the respondents have finished presenting their evidence, it's time for each party, starting with the claimant, to present their closing arguments. Closing arguments can be given in writing, orally or both. A lot of people like to prepare written closing arguments because of the extra time they have to really think about the evidence that was

given and how the evidence fits into the law. It lets people provide much more careful, polished arguments than oral closing arguments sometimes allow.
Your closing argument is when you really try to convince the arbitrator to make awards you're looking for, or awards that are as close to what you're looking for as possible. This is your opportunity to talk about the facts and the law, and about how the law should be applied to those facts to produce the outcome you're after. You want to be as careful and as organized as possible to make the arbitrator's job as easy as possible.

In your closing argument you'll probably want to talk about the law first. Remember that the arbitrator knows what the legal issues are and that the arbitrator you've hired is an expert in family law. The arbitrator will be familiar with the legislation and the case law, but it's still your job to explain the law and then explain how the evidence the arbitrator has heard meets any legal tests that apply and addresses any legal criteria that apply.

You can also talk about your ex's interpretation of the law. You can argue that your ex is relying on the wrong legal test and the wrong legal criteria. You can argue that the case law they're relying on is out of date, been overruled by another decision, or is doesn't apply to the legal issues in your case.

Next, you'll want to talk about the facts in a good bit of detail, and how the law applies to the facts. You'll want to highlight:

1. how the evidence that was presented addresses any legal tests that apply to the issues;

2. how the evidence addresses any legal criteria that apply; and, ultimately,

3. how the evidence and the law should result in the arbitrator making the awards that you're asking for, or awards that are as close to those awards as possible.

The evidence you'll be talking about includes not just the things that witnesses said in their written or oral evidence, but the documents in the books of documents. These documents can make all the difference in proving your point. If you say that the kids are late all the time when they're with your ex, and your ex says that they're never or hardly ever late, report cards or attendance summaries from the school can make your case for you. Documents, especially from reliable sources like school boards, banks, credit card companies, employers, medical doctors, psychologists and the Canada Revenue Agency, are likely to taken at face value by the arbitrator and can be quite convincing.

Remember that when you're talking about the evidence, you also have the opportunity to talk about the evidence presented by your ex. You'll want to explain any weaknesses and inconsistencies in the evidence of your ex and their witnesses, and perhaps also explain why you think they are being less than truthful or lack credibility – or even how their evidence supports *your* position on the legal issues! If you can get the arbitrator to doubt the evidence a witness for your ex has given, the arbitrator is more likely to believe your version of events than your ex's version.

Most of all, you'll want to talk about how the evidence presented by your ex doesn't meet the legal tests that apply and doesn't addresses the legal criteria that apply. You certainly want to include an argument about why the arbitrator shouldn't make the awards your ex wants the arbitrator to make.

How arbitrators make decisions

The job of the arbitrator is, as I said at the beginning of this guide, to decide what the facts are, decide what the law is, and then decide the outcome of a case by applying the facts to the law.

The discussion we've just finished about evidence will have helped explained how different people can have a different understanding or a different opinion of the facts that are important to their case. That's why arbitrators have to make decisions about what the facts of a case are. I am always happy to accept facts that everyone agrees are true, but when the parties disagree about a fact, whether it's about the colour of a car or something more significant, like the purchase price for the family home or how a credit card was used, then I have to make a decision.

You've also learned how people can disagree about what the law is. Maybe it's about the right legal test to use or how the test should be applied, about the right legal criteria to consider, or about whether the principles in a particular case are relevant or irrelevant to the legal issues in your case. These are the things that people are mostly likely to disagree about, and when they disagree about the law, my job is to make a decision about the law.

Making decisions about the facts

In some ways, making decisions about the law that applies to a case is easier than deciding what the facts of a case are. While some legal problems are indeed difficult to sort out, the

basic rules of family are relatively straightforward and the case law is fairly stable. Case law evolves at a slow and measured pace, and bombshell decisions from Canada's courts of appeal and the Supreme Court of Canada are few and far between.

It's often much more difficult to sort the facts out, especially when the parties to a case present conflicting evidence. Before I go any further, let's talk about evidence in a little more detail.

"Evidence," in the legal sense, is information that tends to prove that a fact is more likely to be true than not. (Facts are important, remember, because it is how the arbitrator applies the law to the facts that leads to the outcome of a case.) The first step in the arbitrator's process is to decide whether evidence can be "admitted," which is something that people normally argue about during the hearing. Evidence that is admissible is evidence that the arbitrator can take into account when making a decision, and the reason why we argue about admissibility at all is to make sure that the evidence the arbitrator considers is as reliable as possible.

Say, for example, a witness says, "I saw Manjeet at the park with her daughter." That's pretty good evidence, especially if the witness:

1. knows Manjeet well enough to identify her by sight;

2. saw Manjeet at the park during the day, with plenty of light to see her; and,

3. was close enough to identify the person they saw as being, in fact, Manjeet.

These things make the witness's evidence fairly reliable, but you can imagine arguments that might be made to undermine the witness's evidence: yes, they saw Manjeet during daylight hours, but it was very foggy or snowing heavily that day; Manjeet had just had cosmetic surgery and would have been unrecognizable; the witness has eye problems and wasn't wearing their glasses; or, the witness was impaired by drugs or alcohol.

Now, say the witness says "Frank told me that he saw Manjeet at the park with her daughter." In a courtroom this would usually be inadmissible as "hearsay." (Hearsay is evidence of information a witness got from someone else but didn't see or hear themselves.) In arbitration, this evidence might be admitted, subject to the arbitrator making a decision about the "weight" – the persuasive importance – to be given to the evidence.

To take things to the extreme, say the witness says "I heard that Manjeet was at the park with her daughter." This is "anonymous hearsay," because we don't even know who told the witness that Manjeet was at the park and, unlike Frank, we can't get that person to come to the hearing to give evidence about what they did and didn't see. Anonymous hearsay wouldn't be admitted in court and it wouldn't be admitted in an arbitration. The evidence is just too unreliable.

Let's take another example. Say a witness says "I saw Stephan kick a squirrel six years ago" in a case about child support. While the witness's evidence might possibility be relevant in a case about parenting after separation, even though the event happened an awfully long time ago, it's really hard to imagine how the evidence of squirrel-kicking has anything to do with child support. In court and in arbitration, this evidence would not be admitted because it is "immaterial." The evidence is more about slagging Stephan's reputation than it is about figuring out how much support Stephan has to pay.

On the other hand, really good evidence that would be "material" in a child support case might include evidence about Stephan's current and former employment, Stephan's income and the hours Stephan works, and maybe, if there are questions about Stephan's honesty, evidence about Stephan's standard of living. Evidence that is material is evidence that is relevant to the legal issues in a case.

To be admitted – to be included among all of the things the arbitrator will think about when deciding what the facts of a case are – evidence must be *reliable* and *material*. However, arbitrators are not bound by the laws of evidence the way judges are. We are more concerned about fairness and efficiency than we are with the strict and complicated rules that apply in court, and, as a result, we're more likely to admit evidence than not. When we do find ourselves admitting evidence that's a bit fuzzy in terms of reliability and materiality, we'll usually admit that evidence subject to our decision about the weight we should give to it.

"Weight" is about persuasiveness. A witness's evidence that they saw Manjeet at the park is far more persuasive than a witness's evidence that Frank saw Manjeet at the park. Likewise, the contract for the purchase of a home that says the selling price was $350,000 is more persuasive than a witness who says "we bought the house for something like $350,000," a bank statement showing a series of withdrawals from an ATM at a casino is more persuasive than a witness who says "Sandra withdraws one to two hundred dollars at a time when she gambles," and a psychologist who gives evidence that Hermione has borderline personality disorder is more persuasive than the opinion of Hermione's roommate, who works as a stockbroker, that Hermione has borderline personality disorder.

This is partly why documents are so helpful. First, they can be the sort of definitive evidence that clears things up when witnesses have different recollections about an event. (Did Ghislaine put $50,000 or $60,000 of family money into her separate account? I don't know, but her bank statements do.) Second, documents are normally very reliable, especially business records like bank statements, credit card statements, payroll records, report cards, doctors' notes, receipts, invoices, contracts, and other legal documents like wills, powers of attorney and health care directives.

Other "documents" that can be useful include:

1. photographs;

2. video and audio recordings;

3. text messages and emails;

4. blog posts and posts on social media; and,

5. letters.

It can get a little sticky, unfortunately, when two people have different recollections of events and there isn't any document or evidence from other witnesses that corroborates one person's version of events rather than the other person's version. In cases like this, I also have to think of the witnesses' "credibility." Credibility means believability; I'm much more likely to accept the evidence of someone who is credible than someone who is not.

Figuring out which witness is more credible than another is a bit like using a Magic 8-Ball. It's a gut call, and if I can make a decision without having to evaluate a witness's credibility I will. (In fact, research shows that judges and police officers aren't any better at spotting people who are lying than anyone else. I assume the same thing goes for arbitrators.) However, these are some of the things I look for when have to assess someone's credibility.

A. Was their evidence stable and constant? Did they change their story when challenged in cross-examination? Did they seem to recall more and more details as their evidence went on, or did their level of recall stay more or less the same throughout?

B. Was their evidence consistent? Do all the pieces of their evidence fit into a logical whole, or are there aspects of their evidence that conflict with other parts of their evidence?

C. Did their evidence make sense? Did their story fit with my experience about how people normally interact with the world around them?

D. Was their evidence probable? Is it likely that the events they described actually happen the way they described, or are there aspects of their evidence which are unlikely, improbable and fantastical? Did their evidence have a ring of truth to it?

E. Was the witness frank and forthcoming? Did the witness admit to faults and mistakes they should have admitted to, or was their evidence of their own behaviour just too good to be true?

Making decisions about the law

When I need to make a decision about the law, what I'm looking for includes:

1. the parts of the legislation that address the legal issues or, if the legislation doesn't address an issue, the case law that addresses the issue;

2. the case law that tells me how to interpret or apply the legislation; and, sometimes,

3. cases that apply the legislation or case law in circumstances that are similar to the circumstances of the case I have to decide.

In family law cases, provincial or federal legislation, or both, might be relevant to the case the arbitrator is asked to decide, since the federal *Divorce Act*, British Columbia's *Family Law Act* and Alberta's *Family Law Act* all talk about parenting after separation, child support and spousal support. (Alberta's *Adult Interdependent Relationships Act* has additional rules that say when a couple are "adult interdependent partners" – unmarried spouses – or not, and British Columbia's *Family Law Act* and Alberta's *Family Property Act* also talk about how property is divided between married and unmarried spouses.) The decision about the legislation the arbitrator will consider is normally made at the planning meeting. If the arbitrator is being asked to make a decision about parenting after separation under the federal legislation, you can ignore the provincial legislation, and vice versa.

You will want to include the relevant parts of the legislation in your book of authorities so you can walk the arbitrator through the legislation, and explain how it applies to your case, in your closing argument.

Case law is the other major component of your book of authorities. As I've just mentioned, there are three kinds of cases that you might want to include.

A. Where the legislation doesn't talk about an issue, there will be cases that provide the legal test the arbitrator must considered. For example, British Columbia's legislation didn't talk about moving after separation until 2013, and the federal *Divorce Act* didn't talk about the issue until 2021. Alberta's *Family Law Act* still doesn't talk about moving after separation.

   Before the legislation changed to address moving after separation, the most important case was that decision from the Supreme Court of Canada, *Gordon v Goertz*. As a result, if you or your ex wanted to move away, you'd put *Gordon* in your book of authorities and your closing argument would talk about the factors and considerations *Gordon* requires. You'd still do this if your arbitration is in Alberta, or in any of the other provinces that don't have rules about moving in their family law legislation, but you wouldn't need to if your arbitration is in British Columbia.

   Some family law issues are still not covered completely by the legislation. One example is how the law of contracts – an area of the law which is almost completely made up of principles from the case law – applies to uphold or cancel family law agreements. Another example is the law on unjust enrichment, the law that applies when someone makes a property claim that isn't addressed by the legislation.

B. Even when the legislation does talk about an issue, there are lots of helpful cases that explain how to interpret and apply the legal tests and legal criteria the legislation provides.

   I've already mentioned *Miglin v Miglin* that talks about the *Divorce Act* test and factors relating to claims for spousal support. There are lots of other cases that do the same sort of thing. *Contino v Leonelli-Contino* is a 2005 decision of the Supreme Court of Canada that talks about special expenses and extraordinary expenses under the Child Support Guidelines. *Boston v Boston*, a 2001 decision of the same court, talks about

paying spousal support based on income that comes from a pension that has already been split between the parties as family property under provincial legislation.

C. Finally, there are cases that show the arbitrator how the legal tests and legal criteria in the legislation and in the case law were applied in cases that are similar to your case and resulted in a decision like the decision you're looking for.

   These cases can be very helpful as they show the arbitrator exactly how they can make the awards you want them to make. Unfortunately, they're often the hardest cases to find.

It's important to know that not every case is equally important or equally persuasive from the arbitrator's point of view.

As I said at the beginning of this guide, case law is the collection of judges' decisions that have accumulated over hundreds of years. As a general rule, when one judge has made a decision about a legal issue, a second judge dealing with the same issue is required to follow the decision of the first judge. However, since the circumstances of two cases are rarely identical, the second judge often winds up adding something to what the first judge decided. This is why the law is so complicated in common law jurisdictions like Canada (outside of Québec, that is), England and Australia.

Say, for example, a judge a long time ago had to deal with a question about what should happen when someone rides a horse onto a field owned by someone else, damaging their crops. The judge might have said that people shouldn't go onto someone else's property without being invited to do so – the basic principle behind the law about trespass – and required the rider to compensate the landowner for the damage they wrongfully caused to their crops. A second judge a little while later might have to think about whether and how the same principle should apply if someone rode onto someone else's field because they were chased by an angry mob and had no choice except to ride onto the field. A third judge might have to consider whether the principle applies if the person rode onto the field to save the landowner from being mauled by a bear. The law on trespass gets more and more complex as we move along this chain of cases and more and more complications are addressed.

Now while judges are usually required to follow the decisions of other judges, some judges are more important than others. In Canada, we have four levels of court.

Court	Function
Provincial court	A trial court with limited authority to deal with some legal issues but not others. The lowest level of court in each province.
Superior trial court	A trial court with unlimited authority that also hears appeals of provincial court decisions. The name of superior trial courts changes by province. In British Columbia, the superior trial court is the Supreme Court. In Alberta and Saskatchewan, this court is the Court of Queen's Bench. In Ontario, the court is the Superior Court of Justice.
Superior appeal court	An appeal court that only hears appeals of superior trial court decisions. The highest level of court in each province.
Supreme Court of Canada	An appeal court, common to all of Canada, that only hears appeals of superior appeal court decisions. The highest and final level of court in Canada.

What all of this means is that:

1. judges throughout Canada are required to follow decisions of the Supreme Court of Canada, the highest court in the country;

2. judges of the two levels of trial court in each province are also required to follow decisions of their province's court of appeal; and,

3. judges of the provincial court, the lowest level of court in each province, are also required to follow decisions of their province's superior trial court.

As a result of this hierarchy, the cases that are most persuasive to arbitrators will be decisions of the Supreme Court of Canada followed by decisions of Canada's courts of appeal. (Decisions of the courts of appeal of other provinces will also have an impact on an arbitrator's analysis of the law in a case.) Decisions of each province's two trial courts will also be persuasive, and sometimes make the difference in the outcome of a case when the circumstances of those decisions are close to the circumstances of the case the arbitrator is resolving.

The law, however, changes as the world changes. This applies just as much to the case law as it does to legislation. The decision that legalized the marriage of same-sex couples at the start of this century almost certainly wouldn't have been made at the start of the previous century, and definitely wouldn't have been made the century before that. As a result, it's also important to know whether a decision:

1. has been overruled by a decision of a higher court or, in the case of the Supreme Court of Canada, by a more recent decision of that court;

2. deals with legislation that has been changed so that the parts of the legislation the decision addresses aren't the same as they were when the decision was made; or,

3. deals with legislation that is no longer in force.

You will want to include relevant case law in your book of authorities so that you can explain to the arbitrator the principles in each case, and how those principles apply to your case, in your closing argument.

It's important to show the arbitrator exactly what part of each case you need them to read. Some decisions are very, very lengthy, and you don't want to make the arbitrator go trudging through the entire case to find the part of the decision you're referring to! Ideally, you want to say something like: "I would like to refer you to the case of *Aldershof v Aldershof*, a 2018 decision of the Alberta Court of Appeal, at Tab 12 of the claimant's book of authorities, and if you could please turn to paragraph 64 of that decision on page nine." That would be perfect.

Here's how I make decisions about the law that applies to a case.

A. I always turn to the legislation first. Legislation sets the basic rules that apply to a particular legal issue and creates the framework for my decision.

B. If the legislation isn't as clearly written as it could be, or if there are different ways to interpret the legislation, I then want to hear about the cases that explain how the legislation is to be interpreted or applied.

C. If a legal issue isn't addressed in the legislation, then I'd like to see the one or two most important cases on the issue. (These are called the "leading cases" on that issue.)

D. Then, I'd like to see cases about how the legal tests or legal criteria, whether they come from legislation or the case law, have been applied in cases where the circumstances are similar to the circumstances of the case I have to decide.

The cases that are most persuasive to me are, in order, decisions from the Supreme Court of Canada, decisions from the court of appeal in the province where the arbitration is taking place, decisions from the courts of appeal of other provinces, decisions of the superior trial court in the province where the arbitration is taking place, decisions from the superior trial courts of other provinces, and decisions of the provincial court in the province where the arbitration is taking place.

Applying the law to the facts

This is the easiest part of the decision-making process for me. The hardest part is always going through the evidence and arguments to decide what the facts of a case are. Making decisions about the applicable law is much easier, and once I've done that, applying the facts to the law is almost like a mathematical equation, A + B = C. The right outcome is usually pretty obvious once I've made my way through the first two steps.

Say someone wants me to make an award about a payment of retroactive child support. (Retroactive support awards are awards that take effect at some time before the award is made. Since they start before the award is made, awards like this usually result in the person paying support, the "payor," owing a sum of money to the person entitled to receive it, the "recipient," for all the support payments that the award says they should have made.) Both the payor and the recipient will have referred me to the Supreme Court of Canada's 2006 decision in *D.B.S. v S.R.G.*, the leading case on retroactive child support.

The payor will make arguments about how the facts of their case support the factors listed in *D.B.S.* about when retroactive support orders *should not* be made:

1. the recipient unreasonably delayed making their application for child support or their application to change an earlier child support order, undermining the payor's interest in the certainty of their financial obligations; and,

2. the recipient will suffer an unfair degree of hardship if they are required to pay the potential support order.

The recipient, on the other hand, will make arguments about how the facts support the factors listed in *D.B.S.* about when retroactive support orders *should* be made:

3. the payor deceived the recipient about the actual amount of their income or refused the recipient's requests to produce information and documents about their income;

4. the payor bullied the recipient into not making their claim for retroactive support earlier;

5. the payor prioritized their own financial interests over the wellbeing of their children; and,

6. the children suffered an unfair degree of hardship as a result of the payor's underpayment of child support or nonpayment of support.

Along the way the payor might refer me to cases like *Connelly v McGouran*, a 2007 case of the Ontario Court of Appeal, and *Greene v Greene*, a 2010 case of British Columbia Court of Appeal, to argue about whether the recipient's delay was reasonable or not, and cases like *Aspe v Aspe*, another 2010 case of British Columbia Court of Appeal, to argue that the hardship to them from the retroactive award suggests that the award should not be made.

The recipient will likely refer me to cases like *Price v Price*, a 2010 case of British Columbia Court of Appeal, and *Baldwin v Funston*, a 2007 case of the Ontario Court of Appeal, to make arguments about the blameworthiness of the payor's conduct, and cases like *de Rooy v Bergstrom*, another 2010 case of British Columbia Court of Appeal, to argue about why the impact on the children from the underpayment or nonpayment of support suggests that a retroactive award should be made.

Connelley, *Green*, *Aspe*, *Price*, *Baldwin* and *de Rooy* are all cases that elaborate on the specific factors discussed in *D.B.S.*, and provide additional considerations that are very useful to decision-makers who have to make orders or awards about retroactive child support claims. They're also cases from Canadian courts of appeal, which makes them fairly persuasive when I have to make my decision, whether the case I'm dealing with is in Alberta or British Columbia.

After I've got the law all sorted out and identified the relevant legal tests and legal criteria – "the principles in *D.B.S.* are…," "*Connelly* and *Greene* say I also have to consider…," and "the rules in *Price* and *Baldwin* require me to also consider…" – it's just a matter of plugging the facts

into the equation. Do the facts I have found address the factors in *Connelly* and *Greene*? Is the recipient's delay reasonable or unreasonable in light of the facts and those factors? Do the facts I have found address the criteria in *Price* and *Baldwin*? Was the payor's conduct blameworthy in light of the facts and those criteria?

You will, in your closing argument, want to explain to the arbitrator how the law should be applied to the facts to produce the awards you're asking for. You'll already have made your arguments about how the arbitrator should decide what the facts are and what the law is, but it's important to understand that the arbitrator might agree with all, some or none of your arguments. As a result, your argument about how the law should be applied to the facts is a bit of a shot in the dark. However, these arguments are always helpful and you shouldn't shy away from making them.

Conclusion

Hopefully this guide has managed to explain a least a part of how arbitrators think and how they make decisions, and maybe made it a bit easier for you to present and argue your case. I know that there's lots more to arbitration, presenting evidence and arguments, and decision-making than what I've been able to cover. There's a reason, I suppose, why law school is three years long and why lawyers are required to serve an apprenticeship before they are released into the world.

If there's anything I want you take away from this, it's about the importance of getting legal advice to help you learn about the law that applies to your case and the awards you want the arbitrator to make. Your decisions about the awards you're going to ask for will determine the law that applies to your case, and the law that applies to your case will play a critical role in making decisions about the evidence you're going to present to your arbitrator.

If there's anything *else* I want you to take away, it's about the importance of making the arbitrator's job as easy as possible. You want to keep the evidence you present simple and straightforward, making sure that your evidence is both reliable and material and that your witnesses are credible. You want to keep your arguments about the law simple too, and when you ask the arbitrator to refer to the legislation or the case law, make sure you provide the arbitrator with pinpoint references to the bits you want them to look at, not "the best interests of the child test in British Columbia's *Family Law Act*" but "the best interests factors at section 37(2)(c) and (f) of British Columbia's *Family Law Act*," and not "the Supreme Court of Canada's

decision in *D.B.S. v S.R.G.*," which runs to some 80 pages, but "paragraph 122 of the Supreme Court of Canada's decision in *D.B.S. v S.R.G*."

I know that representing yourself is difficult, whether you're in court before a judge or at a hearing in a boardroom before an arbitrator. But careful preparation and getting some legal advice before you do anything else will make it easier.

Selected resources

The leading organization in Canada for people who are going to court without lawyers is the **National Self-represented Litigants Project**, based in Ontario. They've got lots of helpful resources. You can find them online at https://representingyourselfcanada.com and on Twitter, YouTube and Facebook.

Litigation Help is another excellent resource which offers useful information about going to court that you can also use in arbitration. Find them at http://litigation-help.com. I also recommend their awesome YouTube channel that features interviews with judges and lawyers, and includes videos on basic steps in litigation processes.

You can also visit **my firm's website**, at https://www.boydarbitration.ca, which includes links to the legislation on family law and arbitration in Alberta and British Columbia, a library of some of my papers and articles on family law and arbitration, and offers examples of different arbitration agreements, including arbitration agreements for people who don't have lawyers, you can download. Also, check out my YouTube channel, Five Minute Family Law, at https://www.youtube.com/c/JohnPaulBoydQC.

To access legislation and case law, the best place to go is the website of the **Canadian Legal Information Institute** at https://www.canlii.org/en/. CanLII also provides a useful YouTube channel with tips and tricks about using their website and doing legal research.

I also recommend a brand-new book, "**Family Mediation and Family Arbitration for the Self-Represented**" by Richard Shields. This book is published by Thomson Reuters and is written by a very experienced family law lawyer and arbitrator.

Alberta

The best and one of the only places to access public legal information in Alberta is the **Centre for Public Legal Education Alberta** at https://www.cplea.ca.

You may be able to get legal advice from the pro bono legal clinics in Calgary, Edmonton, Fort McMurray, Grande Prairie, Lethbridge Lloydminster, Medicine Hat and Red Deer. See the website of **Pro Bono Law Alberta** at https://pbla.ca for more information.

British Columbia

There are rather more resources available for the public in British Columbia than there are in Alberta. The first place I recommend you go is my public legal education resource "**JP Boyd on Family Law**," available in print format in public and courthouse libraries across the province and online at https://wiki.clicklaw.bc.ca/index.php/JP_Boyd_on_Family_Law. This is a comprehensive resource about family law and dispute resolution processes.

You can also access the **Justice Education Society** at https://www.justiceeducation.ca and on YouTube, and the **People's Law School** at https://www.peopleslawschool.ca and on Twitter, YouTube and Facebook.

Legal Aid BC includes public legal education in its mandate and hosts a very useful website at https://lss.bc.ca, as well as a website just about family law at https://family.legalaid.bc.ca.

You may be able to get legal advice from the pro bono legal clinics operated throughout the province by **Access Pro Bono**. Visit their website at https://www.accessprobono.ca for more information.