

The group for arbitration and dispute resolution of the Oslo Centre for Commercial Law (OCCL) invites to seminar: Taking evidence (document production)

Time: 22 April 2020 15:00-18:00

Venue: Auditorium 4, Domus Academica

Document production is a recurring issue in commercial disputes. In complex disputes, disagreement with regard to document production may end up as a "dispute in the dispute". Nonetheless, the Norwegian Arbitration Act – as the UNCITRAL model Act – merely provides a rudimentary regulation of document production (No. "provokasjoner" og bevisilgang). Therefore, the Arbitration Act does not provide much guidance for the parties and the Tribunal with regard how to determine the essential legal questions on this matter.

During the last years, it has been settled that the Norwegian Arbitration Act cannot simply be "supplemented" by the provisions in the Civil Procedure Act governing document production; and certainly not in international arbitration cases. However, unless the parties have agreed to use or seek guidance in, for example, the IBA Rules on the Taking of Evidence (or the similar provisions in NOMA) or certain tailor made provisions, there is often uncertainty with regard to how the Tribunal shall address requests for document production. This part of the seminar will be conducted in English.

Until recently, the interpretation of the provisions in the Civil Procedure Act governing document production could appear more or less settled. However, a recent decision by the Norwegian Supreme Court (HR-2019-997-A: Felleskjøpet v Infor) has led to a debate whether or not the requirement of "specification" has become narrowed down. This part of the seminar will be conducted in Norwegian.

On this basis, the seminar will address the following selected topics:

Part 1: Taking Evidence (document production) in arbitration

1. The situation where the parties have not made a particular agreement on this matter (and the Tribunal has not addressed it in Procedural Order No.1):

May and should a Tribunal upon the other party A's request, request party B to produce documents that are likely to be material for the outcome of the case, or should the Tribunal merely infer that such document would be adverse to the interest of party B?

Does it matter whether or not a party intend to request assistance from the court to enforce document production?

When should the Tribunal make such decisions, and to what extent should the PO1 provide a particular schedule to manage requests for document production?

- *Opening speech: Advokat Stefan Brocker, Mannheimer Swartling*
- *Commentator: Advokat Helge Morten Svarva, Wiersholm*

2. The situation where the parties have agreed to use or seek guidance in the IBA Rules on the Taking of Evidence (or the similar provisions in NOMA):

How to understand IBA Rules on the Taking of Evidence Art 3 (a) and (b) with regard to the requirements "description", "relevant" and "material"?

To what extent is the content of these requirements settled in international arbitration practice?

Is there any room for a particular "Nordic" approach in this respect?

- *Opening speech: Sabina Sacco, Partner Lévy Kaufmann-Kohler*
- *Commentator: Advokat Stefan Brocker, Mannheimer Swartling*

Del 2: Spesifikasjonskravet i tvisteloven belyst med "Felleskjøpet-saken"

- *Innleder: Advokat Fredrik Lilleaas Ellingsen, Selmer (prosessfullmektig i Felleskjøpet-saken)*
- *Kommentator: Tidligere Høyesterettsjustitiarius Tore Schei*

Summary

- *Former Court of Appeal Judge, Peter Lauritz Bernhardt*

A light reception will follow the seminar