Subpoenas in Arbitration

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Introduction

As arbitrators with a legal background have to grapple with the *lingua franca* of fields such as engineering and architecture, so those with a non-legal background need to understand those aspects of Court procedures which form part of the process of dispute resolution via arbitration. This paper is intended to provide practical assistance in relation to subpoenas.

Definition

A subpoena is a document issued by a Court at the request of a party to legal proceedings ordering the person to whom it is directed to be present at a particular time and place for a specified purpose under threat of penalty in the event of non-compliance. That specified purpose will be either to produce documents *(subpoena duces tecum)* or to give evidence *(subpoena ad testificandum)* or both. The force of the subpoena derives from its issue by a Court with power to punish in the event of non-compliance. Subpoenas may usually be issued without leave (i.e. without first obtaining the Court's permission). In some jurisdictions the word summons is used instead of subpoena.

Warning

As far as possible, this paper endeavours to deal with principles of general application. However, each Court has its own procedures in relation to subpoenas and the particular provisions of the relevant rules should not be overlooked. For example, it may be that in some jurisdictions subpoenas are always made returnable before the Court, either via a requirement or as a matter of practice.

Commercial Arbitration Act (NSW) 1984, as amended

Section 17(1) enables the parties to obtain subpoenas from the Court. Arbitrators are given the same power as the Court to compel an answer to any question or production of any document by section 17(2) while section 18 enables a party or the arbitrator to apply to the Court in the event of non-compliance arising in relation to a subpoena or if "any person ... refuses or fails to do any other thing which the arbitrator ... may require".

It should be noted that section 18 will not apply if a contrary intention is expressed in an arbitration agreement. Consideration should also be given in the particular circumstances of a refusal/failure as to whether the option to continue the proceedings despite the default can and should be exercised: see section 18(3).

Procedural aspects

Whenever a subpoena is issued by a Court it will specify the time and place for compliance. The place for compliance is usually at the Court which issued the subpoena or at the registry of that Court. As that is often inconvenient in relation to arbitral proceedings, the preferable course is to obtain the consent of the parties at the Preliminary Conference for all subpoenas to be made returnable before the arbitrator at the intended hearing room (for a subpoena to give evidence or produce documents at the outset of the hearing) or at the room being used for directions hearings (in the case of a subpoena to produce documents prior to the hearing).

Having subpoenas to produce documents made returnable prior to the hearing not only gives time for the inspection of documents produced but also lessens the likelihood that the substantive hearing will be delayed at the outset by matters arising out of the issue of subpoenas. Any such early return date for subpoenas to produce documents is best fixed to coincide with date of an intended directions hearing.

Most Courts have their own practical requirements in relation to the issue of a subpoena. They include the form of the document and the amount of notice which the Court will require to be given as a matter of fairness. For example, it is obviously unreasonable to expect a busy expert witness to attend and produce a large number of documents upon one day's notice. Such considerations are best left to the Courts whose compulsive powers underlie every issued subpoena. This approach has the added advantage of ensuring uniformity as between subpoenas issued for arbitrations and those issued in respect of Court hearings.

On the return date - subpoena to give evidence

Unless it has already been indicated that the person the subject of a subpoena to give evidence is already in the hearing room, the name of the person so subpoenaed should be called three times outside the hearing room.

In the event of attendance pursuant to a subpoena to give evidence then the involvement of the person the subject of the subpoena in the proceedings is no different to that of a witness who has attended voluntarily.

One practical problem which commonly arises is that such a person arrives at the outset of the hearing but is not required until much later in the proceedings. The preferable course is to provide that person with some indication as to when he/she will be called and to ascertain how much notice he/she requires in order to attend the hearing thereby

minimising the inconvenience for everyone.

In cases of non-attendance the arbitrator's first question should be whether the party at whose request the subpoena was issued wishes to pursue the matter further. If so, then the arbitrator should check: (1) that the person was properly served; and (2) that there is no known reasonable excuse for the failure to attend. Those two matters should be considered on a preliminary basis since they are issues which the Court will consider if the party who issued the procedure wishes to take further steps in relation to the non-attendance. Having obtained satisfactory responses to both matters, the arbitrator should give permission for the party issuing the subpoena to approach the Court in relation to enforcement of the subpoena .

On the return date - subpoena to produce documents

If necessary, the subpoena should be called three times outside the hearing room. The representative of the party at whose request the subpoena was issued (alternatively the arbitrator himself/herself) should then ask the following questions:

Q1 What is your name?
Q2 What is your address?
Q3 Do you appear in response to a subpoena to produce documents issued to (name)?
Q4 Do you now produce the documents referred to in that subpoena and the subpoena itself?

(Unless there are objections to production, the documents should be handed over to the arbitrator at this point)

Q5 Do you object to any of the parties to these proceedings having access to these documents?

(Having dealt with any objections to access/inspection of the documents, proceed with access arrangements)

Apart from these formal questions it may be prudent to consider such matters as: (1) whether any of the documents are required in the course of the current day-to-day operations of the person or organisation to whom the subpoena has been directed; (2) whether originals or photocopies have been provided; and (3) to what person and address the documents should be returned or would the party producing the documents prefer to collect them when notified that they are no longer required.

There are a number of objections which might be made following the questions numbered 4 or 5 above. Objections to the subpoena itself or to production of the documents should be taken after question 4. Any objection relating to access should be raised after question 5. The former contest production of the documents; the latter challenge access to documents which have been produced. Potential objections are individually dealt with in the next section of this paper. It is important to bear in mind that all objections taken upon the return of a subpoena have nothing whatsoever to do with the question of admissibility of a document into evidence.

Once documents are produced to an arbitrator in response to a subpoena then he/she becomes responsible for their custody. Such documents should be accorded the same level of security as documents which become exhibits in the course of the hearing.

Objections - Procedural

It has already been indicated that it is preferable, for reasons of cost and convenience, to obtain the agreement of the parties at the Preliminary Conference to have subpoenas made returnable before the arbitrator. In like manner it is desirable to obtain the consent of the parties for the arbitrator to rule on any objections which may arise in relation to subpoenas. Hopefully this will serve to avoid applications to the Court which issued the subpoena.

The procedurally correct way to seek to have a subpoena set aside is by way of a Notice of Motion (made returnable at the time and place indicated in the subpoena) and, if necessary, supported by an affidavit. In practice it is common for such documents to be overlooked and objections are often made orally without prior notice. Despite the frequency of such informal applications, objections should be the subject of evidence from the person or firm or party raising the objection unless the objection relates solely to either the wording of the subpoena or legal argument.

A person objecting to a subpoena is entitled to legal representation and may question any deponent or witness or call any witness in relation to the subpoena and make submissions following any such evidence.

When serving a subpoena the recipient should be offered a sum of money sufficient to cover that recipient's expenses of going to and returning from the place for compliance. Failing to offer (or tender) such money (called conduct money) renders the subpoena unenforceable with the consequence that the recipient has no obligation to attend. In some jurisdictions there is provision for payment of the cost of complying with a subpoena to produce documents, intended to cover collation expenses and the like.

Objections to Production

At the risk of stating the obvious, it should be remembered that objections to *production* occur *before* the arbitrator receives the documents unlike objections to *access* which occur *after* the arbitrator receives the documents. The significant distinction is that the arbitrator views the documents before deciding the question of access.

Grounds of objection are commonly referred to as being an "abuse of process". Accordingly, those words alone do not denote any particular basis or have any special significance when used by lawyers.

Although there may appear to be many grounds for setting aside a subpoena and numerous potential objections to producing documents, they may be conveniently considered under two headings: width and improper purpose.

• Width

The most common ground of objection to a subpoena to produce documents is that it is "too wide", meaning that its wording is not sufficiently precise. A subpoena may be considered too wide if it imposes an unduly onerous obligation upon a person to collect and produce documents which have little or no relevance to the proceedings: *Commissioner for Railways v Small* (1938) 38 SR (NSW) 564.

Likewise, a subpoena to produce documents may be too wide if compliance with its wording would be oppressive: *Small 's case, Senior v Holdsworth* [1976] QB 23.

A subpoena directed to a non-party may be set aside as being too widely drawn if it is insufficiently precise and requires that non-party to make a judgment as to which documents relate to the issues between the parties: *National Employers Mutual General Association Ltd v Waind & Hill* [1978] 1 NSWLR 377.

That issue should be contrasted with the burden which a subpoena might impose on a non-party in a matter which necessarily involves a large number of documents. In such cases it is necessary to strike a balance between the burden and the interests of the administration of justice.

It is not necessarily improper for a subpoena to contain phrases such as "relating to" or "referring to": *Southern Pacific Hotel Services Inc v Southern Pacific Hotel Corp Ltd* [1984] 1 NSWLR 710; *Spencer Motors P/L v LNC Industries Ltd* [1982] 2 NSWLR 921. See also *Lucas Industries Ltd v Hewitt* (1978) 18 ALR 555, *Alliance Petroleum v AGL* (1982) 44 ALR 124. Accordingly, it is not a case of "if it uses those words then it must be too wide". What makes a subpoena to produce documents served on a person not a party to the proceedings objectionable as being too wide is the burden which it imposes.

Given the practical consideration that setting aside one subpoena may only lead to another, it may be desirable to consider whether the subpoena can be "read down" in a manner which will limit the scope of the subpoena so as to overcome the objection to the satisfaction of all relevant parties. Such a step sits comfortably with the object of arbitration as a quick and cheap method of dispute resolution and avoids a "cat and mouse" contest whereby successive subpoenas with consequential objections only serve to generate scorecards for the lawyers, costs for their clients and a bad name for arbitration.

The *Arbitration Act* (NSW) 1984 (as amended in 1990) does not give an arbitrator the power to set aside a subpoena. However, a negotiated outcome can usually be accomplished by making the proposed solution appear attractive to both sides:

The party causing the subpoena to be issued will usually prefer to achieve an agreement to comply on a more limited basis than to either pursue non-compliance with the Court (and run the risk of having the subpoena set aside) or issue a new subpoena.

The party or person to whom the subpoena has been directed will usually prefer to minimise the inconvenience and avoid (a) the time and cost of contesting the subpoena in any Court application and (b) the risk of having to comply with the widely drawn subpoena in the event that it is not set aside. Offering to produce less documents, which would only have to be produced if a replacement subpoena was issued, makes good sense.

This may appear as though the arbitrator is re-writing a subpoena which the Court issued. However, what is actually happening is that neither the widely drawn subpoena nor the objection to its width are being pursued on the basis that a replacement obligation is being assumed voluntarily. In order to avoid any further dispute it is preferable to have the agreement noted (by the arbitrator or on the transcript) and to amend the original schedule or have a replacement schedule prepared so as to have the scope of the revised basis clearly defined. If it be thought that the agreement is insufficient by reason of the absence of the potential penalty which underlies a subpoena then consider, as an alternative to issuing a fresh subpoena, using section 12 of the *Evidence Act* (NSW) 1898 (considered later under the heading "Calls") either when the agreement as to the extent of production is reached or when the documents are later produced.

Unlike Supreme Court judges at first instance, Federal Court judges can and do deem limited production of documents as sufficient compliance thereby avoiding the need to consider oppressiveness.

To any arbitrator daunted at the prospect of complicated legal argument it will be a relief to learn that, when interpreting a subpoena said to have been too widely drawn, common sense is the primary consideration.

• Improper purpose

A subpoena may constitute an abuse of process where it has not been served for the bona fide purpose of obtaining relevant evidence (sometimes referred to as an objection on the basis of a collateral purpose). Grounds upon which objections might be based include:

(a) A subpoena not issued for the purpose of a pending hearing: *Botany Bay Instrumentation & Control P/L v Stewart* (1984) 3 NSWLR 98.

(b) Where the subpoena seeks to obtain discovery or further discovery against a party: *Small's case; Finnie v Dalglish* [1982] 1 NSWLR 400.

(c) Where the subpoena has been used to obtain discovery against a non-party: *Small 's case*.

(d) Where the subpoena has been issued for what is commonly termed a "fishing expedition": *Small's case*.

(e) Where the subpoena was not issued for the purpose of obtaining relevant evidence *and* the person to whom it was addressed is unable to give relevant evidence: *R v Baines* [1909] 1 KB 258.

(f) Where to require the attendance of a witness would be oppressive: *Raymond v Tapson* (1882) LR 22 ChD 430.

(g) Where there is an alternative statutory procedure for the production of documents: *R v Hurle-Hobbs, ex parte Simmons* [1945] KB 165.

These six specified circumstances should not be regarded as definitive. Clearly the categories of improper purpose can never be regarded as closed. It is therefore preferable to bear in mind the proper purpose of a subpoena which may be simply stated as seeking to obtain evidence to support the case of the party who caused the subpoena to issue (not to discover whether that party has a case at all and not merely to discover the nature of the other party's evidence). Accordingly, any proven purpose(s) must be considered against the proper purpose of the subpoena which is to add, in the end, to the relevant evidence in the proceedings.

Objections to access

Objections just considered (i.e. width and improper purpose) go to the subpoena itself and, if successful, will result in no obligation to produce documents.

The following grounds go to the question of access and will usually require the arbitrator to inspect the documents which are the subject of the objection.

Hopefully, from the Preliminary Conference, the arbitrator will have the prior agreement of the parties to look at such documents without disqualifying himself/herself from proceeding to hear the substantive dispute between the parties. In the absence of such consent then consideration may be given to referring the matter to the Court or, in the case of legal professional privilege, perhaps to a suitably experienced lawyer if the parties can agree on such a person.

• Legal professional privilege

This objection, if successful, will not overcome production of the privileged documents but will serve to prevent access to them. The privilege attaches to:

(a) confidential communications passing between the client and his/her legal adviser(s);

(b) communications between the client's legal adviser(s) and third parties if made for the *sole purpose* of pending or contemplated legal proceedings (*Grant v Downs* (1976) 135 CLR 674); and

(c) communications between a client and third parties if made for the *sole purpose* of obtaining information to be submitted to that client's legal adviser(s).

Importantly, it should be noted that this privilege does not apply to communications made in order to facilitate crime or fraud. Secondly, at the risk of stating the obvious, the privilege can be lost by reason of prior disclosure which has served to waive any claim for privilege.

Since a claim for legal professional privilege does not usually cover all the documents produced in response to a subpoena, the person producing the documents should be asked to separate or flag those documents in respect of which there is a claim for legal professional privilege. The usual practice is for such documents to be placed in a separate, sealed envelope on which is written (in large letters) "Privileged".

• Public interest immunity

The Courts will not compel or permit the disclosure of information which, if disclosed, would injure the state interest: *Sankey v Whitlam* (1978) 142 CLR 1. This area has subsequently been the subject of statutory provisions (NSW and NT) to the effect that the Attorney-General may issue a conclusive certificate that disclosure is not in the public interest. In such cases the arbitrator has no option but to order non-disclosure.

Public interest immunity recently arose as an issue in the context of professional disciplinary proceedings: *Finch v Grieve* (1991) 22 NSWLR 578 and was said to involve balancing the competing considerations of the public interest in disclosure and the public interest against disclosure.

This is not a ground which commonly arises. Unless the objection is plainly without merit, the preferable course would be to refer the issue for determination by the Court unless the arbitral scenario mirrors a previous Court decision.

• Self-incrimination

This is a potential albeit uncommon ground of objection the foundation for which is that no person or corporation is bound to answer any question or produce any document if the answer of the document would have a tendency to expose that person or corporation to conviction for a crime.

In Australia perhaps the most likely context in which this issue will arise is for a corporation with the prospect of prosecution under the *Trade Practices Act* 1974. Note that this privilege is not merely a rule of evidence confined to the courtroom: *Pyneboard Pty Ltd v TPC* (1983) 45 ALR 609 (High Court).

• Commercial confidence

An objection may be taken to access being granted to documents which contain matters of a confidential commercial nature. If, upon inspection of the documents in question, the claim appears to be well-founded then access may be limited to either the legal advisers to the parties or such advisers and necessary expert witnesses. It is most desirable that written undertakings be obtained in such cases.

The wording used by the Registry of the NSW Supreme Court whenever inspection of documents is sought might be used as a **starting point** for an undertaking appropriate to the case in hand:

> "Except with leave of the court I will not divulge otherwise than for the purpose of the proceedings mentioned beside my signature, divulge, communicate or refer to any person any information obtained from inspection of any document or thing produced by the court to me or a copy of any document or thing so produced to, and inspected by, me, unless it is admitted into evidence in the proceedings."

Given the potential damage which might arise from a rejection of a claim for privilege based upon commercial confidentiality, it would seem preferable to refer the

question of access to the Court if the problem cannot be resolved on the basis of appropriately worded undertakings, bearing in mind that the need for such an application may, with the benefit of hindsight, be taken into consideration when awarding costs.

• No legitimate forensic purpose

Although not normally regarded as a potential basis for objecting to access, there is support for the proposition that access might be refused in the absence of any legitimate forensic purpose: *Maddison v Goldrick* [1976] NSWLR 651.

This residual discretion was also considered in the English decision: *Senior v Holdsworth* [1976] QB 23 at pages 41-43.

• Enforcement of subpoenas

A subpoena used in arbitration proceedings derives its force from the powers of the Court which issued that subpoena. Hence, where non-compliance occurs the arbitrator should normally refer any question of enforcement back to the relevant Court either (a) if so requested by a party; or (b) if the arbitrator considers such a course appropriate. Arbitrators should note both the power accorded the arbitrator to apply to the Court in section 18(1) of the *Commercial Arbitration Act* (NSW) 1984, as amended and the power which he/she may have to proceed despite the default, as to which see section 18(3).

Enforcement is by way of the Court's procedures for contempt of Court. The party seeking enforcement should prove service, the tender of conduct money, the absence of any objections to either production or access and should provide the Court with evidence of any relevant correspondence or conversations in relation to the subpoena.

Apart from non-compliance it is a punishable contempt of Court to destroy documents which are known to be the subject of a subpoena or to take steps to remove any such documents from the jurisdiction so as to frustrate the potential effectiveness of a subpoena.

The fundamental question in all such cases is whether the conduct in question either had the effect or is likely to have the effect of interfering with the administration of justice: *Lane v Registrar of the Supreme Court of NSW (Equity Division)* (1981) 148 CLR 245 and *Registrar of the Supreme Court of NSW (Equity Division) v McPherson* [1980] 1 NSWLR 688.

Arbitrators do not need to be familiar with the procedures which the Court will follow in relation to an allegation of contempt of Court arising out of the issue of a subpoena: they merely have to refer non-compliance to the Court when so requested.

Considerations or fairness (i.e. natural justice) suggest that arbitrators should not, of their own volition, refer questions of non-compliance to the Court without first providing the parties with an opportunity to be heard on the issue.

Alteration of obligations

• subpoena to give evidence

It frequently occurs that a witness is served with a subpoena requiring attendance to give evidence at the outset of the hearing. The practical problem which arises is whether the obligation to attend can be modified or even removed prior to the hearing by either the party which caused the subpoena to be issued or with the consent of both parties.

For example, if a witness is not going to be required until "day four" at the earliest then why should that witness be put to the inconvenience and expense of attending at the outset of the hearing only to be told to come back three days later? Or, if the parties have been successful in narrowing the issues so that the witness is no longer required, why should the witness be required to attend at all?

So far as professional witnesses are concerned it is quite common for the lawyer issuing the subpoena to arrange a mutually convenient time for attendance. There appears to be widespread judicial support for such a practical approach. Respect for the Court is usually maintained by obtaining a phone number from the professional witness and ascertaining how much notice that witness requires in order to be at Court so that the hearing is not delayed by the absence of the witness.

However, strictly speaking, the witness has been given a specific obligation to attend by the Court and such an order cannot be adjusted at the whim of the lawyer or party who sought that order.

The arbitration environment is perceived to be less formal although it should be remembered that the compulsive power of the subpoena derives from a Court, not the arbitrator. Courtesy suggests that amended arrangements or cancelled arrangements be drawn to the attention of the arbitrator at the outset of the hearing or, if possible, at an earlier Directions Hearing. Obviously there may be some reluctance to do so if that would involve disclosing to an opponent the identity of a witness whom it is no longer intended to call.

Of course, where the attendance arrangements are cancelled by the party who caused the subpoena to be issued there is unlikely to be any problem when the witness does not turn up to answer a subpoena which is not going to be called!

• subpoena to produce documents

In New South Wales, the Supreme Court Rules were amended in 1992 to make specific provision for the alteration of obligations in relation to subpoena to produce documents or to attend and produce documents. Part 37 rule 11 permits the party who requested the issue of such a subpoena to alter (by either oral or written notice) the time/date for compliance to a later time/date when the proceedings are before the "Judge, officer, examiner or other person having authority to take evidence" or to excuse the person named from compliance prior to calling upon the subpoena.

As attendance to give evidence and attendance to

produce documents involve similar consideration, the issues raised in the previous section are equally applicable under this heading. However, a further possibility needs to be considered: what happens when the documents are produced, not as specified in the subpoena, but to the lawyer of the party at whose request the subpoena was issued? The proper course in such circumstances is for the lawyer to deliver the documents to the required place, unread: see *Blann v Blann* (1983) FLC 91-322.

Another contingency for which provision might be made is for production of documents earlier than specified in the subpoena. Suitable arrangements may be canvassed at the Preliminary Conference or at a subsequent directions hearing prior to the issue of subpoenas.

Alternative procedures in relation to documents

If the role of subpoenas to produce documents in arbitral hearings is to be properly understood then it is necessary to have some familiarity with the alternative procedures available to the parties so far as documents are concerned, since they are additional forensic weapons which may be employed by a party's legal representative.

• Discovery

This pre-trial procedure discloses the existence of relevant documents. Subsequent inspection reveals its contents. However, neither discovery nor inspection causes a document to be brought to the hearing. Further, discovery is limited to the parties to the proceedings and the extent of the obligation to disclose or discover documents is limited to those which are relevant to the issues between the parties. As discovery extends to documents which are or which have been in the possession of the party, it may be that discovery indicates a document now held by someone else.

• Interrogatories

Interrogatories are pre-hearing written questions directed to an opposing party which must be answered and sworn answers (on oath or by affirmation) are usually required. Interrogatories are of limited value in relation to documents. This is because the best evidence rule requires a party wishing to prove a document to produce the original. Accordingly, interrogating an opponent as to a document cannot be allowed to circumvent that rule. And, at the risk of stating the obvious, asking a question about a document does not secure its production at a hearing.

• Notice to Produce

This is a document issued by one party to another requiring the production of a document specified in the Notice. Such Notices are limited to the parties to the proceedings and can only be used in respect of a document which is capable of specification in the Notice. However, a Notice to Produce has some advantages: it does not have to be filed, it does not require conduct money and it does not carry a deadline for service. A Notice to Produce is commonly used to enable a copy document to be tendered on the basis that the Notice to Produce failed to cause the original to be before the tribunal.

• Notice to Admit Authenticity of Documents

A party may avoid having to obtain production of an original document by seeking to obtain an admission that a copy document already held is an authentic copy of the original. Of course, the sought admission may not be forthcoming. However, in the absence of any good reason, such a response may incur a penalty via the costs orders made in the proceedings.

• Calls

During a hearing, using the words "I call for" followed by a description of the document sought can be used to force any person present and compellable to give evidence and/or produce documents then in his/her possession as if they had been subpoenaed for that purpose.

The statutory basis for such calls in NSW is s12 *Evidence Act* 1898 as quoted in the following paragraph (Vic: s11 *Evidence Act* 1958; Qld: s74 *Common Law Procedure Act* 1867; WA: s15 *Evidence Act* 1906; Tas: s90 *Evidence Act* 1910; NT: s21(3) *Evidence Act* 1939; ACT: s52(1) *Evidence Ordinance* 1971).

> 12. Persons may be examined without subpoena. Any person present at any legal proceedings wherein he might have been compellable to give evidence and produce documents by virtue of a subpoena or other summons or order duly served for that shall be compellable to give evidence and produce documents then in his possession and power in the same manner, and in case of refusal shall be subject to the same penalties and liabilities as if he had been duly subpoenaed or summoned for that purpose.

This procedure has the advantage of avoiding the need for a subpoena during a hearing in respect of a document already in the hearing room. However, it also carries the disadvantage to the party calling for and inspecting the document that he/she may be required to tender that document as part of his/her own case: *Walker v Walker* (1937) 57 CLR 630 at p636.

Conclusion

Subpoenas carry a number of advantages: they can be issued to almost anyone; they may seek documents falling within a defined category rather than a specific document and they have the force of the Court's powers underlying their issue, an aspect which usually results in compliance.

Most of the problems which arise during arbitrations in relation to subpoenas could be overcome if the procedures to be adopted have been the subject of agreement at the Preliminary Conference. Suggested points for agreement are:

1. Do the parties agree that all subpoenas are to be made returnable before the arbitrator?
2. Do the parties agree that any objections in relation to or arising out of the issue of subpoenas are to be determined by the arbitrator, including the inspection of any documents which become the subject of an objection?
3. Do the parties agree to early production of documents in response to a subpoena and, if so, what arrangements are proposed? ❑