

Ciarb's 2026 Expert Witness Report – a commentary

A commentary on Ciarb's July 2026 Report on Party-Appointed Expert Witnesses in International Arbitration, and what its findings on over-instruction, timing and joint reports mean for arbitration counsel, tribunals, and experts handling infrastructure and energy disputes.

The Gap Ciarb's 2026 Expert Witness Report Actually Found

Ciarb's July 2026 Report on Party-Appointed Expert Witnesses in International Arbitration: Effectiveness and Best Practice surveyed 419 participants comprising arbitrators, in-house counsel, external counsel and expert witnesses across multiple jurisdictions. Regional working groups from the Americas, Europe and Africa, the Middle East and Asia-Pacific supplemented the survey with thematic commentary.

Three key observations from the report:

- Perceptions of expert over-instruction diverge sharply between experts and in-house counsel.
- Earlier expert engagement remains commercially underutilised despite widespread recognition of its value.
- Tribunals increasingly benefit from active procedural management of multidisciplinary expert evidence.

The report contains an uncomfortable number. Every in-house counsel respondent to the global survey said expert witnesses are over-instructed often or very often, though Ciarb cautions that the in-house counsel sample was limited. Seventy-three percent of the experts themselves said it happens “never” or “not often”. Two groups on opposite sides of the same relationship, unable to agree on how often the boundary between legitimate instruction and over-instruction is crossed, and that gap, more than anything else in the report, is worth arbitration practitioners' attention.

How Often Are Expert Witnesses Over-Instructed by Counsel?

The sharpest divergence is between in-house counsel and expert witnesses.

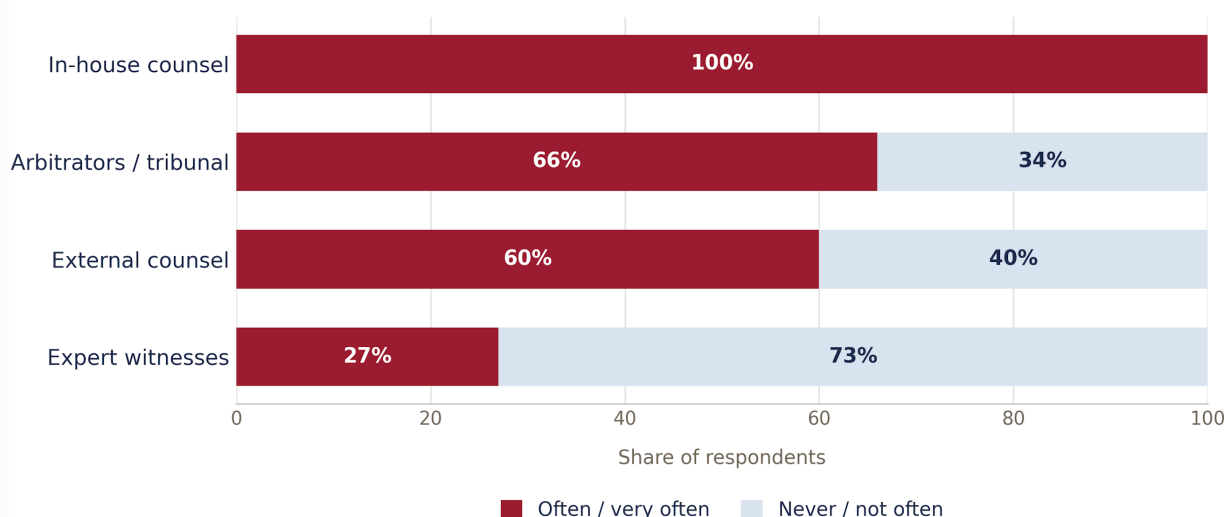


Figure 1. Perceived frequency of expert-witness over-instruction by respondent group. Adapted from Chartered Institute of Arbitrators (Ciarb), Report on Party-Appointed Expert Witnesses in International Arbitration: Effectiveness and Best Practice, V1 (July 2026), Chart 3, p. 22.

Note: Ciarb cautions that the in-house counsel respondent sample was limited.

The Over-Instruction Divergence

The report does not resolve the disagreement between counsel and experts on over-instruction. It can be argued that over-instruction is, by its nature, difficult to see from inside the relationship. An expert shaped gradually by counsel's framing may not experience it as instruction at all, but simply as clarification. In-house counsel, watching from a greater distance and carrying the commercial exposure to the outcome, see it differently.

What the report points toward is a need for procedural discipline rather than aspiration alone. One practical response would be to require an expert to identify and explain any assumption supplied by counsel, to declare expressly whether an instruction was declined or reformulated, and where appropriate to present an alternative analysis where an instruction appears unrealistic. None of this is new, but it converts “*trust the expert's independence*” into something a tribunal can actually verify on the page. An expert report that cannot show its working on instructions is asking to be trusted rather than earning it.

Report Writer Is the Wrong Job Description

The report's clearest finding is also its least surprising: 71% of respondents want experts instructed during the pre-arbitration stage, being 42% once the issues have crystallised and 29% before a claim is made. More interesting, however, is why this preference is so rarely reflected in practice. Fifty-three percent of external counsel cite cost. Forty-two percent of experts point to something more structural, a persistent assumption that an expert's role starts when the claim is filed, not when the dispute starts.

Why Are Expert Witnesses Instructed Late?

Different stakeholders identify markedly different causes.

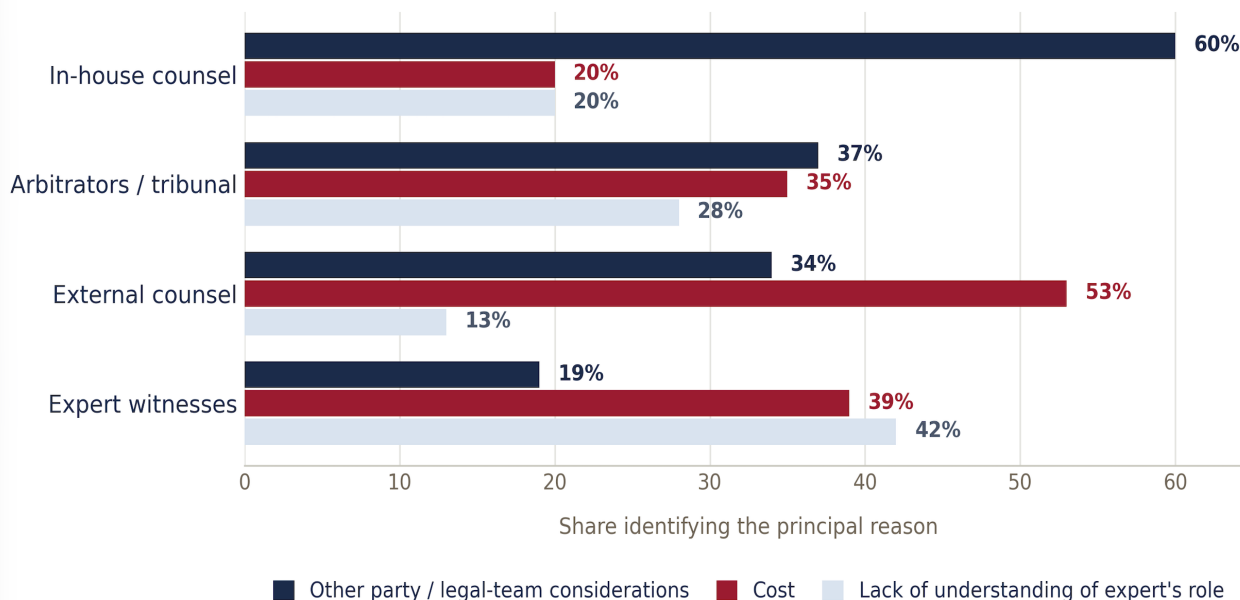


Figure 2. Principal reasons expert witnesses are instructed late, by respondent group. Adapted from Chartered Institute of Arbitrators (Ciarb), *Report on Party-Appointed Expert Witnesses in International Arbitration: Effectiveness and Best Practice, V1 (July 2026)*, Chart 12, p. 48.

That assumption is expensive. Late instruction compresses the time available to test a claim's numbers before they are pleaded, which means positions quantified without expert input often need to be revised once an expert is finally appointed, frequently after the other side has already seen, and priced in, the original weakness. An expert engaged early is not a cost centre. An expert engaged late may inherit a claim quantified without adequate technical testing, increasing the likelihood that important assumptions will only be identified after positions have hardened.

Ciarb proposes express contract language confirming that reasonable pre-arbitration expert costs may be recoverable by the successful party. The survey does not suggest that this would solve the problem by itself. Most arbitrators, external counsel and in-house counsel thought it would not, but it could address one of the principal objections to early engagement, and it warrants serious consideration when drafting dispute-resolution provisions for technically complex contracts, rather than being negotiated only after a dispute has crystallised.

Joint Reports: Consensus on Counsel

On one point the report finds near-consensus rather than divergence. A weighted 84% across the respondent groups, rising to 93% among experts, favoured minimal or no counsel involvement in the drafting of joint expert reports.

The report cites English case law describing a solicitor's comments on a draft joint statement as a "serious transgression". Strong language, because the joint report is where an expert's independence is tested most directly. It is the one document in the process that exists specifically to record where two experts agree and disagree, in the experts' own words and without substantive drafting or negotiation by the parties' lawyers.

As the report states, Counsel's legitimate role is procedural and logistical: identifying the issues to be addressed and coordinating the process. It is not editorial. This is very important because it is precisely the boundary that, when crossed, converts a joint report from evidence into advocacy wearing an expert's signature.

Tribunals that ask about the joint report's drafting process at the outset, rather than assuming the boundary held, end up with a more reliable document.

Multidisciplinary Evidence Needs a Coordinating Hand

The report is candid that a single standardised expert report template is the wrong ambition.

Support was negligible across every group including 18% of arbitrators, 12% of experts, 13% of external counsel, and none of the in-house counsel respondents given the range of disciplines expert evidence covers. That does not mean structure is unimportant. Significant minorities across most groups, and a clear majority of in-house counsel supported standardising selected elements such as declarations, conclusions, structured summaries of agreed and disputed issues, and appendices for detailed workings, while preserving discipline-specific flexibility.

Should the Industry Standardise Expert Witness Report Templates?

Most respondents favour standardising select elements, not a full template.

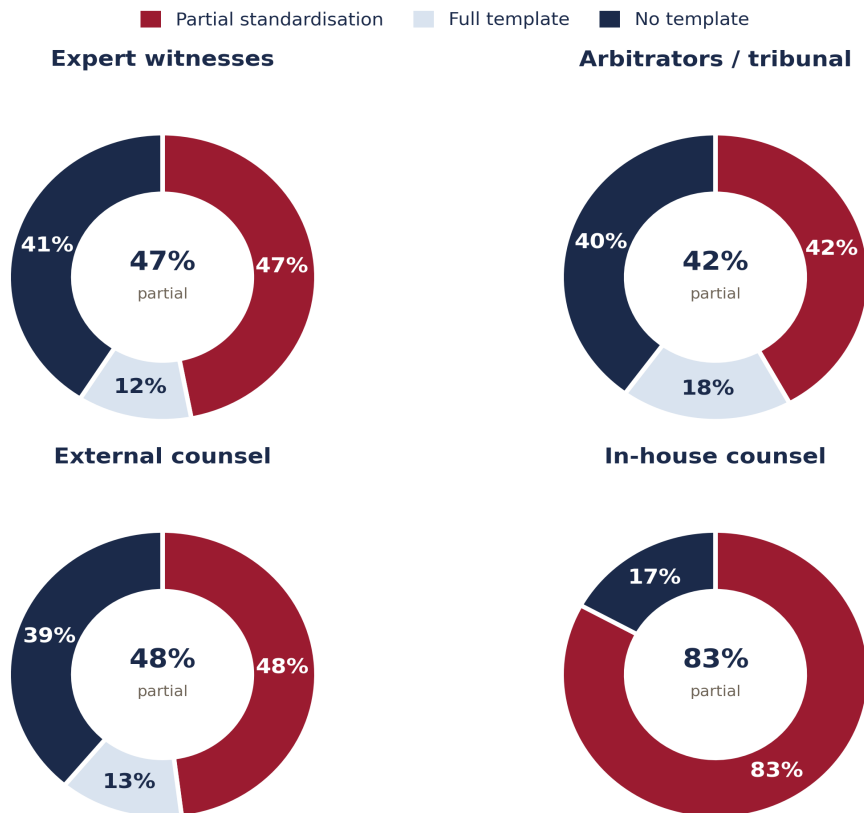


Figure 3. Views on standardising expert witness report templates, by respondent group. Adapted from Chartered Institute of Arbitrators (Ciarb), Report on Party-Appointed Expert Witnesses in International Arbitration: Effectiveness and Best Practice, V1 (July 2026), Chart 28, p. 97.

Note: Ciarb cautions that the in-house counsel respondent sample was limited.

The need for that flexibility is especially acute in large-scale construction disputes. Ciarb notes that these cases may require several experts across delay, quantum, structural, architectural, mechanical and electrical, and geotechnical disciplines, sometimes four or five to a side.

The report also identifies energy and finance disputes, together with multidisciplinary cases generally, as circumstances in which carefully calibrated tribunal involvement may help align scope, assumptions and methodology. Increasingly, major infrastructure arbitrations require tribunals to evaluate integrated evidence from engineering, planning, delay, quantum, finance and regulatory specialists, making procedural coordination as important as the technical opinions themselves.

In that environment, the report's finding that tribunals should take a more active role in setting the terms of expert engagement, not the substance, but the sequencing, the common data sets, the methodology alignment before reports are drafted matters more than it would in a single-expert commercial dispute.

Ciarb's report does not argue for a replacement model of expert evidence, and it is right not to. Party appointment is not, by itself, the problem.

What the report documents is a persistent gap between how tribunals, counsel and experts perceive the same process on instruction, timing and coordination, and between the procedural ideal and the experience reported by those working within it. The response is not another universal rule. It is more disciplined case management, clearer boundaries and earlier technical engagement, applied before the hearing rather than exposed for the first time during cross-examination.

The quality of expert evidence is rarely determined in the witness box; it is usually determined months earlier by the discipline of the process that produced it.

ABOUT THE AUTHOR

Matheson Croyston is the Founder and Managing Director of Sentinel Advisory Pte Ltd, a Singapore-based boutique infrastructure and energy advisory and expert services firm operating across Asia-Pacific and Central Asia, specialising in complex infrastructure, renewable energy and dispute advisory across selected frontier markets. He holds a Master of Engineering Management and a Master of Law (Business) from Australia, and is a member of the Asia Pacific Institute of Experts (AAPIEx), the Chartered Institute of Arbitrators (ACI Arb), the Dispute Resolution Board Foundation (DRBF), the Society of Construction Law Singapore, the Society of Construction Law Australia, and the Australian Centre for International Commercial Arbitration (ACICA). He has more than 34 years of direct operational experience in infrastructure and renewable energy delivery across the region. His work focuses on the intersections of engineering, project delivery, governance, risk and dispute resolution.

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