CANADA

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including

Chapter I. Introduction

1. LAW ON ARBITRATION

Canada is a federal State, composed of fourteen legal jurisdictions: ten provinces, three territories and the federal Parliament. The distribution of legislative powers between Canada (the federal Parliament) and the provinces (the provincial Legislatures) is based on the Constitution Act of 1867. Commercial arbitration is, aside from limited federal powers, a matter of the exclusive jurisdiction of the provincial Legislatures.

In 1986, Canada became the first country to adopt the 1985 UNCITRAL Model Law on International Commercial Arbitration (the "Model Law"). It is today the country with the largest number of judicial decisions on the interpretation of the Model Law reported in the CLOUT database[1].

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1. As of 30 May 2022, <http://www.uncitral.org/clout/search.jspx?f=en%23cloutDocument.textTypes.textType_s1%3aModel%5c+Law%5c+on%5c+International%5c+Commercial%5c+Arbitration%5c+%5c(1985%5c)>.

Following is an overview of the applicable legislation for every Canadian jurisdiction in respect to international and domestic arbitration.

a. The Federal Commercial Arbitration Act 1986

The federal Commercial Arbitration Act[2] (**Annex I** hereto) was enacted in June 1986 (it appears however in the Revised Statutes of Canada 1985). The Schedule to this Act contains the Commercial Arbitration Code ("the Code"). The Code is based on the 1985 UNCITRAL Model Law. According to Sect. 5(2) of the Act, the Code applies only in relation to matters where one of the parties to arbitration is the federal government or one of its agencies or a Crown (federal) corporation. The Code does not, however, apply to provincial bodies. On the other hand, the Code does apply in maritime and admiralty matters, which are areas of exclusive federal jurisdiction. Thus, the federal Act only applies if the criteria of Sect. 5(2) are met or if it is a maritime or admiralty matter. In all other circumstances it is the provincial Arbitration Acts which apply exclusively.

Sect. 4(2) of the Act states the following:

> "In interpreting the Code, recourse may be had to
> (a) the Report of the United Nations Commission on International Trade Law on the work of its eighteenth session, held from June 3 to 21, 1985; and
> (b) the Analytical Commentary contained in the Report of the Secretary General to the eighteenth session of the United Nations Commission on International Trade Law."

The word "international" which appears in Art. 1(1) of the Model Law, has been deleted from Art. 1(1) of the Code. Thus, the Code applies to all commercial arbitrations whether international or national. With this exception, the UNCITRAL Model Law has been adopted in the federal Commercial Arbitration Code. The court referred to in Art. 6 of the Act is the Federal Court or any superior, county or district court; the latter are provincial courts.

b. Common Law Provinces

All provinces and territories in Canada, except Québec (see below*)* are governed essentially by Common Law. In this Report we will refer to these provinces and territories as "Common Law provinces". After the federal Commercial Arbitration Act came into force on 10 August 1986, all Common Law provinces created similar legislation for international commercial arbitration.

2. Available at: <https://canlii.ca/t/7vbd>.

c. International commercial arbitration

As already observed above, the Common Law provinces have all adopted the Model Law for international arbitration. Some of them did so integrally, i.e., the text of the Model Law has been reproduced following a few interpretive and explanatory sections (e.g., Ontario and Alberta). The other provinces adopted the Model Law by incorporating it, with some modifications, in Acts that will govern international commercial arbitration (e.g., British Columbia). As a matter of convenience, we will refer to these jurisdictions, including the federal government, as the "Model Law jurisdictions" throughout this Report. Thus, today, all Common Law provinces as well as the federal Parliament have adopted the 1985 UNCITRAL Model Law whether integrally or by incorporation.

d. Domestic arbitration

Domestic arbitration in the Common Law provinces is governed by the Arbitration Acts. In most of these provinces, domestic Arbitration Acts are modeled on the 1990 Uniform Arbitration Act of the Uniform Law Conference of Canada. Except for some details, Arbitration Acts in the Common Law provinces of Canada are very similar. However, the Arbitration Acts in Newfoundland and Labrador, Northwest Territories, Nunavut, and Yukon Territory differ from the Uniform Arbitration Act. British Columbia has recently enacted a new domestic Arbitration Act (**Annex IV** hereto) based on the 2016 Uniform Arbitration Act. Throughout this text, for domestic arbitration purposes, we will refer to those jurisdictions as the "Non-Uniform jurisdictions". "Arbitration Acts" in this Report will only refer to domestic arbitration laws in the Common Law provinces.

e. Québec

The situation differs for Québec, representing about one-fourth of the population of Canada. In contrast to the Common Law provinces, the law of Québec is patterned on French Law. Arbitration is dealt with in Title Two, Chapter XVIII of the Civil Code of Québec ("CCQ") and Book I, Title I (Arts. 1 to 7) and Book VII, Title II (Arts. 620 to 655) of the Code of Civil Procedure ("CCP") (both included in **Annex III** hereto). These regulations apply to all arbitrations, whether domestic or international[3]. In Title II of Book VII, Québec essentially adopted the Model Law for both domestic and international arbitration. Title II, Chapter IX on recognition and enforcement of awards made outside Québec applies the Convention on the Recognition and Enforcement of Foreign Arbitral Awards as adopted by the United Nations

3. Although Arts. 649 to 651 of the CCP are worded as applicable to international arbitrations only, the Québec Court of Appeal found that these provisions are also relevant in domestic arbitrations. See, for instance, *Coderre v. Coderre*, 2008 QCCA 888 and *Nearctic Nickel Mines Inc. v. Canadian Royalties Inc*., 2012 QCCA 385.

Conference on International Commercial Arbitration at New York on 10 June 1958 (the "New York Convention") also to awards made in other provinces of Canada.

f. The New York Convention

The recognition and enforcement of foreign awards in Canada is governed by the New York Convention of 1958, to which Canada acceded on 12 May 1986 (the legislation enacting it came into effect the following June (see **Annex II** hereto). The New York Convention is applicable in all Canadian jurisdictions. In interprovincial relations, recognition and enforcement of judgments and awards is subject to provincial Reciprocal Enforcement of Judgments Acts; see, for example, the Ontario Reciprocal Enforcement Act (**Annex IX** hereto). Québec applies the New York Convention to all awards outside Québec, whether rendered in Canada or abroad.

g. Further annexes to this Report

Considering that we are attempting a concise and general overview of commercial arbitration in Canada, we will restrict our description of arbitration laws to the leading jurisdictions in this field. In addition to **Annexes I**, **II**, **III** and **IX** already referred to, the following legislation is annexed:

– British Columbia: **Annexes IV and V** (international)
– Ontario: **Annexes VI and VII** (international)
– Alberta: **Annex VIII**.

Except for some details, the Arbitration Acts in the Common Law provinces of Canada are very similar. Québec is examined separately throughout the Report because of its unique system. The present state of laws on arbitration is as follows:[4]

(1) Arbitration Acts Implementing the UN 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards

CANADA (federal): United Nations Foreign Arbitral Awards Convention Act, RSC 1985, c 16 (2nd Supp) (**Annex II** hereto) (<https://canlii.ca/t/7vbc>)
ALBERTA: International Commercial Arbitration Act, RSA 2000, c I-5, s 2(1) (<https://canlii.ca/t/81t9>)
BRITISH COLUMBIA: Foreign Arbitral Awards Act, RSBC 1996, c 154 (<https://canlii.ca/t/841m>)
MANITOBA: The International Commercial Arbitration Act, CCSM c C151, s 2(1) (<https://canlii.ca/t/8gng>)

4. All links are to the latest versions published by the Canadian Legal Information Institute (CanLII). Exceptionally, these versions may not be current at a given time.

NEW BRUNSWICK: International Commercial Arbitration Act, RSNB 2011, c 176, s 3(1) (<https://canlii.ca/t/8pwd>)
NEWFOUNDLAND: International Commercial Arbitration Act, RSNL 1990, c I-15, s 3(1) (<https://canlii.ca/t/89sx>)
NOVA SCOTIA: International Commercial Arbitration Act, RSNS 1989, c 234, s 3(1) (<https://canlii.ca/t/87nn>)
ONTARIO: International Commercial Arbitration Act, 2017, SO 2017, c 2, Sch 5, Part I (**Annex VII** hereto) (<https://canlii.ca/t/901r>)
PRINCE EDWARD ISLAND: International Commercial Arbitration Act, RSPEI 1988, c I-5, s 2(1) (<https://canlii.ca/t/8d6n>)
QUÉBEC: Code of Civil Procedure, CQLR c C-25.01, Arts. 645 to 655 (**Annex III** hereto) (<https://canlii.ca/t/8smj>)
SASKATCHEWAN: The Enforcement of Foreign Arbitral Awards Act, 1996, SS 1996, c E-9.12 (<https://canlii.ca/t/x1m>)
NORTHWEST TERRITORIES: International Commercial Arbitration Act, RSNWT 1988, c I-6, s 4(1) (<https://canlii.ca/t/8htp>)
NUNAVUT: International Commercial Arbitration Act, RSNWT (Nu) 1988, c I-6, s 4(1) (<https://canlii.ca/t/8l44>)
YUKON: Foreign Arbitral Awards Act, RSY 2002, c 93 (<https://canlii.ca/t/8j6l>)

(2) *Arbitration Acts Introducing the UNCITRAL Model Law on International Commercial Arbitration*
CANADA (federal): Commercial Arbitration Act, RSC 1985, c 17 (2nd Supp) (**Annex I** hereto) (<https://canlii.ca/t/7vbd>)
ALBERTA: International Commercial Arbitration Act, RSA 2000, c I-5 (<https://canlii.ca/t/81t9>)
BRITISH COLUMBIA: International Commercial Arbitration Act, RSBC 1996, c 233 (**Annex V** hereto) (<https://canlii.ca/t/844k>)
MANITOBA: The International Commercial Arbitration Act, CCSM c C151, (<https://canlii.ca/t/8gng>)
NEW BRUNSWICK: International Commercial Arbitration Act, RSNB 2011, c 176, s 3(1) (<https://canlii.ca/t/8pwd>)
NEWFOUNDLAND: International Commercial Arbitration Act, RSNL 1990, c I-15, s 3(1) (<https://canlii.ca/t/89sx>)
NOVA SCOTIA: International Commercial Arbitration Act, RSNS 1989, c 234, s 3(1) (<https://canlii.ca/t/87nn>)
ONTARIO: International Commercial Arbitration Act, 2017, SO 2017, c 2, Sch 5, Part II (**Annex VII** hereto) (<https://canlii.ca/t/901r>)
PRINCE EDWARD ISLAND: International Commercial Arbitration Act, RSPEI 1988, c I-5 (<https://canlii.ca/t/8d6n>)
QUÉBEC: Civil Code of Québec, CQLR c CCQ-1991, Arts. 2638-2643 (**Annex III** hereto) (https://canlii.ca/t/z35) and Code of Civil Procedure, CQLR c C-25.01, Arts. 1-7, 620 to 655 (**Annex III** hereto) (<https://canlii.ca/t/8smj>)

SASKATCHEWAN: The International Commercial Arbitration Act, SS 1988-89, c I-10.2 (<https://canlii.ca/t/wph>)
NORTHWEST TERRITORIES: International Commercial Arbitration Act, RSNWT 1988, c I-6, s 4(1) (<https://canlii.ca/t/8htp>)
NUNAVUT: International Commercial Arbitration Act, RSNWT (Nu) 1988, c I-6, s 4(1) (<https://canlii.ca/t/8l44>)
YUKON: International Commercial Arbitration Act, RSY 2002, c 123 <https://canlii.ca/t/8jds>

(3) Domestic Arbitration Acts ("Arbitration Acts")
CANADA (federal): Commercial Arbitration Act, RSC 1985, c 17 (2nd Supp) (**Annex I** hereto) (<https://canlii.ca/t/7vbd>)
ALBERTA: Arbitration Act, RSA 2000, c A-43 (**Annex VIII** hereto) (<https://canlii.ca/t/822r>)
BRITISH COLUMBIA: Arbitration Act, SBC 2020, c 2 (**Annex IV** hereto) (<https://canlii.ca/t/9q1f>)
MANITOBA: The Arbitration Act, CCSM c A120 (<https://canlii.ca/t/8ghm>)
NEW BRUNSWICK: Arbitration Act, RSNB 2014, c 100 (<https://canlii.ca/t/8tnm>)
NEWFOUNDLAND: Arbitration Act, RSNL 1990, c A-14 (<https://canlii.ca/t/8b0x>)
NOVA SCOTIA: Commercial Arbitration Act, SNS 1999, c 5 (<https://canlii.ca/t/87hl>)
ONTARIO: Arbitration Act, 1991, SO 1991, c 17 (**Annex VI** hereto) (<https://canlii.ca/t/2sh>)
PRINCE EDWARD ISLAND: Arbitration Act, RSPEI 1988, c A-16 (<https://canlii.ca/t/8d96>)
QUÉBEC: Civil Code of Québec, CQLR c CCQ-1991 Arts. 2638-2643 (https://canlii.ca/t/z35) (**Annex III** hereto) and Code of Civil Procedure, CQLR c C-25.01, Arts. 1-7, 620 to 651 (**Annex III** hereto) (<https://canlii.ca/t/8smj>)
SASKATCHEWAN: The Arbitration Act, 1992, SS 1992, c A-24.1 (<https://canlii.ca/t/92j6>)
NORTHWEST TERRITORIES: Arbitration Act, RSNWT 1988, c A-5 (<https://canlii.ca/t/8hs9>)
NUNAVUT: Arbitration Act, RSNWT (Nu) 1988, c A-5 (<https://canlii.ca/t/8l2q>)
YUKON: Arbitration Act, RSY 2002, c 8 (<https://canlii.ca/t/8jcn>)

(4) Reciprocal Enforcement of Judgments Acts
These Acts apply to relations not covered by the New York Convention (the situation is different in Québec where there is no distinction between foreign awards and awards rendered in other provinces). (See below Chapter VI.2.)

ALBERTA: Reciprocal Enforcement of Judgments Act, RSA 2000, c R-6 (<https://canlii.ca/t/821w>)
BRITISH COLUMBIA: Court Order Enforcement Act, RSBC 1996, c 78 (<https://canlii.ca/t/84h5>)
MANITOBA: The Reciprocal Enforcement of Judgments Act, CCSM c J20 (<https://canlii.ca/t/8gvs>)
NEW BRUNSWICK: (1) Reciprocal Enforcement of Judgments Act, RSNB 2014, c 127 (<https://canlii.ca/t/8tpt>); (2) Foreign Judgments Act, RSNB 2011, c 162 (<https://canlii.ca/t/8pvx>); (3) Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, RSNB 2016, c 109 (<https://canlii.ca/t/901d>)
NEWFOUNDLAND: Reciprocal Enforcement of Judgments Act, RSNL 1990, c R-4 (<https://canlii.ca/t/89w6>)
NOVA SCOTIA: (1) Reciprocal Enforcement of Judgments Act, RSNS 1989, c388 (<https://canlii.ca/t/87cg>); (2) Canada and United Kingdom Reciprocal Recognition and Enforcement of Judgments Act, RSNS 1989, c 52 (<https://canlii.ca/t/87ns>)
ONTARIO: (1) Reciprocal Enforcement of Judgments Act, RSO 1990, c R.5 (**Annex IX** hereto) (<https://canlii.ca/t/2pt>); (2) Reciprocal Enforcement of Judgments (U.K.) Act, RSO 1990, c R.6 (<https://canlii.ca/t/2pv>)
PRINCE EDWARD ISLAND: Reciprocal Enforcement of Judgments Act, RSPEI 1988, c R-6 (<https://canlii.ca/t/8dbk>)
QUÉBEC: Code of Civil Procedure, CQLR c C-25.01, Arts. 645 to 655 (**Annex III** hereto) (<https://canlii.ca/t/8smj>)
SASKATCHEWAN: (1) The Reciprocal Enforcement of Judgments Act, 1996, SS 1996 c R-3.1 (<https://canlii.ca/t/928q>); (2) The Enforcement of Foreign Judgments Act, SS 2005, c E-9.121 (<https://canlii.ca/t/93nz>)
NORTHWEST TERRITORIES: (1) Reciprocal Enforcement of Judgments Act, RSNWT 1988, c R-1 (<https://canlii.ca/t/8hr6>); (2) Reciprocal Enforcement of Judgments (Canada-U.K.) Act, RSNWT 1988, c R-2 (<https://canlii.ca/t/8hsh>)
NUNAVUT: (1) Reciprocal Enforcement of Judgments Act, RSNWT (Nu) 1988, c R-1 (<https://canlii.ca/t/8l1n>); (2) Reciprocal Enforcement of Judgments (Canada U.k.) Act, RSNWT (Nu) 1988, c R-2 (<https://canlii.ca/t/8l2x>)
YUKON: (1) Reciprocal Enforcement of Judgments Act, RSY 2002, c 189 (<https://canlii.ca/t/8jdk>); (2) Reciprocal Enforcement of Judgments (U.K.) Act, RSY 2002, c 190 (<https://canlii.ca/t/8jcx>)

2. PRACTICE OF ARBITRATION

a. General

Since 1986, Canada has seen an appreciable increase in recourse to domestic and international commercial arbitration. Indeed, on average in recent years, between 80 and 100 commercial arbitration cases per year were initiated in Canada among the ADR Chambers, the ADR Institute of Canada, and the Vancouver International Arbitration Center, all of which are significant institutions providing for the administration of arbitration in Canada. These figures do not include *ad hoc* arbitration cases or those involving other institutions or bodies like those acting in the maritime, insurance or securities sectors, for which statistics appear unavailable. The following is a list of the contact details of the important arbitration institutions in Canada.

b. Arbitral institutions

ADR Chambers

ADR Chamber members are retired Judges and Senior Counsel assisting the legal and business communities, both nationally and internationally, in resolving disputes. Their services include Mediation, Arbitration, Mediation/Arbitration (Med-Arb), Neutral Case Evaluation and Private Appeals from trial judgments in arbitrations. They also offer Dispute Systems Design and all aspects of conflict management. The contact details of ADR Chambers are as follows:

ADR Chambers
112 Adelaide Street East
Toronto, Ontario, M5C 1K9
Telephone: +1 416 362 8555
Facsimile: +1 416 362 8825
Website: <adrchambers.com/ca>

ADR Institute of Canada

The ADR Institute of Canada represents and supports professionals who provide dispute resolution services and the individuals and organizations that use those services. The Institute offers national standards and a code of ethics for ADR training and trainers, national accreditation for mediator and arbitrators, a coordinated approach and national accessibility to ADR services. Affiliates can provide for the same services in Alberta, the Atlantic Provinces, British Columbia, Manitoba, Ontario, Québec (IMAQ) and Saskatchewan. The Institute can be contacted at:

ADR Institute of Canada
234 Eglinton Avenue East, Suite 405
Toronto, Ontario, M4P 1K5

Telephone: +1 416 487 4733
Facsimile: +1 416 487 4429
Website: <www.adrcanada.ca>

Vancouver International Arbitration Centre
The Centre provides information and assistance in the resolution of commercial disputes; selects and appoints an appropriate and qualified mediator or arbitrator; provides for rules of procedure, for assistance in determining where and when proceedings are held and provides guidelines and resources, such as written material. Its contact details are:

Vancouver International Arbitration Centre
#348-1275 West 6th Avenue
Vancouver, British Columbia V6H 1A6
Telephone: +1 604 684 2821
Facsimile: +1 604 736 9233
Website: <www.bcicac.com>

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b. Journals

Canadian Journal of Commercial Arbitration

Revue d'arbitrage et de médiation / Journal of Arbitration and Mediation (Sherbrooke University, Faculty of Law and of the Schulich School of Law (Dalhousie University), Canadian Arbitration Congress) (up to fall 2018)

Canadian Arbitration and Mediation Journal

ADR Perspectives (e-newsletter of the ADR Institute of Canada Inc., see above Chapter I.2)

Chapter II. Arbitration Agreement

1. FORM AND CONTENTS OF THE AGREEMENT

a. Submission agreement and arbitral clause

With respect to both international and domestic arbitration, the Common Law provinces and federal legislation make no distinction between submission of an existing dispute to arbitration and an arbitral clause whereby parties to a contract agree to arbitrate future differences.

Likewise, the Civil Code of Québec ("CCQ") (**Annex III** hereto) defines an arbitration agreement as "a contract by which the parties undertake to submit a present or future dispute to the decision of one or more arbitrators, to the exclusion of the courts" (Art. 2638). According to Art. 2643: "Subject to the peremptory provisions of law, the arbitration procedure is governed by the contract[5] or, failing that, by the Code of Civil Procedure". Thus, the Civil Code makes no distinction between an arbitral clause (*clause compromissoire*) and the submission to arbitration of an existing dispute (*compromis*).

b. Form requirements

As per the 2006 amendments to the 1985 UNCITRAL Model Law, Ontario applies Option 1 of Art. 7 of the Model Law to international commercial arbitration and therefore, while requiring that "[t]he arbitration agreement shall be in writing", recognizes oral arbitration agreements, provided they have been recorded in a written or electronic form. As for all other common law provinces, even though they have adopted language similar to Option 1 of Art. 7 of the 1985 Model Law to international commercial arbitration, they do not recognize oral arbitration agreements. With respect to domestic arbitration, all Arbitration Acts, save for those adopted in Newfoundland and Labrador, Northwest Territories, Nunavut, Yukon Territory and Prince Edward Island make an oral agreement to arbitrate possible. For example, the Alberta Arbitration Act (**Annex VIII** hereto), after providing a definition of the arbitration agreement (Sect. 1(1)(a)), clearly states that such an agreement need not be in writing (Sect. 5(1)).

In Québec, Art. 2640 of the Civil Code states that an arbitration agreement must be evidenced in writing and is deemed to be evidenced in writing if it is contained in an exchange of communications which attests to its existence or in

5. Which can incorporate institutional arbitration rules by reference, see Art. 3133 CCQ.

an exchange of proceedings in which its existence is alleged by one party and not contested by the other.

c. Model arbitration clause
As an example, the Vancouver International Arbitration Centre recommends the following as a model clause for future disputes:

> "All disputes arising out of or in connection with this agreement, or in respect of any legal relationship associated therewith or derived therefrom, shall be referred to and finally resolved by arbitration administered by the Vancouver International Arbitration Centre (VanIAC) pursuant to its applicable Rules.
>
> The place of arbitration shall be Vancouver, British Columbia, Canada."

Standard arbitration clauses should be used carefully, as in several situations those clauses require tailor-made adjustments and modifications. In general, the following matters should be considered by parties for inclusion in the arbitration provisions of their contracts:

– scope of the arbitration agreement and the scope/number of contracts and the number of parties;
– governing or proper law;
– procedural law;
– number of arbitrators;
– specific qualifications of the arbitrators or a presiding arbitrator including, but not limited to, language and professional training;
– place of arbitration; and
– language or languages of the arbitration.

2. PARTIES TO THE AGREEMENT

a. General
In all forms of arbitration, international or domestic, whether the State or its agencies are involved or not, there is no general restriction as to the persons, physical or legal, who may resort to arbitration (subject to general rules regarding the capacity to contract). Residents as well as non-residents may be parties to arbitration.

b. State and state entities
However, when the State or state agencies are parties to an arbitration, the procedure could be governed either by the federal Commercial Arbitration Act (**Annex I** hereto) or by the provincial Arbitration Acts.

The federal Commercial Arbitration Act, which implements the Commercial Arbitration Code (the "Code", which, in turn, reproduces the Model Law) gives specific statutory authority for federal departments and Crown corporations to enter into commercial arbitration agreements. The Code specifies in a beginning note that the word "international" has been deleted from Art. 1(1) of the Model Law which specifies its scope of application. Thus, the Act and the Code apply to "commercial arbitration", be it domestic or international. Whenever the place of arbitration is in Canada (Art. 1(2) of the Code), the Act could apply.

Some (domestic and international) Arbitration Acts equally provide for the possibility of submission to arbitration by provincial State bodies, see, for example, Sect. 12 of the Ontario International Commercial Arbitration Act (**Annex VII** hereto), Sect. 2 of the Prince Edward Island Arbitration Act and Sect. 3 of the Nova Scotia Arbitration Act. And whenever there are no clear provisions as to the application of provincial Acts to arbitrations where the State or State agencies are involved, for example, British Columbia or Québec, nothing in these Acts prohibits them from submitting themselves to arbitration, subject to their constituting statute.

Apart from incorporation by reference or submission, it is now relatively clear that the Crown may be bound under the doctrine of restrictive sovereign immunity and by the contract theory (*Sparling v. Caisse de Dépôt et Placement du Québec*, [1985] C.A. 164; aff'd [1988] 2 S.C.R. 1015). Furthermore, it seems that the Crown may also be bound under the doctrine of necessary implication (*Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 R.C.S. 3).

Under the contract theory, even while acting as sovereign, the Crown will be bound by a contract and by the law governing that contract even if the law does not mention or refer to the Crown (*Banque de Montréal v. P.G. du Québec*, [1979] 1 S.C.R. 565).

c. Bankruptcy and insolvency

In the event that a party to an arbitration becomes insolvent and institutes restructuring proceedings under a Canadian insolvency statute (the Bankruptcy and Insolvency Act (the "BIA") and the Companies' Creditors Arrangement Act (the "CCAA") are the statutes which are most often resorted to), the arbitration proceedings against this debtor will be stayed pursuant to a "stay of proceedings" which prevents the continuation of all existing proceedings against the debtor as well as the institution of new proceedings against same. The stay is automatic and statutory in the context of the filing of a BIA notice of intention, or contained in the initial order issued by the court in the event of a CCAA restructuring.

The impact of the stay on arbitration proceedings will be similar to the impact of the stay on litigation proceedings to which the debtor is a party at the time of its filing. This means that although a debtor may decide to continue

arbitration proceedings if it so chooses (with the approval of the trustee or monitor who supervises the restructuring of the debtor), no creditor will be in a position to compel a debtor to continue an arbitration for the duration of the stay, unless the creditor obtains an order of the court specifically lifting the stay to continue arbitration proceedings. The stay will also prevent the enforcement of arbitral awards against an insolvent debtor.

In the event of a bankruptcy (as opposed to a restructuring) under the BIA, the appointment of a trustee in bankruptcy will similarly interrupt any arbitration undertaken against an insolvent debtor and the creditor will be requested to file a proof of claim with the trustee for the amount of his claim.

The overall effect of insolvency proceedings on a creditor's arbitration claim will be to convert said claim into a provable claim in the bankruptcy or in the restructuring of the debtor. Interestingly, in the context of CCAA restructurings with an important number of claims, courts will routinely set up an arbitration-like "claims process" supervised by the court-appointed monitor, pursuant to which a "claims officer" similar to an arbitrator is empowered by the court to issue determinations regarding the quantum of contested claims against the debtor. This claims process does not qualify as arbitration strictly-speaking, since the decision of a claims officer typically remains subject to a full review by the court.

If a trustee in bankruptcy (in the event of a bankruptcy under the BIA) decides to assert a claim against a debtor of the bankrupt (for the benefit of the bankrupt's creditors) and this claim is subject to an arbitration agreement, the trustee will generally be bound to proceed by arbitration, although a recent decision of the British Columbia Court of Appeal in *Petrowest Corporation v. Peace River Hydro Partners*, 2020 BCCA 339 (leave for appeal to the Supreme Court of Canada granted), concluded that a court-appointed receiver could sue under a contract while disclaiming the application of the arbitration agreement contained in that same contract. An insolvent debtor (in the course of a restructuring under the BIA or the CCAA) should also be bound by the arbitration agreement should it decide to assert a claim against its own debtor (for instance, in order to recover amounts required to successfully complete the restructuring). Finally, an insolvent debtor is bound by all its post insolvency filing obligations, including obligations arising out of an arbitration agreement.

d. Multi-party arbitration

There exists no statutory provision comprehensively describing multi-party arbitration, be it for domestic or international arbitrations. However, some International Arbitration Acts (see for instance, Sect. 8 of the Ontario International Commercial Arbitration Act) provide for consolidation of arbitrations opposing the same parties and most specify that an arbitration agreement may be between "two or more persons" (Sect. 5(1) British Columbia Arbitration Act, see **Annex IV** hereto).

e. Consolidation

The International Commercial Arbitration Acts of Alberta (Sect. 8), Manitoba (Sect. 8), New Brunswick (Sect. 9), Northwest Territories (Sect. 10), Nova Scotia (Sect. 9), Nunavut (Sect. 10), Prince Edward Island (Sect. 8), Saskatchewan (Sect. 7), and Yukon (Sect. 6), contain provisions on consolidation of arbitrations. These Sections provide (in language ranging from similar to almost identical) that upon application of the parties to two or more arbitration proceedings, the court may order:

> "(a) the arbitration proceedings to be consolidated, on terms it considers just,
> (b) the arbitration proceedings to be heard at the same time, or one immediately after another, or
> (c) any of the arbitration proceedings to be stayed until after the determination of any other of them."
>
> "Where the Court orders arbitration proceedings to be consolidated pursuant to subsection [ ](a) and all the parties to the consolidated arbitration proceedings are in agreement as to the choice of the arbitral tribunal for that arbitration proceeding, the arbitral tribunal shall be appointed by the Court, but if all the parties cannot agree, the Court may appoint the arbitral tribunal for that arbitration proceeding."
>
> "Nothing in this section shall be construed as preventing the parties to 2 or more arbitration proceedings from agreeing to consolidate those arbitration proceedings and to take such steps as are necessary to effect that consolidation."
>
> (Alberta, Sect. 8 ICAA)

Sect. 8 of the Ontario International Commercial Arbitration Act and Sect. 27.01 of the British Columbia International Commercial Arbitration Act (**Annex V** hereto) only allow consolidation if both parties agree (or agreed) to consolidate the proceedings, and even then, grants discretion to the court to refuse consolidation if an injustice can result from it.

Domestic arbitration statutes in Common law provinces do contain provisions (similar to those found in the International Commercial Arbitration Acts) in connection with consolidation.

The situation differs in Québec since the Code of Civil Procedure, "CCP", **Annex III** hereto, is silent on the matter of consolidation. Since court intervention in arbitration proceedings is strictly limited to specific situations provided for in the CCP, this silence makes a court-ordered consolidation impossible. The parties remain free however to consolidate multiple arbitration proceedings upon unanimous consent.

3. DOMAIN OF ARBITRATION

a. Arbitrability

All Model Law jurisdictions apply the Model Law to international arbitrations in commercial matters only. Some of the Acts adopting the Model Law went further in defining what the provincial legislator meant by "international" and "commercial" (e.g., see Sect. 1(3) and 1(6) of the British Columbia International Commercial Arbitration Act).

Generally, domestic Arbitration Acts of the Common Law provinces do not contain restrictions as to the subjects which may be referred to arbitration. However, although arbitration-related legislation does not generally contain restrictions on matters that can be submitted to arbitration, such restrictions may result from statutes governing specific subjects such as consumer protection (see below).

In Québec, disputes over "the status and capacity of persons, family matters or other matters of public order" are outside the scope of arbitration (Art. 2639 CCQ). This does not mean however that disputes requiring the application of mandatory legislative provisions (also referred to as "public order provisions") or disputes involving statutory remedies (for instance, oppression claims in shareholders' disputes) cannot be submitted to arbitration. Disputes arising out of consumer contracts are not subject to arbitration, unless it is agreed upon once the dispute arises (Sect. 11.1 of the Consumer Protection Act, RSQ, c P-40.1). In fact, since the Supreme Court of Canada's 2011 decision in *Seidel v. Telus Communications Inc.*, the consumer protection matters is an area where the enforcement of arbitration agreements may be problematic in all of Common law provinces even if the applicable consumer protection statute does not specifically address the issue of arbitrability of consumer disputes. Likewise, since the Supreme Court of Canada 2020 decision in *Uber Technologies Inc v. Heller*, Canadian courts may refuse to enforce an arbitration agreement where doing so would become unconscionable i.e., when arbitration is too onerous for a vulnerable party, such that enforcing the arbitration agreement would deprive the party of any real remedies.

b. Filling gaps and adapting contracts

As to the adaptation of contracts to considerably changed circumstances and/or filling of gaps in an incomplete contract, the arbitrators have the same powers as the courts according to the laws of the Common law provinces and three federal territories.

In Québec, an arbitrator, even when acting as an *amiable compositeur* pursuant to parties' request, cannot rewrite the contract and has to decide in accordance therewith (Art. 620 Code of Civil Procedure, "CCP") (**Annex III** hereto). However, the arbitral tribunal has the power to interpret the contract in order to determine the true intentions of the parties (*Nearctic Nickel Mines Inc. v. Canadian Royalties Inc.*, 2012 QCCA 385, request for leave to appeal before

the Supreme Court of Canada dismissed). This being said, Québec courts seem to be hesitant to sanction a rewriting of the contract by an arbitrator and are prone to qualify it as an interpretation of the contract.

It is noteworthy that Alberta has enacted a specific Act whereby arbitrators can redetermine the price of gas under a gas purchase contract.

4. SEPARABILITY OF ARBITRATION CLAUSE

In all Model Law jurisdictions, the arbitrators in international arbitration may decide on the validity of the main contract and, for that purpose, an arbitration clause which forms part of this contract shall be treated as an agreement independent of the other terms of the contract (Art. 16(1) Model Law). In Québec, Art. 2642 CCQ is to the same effect.

In the Arbitration Acts, there are no statutory limitations on the power of the arbitrator to decide on the validity of the main contract in which the arbitral clause is contained. Therefore, even when the contract containing the submission clause is invalid, the arbitrator could still rule according to this clause.

The problem is more complicated when the main contract is non-existent or null in the sense of the Civil Law (*nullité absolue*).

In the Common Law provinces, the position used to be similar to the position of the English Common Law. In *Heyman v. Darwins Ltd.*, [1942] 1 All E.R. 337 (H.L.), all of their Lordships agreed that where it was alleged that the contract is void *ab initio* the arbitration clause did not apply to those disputes, regardless of the language of the clause. *Canadian Motion Picture Productions Ltd. v. Maynard Film Distributing Co.*, [1949] 4 D.L.R. 458 (H.C.) purported to apply *Heyman, supra*, but arguably extended it to include claims where fraud is alleged. Allegations of fraud do not raise the question of whether a contract was ever entered into, but the aggrieved party is entitled to void the contract and treat it as if it had never been entered into at all. However, this extension of the principle was severely criticized in *Fairfield v. Low* (1990), 71 O.R (2d) 599.

Furthermore, more recent cases demonstrate a "clear shift in policy towards encouraging parties to submit their differences to consensual dispute resolution mechanisms outside of the regular court stream" (*Onex Corp v. Ball Corp.*, [1994] O. J. No. 98 and *Canadian National Railway v. Lovat Tunnel Equipment Inc.*, [1999] O. J. No. 2498). In fact, in *IMG Canada Ltd. v. Melitta Canada Inc.*, [2001] O.J. No. 2331, the judge stated that there is no longer a need to seek guidance from old authorities like *Heyman* and *Canadian Motion Picture Productions Ltd.* and held that that although Sect. 7(2)2 of the Ontario Arbitration Act (**Annex VI** hereto) gives the court a discretion to refuse to stay an action where the issue to be decided is the validity of contract itself, this discretion must be exercised only where the court makes a prima facie

determination that invalidity is a serious issue, and not wherever the party resisting arbitration argues for invalidity (with respect to the stay of proceedings, see below Chapter V.4). As the Superior Court of Ontario elaborates in *Nazarinia Holdings Inc. v. 2049080 Ontario Inc.*, [2010] ONSC 1766 (confirmed on appeal), "the court must have an obligation to scrutinize the pleadings, and the evidence before it, to determine whether, at a minimum, there is some foundation for the allegations" (at para. 32).

In Québec, after a certain hesitation, courts seem to have adopted the view that an arbitral tribunal has jurisdiction to decide whether a contract is void *ab initio*, provided the wording of the arbitration clause is broad enough to include such a claim (see *Sonox Sia v. Albury Grain Sales Inc.* J.E. 2005-1732 (C.S.), aff'd 2005 QCCA 1193; *Gestion George Kyritsis inc. v. Balabanian*, 2019 QCCS 1020).

In an interesting development on the issue of separability, as mentioned in this Chapter in 2.*c*. above, the British Columbia Court of Appeal in *Petrowest Corporation v. Peace River Hydro Partners* concluded that a court-appointed receiver could sue under a contract while disclaiming the application of the arbitration agreement contained in that same contract.

5. EFFECT OF THE AGREEMENT (SEE ALSO CHAPTER V.4 – JURISDICTION)

a. Duty of court

Model Law jurisdictions follow Art. 8 of the Model Law regarding international commercial arbitration.

Arbitration Acts in Common Law provinces provide that if a party to an arbitration agreement commences court proceedings in respect of a matter which it has been agreed shall be referred to arbitration, the other party may, before delivering any pleading or taking any other step in the court proceedings, apply to that court to stay the court proceedings. If the court is satisfied that there is no sufficient reason for not referring the matter to arbitration in accordance with the arbitration agreement, and that the applicant is still ready and willing to do everything necessary to the proper conduct of the arbitration, it may grant an order staying the proceedings.

Court decisions have elaborated this rule by stating that, once the conclusion is reached that the agreement for arbitration is prima facie broad enough to embrace the claims presented in the action before the court, it is the duty of the court to recognize the arbitration agreement, and that the onus of proving that the case is not subject to arbitration lies with the person opposing the stay of the proceeding (see below, Chapter V.4). In fact, as more fully explored below, courts are reluctant to refuse a stay of proceedings even when the validity of the arbitration clause is at stake.

In Québec, as per Art. 622 CCP, the court must refer the parties to arbitration where the parties have made an arbitration agreement, unless the

arbitration agreement is null. The arbitration proceedings may nevertheless be commenced or pursued and an award made at any time while the case is pending before the court. Furthermore, despite the rather unambiguous language of Art. 622 CCP with respect to the court's powers in case of the nullity of the agreement, the courts have a tendency to refer this matter to the arbitral tribunal first. Indeed, mainstream case law suggests that any question regarding the validity or applicability of an arbitration clause must be referred for determination to the arbitral tribunal (*Bombardier Transportation v. SMC Pneumatics (UK) Ltd.* [2009] QCCA 861 at 39). In *Rogers Wireless Inc. v. Muroff*, [2007] 2 S.C.R. 921, the Supreme Court of Canada held that an arbitrator has an exclusive jurisdiction to determine whether an arbitration clause is abusive (which finding would entail the nullity of the arbitration clause), as such an undertaking may require a detailed factual inquiry on a mixed question of law and fact. In this respect, the *Dell Computer Corp. v. Union des consommateurs* case, [2007] 2 S.C.R. 801, set the rule to the effect that a court should depart from the rule of systematic referral to arbitration only if the challenge to arbitral tribunal's jurisdiction is based solely on a question of law, or if it is based on a question of fact or mixed fact and law requiring "only superficial consideration of the documentary evidence in the record". The general principle set out in *Dell* has also been applied in Common Law Provinces (see, among others, *MacKinnon v. National Money Mart Company*, [2009] BCCA 103, *Dancap Productions Inc., v. Key Brand Entertainment, Inc.*, [2009] ONCA 135).

b. Timing

In most Model Law jurisdictions, a motion to stay has to be brought "not later than when submitting [the] first statement on the substance of the dispute" (Art. 8 Model Law), otherwise the right to arbitration will be waived (a decision by the Supreme Court of Canada confirmed that the referral to arbitration can be formulated even in a statement of defense, see *Momentous.ca Corp. v. Canadian American Association of Professional Baseball Ltd.*, [2012] A.C.S. no. 9). Domestic Arbitration Acts generally provide that a motion to stay has to be brought without "undue delay".

In Québec, Art. 622, para. 2 CCP provides that the court shall refer the parties to arbitration at the request of either of them [including a claimant], provided such request is made within forty-five days after the issuance of the originating application or within ninety days of same when the dispute involves a foreign element. These procedural deadlines coincide with the deadlines applicable to the filing of the case protocol, i.e., the timetable applicable to the legal proceedings (Arts. 149 and 490 CCP). Quite unfortunately, this procedural rule sets a time limit different and shorter than the time limit provided for in Art. 16(2) of the Model Law.

Chapter III. Arbitrators

1. QUALIFICATIONS

a. Requirements and restrictions

Apart from the standard rules requiring the independence and impartiality of arbitrators, there are no qualifications for arbitrators required by law for either international or domestic arbitration. Parties may appoint any natural person having the legal capacity to act and there are generally no citizenship or residence requirements for arbitrators. As per Art. 11(1) of the 1985 UNCITRAL Model Law, no person is precluded from acting as an arbitrator based on their nationality, unless otherwise agreed by the parties. Sect. 11(9) of the British Columbia International Commercial Arbitration Act (**Annex V** hereto) further warrants that unless there is agreement to the contrary, the Chief Justice "must not appoint a sole or third arbitrator who is of the same nationality as that of any of the parties". Furthermore, it is the general policy of the Canadian judiciary that acting judges should not sit as arbitrators.

b. Disclosure requirements

Arbitrators are under a continuous duty to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. For instance, as part of an express requirement for the independence and impartiality of arbitrators, arbitrators in Alberta have an obligation of prior and continuing disclosure of any circumstances that may give rise to a reasonable apprehension of bias (Sect. 11(1), (2) and (3) of the Alberta Arbitration Act) (**Annex VIII** hereto).

2. APPOINTMENT OF ARBITRATORS

Generally, the arbitration agreement or the institutional rules referred to therein (which indeed form part of the arbitration agreement) provides a procedure for the appointment of an arbitrator or arbitrators. If the issue of the appointment of arbitrators is not settled by the arbitration agreement or the applicable institutional rules, one should look at the applicable legislation. As more fully explained below, the relevant legislation can also be of assistance in cases where the arbitration agreement provides for the appointment of an even number of arbitrators.

In the Common Law provinces, reference should be made to the slight particularities within the Arbitration Acts of the Canadian provinces, territories and the federal government.

All Common Law provinces provide that where an arbitrator or umpire is incapable of acting or refuses to act, the party or parties, or the arbitrators by

whom he was appointed may appoint a replacement without judicial intervention. If the arbitration agreement provides for two arbitrators, one to be appointed by each party, all Arbitration Acts of the Common Law provinces suggest that the two arbitrators may appoint a third arbitrator or "umpire".

The question as to the timing of appointment of an umpire is left to discretion of the arbitrators, unless the arbitration agreement pronounces itself on this issue. Once selected, an umpire sits in on hearings and serves the function of avoiding deadlock if the arbitrators are evenly split on an issue to be decided.

Generally, where an appointment is not made within seven clear days after the service of the notice to concur in the appointment of a single arbitrator or to appoint an arbitrator, the court may, on application by the party giving notice, appoint an arbitrator, umpire or third arbitrator. The court appoints the arbitrators if any of the parties fail to do so or the two arbitrators cannot agree on the third (presiding) arbitrator, or cannot agree on the umpire after having decided to appoint one. Note that the Alberta Arbitration Act provides additionally that the court may appoint the arbitral tribunal where either the person with the power to appoint the arbitral tribunal has not done so within the time provided in the agreement, or the arbitration agreement provides no procedure for appointing the arbitral tribunal (Sect. 10(1)(a) and (b)).

The Alberta Arbitration Act is not explicit but states that the section relating to substitution of an arbitrator does not apply to named arbitrators, which suggests that unless the parties agree, the arbitration will be stayed (Sect. 16(5)).

In Québec, unless the arbitration agreement specifies otherwise, the parties appoint a sole arbitrator (Art. 624 Code of Civil Procedure, "CCP", see **Annex III** hereto). If the arbitration agreement provides for three arbitrators, each party appoints one arbitrator, and the two party appointed arbitrators appoint the third arbitrator (Art. 624, para. 2 CCP). If one of the parties fails to appoint an arbitrator, or if the arbitrators appointed by the parties fail to concur on a choice of the third arbitrator, within thirty days after having been served a notice to appoint, the court may make the appointment on the motion of one of the parties (Art. 625 CCP). Additionally, where the procedure of appointment contained in the arbitration agreement proves difficult in practice, the court may, on the motion of one of the parties, take any necessary measures to bring about an appointment (Art. 625 CCP). Any judicial intervention with respect to the appointment of an arbitrator is final and without appeal (Art. 630 CCP).

In all Model Law jurisdictions, Art. 11 of the Model Law applies to international commercial arbitration save for the amendments introduced by British Columbia as to the nationality requirements for arbitrators (see above).

3. NUMBER OF ARBITRATORS (SEE ALSO CHAPTER V.2 – MAKING OF THE AWARD)

There are no statutory limitations on the number of arbitrators in either international or domestic arbitration. In the Common Law provinces, where the parties do not stipulate the number of arbitrators in their arbitration agreement, they are deemed to have chosen one arbitrator with respect to *domestic arbitration*, and to have chosen three arbitrators with respect to *international arbitration*.

Neither Québec nor Canada (as a federal Government entity*)* maintains the distinction between domestic and international arbitration. In both instances, the parties are free to determine the number of arbitrators. However failing such determination, the outcome as to the number of arbitrators varies since the parties are deemed to have chosen (i) three arbitrators in the context of an arbitration conducted under the federal Commercial Arbitration Act, RSC 1985, c 17 (Sect. 10(2), Sch. 1) (see **Annex I** hereto) and (ii) one arbitrator in the context of an arbitration conducted under the Québec CCP (Art. 624, para. 1)

4. CHALLENGE TO ARBITRATORS

a. Grounds

In most Model Law jurisdictions, Arts. 12 and 13 of the Model Law apply to international commercial arbitration. Sect. 6(2) of the Alberta International Commercial Arbitration Act and Sect. 7(2) of the Nova Scotia International Commercial Arbitration Act expressly provide that the parties may, by mutual consent, remove an arbitrator at any time prior to the final award, regardless of how the arbitrator was appointed.

Generally, Arbitration Acts of Common Law provinces do not contain detailed provisions on the grounds for challenging an arbitrator or an umpire. The Alberta Arbitration Act is one of the most comprehensive in that regard: a party may challenge an arbitrator only where circumstances exist giving rise to a reasonable apprehension of bias, or where the arbitrator does not possess qualifications that the parties have agreed are necessary (Sect. 13(1)(a) and (b)). In addition to stipulating several formal requirements to a challenge (Sect. 13(3), (4), (5) and (6)), the Alberta Arbitration Act also expressly provides that an arbitrator may be challenged only on grounds of which the party was unaware at the time of appointment (Sect. 13(2)).

In addition to the apprehension of bias, the Alberta Arbitration Act also provides that the "court may remove an arbitrator on a party's application ... if the arbitrator ... commits a corrupt or fraudulent act, delays unduly in conducting the arbitration or does not conduct the arbitration in accordance with section 19" (Sect. 15(1)). Sect. 19 of the Act provides, essentially, for procedural fairness.

British Columbia is the only one of the Model Law jurisdictions which provides for detailed challenge procedures and a list of grounds for challenge in both its International Commercial Arbitration Act (Sects. 12 and 13) and its Arbitration Act (Sects. 17 and 18) and also limits such challenges to grounds the party was unaware of at the time of the arbitrator's appointment.

For an interesting illustration of a successful challenge of an arbitrator by reason of conflict of interest and reasonable apprehension of bias, see *Telesat Canada v. Boeing Satellite Systems International, Inc*, 2010 ONSC 4023. In this case, the challenge was sustained on the basis of the fact that another partner in the arbitrator's firm was a member of another arbitral tribunal that adjudicated a related claim. It is noteworthy that the court relied on the IBA Guidelines on Conflicts of Interest in International Arbitration notwithstanding the fact these guidelines had not been incorporated by reference into the arbitration agreement.

In Québec, an arbitrator is required to disclose to the parties any fact that could cast doubt as to his or her impartiality and justify a challenge (Art. 626, para. 2 CCP). Generally, an arbitrator may be challenged (recused) on grounds similar to those set forth for the challenge of judges in Arts. 202 and 202 CCP, and on the ground that the arbitrator does not have the qualifications agreed by the parties (Art. 626 CCP). Further, an arbitrator may be challenged by the party who appointed her only on a ground which has arisen or been discovered since the appointment (Art. 627, para. 2 CCP).

b. Procedure

Subject to mandatory legislative provisions, the parties are free to agree on a challenge procedure of their choice. If the arbitration is subject to institutional rules, the latter will usually set forth the procedure for challenging arbitrators. Failing an agreement by the parties (including an agreement by reference to institutional rules), in most cases the arbitral tribunal, including the challenged arbitrator, decides on the challenge. If the challenge is not successful, the challenging party may ask a court to rule on the challenge (see, for instance, Sect. 13(3) of the Model Law as incorporated into the Ontario International Commercial Arbitration Act (**Annex VII** hereto), and Art. 627, para. 4 CCP). In addition, a Québec court may intervene if the challenge procedure "provided for in the arbitration agreement … proves difficult to implement" (Art. 629 CCP). If a judge ends up ruling on the challenge, such a decision is not subject to appeal (see, for instance, Sect. 13(3) of the Model Law, 13(6) of the British Columbia International Commercial Arbitration Act and Art. 630 CCP).

5. TERMINATION OF THE ARBITRATOR'S MANDATE

In Model Law jurisdictions, an arbitrator's mandate terminates in conformity with Art. 14 and 32(3) of the Model Law. i.e., upon a successful challenge procedure, a failure or impossibility to act, or with the termination of the arbitral proceedings.

Most domestic Arbitration Acts provide that an arbitrator's mandate terminates upon the happening of one of the following events:

(1) the arbitrator resigns or dies,
(2) the parties agree to remove the arbitrator,
(3) ten days elapse after all the parties are notified of the arbitral tribunal's decision to uphold a challenge of the arbitrator and remove the arbitrator, and no application is made to the court, or
(4) the court removes the arbitrator.

Although not explicitly stated, an arbitrator's mandate also terminates upon the termination of the arbitral proceedings.

In Québec, subject to the parties' contractual arrangements, the court may terminate an arbitrator's mandate if the latter is unable to perform his duties or fails to perform them in reasonable time (Art. 628 CCP). Although not explicitly stated, an arbitrator's mandate also terminates upon a successful challenge or the termination of the arbitral proceedings.

In both domestic and international arbitration, a substitute arbitrator can be appointed upon termination of the previous arbitrator's mandate. The prescribed procedure for the appointment of an arbitrator applies to his substitute. In addition, the Arbitration Acts of the other Common Law provinces (save for British Columbia) provide that the court may appoint the substitute arbitrator on a party's application if the agreement does not provide for an appointment procedure or if a person with the power to appoint has not done so within the time provided or seven days after a party has given notice. On the application of any party, the court may give direction about the conduct of the arbitration.

In Québec, Art. 624, para. 3 CCP provides that the procedure applicable to the appointment of an arbitrator also applies to the appointment of her replacement.

6. LIABILITY OF ARBITRATORS

As they are based on the UNCITRAL Model Law, the International Arbitration Acts of all Common Law provinces are silent with respect to the civil liability of arbitrators in international arbitration except for the British Columbia International Commercial Arbitration Act, which stipulates that the arbitrator

will not be subject to civil liability unless he or she acted in bad faith or has engaged in intentional wrongdoing. (Sect. 36.02) The federal legislation is silent in the domain of both domestic and international arbitration. The Common Law position seems to be that in the absence of fraud or bad faith, an arbitrator enjoys immunity from civil liability (*Arenson v. Casson Beckman Rutley & Co.*, [1977] A.C. 405; *Sutcliffe v. Thackrah*, [1974] A.C. 727).

As is the case in most Common Law provinces, the Alberta Arbitration Act provides exceptions with respect to domestic arbitration. In these provinces, if the court removes an arbitrator for a corrupt or fraudulent act or for undue delay, it may order that the arbitrator receive no payment for services and that the arbitrator compensate the parties for all or part of the costs that they incurred in connection with the arbitration before the arbitrator's removal (Sect. 15(1) and 15(4) of the Alberta Arbitration Act). The British Columbia Arbitration Act (Sect. 62) (**Annex IV** hereto) rather stipulates that the arbitrator is generally immune from damages claims, except for "anything done or omitted in bad faith".

Similarly, in Québec, arbitrators are shielded from civil liability, "unless they acted in bad faith or committed an intentional or gross fault" (Art. 621 CCP). Even prior to the enactment of this provision, the Québec courts held that arbitrators are protected by the same immunity as judges (*Zittrer v. Sport Maska Inc*., [1985] C.A. 386 at 392) in the absence of circumstances resulting from fraud, bad faith or similar offences (*Chao v. White*, [2004] QCTP 25 at 48; also see *Maçonnerie Demers inc. v. Lanthier*, [2002] R.J.Q. 1998).

Chapter IV. Arbitral Procedure

1. PLACE OF ARBITRATION (SEE ALSO CHAPTER V.3 – FORM OF THE AWARD)

a. Determination

In all Model Law jurisdictions, the place of arbitration (i.e., its legal (as opposed to physical) seat for the purpose of determination of *lex arbitri*) is determined by the parties' agreement. Failing that, "the place of arbitration shall be determined by the arbitral tribunal" (Sect. 20 of the Model Law). If the parties do not agree on the place of arbitration and no arbitral tribunal is constituted, serious difficulties may arise with respect to requests for judicial assistance in the constitution of the arbitral tribunal: the jurisdiction of the court whose assistance is required can be challenged and the law applicable to the constitution of the arbitral tribunal may be difficult to determine.

As to domestic arbitration, the Arbitration Acts of most Common Law provinces provide that an arbitral tribunal shall determine the place of arbitration, taking into consideration the parties' convenience and the other circumstances of the case. The British Columbia Arbitration Act (**Annex IV**

hereto) lists a series of criteria that will determine if British Columbia is to be deemed the place of arbitration, such as specific designation by the parties of the place of arbitration, choice of British Columbia law, or even, in the absence of designation, the fact that the parties have their place of business in British Columbia (Sect. 2). As to the physical venue of an arbitration, an arbitral tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or parties or for inspecting property or documents (see, e.g., Sect. 22 of the Ontario Arbitration Act, 1991) (**Annex VI** hereto).

In Québec, the Code of Civil Procedure ("CCP", **Annex III** hereto) does not make reference to the place of arbitration. However, it states under Art. 649 that where matters of extraprovincial or international trade are at issue in an arbitration, the interpretation of its Title I on arbitration proceedings, where applicable, shall take into consideration (1) the UNCITRAL Model Law; (2) the UNCITRAL Report on its 18th session; and (3) the UNCITRAL Analytical Commentary on the draft text of the Model Law. Thus, the analysis with respect to the place of arbitration would likely be the same as in Model Law jurisdictions (see above).

b. Legal consequences

Depending on the place of arbitration, mandatory rules and, in absence of a contrary intention of the parties, the supplementary statutory provisions applicable at the place of arbitration will be applied to the arbitration.

2. ARBITRAL PROCEEDINGS IN GENERAL

a. Determining procedure

Model Law jurisdictions apply Chapter V of the Model Law in the context of international commercial arbitration (with slight variations for British Columbia).

The Québec CCP states that the arbitrators shall proceed to arbitration according to the procedure they determine (Art. 632 CCP), subject to the parties' agreement (Art. 6 and Art. 622, para. 3 CCP). Similarly, Art. 2643 of the Civil Code of Québec ("CCQ", **Annex III** hereto) provides that "[s]ubject to the peremptory provisions of law, the arbitration procedure is governed by the contract or, failing that, by the Code of Civil Procedure". For arbitrations subject to institutional rules, the details of the arbitration procedure are set out in those rules (subject to the mandatory provisions of the place of arbitration). In absence of other stipulations of the parties the arbitrators may require each of the parties to produce a statement of its claim with supporting documents within a prescribed period. Each of the parties shall transmit a copy of the statement and documents to the opposite party within the same time. Every expert's report or other document which the arbitrators may invoke in support

of their decision must be transmitted to the parties (Art. 633 CCP). Proceedings (arguments) are oral, but a party may nevertheless produce a written statement (Art. 633 CCP). The service of documents shall be made in accordance with the relevant provisions of the CCP; these provisions being also applicable to judicial proceedings (Art. 631 CCP). It is important to note however that the other procedural rules found in the CCP in connection with judicial proceedings are not *ipso facto* applicable in arbitration. For these provisions to be applicable to arbitration proceedings, the parties' agreement or, failing such, the arbitral tribunal's order is required.

As to domestic arbitration, the Arbitration Acts of Common Law provinces allow the arbitral tribunal to determine the procedure to be followed in an arbitration. However, the Northwest Territories, Nunavut and Yukon Territory Arbitration Acts all provide for the application of specific rules to be set by regulation. As none of the territorial governments implemented such rules yet, the arbitral practice and procedure is regulated by the same rules as those applicable to court proceedings (see, for instance, Sect. 41 of the Northwest Territories Arbitration Act).

b. Written pleadings and oral hearing

In an arbitration, an exchange of written pleadings takes place first. However, with the arbitral tribunal's permission, the parties may submit their statements orally (see, e.g., Sect. 25 (5) Alberta Arbitration Act) (**Annex VIII** hereto).

The arbitral tribunal may conduct the arbitration on the basis of documents or may hold hearings for the presentation of evidence and oral arguments. The arbitrators shall hold a hearing if the parties request it (see, e.g., Sect. 26(1) Alberta Arbitration Act, Art. 633 CCP).

c. Document disclosure

For international arbitration, in addition to the relevant provisions of the Model Law (e.g., Arts. 23 and 24 thereof), the IBA Rules on Taking of Evidence in International Arbitration often apply either by agreement of the parties or by order of the arbitral tribunal.

For domestic arbitrations in Uniform jurisdictions, the Arbitration Acts provide that, before an arbitration hearing commences, the arbitrator may, on the application of a party, order another party to produce any documents that the arbitrator considers are relevant to the arbitration. The party in whose favor the order was made is entitled to inspect the documents covered by the order and make copies of them. It is specified that no person can be compelled to produce information, property or documents or to give evidence in an arbitration that the person could not be compelled to produce or give in a court proceeding.

For domestic arbitrations in Non-Uniform jurisdictions (excluding British Columbia), the Arbitration Acts provide that the parties, subject to any legal objection, produce all books, deeds, papers, accounts and other documents

within their possession that may be required from them by the arbitrators or the umpire. The arbitrator or umpire may, when no special reason appears to him for filing the original, allow a copy thereof or of such part as he considers material. The British Columbia Arbitration Act gives broad powers to the arbitrator to establish procedures and make procedural orders including to make orders "(vi) subject to privilege, requiring a party to produce records or information". (Sect. 32(2)(b))

In Québec, be it for domestic or international arbitrations, the document disclosure process is to be agreed upon between the parties or decided upon by the arbitral tribunal (Arts. 6 and 632 CCPand Art. 2643 CCQ).

3. EVIDENCE

a. General

In all Model Law jurisdictions, Arts. 19, 23, 24, 25 and 27 of the Model Law set out the rules of evidence in international commercial arbitrations. It is noteworthy that contrary to certain decisions rendered in some other jurisdictions, including the United Kingdom, the Alberta Court of Appeal held in *Jardine Lloyd Thomson Canada Inc. v. SJO Catlin*, [2005] ABCA 18, that Art. 27 of the Model Law also applies to evidence taken at the pre-hearing stage, effectively allowing a party to an arbitration to examine on discovery third party witnesses.

In Québec, issues related to pre-hearing evidence are settled either by agreement of the parties or by directions from the arbitral tribunal as the CCP does not contain any specific provisions in that regard and examinations on discovery are not automatically part of the arbitration process (contrary to the situation prevailing with respect to judicial proceedings involving claims over Can$ 30,000, Arts. 221 to 230 CCP). As to the evidence submitted at trial, the arbitral tribunal can compel the attendance of witnesses (including third party witnesses) and their testimony is partially subject to the rules applicable to a testimony before a court (see below).

In domestic arbitrations in Common Law provinces, the arbitral tribunal is generally not bound by the rules of evidence and has the power to determine the admissibility, relevance and weight of any evidence. However, in Nunavut, Northwest Territories and Yukon Territory, arbitrators are bound by the rules of evidence contained in the Evidence Act.

b. Witnesses

In the Common Law provinces, arbitrators and umpires are free to question all witnesses. A party may obtain a court order compelling a witness to testify (*subpoena ad testificandum*) or it may obtain an order to compel a witness to give evidence and to bring with him certain documents in his possession

(*subpoena duces tecum*). Normally a party examines his witness and the latter is subject to cross-examination by other parties.

All parties to arbitration and any person claiming through them shall, when ordered by the arbitrator, testify under oath and shall produce all records that the arbitrator may require. An arbitrator or umpire has the power to administer oaths to parties and witnesses, unless the parties agree otherwise (see, e.g., Sect. 25(6) Ontario Arbitration Act, 1991).

In Québec, arbitrators have the power to administer oaths (Art. 632 CCP) and may compel witnesses to appear before them (Art. 634 CCP). In absence of other stipulations by the parties, Arts. 269 to 289 of the CCP apply to the hearing of witnesses in arbitration (Art. 633 CCP). A witness cannot be compelled to divulge any communication made to him or her by his or her consort during the marriage (Art. 282 CCP). Similarly, government officials cannot be obliged to divulge what has been revealed to them in the exercise of their functions provided that the judge is of the opinion, for reasons set out in the affidavit of the Minister or Deputy-Minister to whom the witness is answerable, that the disclosure would be contrary to public policy (Art. 283 CCP). A witness cannot refuse to answer for the reason that his reply might tend to incriminate him or to expose him to a legal proceeding of any kind; but if he objects on that ground, his reply cannot be used against him in any penal proceedings instituted under any law of his province (Art. 285 CCP). If the examination of a witness cannot be completed on the day he appears, he is bound to attend on the next following juridical day, or on such other day as is indicated to him by the arbitral tribunal and entered in the minutes of the case. His default renders him liable to the same penalties as for refusing to attend upon a subpoena (Art. 289 CCP). A witness who withdraws without the permission of the court is subject to the same penalties as he who refuses to attend upon a subpoena (Art. 289 CCP).

4. TRIBUNAL-APPOINTED EXPERTS (SEE CHAPTER IV.3 FOR PARTY-APPOINTED EXPERT WITNESSES)

a. Power of tribunal

Arbitrators may appoint an expert to report to them on specific issues or may require parties to give the expert any relevant information or to allow him or her to inspect property or documents (see, e.g., Art. 28 Ontario Arbitration Act, 1991). The consent of parties is not required for the appointment of experts, except in British Columbia where the parties may agree otherwise (Sect. 34 Arbitration Act; Sect. 26 International Commercial Arbitration Act (**Annex V** hereto). At the request of a party or of the tribunal, the expert shall, after making the report, participate in a hearing in which the parties may question the expert and present testimony of another expert on the subject matter of the report. In Québec, Art. 632 CCP provides that the arbitrators have all necessary

powers for the exercise of their jurisdiction, including the power to appoint an expert.

b. Role of parties

The parties are responsible for the remuneration of the experts. In international commercial arbitration, Model Law jurisdictions follow Art. 26 of the Model Law. The British Columbia International Commercial Arbitration Act added to Art. 26 of the Model Law the following paragraph:

> "(3) Unless otherwise agreed by the parties, the expert must, on the request of a party, make available to that party, for examination, all documents, goods or other property in the expert's possession with which the expert was provided in order to prepare the expert's report."

As to domestic arbitration, in all Canadian provinces, experts may be called by each of the parties. They are questioned and cross-examined by the parties during the hearing before arbitrators.

5. INTERIM MEASURES OF PROTECTION (SEE ALSO CHAPTER I.1 – LAW ON ARBITRATION)

a. Court or tribunal

In international commercial arbitration, Art. 17 of the 1985 Model Law is applied by Model Law jurisdictions, allowing arbitral tribunals to issue interim measures of protection (note that the 2006 amendments to the UNCITRAL Model Law, which, among other matters, further develop the framework applicable to the interim measures, have not yet been implemented in any Canadian jurisdiction). In British Columbia, such orders of the arbitral tribunal may be enforced by a court. Furthermore, as per Art. 9 of the 1985 Model Law, the fact of requesting such measures from a court is not incompatible with the existence of an arbitration agreement. Therefore, subject to the limitations imposed on the courts by statutes related to their jurisdiction and the measures they can grant and subject to the limitations imposed on arbitral tribunal (for instance, "injunctions" in Québec, see below), the parties can request interim measures either from a court or an arbitral tribunal. This being said, it is important to keep in mind that court orders are usually easier to enforce (without the need of additional court proceedings) and constitute the only practical choice when interim measures affect third parties.

In Québec, Art. 623 CCP empowers state courts to issue interim measures of protection and parties to arbitration proceedings often rely on that provision rather than requesting interim measures of protection from the arbitral tribunal (which are also available as per Arts. 638 to 641 CCP). This situation is likely due to (i) logistical consideration, e.g., the urgency of such measures and the

time required to constitute the arbitral tribunal; and (ii) the fact that for a long period of time, Québec law remained relatively unsettled with respect to the power of an arbitral tribunal to issue interim measures of protection. In the current state of Québec law, arbitral tribunals do not have the power to issue injunctions (including interim injunctions, see *Joli-Coeur v. Joli-Coeur Lacasse Avocats, s.e.n.c.r.l.*, para. 12, 2011 QCCA 219) but are empowered to grant other provisional measures and to issue specific performance orders, even if the arbitration agreement is silent on the issue (see *Nearctic Nickel Mines Inc. v. Canadian Royalties Inc.*, 2012 QCCA 385. and *Service Bérubé ltée v. General Motors du Canada ltée*, 2011 QCCA 567). Although, in our view, the distinction between an injunction and a specific performance order has yet to be clearly articulated by the courts, it seems that most orders related to the execution of contractual obligations would not amount to "injunctions" (the issuance of which remains within the exclusive jurisdiction of the Superior Court of Québec).

b. Form of relief

As per the provisions of Art. 17 of the Model Law, arbitral tribunals generally enjoy vast powers as to the form of relief granted at the interim stage and the form of such relief is tailored to the circumstances of each case. Subject to the limitations related to the issuance of "injunctions", arbitral tribunals subject to the provisions of the Québec CCP enjoy the same vast powers. Some domestic statutes of the Common law provinces, including those enacted in Uniform jurisdictions, provide examples of relief, such as orders "for the detention, preservation or inspection of property and documents that are the subject of the arbitration or as to which a question may arise in the arbitration" as well as orders "to provide security in that connection" (see, e.g., Art. 18 of the Ontario Arbitration Act).

6. REPRESENTATION AND LEGAL ASSISTANCE

Generally, foreign counsel may appear in international arbitrations physically taking place in Canada without restriction. For instance, the law societies of the main three arbitration venues (Québec, Ontario and British Columbia) have either adopted specific regulations or issued directives allowing foreign counsel to act without obtaining a license from these law societies. In addition, the British Columbia International Commercial Arbitration Act specifically allows a party to be represented "by any person" and stipulates that the restrictions of the BC Legal Profession Act do not apply to international arbitral proceedings (Sect. 21.01).

Canadian counsels are regulated by the stringent Rules of Professional Conduct adopted by the respective law societies. If a party is represented by a lawyer who is a member of the law society of a province where the arbitration

is taking place, there is a presumption that the latter is duly authorized. In case of a foreign counsel or of a party not residing in Canada, a written power of attorney, signed by that party, may nevertheless be recommended.

Although less relevant (as the issue of legal representation is one of public order), certain institutional rules (e.g., Vancouver International Arbitration Centre) also mention that parties may be represented by any person.

Obviously, should international arbitration proceedings require any recourse to Canadian courts, representation by properly licensed Canadian counsel (or by a foreign counsel properly exempted by the relevant Canadian law society) is mandatory.

7. DEFAULT

In international commercial arbitration, Art. 25 of the Model Law is applied in Model Law jurisdictions. A similar provision applies to domestic arbitration, except for Non-Uniform jurisdictions where no provision elaborates on the notion of default.

Hence, in the other Common Law provinces, if the claimant fails to communicate his statement of claim, the arbitral tribunal terminates the proceeding. However, if the respondent fails to communicate his statement of defence, the proceedings go on without treating such failure in itself as an admission of the claimant's allegation. If any party, after due notice, fails to appear before the arbitral tribunal the latter may, nevertheless, go on with the proceedings and render a binding award. In any case, the parties can be excused if they had agreed otherwise, or if they show sufficient cause.

The CCP of Québec states that the arbitrators shall record the default and may continue the arbitration proceedings if one of the parties fails to state his claims, to appear at the hearing or to produce the evidence in support of his claims. If the party having submitted the dispute to arbitration fails to state his claims, the arbitrators shall terminate the proceedings unless one of the other parties objects (Art. 635 CCP).

8. CONFIDENTIALITY OF THE AWARD AND PROCEEDINGS

a. Confidentiality of the arbitral award and proceedings

It is often perceived that one of the inherent benefits of commercial arbitration is its confidentiality. In Canada, as is the case in several other jurisdictions, such an assumption is wrong in most provinces. Except for Nova Scotia (Sect. 18 of Schedule A) British Columbia (Sect. 63 Arbitration Act, 36.01 International Commercial Arbitration Act) and Québec (Art. 4 and 644 CCP, also see *SNC-Lavalin inc. v. ArcelorMittal Exploitation minière Canada*, 2018 QCCS 3024), the legislation does not provide for the confidentiality of

arbitration proceedings and no uniform implicit duty of confidentiality exists. Therefore, it is important for the parties to provide contractually for the confidentiality of the arbitration (which can also be achieved by choosing appropriate institutional rules) and to ensure that arbitrators and other parties (e.g., experts and witnesses) also agree to treat the arbitration as confidential. Where confidentiality is paramount, it may also be prudent to request a confidentiality order from the arbitral tribunal.

Nevertheless, even if the parties provide for confidentiality in their arbitration agreement (which should normally always be the case) and even if an arbitral tribunal issues a confidentiality order, third parties (e.g., parties involved in a court litigation not involving the arbitration proceeding *stricto sensu*) may still be able to obtain, in certain circumstances, a court order for disclosure of arbitration-related documents and proceedings (see, e.g., *Adesa Corp. v. Bob Dickenson Auction Services Ltd.*, [2004] 73 O.R. (3d) 787).

b. Confidentiality of arbitration-related court proceedings

Court proceedings, including all the related document and materials, are public unless a sealing order or an order for an *in camera* hearing is issued. Such orders are difficult to obtain as Canadian courts usually favour the public confidence in the integrity of the judicial process (and, thus, the publicity of court hearings and materials) over the confidentiality-related concerns of private litigants (see, e.g., *Adesa Corp. v. Bob Dickenson Auction Services Ltd.*, [2004] 73 O.R. (3d) 787 and *Gea Group AG v. Ventra Group Co.*, [2009] CanLII 17992 (ON S.C.). The criteria to be met for a sealing order are as follows (*Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] S.C.R. 522):

> "(1) such an order is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
> (2) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and reasonable court proceedings."

Chapter V. Arbitral Award

1. TYPES OF AWARD

The International Commercial Arbitration Acts of the Common Law provinces (except British Columbia) follow Chapter VI of the Model Law, where no mention of partial or interim awards or their enforcement is to be found. However, such awards are not prevented by law in Canada and are regularly rendered in Canada.

The British Columbia International Commercial Arbitration Act (**Annex V** hereto) takes another direction and states that the arbitral tribunal may, at any time during the arbitral proceedings, make a partial award on any matter with respect to which it may make a final award (Sect. 31(6)).

In domestic arbitration, except for the Non-Uniform jurisdictions, the Arbitration Acts of the Common Law provinces expressly give the power to the arbitrator to make one or more interim awards (see, e.g., Sect. 49 of the British Columbia Arbitration Act) (**Annex IV** hereto) (see above Chapter IV.5]).

In Québec, the arbitrators are also entitled to make partial awards since no mandatory provision precludes them from doing so.

2. MAKING OF THE AWARD

Arts. 28 to 30 of the 1985 Model Law apply, with respect to international commercial arbitration, to all Model Law jurisdictions.

a. Decision-making

In Model Law jurisdictions, when an arbitral tribunal consists of more than one arbitrator, any decision is made by a majority of all its members, unless the parties have agreed otherwise. The presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal, however, can rule alone on questions of procedure.

For domestic arbitration, the legislation of Non-Uniform jurisdictions simply states that an award made by a majority of arbitrators is final and binding (e.g., Sect. 26 of the Northwest Territories Arbitration Act). The British Columbia Arbitration Act specifies that if there is no majority decision on any matter to be decided in an arbitration, the decision of the presiding arbitrator prevails on that matter. (Sub-sect. 46(3)). Other Arbitration Acts provide that if there is no majority decision or unanimous decision, the decision of the chair governs.

In Québec, the arbitration award must be made in writing by a majority of arbitrators. It must state the reasons on which it is based and be signed by all the arbitrators (Art. 642 Code of Civil Procedure) ("CCP", see **Annex III** hereto). Each arbitrator may, in the award, state his conclusion and the reasons on which they are based.

b. Timing of the award

The CCP of Québec provides for a three-month time limit (after the hearings are concluded) for the making of the award. However, this time limit can be extended by the parties at will whether or not the initial period has expired and, failing agreement, either party or the arbitrator(s) can petition the court to do so. In parallel, Art. 628 CCP stipulates that "[a] party may ask the court to

revoke an arbitrator if it is impossible for the arbitrator to carry out their mission or if the arbitrator does not discharge their functions within a reasonable time." The consideration of an unreasonable time is left for the judge. An analysis of the provisions of the CCP as well as of doctrine and case law in Québec reveals that a similarity exists between arbitration and the judicial process when determining what constitutes an unreasonable time.

Conversely, the international Arbitration Acts of the Common Law provinces do not mention any time limit for the making of the award. Generally, in domestic arbitration, unless a contrary intention of the parties is expressed in the arbitration agreement, there is no time limit for an award to be made. The period to render an award may, from time to time, be extended by a judge of the competent court in each province, whether or not the initial period has expired (see, e.g., Sect. 39 of Ontario Arbitration Act, 1991) (**Annex VI** hereto).

However, in Yukon, Nunavut, Northwest Territories, Newfoundland and Labrador and Prince Edward Island, the award shall be made within three months after the commencement of the arbitration, or on any later date to which, by any writing signed by the parties, the period for rendering the award is extended. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

3. FORM OF THE AWARD

All Model Law jurisdictions apply Art. 31 with respect to the form and contents of the award in international commercial arbitration. It states that the award must be in writing and be signed by the arbitrator or arbitrators, stating the reasons upon which the award is based (unless the parties have agreed otherwise) and the date and place of arbitration.

In Québec, Art. 642 CCP clearly indicates that the award must state the reasons on which it is based, unless stipulated otherwise by the parties (Arts. 6 and 622, para. 3 CCP). All the arbitrators must sign the arbitration award; if one of them refuses to sign or cannot sign, the others must record that fact and the decision has the same effect as if it were signed by all of them (Art. 642, para. 2 CCP). The award must also contain an indication of the date and place at which it was made (Art. 642, para. 1 CCP).

In domestic arbitration in all Canadian jurisdictions, unless a contrary intention is expressed in the arbitration agreement, the award shall be in writing. An award shall state the reasons on which it is based, indicate the place where and the date on which it is based, be dated and signed by all members of the arbitral tribunal, or by a majority of them if an explanation of the omission of the other signatures is included. In the Non-Uniform

jurisdictions, the award need only be in writing and the Arbitration Acts do not require the inclusion of reasons in the award.

In Common Law provinces, except for the Non-Uniform jurisdictions (but including British Columbia), a party to an arbitration may request in writing that the arbitral tribunal provide a further explanation of the reasons on which the award is based. Such application shall be made within thirty days (fifteen days in Nova Scotia) after receiving a copy of the award. If the arbitral tribunal does not give an explanation within fifteen days after receiving the request, the court may, on the party's application, order the arbitral tribunal to do so (see, e.g., Sect. 40 Ontario Arbitration Act, 1991).

4. JURISDICTION (SEE ALSO CHAPTER II.5 – EFFECT OF THE AGREEMENT)

a. Power of arbitrators

In international commercial arbitrations, Model Law jurisdictions apply Art. 16(1) of the Model Law.

As to Québec, the CCP also states that arbitrators may decide the matter of their own jurisdiction (competence) (Art. 632, para. 2 CCP).

The domestic Arbitration Acts, including the British Columbia Arbitration Act, also recognize the powers of the arbitrators to decide on their own jurisdiction except for the other Non-Uniform jurisdictions. The arbitral tribunal may rule on an objection to its own jurisdiction as a preliminary question or may deal with it in an award.

b. Timing of objection

In international commercial arbitrations, Model Law jurisdictions apply Art. 16(2) of the Model Law. With respect to domestic arbitrations, domestic Arbitration Acts generally contain similar provisions (see, e.g., Sect. 4 and Sub-sect. 17(4) to 17(11) of the Alberta Arbitration Act) (**Annex VIII** hereto).

Although the Québec CCP does not contain specific provisions with respect to the timing of the objection, it is still desirable to raise the objection at the first opportunity be it only to avoid the waiver of objection argument.

c. Role of court

In international commercial arbitrations, Model Law jurisdictions apply Art. 16(3) of the Model Law, i.e., if the arbitral tribunal rules on an objection as a preliminary question, a party may within thirty days after receiving notice of the ruling, make an application to the court to decide the matter and no appeal lies against the court's decision on such an application. Domestic Arbitration Acts (including the British Columbia Arbitration Act but not the other Non-Uniform jurisdictions) contain similar provisions (see, e.g., Sub-sects. 17(10) and 17(11) of the Alberta Arbitration Act).

In Québec, if the arbitrators declare themselves competent during the arbitration proceedings, a party may within thirty days of being notified thereof apply to the court for a decision on the matter (Art. 632, para. 3 CCP). The arbitrators may pursue the arbitration proceedings and make their award while such recourse is pending (Art. 632, para. 4 CCP). A decision of the court during arbitration proceedings that recognizes the competence of the arbitrators is final and without appeal (Art. 632, para. 3 CCP).

5. APPLICABLE LAW

a. International commercial arbitration

Model Law jurisdictions apply a modified version of Art. 28 of the Model Law for determining the applicable law in international commercial arbitration. Indeed, International Commercial Arbitration Acts add a new perspective to that of the Model Law by providing that "[f]ailing any designation of the law … by the parties, the arbitral tribunal must apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute" (Sect. 28(3) British Columbia International Commercial Arbitration Act). Therefore, the International Commercial Arbitration Acts do not refer to conflict of laws rules but define their own method of determining the applicable law, i.e., the "centre of gravity method". Nevertheless, parties can expressly authorize the arbitral tribunal to decide *ex aequo et bono* or as *amiable compositeur*.

In Québec (where domestic and international arbitrations are subject to the same legal regime), Art. 620 CCP provides that that the arbitrators shall settle the dispute according to the "rules of law" and shall take account of applicable usages of trade. If the law applicable to the merits of a dispute is not agreed upon by the parties (either before the dispute arose or after the commencement of the arbitration, the arbitrator decides the dispute in accordance with the rules of law he or she considers appropriate (Art. 651 CCP). In doing so, the arbitrator could consider the conflict of laws rules found in the CCQ (Art. 3109 and following with respect to the law applicable to the merits of a contractual dispute).

In Québec, the arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so (Art. 620, para. 1 CCP). Furthermore, it was decided that an *amiable compositeur* must still resolve the dispute in accordance with the provisions in the arbitration agreement, unless the parties have explicitly agreed otherwise (*Coderre v. Coderre*, [2008] R.J.Q. 1245 (C.A.) at 80-81).

b. Domestic arbitration

In Common Law provinces, arbitrators decide according to the rules of law including equity. The arbitral tribunal may also take into account any applicable usages of trade.

In British Columbia, an arbitrator must follow rules similar to those applicable in international arbitration, and must apply the law chosen by the parties or, failing which, is free to "choose the applicable law" (Sect. 25 British Columbia Arbitration Act). It is also possible for the parties to authorize the arbitrator to act as an *amiable compositeur* (Sect. 27 British Columbia Arbitration Act).

Although Arbitration Acts in other Common Law provinces do not expressly provide for *amiable compositeur* or *ex æquo et bono* clauses, nothing prevents parties from adopting similar clauses given the fact that the tribunal shall decide the dispute in accordance with the arbitration agreement and the contract under which the dispute arose (see, e.g., Sect. 33 of the Ontario Arbitration Act, 1991).

Should the parties decide to use *amiable compositeur* and *ex æquo et bono* clauses in an arbitration agreement, this will allow the arbitrators to decide the dispute according to the legal principles they believe to be just, without being limited to any particular national law. They can disregard legal technicalities and strict constructions which they would be required to apply in their decisions if the arbitration agreement contained no such clause.

6. SETTLEMENT

The award on agreed terms may be enforced and set aside as a normal award. The Model Law jurisdictions apply Art. 30 of the Model Law, stating that an award on agreed terms has the same status and effect as any other award on the merits. The Model Law jurisdictions, except for Northwest Territories and Nunavut, have added to this that the arbitral tribunal may encourage a settlement and that, if parties agree, the arbitral tribunal "may use mediation, conciliation or other procedures" (see, e.g., Sect. 30 British Columbia International Commercial Arbitration Act). Arbitrators are not disqualified from resuming their roles as arbitrators by reason of the mediation, conciliation or other procedure (see below Chapter VIII).

In domestic arbitration in the Common Law provinces, including British Columbia but excluding the other Non-Uniform jurisdictions, parties may reach a settlement during the arbitration proceedings. In such a case, the arbitral tribunal shall terminate the arbitration and, if a party so requests, may record the settlement in the form of an award. This practice corresponds to judicial proceedings before courts where a judgment may be rendered according to the settlement of the parties.

In Non-Uniform jurisdictions, the settlement option is open to the parties, but nothing binds the arbitrator to accept such settlement.

In Québec, Art. 642, para. 4 CCP states that if the parties settle the dispute, the arbitrators shall record the agreement in an arbitration award.

7A. CORRECTION AND INTERPRETATION OF THE AWARD

In the Model Law jurisdictions, Art. 33 of the Model Law pertaining to correction and interpretation of the award applies. Interpretation of the award is also possible "if so agreed by the parties" (Art. 33(1)(b)).

In domestic arbitration, a party may make an application to the arbitral tribunal within thirty days of receiving an award (fifteen days in *Nova Scotia*) that the tribunal (1) correct typographical errors, errors of calculation and similar errors in the award or (except for British Columbia which only allows the first ground) (2) amend the award so as to correct an injustice caused by an oversight on the part of the arbitral tribunal (see, e.g., Sect. 43 of the Alberta Arbitration Act).

In Common Law provinces, there are no statutory provisions concerning the power of the arbitrators to interpret the award. However, a party may within thirty days (fifteen days in Nova Scotia) after being notified of the award, apply to the arbitrators for clarification of the award. British Columbia however allows the parties to seek an interpretation of the arbitral award in a manner similar to Art. 33 of the Model Law (Sect. 56(2). In Québec, the arbitrator may, on his or her on own initiative, correct any clerical error in the arbitration award within thirty days of the award date (Art. 643, para. 1 CCP). The arbitrator also may, on request of a party made within thirty days after the receipt of the award, correct the award or, with the prior agreement of the parties, interpret the award (Art. 643, para. 2 CCP). The interpretation forms an integral part of the award. The decision of arbitrators on a request for correction or interpretation must be made within sixty days after the application; if not, a party may apply to a judge to make any order for the protection of the rights of the parties (Art. 643, para. 3 CCP).

7B. ADDITIONAL AWARD

In Model Law jurisdictions, Art. 33(3) which pertains to additional awards applies. A party may request an additional award within thirty days of receipt of the award. If the arbitral tribunal considers the request to be justified, the additional award shall be made within sixty days.

In the Common Law provinces, (including British Columbia but excluding other Non-Uniform jurisdictions), additional awards may be rendered. Unless otherwise agreed by the parties, a party may, within thirty days after receiving

the award (fifteen days in Nova Scotia) apply to the arbitrator to make an additional award with respect to the claims presented in the proceedings but omitted from the award. A similar provision is contained in the Alberta Arbitration Act which provides that an additional award on a matter presented to the arbitrators but omitted from the earlier award may also be made by the arbitral tribunal on its own initiative (Sect. 43(2)).

In Québec, the arbitrators may render an additional award further to a request of a party (Art. 643, para. 2 CCP) with the same proviso as mentioned supra under 7.A. If the arbitrators do not render the award within sixty days after the application, a party may apply to a judge of the Superior Court (Art. 643, para. 3 CCP).

8. FEES AND COSTS

a. Deposit

There is no prohibition that arbitrators or a commercial arbitration body request a deposit or a security for their fees and expenses either at the time the arbitral tribunal is constituted or from time to time after the constitution of the arbitral tribunal. This is provided, e.g., in Art. 40 of the Rules of the Vancouver International Arbitration Centre. These Rules state that if the required deposits are not paid in full within thirty days after receipt of the request, the arbitral tribunal shall inform the parties in order that one or other of the parties may make the required payment. If the requirement payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

b. Fees of arbitrators

Under international commercial arbitration, no specific rules apply, except in Québec where Art. 637 CCP provides that "[t]he parties, subject to their agreement or unless the arbitrator decides otherwise, are equally liable" for the arbitrator's fees and expenses Furthermore, the various arbitration institutions in Canada have rules concerning arbitration fees.

Under domestic Arbitration Acts, arbitrators are entitled to decide on their own fees, provided the fees and expenses paid to them do not exceed the fair value of the services performed and the necessary and reasonable expenses actually incurred. Some Arbitration Acts or Regulations (Nunavut, Northwest Territories and Yukon Territory) limit the arbitrators' fees. However, the parties may, by a written agreement, establish fees differing from those provided in the Regulations.

The Arbitration Acts of Common Law provinces except for the Non-Uniform jurisdictions further state that a party to an arbitration is entitled to have the costs thereof, including the fees of the arbitrators, or such fees alone, taxed by one of the taxing officers of the competent court in the province even

if the account has been paid (see, e.g., Sect. 56(2) Ontario Arbitration Act, 1991).

The British Columbia Arbitration Act (**Annex IV** hereto) states in Sect. 55 that the fees and expenses of an arbitrator shall not exceed the fair value of the services performed together with necessary and reasonable expenses incurred. Interestingly, Sect. 52(1) also allows an arbitrator to withhold an arbitral award from the parties if the arbitral tribunal has not received full payment of its fees and expenses.

Where an arbitrator has delivered his account for fees and expenses, any party to the arbitration or the arbitrator may apply to the district registrar or other taxing officer of the court for an appointment to tax the bill, and the applicant shall deliver a copy of the appointment to the arbitrator or the parties, as the case may be. A party may make the application to tax an arbitrator's account notwithstanding that the account has been paid. A term of a commercial arbitration agreement prohibiting the taxation of an arbitrator's fees and expenses has no effect.

A party to a taxation may bring an application before a court to review an arbitrator's account for fees and expenses and may confirm the assessment, vary it, set it aside or remit it to the taxing officer with directions. The application for review may not be made after the period specified in the taxing officer's certificate has elapsed or, if no such period is specified, more than thirty days after the date of the certificate, unless the court orders otherwise. When the time during which an application for review may be made has expired and no application has been made, or when the court has reviewed the assessment and has made a final determination, the certificate of the taxing officer may be filed with the competent court and enforced as if it were a judgment of the court (see, e.g., Sect. 56 Ontario Arbitration Act, 1991).

c. Costs of legal assistance

Costs of an arbitration include the parties' legal expenses. It is customary to reimburse the winning party for the costs of its legal assistance as part of the costs of arbitration awards.

For instance, the Rules for International Commercial Arbitration and Conciliation Proceedings in the Vancouver International Arbitration Centre include reasonable legal fees and expenses, as determined by the arbitral tribunal, of the successful party where they were claimed during the arbitral proceedings (Art. 37).

Both the domestic and international Arbitration Acts of British Columbia (in Sects. 50 and 31 respectively) also specify that unless agreed otherwise, the costs of the arbitration include "legal fees and expenses".

d. Allocation of costs

In the absence of a contrary intention expressed in the arbitration agreement, the arbitrator may apportion the costs of arbitration, including his fees, among

the parties at her discretion. If the basis for the apportionment is not specified, the costs are determined on a party-and-party basis (see, e.g., Sect.53 of the Alberta Arbitration Act and Art. 637 CCP regarding the arbitrator's fees and expenses).

9. NOTIFICATION OF THE AWARD AND REGISTRATION

There are no specific provisions with respect to the delivery of an award to parties in Model Law jurisdictions. Unless a contrary intention is expressed in the submission, the award shall be delivered to any of the parties requiring it, and the personal representative of a party deceased may require delivery of the award.

If one of the parties does not voluntarily comply with the award, the other party will have to file the award with the court for purposes of enforcement.

10. ENFORCEMENT OF DOMESTIC AND INTERNATIONAL AWARDS RENDERED IN CANADA (SEE ALSO CHAPTER VI – ENFORCEMENT OF FOREIGN ARBITRAL AWARDS)

a. International commercial arbitration

The Model Law jurisdictions apply Art. 35 of the *Model Law* and enforcement may be refused on the grounds contained in Art. 36.

b. Domestic arbitration

In domestic arbitration in Common Law provinces, an award may be enforced by making an application to the competent court of the province to that effect. The application shall be made on notice to the person against whom enforcement is sought, in accordance with the rules of the competent court and shall be supported by the original award or a certified copy of it. The court stamps must also be paid when an application for enforcement is made. A stamp is a small sum which is based on the applicable tariff in force in each province.

The court shall give a judgment enforcing an award made in the territory where it is competent, unless (1) a thirty-day period for commencing an appeal or an application to set the award aside has not yet elapsed; (2) there is a pending appeal, application to set the award aside or application for a declaration of invalidity; or (3) the award has been set aside or the arbitration is the subject of a declaration of invalidity.

The recognition and enforcement of Canadian extra-provincial awards in Common Law provinces, including British Columbia but excluding the other Non-Uniform jurisdictions, is based on the same principles. A person who is entitled to enforce an award made elsewhere in Canada than in the province where a person is seeking enforcement may make an application to the court of

that province for enforcement. The court will refuse to render a judgment enforcing an award made elsewhere in Canada for the same reasons listed in the preceding paragraph or if the subject matter of the award is not capable of being the subject of arbitration under the province law where enforcement is sought (see, e.g., Sect 50(4) Ontario Arbitration Act, 1991). The applicability of the last ground of refusal will usually be dependent upon the rules of public policy in each province.

Another means of enforcing extra-provincial awards is found in the Reciprocal Enforcement of Judgments Acts. The Reciprocal Enforcement of Judgments Acts of all Common Law provinces state that a "judgment" includes an award which, under the law in force in the jurisdiction where it was made, has become enforceable in the same manner as a judgment given by a court in that jurisdiction (see, e.g., the definition of "judgment" in Sect. 1 of the Ontario Reciprocal Enforcement of Judgments Act, **Annex IX** hereto). Where an award has been given in a reciprocating jurisdiction, the party may apply to the competent court within six years (ten years for Prince Edward Island) after the date of the award to have the judgment registered in that court.

Generally, the Acts require that the extra-provincial court has jurisdiction both *in personam* and over the subject matter in dispute. The jurisdiction *in personam* is sometimes qualified by the requirement that the defendant was ordinarily resident in that country or that the defendant has voluntarily submitted himself to the jurisdiction. Further requirements are that the judgment debtor was duly served with the process of the court and that the judgment was not obtained by fraud. Moreover, no appeal should be pending and the time within which an appeal may be lodged must have expired. Finally, violation of rules of public policy constitutes a ground for refusal of enforcement. As far as procedure is concerned, the respondent may ask the court to order the plaintiff non-resident in the province to deposit with the court security for costs which may be incurred by the resident and the court fixes the sum in the corresponding order.

In Québec, an award, domestic or international, cannot be put to compulsory execution until it has been homologated (Art. 645 CCP). Once homologated, the award is executory as a judgment of the court (Art. 645 CCP). The court, when examining a motion for homologation, cannot enquire into the merits of the dispute (Art. 528 and 645 CCP). The court may postpone its decision in the homologation if an application for correction, interpretation or a supplementary award has been made. In such a case, the court may, on the application of the party applying for homologation, order the other party to provide security (Art. 645 CCP). The court cannot refuse homologation except in the cases mentioned under Art. 646 CCP. The same grounds apply in case an application for annulment of the award is made (Art. 648 CCP).

Foreign awards are all subject to the enforcement procedure established by the New York Convention (see below, Chapter VI).

c. Remedies against decision on leave for enforcement

If the enforcement of an arbitral award has been refused by a court, the party seeking enforcement may appeal from the judgment to the competent appellate body of the province where enforcement is sought. Conversely, if a party is successful in the application to the court for enforcement of an arbitral award, it is open to the other party to appeal from the judgment. In some jurisdictions, it is necessary to obtain a leave for appeal.

The grounds of appeal will usually be based on the requirements for enforcement contained in the applicable International Arbitration Act, the Arbitration Act or the Reciprocal Enforcement of Judgment Act (see paragraph *b.* above). An appeal from a judgment on a question of law, of fact or of mixed law and fact will be dependent upon the rules of appeal in each jurisdiction.

11. PUBLICATION OF THE AWARD

Arbitral awards are not published in Canada. However, when an arbitration is subject to proceedings in court, the decisions of the court and reasons for the same are published in the same way as any other judgment of the courts.

Chapter VI. Enforcement of Foreign Arbitral Awards

1. ENFORCEMENT UNDER CONVENTIONS AND TREATIES

a. Applicable conventions

On 12 May 1986, Canada adhered to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards as adopted by the United Nations Conference on International Commercial Arbitration at New York on 10 June 1958 (the "New York Convention"). The New York Convention came into force in Canada on 10 August 1986. All Common Law provinces adhered to the New York Convention (Ontario having adhered to it in 2017).

In Québec, the Convention has not been adopted by way of a direct incorporation in Québec laws but its essential provisions have been repeated in Book VII, Title II, Arts. 652 to 655 of the Code of Civil Procedure ("CCP", **Annex III** hereto), in force since 11 November 1986 (although article numbering changed in 2014). Art. 652 CCP states that Title II applies to an arbitration award made outside Québec whether or not such award has been confirmed at the place of arbitration.

Thus the recognition and enforcement in Québec of an award made outside Québec, whether outside Canada or in another Canadian province or territory, is subject to the same rules. Contrary to other Canadian jurisdictions, there is no limitation to commercial matters in Québec, i.e., the same rules apply to

commercial and non-commercial arbitration, for example, in other civil matters. Art. 652, para. 3 CCP states that the interpretation of Title II shall take into account, where applicable, the New York Convention.

b. Recognition and enforcement according to New York Convention

The federal Act on the implementation of the New York Convention (i.e., the United Nations Foreign Arbitral Awards Convention Act, see **Annex II**) states that the Convention applies only to disputes arising out of commercial legal relationships, whether contractual or not (Sect. 4(1)). It applies to arbitral awards and arbitration agreements whether made before or after coming into force of that Act, i.e., 10 August 1986 (Sect. 4(2)). For the purpose of seeking recognition and enforcement of an arbitral award pursuant to the Convention, application may be made to the Federal Court or any superior, district or county court (the latter are provincial courts) (Sect. 6).

Similar wording is to be found in the provincial International Commercial Arbitration Acts except for Québec, and each of them determines the provincial court as having jurisdiction in this matter.

In Québec the recognition and enforcement of arbitral awards rendered outside Québec is regulated in Book VII, Title II of CCP (Arts. 652 to 655). This Title applies to arbitral awards rendered outside Québec "whether or not confirmed by a competent authority [at the place of arbitration]" (Art. 652, para. 1 CCP). The award shall be recognized and executed "if the subject matter of the dispute is one which could be submitted to arbitration in Québec and if recognition and enforcement of the award are not contrary to public order" (Art. 652, para. 1 CCP). The grounds for refusal are similar to the grounds for refusal in Art. V of the New York Convention (see Art. 653 in conjunction with Art. 652 CCP). Art. 652, para. 2 describes the documents required in support of the recognition and enforcement application, namely the arbitration award and the arbitration agreement, along with a certified translation if these documents are drawn up in a language other than French or English. The arbitration award as homologated is executory as a judgment of the court (Art. 645 CCP).

2. ENFORCEMENT WHERE NO CONVENTION OR TREATY APPLIES

In Model Law jurisdictions, the Model Law, which mirrors the provisions of the New York Convention, will be applied to awards that are not yet covered by the New York Convention but are international and commercial. Whereas some jurisdictions have implemented the New York Convention directly, such is the case in British Columbia and Saskatchewan with their respective Foreign Arbitral Award Acts.

In Ontario, Arts. 35 and 36 of the Model Law apply to the recognition and enforcement of international commercial arbitration agreements and awards,

whether made before or after the coming into force of the International Commercial Arbitration Act (Sect. 5(3), **Annex VII** hereto). For the purpose of seeking recognition and enforcement of an arbitral award, application may be made to the Ontario Court (Superior Court). (Sect. 6(2)).

Provincial Arbitration Acts and Reciprocal Enforcement of Judgments Acts of Common Law Provinces govern the recognition and enforcement of extra-provincial awards made in Canada which are not awards rendered in international commercial matters. These Acts govern the recognition and enforcement of awards rendered in the corresponding jurisdiction (see above Chapter V.10).

In Québec, the same articles of the CCP apply to all awards, whether international or domestic, with some additional provisions for the arbitral awards made outside Québec.

3. RULES OF PUBLIC POLICY

The courts will control whether enforcement and recognition of an award is against public policy. However, the public policy ground for resisting enforcement of an arbitral award has been construed narrowly (*Re Corporacion Transnacional de Inversiones S.A. de C.V. v. STET International* [1999] O.J. No. 14819 (Ont. S.C.)), *Yugraneft Corporation v. Rexx Management Corporation* [2007] ABQB 450). Furthermore, the concept of international public policy as opposed to public policy in general is not applicable to the recognition of an award. For instance, the Québec Court of Appeal, in a case where arbitrators had omitted to give reasons for their decision, refused to homologate the judgment on the grounds that it would be against public policy "as understood in international conventions" (*Smart Systems Technologies Inc. v. Domotique Secant inc.*, [2008] QCCA 444).

Chapter VII. Means of Recourse

There is no control by courts on the merits of the arbitral decisions, with respect to: (1) matters covered by the New York Convention; (2) in international commercial arbitration awards rendered in Canadian Model Law jurisdictions; and (3) as to all awards in Québec.

However, in Common Law provinces, in domestic arbitrations, there may be a control by the court on the merits as to points of law, but control as to points of fact or mixed law and facts will be limited to circumstances where parties have agreed to provide for that opportunity in the arbitration agreement (see below Chapter VII.1).

1. APPEAL ON THE MERITS FROM AN ARBITRAL AWARD

a. Appeal to a second arbitral instance

Appeal to another arbitral tribunal is available where the parties agree upon this practice directly or under the rules of a particular arbitral institution governing the arbitral agreement (the Domestic Arbitration Rules of the Vancouver International Arbitration Centre provide for such an optional appeal (Sect. 31ff). Otherwise, no Canadian legislation provides for such appeal.

b. Appeal to a court

All Model Law jurisdictions offer the setting aside of an arbitral award as the only recourse to a court against that award (Art. 34 Model Law).

Only domestic Arbitration Acts of the Common Law provinces allow an effective appeal from an arbitral award, even though basic differences exist among these provincial Acts.

In Ontario, the Superior Court is the only competent instance for bringing in an appeal from an award where it is agreed by the terms of the submission that this appeal is allowed (Sect. 45(2) Ontario Arbitration Act, 1991) (**Annex VI** hereto). If the arbitration agreement does not deal with appeals on questions of law, a party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that the importance to the parties of the matters at stake in the arbitration justifies an appeal or determination of the question of law at issue will significantly affect the rights of the parties (Sect. 45(1) Ontario Arbitration Act, 1991). An appeal of an award or an application to set aside an award shall be commenced within thirty days after the appellant or applicant receives the award, correction, explanation, change or statement of reasons on which the appeal or application is based, unless the appellant or applicant alleges corruption or fraud (Sect. 47 Ontario Arbitration Act, 1991). Moreover, the Superior Court may require the arbitral tribunal to explain any matter and may confirm, vary or set aside the award or may remit the award to the tribunal with the Superior Court's opinion on the question of law, in the case of an appeal on a question of law, and give directions about the conduct of the arbitration (Sect. 45 (4) and (5) Ontario Arbitration Act, 1991).

The British Columbia Arbitration Act (**Annex IV** hereto) states that a party to an arbitration may appeal to the court on any question of law arising out of the award where (a) all of the parties to the arbitration consent, or (b) the court grants leave to appeal (Sect. 59(2)). However, leave may not be sought if the arbitration agreement expressly states that the parties to the agreement may not appeal any question of law arising out of an arbitral award (Sect. 59(3)). If the issue involves a mixed question of fact and law, then the Act does not permit the granting of leave *(Grace Residences Ltd. v. Whitewater Concrete Ltd.*, [2009] BCCA 144, *JEL Investments Ltd. v. Boxer Capital Corporation*, [2010] BCSC 947).

In an application for leave under subsection 1(b), the court may grant leave if it determines that:

> "(a) the importance of the result of the arbitration to the parties justifies the intervention of the court and the determination of the point of law may present a miscarriage of justice,
> (b) the point of law is of importance to some class or body of persons of which the applicant is a member, or
> (c) the point of law is of general or public importance."
>
> (Sect 59(4) British Columbia Arbitration Act).

The factors to be considered to grant leave were summarized by the British Columbia Court of Appeal in *BCIT (Student Association) v. BCIT*, [2000] BCCA 496 at paras. 26 to 29, as follows:

> "[26] […] There are three requirements:
> I) the importance of the result of the arbitration to the parties justifies the intervention of the court;
> ii) the determination of the point of law may prevent a miscarriage of justice;
> iii) granting leave is an appropriate exercise of judicial discretion.
> [27] The first criterion […] excludes frivolous appeals and appeals on non-weighty matters.
> [28] The second criterion was described […] as whether […] the alleged error of law [was] material to the decision; does it go to its heart? […]"

If the court grants leave to appeal under this section, it may attach conditions to the order granting leave that it considers just (Sect. 59(5)).

On an appeal to the court, the court may (a) confirm, amend or set aside the award, or (b) remit the award to the arbitrator together with the court's opinion on the question of law that was the subject of the appeal (Sect. 59(6)).

Under the Alberta Arbitration Act (**Annex VIII** hereto) however, a party "may appeal an award to the court", where the arbitration agreement so provides, "on a question of law, on a question of fact or on a question of mixed law and fact" (Sect. 44(1)). Even when the arbitration agreement does not provide for an appeal from the award to the court on a question of law, Sect. 44(2) provides that "… a party may, with the permission of the court, appeal an award to the court on a question of law", which the court shall grant only if is satisfied that (1) "the importance to the parties of the matters at stake in the arbitration justifies an appeal"; and (2) "the determination of the question of law at issue will significantly affect the rights of the parties" (Sect. 44(2.1)).

According to Sect. 44(3) of the Alberta Arbitration Act, a party "may not appeal an award to the court on a question of law that the parties expressly referred to the arbitral tribunal for decision". An appeal under Sect. 44(1) must

be commenced within thirty days after the appellant receives the award (Sect. 46(1)).

However, in all Common Law provinces, if the arbitration agreement so provides, a party may appeal an award to the court on a question of fact or on a question of mixed fact and law.

While the level of deference that courts are supposed to afford to arbitral decisions is somewhat controversial and evolving, the Supreme Court of Canada has applied a standard of review of unreasonableness (as opposed to correctness) for appeals of arbitral award on questions of law in Sattva 2014 CSC 53 and Teal Cedar 2017 CSC 32. The Court of Appeal of British Columbia has however concluded in *Lulemon athletica* 2021 BCCA 42 that a standard of correctness should be applied with respect to questions of jurisdiction.

In Québec, the only possible recourse from an award made in Québec is an application for its annulment (Art. 648 Code of Civil Procedure) ("CCP", **Annex III** hereto). Consequently, no appeals to the courts are allowed. The annulment is obtained by motion to the court or by opposition to a motion for homologation (Art. 648, para. 2 CCP). The application for annulment must be made within three months after reception of the arbitration award or after any correction, interpretation or supplementary award by the arbitral tribunal (Art. 648, para. 2 CCP). The court examining the application for annulment cannot enquire into the merits of the dispute (Arts. 645 and 648 CCP). The grounds upon which the court can order the annulment of the arbitral award are substantially the same than under Art. 34 of Model Law (Art. 646 CCP).

2. SETTING ASIDE OF THE ARBITRAL AWARD (ACTION FOR ANNULMENT, VACATION OF THE AWARD)

a. Grounds for setting aside

i. International arbitration

Here again, all Model Law jurisdictions apply Art. 34 of the Model Law in respect of setting aside an arbitral award in international commercial arbitration on the four grounds mentioned under (a) and the two grounds under (b) of Art. 34(2).

ii. Domestic arbitration

In domestic arbitration, some remarks should be made as to the grounds for setting aside an award and the procedure to be followed in those cases.

In the Common Law provinces, except in Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon Territory, the Arbitrations Acts generally provide for the setting aside of an award by a court on the following

grounds which correspond, to a large extent, to those found in Art. 34 of the Model Law:

(1) a party entered into the arbitration agreement while under a legal incapacity;
(2) the arbitration agreement is invalid or has ceased to exist;
(3) the award deals with a dispute that the arbitration agreement does not cover or contains a decision on a matter that is beyond the scope of the agreement;
(4) the composition of the tribunal was not in accordance with the arbitration agreement or, if the agreement did not deal with that matter, was not in accordance with the Arbitration Act;
(5) the subject matter of the dispute is not capable of being the subject of arbitration under provincial law;
(6) the applicant was not treated equally and fairly, was not given an opportunity to present a case or to respond to another party's case, or was not given proper notice of the arbitration or of the appointment of an arbitrator;
(7) the procedures followed in the arbitration did not comply with the Arbitration Act;
(8) an arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias; or
(9) the award was obtained by fraud.

When the court sets aside an award, the court may remit it to the arbitral tribunal and give directions about the conduct of the arbitration.

In Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon Territory, the Arbitration Acts only provide for two grounds for setting aside an award: (1) an arbitrator or umpire has misconducted himself or (2) an arbitration or an award has been improperly procured. The term "misconduct" is applied by the courts to a wide range of cases. It covers cases where the arbitrator or umpire has been partial. It also covers cases where the award is grossly exorbitant or inadequate.

In Québec, the grounds for setting aside, in domestic as well as in international arbitration, are the same as the grounds upon which homologation of the award may be refused (Art. 648 in conjunction with Art. 646 CCP).

b. Procedure

i. International arbitration

In order to set aside an arbitral award, a party must file an application to set aside the award before a superior court. In all Model Law jurisdictions, such application can only be made during the three months following the date on which the party making the application has received the award (Art. 34(3) Model Law).

The invocation of one or more grounds may be barred by appearance in the arbitration without raising an objection in time.

ii. Domestic arbitration

In domestic arbitration, except for British Columbia and Non-Uniform jurisdictions, if the ground alleged for setting aside the award could have been raised as an objection to the arbitral tribunal's jurisdiction to conduct the arbitration or as an objection that the arbitral tribunal was exceeding its authority, the court may set the award aside on that ground if it considers the applicant's failure to make an objection justified.

In addition, the court shall not set aside an award if:

(1) the party participates in an arbitration despite being aware of non-compliance with a provision of the Arbitration Act or with the arbitration agreement, and does not object to the non-compliance within the time limit provided or, if none is provided, within a reasonable time;
(2) the award deals with a dispute that the arbitration agreement does not cover or contains a decision on a matter that is beyond the scope of the agreement if the party has agreed to the inclusion of the dispute or matter, waived the right to object to its inclusion or agreed that the arbitral tribunal has power to decide what disputes have been referred to it;
(3) an arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias if the party had an opportunity to challenge the arbitrator on those grounds before the award was made and did not do so, or if those grounds were the subject of an unsuccessful challenge (see, e.g., Sect. 46 Ontario Arbitration Act, 1991).

Action for setting aside may be excluded between the parties by the execution of an exclusion agreement. However, such exclusion may only be agreed upon once a dispute has arisen.

In Québec, the annulment is obtained by motion to the court or by opposition to a motion for homologation (Art. 648, para. 2 CCP). The application for annulment must be made within three months after the reception of the arbitration award or of any correction, interpretation or supplementary award made by the arbitral tribunal. This time limit is strict (Art. 648, para. 2 CCP).

3. OTHER MEANS OF RECOURSE

In Model Law jurisdictions, there are no other means of recourse than the setting aside of the award. However, Art. 34(4) of the Model Law gives the court the possibility of suspending the setting aside proceedings for a period of

time in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take any action that will eliminate the grounds for setting aside.

In domestic arbitration, there are two means of recourse besides appeal to the court and setting aside the award; they are the following:

a. Remitting for reconsideration

In Common Law provinces, including British Columbia but excluding the other Non-Uniform jurisdictions, the court may in an appeal confirm, vary or set aside the award or may remit the award to the arbitral tribunal with the court's opinion on a question of law, in the case of an appeal on a question of law, and give directions about the conduct of the arbitration (see, e.g., Sect. 45(5) Ontario Arbitration Act, 1991). Instead of setting aside an award, a court may remit it to the arbitral tribunal and give directions about the conduct of the arbitration (see, e.g., Sect. 46(8) Ontario Arbitration Act, 1991).

In the Non-Uniform jurisdictions, the court may remit a matter referred to the arbitrator or umpire for further consideration. The arbitrator or the umpire shall make the award within three months after the date of remission.

There are four grounds mentioned in decisions of courts upon which the matter can be remitted for reconsideration:

(1) where the award is wrong on its face;
(2) where there has been misconduct on the part of the arbitrators;
(3) if there has been an admitted mistake and the arbitrator himself asks that the matter be remitted; and
(4) where additional evidence has been discovered after the rendering of the award.

b. Suspension of the setting aside proceedings

In Québec, on application of one party, the court, if it considers it expedient, may suspend the application for annulment to allow arbitrators to take whatever measures necessary to eliminate the grounds for annulment (Art. 648 CCP).

Chapter VIII. Conciliation/Mediation

1. GENERAL

In this chapter, the terms mediation and conciliation are used interchangeably.

There is a greater and increasing acceptance of the utility of mediation generally in Canada. The federal government and several provincial governments have become convinced that the increased use of mediation will enhance access to justice by helping to alleviate problems of cost, delay, and

complexity in the civil justice system. Provisions requiring participation in mediation are now found in statutes, regulations, court rules and judicial practice directions in an increasing number of areas of the law, e.g., family law, environmental law, administrative law, construction law and personal injury law.

Court rules and practices have already begun to incorporate some mediation or conciliation features into the courts' own procedures. For example, Ontario courts have replaced the pre-trial system with a scheme of mandatory mediation whereby all civil cases must go before a mediator within ninety days of the statement of defense being filed. It is estimated that over ninety percent of all lawsuits settle before trial. In addition, in 1997, the Québec Court of Appeal began a voluntary mediation program for civil, commercial and family matters. This is the first appeal court level mediation program in Canada. Each mediation lasts from three to five hours and is conducted by a judge. Settlements are drafted by lawyers and presented to a panel of three judges of the Court of Appeal who confirm the settlements in a judgment.

Parties are also encouraged to first attempt a settlement before resorting to arbitration. In fact, specific rules have been incorporated into the rules of professional conduct of law societies requiring lawyers to encourage clients to compromise or settle a dispute, to consider the use of alternative dispute resolution ("ADR") and to advise the clients of ADR options (see, e.g., Ontario Law Society Rules of Professional Conduct, Rule 2.02(2) and (3)).

With respect to procedures, parties are free to choose the rules and procedures that best fit their situation (*ad hoc* ADR) or rely on rules and procedures of an established ADR institution such as the ICC ADR Rules (institutional ADR).

There are other means of ADR besides conciliation which are gaining acceptance. Early neutral evaluation ("ENE") is a confidential and voluntary process in which a third party chosen by the parties listens to the positions of each of the parties. The role of the third party is to provide an impartial assessment of the positions of each side in addition to an analysis of the probable outcome of the dispute. The parties can turn to the third party whenever they wish to do so. ENE is useful to limit issues in a dispute by providing a new and objective point of view.

Another alternative method to conciliation consists in exchanged offers on the Internet. That type of method facilitates confidential claim settlements by matching offers and demands on a secure website. In Canada, <www.Cybersettle.com> is the official and exclusive online settlement tool of the Canadian Bar Association. If the offer and the demand are within a formula agreed upon by the parties (usually thirty percent or Can$ 5,000), the case settles for the median amount. The settlement offers and demands are never revealed to either party.

2. LEGAL PROVISIONS

The International Commercial Arbitration Acts of Common Law provinces, except for Northwest Territories and Nunavut, provide that for the purpose of encouraging settlement of a dispute, an arbitral tribunal may, with the agreement of the parties, use mediation, conciliation or other procedures at any time during the arbitration proceedings and, with the agreement of the parties, the members of the arbitral tribunal are not disqualified from resuming their roles as arbitrators by reason of the mediation, conciliation or other procedure (see, e.g., Sect. 5, Alberta International Commercial Arbitration Act).[6]

In domestic arbitration, reliance on mediation is dependent upon the consent of parties. Except for the Non-Uniform jurisdictions and British Columbia, the Arbitration Acts only provide that the members of an arbitral tribunal may, if the parties consent, use mediation, conciliation or similar techniques during the arbitration to encourage settlement of the matters in dispute. After the members of an arbitral tribunal resort to mediation, conciliation or similar techniques, they may resume their roles as arbitrators without disqualification.

The Ontario Arbitration Act (**Annex VI** hereto) adds that "members of an arbitral tribunal shall not conduct any part of the arbitration as a mediation or conciliation process or other similar process that might compromise or appear to compromise the arbitral tribunal's ability to decide the dispute impartially" (see Sect. 35).

As to procedure, the Arbitration Acts of Common Law provinces do not contain conciliation rules except for Nova Scotia (see Schedule C of the Nova Scotia Commercial Arbitration Act). However, the UNCITRAL conciliation rules have now been adopted by both Nova Scotia and Ontario (see Commercial Mediation Act, SNS 2005, c 36[7], and Commercial Mediation Act, 2010, SO 2010, c 16, Sch 3[8]). Elsewhere, parties are, however, free to resort to such institutional or custom-made rules as they deem fit. It is noteworthy that the Ontario Commercial Mediation Act does not apply to actions taken by an arbitrator in the course of arbitral proceedings to promote settlement of a commercial dispute that is the subject of the proceedings (see Sect. 2(4)(c)). As to the Novia Scotia Commercial Arbitration Act, it does not apply to mediation

6. Sect. 5 of the Alberta International Commercial Arbitration Act reads:

   "For the purpose of encouraging settlement of a dispute, an arbitral tribunal may, with the agreement of the parties, employ mediation, conciliation or other procedures at any time during the arbitration proceedings and, with the agreement of the parties, the members of the arbitral tribunal are not disqualified from resuming their roles as arbitrators by reason of the mediation, conciliation or other procedure."

7. See <https://canlii.ca/t/87mh>.
8. See <https://canlii.ca/t/8npg>.

conducted in the course of an arbitration under the Commercial Arbitration Act (SNS 1999, c 5) unless the parties agree otherwise (see Sect. 4(3)(a)).

In Québec, the very first article of the Code of Civil Procedure ("CCP", **Annex III** hereto) provides that "[p]arties must consider private prevention and resolution processes [which includes both mediation and arbitration] before referring their dispute to the courts". The fact that this obligation to consider recourse to mediation and/or arbitration is contained at the very beginning of the CCP is no coincidence, since the legislator clearly favours and encourages recourse to private dispute resolution. This obligation to consider having recourse to private dispute resolution does not however amount to an obligation to ultimately engage in these processes. The parties are free to agree on the rules applicable to their mediation (which can also be conducted by a sitting judge) (Art. 6 CCP). If the rules agreed upon by the parties (and, often, the mediator) need to be supplemented, provisions of Title I "Mediation" of Book VII of the CCP apply.

Chapter IX. Investment Treaty Arbitration

1. CONVENTIONS AND TREATIES

a. Treaty adherence

Canada is party to a number of multilateral and bilateral investment treaties ("BITs", which in Canada are known as Foreign Investment Protection and Promotion Agreements, "FIPAs"). Canada is also party to a number of Free Trade Agreements ("FTAs"), the most important of which is the United States–Mexico–Canada Agreement (USMCA), which replaced NAFTA in 2020. Some of these FTAs contain investment chapters, as well as provisions for the arbitration of investment disputes. USMCA, however, will only allow investment arbitration for another three years. In fact, Canada seems to be a major promoter of FIPAs and FTAs. However, because of the opposition of the provinces of Alberta and Québec, while Canada signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "ICSID Convention") on 15 December 2006, it has only ratified the Convention in 2013. Furthermore, Canada being a federal State, it should be noted that there is an internal agreement – the Canadian Free Trade Agreement ("CFTA") (which replaced the earlier Agreement on Internal Trade (the "AIT") in 2017) – regarding, among others, trade and investment issues, which binds Canada and its thirteen provinces and territories. The CFTA contains provisions for arbitration-like procedures in relation to investment disputes. As illustrated by the NAFTA Chapter 11 arbitral proceedings instituted by Ethyl Corporation against Canada and its outcome (see *Ethyl Corporation v. the Government of Canada*, 2001; the NAFTA dispute was settled after Canada

lost the AIT challenge, see *Ethyl Corporation v. the Government of Canada,* NAFTA/UNCITRAL), certain measures adopted by Canada or its constituencies can be challenged under both the AIT and Canada's obligations pursuant to an international investment treaty (in that case, the NAFTA). Thus, it may be appropriate to consider the recourse available under the AIT even in the context of an international investment dispute.

All FIPAs and FTAs to which Canada is party (as well as information regarding agreements that are to be concluded) are published on the website of the Ministry of Foreign Affairs and International Trade.[9] In addition, the website of the Organization of American States also provides access to the relevant instruments.[10]

An up-to-date version of the CFTA as well as decisions rendered thereunder and under the AIT are published on the CFTA website.[11]

b. Model FIPA

Canada does use a model FIPA. Its current model FIPA (occasionally referred to as the "2021 Model FIPA") is a comprehensive and detailed agreement[12]. It contains fifty-seven articles divided into eight sections (Section A – Definitions; Section B – Investment Protections; Section C – Investment Promotion and Facilitation; Section D – Reservations, Exceptions, Exclusions; Section E – Investor-State Dispute Settlement; Section F – Expedited Arbitration; Section G – State-to-State Dispute Settlement; Section H – Administration of the Agreement); and thee annexes (Annex I – Reservations for Future Measures; Annex II – Exceptions from Most-Favoured-Nation Treatment and Annex III – Exclusions from Dispute Settlement).

As to the noteworthy arbitration-related features and provisions of the 2021 Model FIPA, there are, among others, the "Minimum Standard of Treatment" provision (Art. 8), which equates the "fair and equitable treatment" with the "customary international law minimum standard of treatment of aliens", the "General Exceptions" provision (Art. 22), and the "Denial of Benefits" provision (Art. 17).

c. Current FIPAs

At the time of writing, Canada was party to the following FIPAs:

9. See <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/index.aspx?lang=eng>.
10. See <http://www.sice.oas.org/ctyindex/CAN/CANBITS_e.asp>.
11. See <https://www.cfta-alec.ca/dispute-resolution/>.
12. The 2021 Model FIPA can be consulted at the following link: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/2021_model_fipa-2021_modele_apie.aspx?lang=eng>.

FIPAs in force	Argentina, Armenia, Barbados, Benin, Burkina Faso, Cameroon, China, Costa Rica, Côte d'Ivoire, Croatia, Czech Republic, Egypt, Guinea, Hong Kong, Hungary, Jordan, Kosovo, Kuwait, Latvia, Lebanon, Mali, Mongolia, Panama, Peru, Philippines, Poland, Romania, Russian Federation, Senegal, Serbia, Slovak Republic, Tanzania, Thailand, Trinidad and Tobago, Ukraine, Uruguay, Venezuela
FTAs (containing investment- and arbitration-related provisions) in force	Chile, Colombia, North America (Mexico and United States of America), Peru, Panama, Honduras, Korea, Trans-Pacific Partnership (Australia, Japan, Mexico, New Zealand, Singapore, Vietnam (but not yet in force for Brunei Darussalam, Chile, Malaysia, Peru)), European Union (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden)
FIPAs concluded but not in force	El Salvador, Moldova, Nigeria, South Africa
FIPAs – Negotiations concluded	Albania, Bahrain, Madagascar, United Arab Emirates, Zambia
FIPAs – Negotiations ongoing	Democratic Republic of the Congo, Gabon, Georgia, Ghana, India, Indonesia, Kazakhstan, Kenya, Macedonia, Mauritania, Mozambique Pakistan, Qatar, Rwanda, Tunisia, Vietnam, Zambia
FTA (containing investment- and arbitration-related provisions) – Concluded but not in force	Trans-Pacific Partnership (Australia, Brunei Darussalam, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States of America, Vietnam)

FTAs – Exploratory discussions or negotiations ongoing (may or may not contain investment and arbitration related provisions)	Andean Community Countries (Bolivia, Colombia, Ecuador, Peru), (El Salvador, Guatemala and Nicaragua), Caribbean Community (Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago), Dominican Republic, India, Japan, Morocco, MERCOSUR (Argentina, Brazil, Paraguay and Uruguay), Singapore, Thailand, Turkey, China, Philippines, Indonesia, Pacific Alliance (Chile, Colombia, Mexico, Peru), Association of Southeast Asian Nations (Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam).

Most of these instruments are published on the website of the ministry of Foreign Affairs and International Trade.[13]

2. INVESTMENT ARBITRATION

a. Overview

To date (as of July 2022), Canada has been involved in thirty concluded (including inactive) investment arbitrations (interestingly, all of which, but one, were initiated pursuant to Chapter 11 of the NAFTA) and faces five known ongoing Chapter 11 NAFTA/CUSMA arbitrations. Canada also participates in Chapter 11 NAFTA/CUSMA arbitrations against Mexico and the United States of America.

Case overviews, summaries and integral texts of arbitral awards are published on the Global Affairs Canada's website.[14]

13. See <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/index.aspx?lang=eng>.
14. See <https://www.international.gc.ca/trade-commerce/trade_topics-domaines_commerce/trade_dispute_settlement-reglement_differends_commerciaux.aspx?lang=eng>

b. Canadian practice with regard to treaty arbitration

i. Investment arbitration practice and significant arbitral awards

All investment arbitration cases are defended on behalf of Canada by a specialized team of in-house lawyers. To date (as of July 2022), thirty claims against Canada have been either settled, dismissed or are ongoing. Five claims have been won by investors (*S.D. Myers Inc. v. Government of Canada, Pope & Talbot Inc. v. Government of Canada* and *Mobil Investments Inc. v. Government of Canada, Bilcon of Delaware et al v. Government of Canada*, *Windstream Energy LLC v. Government of Canada*). It is noteworthy that all the arbitrations, even those involving measures adopted by provincial governments, are instituted against Canada, who is responsible internationally for the actions of its provinces and territories.

As for important investment arbitration awards, *S.D. Myers Inc. v. Government of Canada* (2002), *Pope & Talbot Inc. v. Government of Canada* (2002), *United Parcel Service of America, Inc. (UPS) v. Government of Canada* (2007), *Mobil Investments Inc. v. Government of Canada* (2012), *Windstream Energy LLC v. Government of Canada (2016) and* Clayton/*Bilcon of Delaware et al v. Government of Canada* (2019) particularly stand out.[15]

ii. Treatment of arbitral awards and related topics by Canadian courts

Canadian courts (Ontario, British-Columbia and federal courts) have had several opportunities to deal with applications to set aside arbitral awards, in proceedings initiated (1) by Mexico; (2) by claimants unsuccessful in their claims against Mexico (in relation to arbitrations where a Canadian city was designated as the place of arbitration); and (3) by Canada.

For the most part, Canadian courts have deferred to the findings of the Chapter 11 Arbitral Tribunals and the applications to set aside the arbitral awards did not succeed. (Contrary to the arbitral awards issued by ICSID Tribunals, Chapter 11 NAFTA Arbitral Awards are subject to setting aside proceedings before the courts of the relevant jurisdictions). Recently, the Ontario Superior Court, dismissing Canada's application to set aside the award in *Attorney General of Canada v. Mobil* 2016 ONSC 790, reiterated the limited ability of courts to set aside an investment award and stated that courts should avoid re-litigating the merit of the decision to focus on true jurisdictional issues. Similarly, in *Clayton/Bilcon*, the Federal Court of Canada dismissed Canada's application to set aside the award on jurisdiction and liability (*Canada (Attorney General) v. Clayton*, 2018 FC 436).

In *Council of Canadians v. Canada (Attorney General)*, 2006 CanLII 40222 (ON C.A.), the Ontario Court of Appeal dismissed a constitutional challenge

15. An overview, summaries, legal proceedings and arbitral awards related to these cases can be consulted at: <https://www.international.gc.ca/trade-commerce/trade_topics-domaines_commerce/trade_dispute_settlement-reglement_differends_commerciaux.aspx?lang=eng>.

filed by an advocacy group in relation to the legality of the dispute settlement mechanism provided for in Chapter 11 of the NAFTA.

3. NATIONAL INVESTMENT LEGISLATION

The only Act to deal specifically with foreign investments is the Investment Canada Act, and it does not contain provisions relating to dispute settlement.

The following Canadian provinces and territories have also enacted statutes incorporating the ICSID Convention into municipal law:

- Newfoundland and Labrador (passed and in force since 2006);
- Nunavut (passed and in force since 2006);
- Saskatchewan (passed and in force since 2006);
- British Columbia (passed in 2006, and amended in 2013);
- Northwest Territories (passed and in force since 2009);
- Ontario (passed in 1999; in force since 2011);
- Alberta (passed in 2013; in force since 2014).

ANNEX I

COMMERCIAL ARBITRATION ACT*

R.S.C., 1985, c. 17 (2nd Supp.)

SHORT TITLE

Short title
1. This Act may be cited as the *Commercial Arbitration Act*.

INTERPRETATION

Definitions
2. In this Act,
"Code" means the *Commercial Arbitration Code*, based on the model law adopted by the United Nations Commission on International Trade Law on June 21, 1985, as set out in Schedule 1; (*"Code"*)
"Crown corporation" means a Crown corporation as defined in section 83 of the *Financial Administration Act*; (*"société d'État"*)
"department" [Repealed, R.S., 1985, c. 1 (4th Supp.), s. 8]
"departmental corporation" means a departmental corporation as defined in section 2 of the Financial Administration Act. (*"établissement public"*)

Other words and expressions
3. Words and expressions used in this Act have the meaning assigned to them by the Code.

Ordinary meaning
4. (1) This Act shall be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose.

Recourse to certain documents
(2) In interpreting the Code, recourse may be had to
(a) the Report of the United Nations Commission on International Trade Law on the work of its eighteenth session, held from June 3 to 21, 1985; and
(b) the Analytical Commentary contained in the Report of the Secretary General to the eighteenth session of the United Nations Commission on International Trade Law.

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* 1986, c. 22, assented to 17 June 1986; in force 10 August 1986; last amended on 1 July 2020. Published by the Minister of Justice at the following address: <http://laws-lois.justice.gc.ca>. See also: <http://canlii.ca/t/7vbd>.

APPLICATION

Law in force
5. (1) Subject to this section, the Code has the force of law in Canada.

Limitation to certain federal activities
(2) The Code applies only in relation to matters where at least one of the parties to the arbitration is Her Majesty in right of Canada, a departmental corporation or a Crown corporation or in relation to maritime or admiralty matters.

When applicable
(3) The Code applies to arbitral awards and arbitration agreements whether made before or after the coming into force of this Act.

Meaning of commercial arbitration
(4) For greater certainty, the expression "commercial arbitration" in Article 1(1) of the Code includes

(a) a claim under Article 1116 or 1117 of the Agreement, as defined in subsection 2(1) of the *North American Free Trade Agreement Implementation Act*;
(a.1) a claim under paragraph 1 of Annex 14-C of the Agreement, as defined in section 2 of the Canada-United States-Mexico Agreement Implementation Act, or Article 14.D.3 of that Agreement;
(b) a claim under Article G-17 or G-18 of the Agreement, as defined in subsection 2(1) of the *Canada-Chile Free Trade Agreement Implementation Act*;
(c) a claim under Article 819 or 820 of the Agreement, as defined in section 2 of the *Canada–Peru Free Trade Agreement Implementation Act*;
(d) a claim under Article 819 or 820 of the Agreement, as defined in section 2 of the *Canada–Colombia Free Trade Agreement Implementation Act*; and
(e) a claim under a provision, set out in column 1 of Schedule 2, of an agreement that is set out in column 2.

COURTS

Definition of "court" or "competent court"
6. In the Code, "court" or "competent court" means a superior, county or district court, except when the context requires otherwise.

PUBLICATION

Publication
7. The Minister of Justice shall cause to be published in the *Canada Gazette* the documents referred to in paragraphs 4(2)(a) and (b) forthwith on the coming into force of this Act.

REGULATIONS

Terms and conditions for arbitration agreements
8. The Governor in Council, on the recommendation of the Minister of Justice, may make regulations prescribing the terms and conditions on which Her Majesty in right of Canada, a departmental corporation or a Crown corporation may enter into an arbitration agreement.

General
9. The Minister of Justice may make such regulations as are necessary for the purpose of carrying out this Act or for giving effect to any of the provisions thereof.

HER MAJESTY IS BOUND

Binding on Her Majesty
10. This Act is binding on Her Majesty in right of Canada.

COMING INTO FORCE

Coming into force
11. This Act shall come into force on a day to be fixed by proclamation.[1]

1. [Note: Act in force August 10, 1986, see SI/86-155.]

SCHEDULE 1

(Section 2)

COMMERCIAL ARBITRATION CODE

(Based on the Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law on June 21, 1985)

Note: The word "international", which appears in paragraph (1) of article 1 of the Model Law, has been deleted from paragraph (1) of article 1 below. Paragraphs (3) and (4) of article 1, which contain a description of when arbitration is international, are deleted. Paragraph (5) appears as paragraph (3).

Any additions or substitutions to the Model Law are indicated by the use of italics.

Except as otherwise indicated, the material that follows reproduces exactly the Model Law.

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of Application

(1) This *Code* applies to commercial arbitration, subject to any agreement in force between *Canada* and any other State or States.

(2) The provisions of this *Code*, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in *Canada*.

(3) This *Code* shall not affect any other law of *Parliament* by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this *Code*.

Article 2. Definitions and Rules of Interpretation

For the purposes of this *Code*:

(a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

(b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(c) "court" means a body or organ of the judicial system of a State;

(d) where a provision of this *Code*, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

(e) where a provision of this *Code* refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(f) where a provision of this *Code*, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 3. Receipt of Written Communications
(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

Article 4. Waiver of Right to Object
A party who knows that any provision of this *Code* from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

Article 5. Extent of Court Intervention
In matters governed by this *Code*, no court shall intervene except where so provided in this *Code*.

Article 6. Court or Other Authority for Certain Functions of Arbitration Assistance and Supervision
The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by *the Federal Court or any superior, county or district court*.

CHAPTER II. ARBITRATION AGREEMENT

Article 7. Definition and Form of Arbitration Agreement
(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 8. Arbitration Agreement and Substantive Claim before Court
(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. Arbitration Agreement and Interim Measures by Court
It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of Arbitrators
(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of Arbitrators
(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(a) a party fails to act as required under such procedure, or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications

required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. Grounds for Challenge

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. Challenge Procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14. Failure or Impossibility to Act

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

Article 15. Appointment of Substitute Arbitrator

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate

by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of Arbitral Tribunal to Rule on its Jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Article 17. Power of Arbitral Tribunal to Order Interim Measures

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal Treatment of Parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. Determination of Rules of Procedure

(1) Subject to the provisions of this *Code*, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this *Code*, conduct the arbitration in such manner as it considers appropriate. The

power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. Place of Arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21. Commencement of Arbitral Proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 23. Statements of Claim and Defence

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24. Hearings and Written Proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 25. Default of a Party

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. Expert Appointed by Arbitral Tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. Court Assistance in Taking Evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of *Canada* assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28. Rules Applicable to Substance of Dispute

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 29. Decision-making by Panel of Arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Article 30. Settlement

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31. Form and Contents of Award

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signature of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. Termination of Proceedings

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

Article 33. Correction and Interpretation of Award; Additional Award

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. Application for Setting Aside as Exclusive Recourse against Arbitral Award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of *Canada*; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in

conflict with a provision of this *Code* from which the parties cannot derogate, or, failing such agreement, was not in accordance with this *Code*; or

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of *Canada*; or

(ii) the award is in conflict with the public policy of *Canada*.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and Enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of *Canada*, the party shall supply a duly certified translation thereof into such language.

Article 36. Grounds for Refusing Recognition or Enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of *Canada*; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of *Canada*.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

SCHEDULE 2

(Paragraph 5(4)(e))

Column 1 **Provisions**	**Column 2** **Agreement**
Article 9.20 or 9.21	Free Trade Agreement between Canada and the Republic of Panama, done at Ottawa on May 14, 2010
Articles 10.19 or 10.20	Free Trade Agreement between Canada and the Republic of Honduras, done at Ottawa on November 5, 2013
Article 8.18 or 8.19	Free Trade Agreement between Canada and the Republic of Korea, done at Ottawa on September 22, 2014
Article 9.19 of the Trans-Pacific Partnership Agreement as incorporated by reference into the Agreement by Article 1	Comprehensive and Progressive Agreement for Trans-Pacific Partnership between Canada, Australia, Brunei, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam, done at Santiago on March 8, 2018

ANNEX II

UNITED NATIONS FOREIGN ARBITRAL AWARDS CONVENTION ACT

An Act to implement the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards
Assented to 17th June, 1986, in force 10 August 1986*

R.S.C. 1985, c. 16 (2nd Supp.)
[Unofficial Chapter No. U-2.4]

SHORT TITLE

Short title

1. This Act may be cited as the United Nations Foreign Arbitral Awards Convention Act.

INTERPRETATION

Definition of "Convention"

2. In this Act, "Convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted by the United Nations Conference on International Commercial Arbitration in New York on June 10, 1958, as set out in the schedule.[1]

CONVENTION APPROVED

Convention approved

3. The Convention is approved and declared to have the force of law in Canada during such period as, by its terms, the Convention is in force.

Limited to commercial matters

4. (1) The Convention applies only to differences arising out of commercial legal relationships, whether contractual or not.

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* Current to 21 October 2004.

1. The Second Schedule, which contains the text of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, is not reproduced in this Annex. The text of the Convention can be found in the *International Handbook*, Supplement 29, December 1999, under New York Convention.

When applicable

(2) The Convention applies to arbitral awards and arbitration agreements whether made before or after the coming into force of this Act.

INCONSISTENT LAWS

Inconsistent laws

5. In the event of any inconsistency between the provisions of this Act, or the Convention, and the provisions of any other law, the provisions of this Act and the Convention prevail to the extent of the inconsistency.

COURTS

Application to court

6. For the purpose of seeking recognition and enforcement of an arbitral award pursuant to the Convention, application may be made to any superior, district or county court.

PUBLICATION

Publication of notice

7. The Minister of Justice shall cause a notice of the day the Convention comes into force and of the day it ceases to be in force to be published in the *Canada Gazette* within sixty days after its coming into force or ceasing to be in force, and a notice so published shall be judicially noticed.

REGULATIONS

Regulations

8. The Minister of Justice may make such regulations as are necessary for the purpose of carrying out the Convention or for giving effect to any of the provisions thereof.

COMING INTO FORCE

Coming into force

9. This Act shall come into force on a day to be fixed by proclamation.

ANNEX III

CIVIL CODE OF QUÉBEC,
CQLR Chapter CCQ-1991 (Arts. 2638-2643)*

and

CODE OF CIVIL PROCEDURE, QUÉBEC
CQLR Chapter C-25.01 (Arts. 1-7, 620-655)**

CIVIL CODE OF QUÉBEC

CHAPTER XVIII. ARBITRATION AGREEMENTS

2638. An arbitration agreement is a contract by which the parties undertake to submit a present or future dispute to the decision of one or more arbitrators, to the exclusion of the courts.

2639. Disputes over the status and capacity of persons, family matters or other matters of public order may not be submitted to arbitration.

An arbitration agreement may not be opposed on the ground that the rules applicable to settlement of the dispute are in the nature of rules of public order.

2640. An arbitration agreement shall be evidenced in writing; it is deemed to be evidenced in writing if it is contained in an exchange of communications which attest to its existence or in an exchange of proceedings in which its existence is alleged by one party and is not contested by the other party.

2641. A stipulation which places one party in a privileged position with respect to the designation of the arbitrators is null.

2642. An arbitration agreement contained in a contract is considered to be an agreement separate from the other clauses of the contract and where the arbitrators find the contract to be null, the arbitration agreement is not for that reason rendered null.

2643. Subject to the peremptory provisions of law, the arbitration procedure is governed by the contract or, failing that, by the Code of Civil Procedure (chapter C-25.01).

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* Official version. See for the most recent version of this legislation: <http://canlii.ca/t/z35>. The version appearing at this link as of 16 October 2022 is in force since 1 September 2022.

** Official version. See for the most recent version of this legislation: <http://canlii.ca/t/8smj>. The version appearing at this link as of 16 October 2022 is in force since 1 April 2022.

CODE OF CIVIL PROCEDURE, QUÉBEC

BOOK I. GENERAL FRAMEWORK OF CIVIL PROCEDURE

TITLE I. PRINCIPLES OF PROCEDURE APPLICABLE TO PRIVATE DISPUTE PREVENTION AND RESOLUTION PROCESSES

1. To prevent a potential dispute or resolve an existing one, the parties concerned, by mutual agreement, may opt for a private dispute prevention and resolution process.

The main private dispute prevention and resolution processes are negotiation between the parties, and mediation and arbitration, in which the parties call on a third person to assist them. The parties may also resort to any other process that suits them and that they consider appropriate, whether or not it borrows from negotiation, mediation or arbitration.

Parties must consider private prevention and resolution processes before referring their dispute to the courts.

2. Parties who enter into a private dispute prevention and resolution process do so voluntarily. They are required to participate in the process in good faith, to be transparent with each other, including as regards the information in their possession, and to co-operate actively in searching for a solution and, if applicable, in preparing and implementing a pre-court protocol; they are also required to share the costs of the process.

They must, as must any third person assisting them, ensure that any steps they take are proportionate, in terms of the cost and time involved, to the nature and complexity of the dispute.

In addition, they are required, in any steps they take and agreements they make, to uphold human rights and freedoms and observe other public order rules.

3. The third person called upon by the parties to assist them in the process they have opted for or to decide their dispute must be chosen by them jointly.

The third person must be capable of acting impartially and diligently and in accordance with the requirements of good faith. If acting on a volunteer basis or for an unselfish motive, the third person incurs no liability other than that incurred through an intentional or gross fault.

4. Parties who opt for a private dispute prevention and resolution process and the third person assisting them undertake to preserve the confidentiality of anything said, written or done during the process, subject to any agreement between them on the matter or to any special provisions of the law.

5. The third person called upon to assist the parties may provide information for research, teaching or statistical purposes or in connection with a general evaluation of the dispute prevention and resolution process or its results without it being a breach of the person’s duty of confidentiality, provided no personal information is revealed.

6. Parties who agree to resort to a private dispute prevention and resolution process, together with the third person involved in the process, if any, determine the procedure

applicable to the process they have selected. If the parties have opted for mediation or arbitration or a similar process and the procedure they have determined must be supplemented, the rules of Book VII apply.

7. Participation in a private dispute prevention and resolution process other than arbitration does not entail a waiver of the right to act before the courts. However, the parties may undertake not to exercise that right in connection with the dispute in the course of the process, unless it proves necessary for the preservation of their rights.

They may also agree to waive prescription already acquired and the benefit of time elapsed for prescription purposes or agree, in a signed document, to suspend prescription for the duration of the process. Prescription cannot, however, be suspended for more than six months.

(…)

TITLE II. ARBITRATION

CHAPTER I. GENERAL PROVISIONS

620. Arbitration is the submission of a dispute to an arbitrator for a decision in accordance with the rules of law and, if appropriate, for a determination of damages. The arbitrator may act as *amiable compositeur* if the parties have so agreed. In all instances, the arbitrator decides the dispute in accordance with the stipulations of the contract between the parties and takes into account any applicable usages.

The arbitrator's mission also includes attempting to reconcile the parties, if they so request and circumstances permit, and continuing the arbitration process, with the parties' express consent, if the conciliation attempt fails.

621. Arbitrators cannot be prosecuted for an act performed in the course of their arbitration mission, unless they acted in bad faith or committed an intentional or gross fault.

622. Unless otherwise provided by law, the issues on which the parties have an arbitration agreement cannot be brought before a court even though it would have jurisdiction to decide the subject matter of the dispute.

A court seized of a dispute on such an issue is required, on a party's application, to refer the parties back to arbitration, unless the court finds the arbitration agreement to be null. The application for referral to arbitration must be made within 45 days after the originating application or within 90 days when the dispute involves a foreign element. Arbitration proceedings may be commenced or continued and an award made for so long as the court has not made its ruling.

The parties cannot, through their agreement, depart from the provisions of this Title that determine the jurisdiction of the court or from those relating to the application of the adversarial principle or the principle of proportionality, to the right to receive notification of a document or to the homologation or the annulment of an arbitration award.

623. The court, on an application, may grant provisional measures or safeguard orders before or during arbitration proceedings.

CHAPTER II. APPOINTMENT OF ARBITRATORS

624. The parties appoint an arbitrator to decide their dispute. They do so by mutual agreement, unless they ask a third person to make the appointment.

The parties may choose to appoint a panel of arbitrators, in which case each party appoints one arbitrator, and the two so appointed appoint the third.

If an arbitrator must be replaced, the procedure for the appointment of an arbitrator applies.

625. If the appointment of an arbitrator proves difficult, the court, on a party's request, may take any necessary measure to see to the appointment.

For example, if a party fails to appoint an arbitrator within 30 days after having been required by another party to do so, the court may make the appointment. As well, the court may appoint an arbitrator if, 30 days after two arbitrators are appointed, they cannot agree on the choice of the third arbitrator.

626. An arbitrator may be recused if there is serious reason to question their impartiality or if the arbitrator does not have the qualifications agreed by the parties.

An arbitrator is required to declare to the parties any fact that could cast doubt on the arbitrator's impartiality and justify a recusation.

627. A party may ask for an arbitrator's recusation by notifying a document stating its reasons to the other party, to the arbitrator concerned and, if applicable, to the other arbitrators, within 15 days after becoming aware of the appointment or appointments or of the cause for recusation.

A party may only ask for the recusation of an arbitrator it appointed for a cause which arose or was discovered after the appointment was made.

The arbitrator or arbitrators are required to rule on the recusation request without delay, unless the arbitrator concerned withdraws or, the other party supporting the request, is compelled to withdraw.

If the recusation cannot be so obtained, a party may, within 30 days after being advised of it, ask the court to rule on the recusation. The arbitrator concerned and, if there are more than one, the other arbitrators, may nonetheless continue the arbitration proceedings and make an award for so long as the court has not made its ruling.

628. A party may ask the court to revoke an arbitrator if it is impossible for the arbitrator to carry out their mission or if the arbitrator does not discharge their functions within a reasonable time.

629. If the procedure provided for in the arbitration agreement for the recusation or revocation of an arbitrator proves difficult to implement, the court may, on a party's request, rule on the matter.

630. Decisions of the court on appointment, recusation or revocation cannot be appealed.

CHAPTER III. CONDUCT OF ARBITRATION

631. Arbitration proceedings commence on the date of notification of one party to the other of a notice stating that it is submitting a dispute to arbitration and specifying the subject matter of the dispute.

The notice, like any other document that is required to be notified, is notified in accordance with this Code.

632. Arbitrators conduct the arbitration according to the procedure they determine; they are required, however, to see that the adversarial principle and the principle of proportionality are observed.

Arbitrators have all the necessary powers to exercise their jurisdiction, including the power to administer oaths, the power to appoint an expert and the power to rule on their own jurisdiction.

If an arbitrator rules on the arbitrator's own jurisdiction, a party, within 30 days after being advised of the decision, may ask the court to rule on the matter. A decision of the court recognizing the jurisdiction of the arbitrator cannot be appealed.

For so long as the court has not made its ruling, the arbitrator may continue the arbitration proceedings and make an award.

633. Arbitration proceedings are conducted orally, at a hearing, unless the parties agree on the matter being decided on the face of the record. In either case, a party may state its case in writing.

The arbitrator may require each party to send the arbitrator, within a specified time, a statement of its contentions and any exhibits mentioned, and to send them to the other party, if not already done. Any expert reports and other documents on which the arbitrator may base the arbitration award must also be sent to the parties.

The arbitrator advises the parties of the date of the hearing and, if applicable, of the date on which the arbitrator will inspect the property or visit the premises.

Witnesses are called, heard and indemnified according to the rules applicable to a trial before a court.

634. The arbitrator, or a party with leave of the arbitrator, may request the assistance of the court to obtain evidence, including to compel a witness who refuses, without valid reason, to attend, answer or produce real evidence in their possession.

635. If a party fails to state its contentions, attend at the hearing or present evidence in support of its contentions, the arbitrator, after recording the default, may continue the arbitration.

However, if the party that submitted the dispute to arbitration fails to state its contentions, the arbitration is ended unless the other party objects.

636. Decisions during arbitration proceedings are made immediately or, if they cannot be made immediately, as soon as possible; if they are in writing, they must be signed, as must the arbitration award.

If more than one arbitrator has been appointed, decisions are made by a majority of the panel. However, an arbitrator may rule alone on a question of procedure if so authorized by the parties or by all the other arbitrators.

637. The parties, subject to their agreement or unless the arbitrator decides otherwise, are equally liable for the arbitrator's professional fee and expenses.

CHAPTER IV. EXCEPTIONAL MEASURES

638. The arbitrator may, on a party's request, take any provisional measure or any measure to safeguard the parties' rights for the time and subject to the conditions the arbitrator determines and, if necessary, require that a suretyship be provided to cover costs and the reparation of any prejudice that may result from such a measure. Such a decision is binding on the parties but one of them may, if necessary, ask the court to homologate the decision to give it the same force and effect as a judgment of the court.

639. In an urgent situation, even before a request for a provisional or safeguard measure is notified to the other party, the arbitrator may issue a provisional order for a period which may in no case exceed 20 days. The arbitrator requires the party that requested the order to provide a suretyship unless, in the arbitrator's opinion, it is inappropriate or of no use.

The provisional order must be notified to the other party as soon as it is issued, with all the evidence attached. It is binding on the parties and cannot be homologated by the court.

640. The parties must disclose to the arbitrator without delay any material change in the circumstances based on which a provisional or safeguard measure or a provisional order was requested or granted.

The arbitrator may amend, stay or revoke a provisional or safeguard measure or a provisional order on the parties' request. In exceptional circumstances, the arbitrator may do so on the arbitrator's own initiative but must, in compliance with the adversarial principle, invite the parties to make representations.

641. If the arbitrator subsequently decides that a provisional or safeguard measure or a provisional order should not have been granted, the party that obtained the measure or order may be required to provide reparation for any prejudice caused to another party by the measure or order and to reimburse the costs incurred by that other party. The arbitrator may award such reparation and costs at any time during the arbitration proceedings.

CHAPTER V. ARBITRATION AWARD

642. The arbitration award is binding on the parties. It must be made in writing and be signed by the arbitrator or arbitrators, and include reasons. It must state its date and the

place where it was made. The award is deemed to have been made on that date and at that place.

In arbitration proceedings with more than one arbitrator, the arbitration award must be made by a majority of the panel. If one of the arbitrators refuses or is unable to sign the award, the others record that fact, and the award has the same effect as if it were signed by all of them.

The arbitration award must be made within three months after the matter is taken under advisement, but the parties may, more than once, agree to extend the time limit or, if it is expired, set a new one. In the absence of an agreement, the court may do as much, on a party's or the arbitrator's request. The decision of the court cannot be appealed.

If the parties settle the dispute, the agreement is recorded in an arbitration award.

The arbitration award is notified without delay to each party.

643. The arbitrator, on their own initiative, may correct any error in writing or calculation or any other clerical error in the arbitration award within 30 days after the award date.

Within 30 days after receiving the award, a party may ask the arbitrator to correct any clerical error or ask for a supplemental award on a part of the dispute that was not dealt with in the award or, with the other party's consent, for an interpretation of a specific passage of the award, in which case the interpretation forms an integral part of the award.

The decision correcting, supplementing or interpreting the arbitration award must be made within two months after it is requested. The rules applicable to the arbitration award apply to such a decision. If the decision is not rendered before the expiry of the prescribed time, a party may ask the court to issue an order to safeguard the parties' rights. The decision of the court cannot be appealed.

644. The arbitrator is required to preserve the confidentiality of the arbitration process and protect deliberative secrecy but violates neither by stating conclusions and reasons in the award.

CHAPTER VI. HOMOLOGATION

645. A party may apply to the court for the homologation of an arbitration award. As soon as it is homologated, the award acquires the force and effect of a judgment of the court.

The court seized of an application for the homologation of an arbitration award cannot review the merits of the dispute. It may stay its decision if the arbitrator has been asked to correct, supplement or interpret the award. In such a case, if the applicant so requires, the court may order a party to provide a suretyship.

646. The court cannot refuse to homologate an arbitration award or a provisional or safeguard measure unless it is proved that

(1) one of the parties did not have the capacity to enter into the arbitration agreement;

(2) the arbitration agreement is invalid under the law chosen by the parties or, failing any indication in that regard, under Québec law;

(3) the procedure for the appointment of an arbitrator or the applicable arbitration procedure was not observed;
(4) the party against which the award or measure is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings, or it was for another reason impossible for that party to present its case; or
(5) the award pertains to a dispute not referred to in or covered by the arbitration agreement, or contains a conclusion on matters beyond the scope of the agreement, in which case only the irregular provision is not homologated if it can be dissociated from the rest.

The court cannot refuse to homologate the arbitration award on its own initiative unless it notes that the subject matter of the dispute is not one that may be settled by arbitration in Québec or that the award or measure is contrary to public order.

647. The court seized of an application for the homologation of a provisional or safeguard measure may deny the application if the arbitrator's decision to require a suretyship has not been complied with or the measure has been revoked or stayed by the arbitrator.

The court may order the applicant to provide a suretyship if the arbitrator has not already ruled on that subject or if such a decision is necessary to protect the rights of third persons.

CHAPTER VII. ANNULMENT OF ARBITRATION AWARD

648. An arbitration award may only be challenged by way of an application for its annulment. Such an application is subject to the same rules as those governing an application for the homologation of an arbitration award, with the necessary modifications.

Whether it constitutes an originating application or is presented to contest an application for homologation, the application for annulment must be presented within three months after receipt of the arbitration award or of the decision on the request for a correction, a supplemental award or an interpretation. This is a strict time limit.

The court, on request, may stay the application for annulment for the time it considers necessary to allow the arbitrator to take such action as will eliminate the grounds for annulment, even if the time prescribed for correcting, supplementing or interpreting the award has expired.

CHAPTER VIII. SPECIAL PROVISIONS APPLICABLE TO INTERNATIONAL COMMERCIAL ARBITRATION

649. If international trade interests, including interprovincial trade interests, are involved in arbitration proceedings, consideration may be given, in interpreting this Title, to the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985, and its amendments.

Recourse may also be had to documents related to that Model Law, including

(1) the Report of the United Nations Commission on International Trade Law on its eighteenth session held in Vienna from 3 to 21 June 1985; and
(2) the Analytical Commentary on the draft text of a model law on international commercial arbitration contained in the report of the Secretary-General to the eighteenth session of the United Nations Commission on International Trade Law.

650. International trade interests are considered to be involved in arbitration proceedings if, among other possibilities, the parties to the arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States or if the place where they choose to conduct the arbitration is outside the State in which they have their places of business. Such interests are also considered to be involved in arbitration proceedings if the place where a substantial part of the obligations of the commercial relationship is to be performed, or the place with which the subject matter of the dispute is most closely connected, is outside the State in which they have their places of business, or if the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one State.

651. The arbitrator decides the dispute in accordance with the rules of law chosen by the parties or, failing any such designation, in accordance with the rules of law the arbitrator considers appropriate.

CHAPTER IX. RECOGNITION AND ENFORCEMENT OF ARBITRATION AWARDS MADE OUTSIDE QUÉBEC

652. An arbitration award made outside Québec, whether or not confirmed by a competent authority, may be recognized and declared to have the same force and effect as a judgment of the court if the subject matter of the dispute is one which could be submitted to arbitration in Québec and if recognition and enforcement of the award are not contrary to public order. The same applies for a provisional or safeguard measure.

The application for recognition and enforcement must be accompanied by the arbitration award or measure concerned and the arbitration agreement and by a translation certified in Québec of those documents if they are drawn up in a language other than French or English.

Consideration may be given, in interpreting the rules in this matter, to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration at New York on 10 June 1958.

653. The court examining an application for recognition and enforcement of an arbitration award or a provisional or safeguard measure cannot review the merits of the dispute.

A party against which an award or a measure is invoked cannot oppose its recognition and enforcement unless the party proves that

(1) one of the parties did not have the capacity to enter into the arbitration agreement;
(2) the arbitration agreement is invalid under the law chosen by the parties or, failing any indication in that regard, under the law of the place where the award was made or the measure decided;
(3) the procedure for the appointment of an arbitrator or the arbitration procedure was not in accordance with the arbitration agreement or, failing such an agreement, with the law of the place where the arbitration proceedings were held;
(4) the party against which the award or the measure is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings, or it was for another reason impossible for that party to present its case;
(5) the award pertains to a dispute not referred to in or covered by the arbitration agreement, or contains a conclusion on matters beyond the scope of the agreement, in which case only the irregular provision is not recognized and declared enforceable if it can be dissociated from the rest; or
(6) the award or measure has not yet become binding on the parties or has been annulled or stayed by a competent authority of the place where or under whose law the arbitration award was made or the measure decided.

The court may also deny an application for recognition and enforcement of a provisional or safeguard measure if the arbitrator's decision to require a suretyship was not complied with, if the measure was revoked or stayed by the arbitrator or if the measure is incompatible with the powers conferred on the court unless, in the latter case, the court decides to reformulate the provisional measure to adapt it to its own powers and procedures without modifying its substance.

654. The court may stay its decision in respect of the recognition and enforcement of an arbitration award if an application for the annulment or suspension of the award is pending before the competent authority of the place where or under whose law the arbitration award was made.

If the court stays its decision, it may, on the request of the party applying for recognition and enforcement of the award, order the other party to provide a suretyship.

655. The court may order the party applying for recognition and enforcement of a provisional or safeguard measure to provide a suretyship if the arbitrator has not already ruled on that subject or if such a decision is necessary to protect the rights of third persons.

ANNEX IV

BRITISH COLUMBIA ARBITRATION ACT*

SBC 2020, Chapter 2

PART 1 – INTERPRETATION AND APPLICATION

Interpretation

1. In this Act:

"arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

"arbitration agreement" means an agreement described in section 5 (1) [*arbitration agreement*];

"designated appointing authority" means the entity designated under section 67 [*designated appointing authority*];

"interim measure" means any temporary measure, whether in the form of an arbitral award or in another form, by which, at any time before the issuance of the arbitral award by which a dispute is finally decided, the arbitral tribunal orders a party to

(a) maintain or restore the status quo pending determination of the dispute,

(b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself,

(c) provide a means of preserving assets out of which a subsequent arbitral award may be satisfied,

(d) preserve evidence that may be relevant and material to the resolution of the dispute, or

(e) provide appropriate security for costs in connection with arbitral proceedings;

"place of arbitration" means a place or seat of arbitration.

Application

2. (1) Subject to subsections (4) and (5), this Act applies to an arbitration if the place of arbitration is in British Columbia.

(2) The place of arbitration is in British Columbia if the arbitration agreement

(a) names British Columbia or a place in British Columbia as the place of arbitration,

(b) does not name a place of arbitration, but provides that the arbitration laws of British Columbia are applicable to the dispute,

(c) does not name a place of arbitration and does not provide that the arbitration laws of a specified jurisdiction are applicable to the dispute, but provides that the laws of British Columbia are applicable to the substance of the dispute,

(d) empowers a person or entity to name the place of arbitration, and the person or entity names British Columbia or a place in British Columbia as the place of arbitration, or

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* Assented to 5 March 2020. In force since 1 September 2020. Official version. See: <https://canlii.ca/t/54qvk>.

(e) does not do any of the following and the parties to the arbitration agreement have, on the date the parties entered into the arbitration agreement, their places of business in British Columbia:

(i) name a place of arbitration;

(ii) provide that the arbitration laws of a specified jurisdiction are applicable to the dispute;

(iii) provide that the laws of British Columbia are applicable to the substance of the dispute;

(iv) empower a person or entity to name the place of arbitration.

(3) For the purposes of subsection (2) (e),

(a) if a party has more than one place of business, the party's place of business is that which has the closest relationship to the arbitration agreement, and

(b) if a party does not have a place of business, a reference to the party's place of business is to be read as a reference to the party's last known place of residence.

(4) The following sections of this Act apply to an arbitration whether or not the place of arbitration is in British Columbia:

(a) section 3 [*waiver of right to object*];

(b) section 4 [*extent of judicial intervention*];

(c) section 7 [*stay of court proceedings*];

(d) section 29 [*production and evidence from non-parties*];

(e) section 43 [*recognition and enforcement of interim measures*];

(f) section 44 [*grounds for refusing recognition or enforcement of interim measures*];

(g) section 45 [*court-ordered interim measures*];

(h) section 61 [*recognition and enforcement of arbitral awards*].

(5) This Act does not apply to the following:

(a) an arbitration to which the International Commercial Arbitration Act applies;

(b) an arbitration of a family law dispute as defined in section 1 of the Family Law Act;

(c) an arbitration under a prescribed agreement entered into by the government of British Columbia or the government of Canada and the government of another jurisdiction in or outside Canada, except as provided in the regulations.

(6) If another enactment authorizes or requires arbitration, this Act applies with any modifications necessary to give effect to the other enactment.

Waiver of right to object

3. A party to an arbitration agreement is deemed to have waived the right to object if both of the following apply:

(a) the party knows that

(i) a provision of this Act, other than a provision in respect of which the parties may otherwise agree, has not been complied with, or

(ii) a requirement under the arbitration agreement has not been complied with;

(b) the party proceeds with the arbitration and does not state an objection to the noncompliance without undue delay, or, if a time limit is provided for stating that objection, within that period of time.

Extent of judicial intervention

4. In matters governed by this Act,

(a) a court must not intervene unless so provided in this Act, and

(b) the following must not be questioned, reviewed or restrained by a proceeding under the Judicial Review Procedure Act or otherwise except to the extent provided in this Act:

(i) an arbitral proceeding of an arbitral tribunal or an order, ruling or arbitral award made by an arbitral tribunal;

(ii) a determination or direction by the designated appointing authority.

PART 2 – ARBITRATION AGREEMENT

Arbitration agreement

5 (1) Two or more persons may make an agreement to resolve, by arbitration, a matter that

(a) is the subject of a dispute, or

(b) may be the subject of a dispute in the future.

(2) If the parties to an arbitration agreement make a subsequent agreement regarding how disputes or prospective disputes to which the arbitration agreement applies must or may be arbitrated, the subsequent agreement is a modification of the original arbitration agreement.

(3) If an arbitration agreement incorporates arbitration rules by reference, those rules form part of the arbitration agreement.

(4) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the reference is such as to make that arbitration clause part of the contract.

(5) For certainty, an arbitration agreement

(a) need not be in writing,

(b) need not relate to the interpretation, application or performance of a contract, and

(c) may, but need not, be part of another agreement.

Scott v. Avery clauses

6. An agreement which provides that a matter be adjudicated by arbitration before it may be the subject of a court proceeding is an arbitration agreement in respect of the matter.

Stay of court proceedings

7. (1) If a party commences legal proceedings in a court in respect of a matter agreed to be submitted to arbitration, a party to the legal proceedings may, before submitting the party's first response on the substance of the dispute, apply to that court to stay the legal proceedings.

(2) In an application under subsection (1), the court must make an order staying the legal proceedings unless it determines that the arbitration agreement is void, inoperative or incapable of being performed.

(3) An arbitration may be commenced or continued and an arbitral award made even if an application has been brought under subsection (1) and the issue is pending before the court.

PART 3 – COMMENCEMENT OF ARBITRAL PROCEEDINGS

Commencement of arbitral proceedings

8. (1) If the parties to an arbitration agreement have agreed how arbitral proceedings are to be commenced, arbitral proceedings must be commenced in accordance with that agreement.

(2) If the parties to an arbitration agreement have not agreed how arbitral proceedings are to be commenced, a party may commence arbitral proceedings,

(a) if authorized under the arbitration agreement, by delivering to the other party to the arbitration agreement a notice appointing an arbitrator,

(b) by delivering to the other party to the arbitration agreement a notice requesting that other party participate in the appointment of an arbitral tribunal,

(c) if the arbitration agreement authorizes a person who is not a party to the arbitration agreement to appoint an arbitrator or arbitral tribunal, by delivering to that person a notice requesting the person exercise the power of appointment and by delivering a copy of the notice to any other party to the arbitration agreement, or

(d) by delivering to the other party to the arbitration agreement a notice demanding arbitration.

(3) A person who receives a notice under subsection (2) may deliver to the party who commenced the arbitral proceeding a written request for a concise description of the matter in dispute, unless such a description is already included with the notice.

(4) A party who receives a request under subsection (3) must comply with the request no more than 10 days after receipt of the request.

(5) An arbitral tribunal may extend the time period referred to in subsection (4) before or after the expiry of that period.

(6) A party's failure to comply with subsection (4) does not render a notice delivered under subsection (2) ineffective, but an arbitral tribunal may stay the arbitral proceedings until the party complies with the request under subsection (3).

Consolidation

9. (1) If all parties to 2 or more arbitral proceedings agree to consolidate those proceedings, a party, with notice to the other parties, may apply to the Supreme Court for an order that the proceedings be consolidated as agreed by the parties.

(2) Subsection (1) does not limit the parties' ability to consolidate arbitral proceedings without a court order.

(3) If all parties to the arbitral proceedings agree to consolidate the proceedings but do not agree, by adopting procedural rules or otherwise, to either of the following matters, the Supreme Court may, on application under subsection (1) but subject to subsection (4), make an order deciding either or both of those matters:

(a) the designation of parties as claimants or respondents or a method of making those designations;

(b) the method for determining the composition of the arbitral tribunal.

(4) If the arbitral proceedings are under different arbitration agreements, the Supreme Court must not make an order under this section unless, by their arbitration agreements or otherwise, the parties agree

(a) to the same place of arbitration or a method for determining a single place of arbitration for the consolidated proceedings in British Columbia,

(b) to the same procedural rules or a method for determining a single set of procedural rules for the conduct of the consolidated proceedings, and

(c) to have the consolidated proceedings either

(i) be administered by the same person or entity, or

(ii) not be administered by any person or entity.

(5) In making an order under this section, the Supreme Court may have regard to any circumstance it considers relevant, including

(a) whether one or more arbitrators have been appointed in one or more of the arbitral proceedings,

(b) whether the applicant delayed applying for the order, and

(c) whether any material prejudice to any of the parties or any injustice may result from making the order.

(6) A Supreme Court decision under this section may not be appealed.

Extension of time limit to commence arbitral proceedings

10. (1) If an arbitration agreement provides that a claim to which the agreement applies is barred unless one of the following occurs within a time limit specified in the agreement or otherwise:

(a) notice to appoint an arbitrator is delivered;

(b) an arbitrator is appointed;

(c) any other step to commence the arbitral proceedings is taken,

the Supreme Court may, on application, extend the time limit if it considers that undue hardship would otherwise result.

(2) An application under subsection (1) must be brought without undue delay.

(3) A Supreme Court decision under this section may not be appealed.

Limitation periods

11. (1) The law with respect to limitation periods for commencing court proceedings applies to commencing arbitral proceedings.

(2) Subject to section 10 (1), if a party alleges that a claim to which an arbitration agreement applies is barred for failure to commence arbitral proceedings within the time limit specified in the agreement or otherwise or within the applicable limitation period, the arbitral proceedings continue and the arbitral tribunal must determine whether the claim is barred.

Commencement of arbitral proceedings when stay ordered

12. If court proceedings are stayed under section 7 [*stay of court proceedings*] and the claim that was the subject of the court proceedings is made in arbitral proceedings no more than 30 days after the court proceedings are stayed, the limitation period

applicable to the claim is suspended from the date the claim was made in the court proceedings to the date the claim is made in the arbitral proceedings.

PART 4 – ARBITRAL TRIBUNALS

Division 1 – Composition of Arbitral Tribunals

Number of arbitrators
13. If the parties to an arbitration agreement do not agree on the number of arbitrators, an arbitral tribunal is composed of one arbitrator.

Appointment of arbitrator
14. (1) Subject to this section, the parties may agree on a procedure for appointing the arbitral tribunal.

(2) Unless the parties otherwise agree, in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator, the designated appointing authority must, on request of a party, appoint the arbitrator.

(3) Unless the parties otherwise agree, in an arbitration with 3 arbitrators, each party must appoint one arbitrator, and the 2 appointed arbitrators must appoint the third arbitrator.

(4) If the appointment procedure in subsection (3) applies and either of the following occurs, the designated appointing authority must, on request of a party, appoint an arbitrator:

(a) a party fails to appoint an arbitrator within 30 days after receipt of a request to do so from the other party;

(b) the 2 appointed arbitrators fail to agree on the third arbitrator within 30 days after their appointment.

(5) If, under an appointment procedure agreed to by the parties, any of the following occurs:

(a) a party fails to act as required under that procedure;

(b) the parties, or 2 appointed arbitrators, fail to reach an agreement expected of them under that procedure;

(c) a third party fails to perform any function entrusted to the third party under that procedure,

a party may request the designated appointing authority to take the necessary measure unless the agreement on the appointment procedure provides other means for securing the appointment.

(6) If the designated appointing authority does not make the appointment requested under subsection (2) or (4) or take the necessary measure in accordance with subsection (5) within 7 days of the request, the Supreme Court must, on application, appoint an arbitrator.

(7) In appointing an arbitrator, the designated appointing authority or the Supreme Court must have due regard to

(a) any qualifications required of the arbitrator by the agreement of the parties, and

(b) any other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(8) An appointment of an arbitrator made by the designated appointing authority or the Supreme Court may not be appealed.

Division 2 – Removal and Replacement of Arbitrator

No revocation of appointment

15. Subject to this Division, a party to arbitral proceedings may not revoke the appointment of an arbitrator unless all other parties to the arbitral proceedings consent.

Independence and impartiality of arbitrator

16. (1) Unless otherwise agreed by the parties to arbitral proceedings, an arbitrator must be independent of the parties.

(2) An arbitrator must be impartial and act impartially.

(3) If a person is approached in connection with the person's possible appointment as an arbitrator, the person must, without delay, disclose any circumstances likely to give rise to justifiable doubts as to the person's independence or impartiality.

(4) An arbitrator, from the time of the arbitrator's appointment and throughout the arbitral proceedings, must, without delay, disclose to the parties any circumstances referred to in subsection (3).

Grounds for challenge

17. (1) An arbitrator may be challenged only if

(a) subject to an agreement described in section 16 (1), circumstances exist that give rise to justifiable doubts as to the arbitrator's independence,

(b) circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality, or

(c) the arbitrator does not possess the qualifications agreed to by the parties.

(2) For the purposes of subsection (1) (a) and (b), there are justifiable doubts as to the arbitrator's independence or impartiality only if there is a real danger of bias on the part of the arbitrator in conducting the arbitration.

(3) A party may challenge an arbitrator appointed by that party, or in whose appointment the party has participated, only for reasons of which the party becomes aware after the appointment has been made.

Challenge procedure

18. (1) Subject to subsection (4), the parties to arbitral proceedings may agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in subsection (1), a party who intends to challenge an arbitrator must, within 15 days after becoming aware of the constitution of the arbitral tribunal or any circumstances referred to in section 17 (1), send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under subsection (2) withdraws from office or the other party agrees to the challenge, the arbitral tribunal must decide on the challenge.

(4) If a challenge under any procedure agreed to by the parties or under the procedure referred to in subsection (2) is not successful, the challenging party may, within 30 days after receiving notice of the decision rejecting the challenge, apply to the Supreme Court to decide on the challenge.

(5) If an application is made under subsection (4), the Supreme Court may refuse to decide on the challenge if it is satisfied that, under the procedure agreed to by the parties, the party making the application had an opportunity to have the challenge decided on by a person or entity other than the arbitral tribunal.

(6) A decision of the Supreme Court under subsection (4) may not be appealed.

(7) While an application under subsection (4) is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an arbitral award.

Failure or impossibility to act

19. (1) The mandate of an arbitrator terminates if

(a) the arbitrator becomes in law or in fact unable to perform the arbitrator's functions or for other reasons fails to act without undue delay, and

(b) the arbitrator withdraws from office or the parties agree to the termination of the arbitrator's mandate.

(2) On application by a party, the Supreme Court may terminate the mandate of an arbitrator on a ground referred to in subsection (1) (a).

(3) A decision of the Supreme Court under subsection (2) may not be appealed.

(4) If, under this section or section 18 (3), an arbitrator withdraws from office or the parties agree to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this section or section 17 (1) [*grounds for challenge*].

Termination of mandate and substitution of arbitrator

20. (1) In addition to the circumstances referred to in section 18 or 19, the mandate of an arbitrator terminates

(a) if the arbitrator withdraws from office for any reason, or

(b) by or pursuant to agreement of the parties to the arbitral proceedings.

(2) If the mandate of an arbitrator terminates, a substitute arbitrator must be appointed according to the rules applied to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties to the arbitral proceedings,

(a) if the sole or presiding arbitrator is replaced, any hearings previously held must be repeated, and

(b) if an arbitrator, other than the sole or presiding arbitrator, is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties to the arbitral proceedings, an order or ruling of the arbitral tribunal made before the replacement of an arbitrator under this section is not invalid solely because there has been a change in the composition of the arbitral tribunal.

PART 5 – ARBITRAL PROCEEDINGS

Division 1 – Duties of Arbitral Tribunals and Parties

General duties of arbitral tribunal

21. An arbitral tribunal must

(a) treat each party fairly,

(b) give each party a reasonable opportunity to present its case and to answer any case presented against it, and

(c) strive to achieve a just, speedy and economical determination of the proceeding on its merits.

General duties of parties

22. (1) Parties to arbitral proceedings must do all things necessary for the just, speedy and economical determination of the proceedings, in accordance with the agreement of the parties and the orders and directions of the arbitral tribunal.

(2) A party must not wilfully do or cause to be done any act to delay or prevent an arbitral award being made.

Division 2 – Jurisdiction of Arbitral Tribunals

Competence of arbitral tribunal to rule on its jurisdiction

23. (1) An arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,

(a) an arbitration agreement which forms part of a contract must be treated as an agreement independent of the other terms of the contract, and

(b) a decision by the arbitral tribunal that the contract is null and void must not entail, as a matter of law, the invalidity of the arbitration agreement.

(2) A plea that the arbitral tribunal does not have jurisdiction must be raised not later than the submission of the first response on the substance of the dispute.

(3) A party to arbitral proceedings is not precluded from raising a plea referred to in subsection (2) by the fact that the party appointed, or participated in the appointment of, an arbitrator.

(4) A plea that the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(5) The arbitral tribunal may, in either of the cases referred to in subsection (2) or (4), admit a later plea if it considers the delay justified.

(6) The arbitral tribunal may rule on a plea referred to in subsection (2) or (4) either as a preliminary question or in an arbitral award on the merits.

(7) If the arbitral tribunal rules as a preliminary question on a plea referred to in subsection (2) or (4), any party may, within 30 days after receiving notice of that ruling, apply to the Supreme Court to decide the matter.

(8) A decision of the Supreme Court under subsection (7) may not be appealed.

(9) While an application under subsection (7) is pending, the arbitral tribunal may continue the arbitral proceedings and make an arbitral award.

Division 3 – Representation in Arbitral Proceedings and Applicable Law

Representation in arbitral proceedings
24. A party to arbitral proceedings may appear or act in person or, subject to the Legal Profession Act, may be represented by another person.

Law applicable to substance of dispute
25. (1) The law applicable to the substance of a dispute is the law designated by the parties to the arbitration agreement.

(2) If the parties to the arbitration agreement have not designated the law applicable to the substance of a dispute, the arbitral tribunal may choose the applicable law.

(3) An arbitral tribunal must decide the substance of a dispute in accordance with the applicable law, including any equitable rights or defences available under that law.

(4) An arbitral tribunal may grant relief or remedies under the applicable law, including orders of specific performance, injunctions, declarations or other equitable remedies available under that law.

Conflict of laws
26. A designation by the parties to the arbitration agreement of the law of a jurisdiction refers to the jurisdiction's substantive law and not to its conflict of laws rules unless the parties expressly state that the designation includes the conflict of laws rules.

Application of agreed standards
27. Despite section 25, if all parties agree, an arbitral tribunal may resolve a dispute ex aequo et bono, as amiable compositeur or by applying some other standard.

Division 4 – Powers of Arbitral Tribunals in Respect of Arbitral Proceedings

Evidence
28. (1) An arbitral tribunal may decide all evidentiary matters, including the admissibility, relevance, materiality and weight of any evidence, and may draw such inferences as the circumstances justify.

(2) Unless otherwise agreed by the parties to the arbitral proceedings, the arbitral tribunal is not required to apply the law of evidence other than the law of privilege.

(3) Unless otherwise agreed by the parties to the arbitral proceedings or directed by the arbitral tribunal, the direct evidence of every witness must be presented in written form.

Production and evidence from non-parties
29. (1) If, on application by a party to arbitral proceedings, an arbitral tribunal determines that a person who is not a party to the proceedings should give evidence or produce records, the arbitral tribunal may

(a) issue a subpoena to a person in British Columbia requiring the person to give evidence or produce for inspection records in the person's possession or control, or

(b) request a court of competent jurisdiction to assist the arbitral tribunal by requiring a person in or outside British Columbia to give evidence or produce for inspection records in the person's possession or control.

(2) A subpoena under subsection (1) (a) must set out, and a request under subsection (1) (b) must propose, the following, as applicable:

(a) how, where and when the person is to give evidence;

(b) the records the person is to produce;

(c) how, where and when the records are to be produced and copied;

(d) conditions for the payment of the expenses of the person named in the subpoena or request.

(3) A subpoena under subsection (1) (a) has the same effect as if it were issued in court proceedings.

(4) A subpoena under subsection (1) (a) may be set aside on application by the person named in the subpoena to the arbitral tribunal or the Supreme Court.

(5) A party to arbitral proceedings may apply to the Supreme Court for an order providing the assistance described in a request issued under subsection (1) (b).

(6) If an application is brought to the Supreme Court under subsection (5), the court must, after notice it finds appropriate is delivered to the person named in the request, and if satisfied that the conditions proposed are reasonable, make one of the following:

(a) if the person named in the request is in British Columbia, an order that the person attend to give evidence or produce records as described in the request;

(b) if the person named in the request is outside British Columbia, a request for assistance to another court of competent jurisdiction.

(7) Subsection (8) applies to arbitral proceedings if all of the following apply:

(a) the place of arbitration is within another province or territory;

(b) the arbitration is not considered to be an international arbitration under the laws of the place of arbitration;

(c) the arbitral tribunal has issued a request substantially conforming to the requirements of a request under subsection (1) (b).

(8) A party to arbitral proceedings to which this subsection applies may apply to the Supreme Court for an order providing the assistance described in the request referred to in subsection (7) (c), and the request must be enforced in the manner and to the extent provided under the Subpoena (Interprovincial) Act as if it were a subpoena issued by a court of the place of arbitration.

(9) A person must not be compelled by an order under this section, in relation to arbitral proceedings, to give evidence or produce for inspection property or records in the person's possession or control that the person may not be compelled to give or produce in court proceedings.

(10) A Supreme Court decision under this section may not be appealed.

Hearings and written proceedings

30. (1) Unless otherwise agreed by the parties to the arbitral proceedings, the arbitral tribunal must decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings must be conducted on the basis of documents and other written materials.

(2) Unless the parties have agreed that no oral hearings are to be held, the arbitral tribunal must, on request of a party, hold oral hearings at an appropriate stage of the proceedings.

(3) The parties must be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of the inspection of records, goods or other property.

(4) All statements, documents and other information supplied to, or applications made to, the arbitral tribunal by one party must be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision is to be communicated to the parties.

Hearing location

31. (1) Except as provided in this section, any in-person hearing to receive oral evidence or oral submissions must take place at

(a) a location agreed to by the parties, or

(b) if the parties have not agreed to a location, a location determined by the arbitral tribunal.

(2) An arbitral tribunal may receive oral evidence or oral submissions at any location by telephone, video conference or other electronic means.

(3) An arbitral tribunal may meet wherever it considers appropriate for consultation among its members.

(4) An arbitral tribunal may conduct an inspection of records, goods or other property or receive evidence of a witness at any location.

Procedural powers of arbitral tribunal

32. (1) Subject to this Act and any agreement of the parties, an arbitral tribunal may establish procedures and make procedural orders for the conduct of the arbitral proceedings.

(2) For certainty, and without limiting subsection (1), an arbitral tribunal may

(a) administer an oath or affirmation, and

(b) make orders respecting any of the following:

(i) statements of position or pleadings, including when they should be delivered, their form and content, and whether amendments are allowed;

(ii) requiring security for the arbitral tribunal's fees and expenses;

(iii) requiring a party to provide security for costs that may be incurred by another party;

(iv) the determination of some matters in dispute before other matters in dispute;

(v) giving directions for the preservation of evidence;

(vi) subject to privilege, requiring a party to produce records or information;

(vii) establishing protocols for searching for and producing electronically stored records, and allocating the costs of implementing the protocols;

(viii) giving directions in relation to any property which is the subject of the arbitral proceedings or as to which any question arises in the proceedings, and which is owned by or in the possession of a party, for the purposes of

(A) the inspection, photographing, preservation, custody or detention of the property by the arbitral tribunal, an expert or a party, or

(B) taking samples from, or making observations of any test or experiment conducted upon, the property;

(ix) the form in which evidence and argument are presented;

(x) regarding the confidentiality in the arbitral proceedings and providing for sanctions against parties for failure to observe any confidentiality requirements;

(xi) regarding the use of video or telephone conferencing or other technology to enable the examination of witnesses who are not physically present at an evidentiary hearing;
(xii) allocating hearing time between the parties;
(xiii) excluding witnesses or potential witnesses from attending any part of an oral evidentiary hearing;
(xiv) the examination of a witness on oath or affirmation;
(xv) the language to be used in the proceedings and whether translations of any records are to be supplied, and allocating the costs of interpreting or translating evidence;
(xvi) varying a procedural order, including by shortening or extending a time limit established by the order before or after the expiry of the time limit.

Party default

33. (1) In this section:

"claim" means,

(a) in relation to a party who commenced arbitral proceedings, the matters put in dispute by that party, and

(b) in relation to a party who brings a counterclaim in arbitral proceedings, the matters put in dispute by the counterclaim;

"procedural time limit" means a time limit set by enactment, agreement of the parties or order of the arbitral tribunal for taking a procedural step, other than a time limit for the commencement of arbitral proceedings.

(2) If, after commencement of arbitral proceedings, a party who commenced the proceedings or who brings a counterclaim in the proceedings fails to comply with a procedural time limit, the arbitral tribunal may

(a) terminate the arbitral proceedings in relation to the party's claim, or

(b) suspend the arbitral proceedings in relation to the party's claim, pending fulfilment of conditions.

(3) If a party fails to comply with a procedural time limit, the arbitral tribunal may continue the arbitral proceedings and make an order it considers appropriate, including an order that precludes the party from taking a procedural step.

(4) If, without showing sufficient cause, a party fails to appear at an oral hearing or produce documentary evidence, the arbitral tribunal may continue the proceedings and make an arbitral award on the evidence before it.

(5) Unless the arbitral tribunal determines otherwise at the time of termination, an arbitral award made before termination or suspension of arbitral proceedings under this section remains valid and enforceable.

Expert appointed by arbitral tribunal

34. (1) Unless otherwise agreed by the parties, an arbitral tribunal may appoint an expert to report to the arbitral tribunal and the parties on an issue.

(2) The arbitral tribunal may order a party to deliver to the expert relevant information or to produce or provide access to relevant records, goods or other property for inspection.

(3) The arbitral tribunal may, after the expert has delivered the expert's report to the arbitral tribunal, order the expert to participate in a hearing at which the parties may question the expert on the report and present evidence on issues arising from the report.

(4) Unless otherwise agreed by the parties, the expert must, on the request of a party, make available to that party, for examination, all documents, goods or other property in the expert's possession with which the expert was provided in order to prepare the expert's report.

(5) The costs of an expert appointed under this section must be borne by the parties as directed by the arbitral tribunal.

Duty of expert

35. (1) In giving an opinion to an arbitral tribunal, an expert appointed by one or more parties or by the arbitral tribunal has a duty to assist the arbitral tribunal and is not to be an advocate for any party.

(2) If an expert is appointed by one or more of the parties or by the arbitral tribunal, the expert must, in any report the expert prepares, certify that the expert

(a) is aware of the duty referred to in subsection (1),

(b) has made the report in conformity with that duty, and

(c) will, if called on to give oral or written testimony, give that testimony in conformity with that duty.

PART 6 – INTERIM MEASURES AND PRELIMINARY ORDERS

Division 1 – Interim Measures

Power of arbitral tribunal to order interim measures

36. Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant an interim measure.

Division 2 – Preliminary Orders

Applications for preliminary orders and conditions for granting preliminary orders

37. (1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(2) An arbitral tribunal may grant a preliminary order if the arbitral tribunal considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the interim measure.

Specific regime for preliminary orders

38. (1) Immediately after an arbitral tribunal makes a determination in respect of an application for a preliminary order, the arbitral tribunal must give notice to all the parties of the following:

(a) the request for the interim measure;

(b) the application for the preliminary order;

(c) the preliminary order, if any;

(d) all other communications, including the content of any oral communication, between any party and the arbitral tribunal in relation to a matter referred to in paragraph (a), (b) or (c).

(2) The arbitral tribunal must give an opportunity to any party against whom a preliminary order is directed to present the party's case at the earliest practicable time.

(3) The arbitral tribunal must decide promptly on any objection to a preliminary order.

(4) A preliminary order expires 20 days after the date on which it was issued by the arbitral tribunal.

(5) After the party against whom a preliminary order is directed has been given notice and an opportunity to present its case, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order.

(6) A preliminary order

(a) is binding on the parties but is not subject to enforcement by a court, and

(b) is not an arbitral award.

Division 3 – Provisions Applicable to Interim Measures and Preliminary Orders

Modification, suspension or termination of interim measures and preliminary orders

39. On application of any party or, in exceptional circumstances and with prior notice to the parties, on the arbitral tribunal's own initiative, an arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted.

Provision of security

40. (1) An arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

(2) An arbitral tribunal must require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

Disclosure

41. (1) An arbitral tribunal may require any party to promptly disclose any material change in the circumstances on the basis of which an interim measure was requested or granted.

(2) A party applying for a preliminary order must disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order.

(3) The disclosure obligation under subsection (2) continues until the party against whom the preliminary order has been requested has had an opportunity to present its case.

(4) After the party against whom a preliminary order has been requested has had an opportunity to present its case, the arbitral tribunal may require any party to promptly disclose any material change in the circumstances on the basis of which the preliminary order was requested or granted.

Costs and damages

42. (1) A party requesting an interim measure or applying for a preliminary order is liable for any costs and damages caused by the interim measure or the preliminary order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted.

(2) The arbitral tribunal may award the costs and damages referred to in subsection (1) at any time during the arbitral proceedings.

Division 4 – Recognition and Enforcement of Interim Measures

Recognition and enforcement
43. (1) Subject to section 44, an interim measure issued by an arbitral tribunal must be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced on application to the Supreme Court.

(2) A party who is seeking or has obtained recognition or enforcement of an interim measure must promptly inform the court of any modification, suspension or termination of that interim measure.

(3) The Supreme Court may, if the court considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

Grounds for refusing recognition or enforcement
44. (1) Recognition or enforcement of an interim measure may be refused only

(a) at the request of the party against whom the interim measure is directed if the court is satisfied that

(i) such refusal is warranted on the grounds referred to in section 58 (1) [*applications for setting aside arbitral awards*],

(ii) a decision of the arbitral tribunal with respect to the provision of security in connection with the interim measure has not been complied with, or

(iii) the interim measure has been suspended or terminated by the arbitral tribunal or, where so empowered, by a court of the place of arbitration or under the law of which that interim measure was granted, or

(b) if the court finds that

(i) the interim measure is incompatible with the powers conferred upon the court, unless the court decides to vary the interim measure to the extent necessary to adapt the interim measure to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance, or

(ii) the recognition or enforcement of the interim measure would be contrary to the public policy in British Columbia.

(2) A determination made by the court on a ground referred to in subsection (1) is effective only for the purposes of the application to recognize or enforce the interim measure.

(3) The court where recognition or enforcement is sought may not, in making a determination on a ground referred to in subsection (1), undertake a review of the substance of the interim measure.

Division 5 – Court-Ordered Interim Measures

Court-ordered interim measures
45. (1) A court has the same powers to issue an interim measure in relation to arbitral proceedings as that court has in relation to court proceedings.

(2) When requested to grant an interim measure, a court may, if it considers it proper, refer the request to an arbitral tribunal.

(3) It is not incompatible with an arbitration agreement for a party to request from a court, before or during arbitral proceedings, an interim measure of protection and for a court to grant that measure.

PART 7 – MAKING OF ARBITRAL AWARDS AND TERMINATION OF ARBITRAL PROCEEDINGS

Majority decision

46. (1) Unless otherwise agreed by the parties and subject to subsection (2), in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal must be made by a majority of all its members.

(2) If authorized by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by a presiding arbitrator.

(3) Unless otherwise agreed by the parties, if there is no majority decision on any matter to be decided in an arbitration, the decision of the presiding arbitrator is the decision on that matter.

Settlement

47. (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during arbitral proceedings to encourage settlement.

(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal must terminate the proceedings and, if the parties request it and the arbitral tribunal does not object, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms must be made in accordance with section 48 and must state that it is an arbitral award.

(4) An arbitral award on agreed terms has the same status and effect as any other arbitral award on the substance of the dispute.

Form, content and delivery of arbitral award

48. (1) An arbitral award must be in writing and must be delivered to the parties.

(2) The arbitral tribunal must, on request of a party, deliver an original signed or certified copy of the arbitral award to each party.

(3) An arbitral tribunal must provide reasons for an arbitral award, unless

(a) the parties to the arbitral proceeding have agreed that no reasons are to be provided, or

(b) the award is an arbitral award on agreed terms under section 47 (2).

(4) An arbitral award must state the place of arbitration and the date on which the arbitral award is made.

(5) A failure to comply with subsection (4) is a clerical error that may be corrected under section 56 [*corrections, interpretations and additional awards*].

(6) All members of the arbitral tribunal must sign an arbitral award.

(7) Despite subsection (6), a majority of the members of the arbitral tribunal may sign an arbitral award if the award includes an explanation for the omission of the signatures of the other members.

Partial awards
49. An arbitral tribunal may make an arbitral award finally deciding a matter in dispute while retaining jurisdiction to decide another matter in dispute.

Costs
50. (1) A costs award may be made at any time during arbitral proceedings, including at the termination of the proceedings, and may be made payable at any time.

(2) Unless otherwise agreed by the parties, the costs of an arbitration are in the discretion of the arbitral tribunal, which may, in awarding costs,

(a) include the following as costs:

(i) the fees and expenses of the arbitrators and expert witnesses;

(ii) legal fees and expenses;

(iii) any administration fees of an institution;

(iv) any other expenses incurred in connection with the arbitral proceedings,

(b) specify the following:

(i) the party entitled to costs;

(ii) the party who must pay the costs;

(iii) the amount of costs or method of determining that amount;

(iv) the manner in which the costs must be paid,

(c) determine the amount of a costs award by reference to actual reasonable legal fees, expenses and witness fees, and

(d) summarily determine the amount of costs.

(3) If a party makes an offer to another party to settle the dispute or part of the dispute and the offer is not accepted, the arbitral tribunal may take that fact into account when awarding costs of the arbitration.

(4) The content of an offer to settle the dispute or part of the dispute must not be communicated to the arbitral tribunal unless the arbitral tribunal has issued an arbitral award determining all aspects of the dispute other than costs.

Interest
51. (1) Unless otherwise agreed by the parties, an arbitral tribunal may award simple or compound interest for the time period and at the rate that the arbitral tribunal considers appropriate as follows:

(a) on the whole or part of any amount awarded by the arbitral tribunal, in respect of any period up to the date of the arbitral award;

(b) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the arbitral award was made, in respect of any period before the date of payment.

(2) Unless otherwise agreed by the parties, an arbitral tribunal may award simple or compound interest from the date of the arbitral award, or any later date, until payment, at such rates as the arbitral tribunal considers appropriate, on the outstanding amount of any arbitral award, including any interest awards under subsection (1) and any costs awards.

Withholding arbitral award
52. (1) Despite section 48 [*form, content and delivery of arbitral award*] and unless the designated appointing authority directs otherwise, an arbitral tribunal may withhold an

arbitral award from the parties if the arbitral tribunal has not received full payment of its fees and expenses.

(2) A time limit for delivering the arbitral award is extended until security is provided for an amount claimed under subsection (1).

(3) If the arbitral tribunal refuses or fails to deliver an arbitral award, a party may, upon notice to the other parties and the arbitral tribunal, make a request to the designated appointing authority for one or more of the following:

(a) a direction that the arbitral tribunal deliver the arbitral award on the payment in trust to the designated appointing authority of all or part of the fees and expenses demanded;

(b) a summary determination of the amount of the fees and expenses payable to the arbitral tribunal under section 55 (2) [*arbitral tribunal fees and expenses*];

(c) a direction that the fees and expenses as determined under paragraph (b) be paid out of the money paid in trust to the designated appointing authority;

(d) a direction as to how the balance of the money paid in trust to the designated appointing authority be paid out.

(4) If the designated appointing authority does not make a determination or direction under subsection (3) within 30 days of the application, a party may apply to the Supreme Court for an order on a similar basis.

(5) A determination or direction of the designated appointing authority or an order of the Supreme Court under this section may not be appealed.

Extension of time for arbitral award

53. (1) An arbitral tribunal or a party may apply to the Supreme Court for an order extending the time within which the arbitral tribunal is required to make an arbitral award.

(2) The Supreme Court must make the order referred to in subsection (1) if satisfied that a substantial injustice would otherwise be done.

(3) An order under subsection (2) may be made before or after the expiry of the time within which the arbitral tribunal is required to make the arbitral award.

(4) An order under this section may not be appealed.

Binding nature of arbitral award

54. An arbitral award is final and binding on all the parties to the award.

Arbitral tribunal fees and expenses

55. (1) The fees and expenses payable to an arbitrator must be

(a) in accordance with the agreement of the parties and the arbitrator, or

(b) in the absence of an agreement of the parties and the arbitrator, set at the sum of

(i) the fair value of the services performed, and

(ii) the necessary and reasonable expenses actually paid or incurred by the arbitrator.

(2) Unless otherwise agreed by the parties and the arbitrator, a party or an arbitrator may apply to the designated appointing authority for a summary determination of the fees and expenses payable if

(a) the party alleges the fees and expenses paid to or demanded by the arbitrator exceed the amount owing, or

(b) the arbitrator alleges the party failed to pay fees and expenses owed.

(3) An application under subsection (2) must be made no later than 60 days after the earlier of the following, as applicable:

(a) the date on which payment was demanded;

(b) the date on which payment was made.

(4) If the designated appointing authority does not make a summary determination within 30 days of an application under subsection (2), a party may apply to the Supreme Court for a summary determination of the fees and expenses payable.

(5) A decision of the designated appointing authority or the Supreme Court under this section may not be appealed.

Corrections, interpretations and additional arbitral awards

56. (1) Within 30 days after receipt of an arbitral award, unless another period of time has been agreed to by the parties,

(a) a party may request the arbitral tribunal to correct in the arbitral award any computation, clerical or typographical errors or any other errors of a similar nature, and

(b) a party may, if agreed by the parties, request the arbitral tribunal to give an interpretation of a specific point or part of the arbitral award.

(2) If the arbitral tribunal considers the request made under subsection (1) to be justified, it must make the correction or give the interpretation within 30 days after receipt of the request, and the interpretation forms part of the arbitral award.

(3) The arbitral tribunal may correct, on its own initiative, any type of error described in subsection (1) (a) within 30 days after the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party may request, within 30 days after receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to a claim, including a claim for interest or costs, presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under subsection (4) to be justified, it must make the additional arbitral award within 60 days.

(6) The arbitral tribunal may, if necessary, extend the period of time within which it must make a correction, give an interpretation or make an additional arbitral award under subsection (2) or (5).

(7) Section 48 [*form, content and delivery of arbitral award*] applies to a correction or interpretation of an arbitral award or to an additional arbitral award made under this section.

Termination of proceedings

57. (1) Arbitral proceedings are terminated by the final arbitral award or by an order of the arbitral tribunal under subsection (2).

(2) The arbitral tribunal must issue an order for the termination of the arbitral proceedings if any of the following occurs:

(a) the claimant withdraws the claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on the respondent's part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible;

(d) the arbitral tribunal terminates the proceedings under section 33 (2) (a) [*party default*].

(3) Subject to this Act, the arbitral tribunal's mandate terminates with the termination of the arbitral proceedings.

PART 8 – RECOURSE AGAINST AND ENFORCEMENT OF ARBITRAL AWARDS

Applications for setting aside arbitral awards

58. (1) A party may apply to the Supreme Court to set aside an arbitral award only on one or more of the following grounds:

(a) a person entered into the arbitration agreement while under a legal incapacity;

(b) the arbitration agreement is void, inoperative or incapable of being performed;

(c) the arbitral award deals with a dispute not falling within the terms of the arbitration agreement or contains a decision on a matter that is beyond the scope of the arbitration agreement;

(d) the composition of the arbitral tribunal was not in accordance with the arbitration agreement or this Act;

(e) the subject matter of the dispute is not capable of resolution by arbitration under the law of British Columbia;

(f) the applicant was not given proper notice of the arbitration or of the appointment of an arbitrator;

(g) there are justifiable doubts as to the arbitrator's independence or impartiality;

(h) the applicant was not given a reasonable opportunity to present its case or to answer the case presented against it;

(i) the arbitral award was the result of fraud or corruption by a member of the arbitral tribunal or was obtained by fraudulent behaviour by a party or its representative in connection with the conduct of the arbitral proceeding.

(2) If the Supreme Court finds that the grounds described in subsection (1) (c) or (e) apply in respect of only part of the subject matter of the arbitral award, the court may set aside part of the arbitral award.

(3) For the purposes of subsection (1) (g), there are justifiable doubts as to the arbitrator's independence or impartiality only if there was a real danger of bias on the part of the arbitrator in conducting the arbitration.

(4) The Supreme Court must not set aside an arbitral award on grounds referred to in subsection (1) (g) if, before the award was made,

(a) the applicant was aware of the circumstances it relies upon to set aside the arbitral award and failed to follow the applicable procedure required by the arbitration agreement or this Act for seeking the removal of the arbitrator, or

(b) the court determined that substantially the same circumstances as are relied upon to set aside the arbitral award were not sufficient to justify the removal of the arbitrator.

(5) The Supreme Court must not set aside an arbitral award if the applicant is deemed under section 3 [*waiver of right to object*] to have waived the right to object on the grounds on which the applicant relies.

(6) A party may appeal a Supreme Court decision under this section to the Court of Appeal with leave of a justice of the Court of Appeal.

Appeals on questions of law

59. (1) There is no appeal to a court from an arbitral award other than as provided under this section.

(2) A party to an arbitration may appeal to the Court of Appeal on any question of law arising out of an arbitral award if

(a) all the parties to the arbitration consent, or

(b) subject to subsection (3), a justice of that court grants leave to appeal under subsection (4).

(3) A party to an arbitration may seek leave to appeal to the Court of Appeal on any question of law arising out of an arbitral award unless the arbitration agreement expressly states that the parties to the agreement may not appeal any question of law arising out of an arbitral award.

(4) On an application for leave under subsection (3), a justice of the Court of Appeal may grant leave if the justice determines that

(a) the importance of the result of the arbitration to the parties justifies the intervention of the court and the determination of the point of law may prevent a miscarriage of justice,

(b) the point of law is of importance to some class or body of persons of which the applicant is a member, or

(c) the point of law is of general or public importance.

(5) If a justice of the Court of Appeal grants leave to appeal under subsection (4), the justice may attach to the order granting leave conditions that the justice considers just.

(6) On an appeal to the Court of Appeal, the court may

(a) confirm, amend or set aside the arbitral award, or

(b) remit the arbitral award to the arbitrator together with the court's opinion on the question of law that was the subject of the appeal.

Time limit for applications to set aside and appeals

60. (1) Subject to subsection (2), an application to set aside an arbitral award under section 58 [*applications for setting aside arbitral awards*], an appeal under section 59 (2) (a) or an application for leave to appeal under section 59 (3) must be brought no more than 30 days after date on which the appellant or applicant receives the arbitral award, correction, interpretation or additional award on which the appeal or application is based.

(2) If the applicant alleges corruption or fraud, an application to set aside the arbitral award under section 58 must be brought within 30 days after the date on which the applicant first knew or reasonably ought to have known of the circumstances relied upon to set aside the award.

Recognition and enforcement of arbitral awards

61. (1) A party may apply to the Supreme Court to recognize and enforce an arbitral award made in an arbitration with a place of arbitration in Canada.

(2) Unless the Supreme Court otherwise orders, an application under subsection (1) must be made on notice to the person against whom enforcement is sought, in accordance with the Rules of Court.

(3) An application under subsection (1) must be accompanied by an original or certified copy of the award and evidence as to whether

(a) the time limit for commencing an application to set aside or appeal the award at the place of arbitration has elapsed,

(b) there is a pending application to set aside or appeal the award,

(c) a stay of enforcement of the award has been issued,

(d) the award has been set aside, or

(e) the award has been remitted to the arbitral tribunal.

(4) The Supreme Court must recognize and enforce the arbitral award unless

(a) the award has been set aside by a court of competent jurisdiction,

(b) the subject matter of the dispute is not capable of resolution by arbitration under the law of British Columbia,

(c) the court does not have the jurisdiction to grant the relief sought,

(d) the time limit for commencing an application to set aside or appeal the award under the laws of the place of arbitration has not yet elapsed,

(e) there is a pending application to set aside or appeal the award, or a stay of enforcement of the award has been issued, at the place of arbitration, or

(f) the award has been remitted to the arbitral tribunal.

(5) If subsection (4) (d) or (e) applies, the Supreme Court may order that recognition and enforcement of the arbitral award is stayed for a time and on conditions, including conditions as to the deposit of security.

(6) A Supreme Court decision to recognize and enforce an arbitral award has the same effect as a court judgment granting the remedy described in the award.

(7) A party may appeal a Supreme Court decision under this section to the Court of Appeal with leave of a justice of the Court of Appeal.

PART 9 – GENERAL

Immunity

62. (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against an arbitrator because of anything done or omitted

(a) in the performance or intended performance of any duty under an enactment governing an arbitration or under an arbitration agreement, or

(b) in the exercise or intended exercise of any power under an enactment governing an arbitration or under an arbitration agreement.

(2) Subsection (1) does not apply to an arbitrator in relation to anything done or omitted in bad faith.

Privacy and confidentiality

63. (1) Unless otherwise agreed by the parties, all hearings and meetings in arbitral proceedings must be held in private.

(2) Unless otherwise agreed by the parties, the parties and the arbitral tribunal must not disclose any of the following:

(a) proceedings, evidence, documents and information in connection with the arbitration that are not otherwise in the public domain;

(b) an arbitral award.

(3) Subsection (2) does not apply if disclosure is

(a) required by law,

(b) required to protect or pursue a legal right, including for the purposes of preparing and presenting a claim or defence in the arbitral proceedings or enforcing or challenging an arbitral award, or

(c) authorized by a competent court.

Delivery of record

64. (1) If the parties have agreed on a method for delivering a record, a record must be delivered in accordance with the agreement.

(2) If the parties have not agreed on a method for delivering a record, a record may be delivered to an individual by

(a) leaving it with the individual,

(b) leaving it at the individual's last known place of business, place of residence or mailing address,

(c) sending it electronically to an address or number specified by the individual for that purpose,

(d) sending it to the individual's last known place of business, place of residence or mailing address by registered letter or another means that provides a record of receipt, or

(e) after the arbitral tribunal has been constituted, by any other method the arbitral tribunal directs.

(3) If the parties have not agreed on a method for delivering a record, a record may be delivered to a corporation or extraprovincial corporation by

(a) leaving it with an officer, director or agent of the corporation,

(b) leaving it at a place of business of the corporation with a person who has apparent control or management of the place,

(c) sending it electronically to an address or number specified by the corporation for that purpose,

(d) any other means provided by applicable law, or

(e) after the arbitral tribunal has been constituted, any other method the arbitral tribunal directs.

(4) If the parties have not agreed on a date on which receipt of a record is deemed to occur, then, unless the addressee establishes that the addressee, acting in good faith, did not actually receive it until a later date,

(a) a record delivered under subsection (2) (a), (b) or (c) or (3) (a), (b) or (c) is deemed to have been received on the date it is delivered, and

(b) a record delivered under subsection (2) (d) or (e) or (3) (d) or (e) is deemed to have been received 5 days after it is delivered.

(5) If a party is satisfied that it is impractical or impossible to deliver a record in a manner described in subsection (1) or (2), the party may apply to the arbitral tribunal for an order authorizing an alternative method of delivering the record.

(6) If the arbitral tribunal fails to make an order under subsection (5) within 7 days of the request, the party may apply to the Supreme Court for an order authorizing an alternative method of delivering the record.

(7) An order under subsection (5) or (6) must state the date on which receipt of the record is deemed to occur.

(8) This section does not apply to the service or delivery of records in respect of court proceedings.

Death of party

65. (1) If a party to an arbitration agreement dies, the personal representatives of the deceased party are bound by, and are not by the death precluded from enforcing, the terms of the arbitration agreement.

(2) The authority of an arbitrator to hear and decide on the arbitration is not revoked by the death of the party who appointed the arbitrator.

(3) Subsections (1) and (2) are subject to an agreement by the parties to an arbitration agreement.

(4) This section does not affect a rule of law or an enactment under which the death of a person extinguishes a right of action.

Reference by court order

66. A court may order at any time that one or more of the matters at issue in a court proceeding, or a question of fact arising in a court proceeding, other than a criminal proceeding, be tried before an arbitrator agreed on by the parties to an arbitration agreement if all the parties to the court proceeding consent and are not under a disability.

Designated appointing authority

67. The Lieutenant Governor in Council may designate by regulation an entity to act as the designated appointing authority under this Act.

Section 5 of Offence Act

68. Section 5 of the Offence Act does not apply to this Act or the regulations.

Regulations

69 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

(2) The Lieutenant Governor in Council may make regulations for the purposes of section 2 (5) (c) [*agreements this Act does not apply to*] of this Act,

(a) prescribing agreements entered into by the government of British Columbia or the government of Canada and the government of another jurisdiction in or outside Canada, and

(b) respecting the application of this Act to an arbitration under a prescribed agreement.

Transition

70 (1) This Act applies to an arbitral proceeding if the arbitral proceeding is commenced on or after the date this section comes into force.

(2) For the purposes of an arbitral proceeding to which this Act applies, a reference in the arbitration agreement to any of the following Acts is deemed to be a reference to this Act:

(a) the Arbitration Act, R.S.B.C. 1979, c. 18;

(b) the Commercial Arbitration Act, R.S.B.C. 1996, c. 55;

(c) the Arbitration Act, R.S.B.C. 1996, c. 55.

PART 10 – VALIDATION PROVISION, REPEAL AND CONSEQUENTIAL AND RELATED AMENDMENTS

Retroactive validation

71. (1) In this section:

"relevant regulation", in relation to a specified arbitration, means the regulation that prescribed the agreement described in the definition of "specified arbitration";

"specified arbitration" means an arbitration under an agreement prescribed by a regulation described in subsection (2).

(2) A regulation enacted by the Lieutenant Governor in Council under section 2 (4) (d) of the Arbitration Act, R.S.B.C. 1996, c. 55, that would have been validly enacted had this Act been in force when the regulation was made is conclusively deemed to have been validly enacted.

(3) All things done under the Arbitration Act, R.S.B.C. 1996, c. 55, in relation to a specified arbitration that would have been validly done had this Act been in force when the relevant regulation was made are conclusively deemed to have been validly done.

(4) This section is retroactive to the extent necessary to give full force and effect to its provisions and must not be construed as lacking retroactive effect in relation to any matter because it makes no specific reference to that matter.

Repeal

Section(s)	Affected Act
72	Arbitration Act, R.S.B.C. 1996, c. 55

Consequential and Related Amendments

73-74.	Family Law Act
75.	Family Maintenance Enforcement Act
76-80.	International Commercial Arbitration Act

Amendment to this Act

81.	Arbitration Act, S.B.C. 2020, c. 2

Commencement

82. The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 Provisions of Act	Column 2 Commencement
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 1 to 80	By regulation of the Lieutenant Governor in Council
3	Section 81	The date of Royal Assent or the date that section 25 of the Attorney General Statutes Amendment Act, 2018, S.B.C. 2018, c. 49, comes into force, whichever is later.

ANNEX V

INTERNATIONAL COMMERCIAL ARBITRATION ACT *

RSBC 1996, Chapter 233

PART 1 – APPLICATION AND INTERPRETATION

Scope of application

1 (1) This Act applies to international commercial arbitration, subject to any agreement which is in force between Canada and any other state or states and which applies in British Columbia.

(2) This Act, except sections 8, 9, 17.08, 17.09, 17.10, 35 and 36, applies only if the place of arbitration is in British Columbia.

(3) An arbitration is international if

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different states,

(b) one of the following places is located outside the state in which the parties have their places of business:

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed;

(iii) the place with which the subject matter of the dispute is most closely connected, or

(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one state.

(4) For the purposes of subsection (3),

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement, and

(b) if a party does not have a place of business, reference is to be made to the party's habitual residence.

(5) For the purposes of subsection (3), the provinces and territories of Canada must be considered one state.

(6) An arbitration is commercial if it arises out of a relationship of a commercial nature including, but not limited to, the following:

(a) a trade transaction for the supply or exchange of goods or services;

(b) a distribution agreement;

(c) a commercial representation or agency;

(d) an exploitation agreement or concession;

(e) a joint venture or other related form of industrial or business cooperation;

(f) the carriage of goods or passengers by air, sea, rail or road;

(g) the construction of works;

(h) insurance;

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* Assented to 17 June 1986; in force 21 April 1997; last amended on 1 September 2020. Official version. See: <http://canlii.ca/t/844k>.

(i) licensing;
(j) factoring;
(k) leasing;
(l) consulting;
(m) engineering;
(n) financing;
(o) banking;
(p) investing.

(7) If an arbitration agreement respecting an international commercial arbitration contains a reference to the *Arbitration Act*, that reference is deemed to be a reference to this Act.

(8) This Act does not affect any other law in force in British Columbia by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only in accordance with provisions other than those of this Act.

Definitions and interpretation

2 (1) For the purposes of this Act:

"arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

"arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

"Chief Justice" means the Chief Justice of the Supreme Court or his or her designate;

"court" means a body or an organ of the judicial system of a state;

"party" means a party to an arbitration agreement and includes a person claiming through or under a party;

"Supreme Court" means the Supreme Court of British Columbia.

(2) Where this Act, except section 28, leaves the parties free to determine a certain issue, that freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.

(3) Where this Act

(a) refers to the fact that the parties have agreed or that they may agree, or

(b) in any other way refers to an agreement of the parties,

that agreement includes any arbitration rules referred to in that agreement.

(4) Where this Act, other than section 25 (1) or 32 (2) (a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to that counterclaim.

Receipt of written communications

3 (1) Unless otherwise agreed by the parties,

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at the addressee's place of business, habitual residence or mailing address, and

(b) the communication is deemed to have been received on the day it is so delivered.

(2) If none of the places referred to in subsection (1)(a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered mail or by any other means which provides a record of the attempt to deliver it.

(3) This section does not apply to written communications in respect of court proceedings.

Waiver of right to object

4 (1) A party who knows that

(a) any provision of this Act, or

(b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating an objection to noncompliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, is deemed to have waived the right to object.

(2) In subsection (1) (a), "any provision of this Act" means any provision of this Act in respect of which the parties may otherwise agree.

Extent of judicial intervention

5 In matters governed by this Act,

(a) a court must not intervene unless so provided in this Act, and

(b) an arbitral proceeding of an arbitral tribunal or an order, ruling or arbitral award made by an arbitral tribunal must not be questioned, reviewed or restrained by a proceeding under the *Judicial Review Procedure Act* or otherwise except to the extent provided in this Act.

International origin and general principles

6 (1) In interpreting this Act, a court or arbitral tribunal

(a) must have regard to the international origins of the Act, the need to promote uniformity in its application and the observance of good faith, and

(b) may have regard to the following:

(i) the Reports of the United Nations Commission on International Trade Law on the work of its eighteenth (1985) and thirty-ninth (2006) sessions (UN Docs A/40/17 and A/61/17);

(ii) the International Commercial Arbitration Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration (UN Doc A/CN.9/264);

(iii) the Commentary of the United Nations Commission on International Trade Law concerning the UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006 (UN Sales No. E.08.V.4).

(2) Questions concerning matters governed by this Act that are not expressly settled in this Act are to be settled in conformity with the general principles on which this Act is based.

PART 2 – ARBITRATION AGREEMENT

Definition of arbitration agreement

7 (1) In this Act,

"arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes that have arisen or that may arise between the parties in respect of a defined legal relationship, whether contractual or not;

"data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

"electronic communication" means any communication that the parties make by means of data messages.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement must be in writing.

(4) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct or by other means.

(5) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained in the electronic communication is accessible so as to be usable for subsequent reference.

(6) An arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(7) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement in writing if the reference is such as to make that arbitration clause part of the contract.

Stay of legal proceedings

8 (1) If a party to an arbitration agreement commences legal proceedings in a court against another party to the agreement in respect of a matter agreed to be submitted to arbitration, a party to the legal proceedings may, before submitting the party's first statement on the substance of the dispute, apply to that court to stay the proceedings.

(2) In an application under subsection (1), the court must make an order staying the legal proceedings unless it determines that the arbitration agreement is null and void, inoperative or incapable of being performed.

(3) Even if an application has been brought under subsection (1) and even if the issue is pending before the court, an arbitration may be commenced or continued and an arbitral award made.

Arbitration agreement and interim measures by court

9 It is not incompatible with an arbitration agreement for a party to request from a court, before or during arbitral proceedings, an interim measure of protection and for a court to grant that measure.

PART 3 – COMPOSITION OF ARBITRAL TRIBUNAL

Number of arbitrators

10 (1) The parties are free to determine the number of arbitrators.

(2) Failing the determination referred to in subsection (1), the number of arbitrators is 3.

Appointment of arbitrators

11 (1) A person of any nationality may be an arbitrator.

(2) Subject to subsections (6) and (7), the parties are free to agree on a procedure for appointing an arbitral tribunal.

(3) Failing any agreement referred to in subsection (2), in an arbitration with 3 arbitrators, each party must appoint one arbitrator, and the 2 appointed arbitrators must appoint the third arbitrator.

(4) If the appointment procedure in subsection (3) applies and

(a) a party fails to appoint an arbitrator within 30 days after receipt of a request to do so from the other party, or

(b) the 2 appointed arbitrators fail to agree on the third arbitrator within 30 days after their appointment,

the appointment must be made, on request of a party, by the Chief Justice.

(5) Failing any agreement referred to in subsection (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator, the appointment must be made, on request of a party, by the Chief Justice.

(6) If, under an appointment procedure agreed on by the parties,

(a) a party fails to act as required under that procedure,

(b) the parties, or 2 appointed arbitrators, fail to reach an agreement expected of them under that procedure, or

(c) a third party fails to perform any function entrusted to the third party under that procedure,

a party may request the Chief Justice to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(7) A decision on a matter entrusted by subsection (4), (5) or (6) to the Chief Justice is final and is not subject to appeal.

(8) The Chief Justice, in appointing an arbitrator, must have due regard to

(a) any qualifications required of the arbitrator by the agreement of the parties, and

(b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(9) Unless the parties have previously agreed to the appointment of a sole or third arbitrator who is of the same nationality as any of the parties, the Chief Justice must not appoint a sole or third arbitrator who is of the same nationality as that of any of the parties.

Grounds for challenge

12 (1) When a person is approached in connection with his or her possible appointment as an arbitrator, the person must disclose any circumstances likely to give rise to justifiable doubts as to the person's independence or impartiality.

(2) An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, must, without delay, disclose to the parties any circumstances referred to in subsection (1) unless they have already been informed of them by the arbitrator.

(3) An arbitrator may be challenged only if

(a) circumstances exist that give rise to justifiable doubts as to the arbitrator's independence or impartiality, or

(b) the arbitrator does not possess the qualifications agreed to by the parties.

(3.1) For the purposes of subsection (3) (a), there are justifiable doubts as to the arbitrator's independence or impartiality only if there is a real danger of bias on the part of the arbitrator in conducting the arbitration.

(4) A party may challenge an arbitrator appointed by that party, or in whose appointment the party has participated, only for reasons of which the party becomes aware after the appointment has been made.

Challenge procedure

13 (1) Subject to subsection (4), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in subsection (1), a party who intends to challenge an arbitrator must, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in section 12 (3), send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under subsection (2) withdraws from office or the other party agrees to the challenge, the arbitral tribunal must decide on the challenge.

(4) If a challenge under any procedure agreed on by the parties or under the procedure under subsection (2) is not successful, the challenging party may request the Supreme Court, within 30 days after having received notice of the decision rejecting the challenge, to decide on the challenge.

(5) If a request is made under subsection (4), the Supreme Court may refuse to decide on the challenge, if it is satisfied that, under the procedure agreed on by the parties, the party making the request had an opportunity to have the challenge decided on by a party or entity other than the arbitral tribunal.

(6) The decision of the Supreme Court under subsection (4) is final and is not subject to appeal.

(7) While a request under subsection (4) is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an arbitral award.

Failure or impossibility to act

14 (1) The mandate of an arbitrator terminates if

(a) the arbitrator becomes in law or in fact unable to perform the arbitrator's functions or for other reasons fails to act without undue delay, and

(b) the arbitrator withdraws from office or the parties agree to the termination of the arbitrator's mandate.

(2) If a controversy remains concerning any of the grounds referred to in subsection (1)(a), a party may request the Supreme Court to decide on the termination of the mandate.

(3) A decision of the Supreme Court under subsection (2) is final and is not subject to appeal.

(4) If, under this section or section 13 (3), an arbitrator withdraws from office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this section or section 12 (3).

Termination of mandate and substitution of arbitrator

15 (1) In addition to the circumstances referred to in section 13 or 14, the mandate of an arbitrator terminates

(a) if the arbitrator withdraws from office for any reason, or

(b) by or pursuant to agreement of the parties.

(2) If the mandate of an arbitrator terminates, a substitute arbitrator must be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties,

(a) if the sole or presiding arbitrator is replaced, any hearings previously held must be repeated, and

(b) if an arbitrator, other than the sole or presiding arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made before the replacement of an arbitrator under this section is not invalid solely because there has been a change in the composition of the tribunal.

PART 4 – JURISDICTION OF ARBITRAL TRIBUNAL

Competence of arbitral tribunal to rule on its jurisdiction

16 (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,

(a) an arbitration clause which forms part of a contract must be treated as an agreement independent of the other terms of the contract, and

(b) a decision by the arbitral tribunal that the contract is null and void must not entail, as a matter of law, the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction must be raised not later than the submission of the statement of defence; however, a party is not precluded from raising such a plea by the fact that the party has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in subsection (2) or (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal may rule on a plea referred to in subsection (2) or (3) either as a preliminary question or in an award on the merits.

(6) If the arbitral tribunal rules as a preliminary question on a plea referred to in subsection (2) or (3), any party may request the Supreme Court, within 30 days after having received notice of that ruling, to decide the matter.

(7) The decision of the Supreme Court under subsection (6) is final and is not subject to appeal.

(8) While a request under subsection (6) is pending, the arbitral tribunal may continue the arbitral proceedings and make an arbitral award.

PART 4.1 – INTERIM MEASURES AND PRELIMINARY ORDERS

Division 1 – Interim Measures

Power of arbitral tribunal to order interim measures

17 (1) Unless otherwise agreed by the parties and subject to section 17.01, the arbitral tribunal may, at the request of a party, grant an interim measure.

(2) In this Act, "interim measure" means any temporary measure, whether in the form of an arbitral award or in another form, by which, at any time before the issuance of the arbitral award by which the dispute is finally decided, the arbitral tribunal orders a party to

(a) maintain or restore the status quo pending determination of the dispute,

(b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself,

(c) provide a means of preserving assets out of which a subsequent arbitral award may be satisfied,

(d) preserve evidence that may be relevant and material to the resolution of the dispute, or

(e) provide appropriate security for costs in connection with arbitral proceedings.

Conditions for granting interim measures

17.01 (1) The party requesting an interim measure referred to in section 17 (2) (a), (c) or (e) must satisfy the arbitral tribunal that

(a) harm not adequately reparable by an award of damages or other monetary award is likely to result if the measure is not ordered,

(b) the harm referred to in paragraph (a) substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted, and

(c) there is a reasonable possibility that the requesting party will succeed on the merits of the claim.

(2) A determination of an arbitral tribunal under subsection (1) (c) does not affect the discretion of the arbitral tribunal in making any subsequent determination.

(3) The requirements in subsection (1) apply, only to the extent the arbitral tribunal considers appropriate, to a request for an interim measure referred to in section 17 (2) (b) or (d).

Division 2 – Preliminary Orders

Applications for preliminary orders and conditions for granting preliminary orders
17.02 (1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(2) Subject to subsection (3), the arbitral tribunal may grant a preliminary order if the arbitral tribunal considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the interim measure.

(3) Section 17.01 applies to an application for a preliminary order and, for that purpose, the harm to be assessed under section 17.01 (1) (a) and (b) is the harm likely to result from the order being granted or not.

Specific regime for preliminary orders
17.03 (1) Immediately after the arbitral tribunal makes a determination in respect of an application for a preliminary order, the arbitral tribunal must give notice to all the parties of the following:

(a) the request for the interim measure;

(b) the application for the preliminary order;

(c) the preliminary order, if any;

(d) all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation to a matter referred to in paragraph (a), (b) or (c).

(2) At the same time, the arbitral tribunal must give an opportunity to any party against whom a preliminary order is directed to present the party's case at the earliest practicable time.

(3) The arbitral tribunal must decide promptly on any objection to a preliminary order.

(4) A preliminary order expires 20 days after the date on which it was issued by the arbitral tribunal.

(5) After the party against whom a preliminary order is directed has been given notice and an opportunity to present its case, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order.

(6) A preliminary order

(a) is binding on the parties but is not subject to enforcement by a court, and

(b) is not an arbitral award.

Division 3 – Provisions Applicable to Interim Measures and Preliminary Orders

Modification, suspension or termination of interim measures and preliminary orders
17.04 On application of any party or, in exceptional circumstances and with prior notice to the parties, on the arbitral tribunal's own initiative, an arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted.

Provision of security
17.05 (1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

(2) The arbitral tribunal must require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

Disclosure
17.06 (1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which an interim measure was requested or granted.

(2) The party applying for a preliminary order must disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order.

(3) The disclosure obligation under subsection (2) continues until the party against whom the preliminary order has been requested has had an opportunity to present its case.

(4) After the party against whom a preliminary order has been requested has had an opportunity to present its case, the arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the preliminary order was requested or granted.

Costs and damages
17.07 (1) The party requesting an interim measure or applying for a preliminary order is liable for any costs and damages caused by the interim measure or the preliminary order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted.

(2) The arbitral tribunal may award the costs and damages referred to in subsection (1) at any time during the arbitral proceedings.

Division 4 – Recognition and Enforcement of Interim Measures

Recognition and enforcement
17.08 (1) Subject to section 17.09, an interim measure issued by an arbitral tribunal must be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced on application to the competent court irrespective of the state in which the interim measure was issued.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure must promptly inform the court of any modification, suspension or termination of that interim measure.

(3) The court of the state where recognition or enforcement is sought may, if that court considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

Grounds for refusing recognition or enforcement

17.09 (1) Recognition or enforcement of an interim measure may be refused only

(a) at the request of the party against whom the interim measure is directed if the court is satisfied that

(i) such refusal is warranted on the grounds referred to in section 36 (1) (a) (i), (ii), (iii) or (iv),

(ii) a decision of the arbitral tribunal with respect to the provision of security in connection with the interim measure has not been complied with, or

(iii) the interim measure has been suspended or terminated by the arbitral tribunal or, where so empowered, by a court of the state in which the arbitration takes place or under the law of which that interim measure was granted, or

(b) if the court finds that

(i) the interim measure is incompatible with the powers conferred upon the court, unless the court decides to reformulate the interim measure to the extent necessary to adapt the interim measure to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance, or

(ii) any of the grounds referred to in section 36 (1) (b) (i) or (ii) apply to the recognition or enforcement of the interim measure.

(2) A determination made by the court on a ground referred to in subsection (1) is effective only for the purposes of the application to recognize or enforce the interim measure.

(3) The court where recognition or enforcement is sought may not, in making a determination on a ground referred to in subsection (1), undertake a review of the substance of the interim measure.

Division 5 – Court-Ordered Interim Measures

Court-ordered interim measures

17.10 (1) A court has the same powers to issue an interim measure in relation to arbitral proceedings, irrespective of whether the place of those proceedings is in British Columbia, as that court has in relation to court proceedings.

(2) The court must exercise the powers referred to in subsection (1) in accordance with its own procedures in consideration of the specific features of international arbitration.

(3) When requested to grant an interim measure, the court may, if it considers it proper, refer the request to an arbitral tribunal.

PART 5 – CONDUCT OF ARBITRAL PROCEEDINGS

Equal treatment of parties

18 The parties must be treated with equality and each party must be given a reasonable opportunity to present their case.

Determination of rules of procedure
19 (1) Subject to this Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing any agreement referred to in subsection (1), the arbitral tribunal may, subject to this Act, conduct the arbitration in the manner it considers appropriate.

(3) The power of the arbitral tribunal under subsection (2) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Place of arbitration
20 (1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in subsection (1), the place of arbitration must be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Despite subsection (1), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

Commencement of arbitral proceedings
21 Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Representation in arbitral proceedings
21.01 (1) A party may be represented in arbitral proceedings by any person of that party's choice, including, but not limited to, a legal practitioner from another state.

(2) Section 15 of the *Legal Profession Act* does not apply to a person who

(a) is not a member of the Law Society of British Columbia, and

(b) does one or more of the following:

(i) appears as counsel or advocate in arbitral proceedings;

(ii) gives legal advice concerning arbitral proceedings;

(iii) prepares statements, documents or other materials in connection with arbitral proceedings.

Language
22 (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings.

(2) Failing any agreement referred to in subsection (1), the arbitral tribunal must determine the language or languages to be used in the arbitral proceedings.

(3) The agreement or determination, unless otherwise specified, applies to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.

(4) The arbitral tribunal may order that any documentary evidence must be accompanied by a translation into the language or languages agreed on by the parties or determined by the arbitral tribunal.

Statements of claim and defence

23 (1) Within the period of time agreed on by the parties or determined by the arbitral tribunal, the claimant must state the facts supporting the claim, the points at issue and the relief or remedy sought, and the respondent must state the respondent's defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement a claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

Hearings and written proceedings

24 (1) Unless otherwise agreed by the parties, the arbitral tribunal must decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings must be conducted on the basis of documents and other materials.

(2) Unless the parties have agreed that no oral hearings are to be held, the arbitral tribunal must hold oral hearings at an appropriate stage of the proceedings, if so requested by a party.

(3) The parties must be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of inspection of documents, goods or other property.

(4) All statements, documents or other information supplied to, or applications made to, the arbitral tribunal by one party must be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision is to be communicated to the parties.

(5) [Repealed 2018-8-14.]

Default of a party

25 (1) Unless otherwise agreed by the parties, if, without showing sufficient cause, the claimant fails to communicate the statement of claim in accordance with section 23 (1), the arbitral tribunal must terminate the proceedings.

(2) Unless otherwise agreed by the parties, if, without showing sufficient cause, the respondent fails to communicate the statement of defence in accordance with section 23 (1), the arbitral tribunal must continue the proceedings without treating that failure in itself as an admission of the claimant's allegations.

(3) Unless otherwise agreed by the parties, if, without showing sufficient cause, a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

Expert appointed by arbitral tribunal

26 (1) Unless otherwise agreed by the parties, the arbitral tribunal may

(a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and

(b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for the expert's inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert must, after delivery of the expert's written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to the expert and to present expert witnesses in order to testify on the points at issue.

(3) Unless otherwise agreed by the parties, the expert must, on the request of a party, make available to that party, for examination, all documents, goods or other property in the expert's possession with which the expert was provided in order to prepare the expert's report.

Court assistance in taking evidence

27 The arbitral tribunal, or a party with the approval of the arbitral tribunal, may request from the Supreme Court assistance in taking evidence and the court may execute the request within its competence and according to its rules on taking evidence.

Enforcement of consolidation agreements

27.01 (1) If all parties to 2 or more arbitral proceedings have agreed to consolidate those proceedings, a party, with notice to the other parties, may apply to the Supreme Court for an order that the proceedings be consolidated as agreed to by the parties.

(2) Subsection (1) does not limit the parties' ability to consolidate arbitral proceedings without a court order.

(3) If all parties to the arbitral proceedings have agreed to consolidate the proceedings but have not agreed, by adopting procedural rules or otherwise,

(a) to the designation of parties as claimants or respondents or a method for making those designations, or

(b) to the method for determining the composition of the arbitral tribunal,

the court may, on application under subsection (1) but subject to subsection (4), make an order deciding either or both of those matters.

(4) If the arbitral proceedings are under different arbitration agreements, the court must not make an order under this section unless, by their arbitration agreements or otherwise, the parties have agreed

(a) to the same place of arbitration or a method for determining a single place of arbitration for the consolidated proceedings in British Columbia,

(b) to the same procedural rules or a method for determining a single set of procedural rules for the conduct of the consolidated proceedings, and

(c) either

(i) to have the consolidated proceedings administered by the same arbitral institution, or

(ii) to have the consolidated proceedings not be administered by any arbitral institution.

(5) In making an order under this section, the court may have regard to any circumstances it considers relevant, including

(a) whether one or more arbitrators have been appointed in one or more of the arbitral proceedings,

(b) whether the applicant delayed applying for the order, and

(c) whether any material prejudice to any of the parties or any injustice may result from making the order.

PART 6 – MAKING OF ARBITRAL AWARD AND TERMINATION OF PROCEEDINGS

Rules applicable to substance of dispute

28 (1) The arbitral tribunal must decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute.

(2) Any designation by the parties of the law or legal system of a given state must be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules.

(3) Failing any designation of the law under subsection (1) by the parties, the arbitral tribunal must apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

(4) The arbitral tribunal may decide ex aequo et bono or as amiable compositeur only if the parties have expressly authorized it to do so.

(5) In all cases, the arbitral tribunal must decide in accordance with the terms of the contract and must take into account the usages of the trade applicable to the transaction.

Decision making by panel of arbitrators

29 (1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal must be made by a majority of all its members.

(2) Despite subsection (1), if authorized by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by a presiding arbitrator.

Settlement

30 (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal must terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms must be made in accordance with section 31 and must state that it is an arbitral award.

(4) An arbitral award on agreed terms has the same status and effect as any other arbitral award on the substance of the dispute.

Form and content of arbitral award

31 (1) An arbitral award must be made in writing and must be signed by the members of the arbitral tribunal.

(2) For the purposes of subsection (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal are sufficient if the reason for any omitted signature is stated.

(3) The arbitral award must state the reasons on which it is based, unless

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award must state its date and the place of arbitration as determined in accordance with section 20 and the award is deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy must be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make a partial arbitral award that finally determines any matter with respect to which it may make a final arbitral award.

(7) Unless otherwise agreed by the parties, the arbitral tribunal may award interest.

(8) Unless otherwise agreed by the parties, the costs of an arbitration are in the discretion of the arbitral tribunal which may, in awarding costs,

(a) include as costs,

(i) the fees and expenses of the arbitrators and expert witnesses,

(ii) legal fees and expenses,

(iii) any administration fees of an institution, and

(iv) any other expenses incurred in connection with the arbitral proceedings, and

(b) specify

(i) the party entitled to costs,

(ii) the party who must pay the costs,

(iii) the amount of costs or method of determining that amount, and

(iv) the manner in which the costs must be paid.

Termination of proceedings

32 (1) The arbitral proceedings are terminated by the final arbitral award or by an order of the arbitral tribunal under subsection (2).

(2) The arbitral tribunal must issue an order for the termination of the arbitral proceedings if

(a) the claimant withdraws the claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on the respondent's part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to sections 33 and 34 (4), the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings.

Correction and interpretation of award; additional award

33 (1) Within 30 days after receipt of the arbitral award, unless another period of time has been agreed on by the parties,

(a) a party may request the arbitral tribunal to correct in the arbitral award any computation errors, any clerical or typographical errors or any other errors of a similar nature, and

(b) a party may, if agreed by the parties, request the arbitral tribunal to give an interpretation of a specific point or part of the arbitral award.

(2) If the arbitral tribunal considers the request made under subsection (1) to be justified, it must make the correction or give the interpretation within 30 days after receipt of the request and the interpretation forms part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in subsection (1) (a), on its own initiative, within 30 days after the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party may request, within 30 days after receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under subsection (4) to be justified, it must make the additional arbitral award within 60 days.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it must make a correction, give an interpretation or make an additional arbitral award under subsection (2) or (4).

(7) Section 31 applies to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

PART 7 – RECOURSE AGAINST ARBITRAL AWARD

Application for setting aside arbitral award

34 (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with subsections (2) and (3).

(2) An arbitral award may be set aside by the Supreme Court only if

(a) the party making the application furnishes proof that

(i) a party to the arbitration agreement was under some incapacity,

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, the law of British Columbia,

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present the party's case,

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside, or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless that agreement was in conflict with a provision of this Act from which the parties cannot derogate, or, failing any agreement, was not in accordance with this Act, or

(b) the court finds that

(i) the subject matter of the dispute is not capable of settlement by arbitration under the law of British Columbia, or

(ii) the arbitral award is in conflict with the public policy in British Columbia.

(3) An application for setting aside may not be made after 3 months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) When asked to set aside an arbitral award the court may, if it is appropriate and it is requested by a party, adjourn the proceedings to set aside the arbitral award for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside the arbitral award.

PART 8 – RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

Recognition and enforcement

35 (1) Subject to this section and section 36, an arbitral award, irrespective of the state in which it was made, must be recognized as binding and, on application to the Supreme Court, must be enforced.

(2) Unless the court orders otherwise, the party relying on an arbitral award or applying for its enforcement must supply

(a) the duly authenticated original arbitral award or a duly certified copy of it, and

(b) the original arbitration agreement or a duly certified copy of it.

(3) If the arbitral award or arbitration agreement is not made in an official language of Canada, the party must supply a duly certified translation of it into an official language.

Grounds for refusing recognition or enforcement

36 (1) Recognition or enforcement of an arbitral award, irrespective of the state in which it was made, may be refused only

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that

(i) a party to the arbitration agreement was under some incapacity,

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, under the law of the state where the arbitral award was made,

(iii) the party against whom the arbitral award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present the party's case,

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the arbitral award which contains decisions on matters submitted to arbitration may be recognized and enforced,

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing any agreement, was not in accordance with the law of the state where the arbitration took place, or

(vi) the arbitral award has not yet become binding on the parties or has been set aside or suspended by a court of the state in which, or under the law of which, that arbitral award was made, or

(b) if the court finds that

(i) the subject matter of the dispute is not capable of settlement by arbitration under the law of British Columbia, or

(ii) the recognition or enforcement of the arbitral award would be contrary to the public policy in British Columbia.

(2) If an application for setting aside or suspension of an arbitral award has been made to a court referred to in subsection (1) (a) (vi), the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the arbitral award, order the other party to provide appropriate security.

(3) For the purposes of subsection (1) (b) (ii), third party funding for an arbitration is not contrary to the public policy in British Columbia.

(4) In subsection (3), "third party funding", in relation to an arbitration, means funding for the arbitration that is provided

(a) to a party to the arbitration agreement by a person who is not a party to that agreement, and

(b) in consideration of the person who provides the funding receiving a financial benefit if the funded party is successful in the arbitration.

PART 9 – GENERAL

Privacy and confidentiality

36.01 (1) Unless otherwise agreed by the parties, all hearings and meetings in arbitral proceedings must be held in private.

(2) Unless otherwise agreed by the parties, the parties and the arbitral tribunal must not disclose any of the following:

(a) proceedings, evidence, documents and information in connection with the arbitration that are not otherwise in the public domain;

(b) an arbitral award.

(3) Subsection (2) does not apply if disclosure is

(a) required by law,

(b) required to protect or pursue a legal right, including for the purposes of preparing and presenting a claim or defence in the arbitral proceedings or enforcing or challenging an arbitral award, or

(c) authorized by a competent court.

Immunity

36.02 An arbitrator is not liable for anything done or omitted in connection with an arbitration unless the act or omission is in bad faith or the arbitrator has engaged in intentional wrongdoing.

Repealed

37 [Repealed 2018-8-22.]

Offence Act

38 Section 5 of the *Offence Act* does not apply to this Act.

ANNEX VI

ONTARIO ARBITRATION ACT, 1991*

S.O. 1991, c. 17

INTRODUCTORY MATTERS

Definitions

1. In this Act,

"arbitration agreement" means an agreement by which two or more persons agree to submit to arbitration a dispute that has arisen or may arise between them; ("convention d'arbitrage")

"arbitrator" includes an umpire; ("arbitre")

"court", except in sections 6 and 7, means the Family Court or the Superior Court of Justice; ("tribunal judiciaire")

"family arbitration" means an arbitration that,

(a) deals with matters that could be dealt with in a marriage contract, separation agreement, cohabitation agreement or paternity agreement under Part IV of the *Family Law Act*, and

(b) is conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction; ("arbitrage familial")

"family arbitration agreement" and "family arbitration award" have meanings that correspond to the meaning of "family arbitration". ("convention d'arbitrage familial", "sentence d'arbitrage familial").

Application of Act

Arbitrations conducted under agreements

2. (1) This Act applies to an arbitration conducted under an arbitration agreement unless,

(a) the application of this Act is excluded by law; or

(b) the *International Commercial Arbitration Act* applies to the arbitration.

Transition, existing agreements

(2) This Act applies to an arbitration conducted under an arbitration agreement made before the day this Act comes into force, if the arbitration is commenced after that day.

Arbitrations conducted under statutes

(3) This Act applies, with necessary modifications, to an arbitration conducted in accordance with another Act, unless that Act provides otherwise; however, in the event of conflict between this Act and the other Act or regulations made under the other Act, the other Act or the regulations prevail.

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* Current version in effect 22 March 2017. See: <http://canlii.ca/t/2sh>.

Transition, arbitrations already commenced

(4) Despite its repeal by section 58, the *Arbitrations Act*, as it read on the 31st day of December, 1991, continues to apply to arbitrations commenced on or before that day.

Family arbitrations, agreements and awards

2.1 (1) Family arbitrations, family arbitration agreements and family arbitration awards are governed by this Act and by the *Family Law Act*.

Conflict

(2) In the event of conflict between this Act and the *Family Law Act*, the *Family Law Act* prevails.

Other third-party decision-making processes in family matters

2.2. (1) When a decision about a matter described in clause (a) of the definition of "family arbitration" in section 1 is made by a third person in a process that is not conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction,

(a) the process is not a family arbitration; and

(b) the decision is not a family arbitration award and has no legal effect.

Advice

(2) Nothing in this section restricts a person's right to obtain advice from another person.

Contracting out

3. The parties to an arbitration agreement may agree, expressly or by implication, to vary or exclude any provision of this Act except the following:

1. In the case of an arbitration agreement other than a family arbitration agreement,
   - i. subsection 5(4) ("*Scott v. Avery*" clauses),
   - ii. section 19 (equality and fairness),
   - iii. section 39 (extension of time limits),
   - iv. section 46 (setting aside award),
   - v. section 48 (declaration of invalidity of arbitration),
   - vi. section 50 (enforcement of award).
2. In the case of a family arbitration agreement,
   - i. the provisions listed in subparagraphs 1 i to vi,
   - ii. subsection 4 (2) (no deemed waiver of right to object),
   - iii. section 31 (application of law and equity),
   - iv. subsections 32 (3) and (4) (substantive law of Ontario or other Canadian jurisdiction), and
   - v. section 45 (appeals).

Waiver of right to object

4. (1) A party who participates in an arbitration despite being aware of non-compliance with a provision of this Act, except one mentioned in section 3, or with the arbitration agreement, and does not object to the non-compliance within the time limit provided or,

if none is provided, within a reasonable time, shall be deemed to have waived the right to object.

Exception, family arbitrations

(2) Subsection (1) does not apply to a family arbitration.

Arbitration agreements

5. (1) An arbitration agreement may be an independent agreement or part of another agreement.

Further agreements

(2) If the parties to an arbitration agreement make a further agreement in connection with the arbitration, it shall be deemed to form part of the arbitration agreement.

Oral agreements

(3) An arbitration agreement need not be in writing.

"*Scott v. Avery*" *clauses*

(4) An agreement requiring or having the effect of requiring that a matter be adjudicated by arbitration before it may be dealt with by a court has the same effect as an arbitration agreement.

Revocation

(5) An arbitration agreement may be revoked only in accordance with the ordinary rules of contract law.

COURT INTERVENTION

Court intervention limited

6. No court shall intervene in matters governed by this Act, except for the following purposes, in accordance with this Act:

1. To assist the conducting of arbitrations.
2. To ensure that arbitrations are conducted in accordance with arbitration agreements.
3. To prevent unequal or unfair treatment of parties to arbitration agreements.
4. To enforce awards.

Stay

7. (1) If a party to an arbitration agreement commences a proceeding in respect of a matter to be submitted to arbitration under the agreement, the court in which the proceeding is commenced shall, on the motion of another party to the arbitration agreement, stay the proceeding.

Exceptions

(2) However, the court may refuse to stay the proceeding in any of the following cases:

1. A party entered into the arbitration agreement while under a legal incapacity.
2. The arbitration agreement is invalid.

3. The subject-matter of the dispute is not capable of being the subject of arbitration under Ontario law.
4. The motion was brought with undue delay.
5. The matter is a proper one for default or summary judgment.

Arbitration may continue

(3) An arbitration of the dispute may be commenced and continued while the motion is before the court.

Effect of refusal to stay

(4) If the court refuses to stay the proceeding,

(a) no arbitration of the dispute shall be commenced; and

(b) an arbitration that has been commenced shall not be continued, and anything done in connection with the arbitration before the court made its decision is without effect.

Agreement covering part of dispute

(5) The court may stay the proceeding with respect to the matters dealt with in the arbitration agreement and allow it to continue with respect to other matters if it finds that,

(a) the agreement deals with only some of the matters in respect of which the proceeding was commenced; and

(b) it is reasonable to separate the matters dealt with in the agreement from the other matters.

No appeal

(6) There is no appeal from the court's decision.

Powers of court

8. (1) The court's powers with respect to the detention, preservation and inspection of property, interim injunctions and the appointment of receivers are the same in arbitrations as in court actions.

Questions of law

(2) The arbitral tribunal may determine any question of law that arises during the arbitration; the court may do so on the application of the arbitral tribunal, or on a party's application if the other parties or the arbitral tribunal consent.

Appeal

(3) The court's determination of a question of law may be appealed to the Court of Appeal, with leave.

More than one arbitration

(4) On the application of all the parties to more than one arbitration the court may order, on such terms as are just,

(a) that the arbitrations be consolidated;

(b) that the arbitrations be conducted simultaneously or consecutively; or

(c) that any of the arbitrations be stayed until any of the others are completed.

Arbitral tribunal for consolidated arbitrations

(5) When the court orders that arbitrations be consolidated, it may appoint an arbitral tribunal for the consolidated arbitration; if all the parties agree as to the choice of arbitral tribunal, the court shall appoint it.

Consolidation by agreement of parties

(6) Subsection (4) does not prevent the parties to more than one arbitration from agreeing to consolidate the arbitrations and doing everything necessary to effect the consolidation.

COMPOSITION OF ARBITRAL TRIBUNAL

Number of arbitrators

9. If the arbitration agreement does not specify the number of arbitrators who are to form the arbitral tribunal, it shall be composed of one arbitrator.

Appointment of arbitral tribunal

10. (1) The court may appoint the arbitral tribunal, on a party's application, if,

(a) the arbitration agreement provides no procedure for appointing the arbitral tribunal; or

(b) a person with power to appoint the arbitral tribunal has not done so after a party has given the person seven days notice to do so.

No appeal

(2) There is no appeal from the court's appointment of the arbitral tribunal.

More than one arbitrator

(3) Subsections (1) and (2) apply, with necessary modifications, to the appointment of individual members of arbitral tribunals that are composed of more than one arbitrator.

Chair

(4) If the arbitral tribunal is composed of three or more arbitrators, they shall elect a chair from among themselves; if it is composed of two arbitrators, they may do so.

Duty of arbitrator

11. (1) An arbitrator shall be independent of the parties and shall act impartially.

Disclosure before accepting appointment

(2) Before accepting an appointment as arbitrator, a person shall disclose to all parties to the arbitration any circumstances of which he or she is aware that may give rise to a reasonable apprehension of bias.

Disclosure during arbitration

(3) An arbitrator who, during an arbitration, becomes aware of circumstances that may give rise to a reasonable apprehension of bias shall promptly disclose them to all the parties.

No revocation
12. A party may not revoke the appointment of an arbitrator.

Challenge
13. (1) A party may challenge an arbitrator only on one of the following grounds:
1. Circumstances exist that may give rise to a reasonable apprehension of bias.
2. The arbitrator does not possess qualifications that the parties have agreed are necessary.

Idem, arbitrator appointed by party
(2) A party who appointed an arbitrator or participated in his or her appointment may challenge the arbitrator only for grounds of which the party was unaware at the time of the appointment.

Procedure for challenge
(3) A party who wishes to challenge an arbitrator shall send the arbitral tribunal a statement of the grounds for the challenge, within fifteen days of becoming aware of them.

Removal or resignation of challenged arbitrator
(4) The other parties may agree to remove the challenged arbitrator, or the arbitrator may resign.

Decision of arbitral tribunal
(5) If the challenged arbitrator is not removed by the parties and does not resign, the arbitral tribunal, including the challenged arbitrator, shall decide the issue and shall notify the parties of its decision.

Application to court
(6) Within ten days of being notified of the arbitral tribunal's decision, a party may make an application to the court to decide the issue and, in the case of the challenging party, to remove the arbitrator.

Arbitration may continue
(7) While an application is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitration and make an award, unless the court orders otherwise.

Termination of arbitrator's mandate
14. (1) An arbitrator's mandate terminates when,
(a) the arbitrator resigns or dies;
(b) the parties agree to terminate it;
(c) the arbitral tribunal upholds a challenge to the arbitrator, ten days elapse after all the parties are notified of the decision and no application is made to the court; or
(d) the court removes the arbitrator under subsection 15(1).

Significance of resignation or agreement to terminate

(2) An arbitrator's resignation or a party's agreement to terminate an arbitrator's mandate does not imply acceptance of the validity of any reason advanced for challenging or removing him or her.

Removal of arbitrator by court

15. (1) The court may remove an arbitrator on a party's application under subsection 13(6) (challenge), or may do so on a party's application if the arbitrator becomes unable to perform his or her functions, commits a corrupt or fraudulent act, delays unduly in conducting the arbitration or does not conduct it in accordance with section 19 (equality and fairness).

Right of arbitrator

(2) The arbitrator is entitled to be heard by the court if the application is based on an allegation that he or she committed a corrupt or fraudulent act or delayed unduly in conducting the arbitration.

Directions

(3) When the court removes an arbitrator, it may give directions about the conduct of the arbitration.

Penalty

(4) If the court removes an arbitrator for a corrupt or fraudulent act or for undue delay, it may order that the arbitrator receive no payment for his or her services and may order that he or she compensate the parties for all or part of the costs, as determined by the court, that they incurred in connection with the arbitration before his or her removal.

Appeal re penalty

(5) The arbitrator or a party may, within thirty days after receiving the court's decision, appeal an order made under subsection (4) or the refusal to make such an order to the Court of Appeal, with leave of that court.

No other appeal

(6) Except as provided in subsection (5), there is no appeal from the court's decision or from its directions.

Appointment of substitute arbitrator

16. (1) When an arbitrator's mandate terminates, a substitute arbitrator shall be appointed, following the procedure that was used in the appointment of the arbitrator being replaced.

Directions

(2) When the arbitrator's mandate terminates, the court may, on a party's application, give directions about the conduct of the arbitration.

Court appointment

(3) The court may appoint the substitute arbitrator, on a party's application, if,

(a) the arbitration agreement provides no procedure for appointing the substitute arbitrator; or
(b) a person with power to appoint the substitute arbitrator has not done so after a party has given the person seven days notice to do so.

No appeal
(4) There is no appeal from the court's decision or from its directions.

Exception
(5) This section does not apply if the arbitration agreement provides that the arbitration is to be conducted only by a named arbitrator.

JURISDICTION OF ARBITRAL TRIBUNAL

Rulings and objections re jurisdiction

Arbitral tribunal may rule on own jurisdiction
17. (1) An arbitral tribunal may rule on its own jurisdiction to conduct the arbitration and may in that connection rule on objections with respect to the existence or validity of the arbitration agreement.

Independent agreement
(2) If the arbitration agreement forms part of another agreement, it shall, for the purposes of a ruling on jurisdiction, be treated as an independent agreement that may survive even if the main agreement is found to be invalid.

Time for objections to jurisdiction
(3) A party who has an objection to the arbitral tribunal's jurisdiction to conduct the arbitration shall make the objection no later than the beginning of the hearing or, if there is no hearing, no later than the first occasion on which the party submits a statement to the tribunal.

Party's appointment of arbitrator no bar to objection
(4) The fact that a party has appointed or participated in the appointment of an arbitrator does not prevent the party from making an objection to jurisdiction.

Time for objections that tribunal is exceeding authority
(5) A party who has an objection that the arbitral tribunal is exceeding its authority shall make the objection as soon as the matter alleged to be beyond the tribunal's authority is raised during the arbitration.

Later objections
(6) Despite section 4, if the arbitral tribunal considers the delay justified, a party may make an objection after the time limit referred to in subsection (3) or (5), as the case may be, has expired.

Ruling

(7) The arbitral tribunal may rule on an objection as a preliminary question or may deal with it in an award.

Review by court

(8) If the arbitral tribunal rules on an objection as a preliminary question, a party may, within thirty days after receiving notice of the ruling, make an application to the court to decide the matter.

No appeal

(9) There is no appeal from the court's decision.

Arbitration may continue

(10) While an application is pending, the arbitral tribunal may continue the arbitration and make an award.

Detention, preservation and inspection of property and documents

18. (1) On a party's request, an arbitral tribunal may make an order for the detention, preservation or inspection of property and documents that are the subject of the arbitration or as to which a question may arise in the arbitration, and may order a party to provide security in that connection.

Enforcement by court

(2) The court may enforce the direction of an arbitral tribunal as if it were a similar direction made by the court in an action.

CONDUCT OF ARBITRATION

Equality and fairness

19. (1) In an arbitration, the parties shall be treated equally and fairly.

Idem

(2) Each party shall be given an opportunity to present a case and to respond to the other parties' cases.

Procedure

20. (1) The arbitral tribunal may determine the procedure to be followed in the arbitration, in accordance with this Act.

Idem

(2) An arbitral tribunal that is composed of more than one arbitrator may delegate the determination of questions of procedure to the chair.

Evidence

21. Sections 14, 15 and 16 (protection of witnesses, evidence at hearings, notice of facts and opinions) of the *Statutory Powers Procedure Act* apply to the arbitration, with necessary modifications.

Time and place of arbitration
22. (1) The arbitral tribunal shall determine the time, date and place of arbitration, taking into consideration the parties' convenience and the other circumstances of the case.

Meetings for special purposes
(2) The arbitral tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or parties, or for inspecting property or documents.

Commencement of arbitration
23. (1) An arbitration may be commenced in any way recognized by law, including the following:
1. A party to an arbitration agreement serves on the other parties notice to appoint or to participate in the appointment of an arbitrator under the agreement.
2. If the arbitration agreement gives a person who is not a party power to appoint an arbitrator, one party serves notice to exercise that power on the person and serves a copy of the notice on the other parties.
3. A party serves on the other parties a notice demanding arbitration under the agreement.

Exercise of arbitral tribunal's powers
(2) The arbitral tribunal may exercise its powers when every member has accepted appointment.

Matters referred to arbitration
24. A notice that commences an arbitration without identifying the dispute shall be deemed to refer to arbitration all disputes that the arbitration agreement entitles the party giving the notice to refer.

Procedural directions
25. (1) An arbitral tribunal may require that the parties submit their statements within a specified period of time.

Contents of statements
(2) The parties' statements shall indicate the facts supporting their positions, the points at issue and the relief sought.

Documents and other evidence
(3) The parties may submit with their statements the documents they consider relevant, or may refer to the documents or other evidence they intend to submit.

Changes to statements
(4) The parties may amend or supplement their statements during the arbitration; however, the arbitral tribunal may disallow a change that is unduly delayed.

Oral statements

(5) With the arbitral tribunal's permission, the parties may submit their statements orally.

Directions of arbitral tribunal

(6) The parties and persons claiming through or under them shall, subject to any legal objection, comply with the arbitral tribunal's directions, including directions to,

(a) submit to examination on oath or affirmation with respect to the dispute;

(b) produce records and documents that are in their possession or power.

Enforcement by court

(7) The court may enforce the direction of an arbitral tribunal as if it were a similar direction made by the court in an action.

Hearings and written proceedings

26. (1) The arbitral tribunal may conduct the arbitration on the basis of documents or may hold hearings for the presentation of evidence and for oral argument; however, the tribunal shall hold a hearing if a party requests it.

Notice

(2) The arbitral tribunal shall give the parties sufficient notice of hearings and of meetings of the tribunal for the purpose of inspection of property or documents.

Communication to parties

(3) A party who submits a statement to the arbitral tribunal or supplies the tribunal with any other information shall also communicate it to the other parties.

Idem

(4) The arbitral tribunal shall communicate to the parties any expert reports or other documents on which it may rely in making a decision.

Party's failure to act

Failure to submit statement

27. (1) If the party who commenced the arbitration does not submit a statement within the period of time specified under subsection 25 (1), the arbitral tribunal may, unless the party offers a satisfactory explanation, make an award dismissing the claim.

Idem

(2) If a party other than the one who commenced the arbitration does not submit a statement within the period of time specified under subsection 25 (1), the arbitral tribunal may, unless the party offers a satisfactory explanation, continue the arbitration, but shall not treat the failure to submit a statement as an admission of another party's allegations.

Failure to appear or produce evidence

(3) If a party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may, unless the party offers a satisfactory explanation, continue the arbitration and make an award on the evidence before it.

Delay

(4) In the case of delay by the party who commenced the arbitration, the arbitral tribunal may make an award dismissing the claim or give directions for the speedy determination of the arbitration, and may impose conditions on its decision.

Jointly commenced arbitration

(5) If the arbitration was commenced jointly by all the parties, subsections (2) and (3) apply, with necessary modifications, but subsections (1) and (4) do not.

Counterclaim

(6) This section applies in respect of a counterclaim as if the party making it were the party who commenced the arbitration.

Appointment of expert

28. (1) An arbitral tribunal may appoint an expert to report to it on specific issues.

Information and documents

(2) The arbitral tribunal may require parties to give the expert any relevant information or to allow him or her to inspect property or documents.

Hearing

(3) At the request of a party or of the arbitral tribunal, the expert shall, after making the report, participate in a hearing in which the parties may question the expert and present the testimony of another expert on the subject-matter of the report.

Witnesses and taking of evidence

Notice to witness

29. (1) A party may serve a person with a notice, issued by the arbitral tribunal, requiring the person to attend and give evidence at the arbitration at the time and place named in the notice.

Service of notice

(2) The notice has the same effect as a notice in a court proceeding requiring a witness to attend at a hearing or produce documents, and shall be served in the same way.

Power of arbitral tribunal

(3) An arbitral tribunal has power to administer an oath or affirmation and power to require a witness to testify under oath or affirmation.

Court orders and directions

(4) On the application of a party or of the arbitral tribunal, the court may make orders and give directions with respect to the taking of evidence for an arbitration as if it were a court proceeding.

Restriction

30. No person shall be compelled to produce information, property or documents or to give evidence in an arbitration that the person could not be compelled to produce or give in a court proceeding.

AWARDS AND TERMINATION OF ARBITRATION

Application of law and equity

31. An arbitral tribunal shall decide a dispute in accordance with law, including equity, and may order specific performance, injunctions and other equitable remedies.

Conflict of laws

32. (1) In deciding a dispute, an arbitral tribunal shall apply the rules of law designated by the parties or, if none are designated, the rules of law it considers appropriate in the circumstances.

Designation by parties

(2) A designation by the parties of the law of a jurisdiction refers to the jurisdiction's substantive law and not to its conflict of laws rules, unless the parties expressly indicate that the designation includes them.

Exception, family arbitration

(3) Subsections (1) and (2) do not apply to a family arbitration.

Same

(4) In a family arbitration, the arbitral tribunal shall apply the substantive law of Ontario, unless the parties expressly designate the substantive law of another Canadian jurisdiction, in which case that substantive law shall be applied.

Application of arbitration agreement, contract and usages of trade

33. The arbitral tribunal shall decide the dispute in accordance with the arbitration agreement and the contract, if any, under which the dispute arose, and may also take into account any applicable usages of trade.

Decision of arbitral tribunal

34. If an arbitral tribunal is composed of more than one member, a decision of a majority of the members is the arbitral tribunal's decision; however, if there is no majority decision or unanimous decision, the chair's decision governs.

Mediation and conciliation
35. The members of an arbitral tribunal shall not conduct any part of the arbitration as a mediation or conciliation process or other similar process that might compromise or appear to compromise the arbitral tribunal's ability to decide the dispute impartially.

Settlement
36. If the parties settle the dispute during arbitration, the arbitral tribunal shall terminate the arbitration and, if a party so requests, may record the settlement in the form of an award.

Binding nature of award
37. An award binds the parties, unless it is set aside or varied under section 45 or 46 (appeal, setting aside award).

Form of award
38. (1) An award shall be made in writing and, except in the case of an award made on consent, shall state the reasons on which it is based.

Idem
(2) The award shall indicate the place where and the date on which it is made.

Formalities of execution
(3) The award shall be dated and shall be signed by all the members of the arbitral tribunal, or by a majority of them if an explanation of the omission of the other signatures is included.

Copies
(4) A copy of the award shall be delivered to each party.

Extension of time limits
39. The court may extend the time within which the arbitral tribunal is required to make an award, even if the time has expired.

Explanation
40. (1) A party may, within thirty days after receiving an award, request that the arbitral tribunal explain any matter.

Court order
(2) If the arbitral tribunal does not give an explanation within fifteen days after receiving the request, the court may, on the party's application, order it to do so.

Interim awards
41. The arbitral tribunal may make one or more interim awards.

More than one final award
42. The arbitral tribunal may make more than one final award, disposing of one or more matters referred to arbitration in each award.

Termination of arbitration

43. (1) An arbitration is terminated when,

(a) the arbitral tribunal makes a final award in accordance with this Act, disposing of all matters referred to arbitration;

(b) the arbitral tribunal terminates the arbitration under subsection (2), (3), 27(1) (claimant's failure to submit statement) or 27(4) (delay); or

(c) an arbitrator's mandate is terminated, if the arbitration agreement provides that the arbitration shall be conducted only by that arbitrator.

Order by arbitral tribunal

(2) An arbitral tribunal shall make an order terminating the arbitration if the claimant withdraws the claim, unless the respondent objects to the termination and the arbitral tribunal agrees that the respondent is entitled to obtain a final settlement of the dispute.

Idem

(3) An arbitral tribunal shall make an order terminating the arbitration if,

(a) the parties agree that the arbitration should be terminated; or

(b) the arbitral tribunal finds that continuation of the arbitration has become unnecessary or impossible.

Revival

(4) The arbitration may be revived for the purposes of section 44 (corrections) or subsection 45(5) (appeal), 46(7), 46(8) (setting aside award) or 54(3) (costs).

Death

(5) A party's death terminates the arbitration only with respect to claims that are extinguished as a result of the death.

Corrections and additional awards

Errors, injustices caused by oversights

44. (1) An arbitral tribunal may, on its own initiative within thirty days after making an award or at a party's request made within thirty days after receiving the award,

(a) correct typographical errors, errors of calculation and similar errors in the award; or

(b) amend the award so as to correct an injustice caused by an oversight on the part of the arbitral tribunal.

Additional awards

(2) The arbitral tribunal may, on its own initiative at any time or at a party's request made within thirty days after receiving the award, make an additional award to deal with a claim that was presented in the arbitration but omitted from the earlier award.

No hearing necessary

(3) The arbitral tribunal need not hold a hearing or meeting before rejecting a request made under this section.

REMEDIES

Appeals

Appeal on question of law
45. (1) If the arbitration agreement does not deal with appeals on questions of law, a party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that,

(a) the importance to the parties of the matters at stake in the arbitration justifies an appeal; and

(b) determination of the question of law at issue will significantly affect the rights of the parties.

Idem

(2) If the arbitration agreement so provides, a party may appeal an award to the court on a question of law.

Appeal on question of fact or mixed fact and law

(3) If the arbitration agreement so provides, a party may appeal an award to the court on a question of fact or on a question of mixed fact and law.

Powers of court

(4) The court may require the arbitral tribunal to explain any matter.

Idem

(5) The court may confirm, vary or set aside the award or may remit the award to the arbitral tribunal with the court's opinion on the question of law, in the case of an appeal on a question of law, and give directions about the conduct of the arbitration.

Family arbitration award

(6) Any appeal of a family arbitration award lies to,

(a) the Family Court in the areas where it has jurisdiction under subsection 21.1 (4) of the *Courts of Justice Act*;

(b) the Superior Court of Justice, in the rest of Ontario.

Setting aside award
46. (1) On a party's application, the court may set aside an award on any of the following grounds:

1. A party entered into the arbitration agreement while under a legal incapacity.
2. The arbitration agreement is invalid or has ceased to exist.
3. The award deals with a dispute that the arbitration agreement does not cover or contains a decision on a matter that is beyond the scope of the agreement.
4. The composition of the tribunal was not in accordance with the arbitration agreement or, if the agreement did not deal with that matter, was not in accordance with this Act.
5. The subject-matter of the dispute is not capable of being the subject of arbitration under Ontario law.

6. The applicant was not treated equally and fairly, was not given an opportunity to present a case or to respond to another party's case, or was not given proper notice of the arbitration or of the appointment of an arbitrator.
7. The procedures followed in the arbitration did not comply with this Act.
8. An arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias.
9. The award was obtained by fraud.
10. The award is a family arbitration award that is not enforceable under the *Family Law Act*.

Severable parts of award

(2) If paragraph 3 of subsection (1) applies and it is reasonable to separate the decisions on matters covered by the arbitration agreement from the impugned ones, the court shall set aside the impugned decisions and allow the others to stand.

Restriction

(3) The court shall not set aside an award on grounds referred to in paragraph 3 of subsection (1) if the party has agreed to the inclusion of the dispute or matter, waived the right to object to its inclusion or agreed that the arbitral tribunal has power to decide what disputes have been referred to it.

Idem

(4) The court shall not set aside an award on grounds referred to in paragraph 8 of subsection (1) if the party had an opportunity to challenge the arbitrator on those grounds under section 13 before the award was made and did not do so, or if those grounds were the subject of an unsuccessful challenge.

Deemed waiver

(5) The court shall not set aside an award on a ground to which the applicant is deemed under section 4 to have waived the right to object.

Exception

(6) If the ground alleged for setting aside the award could have been raised as an objection to the arbitral tribunal's jurisdiction to conduct the arbitration or as an objection that the arbitral tribunal was exceeding its authority, the court may set the award aside on that ground if it considers the applicant's failure to make an objection in accordance with section 17 justified.

Connected matters

(7) When the court sets aside an award, it may remove the arbitral tribunal or an arbitrator and may give directions about the conduct of the arbitration.

Court may remit award to arbitral tribunal

(8) Instead of setting aside an award, the court may remit it to the arbitral tribunal and give directions about the conduct of the arbitration.

Time limit
47. (1) An appeal of an award or an application to set aside an award shall be commenced within thirty days after the appellant or applicant receives the award, correction, explanation, change or statement of reasons on which the appeal or application is based.

Exception
(2) Subsection (1) does not apply if the appellant or applicant alleges corruption or fraud.

Declaration of invalidity of arbitration
48. (1) At any stage during or after an arbitration, on the application of a party who has not participated in the arbitration, the court may grant a declaration that the arbitration is invalid because,

(a) a party entered into the arbitration agreement while under a legal incapacity;
(b) the arbitration agreement is invalid or has ceased to exist;
(c) the subject-matter of the dispute is not capable of being the subject of arbitration under Ontario law; or
(d) the arbitration agreement does not apply to the dispute.

Injunction
(2) When the court grants the declaration, it may also grant an injunction against the commencement or continuation of the arbitration.

Further appeal
49. An appeal from the court's decision in an appeal of an award, an application to set aside an award or an application for a declaration of invalidity may be made to the Court of Appeal, with leave of that court.

Enforcement of award

Application
50. (1) A person who is entitled to enforcement of an award made in Ontario or elsewhere in Canada may make an application to the court to that effect.

Formalities
(2) The application shall be made on notice to the person against whom enforcement is sought, in accordance with the rules of court, and shall be supported by the original award or a certified copy.

Duty of court, award made in Ontario
(3) The court shall give a judgment enforcing an award made in Ontario unless,

(a) the thirty-day period for commencing an appeal or an application to set the award aside has not yet elapsed;
(b) there is a pending appeal, application to set the award aside or application for a declaration of invalidity;
(c) the award has been set aside or the arbitration is the subject of a declaration of invalidity; or

(d) the award is a family arbitration award.

Duty of court, award made elsewhere in Canada

(4) The court shall give a judgment enforcing an award made elsewhere in Canada unless,

(a) the period for commencing an appeal or an application to set the award aside provided by the laws of the province or territory where the award was made has not yet elapsed;

(b) there is a pending appeal, application to set the award aside or application for a declaration of invalidity in the province or territory where the award was made;

(c) the award has been set aside in the province or territory where it was made or the arbitration is the subject of a declaration of invalidity granted there;

(d) the subject-matter of the award is not capable of being the subject of arbitration under Ontario law; or

(e) the award is a family arbitration award.

Pending proceeding

(5) If the period for commencing an appeal, application to set the award aside or application for a declaration of invalidity has not yet elapsed, or if such a proceeding is pending, the court may,

(a) enforce the award; or

(b) order, on such conditions as are just, that enforcement of the award is stayed until the period has elapsed without such a proceeding being commenced, or until the pending proceeding is finally disposed of.

Speedy disposition of pending proceeding

(6) If the court stays the enforcement of an award made in Ontario until a pending proceeding is finally disposed of, it may give directions for the speedy disposition of the proceeding.

Unusual remedies

(7) If the award gives a remedy that the court does not have jurisdiction to grant or would not grant in a proceeding based on similar circumstances, the court may,

(a) grant a different remedy requested by the applicant; or

(b) in the case of an award made in Ontario, remit it to the arbitral tribunal with the court's opinion, in which case the arbitral tribunal may award a different remedy.

Powers of court

(8) The court has the same powers with respect to the enforcement of awards as with respect to the enforcement of its own judgments.

Family arbitration awards

50.1 Family arbitration awards are enforceable only under the *Family Law Act*.

GENERAL

Crown bound
51. This Act binds the Crown.

Limitation periods
52. (1) The law with respect to limitation periods applies to an arbitration as if the arbitration were an action and a claim made in the arbitration were a cause of action.

Preservation of rights
(2) If the court sets aside an award, terminates an arbitration or declares an arbitration to be invalid, it may order that the period from the commencement of the arbitration to the date of the order shall be excluded from the computation of the time within which an action may be brought on a cause of action that was a claim in the arbitration.

Enforcement of award
(3) An application to enforce an award shall not be commenced after the later of December 31, 2018 and the tenth anniversary of,

(a) the day the award was received; or

(b) if an application to set aside the award was commenced, the date on which the application was finally determined.

Service

Personal service of notice or document on individual
53. (1) A notice or other document may be served on an individual by leaving it with him or her.

Personal service on corporation
(2) A notice or other document may be served on a corporation by leaving it with an officer, director or agent of the corporation, or at a place of business of the corporation with a person who appears to be in control or management of the place.

Service by telephone transmission of facsimile
(3) A notice or other document may be served by sending it to the addressee by telephone transmission of a facsimile to the number that the addressee specified in the arbitration agreement or has furnished to the arbitral tribunal.

Service by mail
(4) If a reasonable effort to serve a notice or other document under subsection (1) or (2) is not successful and it is not possible to serve it under subsection (3), it may be sent by prepaid registered mail to the mailing address that the addressee specified in the arbitration agreement or furnished to the arbitral tribunal or, if none was specified or furnished, to the addressee's last-known place of business or residence.

Deemed time of receipt

(5) Unless the addressee establishes that the addressee, acting in good faith, through absence, illness or other cause beyond the addressee's control failed to receive the notice or other document until a later date, it shall be deemed to have been received,

(a) on the day it is given or transmitted, in the case of service under subsection (1), (2) or (3);

(b) on the fifth day after the day of mailing, in the case of service under subsection (4).

Order for substituted service or dispensing with service

(6) The court may make an order for substituted service or an order dispensing with service, in the same manner as under the rules of court, if the court is satisfied that it is necessary to serve the notice or other document to commence an arbitration or proceed towards the appointment of an arbitral tribunal and that it is impractical for any reason to effect prompt service under subsection (1), (2), (3) or (4).

Non-application to court proceedings

(7) This section does not apply to the service of documents in respect of court proceedings.

Costs

Power to award costs

54. (1) An arbitral tribunal may award the costs of an arbitration.

What constitutes costs

(2) The costs of an arbitration consist of the parties' legal expenses, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration.

Request for award dealing with costs

(3) If the arbitral tribunal does not deal with costs in an award, a party may, within thirty days of receiving the award, request that it make a further award dealing with costs.

Absence of award dealing with costs

(4) In the absence of an award dealing with costs, each party is responsible for the party's own legal expenses and for an equal share of the fees and expenses of the arbitral tribunal and of any other expenses related to the arbitration.

Costs consequences of failure to accept offer to settle

(5) If a party makes an offer to another party to settle the dispute or part of the dispute, the offer is not accepted and the arbitral tribunal's award is no more favourable to the second-named party than was the offer, the arbitral tribunal may take the fact into account in awarding costs in respect of the period from the making of the offer to the making of the award.

Disclosure of offer to arbitral tribunal

(6) The fact that an offer to settle has been made shall not be communicated to the arbitral tribunal until it has made a final determination of all aspects of the dispute other than costs.

Arbitrator's fees and expenses

55. The fees and expenses paid to an arbitrator shall not exceed the fair value of the services performed and the necessary and reasonable expenses actually incurred.

Assessment

Fees and expenses

56. (1) A party to an arbitration may have an arbitrator's account for fees and expenses assessed by an assessment officer in the same manner as a solicitor's bill under the *Solicitors Act*.

Costs

(2) If an arbitral tribunal awards costs and directs that they be assessed, or awards costs without fixing the amount or indicating how it is to be ascertained, a party to the arbitration may have the costs assessed by an assessment officer in the same manner as costs under the rules of court.

Idem

(3) In assessing the part of the costs represented by the fees and expenses of the arbitral tribunal, the assessment officer shall apply the same principles as in the assessment of an account under subsection (1).

Account already paid

(4) Subsection (1) applies even if the account has been paid.

Review by court

(5) On the application of a party to the arbitration, the court may review an assessment of costs or of an arbitrator's account for fees and expenses and may confirm the assessment, vary it, set it aside or remit it to the assessment officer with directions.

Idem

(6) On the application of an arbitrator, the court may review an assessment of his or her account for fees and expenses and may confirm the assessment, vary it, set it aside or remit it to the assessment officer with directions.

Time for application for review

(7) The application for review may not be made after the period specified in the assessment officer's certificate has elapsed or, if no period is specified, more than thirty days after the date of the certificate, unless the court orders otherwise.

Enforcement

(8) When the time during which an application for review may be made has expired and no application has been made, or when the court has reviewed the assessment and

made a final determination, the certificate may be filed with the court and enforced as if it were a judgment of the court.

Interest

57. Sections 127 to 130 (prejudgment and postjudgment interest) of the *Courts of Justice Act* apply to an arbitration, with necessary modifications.

Regulations

58. The Lieutenant Governor in Council may make regulations,

(a) requiring that every family arbitration agreement contain specified standard provisions;

(b) requiring that every arbitrator who conducts a family arbitration be a member of a specified dispute resolution organization or of a specified class of members of the organization;

(c) requiring every arbitrator who conducts a family arbitration to provide specified information about the award, not including the names of the parties or any other identifying information, to a specified person;

(d) requiring any arbitrator who conducts a family arbitration to have received training, approved by the Attorney General, that includes training in screening parties for power imbalances and domestic violence;

(e) requiring that every arbitrator who conducts a family arbitration shall,

(i) ensure that the parties are separately screened for power imbalances and domestic violence, by someone other than the arbitrator, and

(ii) review and consider the results of the screening before and during the family arbitration;

(f) requiring every arbitrator who conducts a family arbitration to create a record of the arbitration containing the specified matters, to keep the record for the specified period and to protect the confidentiality of the record;

(g) specifying standard provisions for the purpose of clause (a), dispute resolution organizations and classes for the purpose of clause (b), information for the purpose of clause (c), persons for the purpose of clause (c), matters for the purpose of clause (f) and a period for the purpose of clause (f).

59. *Omitted (provides for coming into force of provisions of this Act).*

60. *Omitted (enacts short title of this Act).*

ANNEX VII

INTERNATIONAL COMMERCIAL ARBITRATION ACT, 2017*

S.O. 2017, c. 2, Sch. 5

PART I. THE CONVENTION

Interpretation

1 Except as otherwise provided in this Act, words and expressions used in this Part have the same meaning as the corresponding words and expressions in the Convention.

Application of Convention

2 (1) Subject to this Act, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted by the United Nations Conference on International Commercial Arbitration in New York on 10 June 1958 and set out in Schedule 1[1], has force of law in Ontario in relation to arbitral awards or arbitration agreements in respect of differences arising out of commercial legal relationships.

Same

(2) Subsection (1) applies to arbitral awards and arbitration agreements whether made before or after the coming into force of this Act.

Determining application

(3) In determining whether the Convention applies to certain types of arbitral awards,

(a) an arbitral award made in a jurisdiction within Canada that is considered to be international in that jurisdiction is not considered to be a domestic award for the purpose of article I (1) of the Convention; and

(b) an arbitral award made in a jurisdiction within Canada that is not considered to be international in that jurisdiction is considered to be a domestic award for the purpose of article I (1) of the Convention.

Designation of court

3 For the purpose of seeking recognition and enforcement of an arbitral award pursuant to the Convention, application shall be made to the Superior Court of Justice.

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* Consolidation Period: From 22 March 2017 to the e-Laws currency date. Official version. See: <http://canlii.ca/t/901r>.

1. Schedule 1, which contains the text of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, is not reproduced in this Annex. The text of the Convention can be found in the International Handbook, supplement 29, December 1999, under New York Convention.

PART II. THE MODEL LAW

Interpretation
4 Except as otherwise provided in this Act, words and expressions used in this Part have the same meaning as the corresponding words and expressions in the Model Law.

Application of Model Law
5 (1) Subject to this Act, the Model Law on International Commercial Arbitration, adopted by the United Nations Commission on International Trade Law on 21 June 1985, as amended by the United Nations Commission on International Trade Law on 7 July 2006, set out in Schedule 2,[2] has force of law in Ontario.

Same
(2) With respect to article 7 of the Model Law, option I applies in Ontario; option II does not.

Same
(3) The Model Law applies to international commercial arbitration agreements and awards made in international commercial arbitrations, whether made before or after the coming into force of this Act.

Interpretation of Model Law
6 (1) For the purposes of subsection 5 (1), the words and expressions listed in Column 2 of the following table, as used in the provisions of the Model Law set out in Column 1 of the table, shall be read as the words and expressions listed in the corresponding row of Column 3 of the table.

Table

Column 1	Column 2	Column 3
article 1 (1)	"agreement in force between this State and any other State or States"	"an agreement that is in force in Ontario between Canada and any other country or countries"
articles 1 (2), 17 J, 27, 34 (2) (a) (i), 34 (2) (b) (ii), and 36(1) (b) (ii)	"this State"	"Ontario"
article 1 (3)	"different States" and "the State"	"different countries" and "the country", respectively
article 1 (5)	"any other law of this State"	"any other law of Ontario or laws of Canada that are in force in Ontario"

2. Schedule 2, which contains the text of the UNCITRAL Model Law on International Commercial Arbitration, is not reproduced in this Annex. The text of the Model Law can be found in the International Handbook, supplement 52, June 2008, under UNCITRAL Model Law on Arbitration.

articles 34 (2) (b) (i), and 36 (1) (b) (i)	"the law of this State"	"the law of Ontario and any laws of Canada that are in force in Ontario"
article 35 (2)	"this State"	"Canada"

Same, "court" or "competent court"

(2) "Court" or "competent court", when used in the Model Law in reference to an Ontario court, shall be read as a reference to the Superior Court of Justice unless the context requires otherwise.

Use of extrinsic material

(3) In applying the Model Law, recourse may be had to,

(a) the Reports of the United Nations Commission on International Trade Law on the work of its 18th (3 – 21 June 1985) and 39th (19 June – 7 July 2006) sessions (U.N. Docs. A/40/17 and A/61/17);

(b) the International Commercial Arbitration Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration (U.N. Doc A/CN.9/264); and

(c) the Commentary of the United Nations Commission on International Trade Law concerning the UNCITRAL Model Law on International Commercial Arbitration 1985 with Amendments as Adopted in 2006 (U.N. Sales No. E.08.V.4).

Rules applicable to substance of dispute

7 Despite article 28 (2) of the Model Law, if the parties fail to make a designation pursuant to article 28 (1) of the Model Law, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances respecting the dispute.

PART III. GENERAL

Enforcement of consolidation agreements

8 (1) If all parties to two or more arbitral proceedings have agreed to consolidate those proceedings, a party, with notice to the others, may apply to the Superior Court of Justice for an order that the proceedings be consolidated as agreed to by the parties.

Consolidation permissible without order

(2) Subsection (1) does not prohibit parties from consolidating arbitral proceedings without a court order.

Powers of court

(3) On an application under subsection (1), if all parties to the arbitral proceedings have agreed to consolidate the proceedings but have not agreed, through the adoption of procedural rules or otherwise, to the following matters, the court may, subject to subsection (4), make an order deciding either or both of those matters:

1. The designation of parties as claimants or respondents or a method for making those designations.
2. The method for determining the composition of the arbitral tribunal.

Same, limitation

(4) If the arbitral proceedings are under different arbitration agreements, no order shall be made under subsection (1) unless, by their arbitration agreements or otherwise, the parties have agreed,

(a) to the same place of arbitration or a method for determining a single place of arbitration for the consolidated proceeding within Ontario;

(b) to the same procedural rules or a method for determining a single set of procedural rules for the conduct of the consolidated proceedings; and

(c) either to have the consolidated proceedings administered by the same arbitral institution or to have the consolidated proceedings not be administered by any arbitral institution.

Relevant circumstances

(5) In making an order under this section, the court may have regard to any circumstances that it considers relevant, including whether,

(a) one or more arbitrators have been appointed in one or more of the arbitral proceedings;

(b) the applicant delayed applying for the order; or

(c) any material prejudice to any of the parties or any injustice may result from making an order.

Stay of proceedings

9 Where, pursuant to article II (3) of the Convention or article 8 of the Model Law, a court refers the parties to arbitration, the proceedings of the court are stayed with respect to the matters to which the arbitration relates.

Limitation period

10 No application under the Convention or the Model Law for recognition or enforcement (or both) of an arbitral award shall be made after the later of December 31, 2018 and the tenth anniversary of,

(a) the date on which the award was made; or

(b) if proceedings at the place of arbitration to set aside the award were commenced, the date on which the proceedings concluded.

Appeals re jurisdiction

11 (1) If, pursuant to article 16 (2) of the Model Law, an arbitral tribunal rules on a plea that it does not have jurisdiction, any party may apply to the Superior Court of Justice to decide the matter.

No appeal

(2) The court's decision under subsection (1) is not subject to appeal.

Effect on other matters

(3) If the arbitral tribunal rules on the plea as a preliminary question and an application is brought under this section, the proceedings of the arbitral tribunal are not stayed with respect to any other matters to which the arbitration relates and are within its jurisdiction.

Crown bound

12 (1) This Act binds the Crown.

Enforceability of awards

(2) An award recognized pursuant to this Act is enforceable against the Crown in the same manner and to the same extent as a judgment is enforceable against the Crown.

PART IV *(Omitted)*

13-15 *Omitted (amends, repeals or revokes other legislation).*

PART V (*Omitted*)

16 *Omitted (provides for coming into force of provisions of this Act).*

17 *Omitted (enacts short title of this Act).*

ANNEX VIII

ALBERTA ARBITRATION ACT*

R.S.C., 2000, c. A-43

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

INTRODUCTORY MATTERS

Short title
1. This Act may be cited as the *Commercial Arbitration Act*.

INTERPRETATION

Interpretation
1(1) In this Act,

(a) "arbitration agreement" means, subject to subsections (2) and (3), an agreement or part of an agreement by which 2 or more persons agree to submit a matter in dispute to arbitration;
(b) "arbitrator" includes an umpire;
(c) "court" means,
(i) in sections 6 and 7, the Court of Queen's Bench and the Provincial Court, and
(ii) in all other sections, the Court of Queen's Bench.

(2) If the parties to an arbitration agreement make a further agreement in connection with the arbitration, it is deemed to form part of the arbitration agreement.

(3) Where a matter is authorized or required under an enactment to be submitted to arbitration, a reference in this Act to an arbitration agreement is a reference to the enactment, unless the context otherwise requires.

Application of Act
2(1) This Act applies to an arbitration conducted under an arbitration agreement or authorized or required under an enactment unless

(a) the application of this Act is excluded by an agreement of the parties or by law, or
(b) Part 2 of the *International Commercial Arbitration Act* applies to the arbitration.

(2) If there is a conflict between this Act and the other enactment that authorized or required the arbitration, the other enactment prevails.

(3) This Act does not apply to an arbitration authorized or required under any of the following:

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* In force since 17 December 2014. Official version. See: <http://canlii.ca/t/822r>.

(a) repealed 2003 cP‑19.5 s133;
(b) repealed 2008 cH‑4.3 s10;
(c) repealed 2003 cP‑19.5 s133;
(d) *Labour Relations Code*;
(e) *Police Officers Collective Bargaining Act*; application
(e.1) *Post‑secondary Learning Act*;
(f) *Public Service Employee Relations Act*;
(g),(h) repealed 2003 cP‑19.5 s133;
(i) any other enactment set out in the regulations.

(4) The Lieutenant Governor in Council may make regulations prescribing enactments to which the Arbitration Act does not apply.

Party autonomy
3 The parties to an arbitration agreement may agree, expressly or by implication, to vary or exclude any provision of this Act except sections 5(2), 19, 39, 44(2), 45, 47 and 49.

Waiver of right to object
4 A party to an arbitration who is aware of a non‑compliance with a provision of this Act, except with a provision referred to in section 3, or with the arbitration agreement and who does not object to the non‑compliance within the time limit provided or, if none is provided, within a reasonable time, is deemed to have waived the right to object.

Arbitration agreements
5 (1) An arbitration agreement need not be in writing.

(2) An agreement requiring or having the effect of requiring that a matter in dispute be adjudicated by arbitration before it may be dealt with by a court has the same effect as an arbitration agreement.

(3) An arbitration agreement may be rescinded only in accordance with the law of contract.

COURT INTERVENTION

Court intervention limited
6 No court may intervene in matters governed by this Act, except for the following purposes as provided by this Act:

(a) to assist the arbitration process;
(b) to ensure that an arbitration is carried on in accordance with the arbitration agreement;
(c) to prevent manifestly unfair or unequal treatment of a party to an arbitration agreement;
(d) to enforce awards.

Stay
7 (1) If a party to an arbitration agreement commences a proceeding in a court in respect of a matter in dispute to be submitted to arbitration under the agreement, the

court shall, on the application of another party to the arbitration agreement, stay the proceeding.

(2) The court may refuse to stay the proceeding in only the following cases:

(a) a party entered into the arbitration agreement while under a legal incapacity;

(b) the arbitration agreement is invalid;

(c) the subject-matter of the dispute is not capable of being the subject of arbitration under Alberta law;

(d) the application to stay the proceeding was brought with undue delay;

(e) the matter in dispute is a proper one for default or summary judgment.

(3) An arbitration of the matter in dispute may be commenced or continued while the application is before the court.

(4) If the court refuses to stay the proceeding,

(a) no arbitration of the matter in dispute shall be commenced, and

(b) an arbitration that has been commenced shall not be continued, and anything done in connection with the arbitration before the court's refusal is without effect.

(5) The court may stay the proceeding with respect to the matters in dispute dealt with in the arbitration agreement and allow the proceeding to continue with respect to other matters if it finds that

(a) the agreement deals with only some of the matters in dispute in respect of which the proceeding was commenced, and

(b) it is reasonable to separate the matters in dispute dealt with in the agreement from the other matters.

(6) There is no appeal from the court's decision under this section.

Powers of court

8(1) The court's powers with respect to the detention, preservation and inspection of property, interim injunctions and the appointment of receivers are the same in arbitrations as in court actions.

(2) On the application of the arbitral tribunal, or on a party's application with the consent of the other parties or the arbitral tribunal, the court may determine any question of law that arises during the arbitration.

(3) The court's determination of a question of law may, with the permission of the Court of Appeal, be appealed to the Court of Appeal.

(4) On the application of all the parties to more than one arbitration, the court may order, on terms that it considers just,

(a) that the arbitrations be consolidated,

(b) that the arbitrations be conducted simultaneously or consecutively, or

(c) that any of the arbitrations be stayed until any of the others are completed.

(5) When the court orders that arbitrations be consolidated, it may appoint an arbitral tribunal for the consolidated arbitration, and if all the parties agree as to the choice of the arbitral tribunal, the court shall appoint that arbitral tribunal.

(6) Subsection (4) does not prevent the parties to more than one arbitration from agreeing to consolidate the arbitrations and doing everything necessary to effect the consolidation.

ARBITRAL TRIBUNAL

Number of arbitrators
9 If the arbitration agreement does not specify the number of arbitrators who are to form the arbitral tribunal, it shall be composed of one arbitrator.

Appointment of arbitral tribunal
10(1) The court may appoint the arbitral tribunal, on a party's application, if

(a) the arbitration agreement provides no procedure for appointing the arbitral tribunal, or

(b) a person with power to appoint the arbitral tribunal has not done so within the time provided in the agreement or after a party has given the person 7 days' notice to do so, whichever is later.

(2) There is no appeal from the court's appointment of the arbitral tribunal.

(3) Subsections (1) and (2) apply to the appointment of individual members of arbitral tribunals.

(4) An arbitral tribunal composed of 3 or more arbitrators shall, and an arbitral tribunal composed of 2 arbitrators may, elect a chair from among themselves.

Independence and impartiality of arbitrators
11(1) An arbitrator shall be independent of the parties and impartial as between the parties.

(2) Before accepting an appointment as arbitrator, a person shall disclose to all parties to the arbitration any circumstances of which that person is aware that may give rise to a reasonable apprehension of bias.

(3) An arbitrator who, during an arbitration, becomes aware of circumstances that may give rise to a reasonable apprehension of bias shall promptly disclose the circumstances to all the parties.

No revocation
12 A party may not revoke the appointment of an arbitrator.

Challenge
13(1) A party may challenge an arbitrator only on one of the following grounds:

(a) circumstances exist that may give rise to a reasonable apprehension of bias;

(b) the arbitrator does not possess qualifications that the parties have agreed are necessary.

(2) A party who appointed an arbitrator or participated in the arbitrator's appointment may challenge the arbitrator only on grounds of which the party was unaware at the time of the appointment.

(3) A party who wishes to challenge an arbitrator shall send the arbitral tribunal a statement of the grounds for the challenge within 15 days after becoming aware of them.

(4) The other parties may agree to remove the arbitrator who is being challenged, or the arbitrator may resign.

(5) If the arbitrator is not removed by the parties or does not resign, the arbitral tribunal, including the arbitrator who is being challenged, shall decide the issue and shall notify the parties of its decision.

(6) Within 10 days after being notified of the arbitral tribunal's decision, a party may make an application to the court to decide the issue.

(7) While an application is pending, the arbitral tribunal, including the arbitrator who is being challenged, may continue the arbitration and make an award, unless the court orders otherwise.

Termination of arbitrator's mandate

14(1) An arbitrator's mandate terminates when

(a) the arbitrator resigns or dies,

(b) the parties agree to remove the arbitrator,

(c) 10 days elapse after all the parties are notified of the arbitral tribunal's decision to uphold a challenge of the arbitrator and remove the arbitrator, and no application is made to the court under section 13(6), or

(d) the court removes the arbitrator under section 15(1).

(2) An arbitrator's resignation or a party's agreement to terminate an arbitrator's mandate does not imply acceptance of the validity of any reason advanced for challenging or removing the arbitrator.

Removal of arbitrator by court

15(1) The court may remove an arbitrator on a party's application under section 13(6), or may do so on a party's application if the arbitrator becomes unable to perform the functions of an arbitrator, commits a corrupt or fraudulent act, delays unduly in conducting the arbitration or does not conduct the arbitration in accordance with section 19.

(2) The arbitrator is entitled to be heard by the court on an application under subsection (1).

(3) When the court removes an arbitrator, it may give directions on the conduct of the arbitration.

(4) If the court removes an arbitrator for a corrupt or fraudulent act or for undue delay, it may order that the arbitrator receive no payment for services and may order that the arbitrator compensate the parties for all or part of the costs, as determined by the court, that they incurred in connection with the arbitration before the arbitrator's removal.

(5) Within 30 days after receiving the court's decision, the arbitrator or a party may, with the permission of the Court of Appeal, appeal to the Court of Appeal an order made under subsection (4) or the refusal to make such an order.

(6) Except as provided in subsection (5), there is no appeal from the court's decision or from its directions under this section.

Appointment of substitute arbitrator

16(1) When an arbitrator's mandate terminates, a substitute arbitrator shall be appointed, following the procedures that were used in the appointment of the arbitrator being replaced.

(2) When an arbitrator's mandate terminates, the court may, on the application of any party, give directions about the conduct of the arbitration.

(3) The court may appoint the substitute arbitrator on a party's application if

(a) the arbitration agreement provides no procedure for appointing the substitute arbitrator, or

(b) a person with power to appoint the substitute arbitrator has not done so within the time provided in the agreement or after a party has given the person 7 days' notice to do so, whichever is later.

(4) There is no appeal from the court's decision or from its directions under this section.

(5) This section does not apply if the arbitration agreement provides that the arbitration is to be conducted only by a named arbitrator.

JURISDICTION OF ARBITRAL TRIBUNAL

Jurisdiction, objections

17(1) An arbitral tribunal may rule on its own jurisdiction to conduct the arbitration and may in that connection rule on objections with respect to the existence or validity of the arbitration agreement.

(2) The arbitral tribunal may determine any question of law that arises during the arbitration.

(3) If the arbitration agreement forms part of another agreement, it shall, for the purposes of a ruling on jurisdiction, be treated as an independent agreement that may survive even if the other agreement is found to be invalid.

(4) A party who objects to the arbitral tribunal's jurisdiction to conduct the arbitration shall do so no later than the beginning of the hearing or, if there is no hearing, no later than the first occasion on which the party submits a statement referred to in section 25 to the tribunal.

(5) A party who has appointed or participated in the appointment of an arbitrator is not prevented from objecting to the jurisdiction of the arbitral tribunal to conduct the arbitration.

(6) A party who objects that the arbitral tribunal is exceeding its jurisdiction shall do so as soon as the matter alleged to be beyond the tribunal's jurisdiction is raised during the arbitration.

(7) Notwithstanding section 4, if the arbitral tribunal considers the delay justified, a party may object after the time referred to in subsection (4) or (6), as the case may be, has passed.

(8) The arbitral tribunal may rule on an objection when it is raised or may deal with it in an award.

(9) If the arbitral tribunal rules on an objection as a preliminary question, a party may, within 30 days after receiving notice of the ruling, make an application to the court to decide the matter.

(10) There is no appeal from the court's decision on an application under subsection (9).

(11) While an application is pending, the arbitral tribunal may continue the arbitration and make an award.

Detention, preservation and inspection of property and documents

18(1) On a party's request, an arbitral tribunal may make an order for the detention, preservation or inspection of property and documents that are the subject of the arbitration or as to which a question may arise in the arbitration and may order a party to provide security in that connection.

(2) The court may enforce the order of an arbitral tribunal as if it were a similar order made by the court in an action.

CONDUCT OF ARBITRATION

Equality and fairness

19(1) An arbitral tribunal shall treat the parties equally and fairly.

(2) Each party shall be given an opportunity to present a case and to respond to the other parties' cases.

Procedure

20(1) The arbitral tribunal may determine the procedure to be followed in the arbitration.

(2) An arbitral tribunal that is composed of more than one arbitrator may delegate the determination of questions of procedure to the chair.

Evidence

21(1) The arbitral tribunal is not bound by the rules of evidence or any other law applicable to judicial proceedings and has power to determine the admissibility, relevance and weight of any evidence.

(2) The arbitral tribunal may determine the manner in which evidence is to be admitted.

Time and place of arbitration and meetings

22(1) The arbitral tribunal shall determine the time, date and place of arbitration, taking into consideration the parties' convenience and the other circumstances of the case.

(2) The arbitral tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or parties or for inspecting property or documents.

Commencement of arbitration

23(1) An arbitration may be commenced in any way recognized by law, including the following:

(a) a party to an arbitration agreement serves on the other parties notice to appoint or to participate in the appointment of an arbitrator under the agreement;

(b) if the arbitration agreement gives a person who is not a party power to appoint an arbitrator, a party serves notice to exercise that power on the person and serves a copy of the notice on the other parties;

(c) a party serves on the other parties a notice demanding arbitration under the arbitration agreement.

(2) The arbitral tribunal may exercise its powers when every member has accepted appointment.

Matters referred to arbitration

24 An arbitration commenced without identifying the matters in dispute is deemed to refer to arbitration all matters in dispute that the arbitration agreement entitles the party commencing the arbitration to refer.

Procedural directions

25(1) An arbitral tribunal may require that the parties submit their statements within a specified period of time.

(2) The statements of the parties shall indicate the facts supporting their position, the points at issue and the relief sought.

(3) The parties may submit, with their statements, the documents they consider relevant or may refer to the documents or other evidence they intend to submit.

(4) The parties may amend or supplement their statements during the arbitration, but the arbitral tribunal may disallow a change that is unduly delayed.

(5) The parties may submit their statements orally with the permission of the arbitral tribunal.

(6) The parties, and persons claiming through or under them, shall, subject to any legal objection, comply with the directions of the arbitral tribunal, including directions to

(a) submit to examination on oath or affirmation with respect to the matters in dispute, or

(b) produce records and documents that are in their possession or power.

(7) The court may enforce a direction of the arbitral tribunal as if it were a direction made by the court in an action.

Hearings and written proceedings

26(1) The arbitral tribunal may conduct the arbitration on the basis of documents or may hold hearings for the presentation of evidence and for oral argument, but the tribunal shall hold a hearing if a party requests it.

(2) The arbitral tribunal shall give the parties sufficient notice of hearings and of meetings of the tribunal for the purpose of inspecting property or documents.

(3) A party shall

(a) provide to the other parties a copy of any statement submitted to the arbitral tribunal, and

(b) make available to the other parties any other information supplied to the arbitral tribunal.

(4) The arbitral tribunal shall not rely on an expert report or other document of which the parties have not been informed.

Default

27(1) If the party commencing the arbitration does not submit a statement within the period of time specified under section 25(1), the arbitral tribunal may dismiss the claim by making an award terminating the arbitration, unless the party offers a satisfactory explanation.

(2) If a party other than the one who commenced the arbitration does not submit a statement within the period of time specified under section 25(1), the arbitral tribunal may continue the arbitration unless that party offers a satisfactory explanation, but the tribunal shall not treat the failure of that party to submit a statement as an admission of any other party's allegations.

(3) If a party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the arbitration and make an award on the evidence before it, unless the party offers a satisfactory explanation.

(4) In the case of an unreasonable delay by the party who commenced the arbitration, the arbitral tribunal may

(a) make an award terminating the arbitration, or

(b) give directions for the speedy determination of the arbitration,

and may impose conditions on its decision.

Appointment of expert

28(1) An arbitral tribunal may appoint an expert to report to it on specific issues.

(2) The expert shall be a person agreed on by the parties and, failing an agreement, shall be determined by the arbitral tribunal.

(3) The remuneration to be paid to the expert shall be paid by the parties in equal portions, subject to the direction of the arbitral tribunal.

(4) The arbitral tribunal may require the parties to give the expert any relevant information or to allow the expert to inspect property or documents.

(5) At the request of a party or of the arbitral tribunal, the expert, after making the report, shall participate in a hearing in which the parties may question the expert and present the testimony of another expert on the subject-matter of the report.

Obtaining evidence

29(1) A party may serve a person with a notice requiring the person to attend and give evidence at the arbitration at the time and place named in the notice.

(2) The notice has the same effect as a notice in a court proceeding requiring a witness to attend at a hearing or produce documents and shall be served in the same way.

(3) An arbitral tribunal may administer oaths, affirmations and declarations.

(4) An arbitral tribunal shall require witnesses to testify under oath, affirmation or declaration.

(5) On the application of a party or of the arbitral tribunal, the court may make orders and give directions with respect to the taking of evidence for an arbitration as if the arbitration were a court proceeding.

Restriction

30 No person shall be compelled to produce information, property or documents or to give evidence in an arbitration that the person could not be compelled to produce or give in a court proceeding.

AWARD AND TERMINATION OF ARBITRATION

Application of law and equity

31 An arbitral tribunal shall decide a matter in dispute in accordance with law, including equity, and may order specific performance, injunctions and other equitable remedies.

Conflict of laws

32(1) In deciding a matter in dispute, an arbitral tribunal shall apply the law of a jurisdiction designated by the parties or, if none is designated, the law of a jurisdiction it considers appropriate in the circumstances.

(2) A designation by the parties of the law of a jurisdiction refers to the jurisdiction's substantive law and not to its conflict of laws rules unless the parties expressly indicate that the designation includes them.

Application of arbitration agreement, contract and usages of trade
33 The arbitral tribunal shall decide the matters in dispute in accordance with the arbitration agreement and the contract, if any, under which the matters arose and shall also take into consideration any applicable usages of trade.

Decision of arbitral tribunal
34 If an arbitral tribunal is composed of more than one member, a decision of a majority of the members is a decision of the arbitral tribunal, but if there is no majority decision or unanimous decision, the decision of the chair governs.

Mediation and conciliation
35(1) The members of an arbitral tribunal may, if the parties consent, use mediation, conciliation or similar techniques during the arbitration to encourage settlement of the matters in dispute.

(2) After the members of an arbitral tribunal use a technique referred to in subsection (1), they may resume their roles as arbitrators without disqualification.

Settlement
36 If the parties settle the matters in dispute during arbitration, the arbitral tribunal shall terminate the arbitration and shall record the settlement in the form of an award.

Binding nature of award
37 An award binds the parties unless it is set aside or varied under section 44 or 45.

Form of award
38(1) An award shall be made in writing and, except in the case of an award made under section 36, shall state the reasons on which it is based.

(2) An award shall indicate the place where and the date on which it is made.

(3) An award shall be dated and signed by all the members of the arbitral tribunal, or by a majority of them if an explanation of the omission of the other signatures is included.

(4) A copy of an award shall be served on each party.

Extension of time limits
39 The court may extend the time within which the arbitral tribunal is required to make an award, even if the time has expired.

Amplification of reasons
40(1) A party may, within 30 days after receiving a copy of the award, request, in writing, that the arbitral tribunal provide a further explanation of the reasons on which the award is based.

(2) If the arbitral tribunal does not give a sufficient explanation within 15 days after receiving the request, the court, on the party's application, may order the tribunal to do so.

Interim and final awards

41(1) The arbitral tribunal may make interim awards.

(2) The arbitral tribunal may make more than one final award, disposing of one or more matters in dispute referred to arbitration in each award.

Termination of arbitration

42(1) An arbitration is terminated when

(a) the arbitral tribunal makes a final award or awards in accordance with this Act, disposing of all matters in dispute referred to arbitration,

(b) the arbitral tribunal terminates the arbitration under subsection (2) or section 27(1) or (4), or

(c) the arbitrator's mandate is terminated, if the arbitration agreement provides that the arbitration is to be conducted only by that arbitrator.

(2) An arbitral tribunal shall make an order terminating the arbitration if

(a) the party that commenced the arbitration withdraws the matters in dispute, unless the other party objects to the termination and the arbitral tribunal agrees that the other party is entitled to obtain a final settlement of the matters in dispute,

(b) the parties agree that the arbitration should be terminated, or

(c) the arbitral tribunal finds that the continuation of the arbitration has become unnecessary or impossible.

(3) An arbitration that is terminated may only be revived for the purposes of section 43, 44(4), 45(7) and (8) or 53(4).

(4) The death of a party to an arbitration does not terminate an arbitral tribunal.

(5) Subsection (4) does not affect a rule of law or an enactment under which the death of a person extinguishes a cause of action.

Correction of errors

43(1) An arbitral tribunal may, on its own initiative within 30 days after making an award or at a party's request made within 30 days after receiving the award,

(a) correct typographical errors, errors of calculation and similar errors in the award, or

(b) amend the award so as to correct an injustice caused by an oversight on the part of the arbitral tribunal.

(2) The arbitral tribunal may,

(a) on its own initiative within 30 days after making an award or such longer time as approved by the parties, or

(b) at the request of a party within 30 days after receipt of the award by that party,

make an additional award to deal with a matter in dispute that was presented in the arbitration but omitted from the earlier award.

(3) The arbitral tribunal need not hold a hearing or meeting before rejecting a request made under this section.

REMEDIES

Appeal of award

44(1) If the arbitration agreement so provides, a party may appeal an award to the court on a question of law, on a question of fact or on a question of mixed law and fact.

(2) If the arbitration agreement does not provide that the parties may appeal an award to the court on a question of law, a party may, with the permission of the court, appeal an award to the court on a question of law.

(2.1) The court shall grant the permission referred to in subsection (2) only if it is satisfied that

(a) the importance to the parties of the matters at stake in the arbitration justifies an appeal, and

(b) the determination of the question of law at issue will significantly affect the rights of the parties.

(3) Notwithstanding subsections (1) and (2), a party may not appeal an award to the court on a question of law that the parties expressly referred to the arbitral tribunal for decision.

(4) The court may require the arbitral tribunal to explain any matter.

(5) The court may confirm, vary or set aside the award or may remit the award to the arbitral tribunal and give directions about the conduct of the arbitration.

(6) Where the court remits the award to the arbitral tribunal in the case of an appeal on a question of law, it may also remit to the tribunal the court's opinion on the question of law.

Setting aside award

45(1) On a party's application, the court may set aside an award on any of the following grounds:

(a) a party entered into the arbitration agreement while under a legal incapacity;

(b) the arbitration agreement is invalid or has ceased to exist;

(c) the award deals with a matter in dispute that the arbitration agreement does not cover or contains a decision on a matter in dispute that is beyond the scope of the agreement;

(d) the composition of the arbitral tribunal was not in accordance with the arbitration agreement or, if the agreement did not deal with the matter, was not in accordance with this Act;

(e) the subject‑matter of the arbitration is not capable of being the subject of arbitration under Alberta law;

(f) the applicant was treated manifestly unfairly and unequally, was not given an opportunity to present a case or to respond to another party's case, or was not given proper notice of the arbitration or of the appointment of an arbitrator;

(g) the procedures followed in the arbitration did not comply with this Act or the arbitration agreement;

(h) an arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias;

(i) the award was obtained by fraud.

(2) If subsection (1)(c) applies and it is reasonable to separate the decisions on matters covered by the arbitration agreement from the impugned ones, the court shall set aside the impugned decisions and allow the others to stand.

(3) The court shall not set aside an award on grounds referred to in subsection (1)(c) if the applicant has agreed to the inclusion of the matter in dispute, waived the right to

object to its inclusion or agreed that the arbitral tribunal has power to decide what matters in dispute have been referred to it.

(4) The court shall not set aside an award on grounds referred to in subsection (1)(h) if the applicant had an opportunity to challenge the arbitrator on those grounds under section 13 before the award was made and did not do so or if those grounds were the subject of an unsuccessful challenge.

(5) The court shall not set aside an award on a ground to which the applicant is deemed under section 4 to have waived the right to object.

(6) If the ground alleged for setting aside the award could have been raised as an objection to the arbitral tribunal's jurisdiction to conduct the arbitration, the court may set the award aside on that ground if it considers the applicant's failure to make an objection in accordance with section 17 justified.

(7) When the court sets aside an award, it may remove an arbitrator or the arbitral tribunal and may give directions about the conduct of the arbitration.

(8) Instead of setting aside an award, the court may remit it to the arbitral tribunal and give directions about the conduct of the arbitration.

Time limit

46(1) The following must be commenced within 30 days after the appellant or applicant receives the award, correction, explanation, change or statement of reasons on which the appeal or application is based:

(a) an appeal under section 44(1);

(b) an application for permission to appeal under section 44(2);

(c) an application to set aside an award under section 45.

(2) An application to set aside an award on the grounds that an arbitrator has committed a corrupt or fraudulent act or that the award was obtained by fraud must be commenced

(a) within the period referred to in subsection (1), or

(b) within 30 days after the applicant discovers or ought to have discovered the fraud or corrupt act,

whichever is later.

Declaration of invalidity of arbitration

47(1) At any stage during or after an arbitration on the application of a party who has not participated in the arbitration, the court may grant a declaration that the arbitration is invalid because

(a) a party entered into the arbitration agreement while under a legal incapacity,

(b) the arbitration agreement is invalid or has ceased to exist,

(c) the subject-matter of the arbitration is not capable of being the subject of arbitration under Alberta law, or

(d) the arbitration agreement does not apply to the matter in dispute.

(2) When the court grants the declaration it may also grant an injunction prohibiting the commencement or continuation of the arbitration.

Further appeal to Court of Appeal

48 An appeal from the Court of Queen's Bench decision under section 44, 45 or 47 may, with the permission of a justice of the Court of Appeal, be made to the Court of Appeal.

Enforcement of award

49(1) A person who is entitled to enforce an award made in Alberta or elsewhere in Canada may make an application to the court to that effect.

(2) The application shall be made on notice to the person against whom enforcement is sought, in accordance with the Alberta Rules of Court, and shall be supported by the original award or a certified copy of it.

(3) The court shall give a judgment enforcing an award made in Alberta unless

(a) the 30-day period for commencing an appeal or an application to set the award aside has not yet elapsed,

(b) an appeal, an application to set the award aside or an application for a declaration of invalidity is pending, or

(c) the award has been set aside or the arbitration is the subject of a declaration of invalidity.

(4) The court shall give a judgment enforcing an award made elsewhere in Canada unless

(a) the period for commencing an appeal or an application to set the award aside provided by the laws in force in the province or territory where the award was made has not yet elapsed,

(b) an appeal, an application to set the award aside or an application for a declaration of invalidity is pending in the province or territory where the award was made,

(c) the award has been set aside in the province or territory where it was made or the arbitration is the subject of a declaration of invalidity granted there, or

(d) the subject-matter of the award is not capable of being the subject of arbitration under Alberta law.

(5) If the period for commencing an appeal, an application to set the award aside or an application for a declaration of invalidity has not yet elapsed, or if such a proceeding is pending, the court may

(a) enforce the award, or

(b) order, on such conditions as the court considers just, that enforcement of the award is stayed until the period has elapsed without such a proceeding being commenced or until the pending proceeding is finally disposed of.

(6) If the court stays the enforcement of an award made in Alberta until a pending proceeding is finally disposed of, it may give directions for the speedy disposition of the proceeding.

(7) If the award gives a remedy that the court does not have jurisdiction to grant or would not grant in a proceeding based on similar circumstances, the court may

(a) grant a different remedy requested by the applicant, or

(b) in the case of an award made in Alberta, remit it to the arbitral tribunal with the court's opinion, in which case the arbitral tribunal may award a different remedy.

(8) The court has the same powers with respect to the enforcement of awards as with respect to the enforcement of its own judgments.

GENERAL

Crown bound
50 This Act binds the Crown.

Limitation periods
51 (1) The law with respect to limitation periods applies to an arbitration as if the arbitration were an action and a matter in dispute in the arbitration were a cause of action.

(2) If the court sets aside an award, terminates an arbitration or declares an arbitration to be invalid, it may order that the period from the commencement of the arbitration to the date of the order is excluded from the computation of the time within which an action may be brought on a cause of action that was a matter in dispute in the arbitration.

(3) An application for the enforcement of an award may not be made more than

(a) 2 years after the day on which the applicant receives the award, or

(b) 2 years after all appeal periods have expired,

whichever is later.

Service of notice
52 (1) A notice or other document may be served on an individual by leaving it with that individual.

(2) A notice or other document may be served on a corporation by leaving it with an officer, director or agent of the corporation, or at a place of business of the corporation with a person who appears to be in control or management of the place.

(3) A notice or other document may be served by facsimile telecommunication by sending it to the addressee at the number that the addressee specified in the arbitration agreement or furnished to the arbitral tribunal.

(4) If a reasonable effort to serve a notice or other document under subsection (1) or (2) is not successful and it is not possible to serve it under subsection (3), it may be sent by prepaid registered mail to the mailing address that the addressee specified in the arbitration agreement or furnished to the arbitral tribunal or, if none was specified or furnished, to the addressee's last known place of business or residence.

(5) Unless the addressee establishes that the addressee, acting in good faith, through absence, illness or other cause beyond the addressee's control failed to receive the notice or other document until a later date, it is deemed to have been received,

(a) on the day it is given or transmitted, in the case of service under subsection (1), (2) or (3), or

(b) on the 5th day after the day of mailing, in the case of service under subsection (4).

(6) The court may make an order for substitutional service or an order dispensing with service in the same manner as under the Alberta Rules of Court if the court is satisfied that it is necessary to serve the notice or other document to commence an arbitration or proceed toward the appointment of an arbitral tribunal and that it is impractical for any reason to effect prompt service under subsection (1), (2), (3) or (4).

(7) This section does not apply to the service of documents in respect of court proceedings.

Costs

53(1) An arbitral tribunal may award the costs of an arbitration.

(2) The arbitral tribunal may award all or part of the costs of an arbitration on a solicitor-and-client basis, a party-and-party basis or any other basis but if it does not specify the basis, the costs shall be determined on a party-and-party basis.

(3) The costs of an arbitration consist of the parties' legal expenses, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration.

(4) If the arbitral tribunal does not deal with costs in an award, a party may, within 30 days after receiving the award, request that it make a further award dealing with costs.

(5) In the absence of an award dealing with costs, each party is responsible for that party's own legal expenses and for an equal share of the fees and expenses of the arbitral tribunal and of any other expenses related to the arbitration.

(6) If a party makes an offer, in writing, to another party to settle the matter in dispute or part of it, the offer is not accepted and the arbitral tribunal's award is no more favourable to the party to which the offer was made than was the offer, the arbitral tribunal may take that fact into account in awarding costs in respect of the period from the making of the offer to the making of the award.

(7) The fact that an offer to settle has been made shall not be communicated to the arbitral tribunal until it has made a final determination of all aspects of the matters in dispute other than costs.

Interest

54 (1) An arbitral tribunal has the same power with respect to interest as the court has under the Judgment Interest Act, but the provision for payment into court does not apply.

(2) An award is a judgment debt for the purposes of the Judgment Interest Act.

Assessment and review of costs

55 (1) The fees and expenses paid to an arbitrator shall not exceed the fair and reasonable value of the services performed and the necessary and reasonable expenses actually incurred.

(2) A party to an arbitration may have an arbitrator's account for fees and expenses reviewed by a review officer under the Alberta Rules of Court in the same manner that a lawyer's account for lawyer's charges may be reviewed.

(3) If the arbitral tribunal awards costs and directs that they be assessed, or awards costs without fixing the amount or indicating how it is to be ascertained, a party to the arbitration may have the costs assessed by an assessment officer under the Alberta Rules of Court in the same manner as costs awarded may be assessed under the Rules in similar circumstances.

(4) In assessing the part of the costs represented by the fees and expenses of the arbitral tribunal, the assessment officer shall apply the same principles as in the review of an account under subsection (2).

(5) Subsection (2) applies even if the account has been paid.

(6) On the application of a party to the arbitration, the court may review the assessment of costs or the review of the arbitrator's account and may confirm it, vary it, set it aside or remit it to the assessment officer or review officer with directions.

(7) On the application of an arbitrator the court may review the review of the arbitrator's account and may confirm it, vary it, set it aside or remit it to the review officer with directions.

(8) An application for review under subsection (6) or (7) may not be made after the period specified in the assessment officer's or review officer's certificate has elapsed or, if no period is specified, more than 30 days after the date of the certificate, unless the court orders otherwise.

(9) When the time during which an application for review may be made has expired and no application has been made, or when the court has reviewed the assessment or review and made a final determination, the assessment officer's or review officer's certificate may be filed with the court and enforced as if it were a judgment of the court.

Transitional

56(1) This Act applies to arbitrations conducted under arbitration agreements made before September 1, 1991 if the arbitration is commenced on or after September 1, 1991.

(2) Notwithstanding its repeal by section 58, the Arbitration Act (RSA 1980 cA-43) continues to apply to arbitrations that are commenced before September 1, 1991.

ANNEX IX

ONTARIO RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT*

R.S.O. 1990, c. R.5

Definitions
1. (1) In this Act,
"judgment" means a judgment or an order of a court in any civil proceedings whereby any sum of money is payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the province or territory where it was made, become enforceable in the same manner as a judgment given by a court therein; ("*jugement*")
"judgment creditor" means the person by whom the judgment was obtained, and includes the executors, administrators, successors and assigns of that person; ("*créancier en vertu du jugement*")
"judgment debtor" means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the place where it was given; ("*débiteur en vertu du jugement*")
"original court", in relation to a judgment, means the court by which the judgment was given; ("*tribunal d'origine*")
"registering court", in relation to a judgment, means the court in which the judgment is registered under this Act. ("*tribunal d'enregistrement*")

Powers of court, how exercised
(2) Subject to the rules of court, any of the powers conferred by this Act on a court may be exercised by a judge of the court.

Registration of judgment
2. (1) Where a judgment has been given in a court in a reciprocating state, the judgment creditor may apply to any court in Ontario having jurisdiction over the subject-matter of the judgment, or, despite the subject-matter, to the Superior Court of Justice at any time within six years after the date of the judgment to have the judgment registered in that court, and on any such application the court may, subject to this Act, order the judgment to be registered.

Notice of application to register
(2) Reasonable notice of the application shall be given to the judgment debtor in all cases in which the judgment debtor was not personally served with process in the original action and did not appear or defend or otherwise submit to the jurisdiction of the original court, but in all other cases the order may be made without notice.

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* Consolidation Period: From June 22, 2006 to the e-Laws currency date; Last amendment: 2006, c.19, Sched.C, s.1(1).

Registration of judgment

(3) The judgment may be registered by filing with the registrar or clerk of the registering court an exemplification or a certified copy of the judgment, together with the order for such registration, whereupon the judgment shall be entered as a judgment of the registering court.

Conditions of registration

3. No judgment shall be ordered to be registered under this Act if it is shown to the registering court that,

(a) the original court acted without jurisdiction; or

(b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court; or

(c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, despite the fact that the judgment debtor was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or

(d) the judgment was obtained by fraud; or

(e) an appeal is pending, or the judgment debtor is entitled and intends to appeal against the judgment; or

(f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason would not have been entertained by the registering court; or

(g) the judgment debtor would have a good defence if an action were brought on the original judgment.

Effect of registration

4. Where a judgment is registered under this Act,

(a) the judgment is, as from the date of the registration, of the same force and effect and, subject to this Act, proceedings may be taken thereon as if it had been a judgment originally obtained or entered up in the registering court on the date of the registration; and

(b) the registering court has the same control and jurisdiction over the judgment as it has over judgments given by itself; and

(c) the reasonable costs of and incidental to the registration of the judgment, including the costs of obtaining an exemplification or certified copy thereof from the original court, and of the application for registration, are recoverable in like manner as if they were sums payable under the judgment, such costs to be first taxed by the proper officer of the registering court, and his or her certificate thereof endorsed on the order for registration.

Notice of registration on order made without notice

5. In all cases in which registration is made upon an order made without notice, notice thereof shall be given to the judgment debtor within one month after the registration, and the notice shall be served in the manner provided by the practice of the registering court for service of originating process, and no sale under the judgment of any property of the judgment debtor is valid if made prior to the expiration of the period fixed by section 6 or such further period as the court may order.

Setting aside order made without notice
6. In all cases in which registration is made upon an order made without notice, the registering court may on the application of the judgment debtor set aside the registration upon such terms as the court thinks fit, and such application shall be made within one month after the judgment debtor has notice of the registration, and the applicant is entitled to have the registration set aside upon any of the grounds mentioned in section 3.

Application of Act
7. Where the Lieutenant Governor is satisfied that reciprocal provision has been or will be made by any other province or territory of Canada for the enforcement within that province or territory of judgments obtained in the Superior Court of Justice, the Lieutenant Governor may direct that this Act applies to that province or territory, and thereupon this Act applies accordingly.

Effect of Act
8. Nothing in this Act deprives any judgment creditor of the right to bring an action for the recovery of the amount of a judgment instead of proceeding under this Act.

Note: As of April 30, 1999, this Act applies to Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, the Northwest Territories and the Yukon Territory. See: O. Reg. 322/92, as amended by O. Reg. 298/99.