
CHAMBERS GLOBAL PRACTICE GUIDES

International Arbitration 2026

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**Canada: Law and Practice
& Trends and Developments**

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Law and Practice

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Contents

1. General p.4

- 1.1 Prevalence of Arbitration p.4
- 1.2 Key Industries p.4
- 1.3 Arbitration Institutions p.4
- 1.4 National Courts p.4

2. Governing Legislation p.5

- 2.1 Governing Law p.5
- 2.2 Changes to National Law p.5

3. The Arbitration Agreement p.5

- 3.1 Enforceability p.5
- 3.2 Arbitrability p.5
- 3.3 National Courts' Approach p.5
- 3.4 Validity p.5

4. The Arbitral Tribunal p.6

- 4.1 Limits on Selection p.6
- 4.2 Default Procedures p.6
- 4.3 Court Intervention p.6
- 4.4 Challenge and Removal of Arbitrators p.6
- 4.5 Arbitrator Requirements p.6

5. Jurisdiction p.6

- 5.1 Challenges to Jurisdiction p.6
- 5.2 Circumstances for Court Intervention p.7
- 5.3 Timing of Challenge p.7
- 5.4 Standard of Judicial Review for Jurisdiction/Admissibility p.7
- 5.5 Breach of Arbitration Agreement p.8
- 5.6 Jurisdiction Over Third Parties p.8

6. Preliminary and Interim Relief p.8

- 6.1 Types of Relief p.8
- 6.2 Role of Courts p.8
- 6.3 Security for Costs p.9

7. Procedure p.9

- 7.1 Governing Rules p.9
- 7.2 Procedural Steps p.10
- 7.3 Powers and Duties of Arbitrators p.10
- 7.4 Legal Representatives p.10

8. Evidence p.10

- 8.1 Collection and Submission of Evidence p.10
- 8.2 Rules of Evidence p.10
- 8.3 Powers of Compulsion p.10

9. Confidentiality p.11

- 9.1 Extent of Confidentiality p.11

10. The Award p.11

- 10.1 Legal Requirements p.11
- 10.2 Types of Remedies p.11
- 10.3 Recovering Interest and Legal Costs p.12

11. Review of an Award p.12

- 11.1 Grounds for Appeal p.12
- 11.2 Excluding/Expanding the Scope of Appeal p.12
- 11.3 Standard of Judicial Review p.12

12. Enforcement of an Award p.13

- 12.1 New York Convention p.13
- 12.2 Enforcement Procedure p.13
- 12.3 Approach of the Courts p.13

13. Miscellaneous p.14

- 13.1 Class Action or Group Arbitration p.14
- 13.2 Ethical Codes p.14
- 13.3 Third-Party Funding p.14
- 13.4 Consolidation p.14
- 13.5 Binding of Third Parties p.14

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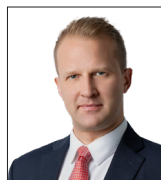
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1. General

1.1 Prevalence of Arbitration

Arbitration is widely used in Canada as an alternative to court litigation.

Historically, Canadian governments and courts have adopted a pro-arbitration stance in line with modern international practices. In 1986, Canada became the first jurisdiction to adopt the UNCITRAL Model Law on International Commercial Arbitration. Canadian courts have since issued over 200 written decisions under arbitration legislation based on the Model Law.

Every province and territory (except Quebec) has a separate statute governing domestic and international arbitration. In Quebec, arbitration legislation is set out in the Civil Code of Quebec and the Code of Civil Procedure, which are generally consistent with the Model Law.

There are also many arbitration institutions and facilities in Canada which support both domestic and international proceedings.

Unless stated otherwise, the sections below address international arbitration matters.

1.2 Key Industries

In Canada, international arbitration is commonly used in the following industries: mining, oil and gas, construction, information technology, forestry and shareholder disputes.

All industries are experiencing increased demand for arbitration, a trend accelerated by the pandemic. Arbitration proceedings proceeded without interruption during the pandemic, while the courts in Canada had various limits or closures that made them less accessible to litigants.

1.3 Arbitration Institutions

There are many arbitration institutions in Canada, including:

- the ADR Institute of Canada Inc (ADRIC);
- the Vancouver International Arbitration Centre (VanIAC, formerly BCICAC);
- the Canadian International Internet Dispute Resolution Centre (CIIDRC, a division of VanIAC);
- the Canadian Arbitration Association (CAA); and
- the International Centre for Dispute Resolution of Canada (ICDR – Canada).

Effective 1 July 2022, VanIAC has introduced new International Commercial Arbitration Rules of Procedure (the “VanIAC Rules”), which include International Expedited Procedures in Appendix A. In 2020, VanIAC amended its domestic arbitration rules (in conjunction with the province of British Columbia’s new domestic Arbitration Act, SBC 2020, c 2).

1.4 National Courts

There are no specialised courts in Canada designated to hear arbitration-related disputes. These matters are typically heard by the provincial superior courts, in accordance with their rules of civil procedure.

Canadian courts are accustomed to dealing with domestic and international arbitration matters and have issued over 200 written decisions under the Model Law.

2. Governing Legislation

2.1 Governing Law

Each of the provinces and territories, except Quebec, has enacted an International Commercial Arbitration Act based on the Model Law.

Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Yukon, Nunavut and Northwest Territories (pursuant to Nunavut's legislation) have adopted the 1985 version of the Model Law, while British Columbia and Ontario adopted the Model Law with amendments as adopted in 2006.

British Columbia has enacted a revised version of the Model Law. At the same time, the other provinces and territories attach it as a schedule to their International Commercial Arbitration Act, with minor variations.

In Quebec, the Model Law has not been incorporated. Arbitration in the province is governed by the Civil Code of Quebec and the Code of Civil Procedure, which are generally consistent with the Model Law.

The Commercial Arbitration Act, RSC 1985, c 17 (2nd Supplement) is a federal statute based on the 1985 version of the Model Law. This statute applies only:

- where at least one of the parties to the arbitration is the Crown, a federal departmental corporation or a Crown corporation; or
- in relation to a maritime or admiralty matter.

2.2 Changes to National Law

There have been no significant changes to the international arbitration statutes in Canada in the past year.

On 1 September 2020, a new domestic Arbitration Act, SBC 2020, c 2, came into force in British Columbia.

3. The Arbitration Agreement

3.1 Enforceability

Arbitration agreements are governed by statute. With the exception of Ontario, British Columbia and Quebec, the requirements for an international arbitration agreement are set out in the 1985 version of the Model Law. Ontario and British Columbia have adopted the requirements set out in the 2006 version of the Model Law.

All the international arbitration statutes in Canada require that an arbitration agreement is in writing.

3.2 Arbitrability

With some limited exceptions, all commercial disputes can be resolved by arbitration, provided that the parties agreed to do so.

Legislatures and courts have, however, decided that certain matters are not arbitrable in Canada. These include:

- certain types of disputes under British Columbia's Business Practices and Consumer Protection Act (*Seidel v Telus Communications Inc*, 2011 SCC 15), Ontario's Consumer Protection Act, 2002, SO 2002, c 30, Sch A, s 7 (2) and Quebec's Consumer Protection Act, CQLR, c P-401, s 11; and
- disputes over the status and capacity of persons, family matters or other matters of public policy (Quebec Civil Code, CQLR c CCQ-1991, s 2639).

3.3 National Courts' Approach

Generally speaking, Canadian courts take a pro-enforcement stance with respect to arbitration agreements.

Consistent with the Model Law, Canadian courts will typically enforce an arbitration agreement unless it is void, inoperative or incapable of being enforced (*Uber Technologies v Heller*, 2020 SCC 16).

3.4 Validity

In accordance with Section 16 (2) of the Model Law, Canadian courts enforce the rule of separability and treat an arbitration clause as an agreement independ-

ent of the other terms of the contract (*Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41).

4. The Arbitral Tribunal

4.1 Limits on Selection

There are no statutory limitations on the selection of arbitrators in Canada. Arbitrators are not required to be legally qualified.

The parties have broad autonomy with respect to the selection of arbitrators, including the procedure to be followed, the number of arbitrators and any specific qualifications required.

4.2 Default Procedures

Under the international arbitration laws in each province and territory, the default procedures for selecting an arbitrator are consistent with Article 11 of the Model Law.

However, these provisions only apply if the parties did not agree to a procedure in the contract or in a set of arbitral rules.

4.3 Court Intervention

Canadian courts will only intervene in the selection of an arbitrator if a party makes a request to the court in accordance with Article 11 of the Model Law.

4.4 Challenge and Removal of Arbitrators

Challenges to or removal of an arbitrator are governed by the Model Law, the parties' agreed procedure or the applicable arbitral institution's rules.

In most Canadian jurisdictions, parties will request the arbitral panel to challenge or remove an arbitrator in the first instance and, if unsuccessful, may then apply to the provincial superior court (the trial-level court).

The Court of Appeal for Ontario has held that a finding of a reasonable apprehension of bias against one arbitrator on a panel of three necessitates a set-aside of any arbitration award issued by the panel (*Vento Motorcycles Inc. v The United Mexican States*, 2025 ONCA 82). This approach is a departure from cases involving judges in Canada, in which the courts have

held that where a member of a court must recuse her or himself, the same duty does not attach to the rest of the court (*ENMAX Energy Corporation v TransAlta Generation Partnership*, 2021 ABCA 366).

4.5 Arbitrator Requirements

In accordance with Article 12 of the Model Law, an arbitrator must disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. That obligation applies throughout the arbitration proceedings.

The parties may also agree to additional requirements regarding an arbitrator's independence or adopt a set of arbitral rules that do so.

For example, the VanIAC Rules contain provisions requiring:

- a written declaration that arbitrators must sign regarding their independence and impartiality; and
- limits on the parties' communication about the disputes with any arbitrator or any candidate for appointment as an arbitrator.

5. Jurisdiction

5.1 Challenges to Jurisdiction

Courts across Canada recognise the principle of competence-competence.

Under Canadian arbitration legislation, an arbitral tribunal can rule on its own jurisdiction as a preliminary matter or in a final award. A party may apply to a superior court for a review of the tribunal's ruling, whether the arbitration proceedings have concluded or not.

In 2020, the Supreme Court of Canada established a new exception to the competence-competence principle based on access-to-justice considerations (*Uber Technologies Inc v Heller*, 2020 SCC 16).

Under this new exception, courts should not refer a jurisdictional challenge to an arbitrator if there is a real prospect that the challenge will never be resolved, unless the court determines the issue. For example, this exception was found to apply where the costs

a party incurred to participate in the arbitration and challenge jurisdiction exceeded the damages the party sought.

In 2022, the Supreme Court of Canada held that an otherwise valid arbitration agreement could be rendered unenforceable in the context of a court-ordered receivership under the Bankruptcy and Insolvency Act, RSC 1985, c B-3 (*Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41).

5.2 Circumstances for Court Intervention

A court may intervene in matters concerning arbitral jurisdiction in the following circumstances.

First, a party may bring an application before the court to stay an action and refer the matter to arbitration under Article 8 of the Model Law (*Husky Food Importers v JH Whittaker & Sons*, 2022 ONSC 1679, aff'd 2023 ONCA 260).

Generally speaking, the courts will refer jurisdictional issues to the arbitral tribunal in the first instance. A court may depart from this general rule only if the following criteria are met:

- the jurisdictional challenge relates solely to a question of law or a question of mixed fact and law, where the questions of fact require only superficial consideration of the documentary evidence in the record;
- the challenge is not a delaying tactic; and
- the court is satisfied that the challenge will not unduly impair the conduct of the arbitration proceeding (*Dell Computer Corp v Union des consommateurs*, 2007 SCC 34; *Uber Technologies Inc v Heller*, 2020 SCC 16).

As discussed in **5.1 Challenges to Jurisdiction**, the Supreme Court of Canada recently established a new exception on access-to-justice grounds. It addressed whether insolvency proceedings can render an arbitration agreement “inoperative”. Second, following the issuance of an arbitral award, a party may bring an application to set it aside pursuant to Article 34 of the Model Law.

Third, the court can address jurisdiction on applications to recognise and enforce an award pursuant to Article 36 of the Model Law.

5.3 Timing of Challenge

Consistent with Article 16 of the Model Law, jurisdiction must be challenged no later than the submission of the statement of defence. The circumstances when a court may intervene are set out in **5.1 Challenges to Jurisdiction** and **5.2 Circumstances for Court Intervention**.

5.4 Standard of Judicial Review for Jurisdiction/Admissibility

Generally speaking, courts in Canada take a deferential approach to the review of arbitral awards.

There has historically been a divergence in Canada on whether the review by a court of a jurisdictional decision of an international arbitration tribunal attracts:

- the deferential “reasonableness” standard; or
- the “correctness standard”, which provides no deference to an arbitral award.

For example, a correctness standard was applied in a line of Ontario decisions (*United Mexican States v Cargill*, 2011 ONCA 622, leave ref'd [2012] SCCA No 528 (SCC) and *The Russian Federation v Luxtona Limited*, 2021 ONSC 4604 (Div Ct), aff'd 2023 ONCA 393). In contrast, a reasonableness standard was applied in another line of cases (*ACE Bermuda Insurance Ltd v Allianz Insurance Company of Canada*, 2005 ABQB 975 and *Iululemon athletica Canada inc v Industrial Color Productions Inc*, 2021 BCSC 15; note that on appeal, the BC Court of Appeal found the judge erred and should have applied the correctness standard, but upheld the judge's decision that the arbitrator had jurisdiction: 2021 BCCA 428).

When seeking to set aside an award on jurisdictional grounds, parties may have the opportunity to present new evidence that was not previously before the arbitrator (*Russian Federation v Luxtona Limited*, 2023 ONCA 393).

5.5 Breach of Arbitration Agreement

As discussed in 3.2 **Arbitrability**, consistent with the Model Law, Canadian courts will enforce an arbitration agreement unless it is void, inoperative or incapable of being enforced.

Where a party commences court proceedings in breach of an arbitration agreement, the other party may seek a stay of the court action consistent with Article 8 of the Model Law. In such cases, the courts will typically refer the matter to arbitration.

5.6 Jurisdiction Over Third Parties

Generally speaking, only parties to an arbitration agreement will be bound by its terms. As the Supreme Court of Canada has recognised, mutual consent is the foundation of private dispute resolution (*TELUS Communications Inc v Wellman*, 2019 SCC 19).

However, non-signatories/third parties may be subject to an arbitration agreement by operation of the law, including subsidiaries, assignees, trustees and other parties that claim through or under a party to the arbitration agreement (*Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 4).

Canadian courts have also recognised the following situations where a non-signatory may be subject to an arbitration agreement:

- an agency relationship exists between a party and a non-signatory;
- the corporate veil between subsidiary and parent companies can be pierced;
- an arbitration agreement is incorporated by reference or by hyperlink into a contract; and
- a non-party is bound by an estoppel (*DNM Systems v Lock-Block Canada Ltd*, 2015 BCSC 2014).

Non-signatory beneficiaries will generally not be bound by an arbitration agreement in the absence of clear and explicit language binding them as a third-party to the agreement (*Husky Oil Operations Limited v Technip Stone & Webster Process Technology Inc.*, 2024 ABCA 369).

6. Preliminary and Interim Relief

6.1 Types of Relief

Except for Quebec, Ontario and British Columbia, Article 17 of the Model Law (1985 version) applies in Canada. It affords an arbitral tribunal discretion to order any party to take such interim measures of protection as it may consider necessary.

In Quebec, an arbitrator's jurisdiction to grant interim measures is codified in Article 638 of the Code of Civil Procedure.

In Ontario and British Columbia, the 2006 version of Article 17 of the Model Law applies, meaning that interim measures can be issued to:

- maintain or restore the status quo pending determination of the dispute;
 - take action that would prevent or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitration process itself;
 - provide a means of preserving assets out of which a subsequent award may be satisfied; or
 - preserve evidence that may be relevant and material to the resolution of the dispute.
- Unlike the 1985 version of the Model Law, the 2006 version contemplates the issuance of preliminary orders.

Article 17 of the 2006 version of the Model Law permits a party to apply without notice for an interim measure and a preliminary order directing a party not to frustrate the purpose of the interim measure requested. The arbitral tribunal may grant the preliminary order without notice where disclosure of the request for the interim measure to the affected party risks frustrating its purpose.

6.2 Role of Courts

Court intervention is limited under Article 5 of the Model Law. However, Article 9 of the Model Law provides that it is not incompatible with an arbitration agreement for a party to request an interim measure of protection from a court. In Quebec, Article 638 of the Code of Civil Procedure permits a party to ask the court to homologate an arbitrator's provisional meas-

ure to give it the same force and effect as a judgment of the court.

Institutional rules in Canada also reflect the principle in Article 9 of the Model Law. For example, Article 26 (h) of the VanIAC Rules provides that “a request for an interim measure addressed by a party to a judicial authority shall not be deemed incompatible with these Rules...” Similarly, Article 27 (3) of the ICDR Rules provides that a request to a court for interim measures is not incompatible with an arbitration agreement and will not be deemed a waiver of the right to arbitrate.

Unique to British Columbia, the BC Act also expressly provides that the court has the same powers to issue an interim measure as it has in court proceedings; however, the court may refer the request to an arbitral tribunal if it considers it proper.

With respect to preliminary orders issued under the 2006 version of the Model Law, Article 17C(5) expressly states that a preliminary order is not an arbitral award and is not subject to enforcement by a court (this will apply in the provinces of Ontario and British Columbia under Section 17.03 (6) of the BC Act).

Similarly, Article 639 of the Quebec Code of Civil Procedure provides that an arbitrator’s provisional order is binding on the parties and cannot be homologated by the court.

The appointment of emergency arbitrators is not contemplated by the legislation. For those arbitrations governed by the ICDR Rules, Article 7 provides that the administrator may appoint an emergency arbitrator and that, once the arbitral tribunal is constituted, the emergency arbitrator has no further powers. Articles 29–32 of the VanIAC Rules provide for the appointment of an emergency arbitrator and set out their powers.

6.3 Security for Costs

The Model Law is silent on an arbitral tribunal’s power to order security for costs (except as noted below regarding interim measures).

However, the parties may grant the arbitral tribunal the power to order security for costs in the arbitration agreement.

In British Columbia, the International Commercial Arbitration Act grants the arbitral tribunal discretion to order security for costs as an interim measure.

With respect to interim measures, Article 17 of both the 1985 and 2006 versions of the Model Law gives the arbitral tribunal the discretion to require any party to provide “appropriate security” in connection with an interim measure. Further, in Ontario, where a party applies for a preliminary order under Article 17B of the 2006 version of the Model Law, Article 17E(2) stipulates that the arbitral tribunal must require the applying party to provide security in connection with the preliminary order, unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

Article 638 of the Quebec Code of Civil Procedure grants the arbitrator the power to require that a suretyship is provided to cover costs “and the reparation of any prejudice” from a provisional measure.

The institutional rules provide for the depositing of costs. For example, Article 39 of the VanIAC Rules permits the arbitral tribunal to require each party to deposit an equal amount in advance for costs. Similarly, Article 39 of the ICDR Rules permits the administrator to request that the parties deposit an advance for costs.

7. Procedure

7.1 Governing Rules

As noted in **2.1 Governing Law**, the Model Law is incorporated into Canada’s provincial international commercial arbitration statutes.

Article 19 of the Model Law provides that subject to its provisions, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings and, failing such agreement, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate.

There are no other provincial laws or rules governing international arbitration procedure. However, Section 14 of New Brunswick's International Commercial Arbitration Act, RSNB 2011, c 176, provides that the province's Rules of Court, as enacted, apply (except where they may conflict with the provisions of the Act).

7.2 Procedural Steps

There are no particular procedural steps expressly required to be followed under the Model Law or the provincial international commercial arbitration statutes.

However, the institutional rules (VanIAC Rules and ICDR Rules) contain mandatory procedural steps.

7.3 Powers and Duties of Arbitrators

An arbitrator must be impartial and independent and have the qualifications agreed to by the parties. These duties are contemplated in Article 12 of the Model Law and in the international commercial arbitration statutes (see, for example, Section 12 (3) of the BC Act).

The institutional rules also impose on an arbitrator the duty to be impartial and independent and to have those qualifications agreed to by the parties: see VanIAC Rules, Article 12 and ICDR Rules, Article 14.

7.4 Legal Representatives

The Canadian legal profession is self-regulated and legal practitioners must meet the qualifications set by the professional regulators of the province in which they practise.

The Model Law is silent regarding the qualifications or requirements of legal representatives appearing as counsel on international commercial arbitrations governed by it.

Unique to British Columbia, the International Commercial Arbitration Act permits a party to be represented by any person of their choice, including a legal practitioner from another state.

8. Evidence

8.1 Collection and Submission of Evidence

Parties are free to determine the procedure for the collection and submission of evidence; failing which, the arbitral tribunal may determine the procedure.

Where the parties have not agreed on a procedure regarding evidence, this issue will typically be addressed at a pre-hearing conference. Increasingly, the IBA Rules on the Taking of Evidence are often referenced or considered in establishing the specific procedures to be used.

Consistent with international practice, documents are often attached to pleadings, with the parties exchanging requests for the relevant documents using a Redfern schedule. Witnesses' evidence is commonly submitted in detailed written statements with questioning by opposing counsel only at the hearing stage.

Expert evidence is typically exchanged prior to any hearing on the merits.

Evidence-taking practices are often adapted based on counsel's experience and the specifics of the dispute. Pre-hearing oral discovery (a typical feature of court litigation in Canada) is, however, increasingly uncommon in international arbitration.

8.2 Rules of Evidence

As set out in Article 19 (2) of the Model Law, an arbitral tribunal may determine the admissibility, relevance, materiality and weight of any evidence. The statutory rules of evidence in the federal and provincial Evidence Acts do not apply to international arbitration seated in Canada.

8.3 Powers of Compulsion

Under the Model Law, an arbitral tribunal or a party with the tribunal's consent, can seek the court's assistance to compel evidence. The courts can compel witnesses to attend for questioning or to produce documents.

With respect to non-parties, the court may:

- issue summons for witnesses located in Canada; or
- request the assistance of foreign courts for witnesses outside Canada.

Typically, the courts will assist evidence-taking for arbitration proceedings, provided that the request is consistent with local evidentiary rules.

9. Confidentiality

9.1 Extent of Confidentiality

The Model Law does not address confidentiality.

Unlike arbitration legislation that adopts the Model Law directly, British Columbia's International Commercial Arbitration Act was amended in 2018 to provide that, unless otherwise agreed, the parties and tribunal must not disclose:

- non-public proceedings, evidence, documents and information in connection with the arbitration; or
- an arbitral award.

In Canada, the "open court" principle generally does not apply to arbitration proceedings (*Fontaine v Canada (Attorney General)*, 2014 ONSC 4585, var'd 2016 ONCA 241, aff'd 2017 SCC 47).

Parties are free to agree on confidentiality requirements. Even if an arbitration agreement is silent on confidentiality, the governing international arbitration institutional rules may require it.

For example, the VanIAC Rules stipulate that, subject to certain exceptions, the parties must keep the following confidential:

- all awards arising from the proceedings;
- all evidence and materials created for the purpose of the arbitration; and
- all other non-public documents produced by another party in the proceeding not otherwise in the public domain.

However, if the parties to an arbitration decide to appeal an arbitral award or otherwise apply to the court for relief, the record of arbitration proceedings will no longer be private and confidential (*2249492 Ontario Inc v Donato*, 2017 ONSC 4975).

British Columbia's International Commercial Arbitration Act expressly provides in Section 36.01 (added in 2018) that, unless otherwise agreed by the parties, the parties and the arbitral tribunal must not disclose arbitration proceedings (or their component parts) or the award.

10. The Award

10.1 Legal Requirements

An arbitral award is subject to the legal requirements set out in Article 31 of the Model Law. These include that the award must:

- be in writing and signed by the arbitrator (or majority of an arbitral panel);
- state the date and place of the arbitration; and
- state the reasons upon which it is based, unless the parties agree otherwise.

There is no time limit for the delivery of the award under the Model Law. These requirements may be contained in arbitral rules. For example, the ICDR Rules specify that the final award must be made no later than 60 days after the closing of the hearing (unless otherwise agreed by the parties, specified by law or determined by the ICDR Administrator). Article 35 (a) of the VanIAC Rules specifies a 90-day time limit (unless otherwise agreed by the parties or directed by the arbitral tribunal).

The arbitration agreement itself and the institutional rules adopted by the parties may contain additional requirements for the award.

10.2 Types of Remedies

No limits are imposed on the types of remedies that an arbitral tribunal may award under the Model Law or international commercial arbitration statutes. However, the parties may limit the types of remedies that can be awarded in the arbitration agreement.

The ICDR Rules, amended and effective from 1 March 2021, no longer restrict an arbitral tribunal governed by the ICDR Rules from awarding punitive, exemplary or similar damages.

10.3 Recovering Interest and Legal Costs

An arbitrator's powers to award pre- or post-award interest are not expressly addressed in the Model Law.

Canadian courts have determined that the awarding of pre- or post-award interest is a matter of substantive law. The arbitrator's mandate to resolve the parties' dispute encompasses the power to award interest.

The institutional rules also address the awarding of interest (Article 35 (e) of the VanIAC Rules and Article 34 (4) of the ICDR Rules).

The Model Law does not address costs. However, the BC Act specifically provides in Section 31 (8) that, subject to the parties' agreement, the arbitral tribunal may award costs, which include legal fees and expenses, the fees and expenses of the arbitrators and expert witnesses, administrative fees and other expenses related to the arbitration (*Allard v The University of British Columbia*, 2021 BCSC 60).

The institutional rules may also permit an arbitral tribunal to award costs (eg, Article 38 of the VanIAC Rules and Article 34 of the ICDR-Canada Rules).

11. Review of an Award

11.1 Grounds for Appeal

Canada's international commercial arbitration statutes permit a party to an arbitration to apply to the courts to have the award set aside on specific grounds.

An application to set aside an arbitral award is not the same as an "appeal" of the judgment in a commercial case. When the decision of a trial judge in a commercial case is appealed in Canada, the grounds on which it may be reviewed are not limited or restricted.

For a discussion about the setting aside of a domestic arbitral award on similar grounds and the distinction with a civil appeal, see *Alectra Utilities Corporation v*

Solar Power Network Inc, 2019 ONCA 254, leave ref'd [2019] SCCA No 202 (SCC).

Article 34 of the Model Law limits the grounds on which an arbitral award may be set aside. In particular, Article 34 of the Model Law provides that an arbitral award may be set aside if the applying party proves:

- contractual incapacity;
- invalidity under the law to which the parties have subjected it;
- lack of notice of the arbitral appointment or proceedings or inability to present the party's case;
- jurisdictional grounds (ie, the award deals with or decides matters beyond the scope of the submission to arbitration); or
- the composition of the arbitral tribunal or procedure was not in accordance with the parties' agreement.

Article 34 (2)(b) further permits the court to set aside an arbitral award if the court finds that the subject matter of the dispute is not capable of settlement by arbitration under the relevant law or if the arbitral award conflicts with public policy.

11.2 Excluding/Expanding the Scope of Appeal

An application to set aside an arbitral award is not the same as an appeal and is limited to the grounds set out in Article 34 of the Model Law (or its statutory equivalent). Parties to an arbitration cannot agree to exclude or expand the scope of the application to set aside the award.

11.3 Standard of Judicial Review

The traditional approach of Canadian courts has been to show deference to arbitral awards; when reviewing them, the courts apply the deferential standard of "reasonableness", subject to a narrow set of exceptions.

For example, the least deferential "correctness" standard has been applied where the question is one of jurisdiction (ie, whether an arbitral decision was on matters beyond the scope of the submission to arbitration), following the 2011 decision of the Ontario Court of Appeal in *Cargill (United Mexican States v*

Cargill, 2011 ONCA 662, leave ref'd [2012] SCCA No 528 (SCC)). See the discussion on divergence in the case law in 5.5 Standard of Judicial Review for Jurisdiction/Admissibility.

As a result of two recent decisions of the Supreme Court of Canada, the question of the correct standard of review from an arbitrator's jurisdictional decision is unsettled and likely to be the subject of further jurisprudence (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 and *Wastech Services Ltd v Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7).

In *Iululemon athletica canada inc v Industrial Color Productions Inc*, 2021 BCCA 108, the British Columbia Court of Appeal concluded that the standard of review of an application to set aside an arbitral award under the Model Law (or international commercial arbitration statutes) is correctness and that *Cargill (United Mexican States v Cargill*, 2011 ONCA 662, leave ref'd [2012] SCCA No 528 (SCC)) remains the leading case on the standard of review for applications to set aside arbitral awards.

12. Enforcement of an Award

12.1 New York Convention

Canada is a signatory to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention"), which entered into force in Canada on 10 August 1986.

Under the Convention, Canada declared one reservation: that it would apply the Convention only to differences arising out of legal relationships, whether contractual or not, that were considered commercial under the laws of Canada, except in Quebec, where the law did not provide for such limitation.

In addition to the New York Convention, Canada is a party to:

- the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (ICSID); and

- numerous free trade agreements, foreign investment promotion and protection agreements, multilateral agreements and World Trade Organization agreements.

12.2 Enforcement Procedure

The procedure for recognition and enforcement of a foreign award is set out in Articles 35 and 36 of the Model Law, which, generally speaking, serve as a complete code in Canada (CJSC "*Sanokr-Moskva*" v *Tradeoil Management Inc*, 2010 ONSC 3073).

In Canada, the court retains the discretion to refuse to recognise or enforce an arbitral award if the party against whom the award is invoked proves the existence of a ground under Article 36 (1)(a) (*Depo Traffic Facilities (Kunshan) Co v Vikeda International Logistics and Automotive Supply Ltd*, 2015 ONSC 999).

12.3 Approach of the Courts

The Model Law limits the ability of national courts to interfere with international arbitration proceedings (*Yugraeft Corp v Rexx Management Corp*, 2010 SCC 19). In addition to the grounds under Article 36 (a) for refusing to enforce arbitral awards, the court retains discretion to refuse to recognise or enforce an arbitral award on the ground of public policy.

The public policy ground for resisting enforcement of an arbitral award has been narrowly construed in Canada (*Corporacion Transnacional de Inversiones SA de CV v STET International SpA*, 1999 CanLII 14819 (Ont Sup Ct J [Commercial List]), aff'd 2000 CanLII 16840 (ON CA), leave ref'd [2000] SCCA No 581 (SCC)).

There is no onus on a party to convince the court that the award is contrary to public policy; rather, such determination is made by the court itself (*Depo Traffic Facilities (Kunshan) Co v Vikeda International Logistics and Automotive Supply Ltd*, 2015 ONSC 999).

Canadian courts will generally uphold the homologation of arbitration awards even when such awards run contrary to foreign court decisions (*Eurobank Ergasias S.A. v. Bombardier Inc.* (2024 SCC 11)).

13. Miscellaneous

13.1 Class Action or Group Arbitration

Arbitration legislation in Canada does not provide for class-action arbitration or group arbitration.

13.2 Ethical Codes

There are no ethical codes in Canada that apply specifically to arbitration counsel. However, the law societies in each province and territory establish the professional and ethical obligations applicable to Canadian lawyers.

As discussed in 4.5 **Arbitrator Requirements**, arbitrators must be independent and impartial.

13.3 Third-Party Funding

There is no Canadian legislation providing rules or restrictions on third-party funding. This issue is being addressed primarily in the context of court-based class action proceedings.

13.4 Consolidation

The Model Law does not provide for consolidation of arbitration proceedings. However, the international arbitration legislation in each province and territory generally allows the court to order consolidation upon the parties' application.

13.5 Binding of Third Parties

The instances in which third parties may be bound by an arbitration agreement or award are addressed in Section 5.6 **Jurisdiction Over Third Parties**.

Trends and Developments

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Lawson Lundell LLP differentiates itself as one of the largest and most experienced law firms in Western Canada. It is a leading, full-service business law firm, with over 200 lawyers located in offices in Vancouver, Calgary, Kelowna and Yellowknife. The litigation and dispute resolution group has over 70 lawyers across its offices and specialises in arbitration, both domestic and international. The firm's experience includes Aboriginal, administrative, constitutional and public law; alternative dispute resolution; appellate advocacy; class action; commercial litigation; com-

petition and antitrust; construction and engineering; corporate governance; defamation and media; environmental; healthcare; insolvency and restructuring; insurance; natural resources; pensions, benefits and trusts; privacy and freedom of information; product liability; public utility and regulatory; real estate; research and opinions; securities; taxation; technology; and transportation. The firm's lawyers are leaders in ADR processes and approaches, including having completed formal training through ADR societies.

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Introduction

In this year's Canada Trends and Developments chapter for the International Arbitration Global Practice Guide, we begin with a discussion of the Ontario Court of Appeal's decision in *InFrontier AP LP v Rahmani*, 2026 ONCA 289. This decision recognised and enforced an arbitral award made in Dubai after the parties' chosen arbitral institution, the DIFC-LCIA Arbitration Centre, was unexpectedly dissolved.

Next, we review the Ontario Superior Court of Justice's decision in *Feicheng Mining Group v Liu*, 2026 ONSC 1969, which confirms Canada's pro-arbitration stance and the "exceptionally high bar to meet" when invoking the public policy defence to the enforcement of a foreign arbitral award. The court also considered the difference between "repugnant laws" and "repugnant facts" when considering a public policy objection.

Finally, we review the decision in *TSA CORPORATION et al v KPMG LLP*, 2026 NWTSC 2, in which the court set aside an arbitration agreement as a remedy for oppression. The court did not outline a test for when an arbitration agreement should be set aside as a remedy for oppression. It did, however, list the factors it considered in its analysis. Despite ostensibly making arbitration agreements more vulnerable, the court emphasised the unique facts underlying its decision and the exceptional use of the oppression remedy in this case. It remains to be seen whether this decision will impact the courts' approach to other cases involving oppression or other corporate remedies.

Dubai Arbitral Award Recognised in Ontario Notwithstanding a Change in Applicable Rules

In *InFrontier v Rahmani*, 2026 ONCA 289, the Court of Appeal for Ontario upheld a previous decision to recognise and enforce an arbitral award of the Dubai International Financial Centre (DIFC). This case arose from uncertainty following the dissolution of the DIFC-LCIA Arbitration Centre. It highlights the importance of contractual provisions related to rules of procedure and the impact of amendments to those rules.

The appellant, Roen Rahmani (Rahmani), founded several schools in Afghanistan that were financed in part by a loan from the respondent, InFrontier AF LP

(InFrontier). The 2020 loan agreement specified that any disputes were to be resolved by arbitration in the DIFC under the applicable rules. At the time of the loan agreement, the DIFC operated in partnership with the London Court of International Arbitration (LCIA) as the DIFC-LCIA Arbitration Centre. The operational partnership between the two arbitration centres had enacted a set of rules known as the Rules of Arbitration of the DIFC-LCIA Arbitration Centre (the DIFC-LCIA Rules).

The preamble to the DIFC-LCIA Rules stated that parties agreeing to arbitrate under these Rules accepted both the rules in effect at the time of their agreement and any future amendments to those rules.

InFrontier commenced arbitration proceedings against Rahmani in 2023, alleging a December 2022 default on the loan repayment. In the eventual arbitration proceedings, the initially agreed-upon DIFC-LCIA Rules had changed. In September 2021, Dubai enacted Decree 34, which abolished the DIFC and transferred its rights and obligations to the Dubai International Arbitration Centre (DIAC). Under Decree 34, the DIAC was to continue using the DIFC's rules until the DIAC's own rules were approved in March 2022.

After adopting its own rules, the DIAC issued a press release with the LCIA stating that all arbitrations commenced after March 21, 2022, under agreements that referred to the DIFC-LCIA Rules, would be administered under the new DIAC rules unless the relevant parties agreed otherwise.

Despite Rahmani's objection, the arbitration between the parties proceeded under the DIAC rules. The tribunal issued an award requiring Rahmani to pay InFrontier USD2.5 million plus interest, penalties and costs.

InFrontier applied to the Superior Court of Justice in Ontario for an order recognising and enforcing the award under Ontario's *International Commercial Arbitration Act (ICAA)* (which is based on the Model Law). The application judge relied on Decree 34 and found that the DIAC rules were an amendment to the DIFC-LCIA Rules and were correctly applied. The application judge recognised and enforced the award against Rahmani.

On appeal, Rahmani argued Decree 34 should not have been relied upon by the lower court in its interpretation of the parties' arbitration agreement. The Ontario Court of Appeal disagreed with Rahmani's argument and dismissed his appeal. Before determining whether the arbitration complied with the parties' agreement, the application judge first needed to interpret the agreement itself. The application judge was entitled to review the parties' agreement as an initial step, prior to any analysis of whether the parties' arbitration agreement had been followed. The DIFC-LCIA rules contemplated future amendment. Decree 34 amended the DIFC-LCIA rules. As the parties agreed to a set of rules that permitted future amendment, Decree 34 was validly considered by the first-instance court in its analysis.

This decision confirms that courts may enforce foreign arbitral awards under the New York Convention and Model Law where the arbitration rules change after the contract is agreed. Parties should review their current contracts and consider amendments where necessary in light of changes to arbitral rules or institutions.

The Defence of Public Policy is a High Bar to Clear
In *Feicheng Mining Group v Liu*, 2026 ONSC 1969, the Ontario Superior Court of Justice reaffirmed the high bar parties must clear when seeking to avoid the enforcement of foreign arbitral awards on public policy grounds. The invocation of the public policy defence must be raised in reference to "repugnant laws and not repugnant facts."

In December 2012, Feicheng Mining Group Co. Ltd. (Feicheng Mining) entered into a joint venture agreement with Canadian Dehua International Mines Group Inc. (Dehua) to be governed by the law of the People's Republic of China (PRC). The joint venture agreement contained an arbitration clause that specified that any disputes arising from the agreement shall be submitted to arbitration before the China International Economic and Trade Arbitration Commission (CIETAC).

In February 2018, Feicheng Mining and Dehua entered into a repayment agreement following Dehua's default on certain payments. As part of the repayment agreement, Dehua's outstanding obligations were rescheduled and Naishun Liu (Liu), as a director and 50%

shareholder of Dehua, was required to assume joint and several personal liability for the debt. The repayment agreement also contained an arbitration clause, which referred any disputes to CIETAC.

In 2019, Feicheng Mining commenced arbitration proceedings against Dehua and Liu before CIETAC pursuant to the February 2018 repayment agreement.

The CIETAC tribunal issued a unanimous award in Feicheng Mining's favour. Liu argued that he signed the repayment agreement under duress. This duress argument was based on Feicheng Mining instigating criminal proceedings against him in China, which he alleges the company used to secure his signature on the repayment agreement. The tribunal rejected this argument. It found that Liu's only evidence of coercion was the criminal investigation being dropped after he signed the agreement and that was insufficient evidence. All parties participated in the proceedings.

Feicheng Mining applied to have its arbitral award enforced against Liu in Ontario.

The court found the award to be valid and enforceable under CIETAC and PRC law. The only question for the court was whether the award was enforceable in Ontario.

Liu raised the defence of public policy to resist the enforcement of the award in Ontario. Under Article V of the New York Convention and Article 36 of the Model Law, a court may refuse to recognise and enforce the award issued in a foreign arbitral proceeding where the "recognition or enforcement of the award would be contrary to the public policy" of the respective court's own country.

The court found that the public policy defence is a high bar to meet and that the defence must focus on the public policy issue related to a foreign law, not the factual matrix underlying a foreign arbitral award.

Liu argued the tribunal's refusal to accept his evidence that he only signed the repayment agreement under duress is sufficiently repugnant to Canadian contract law to set aside the award. The Ontario Court rejected Liu's duress argument. During the initial arbitra-

tion in China, Liu had claimed duress. The tribunal found Liu's evidence insufficient to support his duress claim and rejected it. In the Ontario proceedings, the Court characterised Liu's advancement of the duress argument as an "attempt to relitigate" the tribunal's finding of no duress. The Court understood the tribunal's rejection of Liu's duress argument to be a matter of fact. The defence of public policy is meant to be invoked against laws, not facts. As Liu did not launch "an attack on the laws of China", he did not properly invoke the public policy defence.

Feicheng Mining's application was granted and the Court ruled that the award against Liu was enforceable in Ontario.

An Arbitration Agreement may be Set Aside as a Remedy for Oppression

TSA CORPORATION et al v KPMG LLP, 2026 NWTSC 2, is a case emerging from the misconduct of Ron Barlas ("Barlas"), the former CEO of a Northwest Territories' First Nation's development companies. He became CEO of the Łutsël K'édene First Nation's (the "First Nation") development corporations (the "Companies") in 2014.

Barlas allegedly used his position to misappropriate millions of dollars from the Companies for his own benefit, including by entering into agreements which funnelled millions of dollars into companies owned by him or his family members. The court noted damages exceeded CAD10 million.

As part of his scheme, Barlas replaced the Companies' former accountant with KPMG. The agreement between KPMG and the Companies included a standard-form arbitration agreement.

The First Nation brought an action against KPMG for negligence, breach of contract, breach of fiduciary duty and knowing assistance of breach of fiduciary duty (the "derivative action") and a separate proceeding against KPMG for oppression (the "oppression action").

In *TSA Corporation*, the Supreme Court of the Northwest Territories considered three overlapping motions:

- KPMG's application to stay the derivative action;
- KPMG's application to stay the oppression action; and
- the receiver's application to set aside the arbitration agreement.

The Court broadly sided with KPMG on the first two applications, finding all but a portion of derivative Action was covered by the arbitration agreement, and staying the Oppression Action as an attempt to "end-run" around it.

The Court's decision on the receiver's application rendered its conclusions on the first two applications largely academic: it sided with the receiver and set aside the arbitration agreement as a remedy for Barlas' oppression.

In reaching this conclusion, the Court first considered whether it had the authority to set aside an arbitration agreement as a remedy for corporate oppression and concluded it did, noting both case law and explicit statutory authority to set aside contracts.

In the Court's words: "the question in this case is not whether arbitration agreements can be set aside, but whether this is a proper case to deploy this exceptional power as a form of oppression relief."

The arbitration agreement was set aside

The Court found that it was an appropriate case to exercise the "exceptional" power to set aside the arbitration agreement. It declined to articulate a test for when an arbitration agreement would be set aside as a remedy for oppression, but provided a list of factors which militated in its favour:

- the arbitration agreement had some nexus to the oppression;
- the broader deal in which the arbitration agreement is found yielded minimal or generic benefit to the subject company;
- there was minimal conscious consideration or negotiation of the arbitration agreement;
- the company's governance in and around the entering of the broader agreement was compromised; and

- the arbitration in question can be shown to materially interfere with efficient and fair resolution of the oppression.

The Court found each of these circumstances present.

- The arbitration agreement had a nexus to the oppression: it arose from Barlas' use of an out-of-territory accountant to conceal his scheme and was therefore tainted by his wrongdoing regardless of whether KPMG was complicit.
- The broader engagement yielded no meaningful benefit to the Companies, such that preserving the arbitration agreement would not be inequitable. The agreement was a standard-form contract whose terms neither party consciously considered nor negotiated.
- The Companies' governance was decimated at the relevant time, stripping the contract of its character as a freely and informedly joined bargain. And proceeding to arbitration would generate duplicative proceedings and impose undue, if not prohibitive, costs on the First Nation.
- The Court placed a significant emphasis on the unique context of the case, which involved "big law" and "big accounting" vouching for Barlas and Barlas exploiting his position to steal millions from a remote Indigenous community.
- The Court noted recent Canadian law that affirmed the *United Nations Declaration on the Rights of Indigenous Peoples* as "an interpretative lens" that informed the legal and social context in which the court crafted the remedy.

Taken together, these factors led the Court to conclude that setting aside the arbitration agreement was in the interests of justice and an appropriate remedy for Barlas' oppression.

The arbitration community and parties may question whether this decision opens a new ground for attacking arbitration agreements.

Arguably, that concern may be mitigated by the decision's heavily fact-specific nature. The court's focus on the unique facts at play, including the particular social and legal considerations of the First Nation and the egregious acts of Barlas, reflects its hesitancy to set aside an arbitration agreement altogether. As the Court cautioned, the oppression remedy must not be popularised as a backdoor to avoid arbitration.

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