



Arbitration Guide
IBA Arbitration Committee

CANADA

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

Arbitration is growing in popularity as a dispute-settlement mechanism for Canadian businesses and Canadian courts have embraced a deferential approach towards arbitration and the jurisdiction of arbitral tribunals.

The principal perceived advantages of arbitration vis-a-vis court proceedings include privacy (and confidentiality where the parties so provide), procedural flexibility, finality, easier enforcement and access to arbitrators with relevant subject matter expertise.

The principal perceived disadvantages of arbitration include the cost of holding the arbitration (there are no charges for judges or court facilities in Canada other than modest filing fees), the difficulty in joining third parties to the proceedings and a possible lack of discovery and appeal rights.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Ad hoc and institutional arbitrations are both commonly used in Canada, in both domestic and international arbitrations.

The services of all major international arbitral institutions – for example the International Court of Arbitration of the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and the International Centre for Dispute Resolution (ICDR), which is affiliated with the American Arbitration Association (AAA) – are available for use in international arbitrations in Canada where the parties so choose. The United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules are also often used in ad hoc international arbitrations.

There are also a number of arbitral institutions that are based in Canada. They are: ADR Chambers International, the ADR Institute of Canada (which also operates through affiliates located in most of the provinces), the British Columbia International Commercial Arbitration Centre and the Canadian Commercial Arbitration Centre. Each of these institutions has developed its own set of arbitration rules.

(iii) What types of disputes are typically arbitrated?

Parties refer a broad range of disputes to arbitration, including, for example, those arising from distribution and franchise agreements, construction contracts,

mergers and acquisitions, technology and intellectual property licensing agreements and international trade and investor/state disputes.

(iv) How long do arbitral proceedings usually last in your country?

The length of an arbitral proceeding will depend on a number of factors, including the wishes and availability of the parties and of the tribunal members, and in particular the agreed-upon procedure to be followed. In institutional arbitrations, the timeline will depend to a large extent on the rules of the institution, which often include provisions for an expedited process.

Arbitrations typically take less time than court proceedings in Canada to obtain a final resolution of business disputes.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

Foreign nationals are generally free to act in arbitration proceedings seated in Canada and, in particular, do not need to be licensed with the law society of the province in which the arbitration is being conducted. While each province regulates professional acts that may be performed by persons other than members of their association and prohibits them from giving legal advice, exceptions exist for practitioners in international arbitration. For example, in Quebec, a foreign practitioner may give advice and consultations on legal matters if the person (1) is legally authorized to exercise outside of Quebec the same profession as members of the Barreau du Quebec, (2) acts as counsel or advocate before an international arbitration tribunal and (3) gives advice and consultations on legal matters regarding the case for which said person is acting as counsel or advocate before an international arbitration tribunal. Similarly, in Ontario, foreign practitioners do not need a license if (1) they are authorized to practice law in a jurisdiction outside Ontario, and (2) their practice of law in Ontario is limited to acting as counsel to a party to a commercial arbitration that is conducted in Ontario and that is ‘international’ within the meaning prescribed by the *International Commercial Arbitration Act*.

Foreign arbitration practitioners will need normal travel documents to enter Canada, which may include a visa depending on their country of origin. A Canadian work permit will likely not be necessary to work on a single arbitration case, since an exemption exists in Canada’s immigration law for foreign nationals who seek to engage in ‘international business activities in Canada without directly entering the Canadian labour market’.

II. Arbitration Laws

- (i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?**

The 1985 UNCITRAL Model Law (the ‘Model Law’) provides the framework for international arbitration laws in Canada. The 2006 amendments to the Model Law have only been implemented in Ontario so far, and have inspired recent legislative reforms in Quebec (see below). Unlike many other Model Law countries, domestic and international arbitration statutes applicable in Canada have not been amalgamated into a single legislative scheme.

In accordance with Canada’s federal structure, which divides legislative powers between the federal and provincial and territorial governments, the provinces and territories have primary legislative authority with respect to arbitration. The sole exception is for arbitrations within certain federal spheres of jurisdiction 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 where the dispute is in relation to maritime or admiralty matters. Arbitrations concerning such matters are governed by the federal Commercial Arbitration Act, the main schedule to which is the Commercial Arbitration Code, which is also based on the Model Law.

Accordingly, each province and territory has enacted legislation governing international arbitration, generally by incorporating the Model Law as a schedule to the relevant act or by reproducing the text of the Model Law in the body of the legislation. In Quebec, the principal elements of the Model Law have been incorporated into the Civil Code of Quebec (CCQ) and the Code of Civil Procedure (CCP) with the express stipulation that the Model Law itself, including its amendments, are to be taken into consideration in arbitrations involving interprovincial and international matters. The new CCP, in force since January 2016, reflects some aspects of the 2006 amendments to the Model Law.

In this chapter, unless otherwise indicated, “Canadian arbitration laws” refers both to specific statutes on international commercial arbitration and to the relevant provisions of the CCQ and CCP.

- (ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

All provinces and territories, other than Quebec, have enacted two arbitration statutes: one for domestic arbitrations and another for international commercial arbitrations. The international arbitration legislation in each of these provinces and territories incorporates the Model Law, either by appending a version of the

Model Law or by direct incorporation into the body of the legislation. In Quebec, a single law (Book VII, Title II of the CCP) applies both to domestic and international arbitration, with the proviso that where an arbitration involves interprovincial or international trade interests, ‘consideration may be given, in interpreting’ the relevant provisions of the CCP, to the Model Law and UNCITRAL’s *travaux préparatoires* (art. 649 CCP).

The domestic arbitration legislation varies significantly among the provinces and territories. Generally speaking, as compared to its international arbitration counterpart, the domestic legislation applies to all arbitrable domestic disputes (not only commercial disputes) and expressly addresses the arbitrator’s powers and the court’s supervisory powers over the arbitration. Some domestic statutes – but not all – allow for limited rights of appeal (as opposed to only providing for the right to set aside or annul an award).

With respect to disputes that relate to maritime or admiralty matters, or 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, there is no distinction between international and domestic disputes, as the federal *Commercial Arbitration Act* governs both.

(iii) What international treaties relating to arbitration have been adopted?

Canada became a party to the New York Convention in 1986.

In November 2013, Canada ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ‘Washington Convention’).

(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

Article 28(1) of the Model Law, which has been implemented across Canada, provides that 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’.

While Article 28(2) of the Model Law provides that, failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable, the provincial acts adopting the Model Law have modified Article 28(2) to allow the tribunal to apply ‘the rules of law it considers to be appropriate given all the circumstances respecting the dispute’. The wording is substantially the same in all provinces, except in Quebec, where the CCP provides that ‘[t]he 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’.

III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

For an arbitration agreement to be binding and enforceable it must be in writing and its subject-matter must be capable of being settled by arbitration. In accordance with the Model Law, the writing requirement is satisfied when the arbitration agreement is recorded by an exchange of documents or is incorporated by reference. Electronic-commerce legislation in Canada provides that the writing requirement is satisfied by electronic format of documents.

- (ii) **What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an agreement will not be enforced?**

Canadian courts are typically ‘pro-arbitration’ when asked to enforce an arbitration agreement and will stay a parallel judicial proceeding accordingly. Consistent with the Model Law, an arbitration agreement will not be enforced if it is ‘null and void, inoperative or incapable of being performed’.

Questions concerning the enforcement of arbitration agreements have typically arisen in the context of consumer contracts, especially where the arbitration agreement would have the effect of precluding a class action claim. In Ontario, Alberta and Quebec, consumer-protection legislation prohibits mandatory arbitration agreements and waiver of class proceedings clauses in consumer contracts. In other provinces, where consumer-protection legislation does not provide for the inoperability of arbitration agreements, they will generally be enforceable vis-a-vis contract claims, but their enforceability vis-a-vis a statutory claim will depend on the interpretation of the relevant statute. (See *Seidel v. TELUS Communications Inc.*, [2011] 1 SCR 531.)

- (iii) **Are multi-tier clauses common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability?**

Multi-tier clauses are very common. While the jurisprudence on the topic is not abundant, the enforcement of multi-tier clauses by Canadian courts, certainly in provinces other than Québec, generally depends on the level of detail provided in

the clause and on its interpretation by the court. The case law suggests that the wording of the multi-tier clause must be sufficiently certain and clearly reflect the parties' intention to proceed to arbitration only after the initial step(s) of the dispute resolution process have been complied with. This may be achieved by providing both a clear procedure and a timeframe for the steps preceding arbitration, or by incorporating by reference a set of institutional rules governing these steps.

Courts have enforced sufficiently detailed multi-tier clauses by interpreting the initial step of dispute resolution (such as negotiation or mediation, for example) as a condition precedent to the arbitration. However, courts have been reluctant to enforce multi-tier clauses drafted in general terms (see, e.g., *Alberici Western Constructors Ltd v Saskatchewan Power Corporation*, 2015 SKQB 74 at para. 67, aff'd 2016 SKCA 46).

(iv) What are the requirements for a valid multi-party arbitration agreement?

The key to a valid multi-party arbitration agreement is the consent of all of the parties involved, ideally within the same arbitration agreement. The fact that a number of parties have signed similar contracts for the same project, each containing an identical arbitration clause, may not be sufficient to demonstrate consent to a single arbitration. The arbitration agreement should also provide clearly for multi-party arbitrations in order to ensure one consolidated proceeding.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

There has been no treatment in the Canadian case law on the enforceability of a unilateral right to arbitrate. However, under general contract law principles, such an agreement would generally be enforceable.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

A non-signatory may be bound by an arbitration agreement only under the limited circumstances in which 'consent' is found to exist despite the lack of a signature, namely where:

- The substantive law provides that the non-signatory has rights and obligations under the agreement (ie by virtue of an agency relationship between the party and the non-party or where the non-signatory is merely an *alter ego* of the party);

- The parties have a subsequent agreement consenting to the addition of a new party – and that new party also consents to the arbitration agreement; or
- An entity's conduct leads to a finding of estoppel, preventing the non-signatory from denying that it is a proper party to the arbitration proceedings.

IV. Arbitrability and Jurisdiction

- (i) **Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

Disputes involving criminal offences, public recognition of civil status, capacity of persons and family-law matters are generally not arbitrable in Canada. Consumer-protection legislation in the provinces of Ontario, Alberta and Quebec provides that disputes arising from consumer contracts are not arbitrable unless the consumer specifically agrees to arbitration after the dispute arises.

Arbitrability is typically treated as a matter of jurisdiction. Generally speaking, an arbitral tribunal rules on its own jurisdiction first. However, courts can address challenges to the jurisdiction of the tribunal in limited circumstances. See IV(iii) below.

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

If court proceedings are initiated despite an arbitration agreement, a party may bring a motion to stay the proceedings. If the existence of a valid agreement to arbitrate is established *prima facie*, the court will stay the court proceedings in favour of arbitration, unless the arbitration agreement is 'null and void, inoperative or incapable of being performed'. However, the court will refuse to stay the court proceedings when a party alleged to be a party to an arbitration agreement establishes on clear evidence that it is not.

Time limits to make jurisdictional objections will depend on the local procedural rules. For example, Ontario legislation provides no specific time limit beyond the Model Law's requirement that the application be brought no later than when submitting a first statement on the substance of the dispute, while article 622 of Quebec's CCP provides that any such application "must be made within 45 days after the originating application or within 90 days when the dispute involves a

foreign element”. As provided by Article 8 of the Model Law, a party will be considered to have waived its right to ask for a stay of proceedings when submitting its first statement on the substance of the dispute.

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal’s jurisdiction?

Article 16 of the Model Law, which has been implemented across Canada, provides that the arbitral tribunal may rule on its own jurisdiction, including in respect of any objections relating to the existence or validity of the arbitration agreement.

The *competence-competence* principle is thus applicable in Canada and has been articulated by the Supreme Court of Canada as follows (*Seidel v. TELUS Communications Inc.*, [2011] 1 SCR 531, at para. 114):

‘Challenges to the arbitrator’s jurisdiction – namely arguments that an agreement is void, inoperative or incapable of being performed – should be resolved first by the arbitrator. A court should depart from this general rule only if the challenge is based on a question of law, or on questions of mixed fact and law that require only superficial consideration of the documentary evidence in the record, and is not merely a delaying tactic.’

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

Pursuant to Article 11 of the Model Law, which has been implemented across Canada, the parties are free to agree on a procedure for appointing the arbitrator or arbitrators. The parties may also delegate the responsibility of constituting a tribunal to an institution (usually the institution that is administering the arbitration).

If the parties have not included a mechanism for selecting the arbitrator or arbitrators in their agreement, or cannot agree on the constitution of the tribunal within a certain time frame, any party may request assistance from the court in appointing the arbitrator(s) (as per Article 11(4) of the Model Law).

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

Article 12(1) of the Model Law, which is incorporated in arbitration laws across Canada, provides that an individual approached in connection with his possible appointment as an arbitrator ‘shall disclose any circumstances likely to give rise to justifiable doubts as to impartiality or independence’. Under Article 626 of Quebec’s CCP, an arbitrator must ‘declare to the parties any fact that could cast doubt on the arbitrator’s impartiality and justify a recusation’.

A challenge of an arbitrator based on lack of independence or impartiality is made first before the tribunal. As set out in the Model Law, the challenging party must state the grounds for the challenge in writing to the tribunal within 15 days of becoming aware of the grounds. If the challenge is refused, the challenging party may, within 30 days, request the court to rule on the challenge.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

There are no limitations on who may serve as an arbitrator. However, arbitrators must have whatever qualifications have been agreed by the parties.

Article 12(1) of the Model Law, which is incorporated in arbitration laws across Canada, requires the continuous disclosure of any circumstances which may give rise to justifiable doubts as to an arbitrator’s impartiality or independence. However, no specific set of ethical rules for international commercial arbitration exists. Specific ethical rules may, nevertheless, be imposed by arbitration institutions. In international arbitrations governed by the arbitration rules of the Canadian Commercial Arbitration Centre (CCAC), for example, the arbitrator must make himself available, carry the arbitral procedure to its conclusion with diligence and respect the confidentiality of the proceedings.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

Other than what is provided in the Model Law and already discussed above, there is no specific provincial or federal rule or code related to conflicts of interest in international arbitration. The IBA Guidelines on Conflicts of Interest in International Arbitration are frequently consulted by tribunals and courts in international matters. The Guidelines were referred to favourably by the Ontario Superior Court of Justice in a recent case involving allegations of arbitrator bias, even though they had not been incorporated by reference by the parties in the arbitration agreement. (See *Jacob Securities Inc. v Typhoon Capital B.V.*, 2016 ONSC 604, at para. 41)

VI. Interim Measures

- (i) **Can arbitrators enter interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

Article 17 of the Model Law allows a tribunal, at the request of a party, and absent an agreement to the contrary, to make any 'interim measure of protection as the arbitral tribunal considers necessary', including the provision of security for costs by a party. Article 17 has been implemented in all Canadian jurisdictions, including recently in Quebec (see articles 638-641 CCP).

Examples of interim measures include granting security for costs (if doing so is allowed by the relevant arbitration rules or governing contract) and granting orders for the retention, preservation and production of documents and property. Article 27 of the Model Law, which has been implemented across Canada, also provides for a tribunal, or a party with the approval of the tribunal, to seek the assistance of a competent court in taking evidence.

The 2006 amendments to the Model Law regarding interim measures have been implemented in Ontario, and are substantially reflected in the new Quebec CCP. These amendments address, among other things, the possibility for an arbitrator to make a preliminary order *ex parte* (Article 17B), and to modify, suspend or terminate an interim measure or preliminary order (Article 17D). The amendments also address the recognition and enforcement of interim measures (Articles 17H-17I).

In Ontario, British Columbia and Quebec, interim measures ordered by an arbitrator may be enforced in the same way as an award.

- (ii) **Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following constitution of the arbitral tribunal?**

Canadian courts have shown themselves willing to grant provisional relief in support of arbitration, based on Article 9 of the Model Law, which is incorporated in Canadian arbitration laws, and which provides that 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 such measure. In practice, parties would be well-advised to obtain the necessary relief from the tribunal first, before applying to the courts. However, emergency situations may justify earlier court intervention, and thus courts are willing to hear these requests when warranted under the circumstances.

Because Article 9 of the Model Law specifically refers to situations that arise ‘before or during arbitral proceedings’, there is no prohibition on applying for an order for provisional relief once arbitration has commenced. By the same logic, court-ordered provisional relief need not necessarily expire when the arbitral tribunal is constituted.

In Quebec, the substance of Article 9 of the Model Law is incorporated in Article 623 CCP: ‘The court, on an application, may grant provisional measures or safeguard orders before or during arbitration proceedings’. There are cases in Quebec, in which courts have declined to grant provisional relief in support of international arbitrations, based on a reading of related provisions in the Civil Code of Quebec that define the circumstances under which Quebec courts may exercise jurisdiction in international matters. (See *Jefagro Technologies Inc. v. Vetagro s.p.a.*, 2012 QCCS 2945; see however *Bombardier Inc. v. General Directorate for Defense Armaments and Investments of the Hellenic Ministry of National Defense*, 2013 QCCS 6892).

- (iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal’s consent if the latter is in place?**

Courts can provide assistance in the taking of evidence where necessary, as per Article 27 of the Model Law, which is incorporated across Canada. As provided in the Model Law, these measures require the tribunal’s consent.

VII. Disclosure/Discovery

- (i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

The IBA Rules of Taking of Evidence in International Commercial Arbitration are increasingly relied upon by parties and arbitrators as guidelines regarding evidentiary issues, including disclosure/discovery.

- (ii) What, if any, limits are there on the permissible scope of disclosure or discovery?**

There are no legislated limits on the permissible scope of disclosure or discovery specifically in respect of arbitrations.

- (iii) Are there special rules for handling electronically stored information?**

Arbitration laws in Canada contain no special rules for the handling or disclosure of electronically stored information. However, the Sedona Canada Principles

Addressing Electronic Discovery, which were released in 2008, have already been referred to by Canadian courts and incorporated by reference in some provincial legislation. For example, civil litigants in Ontario are required to consult and have regard to the Sedona Canada Principles in preparing a discovery plan for an action. Because of the growing popularity of the Principles, it is likely that they will have an influence on the handling of electronically stored information in Canadian arbitral proceedings.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

Even though arbitration in Canada is assumed by many to be confidential, there is no legislation – except in Quebec – and little jurisprudence providing assurance in this respect. In a 2010 decision, the Quebec Court of Appeal refused to recognize an implicit obligation of confidentiality associated with the arbitral process that, it was argued, binds arbitrators and parties alike. (See *Rhéaume v. Société d'investissements l'Excellence inc.*, 2010 QCCA 2269.) That said, the CCP was recently amended to require the arbitrator to preserve the confidentiality of the arbitration process (article 644 CCP). This may be construed in the future as also imposing on the parties the obligation to protect the confidentiality of the arbitration. In any event, it is best practice for parties who desire to have a confidential arbitration to specifically provide for confidentiality in the arbitration agreement, whether directly, or indirectly by selecting institutional rules, such as those of the LCIA, that include a confidentiality provision. Any right to or expectation of confidentiality will be waived, however, if parties submit some part of their dispute to the courts – for example, on an application to have an award set aside – without obtaining a sealing order. In Ontario, a court recognized a general public interest in preserving the confidentiality of materials filed in court about a pending arbitration. (See *Telesat Canada v. Boeing Satellite Systems International Inc.*, 2010 ONSC 22 (Ont Sup Ct) at paras. 14, 25, 27.) However, such an order may be more difficult to obtain when the arbitration is over (2249492 *Ontario Inc. v. Donato*, 2017 ONSC 4975).

Canadian courts have also held that there is an implied undertaking by parties not to use information obtained through the course of an arbitration for collateral purposes.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

There are no express provisions in Canadian arbitration laws as to the tribunal's power to protect trade secrets and confidential information.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

None of the Canadian arbitration laws contains any express provision as to rules of privilege.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? Is so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

The IBA Rules on the Taking of Evidence in International Commercial Arbitration are increasingly being used by parties and arbitrators as guidelines regarding evidentiary issues, including document production, witness and expert evidence, hearings and privilege. The extent to which the Rules are adopted as binding or whether the tribunal retains discretion to depart from them depends on the parties' agreement, but it seems more prevalent to adopt them as guidelines.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

The Model Law sets out certain basic limitations on the tribunal's discretionary powers, including that the parties must be treated with equality and that each party must be given a full opportunity to present its case. Within these boundaries, which have been implemented in Canadian arbitration laws, the tribunal is free to adopt a procedure suitable to the circumstances of the case.

The arbitration agreement and, as the case may be, the applicable arbitration rules may also serve to define the scope of the tribunal's discretion to govern the hearings.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

The manner in which witness testimony is presented and challenged varies and will depend on the agreement of the parties and the discretion of the tribunal. Witness statements with cross examination are a common feature of international arbitration, with brief oral direct examination generally permitted. Arbitrators can and do question witnesses.

- (iv) **Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

The Model Law does not expressly regulate who can or cannot appear as a witness, nor does it contain any mandatory rules on oath or affirmation. Provincial laws on oaths or affirmations may apply to arbitrations, with arbitrators empowered to administer oaths. In Quebec, the CCP specifically provides that ‘arbitrators have all the necessary powers to exercise their jurisdiction, including the power to administer oaths’ (Art. 632). The applicability of provincial laws on this subject and the rules contained therein vary from province to province.

- (v) **Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative) and the testimony of unrelated witnesses?**

Neither the Model Law nor Canadian practice distinguishes between the testimony of a legal representative and the testimony of an unrelated witness.

- (vi) **How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

Canadian arbitration laws do not expressly address the independence and/or impartiality of expert witnesses. The presentation of expert testimony can vary and will depend on the agreement of the parties and the discretion of the tribunal. As a matter of practice, expert testimony will be the subject of a written expert report communicated to the other party and the Tribunal in advance of the evidentiary hearing.

- (vii) **Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

Arbitral tribunals may appoint their own experts. The appointment of tribunal experts and the taking of such evidence occurs in accordance with the procedure agreed by the parties (including any applicable institutional rules) or otherwise adopted for the arbitration.

While in practice arbitral tribunals in Canada do on occasion appoint their own experts, it is not a common practice. There are no requirements in Canada that experts appointed by arbitral tribunals be selected from a particular list.

- (viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

Witness conferencing can be and occasionally is employed, subject to the agreement of the parties and the discretion of the tribunal.

- (ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

The use of arbitral secretaries will depend on the arbitrators. There are no explicit rules or requirements in Canadian arbitration laws relating to the use of arbitral secretaries.

X. Awards

- (i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

Pursuant to Article 31(1) of the Model Law, which has been implemented across Canada, an award must be in writing, signed by either a majority or all of the arbitrators, and must also include the place at which and the date on which the award was made. In addition, an award must 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 based on a settlement (ie, a consent award).

There exists no *a priori* limitation on permissible relief, which includes equitable remedies (including specific performance and injunctions), declaratory orders concerning the rights of the parties and statutory remedies. The requested relief, however, must not run afoul of the arbitration agreement itself or of the *lex arbitri*. In Quebec, the power of arbitral tribunals to issue awards ordering specific performance and perhaps other relief of an injunctive nature (but not an 'injunction' whose non-respect entails penal consequences) has been confirmed by the Quebec Court of Appeal (See *Nearctic Nickel Mines Inc. v. Canadian Royalties Inc.*, 2012 QCCA 385). In Quebec, an 'injunction' (whose non-respect entails penal consequences) is defined in Art. 509 CCP as "an order of the Superior Court", and is therefore generally still seen as a remedy that can only be granted by the Superior Court.

- (ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

Whether or not a tribunal can award punitive or exemplary damages depends on the arbitration agreement, the applicable law and the *lex arbitri* – nothing in the

Model Law, nor in Canadian arbitration laws, prohibits the awarding of punitive/exemplary damages.

In adopting the Model Law, only British Columbia – among Canada’s many jurisdictions – added a specific provision regarding interest. British Columbia’s *International Commercial Arbitration Act* (RSBC 1996, C 233) provides, at s. 31(7), that, unless parties agree otherwise, the tribunal may award interest. Without specific provisions in the Model Law regarding interest, whether interest (including compound interest) may be awarded will depend on the arbitration agreement, the contract in dispute and/or the law governing the contract. Agreements that require an arbitrator to award interest will be respected.

(iii) Are interim or partial awards enforceable?

With the exception of British Columbia, Ontario and Quebec, where legislation specifically provides that interim awards may be enforced upon application to the competent court, Canadian arbitration laws, following the Model Law, make no mention of partial or interim awards or their enforcement. However, interim and partial awards are not precluded by law in Canada, and can both be rendered and enforced in Canada.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Canadian arbitration laws do not expressly regulate dissenting opinions. The form and content requirements for an award, *mutatis mutandis*, should be heeded for a dissenting opinion. In Quebec, the award must state the reasons on which it is based and be signed by all the arbitrators; if one of them refuses to sign or is unable to sign, the others must record that fact and the award has the same effect as if it were signed by all of them (Article 642 CCP).

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Article 30 of the Model Law, which is implemented in Canadian arbitration laws, provides that if a dispute is settled during the arbitration, the proceedings shall be terminated, and if requested by the parties, the tribunal may issue a consent award. In Quebec, if the parties settle the dispute, the arbitrators must record the agreement in an arbitration award (Article 642 CCP).

Article 32 of the Model Law also provides that the arbitral tribunal shall terminate the proceedings when:

- The claimant withdraws its claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest of the respondent in obtaining a final settlement of the dispute; or
- The arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Under Article 33 of the Model Law, which has been incorporated in Canadian arbitration laws, parties have 30 days after an award has been rendered, or such other time frame as has been agreed between the parties, to apply to the arbitral tribunal for a correction of the award (ie, a correction of errors in computation, typography, etc). An arbitral tribunal may also correct an error of this type on its own initiative within 30 days after the award has been rendered.

Within the same period, a tribunal may (again by request or on its own initiative) provide an interpretation of the award. Moreover, unless otherwise agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal, within 30 days of receipt of the award, 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.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

Consistent with the Model Law, the arbitration laws in all Canadian jurisdictions (except British Columbia) do not address the issue of costs. Parties are advised to include directions as to costs in the arbitration agreement, whether directly or indirectly, through the incorporation of rules that address the issue. British Columbia's *International Commercial Arbitration Act* expressly grants the arbitral tribunal the discretion to make an order for arbitration costs, legal costs and any other expenses, unless otherwise agreed by the parties (s. 31(8)).

Typically, the parties share the costs of the arbitration – that is, the fees of the arbitrators and the expenses of conducting the arbitration – and pay their own ‘legal costs’ – that is, the fees and expenses of counsel and experts – pending a final award, in which the tribunal may apportion such costs between the parties.

(ii) What are the elements of costs that are typically awarded?

An arbitral tribunal may award the various elements of arbitration costs (such as the fees of the arbitrators and the costs of renting suitable premises for the hearing) and the parties' legal costs (such as the fees of their legal counsel and experts), depending on the circumstances. However, it is open to the parties to agree on the kinds of costs that may be addressed in a cost award by the tribunal depending on the outcome of the proceeding. Typically, an arbitral tribunal will award arbitration costs, but will less frequently award legal costs.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

As stated above, none of the Canadian jurisdictions (except British Columbia) explicitly contemplates the question of the arbitral tribunal's jurisdiction to determine costs, including its own costs. Therefore, the answer depends on the arbitration agreement and/or any applicable arbitration rules agreed upon by the parties.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

Canadian arbitration laws do not address the apportionment of costs between the parties. Subject to the parties' agreement on this issue, institutional arbitration rules typically provide that the arbitral tribunal shall have the discretion to apportion the costs between the parties, based on factors such as the outcome of the proceedings and the conduct of the parties during the proceedings.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

See 'Challenges to Awards' below.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

An arbitral award that is rendered in Canada may be challenged on the grounds set out in Article 34 of the Model Law (which has been implemented across Canada), namely: i) the incapacity of one of the parties or the invalidity of the

arbitration agreement, ii) improper notice given to a party or a party otherwise being unable to present its case, iii) the award deals with a dispute not contemplated by or falling within the terms of the submission to arbitration, or iv) the composition of the tribunal or its procedure was not in accordance with the agreement of the parties. Additionally, a court may set aside an award based on a finding that the subject-matter of the dispute is not arbitrable under the law of the relevant Canadian jurisdiction, or that the award is in conflict with the public policy of that jurisdiction (in Quebec, against public order (art. 648 CCP)).

Ontario courts have held that in order for a challenge to succeed on public policy grounds, the award ‘must fundamentally offend the most basic and explicit principles of justice and fairness [in the province where the award is being challenged], or evidence intolerable ignorance or corruption on the part of the Arbitral Tribunal. The [applicant] must establish that the [award is] contrary to the essential morality of [the province].’ (*Corporacion Transnacional de Inversiones v. Stet International, S.p.A.* (1999), 45 O.R. (3d) 183 (C.A.), affd 136 A.C. 113 (C.A.), leave to appeal to S.C.C. refused 149 O.A.C. 398n; see also *United Mexican States v. Karpa*, [2003] O.J. No. 5070 (QL) at para. 87 (S.C.J.), affd 248 D.L.R. (4th) 443 (C.A.); *Consolidated Contractors Group S.A.L. (Offshore) v. Ambatovy Minerals S.A.*, 2017 ONCA 939).

An application to set aside an award must be made within three months of the receipt of the award by the applicant. The duration of challenge proceedings will depend on local court procedure and the backlog of cases – if any – in the court where the application has been made.

Applying Model Law Article 36(2), which has been implemented in Canadian arbitration laws, a court in Canada may stay proceedings to enforce an award pending the outcome of a challenge to the award (see *Dalimpex Ltd v. Janicki*, [2003] OJ No 2094 (CA) at paras 60-61) and may also, on the application of the party seeking the recognition and enforcement of the award, order the other party to provide appropriate security.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

An Ontario court has held that Article 34 of the Model Law (ie, the provision allowing a party to bring an application to set aside an award) is not a mandatory provision of the Model Law and that parties may therefore agree to waive the right to apply to set aside an award as long as their agreement does not conflict with a mandatory provision of the Model Law (See *Noble China Inc. v. Lei* (1998) 42 O.R. (3d) 69 (Gen. Div.); see also *Popack v. Lipszyc*, 2015 ONSC 3460). Such a waiver is therefore likely to be effective unless the arbitral tribunal has itself breached a mandatory provision of the Model Law, or unless allowing the award

to stand would be contrary to the public policy of the relevant Canadian jurisdiction.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

The only recourse available in Canada against an international arbitration award is an application to set it aside or opposition against its recognition and enforcement.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

Article 34 of the Model Law, which has been implemented across Canada, provides that when a court is asked to set aside an award, it 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.

XIII. Recognition and Enforcement of Awards

(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?

In Canada, parties may apply to a court for the recognition and enforcement of an arbitral award. Due to Canada's federal structure, the application should be made in the court of the province or territory where the arbitral award debtor possesses, or might eventually possess, assets. In the limited circumstances where an award relates to matters that fall within the federal Parliament's constitutionally defined powers, a party has the option of bringing an application to the Federal Court of Canada, whose territorial jurisdiction extends to the whole country.

In order for the application to be considered, it must meet certain formal requirements. A party must file an authenticated original or a certified copy of both the award and the arbitration agreement. If the award is not in English or French, a certified translation must also accompany the application.

The grounds for refusing recognition or enforcement, listed in Article 36(1) of the Model Law, include the grounds applicable to the setting aside or annulment of an award, which are set out above, as well as the following additional grounds: i) 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; ii) the subject matter is not arbitrable under the law of the enforcing jurisdiction; or iii) recognition is contrary to the public policy of the enforcing jurisdiction. In considering whether or not to enforce the award, the court may not inquire into the merits of the dispute.

Pursuant to Article 36(2) of the Model Law, a court may adjourn an application for enforcement if an application to set aside the award has been made to a competent court, and may also, on the application of the party claiming recognition and enforcement of the award, order the other party to provide appropriate security (which, in some cases, has been the full amount of the award).

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

Once an exequatur is obtained (ie, an application for enforcement is granted), the order has the same force and effect as a judgment of the relevant court, and may be enforced through the relevant jurisdiction's ordinary rules of procedure.

(iii) Are conservatory measures available pending enforcement of the award?

Pursuant to Article 36(2) of the Model Law, which has been incorporated in arbitration laws across Canada, if the judgment debtor seeks to oppose enforcement and if an application for setting aside or suspension of the award has been made to a court of the country in which or under the law of which the award was made, the competent Canadian court may order the judgment debtor to provide security for the award while the enforcement proceedings are ongoing.

There is no specific provision in Canadian arbitration laws allowing parties to apply for conservatory measures while enforcement proceedings are pending. A party may generally seek an injunctive order from a court to prevent a defendant from dissipating assets or from conveying away his or her own property (ie, a *Mareva* injunction) even after a judgment is obtained in aid of execution.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

The courts have generally adopted a positive and non-interventionist attitude towards the enforcement of awards.

Whether courts will enforce a foreign award set aside by the courts at the place of arbitration has not been dealt with extensively in Canada. An Ontario court has stated that it had the discretion to enforce an award even if it was under attack at

the place of arbitration. (See *Schreter v. Gasmac Inc.* (1992), 7 O.R. (3d) 608 (Ont. Ct. J. Gen. Div. Comm.); see also *Depo Traffic v. Vikeda International*, 2015 ONSC 999, at para. 32). Conversely, there are at least a few examples of courts adjourning Canadian enforcement proceedings where the award was subject to set-aside proceedings at the place of arbitration (See *Powerex Corp. v. Alcan Inc.*, 2004 BCSC 876; see also *Empresa Minera Los Quenuales S.A. v Vena Resources*, 2015 ONSC 4408).

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

Enforcement proceedings will vary in length depending on whether or not they are contested. The case loads of the courts and procedural rules of the relevant jurisdiction will also influence the duration of the process.

The limitation period for seeking the enforcement of an award varies from jurisdiction to jurisdiction within Canada. The Supreme Court of Canada has recently affirmed that the application of a relatively short limitation period under provincial law (two years) is not inconsistent with the New York Convention. (See *Yugraneft Corp v. Rexx Management Corp.*, [2010] 1 SCR. 649). The Court also affirmed that the limitation period begins to run after the deadline has passed to set aside the award at the seat of the arbitration and only once the arbitral award creditor has learned, exercising reasonable diligence, that the arbitral award debtor possesses assets in the Canadian jurisdiction in which enforcement is sought.

In Ontario, a recent amendment to the *International Commercial Arbitration Act* has clarified that a ten-year limitation period applies to applications for recognition or enforcement of an arbitral award (s. 10).

XIV. Sovereign Immunity

(i) Do State parties enjoy immunities in your jurisdiction? Under what conditions?

The federal *State Immunity Act* (RSC 1985, c. S-18) entitles foreign States to immunity from the jurisdiction of Canadian courts. There are exceptions regarding proceedings that relate to commercial activity, death or bodily injury, maritime law and an interest or right of the State in property that arises in Canada by way of succession, gift or other means. Furthermore, a number of listed foreign states are not immune from proceedings related to their alleged support of terrorism.

The commercial activity exception is understood broadly, allowing an activity's purpose and nature to be taken into account. Where a dispute is rooted in both sovereign and commercial matters, a party may nevertheless benefit from the application of the commercial activity exception by restricting the scope of its complaint to only the commercial matters. In determining whether matters with both sovereign and commercial components should fall under the commercial activity exception, the court will assess the nature of an activity, and then evaluate the activity's relationship to the nature of the legal proceedings.

(ii) Are there any special rules that apply to the enforcement of an award against a State or State entity?

The Model Law does not contain any special rules that apply to the enforcement of an award against a State or State entity.

Canada's *State Immunity Act* contains special rules with respect to service on States or State entities.

The *State Immunity Act* also provides that 'no relief by way of an injunction, specific performance or the recovery of land or other property may be granted against a foreign state unless the state consents in writing to that relief' (s. 11(1)). Similarly, the *Act* provides that property of a foreign state located in Canada is immune from attachment and execution unless: (1) the state has explicitly or by implication waived such immunity (s. 12(1)(a)); (2) the property is used or intended to be used for a commercial activity or to support terrorism (s. 12(1)(b)); (3) 'the execution relates to a judgment establishing rights in property that has been acquired by succession or gift or in immovable property located in Canada' (s. 12(1)(c)); or (4) the foreign state is on the list of countries established for their alleged support of terrorism and the execution relates to a judgment rendered against it for its support of terrorism (s. 12(1)(d)). These immunities do not apply to an *agency* of a foreign state, where an agency is defined to mean any legal entity that is an organ of the foreign state but that is separate from the foreign state (see *State Immunity Act*, s. 2).

An agreement to arbitrate, on its own, would not constitute an implicit waiver of immunity from attachment and execution, although specific arbitration rules incorporated by reference could, depending on their wording in relation to the effect of the award, leave room to argue that such immunity has been waived.

XV. Investment Treaty Arbitration

- (i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Canada has ratified the Washington Convention. Canada is also a party to the North American Free Trade Agreement (NAFTA) with Mexico and the United States. Chapter 11 of NAFTA contains provisions on the protection of investments and on the arbitration of investment disputes.

In October 2016, Canada and the European Union signed the Comprehensive Economic and Trade Agreement (CETA). While substantial parts of CETA apply provisionally since September 2017, the investment chapter (Chapter 8) does not. Application of the investment chapter has been suspended due to the intensification of the controversy over investor-state dispute settlement in Europe. CETA is still subject to ratification by the EU and the national legislatures of member states. The fate of the investment chapter depends, in part, on how the European Court of Justice will rule in respect of a request for an opinion by Belgium on the compatibility of certain aspects of CETA (notably Chapter 8) with the European Treaties.

- (ii) Has your country entered into Bilateral Investment Treaties with other countries?**

Canada has entered into more than 35 BITs, which in Canada are referred to as Foreign Investment Protection Agreements (FIPAs).

XVI. Resources

- (i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

A useful primer on commercial arbitration in Canada may be found online in the Global Arbitration Review. There are also a number of resources on arbitration in Canada including the McEwan/Herbst loose-leaf *Commercial Arbitration in Canada: A Guide to Domestic and International Arbitrations*, J. Brian Casey and Janet Mill's *Arbitration Law of Canada: Practice and Procedure* and the *Osler Guide to Commercial Arbitration in Canada*. Professor Frédéric Bachand (now a Superior Court judge) created a website on the subject of 'consensual arbitration in Quebec' (www.mcgill.ca/arbitration), including summaries of leading cases and notes on recent developments, but it should be noted that the website is not updated anymore.

- (ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

The Canadian National Committee of the International Chamber of Commerce – ICC Canada – organizes an annual conference to discuss national and international law and policy with respect to commercial and investment arbitration. Canada's arbitration group for young practitioners – Young Canadian Arbitration Practitioners (YCAP) – organizes several symposia each year. The ADR Institute of Canada also holds an annual conference. Events are also organized by the Toronto Commercial Arbitration Society (TCAS) and the Western Canada Arbitrators Roundtable (WCART). The law societies and bar associations of each Province also occasionally organize special seminars and events related to commercial arbitration. Finally, certain universities with strong programs in arbitration hold regular conferences and lectures on topics of interest. For example, McGill University's Faculty of Law hosts the annual Brierley Lecture, which has featured as speakers Jan Paulsson, Emmanuel Gaillard, L. Yves Fortier and Lucy Reed, among others.

XVII. Trends and Developments

- (i) Do you think that arbitration has become a real alternative to court proceedings in your country?**

Absolutely. Increased willingness on the part of businesses and individuals to submit disputes to arbitration has assisted in developing arbitration as a genuine alternative. Canadian courts have helped to foster this growth by enforcing agreements to arbitrate and exercising deference towards arbitral tribunals and their decisions.

- (ii) What are the trends in relation to other ADR procedures, such as mediation?**

Most forms of other ADR procedures are commonly used and occasionally perceived as viable alternatives to court proceedings or binding arbitration. Mediation and mediation-arbitration (or 'med-arb') are increasing in popularity, and practitioners are becoming more specialized in that respect.

Mediation also occupies a place of considerable importance in the reforms of the civil justice systems in Canada. Most Canadian provinces and territories have implemented their own court-annexed mediation programs, presided either by judge-mediators or private mediators. The Quebec Court of Appeal was a pioneer by introducing the first appellate judicial mediation program in Canada. The Quebec justice system now offers judicial mediation on a voluntary basis at every court level and in every area of law. Certain provinces have imposed mandatory mediation for most types of civil cases.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

The Supreme Court of Canada has generally issued judgments favouring arbitration such as the decisions in *Dell Computer Corp. v. Union des consommateurs*, [2007] 2 SCR 801 and *Desputeaux v. Éditions Chouette (1987) inc.*, [2003] 1 SCR 178. The more recent decision in *Seidel v. TELUS Communications Inc.*, [2011] 1 SCR 531, while endorsing the competence-competence principle, is more equivocal. This case concerned the enforceability of arbitration clauses inserted in consumer contracts. While some commentators were concerned that this case might change the pro-arbitration stance of Canadian courts to the arbitration process, such impact has not been observed yet and the supportive attitude of the Canadian judiciary appears to be holding.

In terms of law reform, two areas are worth noting.

First, Quebec has recently reformed its *Code of Civil Procedure*, which includes most of the provisions of its arbitration law. The reform is characterized by a conspicuous effort to give priority to private means of settling disputes over traditional court litigation. Indeed, the new Code requires parties to consider such private means (including negotiation, mediation and arbitration) before resorting to litigation (articles 1-7 CCP).

Second, the Uniform Law Conference of Canada is spearheading a project to review and modernize Canadian arbitration laws, with a first phase of the project focusing on international arbitration laws, and a subsequent phase turning to domestic arbitration laws. The first phase was completed and resulted in the recent legislative reforms adopted in Ontario, which implement the amendments to the UNCITRAL Model Law adopted in 2006.

Finally, a new arbitration centre was opened in Toronto in 2012, called Arbitration Place. It offers a logistical hub for hearings, and ‘chambers’ for a number of arbitrators. It has established strategic alliances with ICC Canada, the LCIA, the International Institute for Conflict Prevention and Resolution (CPR) and the International Centre for Dispute Resolution Canada (ICDR Canada), among others. In 2017, Arbitration Place opened a branch in Ottawa.