

Legislative Developments in Arbitration in Canada

- 8th Annual WCCAS Energy, Mining and Resources Arbitration Conference
- 13 May 2014
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◆ Agenda

1. Recommended changes to *Alberta Arbitration Act*,
R.S.A. 2000, c. A-43
 - a) Section 7 – Stays of proceedings
 - b) Section 44 – Appeal of award
2. Uniform Law Conference of Canada (ULCC)
Arbitration Law Reform Project
 - a) New Uniform *International Commercial Arbitration Act*
 - b) New Uniform *Arbitration Act*

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Recommended Changes to *Alberta Arbitration Act*, R.S.A. 2000, c. A-43

◆ Section 7 – Stays

Existing Provision	Proposed Reform
7(1) If a party to an arbitration agreement commences a proceeding in a court in respect of a matter in dispute to be submitted to arbitration under the agreement, the court shall, on the application of another party to the arbitration agreement, stay the proceeding.	No change
<p>(2) The court may refuse to stay the proceeding in only the following cases:</p> <p>(a) a party entered into the arbitration agreement while under a legal incapacity;</p> <p>(b) the arbitration agreement is invalid;</p> <p>(c) the subject-matter of the dispute is not capable of being the subject of arbitration under Alberta law;</p> <p>(d) the application to stay the proceeding was brought with undue delay;</p> <p>(e) the matter in dispute is a proper one for default or summary judgment.</p>	Repeal paragraph 7(2)(e)

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Recommended Changes to *Alberta Arbitration Act*, R.S.A. 2000, c. A-43

◆ Section 7 – Stays

Existing Provision	Proposed Reform
(3) An arbitration of the matter in dispute may be commenced or continued while the application is before the court.	No change
<p>(4) If the court refuses to stay the proceeding,</p> <p>(a) no arbitration of the matter in dispute shall be commenced, and</p> <p>(b) an arbitration that has been commenced shall not be continued, and anything done in connection with the arbitration before the court's refusal is without effect.</p>	No change

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Recommended Changes to *Alberta Arbitration Act*, R.S.A. 2000, c. A-43

◆ Section 7 – Stays

Existing Provision	Proposed Reform
(5) The court may stay the proceeding with respect to the matters in dispute dealt with in the arbitration agreement and allow the proceeding to continue with respect to other matters if it finds that (a) the agreement deals with only some of the matters in dispute in respect of which the proceeding was commenced, and (b) it is reasonable to separate the matters in dispute dealt with in the agreement from the other matters.	Repeal
(6) There is no appeal from the court's decision under this section.	No change

Recommended Changes to *Alberta Arbitration Act*, R.S.A. 2000, c. A-43

◆ Section 44 – Appeal of award

Existing Provision	Proposed Reform
44(1) If the arbitration agreement so provides, a party may appeal an award to the court on a question of law, on a question of fact or on a question of mixed law and fact.	No change
(2) If the arbitration agreement does not provide that the parties may appeal an award to the court on a question of law, a party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that (a) the importance to the parties of the matters at stake in the arbitration justifies an appeal, and (b) determination of the question of law at issue will significantly affect the rights of the parties.	Repeal

Recommended Changes to *Alberta Arbitration Act*, R.S.A. 2000, c. A-43

◆ Section 44 – Appeal of award

Existing Provision	Proposed Reform
(3) Notwithstanding subsections (1) and (2), a party may not appeal an award to the court on a question of law that the parties expressly referred to the arbitral tribunal for decision.	Repeal
(4) The court may require the arbitral tribunal to explain any matter.	No change
(5) The court may confirm, vary or set aside the award or may remit the award to the arbitral tribunal and give directions about the conduct of the arbitration.	No change
(6) Where the court remits the award to the arbitral tribunal in the case of an appeal on a question of law, it may also remit to the tribunal the court's opinion on the question of law.	No change

Uniform Law Conference of Canada (ULCC) Arbitration Law Reform Project

◆ Overview of ULCC Arbitration Law Reform Project

- ◆ ULCC established in 1918 to promote uniformity of law throughout Canada, including through preparation of model statutes to be recommended for adoption by the various provincial legislators
- ◆ Existing Uniform *International Commercial Arbitration Act* (1986) and *Arbitration Act* (1990) in need of reform
- ◆ Early 2011: ULCC established two-phase project to revise arbitration legislation in Canada

Uniform Law Conference of Canada (ULCC) Arbitration Law Reform Project

- ◆ Overview of ULCC Arbitration Law Reform Project
 - ◆ August 2011: ULCC approved Phase 1 and appointed Working Group to bring forward recommendations for new Uniform *ICAA*
 - ◆ Core Group created to steer activity, drawing on advice from larger Advisory Group
 - ◆ March 2014: final version of new Uniform *ICAA* approved by ULCC
 - ◆ March 2014: Phase 2 of project commenced
 - ◆ August 2015: target for draft new Uniform *AA*

Uniform Law Conference of Canada (ULCC) Arbitration Law Reform Project

- ◆ Key substantive features of new Uniform *ICAA*
 - ◆ Single statute continues to implement NY Convention and UNCITRAL Model Law
 - ◆ "commercial reservation" continued under NY Convention Article I(3)
 - ◆ Implements all of 2006 UNCITRAL Model Law amendments (including new powers to grant interim measures and preliminary orders: UNCITRAL Model Law Articles 17, 17A, 17D-17J)

Uniform Law Conference of Canada (ULCC) Arbitration Law Reform Project

- ◆ Key substantive features of new Uniform *ICAA*
 - ◆ Preserves need for arbitration agreement to be in writing (Option I of the two Article 7 options contained in the 2006 UNCITRAL Model Law amendments)
 - ◆ Ten-year limitation period for seeking recognition and enforcement (Uniform *ICAA* section 11)
 - ◆ Court may enforce agreements to consolidate arbitral proceedings (Uniform *ICAA* section 9)

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