THE NEW BC *ARBITRATION ACT*

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On September 1, 2020, British Columbia's new *Arbitration Act*[1] came into force, updating BC's arbitration legislation and building upon enhancements found in modern arbitration legislation in comparative jurisdictions. The *Act* applies to all arbitrations seated in the Province that do not fall within the scope of the *International Commercial Arbitration Act* (*ICAA*),[2] which was also recently updated in May 2018. The *Act* increases compatibility between BC's international and non-international arbitration regimes.[3] It will improve access to justice in BC by supporting arbitration as an efficient, viable, and equal alternative to court proceedings.

INTRODUCTION

In the 1980s, BC's arbitration legislation was cutting-edge. BC was one of the first jurisdictions in the world to adopt the UNCITRAL *Model Law on International Commercial Arbitration* (*Model Law*).[4] Concurrently, the Province updated its non-international regime based on a Commonwealth precedent and innovatively integrated institutional arbitration rules to apply by default. More than thirty years on, it was time to revisit and improve the statutory support in both areas.

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[1] SBC 2020, c C-2.

[2] RSBC 1996, c C-233. Arbitration in the labour and family law context have distinct statutory regimes.

[3] The term "non-international" is used in this article, as the term "domestic" would be overly broad and capture arbitrations not covered by the *Act.*

[4] United Nations Commission on International Trade Law, 1985, UN Doc. A/40/17, annex 1.

The 2018 *ICAA* updates included the 2006 revisions to the *Model Law*. The *Act* builds on recommended changes from the Uniform Law Conference of Canada's (ULCC) *Uniform Arbitration Act*.[5] The end result of the two updates is greatly increased compatibility between the international and non-international statutes.

Both the *ICAA* updates and the *Act* reflect the work of a volunteer group of senior arbitration practitioners and businesspersons assembled to advise the BC Attorney General on matters of importance to arbitration (the Arbitration Advisory Group), including legislative reform and promotion of Vancouver as an arbitration venue. The Legislation Sub-Committee of the Arbitration Advisory Group, co-chaired by Ministry of Attorney General legal counsel, met extensively over a period of two years and conducted comparative law research concerning recently modernized acts in other jurisdictions, including Australia and England. The Legislation Sub-Committee recommended changes to BC's arbitration legislation, which were accepted and then enacted by government.

The amendments make the *Act* an efficient, comprehensive, and structured piece of arbitration legislation that will support non-international arbitration with concepts and language that are easy to follow for business parties and counsel.

The *Act* now follows an orderly structure which tracks the common flow of arbitration proceedings:

- Arbitration agreements;
- Commencement of arbitration proceedings;
- Establishment of the arbitral tribunal;

[5] (2016), online: <https://www.ulcc.ca/images/stories/2016_pdf_en/2016ulcc0017.pdf>.

- Conduct of arbitration proceedings, including arbitral powers;
- Arbitral awards; and
- Recourse against and enforcement of arbitral awards.

Highlights include codification and clarification of the following:

- Arbitration consolidation procedures;
- Standards for arbitral challenges;
- Duties of arbitral tribunals and parties to strive to achieve a just, speedy, and economical determination;
- Duties of expert witnesses;
- Interim measures;
- Party opt-out of appeals;
- Confidentiality obligations; and
- Arbitrator immunity.

The *Act* also preserves positive features of BC arbitration, most notably the statutory role for an arbitral institution. The previous *Arbitration Act*[6] provided for the rules of the British Columbia International Commercial Arbitration Centre (BCICAC) to apply in the event that the parties had not agreed to other arbitration rules. This reference in the previous *Act* has created a culture of institutional arbitration in BC that either does not exist at all, or not to the same extent, in the other Canadian provinces.

That integration between legislation and institution continues. In conjunction with the *Act* coming into force, BCICAC rebranded as the Vancouver International Arbitration Centre (VanIAC/the Centre) and promulgated streamlined new Rules of Procedure, expressly designed to dovetail with the *Act* and

[6] RSBC 1996, c 55.

support efficient arbitration under it. Key features of those Rules include summary documents-only arbitration by default for disputes under $250,000 and an opt-in internal appeal mechanism which permits appeals without public disclosure of the parties' dispute in the courts.

The *Act* and its regulations accord the Centre the key role of "designated appointing authority". When parties cannot agree to an arbitrator, instead of applying to the BC Supreme Court to appoint an arbitrator, the Centre, which maintains an extensive roster of qualified arbitrators, can efficiently make the appointment.

In addition, the *Act* assigns the Centre a new role in quickly and summarily resolving fee disputes between parties and arbitrators. The previous *Act* directed these types of disputes to be decided by a district registrar. Unlike a registrar, the Centre is ideally placed to quickly and efficiently dispose of such secondary disputes, consistent with the parties' objectives to resolve their disputes by an alternative process outside of court.

The *Act* also preserves key provisions of the previous *Arbitration Act*, which have functioned smoothly, most notably the Stay of Proceedings provision. However, the *Act* now corrects several negative developments in case law which permitted court review, and in some cases set-aside, of an arbitral award based on procedural decisions taken by the tribunal in the course of the arbitration. The legislative overrides of case law considered to be inconsistent with an effective arbitral regime are further addressed below.

The *Act* respects party autonomy. Consistent with the *Model Law*, the *Act* preserves the freedom of parties to agree how their disputes are to be resolved, subject to minimum requirements from which they may not deviate. (The parties must be treated fairly and each be given a reasonable opportunity to present their case.)

The courts will also benefit from the changes to the *Act*. The cumbersome appeal provision from the previous *Act* (which led to multiple appeals) has been streamlined and simplified. The *Act* adheres to the approach of the *Model Law*: courts are provided discrete and confined places of interface with arbitration. Consistent with the *Model Law*, unless expressly authorized by the *Act*, court intervention in arbitral proceedings is limited.

As a whole, the changes are intended to ensure that arbitration remains an effective form of dispute resolution and to limit the interaction of court processes with arbitral processes consistent with modern arbitration practice.

A summary and discussion of key provisions of the *Act* follows.

APPLICATION OF THE *ACT*, SECTIONS 1, 2

The definition of "place of arbitration" has been added to include the common and interchangeable term, "seat of arbitration". The provision follows a recommendation of the ULCC. The purpose of this inclusion is to simplify determination as to when the *Act* applies by providing default rules for determining when the place of arbitration is in BC.

Section 2(4) confirms that certain specified provisions of the *Act* apply whether or not the place of arbitration is in BC. This is needed for circumstances when parties outside the province seek various forms of relief from BC courts, including stays of court proceedings and enforcement of non-international arbitral awards.

STAYS OF COURT PROCEEDINGS, SECTION 7

The requirement that courts stay proceedings concerning matters that are the subject of an arbitration agreement is central to preserving the integrity of the arbitral process. Clarity and certainty are needed on this critical issue: whether to grant a stay of court proceedings when a party to an arbitration

agreement commences court proceedings in respect of matters agreed to be submitted to arbitration. The judicial treatment of the stay provisions by the BC courts has been non-problematic. The new *Act* preserves the *Model La*w stay provision found since the 1980s in both the *ICAA* and the previous *Act*. Changes to the provision are "house-keeping" only, adopting modernized, jurisdictionally neutral terminology to indicate the timing for such applications, "before submitting the party's first response on the substance of the dispute", again reflecting the language used in the *Model Law.*

CONSOLIDATION, SECTION 9

The purpose of the updated consolidation provision is to clarify enforcement of consolidation agreements and to provide guidance as to circumstances the court should consider when consolidation orders are requested. The previous *Act* included only a rudimentary consolidation provision. The provision was recommended by the ULCC and has been recently adopted in the *ICAA* and the Ontario *International Commercial Arbitration Act, 2017*.[7]

LIMITATION PERIODS, SECTIONS 11 AND 12

Section 11 of the *Act* clarifies that limitation periods apply to commencing arbitral proceedings as if they were court proceedings. The provision will prevent delays to the arbitral proceeding by specifying that the tribunal will determine whether a claim is barred, either under the applicable limitation period or the arbitration agreement, subject to the extension of a specified time limit by the court. It was considered important to include a limitation period provision in the *Act* because the applicable law selected by the parties in a BC seated arbitration may be the law of another jurisdiction (i.e. not the *BC Limitation Act* [8]). The provision clarifies that the arbitral proceeding

[7] SO 2017, c 2, Sched 5.

[8] SBC 2012, c C-13.

continues until the arbitral tribunal has determined whether the claim is barred.

Section 12 is intended to protect parties in the event there is a dispute as to the correct forum in which to bring the claim. In circumstances where a party commences court proceedings, and a claim is referred by the court to arbitration following a stay of proceedings application, the limitation period is extended for a further 30 days. The provision will ensure that a party will not unfairly miss a statutory limitation period to commence an arbitral proceeding if court proceedings are stayed by the court in favour of arbitration.

Previously, parties commenced both court proceedings and arbitral proceedings to avoid the risk of missing a statutory limitation period in what turns out to be the correct forum. This was duplicative and inefficient. The new provision tolls the limitation period to commence arbitral proceedings by 30 days if a claim is pursued in court in the first instance. The applicable law determines the statutory limitation in question; that law may not be BC law. This provides procedural certainty without creating any unfairness to the respondent who has received notice of the claim through the court proceeding.

INDEPENDENCE, IMPARTIALITY, AND CHALLENGE OF ARBITRATORS, SECTIONS 16 AND 17

The *Act* confirms the standard required under the *ICAA* that arbitrators must be independent and impartial and must disclose any circumstances that may give rise to justifiable doubts as to independence or impartiality. While section 16 allows the parties to agree to the appointment of an arbitrator who is not independent, it does not allow the parties to agree to the appointment of an arbitrator who is not impartial or who does not act impartially. The provision is designed to ensure that parties approaching a potential arbitrator are informed of circumstances likely to give rise to justifiable doubts as to the potential arbitrator's independence or impartiality. An arbitrator appointed is under a continuing duty to disclose any

circumstances which may give rise to justifiable doubts as to their independence or impartiality throughout the arbitral proceedings.

Once an arbitrator has been appointed, to successfully challenge the arbitrator's independence or impartiality under section 17 of the *Act*, a party must establish that a "real danger of bias" exists. This standard is consistent with that found in the *ICAA* and arbitration statutes in England and Australia. It is intended to avoid disgruntled parties making spurious challenges after they have agreed to an appointment, while ensuring that a successful challenge is still possible if a real danger of bias exists.

GENERAL DUTIES, SECTIONS 21 AND 22

Section 21 of the *Act* codifies the tribunal's obligation to treat parties fairly, as well as imposing proportionality and efficiency obligations.

Arbitration can be undercut when a party refuses to comply with an alternative dispute resolution process, compromising the achievement of a "just, speedy and economical determination". Section 22 imposes upon arbitrating parties a general duty to cooperate and not take actions to wilfully delay the arbitration.

In addition, the *Act* confirms a party's right to have legal representation or be self-represented in an arbitral proceeding. This section clarifies that a party may be self-represented or may be represented by another person, subject to the requirements of the *Legal Profession Act*.[9] A party need not be represented by a lawyer in arbitral proceedings, unless legislation regulating the practice of law so requires. This provision is consistent with the objective of facilitating the use of arbitration as an alternative to court proceedings.

[9] SBC 1998, c 9.

COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION, SECTION 23

This section addresses two of the pillars of modern arbitration law: the principle of competence-competence and the doctrine of separability. Under the principle of competence-competence, the arbitral tribunal may rule on its own jurisdiction—it is competent to rule on its own competence. The doctrine of separability means that an arbitration agreement is treated as a stand-alone contract and survives termination or a finding of invalidity of the main agreement.

These core concepts were not expressly endorsed in the previous *Act*, although they were incorporated by reference to the Rules of Procedure of the BCICAC (or potentially not, if the parties opted-out of the BCICAC Rules). Section 23 of the *Act* now tracks the language found in the *ICAA* related to these concepts, which has been extensively interpreted by Canadian and international courts.

LAW APPLICABLE TO SUBSTANCE OF DISPUTE, SECTION 25

There has been incertitude in some cases whether arbitral tribunals have the power to apply equity and to grant equitable remedies such as specific performance, injunctions, or declarations. Section 25 of the *Act* makes it clear that such power exists to the extent that equity and equitable remedies are part of the applicable law. This places arbitrators in the same position as the courts with respect to the ability to apply equity and equitable remedies.

EVIDENCE, SECTIONS 28 AND 29

Section 28 of the *Act* codifies an arbitral tribunal's authority to decide all evidentiary matters and ensures flexibility in the application of strict rules of evidence, which are not always suited to arbitration proceedings. Tribunals are expressly empowered to decide all evidentiary matters including admissibility, relevance, materiality, and weight of evidence. The provision supports arbitration efficiency by ensuring that

the tribunal has authority and flexibility in making evidentiary determinations.

In addition, a statutory presumption has been created that direct evidence be given in writing. This presumption confirms best arbitration practice: hearings on the merits are largely confined to witness cross-examination, shortening hearing time and the accompanying expense and inconvenience.

Section 29 authorizes arbitral tribunals to issue subpoenas for evidence or records from non-parties to the arbitration, and sets out the process for court assistance with this process, if necessary.

HEARINGS AND PROCESS, SECTIONS 30–32

Section 30 tracks the *Model Law* and *ICAA*, requiring the arbitral tribunal to decide whether oral hearings should be held or the proceedings should be conducted in writing. This provision is subject to party agreement. The arbitral tribunal is required to hold oral hearings if requested by a party, unless the parties have previously agreed to no oral hearings. The section favours flexible use of written hearings, subject to override to ensure procedural fairness to a party wanting an oral hearing. In addition, the section contains notice provisions for hearings, as well as open and mutual exchange of information between the parties and the arbitral tribunal, both of which ensure fairness.

Absent agreement by the parties, section 31 allows oral hearings to be held at a location determined by the arbitral tribunal. It also expressly authorizes the receipt of oral evidence and submissions by electronic means. The approach is consistent with modern practice and technology and the flexibility of the arbitration process. It is also compatible with the possibility of fully remote hearings, which have become the default when health-related travel and gathering restrictions are in place.

Section 32 addresses the arbitral tribunal's procedural powers, including the power to establish procedures and make procedural orders for the conduct of effective arbitral proceedings. The provision incorporates a non-exhaustive list of tribunal powers. The intention is to provide the arbitral tribunal with the necessary tools to establish a flexible procedure that best addresses the needs of the particular case while limiting the need for court intervention. The section expressly authorizes the tribunal to make orders regarding the use of technology for the examination of witnesses not physically present. While this flexibility has always been desirable to make the arbitral process as efficient as possible, post-pandemic many parties may be more likely to request this option in appropriate circumstances. The parties can alter such authority and agree to other procedures.

DUTY OF EXPERTS, SECTION 35

This new provision in the *Act* imposes a duty on expert witnesses to assist arbitral tribunals and to certify their awareness of and compliance with that duty. The duty is intended to curb the tendency for experts to advocate overzealously for the position of the party who retained them. This provision harmonizes with BC Supreme Court procedure and avoids potential discontinuity between the duties of expert witnesses in BC civil litigation versus arbitration.

INTERIM MEASURES AND PRELIMINARY ORDERS, SECTIONS 36–45

Interim measures of protection have been considered one of the perceived shortcomings of arbitration and are a place where concurrent jurisdiction between the arbitral tribunal and the courts exists. In the arbitral context, injunctions are known as interim measures and *ex parte* applications are known as preliminary orders. Interim measures and preliminary orders were undeveloped in the previous *Act*. The *ICAA* was recently updated to include an elaborate and systematic *Model Law* code covering interim measures and preliminary orders. The new provisions in the *Act* harmonize with the provisions in the *ICAA*,

allowing arbitral tribunals in non-international arbitrations to also exercise an injunctive jurisdiction to maintain the *status quo*, prevent harmful or prejudicial actions being taken, preserve assets, preserve evidence, and order security for costs.

INTEREST, SECTION 51

The Supreme Court of Canada had ruled that arbitral tribunals under the previous *Act* did not have the authority to award pre- and post-award compound interest. Section 51 overrides this decision and expressly provides discretionary authority to award interest for any period up to the date of the award and from the date of the award until payment. This authority extends to a discretion to award simple or compound interest, in whole or in part of amounts claimed, awarded, or paid, at rates the arbitral tribunal considers appropriate. The new interest provision is modelled on a comparable provision from England.[10] The parties remain free to agree to other allocations of interest liability, rates or methods of calculation.

DELIVERY OF THE ARBITRAL AWARD AND FEES OF THE ARBITRAL TRIBUNAL, SECTIONS 52, 55

Section 52 creates a mechanism for the parties to receive the arbitral award in a timely manner if a party has not paid the arbitral tribunal's fees and expenses. This issue most commonly arises when one party does not pay its share of the tribunal's fees and expenses, usually because it believes it has lost the arbitration and no longer has an interest in having the tribunal issue the award. The provision provides a mechanism to secure payment of fees and expenses and allow release of the arbitral award to the parties, even in *ad hoc* proceedings. A party may now apply to VanIAC, the designated appointing authority, for:

- a direction that the arbitral tribunal deliver the award on payment in trust to the appointing authority of fees and expenses;

[10] *Arbitration Act 1996* (UK), s 49.

- a summary determination of fees and expenses;
- a direction that fees and expenses be paid out of the trust monies; or
- a direction that any balance of monies in trust be paid out.

This provision will ensure arbitral awards are released in a timely manner and arbitral fees and expenses are paid.

Section 55 of the Act creates a further summary mechanism on application to VanIAC for the timely resolution of any dispute between the arbitral tribunal and the parties as to fees and expenses payable to the arbitral tribunal.

The intent of this provision is to avoid satellite litigation regarding arbitration process disputes. Arbitration efficiency and effectiveness is reinforced; privacy and confidentiality are preserved.

APPLICATIONS FOR SETTING ASIDE ARBITRAL AWARDS, SECTION 58

Section 58 closely resembles the set-aside provisions found in most Canadian jurisdictions and in the *ICAA.* The provision will improve court review of arbitral awards by restricting the grounds for challenging an award and by providing a single remedy for a successful court challenge—set-aside. Under the provision, the court's jurisdiction to set aside all or part of an award is discretionary and limited to instances where the process was fundamentally flawed in one or more specific ways. Unlike the revised appeal provision, parties should not be able to contract out of the set-aside remedy, although they may be precluded by their conduct from asserting certain of the grounds for setting aside.

The *Act* allows a party to apply to the BC Supreme Court to set aside an arbitral award only on restricted grounds, and also permits a partial set-aside in limited circumstances. A party may waive its right to object to the circumstances upon which it

seeks to set aside an award, and in such situations, the *Act* prohibits the award from being set aside.

The section replaces the dated and unique-to-BC notion of "arbitral error" as the basis for set-aside found in the previous *Act*. In doing so, the *Act* resolves a problematic line of cases considering "arbitral error", stemming from *Williston Navigation Inc v BCR Finav No 3 et al*.[11] Unlike court proceedings where costs awards are factored according to a scaled tariff, the practice in arbitration proceedings is to determine costs based on the reasonableness of the costs incurred in bringing or defending a claim (indemnity for costs). In *Williston*, the court found that an arbitrator's summary determination of legal fees, without ordering production of the solicitor's file, was a breach of natural justice and amounted to arbitral error.

This finding is inconsistent with modern arbitration practice, which typically allows the tribunal, which has managed the dispute from its commencement through to a final award, to assess the reasonableness of the costs claimed in a summary manner and thereby avoid potentially lengthy disputes over privilege and document production. In other words, the arbitral tribunal has the discretion of determining the extent of the information that is necessary to assess the reasonableness of the costs claimed in the circumstances. The *Act* addresses this issue in two ways: removing the concept of "arbitral error" entirely and confirming the tribunal's power to award costs summarily.

APPEALS ON QUESTIONS OF LAW, SECTION 59

One of the main issues that had been identified with the functioning of the previous *Act* related to the appeal provisions. The previous appeal provision allowed leave applications and appeals to both the BC Supreme Court and Court of Appeal. In several high-profile cases, this process created years of post-award delays and protracted litigation before the arbitral awards were ultimately upheld. Such extensive process and

[11] 2007 BCSC 190.

delay are antithetical to the aims of arbitration—just, speedy, and economical determination of the proceeding. Further, when access to justice is a pressing concern, this amount of process was an unnecessary drain on limited court resources.

Most Canadian jurisdictions provide some ability to appeal certain questions under non-international arbitration legislation. However, there is a broad consensus that appeals on questions of fact or mixed fact and law should not be allowed from arbitral awards. This approach is maintained in the *Act*.

The Supreme Court of Canada has been called on several times in recent years to clarify the scope of arbitration appeals from BC. It has helpfully confirmed that such appeals are narrowly circumscribed and that a deferential standard of review applies. Consistent with this approach, the modified appeal provision directs leave to appeal applications from questions of law arising out of the arbitral award straight to the BC Court of Appeal.

The new appeal provision enhances party autonomy and controls the use of court resources in several ways. Leave to appeal applications and appeals are restricted to the Court of Appeal alone. Parties may agree to appeal without leave. Parties may agree to dispense with appeals entirely.

Directing appeals to the Court of Appeal corrects a further problem. The previous *Act* allowed set-aside applications and appeals to be initiated together in BC Supreme Court. This practice served to undercut proper process on leave to appeal applications, as the scope of materials potentially necessary for review on a set-aside application may be large. By contrast, appeals are limited to clearly perceived questions of law that arise out of the award. The appeal regime created in the *Act* is intentionally a different legal regime than found in judicial review of administrative law decisions, where the court is entitled to review the evidentiary record that was before the administrative decision maker.

Finally, the section preserves other portions of the previous appeal provision, including the court's discretion to attach conditions if leave to appeal is granted and the remedies the court may grant on appeal. These provisions have been interpreted and explained in many leading appeal cases, and it was considered useful to maintain the language that has already been judicially considered and settled.

TIME LIMIT FOR APPLICATIONS TO SET ASIDE AND APPEALS, SECTION 60

The time limit for applications to set aside and to appeal an arbitral award has also been revised to provide for a 30-day limit. This makes the time limit consistent with civil practice for appeals in BC and other Canadian jurisdictions.

RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS, SECTION 61

Section 61 confirms that applications may be brought to BC Supreme Court to enforce arbitral awards with a place of arbitration in Canada. It also provides that notice of the enforcement application be made, in accordance with the *Supreme Court Civil Rules*,[12] to the party against whom enforcement is sought, unless the court orders otherwise. The provision is more robust than its predecessor: it sets out the requirements of an enforcement application, including evidence concerning appeals, stays, and set-aside applications. It also addresses recognition and enforcement of awards in a manner consistent with the *ICAA*.

If proceedings to appeal or set aside the award at the place of arbitration are pending, or if the time limit for their commencement has not yet expired, the court may stay the enforcement proceeding. If a stay of enforcement is granted, the court may require the posting of security.

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[12] BC Reg 168/2009.

A court must enforce the arbitral award, except for limited and specified reasons, and such enforcement has the same effect as a court judgment granting the remedy described in the arbitral award. The only substantive defences to an application for enforcement are that the dispute is not capable of being the subject of arbitration under BC law or that the court lacks jurisdiction to grant the relief sought. If the arbitral award has been set aside or remitted, it cannot be enforced. A decision to enforce an award may be appealed, with leave.

ARBITRATOR IMMUNITY, SECTION 62

This provision prevents legal proceedings for damages against arbitrators because of anything done or omitted other than in bad faith. Immunity provisions have become more common in modern arbitration legislation due to the increased use of challenges to arbitrators. Such challenges are sometimes launched to disrupt the arbitral proceedings and to undermine the enforceability of the award.

The ULCC has recommended an immunity provision, and other jurisdictions such as Australia have incorporated immunity provisions into modernized arbitration legislation in recent years. Further, an immunity provision for arbitrators appointed in arbitrations is consistent with the protection afforded by statute to international arbitrators in the *ICAA*, as well as administrative tribunal members and other domestic decision makers.

The scope of this immunity provision does not extend to acts or omissions by arbitrators when the act or omission is in bad faith or the arbitrator has engaged in intentional wrongdoing. Providing arbitrators with this immunity will assure arbitrators that they are protected in the event of meritless challenges and is intended to encourage arbitrators to accept arbitral appointments when the *Act* is the governing law.

PRIVACY AND CONFIDENTIALITY, SECTION 63

While the previous *Act* made clear that arbitral proceedings were private, the situation as to confidentiality was less clear. Since parties often consider confidentiality to be an advantage of arbitration, the provision establishes that arbitral proceedings are confidential by default, although the parties may agree otherwise.

The provision is intended to enhance any inherent duty of confidentiality that attaches to arbitration at common law and ensures that the record of the arbitral proceeding is not disclosed unless agreed or authorized. The confidentiality obligations in the *Act* do not apply in cases where disclosure of confidential information is required by law, is required to protect or pursue other legal rights, or is authorized by a court. The provision is modelled on a recent inclusion made with updates to the *ICAA* and thereby increases consistency between international and non-international proceedings.

FAMILY LAW ARBITRATION RELOCATED

The scope of the previous *Act* was expanded several years ago to include family law arbitrations. Through the consultation process with the family bar, it was decided to migrate this subject matter to the *Family Law Act*,[13] as this type of arbitration has important differences from commercial arbitration.

CONCLUSION

In sum, with the new *Act*, there is substantially increased harmony between international and non-international arbitration practice in BC. For arbitration to be a viable alternative to court proceedings, arbitration should proceed in a just, speedy, and economical manner leading to a final and binding arbitral award. Court intervention should be limited. The *Act* achieves these objectives with an approachable,

[13] SBC 2011, c C-25.

comprehensive structure and terminology: easy to follow for business parties, counsel, arbitrator and—when required—the courts.