

THE VANCOUVER INTERNATIONAL ARBITRATION CENTRE ON ITS 35TH ANNIVERSARY: EVOLVING TO MEET MODERN DISPUTE RESOLUTION NEEDS

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I. INTRODUCTION

On September 1, 2020, the British Columbia International Arbitration Centre (“BCICAC”) was renamed as the Vancouver International Arbitration Centre (“VanIAC”). Along with this name change, there have been several new developments at VanIAC, and more are planned for the near future. These changes were designed to complement recent revisions to British Columbia’s domestic and international arbitration legislation, all of which are intended to promote the use of arbitration in British Columbia and to increase the selection of British Columbia as the place of arbitration in arbitral agreements.

II. ORIGINS AND EVOLUTION OF VANIAC

VanIAC is a non-profit organization focused on providing arbitration and mediation services to the business community. It has an interesting history, as it was established by the Province of British Columbia in conjunction with Expo ’86. It initially received funding from the Province and the Government of Canada, and was a joint effort between the public and private sectors to position Vancouver to become a leading center for international commerce and finance.

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As commerce has evolved, so too has VanIAC. For over 17 years, it has administered “.ca” domain name disputes for the Canadian Internet Registration Authority (CIRA). In 2019, the Canadian International Internet Dispute Resolution Centre (“CIIDRC”) was established as a new division of BCICAC, and has continued as a division of VanIAC. CIIDRC’s function is to administer internet domain disputes for the International Corporation for Assigned Numbers and Names (ICANN), and it continues to expand and draw quality panelists from around the globe.

In 2020, BCICAC reconstituted itself as VanIAC and launched a modernized website in conjunction with its new name. This was not merely a rebranding exercise, but was accompanied by significant change both in the rules and in the institution. The Board of Directors has undergone significant renewal in recent years, with a focus on increasing Board diversity and including leaders in business, academia, and arbitration.

Also in 2020, a new domestic *Arbitration Act* was passed in British Columbia.¹ The prior legislation² did not include significant guidance with respect to procedure; guidance was provided to parties through VanIAC’s domestic arbitration rules (at the time the BCICAC Domestic Commercial Rules of Procedure), which applied by default to all domestic arbitrations seated in BC. The new *Arbitration Act* includes more detailed procedural direction and, as a result, VanIAC’s domestic arbitration rules no longer apply by default. However, those rules do apply where the parties have identified VanIAC as the administrator of the arbitration in their arbitration agreement or where they otherwise agree. In addition, consistent with the Province’s longstanding support of the centre, VanIAC has been assigned key functions under the *Arbitration Act* as the

¹ *Arbitration Act*, SBC 2020, c 2 [*Arbitration Act*]. See also Tina Cicchetti & Jonathan Eades, “The New BC Arbitration Act” (2020), 1:1 Can J Comm Arb 144.

² *Arbitration Act*, RSBC 1996, c 55.

“designated appointing authority”;³ these functions apply to all domestic arbitrations in BC. As the designated appointing authority, VanIAC assists with various matters including the appointment of arbitrators, directions with respect to arbitrators’ fees, and the withholding of arbitration awards.

As VanIAC’s role changed in conjunction with the new *Arbitration Act*, it became necessary to revise its domestic arbitration rules to provide some structure for the centre’s new responsibilities as designated appointing authority. In addition, VanIAC sought to codify best practices, including those that evolved during the COVID-19 pandemic, which was well underway when the centre began to redraft its rules. As set out below, the new Domestic Arbitration Rules⁴ include several attractive features that can offer parties a degree of efficiency and flexibility not necessarily available through the courts. In addition, VanIAC’s Expedited Procedures, which allow for resolution of disputes primarily in writing for fixed fees, will further VanIAC’s objectives of increasing access to justice and increasing appointment opportunities for a more diverse group of arbitrators.

Following the successful reception of its Domestic Arbitration Rules, VanIAC is now focused on revising its international rules of procedure. In 1986, British Columbia was one of the first governments to enact international arbitration legislation based on the *UNCITRAL Model Law*,⁵ and in 2018, British Columbia became the second Canadian jurisdiction to update its international commercial arbitration legislation in accordance with the 2006 amendments to the *UNCITRAL Model*

³ *Arbitration Act*, supra note 1.

⁴ Vancouver International Arbitration Centre, Domestic Arbitration Rules (effective September 1 2020), online: <vaniac.org/arbitration/rules-of-procedure/domestic-arbitration-rules> [Domestic Arbitration Rules].

⁵ *UNCITRAL Model Law on International Commercial Arbitration* (21 June 1985), UNCITRAL, Annex 1, UN Doc A/40/17 (1985) [*Model Law*].

Law.⁶ VanIAC seeks to build on British Columbia's leadership by developing a set of institutional rules that will be marketable to parties globally and increase the number of international arbitrations seated in British Columbia.

III. HIGHLIGHTS OF VANIAC'S DOMESTIC RULES OF PROCEDURE

VanIAC's Domestic Arbitration Rules are meant to supplement the detailed provisions of the *Arbitration Act*. Accordingly, it is necessary to consider both the new Domestic Arbitration Rules and the *Arbitration Act* when acting as counsel or arbitrator under the Rules. Below, we set out some highlights that will be of interest to parties and practitioners.

1. *Emergency Arbitrator Provisions*

Sections 9 to 15 of the Domestic Arbitration Rules provide parties with the ability to apply for emergency interim measures prior to the constitution of the arbitral tribunal by delivering an application to VanIAC and all other parties concurrently, either with or following the delivery of a Notice to Arbitrate.

The Domestic Arbitration Rules also permit parties to apply for an emergency preliminary order at the same time as applying for an emergency interim measure, directing a party not to frustrate the purpose of any interim measures that are ordered.⁷ Such an application can be made without notice to the other party and the procedure is established by the emergency arbitrator. VanIAC has a roster of arbitrators prepared to hear these matters on short notice and will appoint an Emergency Arbitrator within two days of an application being received.⁸

⁶ *International Commercial Arbitration Act*, RSBC 1996, c 233.

⁷ Domestic Arbitration Rules, *supra* note 4, s 10.

⁸ *Ibid*, s 11.

The Emergency Arbitrator provisions also address challenges to Emergency Arbitrators⁹ and provide parties with the right to opt out of the Emergency Arbitrator provisions.¹⁰

2. *Expedited Procedures*

Part B of the Domestic Arbitration Rules (sections 24 to 27) contain Expedited Procedures that will apply (a) if the parties agree to use them or (b) if the parties have agreed to apply the Rules and none of the claims raised exceed \$250,000 exclusive of interest and costs.¹¹ Matters that fall under these provisions will be heard on an expedited basis and for a flat fee.¹² For matters with a value less than \$100,000, the arbitrator's flat fee is \$5,000 plus tax; for matters with a value of \$100,001 to \$250,000, the arbitrator's flat fee is \$10,000 plus tax.¹³

The Expedited Procedures are designed to increase access to justice by making arbitration accessible where the quantum is such that it is not economically feasible to run a claim through a full Supreme Court proceeding, but where the value of the claim exceeds the monetary limits of the Civil Resolution Tribunal and Small Claims Court. Parties with smaller claims may also wish to access arbitration for other reasons, including efficiency, confidentiality, and subject-matter expertise.

If the parties have agreed to an arbitral tribunal consisting of more than one arbitrator, by so doing they opt out of the Expedited Procedures. Alternatively, if VanIAC determines prior to appointment of the tribunal that the arbitration is not suitable

⁹ *Ibid*, s 12.

¹⁰ *Ibid*, s 15.

¹¹ *Ibid*, s 24.

¹² *Ibid*, ss 24, 26.

¹³ See Vancouver International Arbitration Centre, "Fee Schedule for Domestic Arbitration Rules" (1 September 2020), online: *Vancouver International Arbitration Centre* <vancouverinternationalarbitrationcentre.org/arbitration/fee-schedule/fee-schedule-for-domestic-arbitration-rules/>.

for the Expedited Procedures (such as where value of the claim is misstated by the claimant), the Expedited Procedures will not apply.¹⁴

For the most part, matters that fall under these provisions will be determined based on written materials only. Parties may apply for an oral hearing, but the necessity of such a hearing will be assessed by the tribunal and the default hearing length of oral hearing is one day. In such circumstances, an hourly rate will apply for the arbitrator's time.¹⁵

3. *Virtual Hearing Procedures*

There is a movement toward “greener” arbitrations, and the COVID-19 pandemic has introduced parties to the cost savings made possible by virtual hearings. All of this led VanIAC to the conclusion that virtual hearings will remain in use for some time, particularly given the efficiencies derived where parties and witnesses are not in the same location. As a result, section 21 of the Domestic Arbitration Rules includes procedures that formalize best practices for virtual hearings. These rules are less prescriptive than other sections of the Domestic Arbitration Rules, and generally provide a guide for parties who are less familiar with the matters that should be considered when proceeding virtually. For example, section 21(d) sets out a series of issues on which the tribunal should provide direction prior to the hearing, such as how documents will be referenced during a virtual hearing.

4. *Optional Appeal Tribunal*

Prior to the current iteration of the *Arbitration Act*, it was not possible to limit appeals from domestic arbitration awards to the courts. The new *Arbitration Act* allows parties to opt out of appeals. There may be circumstances in which parties wish to

¹⁴ *Supra* note 11.

¹⁵ *Ibid*, s 25.

avoid court processes but would still like to maintain a right to appeal. To provide such parties with a confidential and efficient appeal mechanism, Part D of the Domestic Arbitration Rules (sections 31 to 35), allows for a confidential appeal to arbitrators in place of a public appeal to the courts.

The appeal tribunal provisions also allow parties to specify the ground on which an appeal may be sought. In other words, rather than being limited to a “question of law” as is the case with appeals to court under the domestic *Arbitration Act*, parties may agree in an arbitration agreement that an appeal may be brought on questions of mixed law and fact, pure questions of fact, or other specified grounds.¹⁶ Section 32(f) of the Domestic Arbitration Rules provides that unless the parties agree otherwise, by consenting to an appeal under Part D of the Rules the parties expressly agree that they may not appeal any question of law arising out of the appealed award under the *Arbitration Act*. That is, by agreeing to an arbitral appeal mechanism, the parties contract out of any right to appeal an award to the courts. However, the appeal process does not replace the correction, interpretation, and additional arbitral award remedies under Section 56 of the *Arbitration Act*.¹⁷

IV. CONCLUSION

As VanIAC celebrates its 35th anniversary, with its new name and new domestic rules, it is well positioned to promote modern dispute resolution not just in BC but across Canada and around the world. Its continued evolution, including the planned release of new international arbitration rules later this year, will also position VanIAC to enhance Vancouver’s reputation as a desirable seat for international arbitrations.

¹⁶ *Ibid*, s 31.

¹⁷ *Ibid*, s 32.