

EDITORS' NOTE

The *CJCA* editors are proud to present this special issue on commercial arbitration legislation reform in Canada. It is *CJCA*'s first special issue on any topic, an indication of the importance the editors place on further improving our arbitration laws. While Canada is justifiably known for its robust legislative and judicial support for commercial arbitration, a number of achievable reforms exist that would improve our legislative framework and help launch Canada's arbitration laws to the global forefront. The bulk of this issue is taken up with a symposium on that theme, collecting diverse perspectives on different ways that arbitration legislation in Canada might—and might not—be improved.

The symposium was inspired by the Toronto Commercial Arbitration Society's Arbitration Act Reform Committee (AARC), which has published an ambitious and comprehensive set of proposals for reforming Ontario's arbitration laws. The AARC's Final Report, along with a summary and appendices, can be found at: <https://torontocommercialarbitrationsociety.com/arbitration-act-reform-committee/>. We note that several contributors to this symposium were members of the AARC, and that some journal editors have endorsed its proposals as self-designated "Champions for a Unified Commercial Arbitration Act".

Since *CJCA* is a national publication, this issue showcases perspectives from various Canadian and foreign jurisdictions. The symposium comprises ten essays, each by a leader of Canada's commercial arbitration community, and each dealing with a specific aspect of the law or surveying lessons learned from a recent legislative reform initiative in a particular jurisdiction.

First, William G. Horton highlights the value of ending the legislative distinction between domestic and international commercial arbitration that prevails in most Canadian

provinces. Finding that distinction unjustified, he argues for a single arbitration statute that encompasses both.

Second, Cynthia Kuehl addresses a different set of distinctions: those between commercial and non-commercial arbitrations. She finds that the differences between them justify separate statutes to regulate commercial and non-commercial arbitrations.

Third, Joel Richler reflects on appeal rights. He endorses proposals that would improve predictability and efficiency by streamlining the treatment of appeals and making them available only on an opt-in basis.

Fourth, J. Brian Casey discusses set-aside remedies, advocating a set of reforms that would rationalize the provincial arbitration acts' treatment of these remedies.

Fifth, Barry Leon argues for international standards (as exemplified by the UNCITRAL Model Law) to govern domestic commercial arbitrations, and appraises various means of incorporating the Model Law into domestic legislation.

Sixth, Matthias Heilke, Laurence Sainte-Marie, and Stephen L. Drymer present a view from Québec, offering some lessons learned based on Québec's experiences since the 2016 amendments to its Code of Civil Procedure.

Seventh, Tina Cicchetti describes some of the specifics of British Columbia's modernization of its Arbitration Act, which took effect in 2020. She shares the thinking behind those amendments, in order to help inform legislative modernizations in other provinces.

Eighth, Gerald W. Ghikas tackles procedural norms. Since procedural flexibility is a hallmark of arbitration, legislation should not touch upon many aspects of procedure. Nevertheless, he argues, Canadian practice would benefit from a soft law document setting out consensus best practices as default procedural norms.

Ninth, Alexander M. Gay examines the prospects for reform of Canada’s federal commercial arbitration laws, assessing a range of options that the federal government might pursue if it goes forward with implementing legislative amendments.

And tenth, Janet Walker considers Australia’s adoption of the UNCITRAL Model Law for both international and domestic commercial arbitrations. She presents a range of lessons Canadian jurisdictions could learn from the Australian experience.

In addition to the symposium essays, this issue also contains two articles and one regular feature.

Joshua Karton, Barry Leon, Joel Richler, and Lisa Munro confront a split between British Columbia and Ontario on the identification of “extricable errors of law” in contractual interpretations by arbitrators. This issue is crucial to a key aspect of the relationship between arbitration and the courts: the scope of appeals. They argue that the Supreme Court of Canada should take up the question, and should reject BC’s expansive approach to extricable errors of law and endorse Ontario’s narrow approach.

Stephen Armstrong updates readers on developments in the Canadian law of anti-suit injunctions since the Supreme Court of Canada’s landmark decision in *Amchem*. Such injunctions can be a powerful tool for justice and mischief alike. Armstrong’s article identifies an emerging line of Canadian jurisprudence that clarifies the scope of parties’ rights to avoid being sued in a given forum.

This issue’s content is rounded out by a review of key developments in Canadian arbitration case law in 2022, penned by Lisa Munro, doyenne of the Arbitration Matters blog, drawing from the blog’s popular coverage of Canadian case law.

Finally, CJCA is pleased to support the Canadian Arbitration Survey, now underway. If you are able, please take some time to provide your (entirely voluntary and entirely anonymous)

answers to the survey questions. The data will be used to generate an accurate profile of commercial arbitration practice in Canada, information that will point the way forward to help us build the practice of arbitration across Canada and beyond. See the inside back cover of this issue for more information.

Please consider submitting your own writing to CJCA, (see <https://cjca.queenslaw.ca/submission>) and do not hesitate to contact us with article ideas, feedback, or suggestions.

Joshua Karton, Managing Editor
joshua.karton@queensu.ca

on behalf of the senior editors:
Barry Leon, Executive Editor
Gerald W. Ghikas, Executive Editor
Janet Walker, Executive Editor
Anthony Daimsis, Case Comments and Developments Editor