

British Columbia's New *Arbitration Act*

British Columbia's arbitration legislation had not undergone major revisions in over 30 years. However, the new *Arbitration Act*¹ (the 'Act') and *Arbitration Regulation*² (the 'Regulation') came into force on September 1, 2020, at which time the previous act and regulation were repealed. The new Act applies to arbitral proceedings commenced September 1, 2020 or later. The old Act still applies to proceedings initiated prior to September 1, 2020. The new legislation is intended to modernize the arbitration regime and benefit parties, counsel, and arbitrators alike.³ The amendments sought to bring British Columbia's statute in conformity with domestic and international arbitration legislation.⁴

One such way the Act achieves this is through clarifying procedural issues. For example, provisions were added which establish a process for commencing proceedings.⁵ Where parties have an existing agreement as to how to commence arbitration, the Act requires they follow their agreement. However, where there is no such agreement, a party may send notice in the methods provided by the Act to commence proceedings. Further, the Act sets out procedures for obtaining and enforcing interim orders as well as interim orders without notice.⁶ Interim measures include where the arbitral tribunal orders a party to maintain or restore the status quo, take or refrain from taking certain actions, preserve assets, and the like. A clear process for obtaining such orders did not exist under the previous legislation.

Additionally, evidence now must be presented in written form, unless otherwise agreed by the parties.⁷ This change was intended to expedite proceedings. An arbitral tribunal may also subpoena non-parties to give evidence.⁸ The Act further specifies that all hearings and materials presented must be kept confidential,⁹ which was not expressly provided for previously. Parties may also, by agreement, consolidate two or more arbitral proceedings.¹⁰

Under the Act, parties can now appeal from an arbitration directly to the British Columbia Court of Appeal on questions of law if all parties consent or a justice of the court grants leave to appeal, unless the agreement expressly prohibits such an appeal.¹¹ However, the Supreme Court retains jurisdiction to set aside awards on specific grounds, such as procedural grounds. Despite this added right of appeal, the Act is meant to limit court intervention¹² to ensure that arbitration is used as intended, as an alternative dispute mechanism, and not an additional step in resolving disputes.¹³ Moreover, the time period for appealing has been reduced to 30 days from the previous 60 days. The new Act is also subject to the Limitation Act.

The Regulation has assigned the Vancouver International Arbitration Centre (VIAC) as the designated appointing authority under the Act.¹⁴ VIAC has the authority to appoint arbitrators, determine fees and expenses, and direct awards related to fees and expenses.¹⁵ The decisions of VIAC may not be appealed.¹⁶

Under the repealed legislation, arbitrators could only consider legal principles, unless the agreement expressly authorized the arbitrator to decide on equitable or other grounds. The Act now empowers arbitrators to also consider equitable rights and defences as well as legal principles.¹⁷ Arbitrators must consider the duties set out in the Act as well. Specifically, to achieve a just, speedy, and economical determination.

The Act establishes the authority of arbitral tribunals to rule on their own jurisdiction.¹⁸ Decisions regarding jurisdiction may be appealed to the Supreme Court of British Columbia. However, further appeals are not permitted.

Arbitral tribunals also have the authority to appoint an expert.¹⁹ This includes the power to order a party to provide information and documents to the appointed expert. Such

experts have a legislated duty to not be an advocate for any party.²⁰

While the Act provides clarity in several ways, it does not specify whether its provisions may be contracted out of or which are mandatory. Some of the provisions expressly state that they are mandatory and other allows the parties to 'agree otherwise'. Nevertheless, it is not clear if parties may contract out of provisions which were left silent on the matter.

Overall, the Act has been modernized and is more in line with existing arbitration legislation, both domestic and international.²¹ The amendments offer guidance regarding procedures, evidence, and jurisdiction. The changes will likely expedite arbitration proceedings. However, it is yet to be seen how specific provisions will be interpreted and applied to arbitration matters. Care should be taken by parties when drafting agreements to ensure that the new regime is taken into account.

¹ *Arbitration Act*, S.B.C. 2020, c.2

² *Arbitration Regulation*, B.C. Reg. 160/2020

³ Hon D Eby First Reading Wednesday, February 19, 2020 Afternoon Sitting Issue No. 309

⁴ Hon D Eby Second Reading Wednesday, February 27, 2020 Afternoon Sitting Issue No. 318

⁵ *Arbitration Act*, S.B.C. 2020, c. 2 at section 8

⁶ *Ibid* at section 37

⁷ *Ibid* at section 28

⁸ *Ibid* at section 29

⁹ *Ibid* at section 63

¹⁰ *Ibid* at section 9

¹¹ *Ibid* at section 59

¹² *Supra* at section 3

¹³ Hon D Eby Second Reading Wednesday, February 27, 2020 Afternoon Sitting Issue No. 318

¹⁴ *Arbitration Regulation*, B.C. Reg. 160/2020 at section 2

¹⁵ *Supra* at section 14

¹⁶ *Ibid* at section 4

¹⁷ *Ibid* at section 25

¹⁸ *Ibid* at section 23

¹⁹ *Ibid* at section 34

²⁰ *Ibid* at section 35

²¹ Hon D Eby Second Reading Wednesday, February 27, 2020 Afternoon Sitting Issue No. 318

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