

## TABLE OF CONTENTS

<i>Dedication</i> . . . . .	<i>iii</i>
<i>Foreword</i> . . . . .	<i>v</i>
<i>Introduction</i> . . . . .	<i>vii</i>
<i>Methodology</i> . . . . .	<i>xi</i>
<i>Table of Cases</i> . . . . .	<i>xix</i>

### PART I — FOREIGN ARBITRAL AWARDS ACT

#### FOREIGN ARBITRAL AWARDS ACT

1 Definition . . . . .	1
Commentary . . . . .	1
2 Convention applies in British Columbia . . . . .	1
Commentary . . . . .	1
3 Limitation . . . . .	1
Commentary . . . . .	1
4 Court . . . . .	2
Commentary . . . . .	2
5 This Act prevails . . . . .	2
Commentary . . . . .	2

#### SCHEDULE — CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I . . . . .	2
Commentary . . . . .	3
Article I(1) . . . . .	4
Article I(2) . . . . .	9
Article I(3) . . . . .	9
Canadian Case Law . . . . .	10
Article II . . . . .	11
Commentary . . . . .	11
Article II(1) . . . . .	12

## Table of Contents

Article II(2) .....	15
Article II(3) .....	18
Canadian Case Law .....	24
Article III .....	26
Commentary .....	26
Canadian Case Law .....	28
Article IV .....	29
Commentary .....	29
Article IV(1) .....	30
Article IV(2) .....	34
Canadian Case Law .....	35
Article V .....	35
Commentary .....	36
Article V(1)(a) .....	37
Article V(1)(b) .....	43
Article V(1)(c) .....	50
Article V(1)(d) .....	54
Article V(1)(e) .....	57
Article V(2)(a) .....	62
Article V(2)(b) .....	64
Canadian Case Law .....	77
Article VI .....	80
Commentary .....	80
Canadian Case Law .....	85
Article VII .....	86
Commentary .....	86
Article VII(1) .....	86
Article VII(2) .....	88
Article VIII .....	88
Commentary .....	89
Article IX .....	89
Commentary .....	89
Article X .....	89
Commentary .....	90
Article XI .....	90
Commentary .....	91
Article XII .....	91
Commentary .....	91
Article XIII .....	92
Commentary .....	92
Article XIV .....	93
Commentary .....	93

Table of Contents

Article XV ..... 93  
Commentary ..... 93  
Article XVI ..... 93  
Commentary ..... 94

**PART II — INTERNATIONAL COMMERCIAL ARBITRATION ACT**

**INTERNATIONAL COMMERCIAL ARBITRATION ACT**

**PART 1 — APPLICATION AND INTERPRETATION (SS. 1–6)**

1 Scope of application ..... 95  
    Commentary ..... 96  
    Canadian Case Law ..... 102  
2 Definitions and interpretation ..... 102  
    Commentary ..... 102  
3 Receipt of written communications ..... 105  
    Commentary ..... 106  
4 Waiver of right to object ..... 106  
    Commentary ..... 107  
5 Extent of judicial intervention ..... 108  
    Commentary ..... 108  
    Canadian Case Law ..... 109  
6 International origin and general principles ..... 110  
    Commentary ..... 110

**PART 2 — ARBITRATION AGREEMENT (SS. 7–9)**

7 Definition of arbitration agreement ..... 111  
    Commentary ..... 111  
    Canadian Case Law ..... 121  
8 Stay of legal proceedings ..... 122  
    Commentary ..... 122  
    Canadian Case Law ..... 135  
9 Interim measures by court ..... 143  
    Commentary ..... 143  
    Canadian Case Law ..... 145

**PART 3 — COMPOSITION OF ARBITRAL TRIBUNAL (SS. 10–15)**

10 Number of arbitrators ..... 146  
    Commentary ..... 146  
11 Appointment of arbitrators ..... 147  
    Commentary ..... 148

## Table of Contents

12	Grounds for challenge . . . . .	153
	Commentary . . . . .	154
	Canadian Case Law . . . . .	156
13	Challenge procedure . . . . .	157
	Commentary . . . . .	158
	Canadian Case Law . . . . .	159
14	Failure or impossibility to act . . . . .	160
	Commentary . . . . .	160
15	Termination of mandate and substitution of arbitrator . . . . .	162
	Commentary . . . . .	162
	<b>PART 4 — JURISDICTION OF ARBITRAL TRIBUNAL (S. 16)</b>	
16	Competence of arbitral tribunal to rule on its jurisdiction . . . . .	163
	Commentary . . . . .	163
	Canadian Case Law . . . . .	171
	<b>PART 4.1 — INTERIM MEASURES AND PRELIMINARY ORDERS (SS. 17–17.10)</b>	
	<b>DIVISION 1 — INTERIM MEASURES</b>	
17	Power of arbitral tribunal to order interim measures . . . . .	173
	Commentary . . . . .	174
	Canadian Case Law . . . . .	176
17.01	Conditions for granting interim measures . . . . .	177
	Commentary . . . . .	177
	<b>DIVISION 2 — PRELIMINARY ORDERS</b>	
17.02	Applications for preliminary orders and conditions for granting preliminary orders . . . . .	179
17.03	Specific regime for preliminary orders . . . . .	180
	Commentary . . . . .	180
	<b>DIVISION 3 — PROVISIONS APPLICABLE TO INTERIM MEASURES AND PRELIMINARY ORDERS</b>	
17.04	Modification, suspension or termination of interim measures and preliminary orders . . . . .	181
17.05	Provision of security . . . . .	182
17.06	Disclosure . . . . .	182
17.07	Costs and damages . . . . .	182
	Commentary . . . . .	182
	<b>DIVISION 4 — RECOGNITION AND ENFORCEMENT OF INTERIM MEASURES</b>	
17.08	Recognition and enforcement . . . . .	183
17.09	Grounds for refusing recognition or enforcement . . . . .	184
	Commentary . . . . .	184
	<b>DIVISION 5 — COURT-ORDERED INTERIM MEASURES</b>	
17.10	Court-ordered interim measures . . . . .	185

Table of Contents

Commentary	186
<b>PART 5 — CONDUCT OF ARBITRAL PROCEEDINGS (SS. 18–27.01)</b>	
18 Equal treatment of parties	187
Commentary	187
19 Determination of rules of procedure	191
Commentary	191
20 Place of arbitration	198
Commentary	199
21 Commencement of arbitral proceedings	200
Commentary	200
21.01 Representation in arbitral proceedings	201
Commentary	201
22 Language	202
Commentary	202
23 Statements of claim and defence	203
Commentary	203
Canadian Case Law	204
24 Hearings and written proceedings	205
Commentary	205
25 Default of a party	207
Commentary	208
26 Expert appointed by arbitral tribunal	209
Commentary	209
27 Court assistance in taking evidence	211
Commentary	211
27.01 Enforcement of consolidation agreements	213
Commentary	214
Canadian Case Law	215
<b>PART 6 — MAKING OF ARBITRAL AWARD AND TERMINATION OF PROCEEDINGS (SS. 28–33)</b>	
28 Rules applicable to substance of dispute	215
Commentary	216
29 Decision making by panel of arbitrators	219
Commentary	219
30 Settlement	222
Commentary	222
31 Form and content of arbitral award	223
Commentary	224
Canadian Case Law	231
32 Termination of proceedings	231

Table of Contents

Commentary	232
33 Correction and interpretation of award; additional award	233
Commentary	233
<b>PART 7 — RECOURSE AGAINST ARBITRAL AWARD (S. 34)</b>	
34 Application for setting aside arbitral award	236
Commentary	237
Canadian Case Law	270
<b>PART 8 — RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS (SS. 35, 36)</b>	
35 Recognition and enforcement	272
Commentary	272
36 Grounds for refusing recognition or enforcement	277
Commentary	278
Canadian Case Law	299
<b>PART 9 — GENERAL (SS. 36.01–38)</b>	
36.01 Privacy and confidentiality	302
Commentary	303
36.02 Immunity	305
Commentary	305
37 [Repealed 2018, c. 8, s. 22.]	305
38 Offence Act	305
Commentary	305
<b>ANNEX A</b>	
Foreign Arbitral Awards Act	307
Schedule — Convention on the Recognition and Enforcement of Foreign Arbitral Awards	308
<b>ANNEX B</b>	
International Commercial Arbitration Act	315
<b>ANNEX C</b>	
IBA Rules of the Taking of Evidence in International Arbitration	343
<b>ANNEX D</b>	
IBA Guidelines on Conflicts of Interest in International Arbitration Adopted by Resolution of the IBA Council on Thursday 23 October 2014	357
<i>Index</i>	375