

Alberta courts provide special mechanism to ease the enforcement of Arbitration Awards

April 3, 2020

On March 31, 2020, the Court of Queen's Bench of Alberta (ABQB) announced that it would adjudicate, by way of written application (as opposed to an in-person hearing), urgent contested applications to enforce Arbitration Awards pursuant to s. 49 of the Alberta *Arbitration Act*. This is in keeping with the ABQB's previous directives that it will hear emergency proceedings only, in light of the suspension of all other proceedings due to the COVID-19 outbreak.

The ABQB also announced on March 31, 2020, that it will process, via email or fax, Consent Orders to enforce Arbitration and Mediation Awards, whether urgent or not. This is in addition to all other Consent Orders over which the ABQB has jurisdiction.

The ability to submit a written application to enforce an arbitral award, if contested, is significant. Once the ABQB orders the enforcement of an Arbitration Award, it may be enforced similar to a judgment issued directly from the courts. Otherwise, non-urgent and non-emergency proceedings in Alberta's courts have largely halted. Further, even when the suspension is lifted, there will likely be a backlog of matters leading to significant delay. Indeed, in this announcement "the Court is encouraging counsel and the public to access alternative dispute resolution mechanisms, including mediation and arbitration." Dentons' ADR group has extensive experience in all forms of alternative dispute resolution mechanisms and can assist clients in navigating the shift of a dispute from court proceedings, the initiation of new resolution processes, and the drafting of agreements to incorporate effective and efficient ADR provisions.

Contested enforcement of Arbitration Awards

In its March 31, 2020 announcement, the ABQB listed the following four requirements applicable to the new process for contested applications to enforce Arbitration Awards pursuant to s. 49 of the Alberta *Arbitration Act*:

- The application shall be made in writing, include a detailed statement of the reasons that enforcement is claimed to be urgent, and be submitted electronically.
- The application shall be made on notice to the person against whom enforcement is sought, in accordance with the *Alberta Rules of Court*, and shall be supported by the original Arbitration Award or certified copy.
- The application must include a proposed form(s) of Order.
- The court will deal only with applications that it considers to be urgent, and may only deal with interim enforcement, without a hearing, until COVID-19 restrictions are ended or reduced.

The Alberta *Arbitration Act* governs domestic arbitrations and, therefore, the written application process described above does not apply to awards rendered in an international arbitration. Where the enforcement of a domestic Arbitration Award is contested, the written application process is significantly limited in scope to "urgent" enforcements

only. Further, the ABQB's language suggests that there may be discretion to address only interim enforcements under this process. If so, then such interim awards would presumably need to be revisited once the courts resume regular operations.

The ABQB's move to issue enforcement orders without in-person hearings appears to be the first amongst similar jurisdictions. Litigants in Alberta may want to consider or reconsider arbitration as an alternative to move suspended litigation proceedings forward.

For more information, please contact Gord Tarnowsky, Q.C., Dennis Picco, Q.C., Rachel Howie or another member of Dentons' Litigation and Dispute Resolution group in Alberta.

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