

## Opinion

### **APPLICABLE LEGISLATION COMMERCIAL ARBITRATION IN CANADA.**

Canada is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, known as the New York Convention of 1958; however, pursuant to Article I of the Convention, Canada declared that the Convention applies only to legal relationships that are considered 'commercial' under the laws of Canada, except in the case of the Province of Quebec, where the law does not provide for this limitation.

In addition, in June 1986, Canada adopted the Model Law on International Commercial Arbitration (adopted by the United Nations Commission on International Trade Law in 1985 (the Model Law)) via the United Nations Foreign Arbitral Awards Convention Act. The Model Law provides the basis for all international arbitration legislation in Canada, with the exception of Quebec. Each province's legislation is somewhat idiosyncratic and varies to differing degrees in terms of reliance on the Model Law.

Furthermore, each province and territory has its own domestic and inter-national arbitration legislation, while federal commercial arbitration is governed by the Commercial Arbitration Act. Parties to an arbitration agreement may agree to vary or exclude certain provisions of the legislation, with the exception of various mandatory requirements (e.g., the parties must be treated equally and fairly). Generally, domestic legislation is more permissive in terms of the provisions that parties are entitled to exclude, whereas international legislation is more restrictive. By contrast, the provinces' international arbitration legislation tends to be based on the Model Law, and most often incorporates the bulk of the Model Law.

Parties to a construction arbitration will also need to be mindful of other legislation of general application, such as that which applies to contracts more generally (e.g., legislation relating to consumer protection and sale of goods, bankruptcy and insolvency, and labour and employment, legislation pertaining to guarantees under forms of security, and legislation respecting limitation periods).