

Kluwer Arbitration Blog

Interviews with Our Editors: The VanIAC in the Spotlight with Barry Penner, QC

Dina Prokic (Assistant Editor for Canada and the United States) (Woods LLP) · Thursday, February 17th, 2022

Established in 1986, the Vancouver International Arbitration Centre (“VanIAC”, formerly known as the British Columbia International Commercial Arbitration Centre) is an organization committed to offering additional dispute resolution paths, providing services to individuals and businesses who wish to resolve conflicts through mediation and arbitration. Barry Penner Q.C. serves as VanIAC’s Managing Director.

Mr. Penner, thank you for joining us on the Kluwer Arbitration Blog! We are thrilled to have this opportunity to share with our readers your perspectives and to highlight interesting initiatives undertaken by the VanIAC.



1. Before we delve in, would you please briefly introduce yourself and describe the path that brought you to the VanIAC?

I’m a licensed lawyer, and served almost 16 years in elected office as a member of the

Legislature in British Columbia, the third largest province in Canada. During that time, my roles included Attorney General, Minister of Aboriginal Relations & Reconciliation and Minister of Environment.

During my years in legal practice and public service, I observed lengthy delays and rising costs associated with court proceedings, which increased my interest in alternatives to traditional litigation. The Canadian justice system is renowned for its impartiality, but also for what can sometimes be excruciating delays. After hearing that the board of directors was looking for a Managing Director to help the organization grow, I took on the role of Managing Director of the VanIAC in 2017.

2. Mr. Penner, in your opinion, what are the advantages of seating arbitrations in Vancouver?

British Columbia statutory law limits the ability of courts to intervene in the arbitration process. Generally, our courts are “arbitration friendly” with extensive case law supporting the principle of party autonomy. Judicial intervention is limited, but court enforcement of arbitral awards is well established. Canada is a signatory to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*.

Vancouver, located on the Pacific rim, is in the same time zone as the west coast U.S.-states of California, Oregon and Washington. Vancouver is known internationally for its mild climate, stunning scenery and highly-capable legal counsel and impartial arbitrators. With direct flights to many Asian, European, South Pacific, North and South American cities, Vancouver is an ideal meeting point for domestic and international businesses and, thus, an excellent venue for hosting international arbitrations.

3. This year, VanIAC is celebrating its 36th birthday. As the institution has grown and gained traction, has it seen any trends in the kinds of users and disputes it attracts? How has VanIAC used this information to enhance its services and approach over the years? Have you noticed a change in Canadian companies’ attitudes toward international arbitration during your time with VanIAC?

Like other industries, we moved quickly to make greater use of technology when the COVID-19 pandemic was declared in early 2020, allowing us to move seamlessly to virtual hearings. VanIAC has remained fully-functioning and for the fourth year in a row, we’ve opened a record number of files, representing an increase of more than 50% since 2019. Online video platforms such as Microsoft Teams and Zoom are now commonly used to host arbitration and mediation hearings, although today we can also support in-person meetings (that comply with public health requirements) as well as hybrid hearings.

While there are fluctuations from year to year, the types of cases administered by VanIAC continue to include disputes relating to commercial lease agreements, shareholders' agreements, construction, real estate, employment, and energy purchase agreements.

In 2021, the total value of new arbitrations commenced with VanIAC exceeded \$1 billion, with a typical case being in the \$1 million range.

The majority of our international cases are between counterparties based in the USA and Canada, but our arbitrators and mediators hail from the USA, France, New Zealand, Australia, Austria, Italy, Portugal, Hong Kong, UK, UAE, China, Portugal, Columbia, Switzerland, India, Mexico, and Germany.

The length of proceedings of course depends on a number of factors, including complexity of the individual case. Under our new expedited procedures for domestic arbitrations, a document-only arbitration case can be completed within four months. The length of non-expedited proceedings can be estimated between 10 - 18 months, but again this depends on the facts of the particular case and the conduct of the parties.

4. VanIAC's Domestic Arbitration Rules were amended in 2020, coinciding with the changes in domestic legislation. The International Commercial Arbitration Rules of Procedure, however, were last amended in 2000. We understand that VanIAC is currently in the process of preparing revised rules for release. Could you preview for us two or three of the key areas of focus in the revision process?

Our new International Rules of procedure are nearing completion. Subject to further feedback from our consultation process with leading practitioners, we anticipate the new rules to include:

- expedited procedures for claims under \$500,000,
- flat fee arbitrations for claims under \$250,000, and
- provisions for emergency arbitrations.

Further, we anticipate adding language specific to virtual hearing techniques and a requirement that such hearing methods be considered at the initial procedural conference.

VanIAC is making sure that any changes in our new International Rules complement the *International Commercial Arbitration Act* which was updated by the British Columbia Legislative Assembly in 2018 to reflect the latest version of the UNCITRAL Model Law. Ultimately, our objective is to provide individuals and businesses with a cost-effective and efficient alternative to courts for resolving disputes, while adhering to fundamental principles of neutrality and the rule of law.

5. In 2019, VanIAC established a division dedicated to providing assistance with domain name disputes - the *Canadian International Internet Dispute Resolution Centre* (“CIIDRC”). There are only a few institutions in the world that administer disputes under the *Uniform Domain Name Dispute Resolution Policy* (“UDRP”). How did this idea come about and how does the CIIDRC compare to these other UDRP service providers? Since CIIDRC administers disputes not only under the UDRP but also under the *Domain Name Dispute Resolution Policy of the Canadian Internet Registration Authority* (“CDRP”), could you please shine some light on the distinctions between the two procedures?

We launched CIIDRC to focus on administering internet domain name disputes. We had already been administering such disputes for the Canadian Internet Registration Agency (CIRA) since 2002, and decided to offer our services to the Internet Corporation for Assigned Names and Numbers (“ICANN”).

Prior to our approval to administer domain name disputes for ICANN in accordance with their UDRP, there was only one approved service provider in the western hemisphere...and none in Canada. At the same time, there have been double digit increases in the number of domain name disputes in recent years, leading to reports of increasing delays at some other service providers. We believe there is an opportunity for us to build on our 20-year track record handling CIRA disputes, as well as Canada’s reputation for skilled legal practitioners, impartial arbitrators and the highest standards of intellectual property protection.

While dispute resolution policies are similar under the CDRP and UDRP, there are some distinctions. Some of the key differences include:

- For CDRP cases, the definition of what constitutes trademark use is similar to “use” as defined in Canada’s *Trademarks Act*;
- CDRP disputes require a three-member panel, unless the registrant does not file a response, whereas in UDRP disputes complainants can opt for either a single- or three-member panel;
- The entire cost of a CDRP process is borne by the complainant, whereas the costs of a UDRP dispute can be shared between both sides; and
- For CDRP cases, decisions are implemented (eg, domain name transfers) within 30 days, compared to 10 days for ICANN/UDRP cases.

6. As of June 2021, VanIAC has supported the *Equal Representation in Arbitration Pledge* and the *Campaign for Greener Arbitrations*. Mr. Penner, in light of your previous experiences as Attorney General of British Columbia and the Minister of Environment and Minister of Aboriginal Relations and Reconciliation, how do you plan to transpose VanIAC’s commitment to these initiatives into practice? Do you think the international arbitration community faces any unique challenges in this regard?

VanIAC has a diverse board of directors, which is the result of a conscious effort to

reach out to and encourage a new generation of leadership. We have also been encouraging previously under-represented demographic groups to apply to join our roster of approved mediators and arbitrators.

By pivoting to adopt online software to facilitate ‘virtual’ hearings, the carbon footprint associated with in-person arbitrations has been greatly reduced. We also designed our CIIDRC website to facilitate the uploading of key documents, replacing the previous need to courier packages of printed documents. VanIAC recently updated its website to enhance online, interactive functionality, further reducing the volume of paper that must be used. www.VanIAC.org provides its users with 24/7 digital access to their case files, including submitted material, case schedules, correspondence, directions and awards, that is safe and secure, saving time and money.

7. To conclude, what do you hope to achieve before VanIAC’s 40th anniversary?

VanIAC’s overriding objective is to provide expert and trusted dispute resolution services, with streamlined rules and friendly, supportive administrative services. We strive to uphold the highest standards in domestic and international mediation and arbitration. In doing so, we hope to increase public awareness that there is a convenient, cost-effective alternative available for those who hope to resolve disputes without going to court.

Thank you for your time and perspectives - we wish you and the VanIAC continued success!

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