

# Kluwer Arbitration Blog

## What's New on Canada's West Coast? VanIAC's New International Commercial Arbitration Rules of Procedure

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Canada's west coast has long welcomed arbitration as a means of dispute resolution and provided a venue for arbitrations of all kinds. The [Vancouver International Arbitration Centre](#) (VanIAC) – established in 1986 under the name British Columbia International Commercial Arbitration Centre (BCICAC) – has recently made further strides in providing parties with workable and efficient routes for resolving their disputes outside the courts. Its offerings now include a new set of [International Commercial Arbitration Rules of Procedure](#) that came into effect on July 1, 2022.

VanIAC had several objectives in updating its previous international rules. First, VanIAC wished to incorporate innovations such as emergency arbitrator procedures (which have proven helpful in other venues as well as under VanIAC's earlier-updated [domestic rules](#)) and take into account changes (postdating the rules' last amendment, in 2000) to the UNCITRAL Model Law and Canadian arbitration legislation, all while preserving well-tested elements of the international rules' prior content.

Second, relatedly, VanIAC's new international rules solidify its appeal as an administering arbitral institution for parties internationally. Those parties will benefit from the new rules' express provision for virtual hearings as well as from VanIAC's adoption of best practices competitive with those of leading arbitral institutions around the world.

Third, VanIAC sought to make its international rules suitable not only for parties from different countries but also where an arbitration governed by VanIAC rules is seated elsewhere in Canada than VanIAC's home province of British Columbia. Under Rule 1(d) of the new international rules, in a case seated in another Canadian province or territory between parties that have agreed to arbitrate disputes under any VanIAC (or BCICAC) rules, VanIAC's new international rules, rather than its domestic rules, will apply.

Why is the last point important? In 2020, the province of British Columbia enacted a new domestic [Arbitration Act](#) that, in contrast to its relatively skeletal predecessor, included much of the procedural detail that had formerly been found in VanIAC's domestic rules (the *Arbitration Act* was previously discussed on this blog [here](#)). Accordingly, also in 2020, VanIAC revised its domestic rules to mesh with the new domestic legislation, streamlining those domestic rules to avoid overlap. VanIAC's more streamlined domestic rules, however, no longer work as well alongside other provincial or territorial legislation that does not include the same content as BC's

new *Arbitration Act*. VanIAC's international rules provide the additional detail needed in circumstances not governed by BC's domestic arbitration statute.

### **Resolving Disputes Expeditiously**

Further shaping VanIAC's new international rules is the principle that disputes should be resolved expeditiously while still ensuring, as reflected in Rule 19, that the parties are treated with equality and each given a reasonable opportunity to present their case. In this regard:

- Rule 19 also provides that the arbitral tribunal shall endeavour to conduct the proceedings expeditiously and avoid unnecessary delay and expense; the parties too shall endeavour to promote the expeditious conduct of the arbitration and to avoid unnecessary delay and expense. The arbitral tribunal may allocate costs or take any other steps it considers necessary to preserve these objectives.
- Rule 21 provides that a party may seek leave to bring an application for early disposition of one or more issues of fact or law at any stage in the proceedings.
- Rule 23 provides that unless otherwise agreed by the parties or directed by the arbitral tribunal, the direct evidence of witnesses shall be provided by way of written witness statements.
- The new international rules expressly contemplate the prospect of virtual hearings, providing specific details in this regard in Rule 25.
- Under Rule 35, unless otherwise agreed by the parties or directed by the arbitral tribunal, the arbitral tribunal shall issue an award within 90 days of the latter of the close of the hearing and the last written submissions received by the arbitral tribunal.
- Beyond the above, VanIAC's new international rules are supplemented by specific expedited procedures which – subject to other determination by the parties, arbitral tribunal or VanIAC – apply to arbitrations conducted by a sole arbitrator if the parties agree or if no claim (or estimate of the amount claimed) by any one party in a notice to arbitrate or notice of counterclaim exceeds \$500,000 CAD exclusive of interest and costs. The expedited procedures set out short timelines, including that all written material must be exchanged no later than 120 days from the appointment of the arbitrator, unless otherwise agreed by the parties or directed by the arbitrator. They also provide that, unless otherwise agreed by the parties or directed by the arbitrator, a final award shall be issued without an oral hearing based on the written material. If an oral hearing is necessary, under the expedited rules it is generally to be no more than one day in length. Unless otherwise agreed by the parties or directed by the arbitrator, the expedited arbitrator shall issue an award within 45 days of the last written material received by that arbitrator, or, where an oral hearing has been ordered, within 45 days of the closure of proceedings.

### **Appointing and Challenging Arbitrators**

VanIAC's new international rules set out the process for appointing – and, where this circumstance arises, challenging – arbitrators (Rules 11 and 13).

Rule 12 confirms that arbitrators acting under VanIAC's international rules shall be and remain wholly independent and impartial of any party involved in the arbitration. When a person is approached in connection with their possible appointment as an arbitrator, the person must disclose any circumstances likely to give rise to justifiable doubts as to the person's independence or

impartiality.

For the purposes of VanIAC's new international rules, there are justifiable doubts as to an arbitrator's independence or impartiality only if there is a real danger of bias on the part of the arbitrator in conducting the arbitration.

## Interim Measures

VanIAC's new international rules also address the topic of interim relief. Consistent with the prior rules, Rule 26 makes clear that unless otherwise agreed by the parties in writing, the arbitral tribunal may, at the request of a party, grant any interim measure the tribunal deems appropriate, including security for all or part of the amount in dispute, or the preservation, storage, sale or other disposal of property under the control of any party and relating to the subject matter of the arbitration.

Rule 27 goes on expressly to state that unless prohibited by law or otherwise agreed by the parties in writing, the arbitral tribunal may, at the request of a party, grant an *ex parte* preliminary order (that is, an order made without notice to the other party) directing a party not to frustrate the purpose of a requested interim measure. A preliminary order shall only be granted in exceptional circumstances where the arbitral tribunal considers that prior disclosure of a request for an interim measure to the party against whom it is directed risks frustrating the interim measure's purpose.

*Ex parte* relief requires certain safeguards to be satisfied. Under Rule 27, a party applying for an *ex parte* preliminary order must disclose to the arbitrator all circumstances that are likely to be relevant to the arbitrator's determination of whether to grant or maintain the order. Further, at the earliest practicable time, the arbitral tribunal must give a reasonable opportunity to the party against whom a preliminary order is directed to present its case. After the party has had a reasonable opportunity to present its case, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order.

A preliminary order expires 20 days after the date on which it was issued. The preliminary order itself is binding on the parties but is not an arbitral award and is not subject to enforcement by a court.

VanIAC's new international rules also address the difficult situation where relief is required before the arbitral tribunal that will ultimately decide the merits of the dispute is constituted. To deal with this circumstance, VanIAC's new international rules set out certain emergency arbitration procedures (although Rule 32 allows parties to agree in writing to opt out of same).

Under Rule 29, where a party applies in accordance with Rules 26 and 27 for an interim measure or preliminary order prior to the constitution of the ultimate arbitral tribunal, VanIAC shall appoint an emergency arbitrator within two days of its receipt of the application. The emergency arbitrator shall establish a procedure within three days of appointment and, under Rule 31, issue any interim measure or preliminary order within 15 days of appointment.

The emergency arbitrator may issue an interim measure or preliminary order after the ultimate arbitral tribunal has been constituted but shall not have any further powers. (Under Rule 29(d), unless otherwise agreed by the parties, an emergency arbitrator appointed under the new

international rules cannot be appointed as part of the arbitral tribunal in the same arbitration.)

## Looking Forward

As mentioned by VanIAC's [managing director](#), VanIAC looks forward to providing expert and trusted dispute resolution services by implementing the new international rules. It welcomes questions from anyone considering adoption of those rules as well as feedback from those who use them.

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