

Publisher's Note

2019 — Release 1

Previous release was 2018-9

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Earle

Drafting ADR and Arbitration Clauses for Commercial Contracts

This publication provides, to counsel drafting a commercial agreement, all the tools and information necessary to design and draft an effective ADR/arbitration clause that accomplishes the intentions and desires of the parties who have chosen ADR/arbitration to resolve their disputes. It canvasses the various forms of ADR, including ones on the cutting edge, such as “collaboration” and “cybersettle.com.” It considers some of the pitfalls and dangers in poorly drafted clauses, which only become apparent when the ADR/arbitration process is underway. Issues specific to ADR/arbitration clauses in commercial agreements that are addressed include: Rent renewals, Shareholder agreements, Options to purchase land, and Agreements involving parties outside Canada. This publication also features appendices containing numerous precedent arbitration, mediation, and different types of ADR clauses, as well as summaries of the procedural rules of the major arbitration institutions and legislation governing arbitrations in place across Canada.

This release features updates to the case law summaries under the heading Court Intervention — Applications for Enforcement of Arbitration Awards in Chapter 4 (The Arbitration Clause). This release also features the addition to Appendix H (Arbitration Rules of Leading International Arbitration Institutions — United States) of the CPR International Institute for Conflict Prevention & Resolution, Inc. Non-Administered Rules Arbitration Rules, effective March 1, 2018. This release also includes the addition to Appendix H (Arbitration Rules of Leading International

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Arbitration Institutions — Continental Europe) of the CPR International Institute for Conflict Prevention & Resolution, Inc., CPR European Mediation and ADR Guide.

Highlights

- **Court Intervention — Applications for Enforcement of Arbitration Awards — Whether Award to be enforce immediately** — The Court was empowered to remit the award to the arbitrator and give directions. This was the route the Court should follow, rather than attempting to redraft paragraph 14 itself. In view of the foregoing disposition, the Court questioned whether it is appropriate and also whether it had jurisdiction to grant the relief sought in Del’s cross-application under s. 50 of the *Arbitration Act*, for an order to enforce the remaining portions of the April 12, 2017 formal judgment. The Court therefore declined that request, without prejudice to the right of Del to renew it once the further award was issued by the arbitrator: *Bedard v. Bedard*, 2018 CarswellOnt 5490, 2018 ONSC 2220, 290 A.C.W.S. (3d) 692 (Ont. S.C.J.).