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### **INNOVATIVE DISPUTE RESOLUTION: THE ALTERNATIVE**

**Richard H. McLaren**  
**Release No. 2, June 2022**

#### **Publisher's Special Release Note 2021**

The pages in this work were reissued in June 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the June 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This comprehensive work offers a thorough analysis of available alternative dispute resolution techniques, including mediation, arbitration, fact-finding, mini-trial and private court. Extensive case histories illustrate practical applications of resolution techniques in actual fact situations and practical precedents to provide guidance on how best to structure and manage ADR agreements. Also included are techniques and tips on the selection of experts, timing considerations, the role of lawyers and the dispute resolution process itself.

### **What's New in this Update:**

This release features valuable case and commentary updates to Chapter 6 (Arbitration) and Chapter 9 (International Commercial Arbitration).

### **Highlights**

**Arbitration — The Technique — The Process — Appeals and Judicial Review** — In *Escape 101 Ventures Inc. v. March of Dimes Canada*, the British Columbia Court of Appeal (“BCCA”) held that a party seeking leave to appeal an arbitrator’s decision based on contractual interpretation must do two things. First, it must be able to point to an extricable error of law in the arbitrator’s decision. An extricable error of law can arise where the arbitrator uses an incorrect legal principle, fails to consider an element of a legal test, fails to consider a relevant factor, or has forgotten, ignored, or misconceived evidence. Second, the party seeking leave must show that the extricable error of law materially affected the result of the arbitration. In *Escape Ventures*, the BCCA granted leave to appeal an arbitrator’s decision based on contractual interpretation pursuant to s. 59 of the *British Columbia Arbitration Act*. The court found that the arbitrator made an extricable error of law by potentially misconceiving evidence. Specifically, the court found that the arbitrator may have overlooked the existence of evidence on one issue in a way that materially affected his conclusions on the interpretation of a contractual provision. *Escape 101 Ventures Inc. v. March of Dimes Canada*, 2021 BCCA 313, 2021 CarswellBC 2530, 57 B.C.L.R. (6th) 105 (B.C. C.A.).

**International Commercial Arbitration — The Technique — The Process — Enforcement of the Award — Worldwide Anti-Suit Injunctions — Enforceability of Arbitration** — In *UAU v. HVB*, the English Commercial Court granted an anti-suit injunction to restrain further court proceedings. The court is granted this power under s. 37 of the *Senior Courts Act 1981* and may order an injunction if the applicant establishes that there is a) an existing arbitration agreement governing the dispute, b) proceedings have been commenced in breach of said agreement, c) the court has jurisdiction over the parties, d) the court has sufficient interest in the proceedings, e) there is an identified appropriate ground for obtaining relief and f) it is appropriate to grant the injunction as a matter of discretion. An additional consideration is that the application must be brought by the applicant promptly and well in advance of the targeted proceedings. In this case, the dispute between UAU (applicant) and HVB (defendant) was regarding the parties’ involvement in a foreign oil and gas field. The parties had previously entered into an arbitration agreement

requiring disputes to be heard in London under the London Court of International Arbitration. In November 2020, a dispute arose and HVB brought proceedings for damages and interim relief in Equatorial Guinea. UAU applied to the English court requesting a prohibitory injunction to stop the foreign proceedings. The English court considered the arbitration agreement agreed to by the parties, reasons for the injunctive relief, the timing of the application and the court's discretionary role. Upon consideration of these factors, the court granted the injunctive relief. *UAU v. HVB*, [2021] EWHC 1548 (Comm).

## **ProView Developments**

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
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