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**COMMERCIAL ARBITRATION  
IN CANADA**

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**Release No. 16, December 2018**

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

This release features updates to case law and commentary in Chapters 1 (Overview), 2 (Providing for Arbitration), 3 (Commencement of Arbitration and Stays of Proceedings), 4 (The Arbitral Tribunal), 5 (Arbitral Jurisdiction), 6 (Pre-Hearing Matters), 7 (Conduct of the Arbitration), 8 (Substantive Law), 9 (Termination of Arbitration), 10 (Judicial Intervention), 11 (Financial Considerations), and 12 (Recognition and Enforcement of Arbitral Awards). This release also features updates to Appendices C (*Arbitration Act*, R.S.B.C. 1996, c. 55), and D (*International Commercial Arbitration Act*, R.S.B.C. 1996, c. 233).

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- **Providing for Arbitration – Rescission of Revocation of Arbitration Agreement** – Where a party served a “withdrawal of notice of arbitration” but the parties thereafter continued to discuss arbitration, it appeared that “the arbitration agreement – the fundamental agreement to submit a dispute to arbitration – continued in force, even if the agreement was not in writing”. The court also remarked that “it would not be in keeping with the ordinary rules of contract law to allow one party to unilaterally withdraw from its obligations under an agreement, where such an option was not contracted for”: *Zenith Aluminum Systems Limited v. 2335945 Ontario Inc.*, 2018 ONSC 4199, 2018 CarswellOnt 11396 (Ont. S.C.J.).
- **Conduct of the Arbitration – Natural Justice Overview – Equal and Fair Treatment** – The Ontario Superior Court of Justice has noted that the requirements of “equality, fairness and procedural fairness” are “so important that the *Act* has given them a special status, and confirmed that the parties cannot contract out of them. Regardless of the nature of the arbitration process chosen by the parties, an arbitrator is required to treat the parties equally and fairly, including procedurally”: *Jirova v. Benincasa*, 2018 ONSC 534, 2018 CarswellOnt 843 (Ont. S.C.J.).
- **Judicial Intervention – The Court** – As in Ontario, it has been held that an arbitral award cannot be appealed directly to the Court of Appeal of the province in which it was made. In *Anand v. Anand* a justice of the Alberta Court of Appeal considered an application for that court to hear an appeal of portions of the arbitration award as well as an appeal of the Court of Queen Bench’s denial of the prospective appellant’s earlier application to stay portions of the award pending his appeal. The applicant argued that because the Court of Queen’s Bench had enforced the arbitration award (by signing orders confirming the award’s terms), it no longer had jurisdiction to hear his appeal. The application for leave to appeal was rejected, with O’Ferrall J.A. pointing out that Alberta’s *Arbitration Act* conferred jurisdiction to hear appeals of arbitration awards on the Court of Queen’s Bench, that s. 49(5) of the *Arbitration Act* provided that the Court of Queen’s Bench could enforce the award even if an appeal was pending, and that, as a justice of the Court of Appeal, he had no jurisdiction to grant leave until the Court of Queen’s Bench had heard and decided the appeal: *Anand v. Anand*, 2018 ABCA 259, 2018 CarswellAlta 1463 (Alta. C.A.).