



# CANADA AND CANADIANS IN INTERNATIONAL ARBITRATION

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Thank you. I am delighted to join you today. I have been asked to address the role of Canada and Canadians in international arbitration, and how they can continue to thrive and expand in the future. As you know, this is a highly competitive area, with new arbitration centers opening virtually every month, specialized conferences held every week, and a burgeoning group of practitioners and academics entering the field. As a result, I hope you will take my ideas as an invitation to brainstorm rather than a settled prescription.

## I. CANADA WAS LATE TO THE PARTY ...

When you think about the role of Canada and Canadians in international arbitration, it is important to remember that Canada was relatively “late to the party”. Until 1985, the Canadian federal government had not passed any arbitration legislation. Some of the Common Law provinces had adopted arbitration laws based on English legislation dating from 1899, but these had become outdated by the post-war period.

This situation began to change in the mid-1980s and early 1990s, with two notable steps. First, in June 1985, UNCITRAL adopted the *Model Law on International Commercial Arbitration*,<sup>1</sup> which set the foundations for modern arbitration. This included party autonomy to design the process; the binding nature of an arbitration agreement; that arbitral tribunals were to be impartial and were empowered to decide their jurisdiction; limited intervention by supervising courts; and easy enforcement of awards with minimal grounds for review.

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<sup>1</sup> UN, *UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted on 7 July 2006*, (Vienna: UN, 2008). For the 1985 UN resolution, see *Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law*, UNGA, 40th Sess, UN Doc A/RES/40/72 (1985) GA Res 40/72, online: <<https://docs.un.org/en/A/RES/40/72>>. For the 2006 UN resolution, see *Revised articles of the Model Law on International Arbitration of the United Nations Commission on International Law, and the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958*, UNGA, 61st Sess, UN Doc A/RES/61/33 (2006) GA Res 72/175, online: <[https://uncitral.un.org/en/texts/arbitration/modellaw/commercial\\_arbitration](https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration)>.

Canada became the first country to adopt the Model Law, enacting it at the federal level in 1986. Given the extent to which a substantial portion of arbitration falls under provincial jurisdiction, individual provinces and territories followed suit with their own implementing legislation based on the Model Law. British Columbia (BC) was the first to do so, while Ontario, Alberta and Quebec adopted provincial legislation between 1986 and 1989. Most of Canada still operates under the 1985 version of the Model Law, although BC (in 2018), Ontario (in 2017) and Quebec (in 2016) adopted the principles of the 2006 amendments to the Model Law. In addition, several provinces have enacted separate international commercial arbitration legislation also based on the UNCITRAL Model Law. So, for example, in 1991 Ontario adopted the *International Commercial Arbitration Act*, which was last updated in 2017.<sup>2</sup>

The second step forward was perhaps a bit less impressive in terms of being a first mover, but nonetheless, critical to updating Canada's arbitration framework in the 1980s. This was the adoption of the New York Convention ("NY Convention"). Formally known as the *UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards*,<sup>3</sup> that treaty was opened for signature in 1958, and was widely adopted by countries around the world. Unfortunately, the Canadian federal government chose not to accede to the NY Convention for several decades. Indeed, as recently as 1982 the Canadian Department of Justice advised that the Canadian business community had little interest in accession to the NY Convention, and so it was not inclined to pursue this.

British Columbia led the charge to change this situation, in large part as it realized the potential for international trade with Asia and the importance of arbitration in a globalizing world where transactions would not be confined to the boundaries of Canada. So, in May of 1986, Canada acceded to the NY Convention and incorporated the Convention into Canadian law through the *United Nations Foreign Arbitral Awards Convention Act*.<sup>4</sup> Each of the provinces followed suit, adopting legislation making the NY Convention part of provincial law.

If you read the legal literature at the time, savvy practitioners thought that this would be the beginning of a golden age of arbitration in Canada, and they expected substantial take-up of arbitration, both domestically and internationally. In fact, progress has been slow, especially with respect to international arbitration. There are a number of reasons for this, prime among them an absence of familiarity with arbitration by counsel, a general absence of understanding of the advantages of arbitration, and an absence of support from the user community. That said, there has been real progress in the past 35 years that should be celebrated.<sup>5</sup>

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<sup>2</sup> *International Commercial Arbitration Act*, 2017, SO 2017, c 2, Schedule 5.

<sup>3</sup> *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 10 June 1958, 330 UNTS 3, 21 UST 2517.

<sup>4</sup> *United Nations Foreign Arbitral Awards Convention Act*, RSC 1985, c 16 (2nd Supp).

<sup>5</sup> For a more fulsome discussion on the genesis of Canadian arbitration in practice, see Randy A. Pepper, "Why Arbitrate?: Ontario's Recent Experience with Commercial Arbitration" (1998) 36:4 Osgoode Hall LJ 807-845.

## II. ADVANTAGES OF CANADA FOR ARBITRATION

Someone looking at Canada as a potential situs for arbitration today should be very encouraged. I recognize that everyone in this audience knows all of these attributes, but they are worth reciting again:

- Canada is one of the highest-ranked “rule of law” jurisdictions in the world, with very strong showings on absence of corruption, constraints on government power, regulatory enforcement and order and security<sup>6</sup>;
- Canada is a bilingual and bijural nation, able to offer service in English, French and often in many other languages given its multicultural make-up;
- The Canadian judiciary is viewed as impartial and effective, and has adopted a pro-arbitration stance that is restrained in terms of judicial intervention in the arbitral process;
- Canadian lawyers reflect the high level of Canadian education and are sophisticated and effective counsel.

On the arbitration practice front, Canada has seen the development of arbitration services as a feature of most large law firms, originally as a sub-category of litigation, but increasingly as a specialty in and of itself. Canada is also starting to see specialized boutique arbitration practices across the country. Arbitration is now taught in most Canadian law schools, and a new generation of young Canadian arbitration specialists have emerged, who are extremely impressive.

Canada has also produced a cadre of world-class international arbitrators: people like Yves Fortier, Mark Lalonde, John Judge, Chris Thomas, Stephen Drymer, and I could easily go on with another 20 or 30 names. In a statistic that is close to my heart, Canada ranked first (tied with France and the United States) as the nationality of choice for ICSID arbitrators in calendar year 2025, and over the 60-year history of ICSID, Canada ranks 4<sup>th</sup> (after the US, France & the United Kingdom) by nationality of ICSID arbitrators.<sup>7</sup>

In terms of pragmatic considerations, Canada easily checks those boxes as well. Canada boasts easy transportation links to virtually the whole world, world-class hotels, restaurants and other services, a high level of information technology services and technical fluency, safe cities, and its customs officers are efficient (and even welcoming!).

Canadian arbitration facilities are also top-notch. For example, I don’t think you will find a better facility internationally than Arbitration Place here in Toronto, and I suspect this is also true of the

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<sup>6</sup> World Justice Project, *WJP Rule of Law Index 2025: Country Profile Canada*, (2025), online: <<https://worldjusticeproject.org/rule-of-law-index/country/Canada>>, (overall, Canada is ranked 13<sup>th</sup> out of 143 countries globally).

<sup>7</sup> International Centre for Settlement of Investment Disputes, *The ICSID Caseload–Statistics, Issue 2026-1* (Washington: International Centre for Settlement of Investment Disputes, 2026), online: <[2026-1\\_ENG\\_TheICSIDCaseloadStatistics.pdf](#)>.

other Canadian arbitration centers that I have not yet had a chance to see. And, because we are Canadian, we have to mention that Canada provides excellent value for money, with a dollar that is 30% less than the US dollar.

On paper, one would expect the world to be beating a path to Canada's door with their international arbitration cases. However, this is not the case, and the question is what might be done to address it. When I prepared for this conference, I did my own survey of about 25 people – arbitrators, counsel, foreign lawyers and foreign arbitration consumers, to hear what they thought. I also looked at some of the world's leading jurisdictions and asked what they were doing that Canada is not, and what could be done to move the needle.

### **III. WHAT WE CAN LEARN FROM OTHER JURISDICTIONS**

In fairness, a number of the world's top international arbitration jurisdictions have some attributes that give them a real head start. Places like New York City, Paris, London and Geneva have been in arbitration for much longer than Canada; they serve larger regional and international populations and have long-established hubs of arbitration services. But that is not the case for all of the success stories.

A good example is Singapore, which is the leading arbitration center in Asia today. Singapore became a top global arbitration hub through a strategic, state-led push to build a world-class legal ecosystem. It has done this in a very short period, essentially in the last 20 years. Much of what makes Singapore successful could equally be said for Canada. For example, Singapore is seen as a neutral place for dispute resolution, with a judiciary that has a strong reputation for impartiality and integrity. The courts in Singapore are supportive of arbitration and rarely intervene in arbitral proceedings unless necessary. It has a solid legal infrastructure, including the Model Law on International Commercial Arbitration. It is also a strong rule-of-law jurisdiction that ensures that the arbitral process is fair and transparent. Singapore offers state-of-the-art facilities for conducting arbitration, in particular, Maxwell Chambers, which opened in 2010 as a dedicated arbitration complex and expanded significantly in 2017. It is equipped with modern technology and amenities to facilitate seamless proceedings and offers high levels of administrative support to parties in arbitration. Singapore also has the Singapore International Arbitration Centre ("SIAC"), which has a consistent history of procedural innovation and updated rules. These institutions are surrounded by a talented legal community, including branch offices of some of the world's largest firms, as well as home-grown firms that have become best in class.

So how does Singapore differ from Canada as an arbitration center? I can suggest a few considerations. Singapore is perfectly located to take advantage of the incredible economic growth in Asia, including in India, Viet Nam, the Philippines and Malaysia. Few, if any, countries in Asia have an arbitral ecosystem like Singapore's, and so it is a natural home for cases in the region. Equally important, the arbitration community in Singapore had substantial support from the Singaporean government in developing its arbitration expertise. Not only did the Singaporean

government provide financial support for this endeavour. It also championed legal innovation: think for example of the Singapore International Commercial Court, the Singapore Convention on Mediated Settlements, its legislation on third-party funding and updates of its International Arbitration Act, to name a few.

Another instructive comparator is London. Most of us rightly put London in the category of established arbitration hubs which has had the magic combination of a leading Bar, leading Bench, long arbitral tradition, and an ideal location for many decades. Interestingly, in 2017 the UK government established something called GREAT Legal Services (GLS). It is an international marketing and export promotion campaign led by the UK Ministry of Justice and the Department for Business and Trade, designed to promote UK legal expertise, English and Welsh law, and the independent judiciary to the global market. The overall message of GLS is that the UK is a safe and trusted place to conduct business. The initiative focuses on several strategic areas:

- Global Expansion: GLS facilitates business networks and export opportunities for UK law firms and chambers in fast-growing international markets such as the US, Singapore, the United Arab Emirates, and across Africa;
- Sector Support: GLS specifically targets and assists Small and Medium Enterprises and regional law firms in securing international contracts, in particular by helping firms and chambers expand into high-growth and emerging markets;
- Lawtech & Innovation: GLS showcases the UK as a trailblazer in legal technology, with a heavy emphasis on artificial intelligence and digital solutions in legal services; and
- Trust and the Rule of Law: GLS promotes the independence of the UK judiciary and highlights English and Welsh law as the preferred jurisdiction for international business contracts and dispute resolution.

GLS has been very astute in recognizing that this is not just about law, but rather that arbitration is a service industry that generates significant revenue. GREAT Legal Services recognizes that the UK's legal sector is a massive driver of the British economy, generating over £52 billion in annual revenues and underpinning approximately 25% of the world's jurisdictions. It also recognizes that the services of the arbitration community complement international commerce. As a result, it gets counsel involved in seminars with foreign lawyers and clients, and on UK trade missions and other delegations.<sup>8</sup>

The other savvy thing the UK has done is to keep its arbitration laws at the cutting edge. The Law Reform Commission of the UK undertook a comprehensive review of the *Arbitration Act* in 2022-2023.<sup>9</sup> This was followed by legislation reforming and updating the *Arbitration Act*. Among the amendments were updates to clarify the governing law of the arbitration agreement, formalizing summary disposition and emergency arbitration, codifying arbitrator immunity, and codifying the statutory duty of an arbitrator to disclose any circumstances that might lead to justifiable doubts

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<sup>8</sup> For information on this initiative, see Ministry of Justice, “GREAT Legal Services” (last modified 27 July 2026), online: <<https://www.gov.uk/great-legal-services>>. See also TheCityUK, “UK Legal Services 2025: Legal excellence, internationally renowned” (9 December 2025), online: <<https://www.thecityuk.com/our-work/uk-legal-services-2025/>>.

<sup>9</sup> UK, Law Commission, *Review of the Arbitration Act 1996: Final Report and Bill*, (Law Com No 413) (London, 2023) online: <<https://lawcom.gov.uk/project/review-of-the-arbitration-act-1996/>>.

as to their impartiality. As a further example, the London Court of International Arbitration has just opened a rules revision consultation where a number of themes have been identified, including expedited procedures, coordination of related disputes, award publication options, integration of ADR tools such as settlement windows, AI guardrails and data protection.<sup>10</sup> The result is a very modern and impressive arbitration milieu.

#### **IV. SOME IDEAS TO CONSIDER**

There are many other international examples that can be instructive, although there is no one size that fits all. Recognizing that the international market is a very competitive one, it is necessary to find ways to stand out in the crowd and build an international profile. To start some brainstorming, there are a number of initiatives that could help Canada and Canadians attract more international arbitration and build its international profile. These areas are addressed in no particular order below.

##### **1. THE ROLE OF GOVERNMENT IN THE LEGISLATIVE FRAMEWORK**

Government needs to be a full partner in this endeavour. This is because the arbitration sector is an important player in the success of Canadian businesses, and also because the arbitration sector in and of itself is a significant financial contributor to domestic GDP.

Certainly, financial support as in the Singapore example would be nice, but most Canadians realize that the country is currently facing some daunting economic challenges, and so that perhaps goes on the “for another day” list. What can be done now is for the federal and provincial governments to ensure that the legislative framework for arbitration in Canada is as modern as possible. There have been too many examples in the past where this has not been done. An illustrative example in this respect is Canadian accession to ICSID, the world’s leading investment arbitration institution under the rubric of the World Bank. Accession to ICSID is a very simple process and costs no money. Canada was eligible to join ICSID from October 1966 when the ICSID Convention was ratified by the first twenty countries. Over the years, many delegations of Canadian counsel made various entreaties to the federal government and some provincial governments, pointing out why this was important. Canada had a substantial FIPA (BIT) program and numerous NAFTA Chapter 11 cases by the 1990s, so it was very much part of the investment arbitration world, yet it was not an ICSID member. When did it join? Canada signed the ICSID Convention in 2006 (40 years after it opened for accession) and ratified the Convention in 2013 (47 years). It was the 145<sup>th</sup> State to join, after all G8 States and after all but one OECD State. Since joining, Canada and Canadian companies have been active users of ICSID, and Canada has been an active participant in ICSID activities, including its 2022 rules amendment.

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<sup>10</sup> LCIA, “LCIA Rules Revision Consultation” (Last modified 27 May 2026) online: <<https://www.lcia.org/News/lcia-rules-revision-consultation.aspx>>.

There are other current examples where Canada has the opportunity to modernize its legal framework for arbitration. For example, many of you may be familiar with the extensive work of TCAS suggesting modernization of arbitration legislation in Ontario to a single, updated act. That work was shared with the Ontario government in 2022 and hopefully will garner legislative attention in the near future. Another good example is the Singapore Convention on Enforcement of Mediated Settlements which was opened for signature in August 2017. The US, China, India and many Asian States signed the Convention on the first day it was open for signature, and 57 States were signatories by 2024, with another 12 having deposited their instruments of ratification or approval. Canada has not done so, yet this presents a very useful and simple way to update the legal framework for international commercial disputes resolved through ADR mechanisms.

Obviously technical legal issues such as ICSID membership or Singapore Convention accession are not necessarily high-profile items for government or citizens at large. That said, it is vital that government monitor and address such initiatives if Canada is to become and maintain world class status in the international arbitration world. It might also be useful for governments to nominate a champion from within its ranks who could shepherd such projects through the legislative process and make sure they don't fall off the legislative agenda. Having a government minister or designated Member of Parliament with this focus would be encouraging. There is also every reason for the Canadian arbitration community to support this work, for example by explaining why certain legislation matters, how it could be done, which economic sectors would benefit in practice, and the like. With this kind of support, Canada can be more nimble in keeping the arbitration framework at the cutting edge.

## **2. CANADIANS IN HIGH PROFILE POSITIONS**

A related area where government could play a role is to propose Canadians for various roles in the arbitration (and legal) universe. Again, this is about being visible, building a reputation for excellence and being cutting edge. Canada has numerous rosters under its free trade and investment agreements that have not yet been filled, although there are numerous practitioners and scholars who could very ably discharge these roles. An historic illustration is that Canada never advanced a candidate for the WTO Appellate Body, despite being one of the top users of that system and having some world-renowned experts in the area. While not an arbitration example, this is reminiscent of the fact that Canada has only had one national on the International Court of Justice, Judge John Read, who served from 1946 to 1958.

These are all opportunities missed. It is true that proposing a national for such opportunities involves an investment of time in identifying and supporting candidates. However, many countries do it, including countries much smaller than Canada. Canada and Canadians have a lot to contribute to the international community, and advancing their candidacies as leaders in international bodies can only contribute to the perception of Canada as a leader generally.

### **3. CONSULTATIVE MECHANISMS**

Another example that involves government is even easier. Many of the people I spoke to in my informal survey often said they didn't know who to talk to in government and had trouble finding the right person to talk to when there was an arbitration issue that should be addressed. I recall that at the Canadian Department of Foreign Affairs there were regular meetings with stakeholders, which were extremely valuable for everyone around the table. Why not have an equivalent standing meeting between the arbitration community and relevant officials in government? They could update one another on opportunities and concerns, and might even address initiatives such as the UK has, involving arbitration experts on trade delegations. This would not involve a large investment in time but could be very worthwhile.

### **4. THE ROLE OF THE LEGAL PROFESSION**

The next set of ideas concerns the role of the arbitration bar. I suspect some of these initiatives are already being pursued by a number of firms, but let's list them. First, we have to treat arbitration as a specialty, with different rules, practices, and players. It is no longer seen as "lazy litigation" or "litigation sitting down", as some might have charged in the past, and that is especially important for Canadian arbitrators and Canadian counsel to project internationally.

Second, when I did my informal survey, many foreign counsel and foreign General Counsel told me that it was not that they thought there was anything lacking in Canada – to the contrary – but that they "just didn't think of Canada" as a seat, as a source of counsel or otherwise. So being top of mind is important, and that is where perhaps a targeted campaign as Team Canada – not individual firms – would be helpful. We have seen the success of Team Canada on trade missions, at conferences, (and in hockey rinks!), and adopting such a model for arbitration might be equally effective. This is especially true today where we see Canada diversifying its trade partners – arbitration should be part of the package.

Third, Canada might also think about enhancing its regional presence. We have all heard our American colleagues express concern that foreign parties are beginning to question the US as an arbitral seat, worrying about getting visas, the cost of operating in US arbitration hubs, and the rule of law. Some of these arbitration users might be willing to think about Canada when they have not done so in the past. Similarly, some Mexican entities might consider siting cases in Canada, as a close and impartial jurisdiction. So as Canada looks to expand as a middle power economically, there is a regional arbitration component to it that could be addressed.

### **5. THE ARBITRATION USER COMMUNITY**

The last set of thoughts I have is with respect to the arbitration user community. I suspect there is still work to be done, especially with SMEs, to make them aware of arbitration and its advantages. Not only is this good for the individual companies in resolving their disputes. It also builds a

constituency which supports a modern arbitration environment. Hopefully Chambers of Commerce and sector-specific industry groups will be interested in this and vigorously support these initiatives.

It is also important to impress upon Canadian General Counsels that they have superb options in Canada, and they need to use those resources. Too often the instinct is to go to a UK or US firm. Again, ICSID statistics tell the story. I looked at all the pending cases at ICSID involving a Canadian claimant last week. There are currently 24 cases with a Canadian claimant. Of these, only 4 had a Canadian firm representing them, 14 had US firms, 2 had Mexican firms, 1 had a French firm, and 3 had UK firms. More of that work could be done at home.

Finally, let's think strategically about where international work will come from in the next 5-10 years. Look at the countries Canada is engaging with on a trade and investment basis, particularly in Asia and the Middle East. Let's look as well at the industries and economic sectors where Canada is growing in influence, for example mining, pharma, and defence production. These present opportunities for Canadians to increase participation in arbitration in these fields.

## **V. CONCLUSION**

The world faces an unprecedented number of challenges today. That means there has never been a better time to let the world know what Canada and Canadians can bring to the table in international arbitration.