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CASE LAW ON UNCITRAL TEXTS
(CLOUT)

Contents

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Introduction

This compilation of abstracts forms part of the system for collecting and disseminating information on court decisions and arbitral awards relating to Conventions and Model Laws that emanate from the work of the United Nations Commission on International Trade Law (UNCITRAL). Information about the features of that system and about its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1/REV.1). CLOUT documents are available on the UNCITRAL website (http://www.uncitral.org).

Issues 37 and 38 of CLOUT introduced several new features. First, the table of contents on the first page lists the full citations to each case contained in this set of abstracts, along with the individual articles of each text which are interpreted by the court or arbitral tribunal. Second, the Internet address (URL) of the full text of the decisions in their original language are included, along with Internet addresses of translations in official United Nations language(s), where available in the heading to each case (please note that references to websites other than official United Nations websites do not constitute an endorsement by the United Nations or by UNCITRAL of that website; furthermore, websites change frequently; all Internet addresses contained in this document are functional as of the date of submission of this document). Third, abstracts on cases interpreting the UNCITRAL Model Arbitration Law now include keyword references which are consistent with those contained in the Thesaurus on the UNCITRAL Model Law on International Commercial Arbitration, prepared by the UNCITRAL Secretariat in consultation with National Correspondents, and in the forthcoming UNCITRAL Digest on the UNCITRAL Model Law on International Commercial Arbitration. Finally, comprehensive indices are included at the end, to facilitate research by CLOUT citation, jurisdiction, article number, and (in the case of the Model Arbitration Law) keyword.

Abstracts have been prepared by National Correspondents designated by their Governments, or by individual contributors. It should be noted that neither the National Correspondents nor anyone else directly or indirectly involved in the operation of the system assumes any responsibility for any error or omission or other deficiency.

I. Cases relating to the UNCITRAL Model Arbitration Law (MAL)

Case 501 : MAL 36(1)(a)(i); 36(1)(a)(ii); 36(1)(b)(ii)
Canada: Prince Edward Island Supreme Court – Trial Division (MacDonald C.J.T.D.)
D.L.T. Holdings Inc. v. Grow Biz International, Inc.
March 23, 2001
Published in English: [2001] 199 Nfld. & Prince-Edward-Island Reports 135
http://www.gov.pe.ca/courts/supreme/reasons/17431.pdf
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *award—recognition and enforcement; validity; public policy; arbitral proceedings*]

On an application for recognition and enforcement of an American arbitral award, the defendant, D.L.T. Holdings, a Canadian franchisee of the plaintiff, objected on the basis of incapacity (article 36(1)(a)(i)), lack of financial resources to attend arbitration (article 36(1)(a)(ii)) and public policy (article 36(1)(b)(ii)). The court rejected the first argument although it held that this would be a valid ground for refusing enforcement if there were evidences of "oppression, high pressure tactics or misrepresentation" at the contracting stage. The second objection was also rejected as the arbitrator was empowered to continue the process even in the absence of a party as provided for under article 25. Finally, the court rejected the public policy objection that was based on a claimed inequality of bargaining power.

The court reduced the amount of the award following an admission by the plaintiff that the arbitrator had apparently miscalculated a particular fee due by the defendant under the franchise agreement.

Case 502: MAL 1; 34(2)(a); 34(2)(b)
Canada: British Columbia Supreme Court (Tysoe J.)
Mexico v. Metalclad
May 2, 2001
Published in English: [2001] 89 British Columbia Law Reports (3d) 359
http://www.courts.gov.bc.ca/jdb-txt/sc/01/06/2001bcsc0664.htm
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *commercial; award—setting aside; public policy; arbitration agreement*]

The parties had engaged in arbitration in British Columbia under Chapter 11 of the North American Free Trade Agreement (NAFTA) following an order stopping the plaintiff's construction of a hazardous waste landfill in Mexico. The arbitrator concluded that the treaty had been breached by Mexico in what amounted to an expropriation and ordered compensation. The applicant sought to set the award aside and the tribunal in British Columbia determined that the issue should be decided under the International Commercial Arbitration Act that incorporates the Model Law. The key determination was the meaning attributed to the term "commercial". In the domestic law (s. 1(6)), "commercial relationship" was defined

as including "investing" which the court found to describe the relationship between the parties, rejecting Mexico's claim that the relationship was instead regulatory in nature. The court held that the notion of commerciality was to be given a broad interpretation in accordance with the UNCITRAL report on the Model Law to which the court could refer under s.6 of the Act. The court rejected Mexico's argument that such a conclusion was inconsistent with the fact that the federal Act implementing the Model Law was amended to specify that NAFTA Chap. 11 arbitration is to be considered "commercial" in nature while the implementing Act of British Columbia was not so amended.

Having concluded that the Act applied, the court considered the grounds on which the award could be set aside under article 34, in particular the objection under article 34(2)(a)(iii), (iv) and (2)(b)(ii). The court found that on certain issues, the arbitral tribunal had gone beyond the scope of the submission to arbitration by relying on inapplicable sections of NAFTA within the Chapter 11 context. However, it concluded that the tribunal's alternative basis for its finding of expropriation did not involve any breach of article 34 and refused to set aside the award. It also rejected claims that the award contained bribes or that Metalclad had deceived the arbitral tribunal in terms of the claimed expenses that were the basis for the $16M award. Both of these had been argued to violate British Columbia public policy and thus fall within the objection in article 34(2)(b)(ii). The court set aside a certain portion of interest which had been calculated on the basis of conclusions the court found to have been in violation of article 34(2)(a)(iii). Otherwise, Mexico's motion to set aside was dismissed.

Case 503: MAL 8
Canada: Alberta Court of Appeal (Côté and McFadyen JJ.A. and Brooker J. (ad hoc))
International Resource Management (Canada) Ltd. v. Kappa Energy (Yemen) Inc.
June 18, 2001
Published in English: [2001] 92 Alberta Law Reports (3d) 25
http://www.albertacourts.ab.ca/jdb/1998-2003/ca/Civil/2001/2001abca0146.pdf
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *arbitration agreement; courts*]

Contracts to drill oil wells in Arabia contained an arbitration clause, as well as a clause that said that if the appellant received an invoice it disputed, it could pay the sum into trust, but could not merely refuse to pay. The respondent sent invoices that the appellant refused to pay, arguing that it did not owe money, and that the balance of accounts favoured it. The appellant refused to pay any money into trust. The respondent sued and the appellant moved for a stay to permit arbitration. The motions judge ordered the suit be stayed only if the appellant paid the disputed amounts into trust.

The Court of Appeal removed the condition for the stay—that the money be paid into trust—holding that it was not an accepted ground for refusing the stay according to the Alberta legislation's equivalent of article 8 of the Model Law. In so doing, the Court ruled that the obligation to pay disputed sums into trust was not the main "matter in dispute" in this case, but was only a procedural or ancillary

question. The main matter was whether money was owing, and therefore a stay was ordered, without any condition on the appellant to pay money into trust.

Case 504: MAL 8; 16(1)
Canada: Ontario Superior Court of Justice (Croll J.)
D.G. Jewelry Inc. et al. v. Cyberdiam Canada Ltd. et al.
April 17, 2002
Published in English: [2002] Ontario Judgments No. 1465 (Lexis), 21 Canadian Practice Cases (5th) 174
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *arbitration agreement; kompetenz kompetenz*]

The parties were all involved in the North American diamond trade, with the plaintiffs having entered into consignment sales agreements with the defendant suppliers. Although the agreements contained arbitration clauses, the plaintiffs claimed that arbitration clauses did not apply because the defendants had engaged in fraudulent misrepresentations at the time of contracting, which, they argued, rendered the agreements null *ab initio*, including the arbitration clauses. Referring to articles 8 and 16(1) of the Model Law, the court confirmed the separability thesis according to which the claimed nullity of the underlying contract does not affect the independent validity of the arbitration clause included in the contract. In addition, the court held that the wording of the clause ("all disputes arising from or out of this agreement") was sufficiently broad to encompass the numerous tort claims raised by the plaintiffs. Moreover, the court held that the determination of the scope of the arbitration clause was more properly within the purview of the arbitrator and that the court should not interfere unless "it is clear that the dispute in question falls outside the terms of the arbitration provision."

Case 505: MAL 1
Canada: Ontario Superior Court of Justice (Swinton J.)
Ross v. Christian and Timbers, Inc.
April 30, 2002
Published in English: [2002] Ontario Judgments No. 1609 (Lexis)
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *commercial*]

This case involved an employment dispute between a Canadian employee and an American employer. In deciding whether to refer the parties to arbitration, the court held that the applicable statute was not the International Commercial Arbitration Act that implements the Model Law in Ontario but rather the Arbitration Act which contains different though generally compatible rules. In so doing, the court noted the Analytical Commentary contained in the Report of the Secretary General to the eighteenth session of UNCITRAL which states that "labour or employment disputes were not intended to be covered by the term "commercial"". Still, even under the Arbitration Act, the court upheld the arbitration agreement against the employee and stayed its proceedings.

Case 506: MAL 11; 16
Canada: Ontario Superior Court of Justice (Hoy J.)
Masterfile Corp. v. Graphic Images Ltd.
June 26, 2002
Published in English: [2002] Ontario Judgments No. 2590 (Lexis)
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *arbitrators—appointment; judicial assistance; arbitration agreement; jurisdiction*]

The case concerns a motion, under article 11 of the Model Law, to appoint an arbitrator, requested by the plaintiff following the respondent's failure to respond to the request for arbitration and the nomination of arbitrators, in accordance with the arbitration agreement between the parties. One of the respondents claimed that he was not a party to the agreement and therefore not subject to arbitration. The court found that the issue was unclear and therefore that it was best left to the determination of the arbitrator, in accordance with article 16 of the Model Law.

Case 507: MAL 28(3)
Canada: Ontario Superior Court of Justice (Day J.)
Liberty Reinsurance Canada v. QBE Insurance and Reinsurance (Europe) Ltd.
September 20, 2002
Published in English: [2002] Ontario Judgments No. 3599 (Lexis)
http://www.canlii.org/on/cas/onsc/2002/2002onsc10086.html
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *amiable composition; ex aequo et bono*]

The parties were linked by four reinsurance contracts, all providing for arbitration but using two different clauses, and all of which were the subject of contractual disputes. The applicant asked the court to consolidate the arbitrations into a single proceeding, to which the defendant objected. The court noted that one of the clauses provided for arbitration *ex aequo et bono* in Toronto while the other did not. Referring to article 28(3) of the Model Law as implemented in Ontario, the court held that because arbitration *ex aequo et bono* must be expressly authorized, the two clauses were incompatible. While the court agreed that it would make sense to consolidate the disputes within a single arbitral proceeding, it held that the consent of the parties was required, as set out in article 7(1) of the local Act implementing the Model Law. Since the defendants objected, the motion was denied.

Case 508: MAL 8
Canada: Ontario Superior Court of Justice (Pepall J.)
United Laboratories, Inc. v. Abraham
October 8, 2002
Published in English: [2002] 62 Ontario Reports (3d) 26
http://www.canlii.org/on/cas/onsc/2002/2002onsc10195.html
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *judicial assistance; arbitration agreement*]

The parties were involved in contractual disputes that lead to lawsuits in Illinois and Ontario as well as mediation in Ontario. The defendant resisted enforcement of the default Illinois judgment on the grounds that the parties were bound by an arbitration agreement. The court held that article 8 of the Model Law, applicable in Ontario under the International Commercial Arbitration Act, did not confer on courts the obligation or the power to refer the parties to arbitration in the absence of a request by one of the parties to do so. As the defendants had failed to appear before the Illinois courts, or to contest its jurisdiction, they could no longer invoke the arbitration clause as a bar to enforcement of the foreign judgment.

Case 509: MAL 8; 16(1); 35; 36(1); 36(2)
Canada: Ontario Court of Appeal (Carthy, Charron and Rosenberg JJ.A.)
Dalimpex Ltd. v. Janicki; Agros Trading Spolka Z.O.O. v. Dalimpex Ltd.
May 30, 2003
Published in English: [2003] 64 Ontario Reports (3d) 737, 228 Dominion Law Reports (4th) 179.
http://www.ontariocourts.on.ca/decisions/2003/may/dalimplexC37306.htm
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *arbitration agreement; jurisdiction; arbitrators; recognition—of award*]

Prior to the commencement of this action in 1998, the parties did business together for approximately thirty years. Dalimpex is a Canadian company that imports and distributes various goods, most of which are manufactured in Poland. A large portion of Dalimpex's business consists of food products, and its major supplier was Agros, a large Polish food conglomerate and broker. The parties were bound by an agency agreement that included an arbitration clause designating a Polish arbitration board. A senior employee of Agros, Andrzej Janicki, became an executive of Dalimpex in 1993 and subsequent events lead to severe financial difficulties for Dalimpex and the termination of the agreement in June 1998. Dalimpex claimed that Janicki conspired with Agros during his time with Dalimpex and largely contributed to the downfall of the latter. Dalimpex sued Agros in Ontario and Agros responded with a notice of arbitration to take place in Poland, claiming for payment of certain sums due, including the refund of a bank guarantee paid by Agros. Dalimpex objected to the jurisdiction of the Polish arbitral board on the grounds that the bank guarantee was outside the scope of the agency agreement and its arbitration clause. This argument was rejected and an award was made in favour of Agros. Dalimpex sought but failed to get the award set aside by the Polish courts (an appeal of that decision was pending in Poland at the time of the Ontario judgment).

In the Ontario courts, Agros first invoked article 8 of the Model Law and sought a stay. The motion was denied at first instance for two reasons: first, that the arbitrator had ceased to exist and second, that the claim was outside the scope of the agreement to arbitrate. This decision was overturned on rehearing and the stay granted. Agros later also sought recognition of the award granted by the Polish arbitration board.

At the Court of Appeal, the decision regarding the referral to arbitration was confirmed. On the issue of the scope of the clause, the court strongly endorsed a limited role for courts, in light of articles 8(1) and 16 of the Model Law. It held that

"in cases where it is not clear, it may be preferable to leave any issue related to the "existence or validity of the arbitration agreement" for the arbitral tribunal to determine in the first instance under article 16. [T]his deferential approach is consistent with both the wording of the legislation and the intention of the parties to refer their disputes to arbitration." On the question of the identity of the arbitral board, which had been altered by statute since the date of the agreement, the Court made two findings. First, it held that the wording was broad enough to encompass the newly created Polish Court of Arbitration and upheld the motion to stay on that ground alone. Second, in *obiter*, it agreed with Agros that Dalimpex should be estopped from raising this argument before the Ontario courts because it had failed to raise it before the arbitral panel in Poland.

On the recognition issue, the Court of Appeal considered articles 35 and 36 of the Model Law, specifically Dalimpex's objections under article 36(1)(a)(iii), (iv) and (v) as well as article 36(2). Considering the conclusions of the court on the jurisdictional issues, it held that only article 36(2) applied and therefore adjourned the recognition motion until the final determination on appeal by the Polish courts.

Case 510: MAL 7; 36(1)(b)(i); 36(1)(b)(ii)
Canada: British Columbia Supreme Court (Holmes J.)
Javor v. Francoeur
March 6, 2003
Published in English: [2003], 13 British Columbia Law Reports (4th) 195; confirmed on appeal [2004] B.C.J. no. 448
http://www.courts.gov.bc.ca/jdb-txt/sc/03/03/2003bcsc0350.htm
http://www.courts.gov.bc.ca/jdb-txt/ca/04/01/2004bcca0134.htm
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *arbitration agreement; parties; recognition—of award; arbitrability*]

Javor and Fusion-Crete Products Inc. were involved in an arbitration in California pursuant to an arbitration agreement. The arbitrator found that the individual Francoeur was the "alter-ego" of the corporate defendant, an issue which Francoeur's counsel voluntarily argued on the merits in the arbitral proceedings. The arbitrator therefore made an order declaring Francoeur to be a party to the arbitration proceedings and eventually held him personally liable for the damages awarded against Fusion-Crete. On the enforcement motion in British Columbia, the award was recognized as against the corporate defendant but Francoeur objected to enforcement against him personally. The court defined the issue as whether a person who was not party to an arbitration agreement but was found by an arbitrator to be a proper party to the arbitration proceeding can have an award for costs enforced against him. The court considered the provisions of the New York Convention and the Model Law, both in force in British Columbia, and concluded that only a party named in the arbitration agreement could be subjected to enforcement proceedings under the relevant international conventions. The court also held that the arbitrability exception of article 36(1)(b)(i) applied because the matter of Francoeur's liability could not have been determined by arbitration under British Columbia law since he was not a party to the arbitration agreement. Finally, on the public policy objection, the court did not rule, finding that there was insufficient evidence before it. On appeal, the British Columbia Court of Appeal summarily

dismissed the appellant's claim that any error had been made in the lower court's, rejecting enforcement against Francoeur.

Case 511: MAL 36(1)(b)(i); 36(1)(b)(ii)
Canada: Supreme Court of Canada (LeBel J. for the court)
Desputeaux v. Les Éditions Chouettes (1987) Inc.
March 21, 2003
Published in English and French : [2003] 1 Supreme Court Reports 178
http://www.lexum.umontreal.ca/csc-scc/en/pub/2003/vol1/html/2003scr1_0178.html
http://www.lexum.umontreal.ca/csc-scc/fr/pub/2003/vol1/html/2003rcs1_0178.html
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *recognition—of award; arbitrability; public order*]

This arbitration concerned a domestic arbitration award but in refusing to set it aside, the Supreme Court of Canada made general statements about commercial arbitration and referred to the language of the Model Law. In so doing, the court held that questions of copyright could be the subject matter of arbitration under Canadian substantive law and Quebec procedural law (applicable to the arbitration proceedings). It also endorsed a very narrow view of the public policy defense to arbitration and to enforcement of arbitral awards, rejecting the tendency of some courts to conduct a review of the merits of the arbitral ruling, particularly in cases where the applicable law included public policy provisions. This decision provides strong support for a broad interpretation of arbitrability and a very strict reading of public policy, relevant to the domestic and international arbitral context.

Case 512: MAL 8
Canada: British Columbia Court of Appeal (Low J.)
Instrumenttitehdas Kytola Oy v. Esko Industries Ltd.
15 January 2004
Published in English: [2004] B.C.C..A. no. 25 (Lexis)
http://www.courts.gov.bc.ca/jdb-txt/ca/04/00/2004bcca0025.htm
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *arbitration agreement; jurisdiction*]

The Canadian defendant had been the distributor of the Finnish plaintiff's forestry machinery for over twenty years when the latter sought to terminate the agreement as permitted by the contract. After negotiations to resume the contractual relationship had failed, the plaintiff sued the defendant in British Columbia, for unpaid balances. The defendant prevailed itself of the arbitration clause in the distribution contract. As stated by the Court of Appeal, "the issue between the parties is whether the contract between them containing an arbitration clause was terminated pursuant to notice when the debt arose or whether the debt was incurred during a time extension of the contract. If the latter is the case, the arbitration clause would still be operative and the trial court would not have jurisdiction." A stay was granted at trial and confirmed on appeal. The Court of Appeal considered that the evidence concerning termination was confusing and that the question was better left to the arbitrator in Finland. In so finding, the court noted that the arbitration clause

referred to claims relating to termination of the contract, thereby confirming that the judicial process should give way to the arbitral proceedings on this question.

Case 513: MAL 5
Canada: Alberta Court of Queen's Bench (Hawco J.)
Western Oil Sands Inc. v. Allianz Insurance Co. et al.
2 February 2004
Published in English: (2004) A.J. no. 85 (Lexis)
http://www.albertacourts.ab.ca/jdb/2003-/qb/civil/2004/2004abqb0079.cor1.pdf
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *procedure; judicial intervention*]

The Canadian plaintiff had obtained insurance coverage from Catlin, an English party who subsequently sought to rescind it on the basis of material non-disclosure by the insured. Catlin first joined an arbitral proceeding against the plaintiff initiated by other parties but then wished to begin a separate arbitral proceeding against the plaintiff. The latter asked the court to consolidate the arbitral proceedings. The court first looked at the Act implementing the Model Law, which Act includes provisions dealing with the consolidation of arbitral proceedings. The court interpreted these provisions as requiring the consent of the parties and therefore denied the plaintiff's motion taking account of the defendant's objection to consolidation. In addition, the court rejected the plaintiff's appeal to broader inherent powers of the court given the limited powers of interference granted to courts under article 5 of the Model Law.

Case 514: MAL 36(2)
Canada: British Columbia Supreme Court (Halfyard J.)
Powerex Corp. v. Alcan Inc.
10 July 2003
Published in English: (2003) British Columbia Judgments no. 1674 (Lexis)
http://www.courts.gov.bc.ca/jdb-txt/sc/03/10/2003bcsc1096.htm
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *award—setting aside; recognition—of award*]

Pursuant to arbitration in Oregon, the defendant, Alcan, sought to have the award against it set aside by courts in that State. Powerex then began enforcement proceedings in British Columbia. Alcan asked the British Columbia court to adjourn the enforcement hearing under article 36(2) of the Model Law until the Oregon court rendered judgment. Powerex countered with a request for security, should a stay be ordered. The British Columbia court considered the interpretation given by foreign courts relating to article 36(2) of the Model Law, in particular that the challenge to the award is not futile and that undue delay will not be occasioned. In the end, however, the court held that this jurisprudence applied only to adjournment of the decision to enforce, not to an adjournment of the enforcement hearing. As a result, the order to suspend the hearing was made under local procedural law and not the Model Law as implemented in the province.

Case 515: MAL 8(1)
Canada: Ontario Superior Court of Justice (Sachs J.)
AMEC E&C Services Ltd. v. Nova Chemicals (Canada) Ltd.
30 June 2003
Published in English: 22 C.L.R. (3d) 298
http://www.canlii.org/on/cas/onsc/2003/2003onsc10915.html
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *judicial intervention; jurisdiction*]

The plaintiff, an American engineering firm, entered into a consulting services agreement with the Canadian defendant in relation to the expansion of the latter's chemical plant in Ontario. After completion of the project, a dispute arose and the plaintiff sought a judicial declaration that any claim the defendant may have had was time-barred under the contract. The defendant disputed the existence of a contractual limitation period. The court found that the parties had not expressly requested that they be referred to arbitration but that the court could refer the parties to arbitration of its own motion, on the basis of local procedural law. The court found that the question of the existence of a limitation period was arguably within the scope of the arbitral agreement and should be left to the determination of the arbitrator. The court also considered whether undue delay provided ground for denying a stay, as permitted for domestic arbitrations, but found this inapplicable where the referral to arbitration was made pursuant to the court's own motion. Moreover, the court found no prejudice to either parties would result from the stay, which was ordered.

Case 516: MAL 5, 11

Canada: Quebec Superior Court (Godin J.), confirmed by the Quebec Court of Appeal
Microtec Sécuri-T Inc. v. Quebec National and International Commercial Arbitration Centre (CACNIQ)
14 March 2003, confirmed on 2 June 2003
Published in French: [2003] Quebec Judgements No. 2918 (Lexis); confirmed [2003] Quebec Judgements No. 6868 (Lexis)
http://www.jugements.qc.ca/php/decision.php?liste=3534067&doc=5056545F5D001603
Abstract prepared by Geneviève Saumier, National Correspondent

[**keywords**: *judicial intervention; arbitrators—appointment of*]

The parties were bound by a shareholder agreement which contained an arbitration clause. Following a dispute, arbitral proceedings commenced, in accordance with the administrative rules of the arbitration institution designated in the clause. As the parties were unable to reach agreement on the composition of the arbitral tribunal, the Quebec National and International Commercial Arbitration Centre (CACNIQ) appointed arbitrators, in accordance with the applicable arbitration rules. The claimant requested that the Quebec Superior Court set aside the constitution of the tribunal by CACNIQ, citing the competence of the Court established in article 941.2 of the Code of Civil Procedure of Quebec, which was based on article 11 of the Model Law. The Court noted that that provision applied

only if the parties had not reached an agreement to the contrary, for example by designating a set of arbitration rules, as in this case. The Court thus refused to intervene on the question of the appointment of arbitrators, since the parties had excluded recourse to court supervision by acceding to the CACNIQ arbitration rules, which provided for an appointment procedure in the event of a lack of agreement between the parties. Furthermore, the Court refused to intervene on any other question relating to the conduct of arbitral proceedings on the grounds that its intervention was limited by the equivalent of article 5 of the Model Law, thus relegating any supervision to the time of approval of the award.

Index to this issue

I. Cases by jurisdiction

Canada

Case 514: MAL 36(2) - *Canada: British Columbia Supreme Court (Halfyard J.), Powerex Corp. v. Alcan Inc. (10 July 2003)*

Case 515: MAL 8(1) - *Canada: Ontario Superior Court of Justice (Sachs J.), AMEC E&C Services Ltd. v. Nova Chemicals (Canada) Ltd. (30 June 2003)*

Case 516: MAL 5, 11 - *Quebec Superior Court (Godin J.), confirmed by the Quebec Court of Appeal, Microtec Sécuri-T Inc. v. Quebec National and International Commercial Arbitration Centre (CACNIQ) (14 March 2003, confirmed on 2 June 2003)*

II. Cases by text and article

UNCITRAL Model Arbitration Law (MAL)

MAL 1

Case 502: - *Canada: British Columbia Supreme Court (Tysoe J.), Mexico v. Metalclad (May 2, 2001)*

Case 505: - *Canada: Ontario Superior Court of Justice (Swinton J.), Ross v. Christian and Timbers, Inc. (April 30, 2002)*

MAL 5

Case 513: - *Canada: Alberta Court of Queen's Bench (Hawco J.), Western Oil Sands Inc. v. Allianz Insurance Co. et al. (2 February 2004)*

MAL 7

Case 510: - *Canada: British Columbia Supreme Court (Holmes J.), Javor v. Francoeur (March 6, 2003)*

MAL 8

Case 503: - *Canada: Alberta Court of Appeal (Côté and McFadyen JJ.A. and Brooker J. (ad hoc)), International Resource Management (Canada) Ltd. v. Kappa Energy (Yemen) Inc. (June 18, 2001)*

Case 504: - *Canada: Ontario Superior Court of Justice (Croll J.), D.G. Jewelry Inc. et al. v. Cyberdiam Canada Ltd. et al. (April 17, 2002)*

Case 508: - *Canada: Ontario Superior Court of Justice (Pepall J.), United Laboratories, Inc. v. Abraham (October 8, 2002)*

Case 509: - *Canada: Ontario Court of Appeal (Carthy, Charron and Rosenberg JJ.A.), Dalimpex Ltd. v. Janicki; Agros Trading Spolka Z.O.O. v. Dalimpex Ltd. (May 30, 2003)*

Case 512: - *Canada: British Columbia Court of Appeal (Low J.), Instrumenttitehdas Kytola Oy v. Esko Industries Ltd. (15 January 2004)*

MAL 8(1)

Case 515: - *Canada: Ontario Superior Court of Justice (Sachs J.), AMEC E&C Services Ltd. v. Nova Chemicals (Canada) Ltd. (30 June 2003)*

MAL 11

Case 506: - *Canada: Ontario Superior Court of Justice (Hoy J.), Masterfile Corp. v. Graphic Images Ltd. (June 26, 2002)*

Case 516: - *Quebec Superior Court (Godin J.), confirmed by the Quebec Court of Appeal, Microtec Sécuri-T Inc. v. Quebec National and International Commercial Arbitration Centre (CACNIQ) (14 March 2003, confirmed on 2 June 2003)*

MAL 16

Case 506: - *Canada: Ontario Superior Court of Justice (Hoy J.), Masterfile Corp. v. Graphic Images Ltd. (June 26, 2002)*

MAL 16(1)

Case 504: - *Canada: Ontario Superior Court of Justice (Croll J.), D.G. Jewelry Inc. et al. v. Cyberdiam Canada Ltd. et al. (April 17, 2002)*

Case 509: - *Canada: Ontario Court of Appeal (Carthy, Charron and Rosenberg JJ.A.), Dalimpex Ltd. v. Janicki; Agros Trading Spolka Z.O.O. v. Dalimpex Ltd. (May 30, 2003)*

MAL 28(3)

Case 507: - *Canada: Ontario Superior Court of Justice (Day J.), Liberty Reinsurance Canada v. QBE Insurance and Reinsurance (Europe) Ltd. (September 20, 2002)*

MAL 34(2)(a)

Case 502: - *Canada: British Columbia Supreme Court (Tysoe J.), Mexico v. Metalclad (May 2, 2001)*

MAL 34(2)(b)

Case 502: - *Canada: British Columbia Supreme Court (Tysoe J.), Mexico v. Metalclad (May 2, 2001)*

MAL 35

Case 509: - *Canada: Ontario Court of Appeal (Carthy, Charron and Rosenberg JJ.A.), Dalimpex Ltd. v. Janicki; Agros Trading Spolka Z.O.O. v. Dalimpex Ltd. (May 30, 2003)*

MAL 36(1)

Case 509: - *Canada: Ontario Court of Appeal (Carthy, Charron and Rosenberg JJ.A.), Dalimpex Ltd. v. Janicki; Agros Trading Spolka Z.O.O. v. Dalimpex Ltd. (May 30, 2003)*

MAL 36(1)(a)(i)

Case 501: - *Canada: Prince Edward Island Supreme Court – Trial Division (MacDonald C.J.T.D.), D.L.T. Holdings Inc. v. Grow Biz International, Inc. (March 23, 2001)*

MAL 36(1)(a)(ii)

Case 501: - *Canada: Prince Edward Island Supreme Court – Trial Division (MacDonald C.J.T.D.), D.L.T. Holdings Inc. v. Grow Biz International, Inc. (March 23, 2001)*

MAL 36(1)(b)(i)

Case 510: - *Canada: British Columbia Supreme Court (Holmes J.), Javor v. Francoeur (March 6, 2003)*

Case 511: - *Canada: Supreme Court of Canada (LeBel J. for the court), Desputeaux v. Les Éditions Chouettes (1987) Inc. (March 21, 2003)*

MAL 36(1)(b)(ii)

Case 501: - *Canada: Prince Edward Island Supreme Court – Trial Division (MacDonald C.J.T.D., D.L.T. Holdings Inc. v. Grow Biz International, Inc. (March 23, 2001)*

Case 510: - *Canada: British Columbia Supreme Court (Holmes J.), Javor v. Francoeur (March 6, 2003)*

Case 511: - *Canada: Supreme Court of Canada (LeBel J. for the court), Desputeaux v. Les Éditions Chouettes (1987) Inc. (March 21, 2003)*

MAL 36(2)

Case 509: - *Canada: Ontario Court of Appeal (Carthy, Charron and Rosenberg JJ.A.), Dalimpex Ltd. v. Janicki; Agros Trading Spolka Z.O.O. v. Dalimpex Ltd. (May 30, 2003)*

Case 514: - *Canada: British Columbia Supreme Court (Halfyard J.), Powerex Corp. v. Alcan Inc. (10 July 2003)*