



Lawrence E. Thacker



Sean Lewis

Jun 13, 2019

Enforcing Arbitral Awards on the Commercial List

While arbitration is often considered a more expeditious and cost-effective alternative to the traditional trial process, the enforcement of an arbitral award often requires the additional step of obtaining a Court judgment. An arbitration award is a final and binding determination of the amount owing. However, typically the arbitral tribunal has no practical power to enforce the arbitral award.

To enforce an arbitration award, the typical steps are as follows:

- request the funds from the debtor party;
- consider any payment plan that may be necessary in the circumstances; and
- begin enforcement proceedings where necessary.

While a Court judgment can be enforced immediately, an arbitration award must first be converted into a judgment.

In Ontario, this process is governed by section 50 of the *Arbitration Act, 1991*, SO 1991, c 17:

Enforcement of Award Application

50 (1) *A person who is entitled to enforcement of an award made in Ontario or elsewhere in Canada may make an application to the court to that effect.*

As a result, to enforce an arbitral award, the successful party will be required to commence a new application before the Superior Court. The grounds on which an application can be successfully opposed are narrow and usually the Court will issue a judgment.

Importantly, section 50 of the *Arbitration Act, 1991* also applies to costs awards. In this sense, even where the successful party has received its damages award, an entirely new application before the Superior Court may be needed to enforce a costs award, which may be awarded long after the arbitration was

completed.

Given the ability (and in some cases, the tendency) of arbitrators to grant higher costs awards than those made by the Court, the inability to swiftly and easily enforce such awards is one drawback to the arbitration process.

Accordingly, issues with the enforcement of arbitral awards should be considered in any decision to enter into arbitration instead of traditional litigation. Like any other element exclusive to the court process, the ability to enforce a judgment without preparing, serving, and arguing a new application should be assessed and considered before entering into any optional arbitration arrangement.

Where arbitration is mandatory, each party should be mindful of the other party's ability to pay a damages and a costs award, and should consider preparing for an eventual application to the Superior Court if needed.