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Enforcing Arbitral Awards on the Commercial List

While arbitration is often considered a more expeditious and cost-effective alternative to traditional litigation, parties should be aware of a frequently overlooked hurdle: the enforcement of arbitral awards.

An arbitration award is a final and binding determination of the parties' rights and obligations. However, arbitral tribunals typically lack the practical power to enforce their own awards. Unlike court judgments, which can be enforced immediately, an arbitration award must first be converted into a judgment before enforcement proceedings can commence. Without proper enforcement mechanisms, even the most comprehensive arbitral determination may remain a paper victory.

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.
- Where a debtor remains uncooperative, begin enforcement proceedings.

The Statutory Framework

In Ontario, section 50 of the *Arbitration Act* governs the enforcement of arbitral awards:

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 must commence a new application before the Superior Court. Where an arbitral award addresses multiple grounds of relief, the Court may require separate enforcement steps for each component.

Notably, section 50 of the *Arbitration Act* also applies to costs awards. Even where a 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 issued long after the conclusion of the arbitration. Given the tendency of arbitrators to grant higher costs awards

than those typically made by the courts, the delay associated with enforcing such awards is one drawback to the arbitration process.

Practical Considerations & Safeguards

In most cases, the Court will issue a judgment to enforce the award. There are only narrow grounds to oppose the enforcement of an arbitral award. Those narrow grounds are coupled with a high bar. For example, opposing enforcement may require a party to demonstrate the award was obtained by fraud or the arbitration agreement was invalid.

Prudent parties should also turn their minds to any additional safeguards that can be taken before or during the arbitration process to avoid any later enforcement challenges. Parties should consider monitoring counterparty assets or requesting security for costs early in the arbitration to prevent enforcement difficulties later. Keep in mind that Ontario courts have jurisdiction to grant *Mareva* injunctions and other interim measures in support of arbitration proceedings, which can preserve assets for satisfaction of any ultimate award.

Enforcement on the Commercial List

For parties seeking to enforce arbitral awards in Ontario, the Commercial List offers a sophisticated and efficient forum. Its specialized procedures, experienced judiciary, and track record of upholding arbitral awards minimize delay and maximize the likelihood that an arbitration's intended benefits translate into practical, enforceable relief.