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International Commercial Arbitration Harmony

Shara Roy was quoted in the Lexpert Magazine article *International Commercial Arbitration Harmony* on October 16, 2017 regarding Ontario's new legislation governing international commercial arbitration and what it means for Ontario as a venue for future arbitrations and the desirability of harmonization with other Canadian arbitration centres.

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If the laws were to be harmonized among provincial and territorial jurisdictions, "Canada in general would become a more attractive space for International Arbitration," says Shara Roy, a partner at Lenczner Slaght Royce Smith Griffin LLP in Toronto.

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Ontario's approach facilitates matters by showing that which is included and not, without having to do a line-by-line comparison between the provincial legislation and the international regime, says Roy. "That already gave Ontario an advantage, and this [new legislation] enhances it."

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"Previously," says Roy, "it was inferred that the New York Convention was applicable in Ontario by virtue of section 10 of the previous version of the Ontario Act, which said that an arbitral award includes an award made outside of Canada. Now the new legislation formally removes any doubt that Ontario is a New York Convention jurisdiction, to the extent that any existed previously."

Whether the specific provisions of the New York Convention were applicable in Ontario was a matter of debate. "Most of the time that debate was resolved in favour of 'yes,' but now there's just no room for debate," says Roy. Ontario's Superior Court of Justice can apply the Convention as part of Ontario law when a party seeks to enforce, or resist enforcement of, an international arbitral award.

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Says Roy: "It could be recorded in correspondence, in electronic communication, or it may even be that if a party pleads it and the other party doesn't deny it, that may be

sufficient. It really broadens the scope of what may be available for international commercial arbitration.”

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Even if the 10-year limitation period for enforcement of foreign arbitral awards were harmonized among all the provinces, a victorious party might still have to seek enforcement in several provinces. “But they would have a longer period of time to understand whether it was a commercially reasonable course of action,” says Roy. “Two years doesn’t give a party much time to collect themselves, retain counsel and start pursuing assets in different provinces in Canada.”

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