

**ARBITRATION LAW OF CANADA: PRACTICE AND PROCEDURE  
(THIRD EDITION)**

*by J. Brian Casey*

*Reviewed by Gordon Kaiser\**

Most disputes in the energy sector are ultimately resolved by either a regulatory agency or an arbitration panel.<sup>1</sup> The courts are generally a distant third. Regulators have the primary jurisdiction, but the majority of the contract disputes end up in the hands of arbitrators. Arbitration has grown tremendously over the last twenty years – particularly domestic energy arbitration.<sup>2</sup>

In the United States, domestic arbitration takes place, for the most part, under a Federal statute. In Canada, it is largely under Provincial statutes. However, the principles are largely the same. In addition, much of the domestic arbitration in the energy sector involves cross-border disputes. They usually take place in one of four cities – Houston, Calgary, Toronto or New York. That is why the latest book by Brian Casey will be of particular interest to American energy lawyers.

September 10, 2016, was an important day in Canadian arbitration circles. On that day, Casey sent the third edition of *Arbitration Law of Canada: Practice and Procedure* to the publishers in New York. The “Red Book” – as we know it – has become a staple in Canadian arbitration. It is the Bible for both arbitrators and counsel alike.

The book has grown a bit since the first edition in 2004 and the second edition in 2011. The first edition was only 358 pages.<sup>3</sup> The second was 459 pages.<sup>4</sup> Now, it is 578 pages.<sup>5</sup> Those pages do not include the Appendices, which are very useful despite the additional size and weight. Those Appendices were crucial to the initial success of this book and they remain so. This book is one-stop shopping. The Appendices include all the necessary references to the relevant statutes and rules.

A feature that is unique to this book, and likely is one of its most important features, is the Practice Notes. This is not something you see in every book. The Practice Notes are invaluable, whether you are a young counsel starting out or a senior arbitrator hobbling into the hearing room. The number of Practice Notes has grown over the years, but they remain concise and up to date.

The frequent updating is important and rare. Few arbitrators as busy as Brian Casey could write three editions of a book this size in such a short time. In every

---

\* Gordon Kaiser is a JAMS Arbitrator in Toronto and Washington, D.C., and served as the Vice Chair of the Ontario Energy Board from 2004 to 2010.

1. A. Timothy Martin., *Dispute resolution in the international energy sector: an overview*, 4 J. OF WORLD ENERGY L. & BUS. 332, at 339 (2011), <http://timmartin.ca/wp-content/uploads/2016/02/Dispute-Resolution-in-Int-Energy-Sector-JWELB-Martin2011.pdf>

2. FTI JOURNAL, TRENDS IN INTERNATIONAL ARBITRATION, <http://www.ftijournal.com/article/trends-in-international-arbitration> (last visited Nov. 8, 2017).

3. *See generally* J. Brian Casey, *Arbitration Law of Canada: Practice and Procedure* (1st ed. 2005).

4. *See generally* J. Brian Casey, *Arbitration Law of Canada: Practice and Procedure* (2d ed. 2011).

5. *See generally* J. Brian Casey, *Arbitration Law of Canada: Practice and Procedure* (3d ed. 2017).

edition, Casey thanks Eva for putting up with countless lost evenings and weekends without complaint. We should be the ones thanking Eva.

The third edition has the same ten chapters as the first edition.<sup>6</sup> They were the basics in 2004 and they remain the basics. Casey has avoided the temptation to wander into the esoteric. More international content has, however, crept into the book.<sup>7</sup> That may be because there are more international arbitrations today. The increase in international content is important.

There are differences in domestic and international arbitration. These differences stand out in Chapter 10, which deals with the recognition and enforcement of awards.<sup>8</sup> The Casey chapter on this subject is as good as any on this subject.

If you cannot enforce the award, there is no point in having the arbitration. Here, there are real differences between international and domestic arbitration, and a growing army of lawyers and investigators with novel set-aside claims.

Both counsel and arbitrators should buy this book as quickly they can. In fact, they should buy two. Somebody will borrow one and never give it back.

---

6. *Id.*

7. *See generally Id.*

8. *Id.*