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Canada

Arbitration in Toronto: An Economic Study

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I. Introduction

I.1. Our mandate

Charles River Associates was commissioned by Arbitration Place in the spring of 2012 to conduct a study of the economic impact of arbitration on the City of Toronto economy, and to report on the results of the study. We conducted the study during the spring and summer of 2012. This is our report on the results and conclusions of the study.

Charles River Associates is a leading global consulting firm that offers economic, financial, and business management expertise to major law firms, corporations, accounting firms, and governments around the world. Headquartered in Boston, the firm has offices throughout the United States, Canada, and Europe.¹

Arbitration Place is an organization and venue dedicated to providing facilities and services for arbitration and other forms of dispute resolution. Located in the financial centre of Toronto, Ontario, Arbitration Place opened on April 18, 2012 as a full-service venue for arbitration hearings. It offers a range of hearing and meeting rooms, ancillary services, and other services to support arbitrations.² Arbitration Place provides an “all-encompassing approach” to facilitate arbitration proceedings and has a roster of experienced resident and member arbitrators.³ Arbitration Place opened with affiliations with the London Court of International Arbitration (LCIA) and ICC Canada (the Canadian National Committee of the International Court of Arbitration of the International Chamber of Commerce (ICC)), and is expanding its affiliation to include other arbitral institutions and arbitration organizations. It aims to establish itself as a leading facility for Canadian (domestic) arbitration and as a world class facility for international arbitration.

The availability of these facilities and resources is likely to encourage increased arbitration activity in Toronto. In this report, we provide what we believe to be the first available estimates of the magnitude of arbitration activity in Toronto, and a forecast of its future economic significance for the city. Second, we estimate numerous benefits that arbitration activity provides for the Toronto economy more broadly. Third, we assess the economic importance of arbitration to the Toronto economy, and the potential economic benefit that attracting increased arbitration activity may have for Toronto and the surrounding area. To our knowledge, this is the first report to quantify the economic impact of a city's arbitration activity.

1 See www.crai.com.

2 See <http://arbitrationplace.com/media/> for news articles and coverage of Arbitration Place's launch.

3 See <http://arbitrationplace.com/services/>.

Arbitration activity contributes to a city's economy in multiple ways, including by means of the following:

- Directly generating work for legal counsel, expert witnesses and providers of support services (document management, reporting and transcription, translation and interpretation, and so on) retained by parties in the arbitration;
- Directly generating work for arbitrators;
- Generating spending on facilities, including hearing facilities and hotels, restaurants, shops, and service providers that support them;
- In the case of international arbitration, bringing counsel and arbitrators from outside of the local area to hearings and meetings, with attendant benefits to the local economy arising from spending on accommodation, local transportation, food and beverage, and other visitor expenditures;
- Indirectly, raising the profile and reputation of the city, particularly with businesses internationally; and
- Attracting legal counsel, experts, business people, arbitrations, and others, all of whom serve to enhance the local economy directly and indirectly.

Quantifying these contributions should prove useful to both policymakers and stakeholders. A natural extension of this research is an examination of potential initiatives to promote international arbitration activity, which brings visitors to the city and attracts spending from the rest of the world. An estimate of the potential economic impact and the framework for estimating the impact of incremental growth informs this discussion. Those who are active in the field of arbitration are interested in knowing the amount of activity in the Toronto area and our results provide information that may assist them in prioritizing their professional activities. For active and potential arbitration practitioners, our estimates provide some guidance on the Toronto demand for their services as well as projections of potential growth.

I.2. Overview of results

We conducted a survey of Toronto area counsel who are active in arbitrations to gain insight into the volume of arbitration activity and associated expenditures. Using the results of this survey, we estimate the number of commercial arbitrations occurring annually in the Toronto area and the expenditures associated with these arbitrations.

In summary, we estimate the total impact of arbitration on the economy of the City of Toronto to be \$256.3 million in 2012, growing to \$273.3 million in 2013.

From the survey, we estimate that approximately 425 arbitrations will occur in Toronto in 2012.⁴ On average, survey respondents reported that each arbitration is associated with total expenditures by the parties of approximately \$600,000, leading to an estimated total direct expenditure of \$256.3 million in 2012.⁵ Participants were asked to provide all-inclusive figures, and these expenditure numbers consist of all costs relating to the arbitration, including direct legal fees, arbitrator expenses, arbitral institution expenses, expert witness expenses, external document management expenses, reporting services, translation services, and other miscellaneous expenses, such as meals, travel, and accommodations. Survey respondents reported significant recent growth in arbitration activity, and expected growth to continue into 2013. Accordingly, we estimate expenditures on arbitration activity to amount to \$273.3 million in 2013 based on expected growth of 6.6 percent.

To validate our primary survey findings, we include a secondary estimate of arbitration expenditures based on a “bottom-up” estimate of per-arbitration expenditures for domestic and international arbitrations. While this approach relies on a number of secondary sources, it provides independent confirmation of the survey’s cost estimates. This approach constructs an estimate of the cost of arbitrations based on estimated average hours spent on associated activities, estimated average expenditures associated with those activities, and estimated incidental expenditures such as travel and accommodation. The secondary approach leads to an alternative estimated level of expenditure of approximately \$370,000 per domestic arbitration and \$1,710,000 per international matter. Using these estimates, we obtain an alternative bottom-up estimate of direct arbitration expenditures of \$237.7 million in 2012, growing to \$253.5 million in 2013.

Additionally, by itemizing expenses, this secondary approach allows us to consider the broader or multiplier effect of certain classes of spending, such as accommodations and travel, on the local economy. The total impact arbitration activity has on the economy extends beyond the direct expenses described above, especially in the case of international arbitrations that draw visitors and spending to the economy.⁶ We use a model from Ontario’s Ministry of Tourism, Culture, and Sport to calculate the indirect impact of these spending categories for both domestic and international arbitrations. The additional impact on the

⁴ As we explain below, this is likely to underestimate the true number of arbitrations.

⁵ All currency figures are in Canadian dollars unless specified otherwise.

⁶ The multiplier effect captures the trickle-down impact of spending on goods and services, such spending provides income for others to spend and so the initial effect is multiplied. We associate the multiplier effect with particular classes of spending, including accommodation, food and beverage, and local transportation. To be conservative, we do not apply the multiplier to direct legal fees or international transportation because those expenditures do not necessarily entail direct spending in the local economy. For example, counsel may be based outside Toronto, and international flight expenditures may not accrue to Toronto.

gross domestic product (GDP) of the Toronto economy arising from these indirect sources is estimated to be \$3.1 million in 2012, growing to \$3.3 million in 2013. As a result, the total economic effect of arbitration activity in Toronto, estimated using this secondary approach, is \$240.8 million in 2012, growing to \$256.8 million in 2013. This secondary approach therefore is confirmatory of the estimates in our primary survey approach.

The rest of this report proceeds as follows. Section II provides a brief introduction to arbitration and some of its potential benefits. Section III discusses the economic impact that arbitrations have on the Toronto economy and examines some key differences between domestic and international arbitrations. Section IV describes the survey of Toronto counsel that we use to derive many of our results. Section V presents survey results on expenditures associated with arbitration; these results are used as inputs in estimating the direct expenditures on arbitrations in Toronto as well as the calculated indirect effects. Section VI explains our primary methodology and key assumptions. Estimates of per-arbitration expenditures from the survey methodology and the alternative methodology are also presented in this section. Section VII presents our estimates of the total magnitude of arbitration activity while also performing sensitivity analyses surrounding key variables. Section VIII concludes the report.

II. Arbitration: An introduction

Arbitration is a form of dispute resolution frequently used in commercial contracts. Also, investment treaties between states often provide that arbitration will be used to resolve claims for violations of a treaty's investor protection provisions. Where arbitration clauses are included in commercial contracts, they obligate the parties to use the arbitration process to resolve their disputes, and typically specify the rules that are to be followed in case a dispute arises. Underpinning the use and acceptance of arbitrations is a legal system and framework that can be used by participants and the acknowledgement of the relevant judicial systems to respect and enforce arbitral decisions.⁷ The use of commercial arbitration as a means of dispute resolution has received increased attention in recent years in light of perceived advantages relative to other forms of dispute resolution, particularly court systems.⁸ Among these advantages are the following:

⁷ The Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") requires member states to recognize and enforce arbitration awards made in other member states, and is basis for effective international arbitration (New York Convention, United Nations Conference on International Commercial Arbitration, 1958, Articles I - III).

⁸ See, for example, PricewaterhouseCoopers, *International Arbitration: Corporate Attitudes and Practices 2008*, p. 5. This study found that international arbitration had significant support, with 88 percent of participating corporations

- Arbitration is voluntary and provides parties with the ability to select mutually agreeable rules and processes.
- Arbitration clauses provide parties greater flexibility and avenues for customization, including the ability to specify the number of arbitrators, the ability to specify arbitrators with relevant subject matter expertise, and the ability to choose their arbitrators.⁹
- Arbitration potentially provides more control over the timetable, cost, and confidentiality of the dispute resolution process.¹⁰
- From a societal perspective, arbitrations (as well as other alternative dispute resolution mechanisms) may help to alleviate the burden on domestic legal institutions.

The legal location of the arbitration (the “seat” or “place” of arbitration) and the arbitral institution (if any) that will administer the arbitration are typically stipulated in the contract between the parties. Neutrality, supportive courts, convenience, appropriate facilities, and availability of arbitrators are all potential considerations in the choice of the seat (this appears to be so even though the venue for hearings need not be at the seat if the parties agree otherwise). These factors may be weighed differently in designing arbitration clauses between parties in the same country as opposed to parties in different countries. For example, in international arbitrations with parties from different countries, choosing a neutral location is often desirable, while in domestic arbitrations choosing a convenient location for both parties may be paramount.

There is often a natural venue choice for the parties. For two domestic businesses operating in Ontario, it may be natural for them to choose Toronto as the seat of arbitration. These choices become more complex when parties are located in different countries. A US company and a UK company might desire a seat of arbitration other than New York or London to preserve neutrality. In that case, choices may include Paris, Stockholm, Geneva, and Toronto. Toronto may be attractive given its location and numerous other factors

having used it. Additionally, the study found that certain industries, such as insurance, energy, oil and gas, and shipping, use international arbitration as a default dispute resolution mechanism (as opposed to relying on local legal systems).

⁹ For particularly complex or specialized contracts, an experienced arbitrator may be essential. For example, an oil refinery and a crude oil supplier may desire to include contingencies on oil prices that are best understood and interpreted by an industry expert. With an arbitration clause, they can guarantee such an expert adjudicates the dispute.

¹⁰ ICC, Publication 843: Techniques for Controlling Time and Costs in Arbitration, 2007. The publication highlights how parties can design arbitration clauses to streamline the potential length and cost of future disputes. Among other recommendations, the report highlights the need for both parties to agree on clear arbitral provisions that allow for a faster arbitration process.

including its legal culture, supportive courts, stable political environment, native English speakers, cost structures, accessibility and relative safety.

Economic evidence supports the importance of strong legal institutions that respect property rights and enforce contracts. Grouped in a larger category of measures capturing the strength and fairness of legal institutions, researchers have created rule of law indices to estimate differences across countries. This has been a topic of considerable interest as cross-country studies of economic growth have shown that adherence to the rule of law leads to greater growth in economic activity.¹¹

The World Justice Project publishes a Rule of Law Index that broadly encompasses a country's legal system as well as level of corruption.¹² This index is constructed with the use of several other indices published by the World Bank. It has become widely accepted that stronger governance including a stronger rule of law is a critical part of economic success.¹³ The World Bank's Investing Across Borders 2010 (IAB) reports on indicators supporting foreign direct investment (FDI) for 87 countries. Focusing on the ease of investing in a foreign country, the IAB indicators provide an evaluation of the characteristics of each country's laws and regulations (de jure indicators) and their implementation and enforcement (de facto indicators). Indicators are measured in four categories:¹⁴

1. *Investing across sectors* indicators measure the degree to which foreign companies can establish or acquire local firms;
2. *Starting a foreign business* indicators record the time, procedures, and regulations involved in establishing local subsidiaries;
3. *Accessing industrial land* indicators evaluate the ability of foreign companies to lease or buy land in the host country; and

11 See, for example: Robert J. Barro, Democracy and Growth, *Journal of Economic Growth*, 1996,1: 1–27; Robert J. Barro, Determinants of Economic Growth in a Panel of Countries, *Annals of Economics and Finance* 4, 2003, pp. 231–274. Barro finds a positive relationship between rule of law (measured by a rule-of-law index from the International Country Risk Guide) and growth in GDP. This rule-of-law score evaluated the maintenance of the rule of law, political corruption, risk of repudiation of contracts, etc.

12 World Justice Project Rule of Law Index, <http://www.worldjusticeproject.org/rule-of-law-index/>. The Rule of Law Index broadly encompasses how well a government adheres to four principles: 1) the government and its officials and agents are accountable under the law; 2) the laws are clear, publicized, stable and fair, and protect fundamental rights including the security of persons and property; 3) the process by which the laws are enacted, administered, and enforced is accessible, fair and efficient; 4) the laws are upheld and access to justice is provided, by competent, independent, and ethical law enforcement officials, attorneys or representatives, and judges who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve. (For information on the World Justice Project, see <http://www.worldjusticeproject.org/about>.)

13 See, for example, The World Bank, Law and Justice Institutions. The World Bank's Justice and Development Working Paper Series publishes research from developing countries on the importance of legal institutions and mechanisms and emphasizes how strong legal institutions promote growth.

14 World Bank, Investing Across Borders 2010, p. 3, <http://iab.worldbank.org/~media/FPDKM/IAB/Documents/IAB-report.pdf>.

4. *Arbitrating commercial disputes* indicators assess the strength of local legal frameworks for the rules of arbitration, including the extent to which the judiciary supports and aids the arbitration process.

The *arbitrating commercial disputes* indicators include three metrics: *strength of laws*, *ease of process*, and *extent of judicial assistance*.¹⁵ Together, the three indicators capture the strength of the arbitration process in a given country, indirectly supporting foreign investment. The values of these metrics are shown for several countries, including Canada, in Table 1.

Table 1: Arbitrating commercial disputes indicators (0=min, 100=max)

	Canada	France	Singapore	United Kingdom	United States	IAB Average (87 Countries)
Strength of laws	89.9	90.0	94.9	99.9	85.0	85.2
Ease of process	84.7	86.6	81.8	87.5	81.8	70.6
Extent of judicial assistance	94.0	94.0	93.5	94.5	75.3	57.9
Average	89.5	90.2	90.1	94.0	80.7	71.2

Source: World Bank, *Investing Across Borders* 2010, pp. 98, 109, 150, 163–64.

Arbitration activity benefits from agglomeration, with professionals tending to gather in the same locations and creating more highly concentrated activity. Experienced arbitration practitioners and supporting professionals are more likely to gather and locate around cities that host arbitrations. Similarly, companies are more likely to choose cities that have access to such arbitration practitioners and supporting professionals as arbitration venues. This feedback effect means that a few specialized locations may be favoured over dispersed activity across many locations.¹⁶ However, the need for arbitration resources to be available in convenient locations to provide geographically dispersed companies the flexibility to choose neutral and fair locations also means that we should expect a number of cities to have thriving arbitration communities.¹⁷ Paris, London, Singapore, Hong Kong, Sydney, and now Toronto are examples of cities that host international arbitrations and have dedicated

¹⁵ World Bank, *Investing Across Borders* 2010, pp. 55-56.

¹⁶ These same effects may favour and increase specialization by particular types of arbitration activity; for example, London may be a favoured location for maritime and shipping disputes.

¹⁷ Neutrality is especially important when one party is a state owned enterprise (SOE). Disputes with SOEs may give rise to issues with the independence of local legal systems and may politicize the dispute process, particularly with respect to transnational disputes.

arbitration hearing facilities. Within Canada, other cities host domestic arbitrations involving parties located in or near those cities.

For international arbitrations, access to sufficient and proven resources is critical. Parties to international arbitrations include large, sophisticated corporations and governments that require assurances that the arbitration will be efficiently and fairly administered and executed. Agglomeration and the need for proven resources together suggest a role for initial support for international arbitrations that may jump-start growth of related resources. This initial support can help a location establish the needed credentials to attract significant arbitrations, while agglomeration can provide for organic growth once a location has been established as viable. Initial support could take a number of different forms, including legal and regulatory support for arbitration, advocacy of the arbitration process, and relationships with arbitral institutions. Singapore and Sydney are examples of cities receiving government support for their international arbitration institutions.¹⁸ To the extent that arbitration resources are being developed in a new centre, one must allow for the potential lag in recognition as a high-quality arbitral seat. As parties specify the seat of arbitration in their contract clauses, there will be lag from the time that a location is named in contracts to the occurrence of a dispute and the initiation of arbitration.

A 2010 White & Case LLP survey on international arbitration found that the formal legal infrastructure (e.g., the national arbitration law, track record in enforcing agreements to arbitrate and arbitral awards, neutrality and impartiality of legal system) was the most influential factor in choosing the seat of the arbitration, followed by the law governing the substance of the dispute and convenience of the location.¹⁹ The survey found that London (30 percent) was the preferred seat for international arbitration followed by Geneva (9 percent), Paris (7 percent), Tokyo (7 percent), Singapore (7 percent), and New York (6 percent) with the rest of the respondents choosing “Other” (34 percent).²⁰ The diversity of reported locations would appear to represent the different needs of companies within their contractual arrangements as well as their geographical preferences. In this respect, Toronto

18 Singapore's arbitration community has received government support since the mid-2000s. See the Singapore International Arbitration Centre (<http://www.siac.org.sg/>), a non-profit dedicated to the growth of international arbitration activity in Singapore initially funded at its inception in 1991 and continually supported by the government. Sydney's arbitration community also receives government support. See the Australian International Disputes Centre (<http://www.sydneyarbitration.com/>), which was founded in 2010 with the assistance of the Australian government and the state of New South Wales.

19 White & Case, 2010 International Arbitration Survey: Choices in International Arbitration, 2010 (“White & Case Study”), pp. 34–35. The survey was conducted from January to August 2010 through an online questionnaire and interviews completed by 136 respondents. Respondents were general counsel, heads of legal departments, specialist legal counsel, and regional legal counsel. Of the participants, 35 percent were from Asia, 31 percent from Western Europe, 12 percent from North America, and 32 percent from emerging markets.

20 White & Case Study, p. 19.

has some inherent advantages as a venue for international arbitrations. For US companies, Toronto is relatively close, shares a similar legal system of common law origin, and uses English as a predominant legal language. Additionally, Toronto provides a neutral non-US jurisdiction that may appeal to international non-US companies.

III. How arbitrations provide value to the local economy

Arbitrations generate a variety of accompanying economic activity. Proceedings may use local counsel, experts, and arbitrators, bringing benefits to the local professional services community. Additionally, the proceedings use local legal support services and venues. Counsel and arbitrators from outside the local area are likely to visit for international arbitrations, bringing benefits to the hotel and hospitality industry. In total, the potential impact on the local economy can be significant; moreover, it does not necessarily accrue only to businesses and individuals in the legal industry.

As an example of the potential expenditures associated with arbitration, consider a dispute between two commercial entities in Canada. Invoking the arbitration clause in their contract, the two parties first retain counsel to represent them in the arbitration. Those lawyers in turn bill their services to the client and may employ experts and other services in the course of their work. All of these are direct expenses incurred in relation to the arbitration and those dollars flow to the location of those individuals (e.g., dollars flow to Toronto for counsel based there and to Vancouver for counsel based there).

Expenses related to the hearing accrue directly to the location of the arbitration hearing. Legal counsel and arbitrators will travel to the location and spending on hotel accommodations, food and local transportation accrues to the local hospitality industry. Additionally, retail and tourist spending by visitors also accrues to the city and local economy. This discussion suggests a useful distinction between local and international arbitrations. The former are more likely to use local counsel and experts while the latter are more likely to use some or all counsel and experts from other countries, attracting new spending on hotel accommodations, food and local transportation and other local tourist spending to the area. Additionally, international arbitrations are more likely to require more specialized services, including translation and interpretation services.

An accounting of the expenditures associated with arbitration would include:

1. Number of arbitrators and the costs per arbitrator;
2. Number of counsel (accounting for foreign and domestic) and hourly rates;
3. Number of experts and hourly rates;

4. Number of additional supporting services (e.g., reporters, translators, document management firms, tribunal secretaries, and delivery services) and associated costs;
5. Hearing facilities costs;
6. Transportation expenses; and
7. Accommodation and restaurant expenses.

As we discuss in greater detail below, the composition of these expenses differs across domestic and international arbitrations.

IV. Survey

To gather data for our study, we conducted a survey of counsel active in arbitration to gain insight into the volume of arbitration activity and associated expenditures in Toronto. These primary stakeholders are well-positioned to make informed statements on local arbitration activity, to report recent growth, and to provide their opinions on future growth. In addition to gathering information directly on Toronto arbitrations, we supplemented our analysis using data from other publicly available sources.

The online survey was conducted from April 24, 2012 to May 22, 2012. It was directed to individuals who had served or are serving as counsel to a party in arbitration.²¹ The arbitration counsel survey was distributed to the members of the Toronto Commercial Arbitration Society (TCAS)²² and The Advocates Society (TAS).²³ TCAS and TAS supported the distribution of the survey and encouraged members to participate.²⁴ We received 140 completed responses.

The survey queried respondents regarding:

- General information on their work and practice;
- Their participation in arbitrations during the past three years;

²¹ CRA also conducted a survey of arbitrators and a survey of court reporting agencies, the results of which were used for other purposes in relations to this study and report.

²² TCAS's mission is "[t]o promote and develop in Toronto a world centre for arbitration excellence to resolve international and domestic disputes." The society provides information on available arbitration resources, including directories of experienced counsel and arbitrators, venues, and information on the arbitral process and Ontario's legal system. TCAS has approximately 150 members. See <http://torontocommercialarbitrationsociety.com>.

²³ Headquartered in Toronto, TAS is a provider of advocacy skills training in Canada. It represents the legal profession in policy discussions, the media, and communications with other professional associations. Its membership list includes advocates in the Toronto area and throughout Canada. TAS has approximately 3,700 members. See <http://www.advocates.ca/new/about-the-society.html>.

²⁴ Survey participants also were entered into a raffle for an iPad 3.

- Recent arbitration growth and projected growth;
- Specifics on the arbitrations that they participated in (including expenditure details); and
- Their opinion on key factors in choosing an arbitral location.

Appendix A includes the full set of survey questions.

V. Survey results

Table 2 includes general characteristics of the 88 out of the 140 completed responses to the survey who are participating or who have participated as counsel in arbitration and are used in our data analysis.²⁵ More than half of these respondents, 51 percent, were admitted to the bar in 1987 or earlier (with 24-plus years of membership) and 78 percent received bar admission in 2000 or earlier (with 11-plus years of membership). These figures suggest that our survey was generally completed by experienced counsel who are likely to have knowledge and understanding regarding arbitrations. In the past three years, the median respondent active in arbitration matters participated in three arbitrations.

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Ninety-four respondents participated in arbitrations. Six of these observations are not used due to potential double-counting of arbitrations, leading to our sample of 88. Section VI includes a more detailed discussion of the methodology.

Table 2: Survey summary statistics

Total complete responses:	88				
	Average	Median	25th Percen- tile	75th Percen- tile	Total
Year of bar admission	1989	1987	1979	2000	N/A
Total employees	101.3	35.0	10.8	99.3	8914
Toronto employees	37.1	27.5	8.8	45.0	3263
During the past three years					
Arbs. (by respondent)	6.0	3.0	2.0	7.3	529
Arbs. (by rest of Toronto office)	31.4	15.0	7.0	40.0	2419
Counsel to claimant	2.2	1.0	1.0	3.0	190
Counsel to defendant	2.3	1.0	0.0	2.3	204
Counsel (other role)	1.5	0.0	0.0	0.0	135
Institutional arbitrations handled	1.1	0.0	0.0	1.0	97
Internat'l arbitrations handled	0.8	0.0	0.0	1.0	74
Domestic arbitrations handled	5.2	3.0	1.8	5.0	455
One arbitrator presiding	4.7	2.0	1.0	5.0	414
Three arbitrators presiding	1.3	0.0	0.0	2.0	115

Source: CRA Online Survey of Counsel, April 24, 2012 to May 22, 2012.

Table 3 provides a more detailed breakdown of total arbitration activity during the three year period. The average respondent participated in 6 arbitrations during the past three years, and 86.0 percent of these were domestic arbitrations.

Table 3: Survey respondent arbitration volume

<i>Arbitrations handled</i>	# Respondents	% Respondents	Avg. # arbs. handled	Avg. # domestic arbs. handled	Avg. # internat'l arbs. handled	% Internat'l arbs
1-2	33	37.5%	1.42	1.15	0.27	19.1%
3-5	29	33.0%	3.90	3.41	0.48	12.4%
6-10	19	21.6%	8.84	7.32	1.53	17.3%
11+	7	8.0%	28.71	25.57	3.14	10.9%
Total	88	100.0%	6.01	5.17	0.84	14.0%

Source: CRA Online Survey of Counsel, April 24, 2012 to May 22, 2012.

Table 4 summarizes results from the survey regarding the growth of arbitration activity in the past and projected for the future. With respect to the growth of arbitration activity in the recent past, 53 percent of respondents reported increased activity; only 7 percent reported a

decrease in arbitration activity. Of those reporting an increase, the average increase during the past three-year period was reported to be 36.5 percent (equivalent to 10.9 percent compound growth annually).

Table 4: Survey arbitration activity history and expectations

		# Resp.	% Resp.	Avg. # arbs. handled in last three years	Wtd. avg. % change	Avg. % change	Median % change
<i>Arbitration activity in the past three years has:</i>	Increased	47	53.4%	7.66	35.9%	36.5%	25.0%
	Stayed the same	35	39.8%	4.54	-	-	-
	Decreased	6	6.8%	1.67	-68.0%	-67.5%	-62.5%
	Total	88	100.0%	6.01	23.2%	14.6%	5.0%
<i>Arbitration activity in the next 12 months will:</i>	Increase	35	39.8%	9.31	19.9%	17.4%	10.0%
	Stay the same	48	54.5%	4.04	-	-	-
	Decrease	5	5.7%	1.80	-12.5%	-13.3%	-10.0%
	Total	88	100.0%	6.01	11.73%	6.6%	0.0%

Source: CRA Online Survey of Counsel, April 24, 2012 to May 22, 2012.

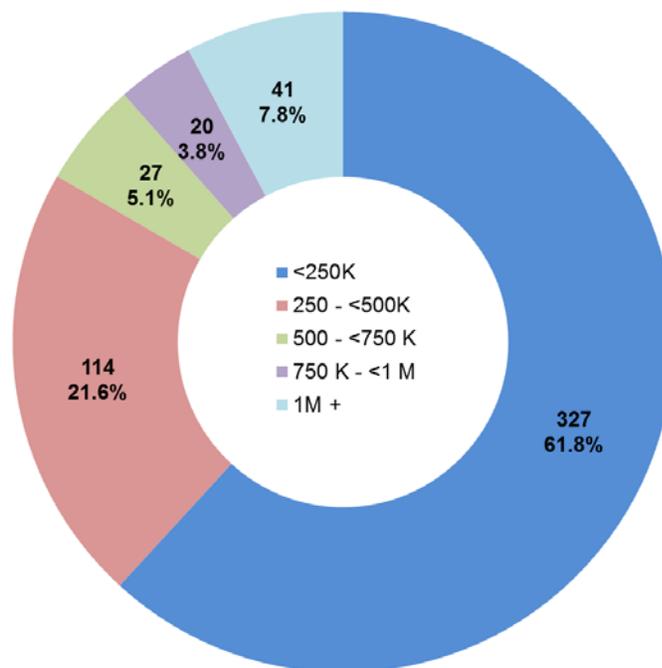
As factors contributing to the recent growth in the past three years, respondents cited:

- A growing acceptance of arbitration as a dispute resolution mechanism in commercial contracts;
- Delays in traditional litigation, giving arbitration a perceived advantage in speed, efficiency, and costs; and
- The ability to choose arbitrators.

The survey revealed significant growth of arbitration activity during the past three years, and the majority of respondents (55 percent) expected activity to hold steady at the level of the last 12 months. A significant number of respondents (40 percent) expected an increase in arbitration activity for the future, while only 6 percent of respondents forecasted a decline. Among those expecting arbitration activity to hold constant at current levels, respondents cited already significant market penetration.

Respondents were also asked to report the cost range incurred by their clients for the arbitrations they worked on and details on the breakdown of those expenditures by type. Legal fees include billings paid to lawyers through all phases of the arbitration as well as legal services fees and expert fees. Figure 1 shows the reported costs of the 529 arbitrations described in the data. We note that for 61.8 percent of the arbitrations in which respondents participated, single party costs were below \$250,000; in 16.6 percent of the cases, single party costs exceeded \$500,000.

Figure 1: Total cost to client



Additional details on the length, number of hearing days, dispute value, and awards in the arbitrations in the dataset are shown in Figures 2 through 5. As shown in Figure 2, the majority of arbitrations (68.9 percent) last less than two years and only 8.1 percent last three or more years. As shown in Figure 3, 69.5 percent of hearings were five days or fewer with only 5.3 percent lasting 30 or more days.

Figure 2: Arbitration length, commencement to award

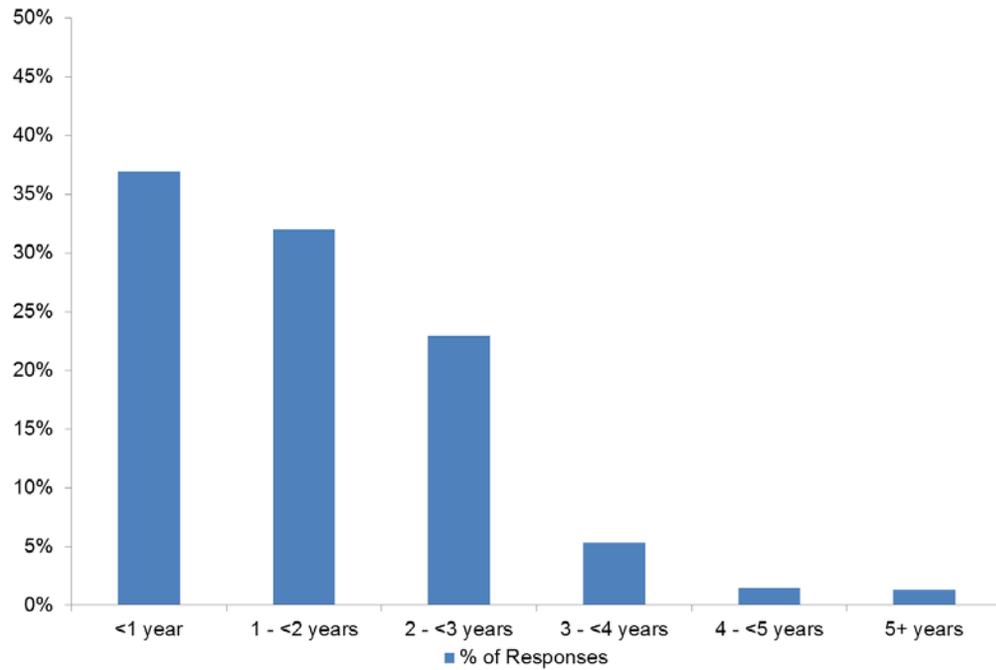


Figure 3: Arbitral hearing length

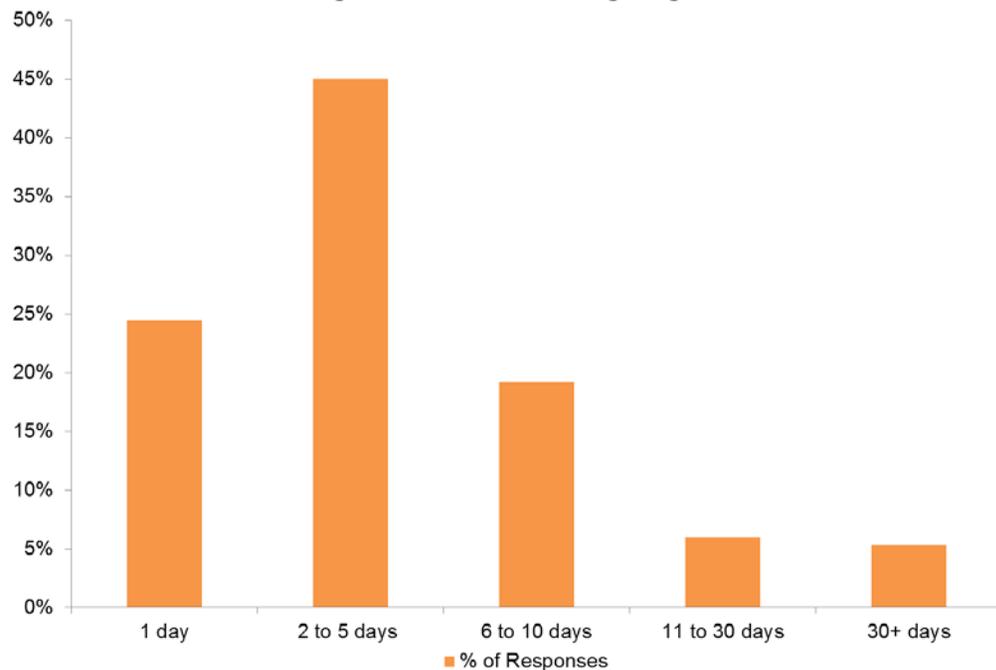


Figure 4 summarizes the dispute values for arbitrations reported. While the most common response (48.4 percent) was less than \$1,000,000, a number of cases were much larger, with 10.6 percent having dispute values of \$50 million or greater. Figure 5 shows the arbitral

award values. As expected, the distribution of award values is skewed toward lower figures than the dispute values.

Figure 4: Arbitral dispute value

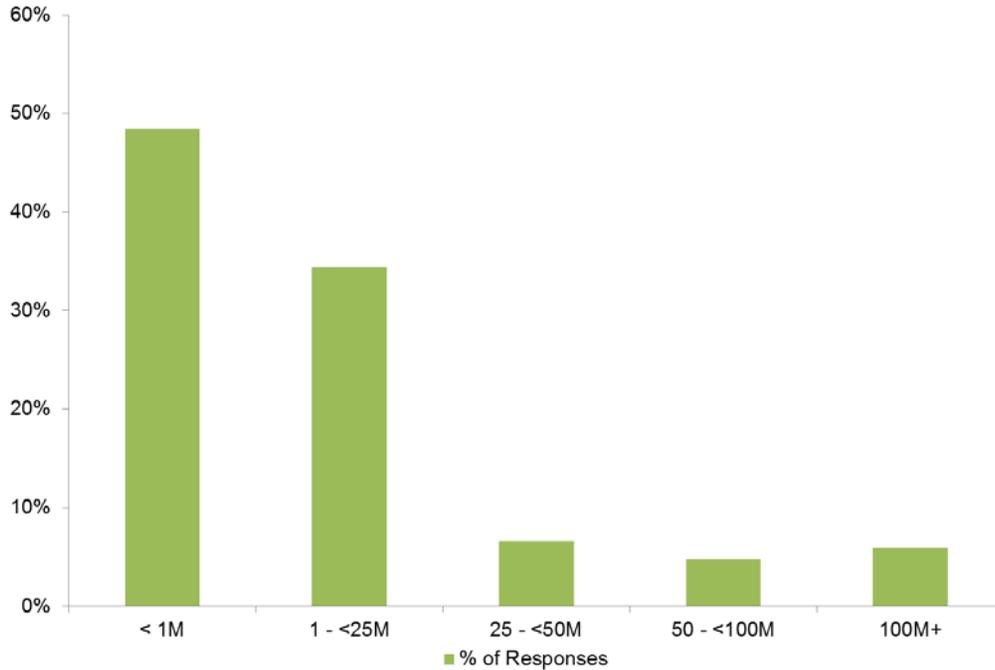
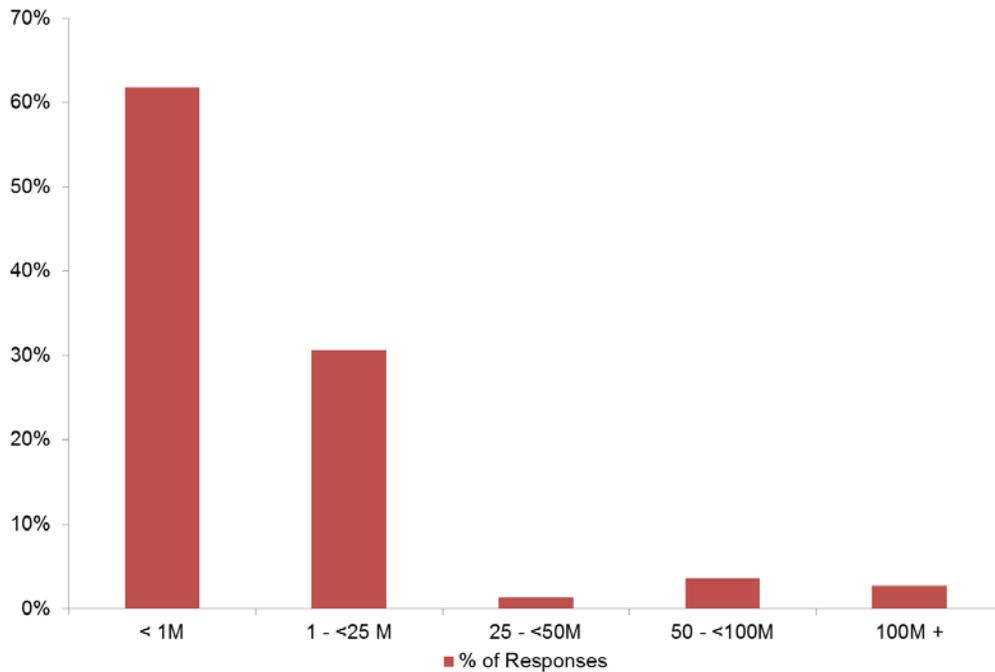


Figure 5: Arbitral award value



Figures 6 and 7 provide additional detail on client costs and joint costs respectively. As shown in Figure 6, hearing costs (hearing preparation, hearing, and post-hearing costs) accounted for 49.7 percent of client legal fees and represented the largest expenditure item. Lawyer fees billed during pre-commencement and commencement of arbitration (24.1 percent) were the greatest cost category followed by document exchange and discovery (19.3 percent) and expert witnesses (6.9 percent). For common arbitration fees shared by both parties, shown in Figure 7, the arbitral tribunal was the largest cost at 65.5 percent followed by court reporting expenses at 9.8 percent.

Figure 6: Legal fees breakdown

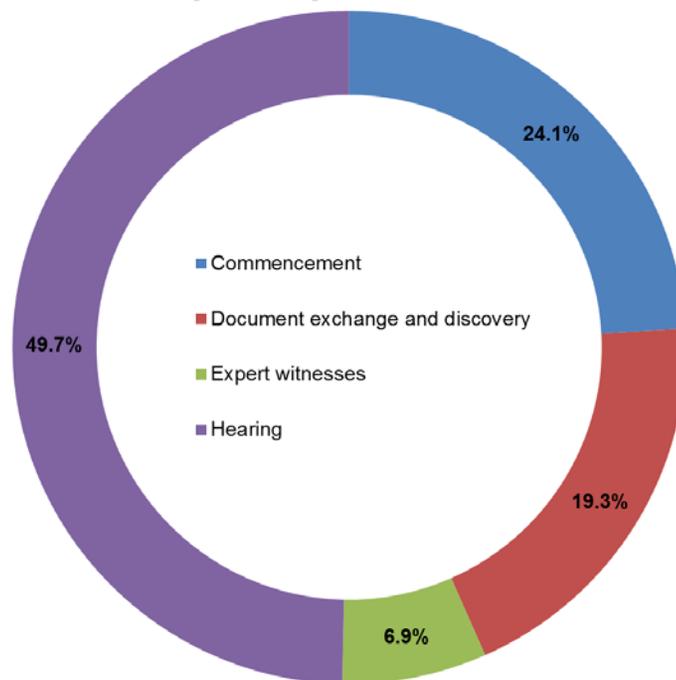
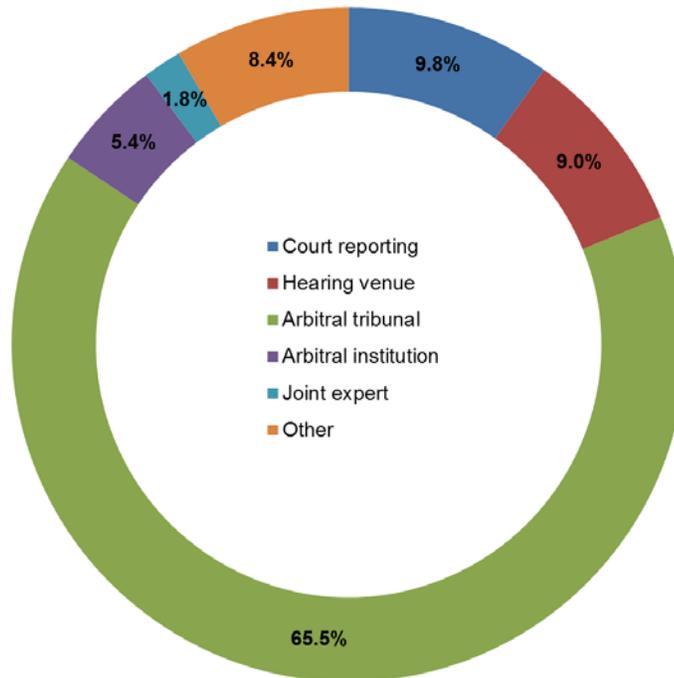


Figure 7: Common cost breakdown



VI. Methodology

To estimate the direct expenditures associated with arbitrations in Toronto, we consider (1) the number of arbitrations taking place in Toronto and (2) the average expenditure level associated with these arbitrations. To our knowledge, this is the first attempt to estimate the economic activity resulting from arbitrations in Toronto; we have been unable to find any publicly available data directly reporting the average cost or the average annual number of arbitrations.

To estimate the annual number of arbitration matters that occur in the Toronto area, we use the direct reports of arbitration activity from the survey. To account for the possibility that lawyers working on the same case, either on the same side or on opposing sides, report the same arbitration in our survey responses, we use the following procedure to avoid over-counting the number of arbitrations. In addition to being asked the number of arbitrations for themselves and for their Toronto office, survey participants were asked to state the number of lawyers in their firm and their Toronto office. We use firm size as a proxy for the potential that respondents are from the same firm. For a given number of reported employees, we consider the number of reported arbitrations. If two observations of the number of Toronto office arbitrations fell within 20 percent of each other, we assumed that the observations

came from the same firm and eliminated the higher number reported.²⁶ This approach gave us a pool of 2,948 arbitrations during the three years in the sample, or 983 annually.²⁷

This figure requires further adjustment to account for the fact that representation for both sides of a single arbitration may have participated in our survey. If our data capture only one side of each arbitration, each report is unique, leading to no adjustment of the 983 arbitrations annually. If our data capture both sides of each arbitration reported, we would divide by two to avoid double-counting, hence reaching 491 unique arbitrations annually. We expect that neither of these extreme cases applies, and that the most accurate estimate is a figure between 491 and 983. We report results using the midpoint of this range, or 737 arbitrations. These numbers are adjusted for the 57.8 percent reported to occur in Toronto, yielding an estimate of 426 Toronto-based arbitrations annually.

We note that to the extent that our sample is an incomplete representation of all lawyers working on arbitrations in Toronto, we are likely to have underestimated the total activity level. Arbitrations involving Toronto counsel who did not participate in our survey are not captured in our analysis. Additionally, there may be Toronto arbitrations that do not use Toronto-based counsel. Again, those arbitrations are not likely to be reported in our data. Finally, to the extent that individual respondents are not fully aware of arbitration activity by their colleagues, they may have underreported the true level of activity at their firms. For these reasons, we expect that our estimates of arbitration activity are conservative.

To estimate average arbitration expenditure, we use a primary and secondary procedure. Our primary approach was to use the responses from the survey to estimate average expenditures for both domestic and international arbitrations. As a secondary estimate of arbitration expenditures, we used a “bottom-up” methodology. To construct this estimate, we itemized and calculated arbitration expenses, calculating legal counsel, arbitrator, accommodation, and other expenses based on information from a combination of different data sources. For this secondary approach, we use a database of investment treaty arbitration awards and a database of financial services arbitration awards to determine the number of counsel on each side in international and domestic matters, respectively.²⁸ Billed

26 For example, suppose three respondents state that their Toronto office comprises 20 lawyers; these respondents estimate the office-wide number of arbitrations (including those in which they participated personally) as five, 11, and 13. Then we assume that the latter two respondents are reporting for the same firm, with some margin for error in estimating the number of arbitrations and eliminate the report of 13 arbitrations. This approach eliminated six observations and reports of 257 arbitrations from the total.

27 Survey participants most commonly acted on behalf of the claimant or respondent, but may also have acted in another capacity (e.g., as an arbitrator). Eliminating arbitrations where participants acted in another role would reduce the arbitration count by 135 to 2813 in total or 938 annually.

28 For international arbitrations, we use the average number of attorneys representing parties in arbitrations available from the Investment Treaty database (http://italaw.com/chronological_list.htm) for the years 2009-2012. For domes-

hours come from an article from the Oregon State Bar International Law Section²⁹ and billable rates are from articles in the Canadian Lawyer magazine and US Vietnam Trade Council Education Forum, with additional guidance from conversations with local Toronto counsel.³⁰ To compute the impact in 2013, we assume growth in the number of Toronto-based arbitrations for 2013 of 6.6 percent consistent with the average level projected in the survey responses, and conservatively hold fixed the cost of arbitrations from 2012 to 2013.³¹

With this secondary bottom-up approach, we also calculate the indirect multiplier effect of certain classes of expenditures related to domestic and international arbitrations. These classes of expenditure include accommodation, food and beverage, and local transportation, as appropriate. These categories of spending create indirect effects as initial spending generates follow-on effects through other sectors of the economy. These follow-on effects depend on households' willingness to spend additional income, which in turn depends on the economic environment. When households' willingness to spend is relatively high, an initial outlay creates a larger multiplier effect as the incremental income from the direct spending is spent again and again. The ultimate impact is thus greater than the initial expenditure value. We use the Tourism Regional Economic Impact Model (TREIM) from the Ontario Ministry of Tourism, Culture, and Sport to calculate these indirect benefits, based on applying the appropriate multiplier effect to the relevant expenditures.³² This bottom-up approach thus yields an alternative secondary estimate to help validate our primary approach based on the responses from survey participants.

VII. Results

Table 5a presents our assumptions. As discussed above, the 2,948 total arbitrations reported in the survey translate to an estimated 737 arbitrations per year worked on by Toronto counsel, and 57.8 percent of these are expected to occur in Toronto. This leads to

29 tic arbitrations, a similar approach is used for the Financial Industry Regulatory Authority ("FINRA") database of awards. Cases from the month of January in 2009-2012 were compiled and the average number of counsel representing both parties was used. (FINRA Arbitration Awards Online, <http://finraawardsonline.finra.org/search.aspx>).

30 Steven C. Smith, International Commercial Arbitration, A Few Things Every Business Executive & Lawyer Should Know, Oregon State Bar International Law Section, January 2005, pp. 5-6 ("ILS International Arbitration").

31 Robert Todd, The going rate: Canadian Lawyer's 2010 legal fees survey, Canadian Lawyer Magazine, June 2010 ("Todd 2010"), pp. 36-43; David Gantz, Investor-State Arbitration Under ICSID, the ICSID Additional Facility and the UNCTAD Arbitral Rules, US Vietnam Trade Council Education Forum ("Gantz"), p. 23.

32 This growth rate represents the arithmetic mean of expectations of arbitration activity over the next twelve months. Two observations that indicated a future decrease of 100 percent were dropped to account for those respondents' apparent exit from arbitral activity in Toronto. With those responses included, the growth rate for 2013 is 4.2 percent.

Ontario's Tourism Regional Economic Impact Model, Ontario Ministry of Tourism Culture and Sport, <http://www.mtc.gov.on.ca/en/research/treim/treim.shtm>. TREIM produces estimates of the direct, indirect, and induced impacts of tourism-related activities on GDP, labour income, employment, and tax revenues for the local geographical area and captures the multiplier effect as it pertains to the greater Toronto area.

an estimated 426 Toronto arbitrations annually. Survey respondents were asked to report the number of arbitrations with legal expenses falling into each of five categories: \$0 to \$250,000, \$250,000 to \$500,000, \$500,000 to \$750,000, \$750,000 to \$1,000,000, and \$1,000,000 or over. Accordingly, we took the midpoint of each value range as an estimate of per-side costs of the arbitration and multiplied by two to obtain an estimate of the total costs from both sides of the same matter. For the \$1,000,000-plus category, we use \$1,000,000 as the total cost per side. This yields per-matter cost groupings of \$250,000, \$750,000, \$1,250,000, \$1,750,000, and \$2,000,000, as reported in Table 5a. Based on the results reported in the table, the median arbitration is associated with estimated total costs of \$250,000; the 75th percentile arbitration is associated with estimated total costs of \$750,000; and estimated total costs for an arbitration in the 95th percentile are \$2 million. The average arbitration cost based on this distribution is approximately \$600,000. Finally, the ratio of domestic to international arbitrations is 86:14 from the survey. We use this ratio in our secondary bottom-up estimate of economic activity associated with arbitrations in Toronto.

Table 5a: Model assumptions, survey

Arbitration volume during past three years		2948
Arbitrations per year (midpoint)		737
% Arbitrations per year with hearing in Toronto		57.8%
	\$250,000	61.8%
	\$750,000	21.6%
Total arbitration cost distribution	\$1,250,000	5.1%
	\$1,750,000	3.8%
	\$2,000,000	7.8%
Average total cost per matter		\$601,134
Active arbitrations with Toronto hearings, 2012		426
% Domestic arbitrations		86%
% International arbitrations		14%

Source: CRA Online Survey of Counsel, April 24, 2012 to May 22, 2012. See appendix B.i for details.

As noted above, the survey methodology allows us to estimate total costs for an approximate distribution of arbitrations ranging from small to large matters. To supplement the survey methodology, we also present the second approach. The second approach includes legal expenses from counsel and experts, arbitrator expenses, and accommodation and related expenses (transportation, meals and incidentals, and arbitral venue fees). Table 5b provides details on the cost estimates for domestic and international arbitrations respectively used for this second approach.

For legal expenses, figures for the number of involved legal counsel are taken from the Investment Treaty Arbitration Database.³³ The numbers for international and domestic billable hours,³⁴ billing rates,³⁵ and expert witness costs³⁶ are taken from published articles and are also adjusted per discussions with local Toronto counsel. For arbitral expenses, we obtained estimates of the number of billable hours per arbitrator,³⁷ the average domestic arbitrator billing rate,³⁸ and domestic institutional fees.³⁹ International arbitral institution fees are from the International Chamber of Commerce (ICC).⁴⁰ Daily local transportation expenses are conservatively based on two US\$20 cab rides with meals and incidentals expenses of US\$150.⁴¹ Domestic arbitrations are conservatively assumed not to incur lodging expenses; for international arbitration accommodations, we use daily hotel rates from expedia.com.⁴² Venue fees are based on ADR Chambers fees.⁴³ International travel expenses are from an average of roundtrip business class flight prices from New York to Toronto and from Paris to Toronto.⁴⁴ Consistent with published work, we assume a four-day hearing for both domestic and international arbitrations.⁴⁵

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- 33 Investment Treaty Arbitration Chronological Listing, http://old.italaw.com/chronological_list.htm. We use the average number of attorneys representing both parties in arbitrations available for years 2009-2012 for international arbitrations. For domestic arbitrations, a similar approach is used for the FINRA database of awards. Cases from the month of January in 2009-2012 were compiled and the average number of counsel representing both parties was used. (FINRA Arbitration Awards Online, <http://finraawardsonline.finra.org/search.aspx>).
- 34 ILS International Arbitration, pp. 5–6. To approximate domestic figures, hours related to international travel were eliminated. Per attorney figures were then applied to our calculations.
- 35 See Todd 2010, pp. 36–43. Todd reports an average hourly billing rate of \$337 for lawyers with ten years of experience. See also Gantz, p. 23. Gantz states that legal fees for major law firms who represent investors and host governments range from \$200 to \$500 per hour, but may be negotiable (downward).
- 36 For the number of expert witnesses and their hours, see ILS International Arbitration, pp. 5–6. We adjust figures to remove hours attributed to international travel for domestic arbitrations and additionally assume domestic expert billings are half those of international. See also SEAK Inc., National Guide to Expert Witness Fees and Billing Procedures, 2004. SEAK reports that the average hourly fee for all experts was \$385 for in-court testimony, \$353 for depositions, and \$254 for file reviews and preparation. Per conversations with local counsel, the rate was adjusted to \$375.
- 37 ILS International Arbitration, pp. 5–6.
- 38 ADR Chambers, Arbitration Fees, <http://adrchambers.com/ca/arbitration/regular-arbitration/arbitration-fees/>.
- 39 ADR Canada National Arbitration Rules, p. 22. Our base case assumes a claim between \$500,000 and \$5,000,000. (http://www.adrcanada.ca/resources/documents/ADRIC_National_Arbitration_RulesWithTaxNote.pdf.)
- 40 International Chamber of Commerce Arbitration Cost Calculator for a dispute value of US\$12,500,000. (<http://www.iccwbo.org/cost-calculator/>.)
- 41 See ILS International Arbitration, pp. 5–6. The article assumes a US\$75 per diem for meals and incidental expenses. Per discussions with local counsel, we doubled this to US\$150 per diem.
- 42 Average of one-night prices for five-star hotels excluding one outlier from www.expedia.com as of August 27, 2012 for the dates January 14, 2013 to January 20, 2013.
- 43 ADR Chambers, Arbitration Fees, <http://adrchambers.com/ca/arbitration/regular-arbitration/arbitration-fees/>.
- 44 Average of nonstop roundtrip business class flight prices found on <http://www.expedia.com> from August 27-August 29, 2012 for flights from New York City (JFK) to Toronto (YYZ) and Paris (CDG) to Toronto (YYZ), departing January 15, 2013 and returning January 20, 2013.
- 45 ILS International Arbitration, pp. 5–6 assumes a four-day hearing. The survey also asked respondents to report the length of their hearings in ranges: one day, two to five days, six to 10 days, 11 to 30 days, and more than 30 days. The median response is an arbitral hearing length range of two to five days consistent with a four-day hearing.

Table 5b: Alternative domestic and international cost assumptions

<i>Legal expenses</i>	Domestic		International	
Number of legal counsel	3		9	
Billed hours per counsel member	209		329	
Billing rate (USD hourly)	\$400		\$400	
Number of expert witnesses	2		2	
Billed hours per expert witness	42		80	
Billing rate (USD hourly)	\$375		\$375	
CAD total	\$293,027		\$1,291,687	
<i>Arbitral expenses</i>				
Number of arbitrators	1	3	1	3
Billed hours per arbitrator	61	58		
Billing rate (USD hourly)	\$700	\$700		
USD fees per arbitrator	\$42,700	\$40,600	\$117,096	\$117,096
Arbitral institution fee (CAD for domestic, USD for international)	\$6,000	\$6,000	\$60,015	\$60,015
CAD Total	\$50,323	\$132,428	\$183,841	\$426,933
<i>Accommodation expenses</i>				
Personnel	6	8	12	14
Transportation (USD per person/day)	\$40	\$40	\$40	\$40
Meals and incidentals (USD per person/day)	\$150	\$150	\$150	\$150
Lodging (USD per person/night)			\$459	\$459
Arbitral venue fees (CAD per day)	\$950	\$950	\$950	\$950
CAD total per day	\$2,133	\$2,528	\$9,034	\$10,381
<i>International travel expenses</i>				
Personnel			12	14
Transportation (USD per person)			\$2,885	\$2,885
<i>Arbitration volume assumptions</i>				
Number of hearing days	4		4	
% of arbitrations with one arbitrator	78%		36%	
% of arbitrations with three arbitrators	22%		64%	
<i>Exchange rate</i>				
USD to CAD exchange rate	1.038		1.038	
Average cost per matter	\$370,075		\$1,710,460	

Source: See appendices B.iii and B.iv for details.

Table 5c presents the estimates of the total magnitude of economic activity due to arbitration for 2012–2013, taking into account direct sources only. The 2013 growth rate is set at 6.6 percent based on survey responses. The number of arbitrations is estimated to be 426 in 2012, growing to 455 arbitrations in 2013. The magnitude based on the survey estimates is \$256.3 million in 2012, growing to \$273.3 million in 2013. The alternative secondary methodology estimates \$237.7 million in 2012, growing to \$253.5 million in 2013

using the per-domestic and per-international arbitration expenditures calculated above and the 86:14 ratio of domestic to international arbitrations based on the survey. These estimates represent the direct computation of the benefits of domestic and international arbitrations and do not account for the multiplier effects of visitor spending.

Table 5c: Total direct expenditures

	2012	2013
Growth rate	N/A	6.6%
Survey estimate	\$256,274,084	\$273,259,692
Alternative estimate	\$237,704,981	\$253,459,846

Source: See appendix B.i.

Table 6a presents the breakdown of multiplier-eligible spending for 2012 from the alternative estimation methodology on an average per matter and total basis for domestic and international arbitrations. It additionally includes estimates for 2013 effects. These encompass tourist expenses that are brought about by bringing new visitors to the Toronto area, and are derived from the secondary bottom-up methodology that itemizes expenses and places the relevant expenses in the appropriate categories.

Table 6a: Multiplier (TREIM)-eligible spending, per matter and total

<i>Per matter</i>	Domestic	International		
	2012	2012		
Accommodation	\$ -	\$ 25,309		
Food and beverage	\$ 4,008	\$ 8,271		
Local transportation	\$ 1,069	\$ 2,206		
Total	\$ 5,076	\$ 35,785		
<i>Total</i>			2012 (Dom + Internat'l)	2013 (Dom + Internat'l)
Accommodation	\$ -	\$ 1,509,306	\$ 1,509,306	\$ 1,609,342
Food and beverage	\$ 1,469,506	\$ 493,237	\$ 1,962,744	\$ 2,092,832
Local transportation	\$ 391,868	\$ 131,530	\$ 523,398	\$ 558,089
Total	\$ 1,861,375	\$ 2,134,074	\$ 3,995,448	\$ 4,260,263

Source: See appendix B.ii for details.

As discussed above, these expenses result in direct outlays to specific industries typically associated with tourism and are subject to a multiplier effect. TREIM uses as inputs spending in specific categories: accommodation, food and beverage, local transportation, and international transportation. The economic model then computes the total impact that the incremental spending in those categories has on the local economy, accounting for

household spending habits in the Toronto area. We run the model for each scenario, using the incremental spending figures from Table 6a.

Table 6b shows the results from the TREIM model and the overall impact of the expected incremental spending in the four categories on the local Toronto economy as well as a “net jobs created” figure. The expected total consequent impact is the increase in GDP, being a measure of the value of the goods and services produced in the local area. TREIM further segments this net impact into gross labour income, being a measure of the benefit in wages to local workers, e.g., waiters and waitresses in local restaurants; and taxes, being a measure of the increase in local government revenues through wage and sales taxes.⁴⁶ According to TREIM, the indirect impact of arbitration activity in Toronto is estimated to account for \$3.1 million in GDP in 2012 growing to \$3.3 million in 2013.

Table 6b: Multiplier (TREIM) results

	2012	2013
GDP	\$ 3,136,830	\$ 3,347,097
Labour income	\$ 1,425,011	\$ 1,544,397
Taxes	\$ 1,024,158	\$ 1,092,379
Jobs created	57	60

Source: See appendix B.ii for details.

Table 7 presents the total impact from direct expenditures and the multiplier effect for the bottom-up methodology. We estimate the multiplier effect only for the bottom-up methodology which itemizes costs by expense category. Multiplier effects are relatively modest, representing 1.3 percent of the direct expenditure impact estimated for 2012 estimate. The total effect of arbitration spending in Toronto, as estimated using the secondary bottom-up methodology, is \$240.8 million in 2012, growing to \$256.8 million in 2013.

⁴⁶ Note that the sum of labour income and taxes is greater than the total GDP impact as the two overlap (i.e., wages are taxed and some dollars accrue both as labour income and as tax revenue).

Table 7: Total expenditure related to arbitration activity in Toronto, ON

		2012	2013
<i>Survey</i>	Direct impact	\$256,274,084	\$273,259,692
	Multiplier impact	\$ -	\$ -
	Total	\$256,274,084	\$273,259,692
		2012	2013
<i>Alternative</i>	Direct impact	\$237,704,981	\$253,459,846
	Multiplier impact	\$ 3,136,830	\$ 3,347,097
	Total	\$240,841,811	\$256,806,943

Source: See appendices B.i and B.ii.

VIII. Conclusion

For good reason, arbitration resources tend to agglomerate by location. This tendency is balanced by the need for multiple locations throughout the world to provide additional flexibility and neutrality in disputes. Both factors make arbitration an attractive area for public and private support. Our report informs such efforts by estimating the direct expenditures associated with Toronto arbitrations. Using a survey of arbitration participants, we estimate \$256.3 million in total direct expenditures in 2012 from approximately 425 arbitrations. We estimate growth to \$273.3 million in 2013. To validate our results, we also use a secondary bottom-up estimate of arbitration expenditures based on individual itemized expenses. This secondary approach yields an estimate including multiplier effects of \$240.8 million in 2012, growing to \$256.8 million in 2013, and therefore is confirmatory of the estimates in our primary approach.

In summary, we estimate the total impact of arbitration on the economy of the City of Toronto to be \$256.3 million in 2012, growing to \$273.3 million in 2013.

To the extent that the facilities and capabilities of Arbitration Place act as a draw for Toronto as a preferred location for arbitrations or other efforts are made to accelerate growth in arbitration activity or to draw new international arbitration activity to the city and the country, expenditures may grow more quickly.

As far as we know, this is the first estimate of direct expenditures associated with Toronto arbitrations. The estimates help inform further discussions on efforts to promote domestic and international arbitration in Toronto and to help stakeholders prioritize their professional activities. Additional topics for future investigation might include:

- Identification of arbitration growth drivers in contract adoption and venue choices;
- Comparison of differences in arbitration site characteristics, and how Toronto could improve its relative positioning;
- Arbitration clause use across industries and the potential for cities to pursue industry-specific specialization as arbitration continues to grow; and
- Overall real direct and indirect costs differences between the use of arbitration and the use of courts to resolve commercial disputes.

Appendix A: Survey questions

This section includes complete copies of the counsel survey, arbitrator survey, and reporting agencies survey distributed by CRA in creating this report. Line breaks indicate page breaks for the survey taker and an asterisk indicates a mandatory question for participants. Unnumbered questions indicate optional applicable questions prompted by participant responses.

Counsel survey

Introduction

Welcome to this survey of counsel. It is being administered by Charles River Associates, an economic consulting firm. The survey will ask you for data and opinions that will be used to assess the economic impact of arbitrations in Toronto. We request that you provide answers that are as clear and accurate as possible. If you have any questions, please e-mail Justin Ho at jho@crai.com. We estimate this survey should take about fifteen minutes to complete, although individual times for completion can vary. You can save your progress and return later by clicking on the "Save and continue survey later" at the top of any survey page, saving responses on all previous pages. If you use this function, you will be asked for a valid email address, which will not be used in the data collection of the survey and will be kept strictly confidential. You may also take a break at any time as the survey will remain valid in an open browser window for several hours. However, if you exit the survey by closing your browser without completing or using the "Save and continue survey later" feature, you will be forced to re-start from the beginning. Instructions for entering the raffle for the iPad 3 are at the end of the survey. Please complete the survey by 5 pm EST on Monday, May 7th.

Screener

1) Your responses will be treated as confidential. Your responses will be used in aggregate along with responses from other counsel. At no time will you be individually identified in the reporting of results from this survey. Is this agreeable?

Yes

No

If "No:" Please explain why you responded 'NO' to the previous question.

In the past three years, have you participated as counsel in a hearing that was or will be held in Toronto?

Yes

No

2) What is your year of Call/Admission to the Bar?

Case number estimates/trends

3) Approximately how many partners and associates currently practice law in the litigation department/group at your firm? Please include partners and associates from all offices globally. Please answer 1 if you are a sole practitioner.

4) Of this number of partners and associates, how many are based in your Toronto office?

5) Provide your best estimate of the number of arbitrations (including ongoing arbitrations) handled by you during the past three years.

6) Provide your best estimate of the number of arbitrations (including ongoing arbitrations) handled by other members of your Toronto office during the past three years. If you are unable to make an informed estimate, please leave the question blank.

Trends

7) Over the past three years, has the number of arbitrations handled by your Toronto office:

Please choose only one of the three options above.

Increased

Decreased

Stayed the same

8) By what % (percent) has the number of arbitrations handled by your Toronto office increased over the past three years?

9) Why do you think the number of arbitrations handled by your Toronto office during the past three years has increased by this percentage?

10) By what % (percent) has the number of arbitrations handled by your Toronto office decreased over the past three years?

11) Why do you think the number of arbitrations handled by your Toronto office during the past three years has decreased by this percentage?

12) Why do you think the number of arbitrations handled by your Toronto office during the past three years has stayed the same?

Forecast

13) Relative to the past twelve months, in the next twelve months, do you expect the number of arbitrations handled by your Toronto office to:

- Increase
- Decrease
- Stay the same

14) By approximately what % (percent) do you expect the number of arbitrations handled by your Toronto office to increase during the next twelve months?

15) Why do you expect the number of arbitrations handled by your Toronto office to increase during the next twelve months?

16) By approximately what % (percent) do you expect the number of arbitrations handled by your Toronto office to decrease during the next twelve months?

17) Why do you expect the number of arbitrations handled by your Toronto office to decrease during the next twelve months?

18) Why do you expect the number of arbitrations handled by your Toronto office to stay the same during the next twelve months?

Additional Estimates

For the remainder of the survey questions, please only consider the arbitrations in which you personally participated as counsel during the past three years. Please include active and completed arbitrations.

19) What number of the arbitrations involved you as a:

- _____ Counsel to claimant
- _____ Counsel to respondent
- _____ Other role (Please specify)

20) If applicable, please specify the "other" role from the previous question.

21) Of the arbitrations in which you have participated, were any institutional arbitrations? (If yes, please report how many were institutional)

() Yes:

() No

If Yes: What number of the administered institutional arbitrations were administered by the:

_____ ICC International Court of Arbitration (ICC)

_____ London Court of International Arbitration (LCIA)

_____ American Arbitration Association/ICDR (AAA/ICDR)

_____ Permanent Court of Arbitration

_____ ADR Institute of Canada

_____ ADR Chambers

_____ International Centre for Settlement of Investment Disputes (ICSID)

_____ Other (please specify below)

If applicable, please specify the "other" administering organization from the previous question.

International/domestic and number of arbitrators

22) What number of the arbitrations were/are:

_____ International

_____ Domestic

23) What number of the arbitrations had/have:

_____ One arbitrator

_____ Three arbitrators

Hearings

24) Of the arbitrations, did/does/will any have a hearing? (If yes, please report how many)

() Yes

() No

If Yes: Of the arbitrations with a hearing, what number had hearings that lasted for (for ongoing arbitrations, include your best estimates of duration):

_____ 1 day

_____ 2 to 5 days

_____ 6 to 10 days

_____ 11 to 30 days

_____ More than 30 days

Industry and duration info

25) What number of the arbitrations primarily focused on each of the following industries:

_____ Construction/Engineering

_____ General Commercial

_____ IP/Technology

_____ Oil/Gas/Energy

_____ Other industry (specify below)

26) If applicable, please specify the "other" industry from the previous question.

27) Of the arbitrations during the last three years, what number lasted for a total duration (from commencement to award or conclusion) of (for ongoing arbitrations, please include your best estimates of duration):

_____ < 1 year

_____ 1 to <2 years

_____ 2 to <3 years

_____ 3 to <4 years

_____ 4 to <5 years

_____ 5 Years or longer

Dispute amounts and awards

28) What number of the arbitrations represented disputes valued (total amount of claims and counterclaims) at:

- _____ < CAD 1M
- _____ CAD 1M to < CAD 25M
- _____ CAD 25M to < CAD 50M
- _____ CAD 50M to < CAD 100M
- _____ CAD 100M or more

29) Has there been an award rendered in any of the arbitrations in which you have participated?

- Yes
- No

If Yes: What number of the arbitrations in which an award was rendered had a total award of:

- _____ < CAD 1M
- _____ CAD 1M to < CAD 25M
- _____ CAD 25M to < CAD 50M
- _____ CAD 50M to < CAD 100M
- _____ CAD 100M or more

Cost Information

30) For what number of the arbitrations were (for ongoing cases, please include your best estimates to the conclusion of the case) the total costs to your client (including lawyers, institutional fees, expert fees, arbitrator fees and disbursements):

- _____ < CAD 250K
- _____ CAD 250K to < CAD 500K
- _____ CAD 500K to < CAD 750K
- _____ CAD 750K to < CAD 1M
- _____ CAD 1M or more

31) What proportion/percentage of the lawyers' fees in the arbitrations in the question immediately above represented each of the following arbitration phases:

- _____ Pre-commencement of arbitration
- _____ Commencement and completion of exchange of written pleadings/memorials
- _____ Document exchange
- _____ Discovery of witnesses
- _____ Expert witness
- _____ Hearing preparation
- _____ Hearing
- _____ Post-hearing

32) What proportion/percentage of the total common costs (initially shared by the parties, whether or not they are ultimately awarded differently by the arbitral tribunal) is represented by each of the following items:

- _____ Court reporting/transcripts
- _____ Hearing venue costs
- _____ Arbitral tribunal fees and expenses
- _____ Arbitral institution fees
- _____ Joint expert fees
- _____ Other (please specify)

33) If applicable, please specify the "other" cost category from the previous question.

Arbitration seat selection

34) Of the arbitrations in which you participated, did you ever participate in the selection of the seat of the arbitration? (If yes, please provide the number in which you participated in the selection of the seat)

- () Yes:
- () No

If Yes: Describe the significance of each of the following factors on the choice of the seat of the arbitration (with 1 being highly significant and 7 being not significant).

	1 (highly significant)	2	3	4	5	6	7 (not significant)
Legal infrastructure (arbitration laws, track record enforcing arbitration agreement and arbitral award, impartiality)	()	()	()	()	()	()	()
Convenience	()	()	()	()	()	()	()
General infrastructure of the city (restaurants, hotels, etc.)	()	()	()	()	()	()	()
Location of the parties	()	()	()	()	()	()	()
Location of the arbitral institution	()	()	()	()	()	()	()
Other (please specify below)	()	()	()	()	()	()	()

If applicable, please specify the "other" factor from the previous question.

35) Of the arbitrations in which you participated, did you ever participate in the decision concerning the location (city) of the hearing (whether it was the seat or not)? (If yes, please provide the number in which you participated in the selection of the seat)

() Yes

() No

Toronto arbitration

36) Of the arbitrations in which you have participated that had a hearing, were any hearings located in a city other than Toronto?

Yes

No

For how many of the arbitrations in which you participated that had a hearing was the hearing located:

_____ In Toronto

_____ In another city

37) If applicable, why was Toronto selected as the location of the hearings?

Please list the other cities used as locations for hearings in the arbitrations in which you participated.

	City
1.	_____
2.	_____
3.	_____
4.	_____
5.	_____

Why were these cities selected as the locations of the hearings?

Arbitrator selection

38) For the arbitrations in which you participated, did you participate in the selection of the arbitrator(s)?

Yes

No

If Yes: Describe the significance of each factor on your choice of arbitrators (with 1 being highly significant and 7 being not significant).

	1 (highly significant)	2	3	4	5	6	7 (not significant)
Quality of awards	()	()	()	()	()	()	()
Reputation	()	()	()	()	()	()	()
Availability	()	()	()	()	()	()	()
Prior arbitration experience	()	()	()	()	()	()	()
Fairness	()	()	()	()	()	()	()
Knowledge of applicable law	()	()	()	()	()	()	()
Likelihood arbitrator will influence Chair	()	()	()	()	()	()	()

Proxy identifiers

This question is optional. If you do not wish to complete it, simply press the "Next" button.

39) The purpose of the following question is to avoid any duplication in accounting for the number of arbitrations handled by you and your fellow counsel. All your responses will be treated confidentially. For each of the arbitrations you handled or are handling for the past three years, please provide the first two letters of the name [excluding "the"] of both the first claimant and the first respondent. We believe that by using the first two letters of the parties' names, your answers will maintain the proceedings' confidentiality. Additionally, we will not disclose any information pertaining to this question in the results of the survey.

	Claimant	Respondent
1.	___	___
2.	___	___
3.	___	___
4.	___	___
5.	___	___
6.	___	___
7.	___	___
8.	___	___
9.	___	___
10.	___	___
11.	___	___
12.	___	___
13.	___	___
14.	___	___
15.	___	___
16.	___	___
17.	___	___
18.	___	___
19.	___	___
20.	___	___

Proxy identifiers (Cont.)

Do you need more space to input arbitration identifiers?

Yes

No

If Yes: Please use the space below to continue providing the first two letters of the names of both the first claimant and the first respondent for the arbitrations in which you participated or are participating for the past three years.

	Claimant	Respondent
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____
12.	_____	_____
13.	_____	_____
14.	_____	_____
15.	_____	_____
16.	_____	_____
17.	_____	_____
18.	_____	_____
19.	_____	_____
20.	_____	_____

Raffle entry

40) Please enter your e-mail address to be entered into a raffle for an iPad 3. Your e-mail address will be kept strictly confidential and will not be used in conjunction with your responses to the survey. Alternatively you may e-mail jho@crai.com directly with "Arbitration Survey Raffle Entry" as the subject line to enter.

Thank you!

Thank you for your responses. The data you provided will go a long way in helping us assess the economic impact of arbitrations in Toronto. For additional information please contact Justin Ho at Charles River Associates by e-mail at jho@crai.com.

Appendix B.i: Model variables and assumptions

<i>Model assumptions</i>		[a]	[b] Figure	[c]
[1]	Arbitration Volume Over Past Three Years		2948	
[2]	Arbitrations per Year		737	
[3]	% of Arbitrations per Year with Hearing in Toronto		57.8%	
[4]		\$ 250,000	61.8%	
[5]		\$ 750,000	21.6%	
[6]	Total Arbitration Cost Distribution	\$ 1,250,000	5.1%	
[7]		\$ 1,750,000	3.8%	
[8]		\$ 2,000,000	7.8%	
[9]	Total Cost per Matter: Survey		\$ 601,134	
[10]	Active Arbitrations with Toronto Hearings, 2012		426	
[11]	% Domestic Arbitrations		86%	
[12]	% International Arbitrations		14%	
			2012	2013
[13]	Arbitration Activity Growth Rate		N/A	6.63%
[14]	Total Cost per Domestic Matter: Alternative		\$ 370,075	
[15]	Total Cost per International Matter: Alternative		\$ 1,710,460	
			2012	2013
[16]	Survey Estimate		\$ 256,274,084	\$ 273,259,692
[17]	Alternative Estimate		\$ 237,704,981	\$ 253,459,846

Appendix B.i Notes & Sources

- [1] CRA survey.
- [2] The midpoint of the range ($[1][b] * 0.166$, $[1][b] * 0.333$). The minimum of the range represents a scenario in which there is full doublecounting, i.e., each side of an arbitration reported that arbitration as one arbitration in the total count, so the true per year count would be $[1][b] * (1/3) * (1/2)$. The maximum of the range represents a scenario with no arbitration doublecounting.
- [3] CRA survey.
- [4][a] - [8][b] CRA survey. Midpoints of cost ranges are taken.
- [9] $= [4][a] * [4][b] + [5][a] * [5][b] + [6][a] * [6][b] + [7][a] * [7][b] + [8][a] * [8][b]$.
- [10] $= [2][b] * [3][b]$.
- [11] - [13] CRA survey.
- [14] Appendix B.iii.
- [15] Appendix B.iv.
- [16][b] $= [9][b] * [10][b]$.
- [16][c] $= [16][b] * (1 + [13][c])$.
- [17][b] $= [10][b] * ([11][b] * [14][b] + [12][b] * [15][b])$.
- [17][c] $= [17][b] * (1 + [13][c])$.

Appendix B.ii: Multiplier eligible spending and impact

		Domestic 2012	International 2012		
<i>Per matter</i>		[a]	[b]	[c]	[d]
[1]	Accommodation	\$ -	\$ 25,309		
[2]	Food and beverage	\$ 4,008	\$ 8,271		
[3]	Local transportation	\$ 1,069	\$ 2,206		
[4]	Total	\$ 5,076	\$ 35,785		
				Total	
				2012	2013
[5]	Accommodation	\$ -	\$ 1,509,306	\$ 1,509,306	\$ 1,609,342
[6]	Food and beverage	\$ 1,469,506	\$ 493,237	\$ 1,962,744	\$ 2,092,832
[7]	Local transportation	\$ 391,868	\$ 131,530	\$ 523,398	\$ 558,089
[8]	Total	\$ 1,861,375	\$ 2,134,074	\$ 3,995,448	\$ 4,260,263
<i>TREIM results</i>					
		2012	2013		
[9]	GDP	\$ 3,136,830	\$ 3,347,097		
[10]	Labour income	\$ 1,425,011	\$ 1,544,397		
[11]	Taxes	\$ 1,024,158	\$ 1,092,379		
[12]	Jobs created	57	60		

Appendix B.ii Notes & Sources

- [1] - [4] [a] - [b] Table 4b.
= (Table 1 number of domestic arbitrations) * [x][a], where x is the row number minus four.
- [5] - [8] [a] Accommodation expenses not calculated for domestic arbitrations.
- [5] - [8] [b] = (Table 1 number of international arbitrations) * [x][b], where x is the row number minus four.
- [5] - [8] [c] = [x][a] + [x][b], where x is the row number.
- [5] - [8] [d] = [x][c] * (appendix B.i [13][c]), where [x] is the row number.
- [9] - [12] [a] TREIM results for 2012 figures. Baseline assumptions for TREIM are adopted, and spending is assumed to occur in the Toronto census division.
- [9] - [12] [b] TREIM results for 2013 figures. Baseline assumptions for TREIM are adopted, and spending is assumed to occur in the Toronto census division.

Appendix B.iii: Domestic arbitration alternative cost estimate

	[a]	[b]
<i>Legal expenses</i>		
[1] Number of legal counsel	3	
[2] Billed hours per counsel member	209	
[3] Billing rate (USD hourly)	\$400	
[4] Number of expert witnesses	2	
[5] Billed hours per expert witness	42	
[6] Billing rate (USD hourly)	\$375	
[7] CAD total	\$293,027	
<i>Arbitral expenses</i>		
[8] Number of arbitrators	1	3
[9] Billed hours per arbitrator	61	58
[10] Billing rate (USD hourly)	\$700	\$700
[11] CAD arbitral institution fee	\$6,000	\$6,000
[12] CAD total	\$50,323	\$132,428
<i>Accommodation expenses</i>		
[13] Personnel	6	8
[14] Transportation (USD per person/day)	\$40	\$40
[15] Meals and incidentals (USD per person/day)	\$150	\$150
[16] Arbitral venue fees (CAD per day)	\$950	\$950
[17] CAD total per day	\$2,133	\$2,528
<i>Arbitration volume</i>		
[18] Number of hearing days	4	
[19] % Arbitrations with one arbitrator	78%	
[20] % Arbitrations with three arbitrators	22%	
<i>Exchange rate</i>		
[21] USD to CAD exchange rate	1.038	
<i>Cost per matter</i>		
[22] Cost per matter	\$370,075	

Appendix B.iii Notes & Sources

- [1][a] Investment Treaty Arbitration Chronological Listing, http://old.italaw.com/chronological_list.htm. We use the average number (nine) of attorneys representing both parties in arbitrations available for years 2009-2012 for international arbitrations. For domestic arbitrations, a similar approach is used for the Financial Industry Regulatory Authority (FINRA) database of awards. Cases from the month of January in 2009-2012 were compiled and the average number of counsel representing both parties (three) was used. (FINRA Arbitration Awards Online, <http://finraawardsonline.finra.org/search.aspx>)
- [2] Steven C. Smith, International Commercial Arbitration, A Few Things Every Business Executive & Lawyer Should Know, Oregon State Bar International Law Section, January 2005, pp. 5-6 (ILS International Arbitration). The source figures represent attorney work hours for two attorneys per party in an international arbitration. Here, the figures were halved and adjusted to approximate domestic figures by eliminating hours related to international travel from the total hours figure.
- [3] Approximated from Robert Todd, The going rate - Canadian Lawyer's 2010 legal fees survey Canadian Lawyer magazine, June 2011, p. 36-43, which reported an average hourly billing rate of \$326 for lawyers with ten years of experience, and David Gantz, Investor-State Arbitration Under ICSID, the ICSID Additional Facility and the UNCTAD Arbitral Rules, U.S. Vietnam Trade Council Education Forum, p. 23, which states that legal fees for major law firms who represent investors and host governments range from \$200 to \$500 per hour, but may be negotiable (downward). Adjusted upward from discussions with local counsel.
- [4] ILS International Arbitration, pp. 5-6. Assumes one expert witness per party in an arbitration.
- [5] ILS International Arbitration, pp. 5-6. Figures adjusted to remove hours attributed to international travel.
- [6] Approximated SEAK, Inc., National Guide to Expert Witness Fees and Billing Procedures, 2004. SEAK reports that the average hourly fee for all experts was \$385 for in-court testimony, \$353 for depositions, and \$254 for file reviews and preparation. Adjusted upward from discussions with local counsel.
- [7] = [21]* (([1] * [2] * [3]) + ([4] * [5] * [6])).
- [8] CRA assumption. Most arbitral matters take place before one or a panel of three arbitrators.
- [9] ILS International Arbitration, pp. 5-6.
- [10] ADR Chambers, Arbitration Fees, <http://adrchambers.com/ca/arbitration/regular-arbitration/arbitration-fees/>, accessed 6/6/2012. Adjusted upward from discussions with local counsel.
- [11] ADR Canada National Arbitration Rules, p. 22. Conservative scenario assumes a claim between \$150,000 to \$500,000; CRA and aggressive scenarios assume a claim between \$500,000 and \$5,000,000.
- [12] = ([8] * [9] * [10] * [21]) + [11].
- [13] = [1] + [4] + [8].
- [14] Assumes a USD 20 cab ride to and from the arbitral venue each day.
- [15] ILS International Arbitration, pp. 5-6. ILS assumes a USD 75 per diem for meals and incidental expenses, but CRA assumes USD 150.
- [16] ADR Chambers, Arbitration Fees, <http://adrchambers.com/ca/arbitration/regular-arbitration/arbitration-fees/>, accessed 6/6/2012.
- [17] = [13] * [21] * ([14]+[15]) + [16].
- [18] ILS International Arbitration, pp. 5-6 assumes a 4 day hearing. CRA's survey yielded a median arbitral hearing length range of 2-5 days.
- [19] - [20] CRA survey.
- [21] Closing USD-CAD rate on June 5, 2012 from <http://www.bankofcanada.ca/rates/exchange/>.
- [22][a-b] = [7] + [19] * ([12][a] + [17][a] * [18]) + [20] * ([12][b] + [17][b] * [18]).

Appendix B.iv: International arbitration alternative cost estimate

	[a]	CRA	[b]
<i>Legal expenses</i>			
[1]	Number of legal counsel	9	
[2]	Billed hours per counsel member	329	
[3]	Billing rate (USD hourly)	\$400	
[4]	Number of expert witnesses	2	
[5]	Billed hours per expert witness	80	
[6]	Billing rate (USD hourly)	\$375	
[7]	CAD total	\$1,291,687	
<i>Arbitral expenses</i>			
[8]	Number of arbitrators	1	3
[9]	USD fees per arbitrator	\$117,096	\$117,096
[10]	USD arbitral institution fees	\$60,015	\$60,015
[11]	CAD total	\$183,841	\$426,933
<i>International travel expenses</i>			
[12]	Personnel	12	14
[13]	Transportation (USD per person)	\$2,885	\$2,885
[14]	CAD total	\$35,936	\$41,925
<i>Accommodation expenses</i>			
[15]	Personnel	12	14
[16]	Transportation (USD per person/day)	\$40	\$40
[17]	Meals and incidentals (USD per person/day)	\$150	\$150
[18]	Lodging (USD per person/night)	\$459	\$459
[19]	Arbitral venue fees (CAD per day)	\$950	\$950
[20]	CAD total per day	\$9,034	\$10,381
<i>Arbitration volume</i>			
[21]	Number of hearing days	4	
[22]	% Arbitrations with One Arbitrator	36%	
[23]	% Arbitrations with Three Arbitrators	64%	
<i>Exchange rate</i>			
[24]	USD to CAD exchange rate	1.038	
<i>Cost per matter</i>			
[25]	Cost per matter	\$1,710,460	

Appendix B.iv Notes & Sources

- [1] Average number of attorneys representing parties in arbitrations available from the Investment Treaty Arbitration database (http://italaw.com/chronological_list.htm) for years 2009-2012.
- [2] Steven C. Smith, International Commercial Arbitration, A Few Things Every Business Executive & Lawyer Should Know, Oregon State Bar International Law Section, January 2005, pp. 5-6 (ILS International Arbitration). The figures presented there represent attorney work hours for two attorneys per party in an international arbitration.
- [3] Approximated from Robert Todd, The going rate - Canadian Lawyer's 2010 legal fees survey Canadian Lawyer magazine, June 2010, p. 36-43, which reported an average hourly billing rate of \$337 for lawyers with ten years of experience, and David Gantz, Investor-State Arbitration Under ICSID, the ICSID Additional Facility and the UNCTAD Arbitral Rules, U.S. Vietnam Trade Council Education Forum, p. 23, which states that legal fees for major law firms who represent investors and host governments range from \$200 to \$500 per hour, but may be negotiable (downward). Adjusted upward from conversations with local counsel.
- [4] ILS International Arbitration, pp. 5-6. Assumes one expert witness per party in an arbitration.
- [5] ILS International Arbitration, pp. 5-6.
- [6] Approximated SEAK, Inc., National Guide to Expert Witness Fees and Billing Procedures, 2004. SEAK reports that the average hourly fee for all experts was \$385 for in-court testimony, \$353 for depositions, and \$254 for file reviews and preparation. Since arbitration does not involve in-court testimony, an average hourly rate of \$300 (the approximate average of the deposition and preparation rates) is reasonable. Adjusted upward from conversations with local counsel.
- [7] = [24]* (([1] * [2] * [3]) + ([4] * [5] * [6])).
- [8] CRA assumption. Most arbitral matter take place before one or a panel of three arbitrators.
- [9]-[10][a-b] International Chamber of Commerce Arbitration Cost Calculator for a dispute value of USD 12,500,000.
- [11] = (([8] * [9]) + [10]) * [24].
- [12] = [1] + [4] + [8].
- [13] Average of nonstop roundtrip business class flight prices found on <http://www.expedia.com> from August 27th-August 29th 2012 for flights from New York City, NY (JFK) to Toronto, ON (YYZ) and Paris, FR (CDG) to Toronto, ON (YYZ), departing January 15, 2013 and returning January 20, 2013.
- [14] = [12] * [13] * [24].
- [15] = [1] + [4] + [8].
- [16] Assumes a USD 20 cab ride to and from the arbitral venue each day.
- [17] ILS International Arbitration, pp. 5-6. ILS assumes a \$75 per diem for meals and incidental expenses, but CRA assumes \$150. Adjusted upward from conversations with local counsel.
- [18] Average of one-night prices for five-star hotels excluding one outlier from www.expedia.com as of August 27, 2012 for the dates January 14, 2013 to January 20, 2013.
- [19] ADR Chambers, Arbitration Fees, <http://adrchambers.com/ca/arbitration/regular-arbitration/arbitration-fees/>, accessed 6/6/2012.
- [20] = [15] * [24] * ([16] + [17] + [18]) + [19].
- [21] ILS International Arbitration, pp. 5-6 assumes a 4 day hearing. CRA's survey yielded a median arbitral hearing length range of 2-5 days.
- [22] - [23] White & Case LLP, 2010 International Arbitration Survey: Choices in International Arbitration, 2010, p. 25. Of the 73% of respondents with a preference, 87% preferred three arbitrator panels to sole arbitrators. For a conservative estimate, CRA assumes those not expressing a preference default to scenarios with one arbitrator, since many arbitral institutions require mutually expressed preference for three arbitrators in order to have a tribunal.
- [24] Closing USD-CAD rate on June 5, 2012 from <http://www.bankofcanada.ca/rates/exchange/>.
- [25] = [7][a] + [22][a] * (([11][a] + [14][a] + [20][a] * [21][a]) + [23][a] * (([11][b] + [14][b] + [20][b] * [21][a])).