



**Toronto Commercial  
Arbitration Society**

**Toronto Commercial Arbitration Society  
Gold Standard© Course in Commercial Arbitration  
Participation by video conference available throughout Canada**

**Faculty Members:**

Douglas Harrison, FCIArb, Course Director  
Prof. Joshua Karton  
Megan Keenberg, C.S., Q. Arb.  
Eric Morgan, Q. Arb  
Lisa Munro, FCIArb

**2021-2022 COURSE OUTLINE WITH  
FACULTY (Faculty as of Sept. 10, 2021)**

**Key to Symbols and Notes**

**\*In-Person classes will be held at Arbitration Place in Toronto as public health regulations permit, but the full course will still be available to all participants via Zoom in 2021-2022**

Additional faculty will be added. Changes to faculty may be made based on availability.

Curriculum is subject to modifications prior to and during the course.

Gold Standard© is a course in commercial arbitration that meets, or – as with this course – exceeds, the requirements established by the ADR Institute of Canada for the Q.Arb designation.

<b>SESSION 1</b>	<b>INTRODUCTORY SESSION (Harrison, Karton, Keenberg, Morgan, Munro, Casey)</b> <b>Saturday, September 11, 2021, 11:00 a.m. to 3 p.m. [Note: 4-hour class]</b>
	<ul style="list-style-type: none"> <li>• Course structure, primary and guest faculty, topics that will and will not be covered</li> <li>• The idea of arbitration</li> <li>• Historical development of arbitration</li> <li>• How commercial arbitration differs from other forms of dispute resolution and other forms of arbitration</li> <li>• Core concepts of arbitration law and practice</li> <li>• When and why parties choose arbitration</li> <li>• The Canadian legislative regime respecting arbitration</li> <li>• Important international instruments relating to arbitration</li> <li>• Institutional and <i>ad hoc</i> arbitration and the role of procedural rules</li> </ul>

**Video Supplement:** “Arbitration the Quiet Triumph” (Stockholm Chamber of Commerce)

<b>SESSION 2</b>	<b>ARBITRATION AGREEMENTS (Keenberg, Karton, Seers, Godil)</b> <b>Wednesday, September 22, 2021, 6:30 p.m. to 8:30 p.m.</b>
	<ul style="list-style-type: none"> <li>• The agreement to arbitrate (pre- and post-dispute)</li> <li>• Key elements of arbitration agreements (who, what, where, when and how)</li> <li>• Provision for pre-arbitration relief (interim relief, appointment)</li> <li>• Institutional and <i>ad hoc</i> clauses</li> <li>• Investor-State arbitration – agreement by treaty</li> </ul>

<b>SESSION 3</b>	<b>TRIBUNAL FORMATION (Morgan, Krasula)</b> <b>Wednesday, October 6, 2021, 6:30 p.m. to 8:30 p.m.</b>
	<ul style="list-style-type: none"> <li>• The importance of arbitrator selection</li> <li>• Arbitrator qualifications and qualities</li> <li>• Options and issues in <i>ad hoc</i> arbitration</li> <li>• Institutions and appointing authorities</li> <li>• Provisions of the arbitration agreement</li> <li>• Considerations for sole arbitrators and tribunal panels</li> <li>• Practical considerations when tribunals are formed (e.g., availability, financial arrangements, immunity)</li> <li>• Arbitrator interviews</li> <li>• Ethical issues</li> </ul>

*Arbitration clause drafting exercise will be handed out at Session 3. Due Monday October 18, 2021. Exercise will be discussed at Session 4.*

<b>SESSION 4</b>	<b>DRAFTING AN ARBITRATION CLAUSE</b> (Keenberg, Karton, Harrison, Munro, Morgan) <b>Wednesday, October 20, 2021, 6:30 p.m. to 8:30 p.m.</b>
	<ul style="list-style-type: none"> <li>• Discussion of exercise: Drafting an arbitration clause</li> </ul>

<b>SESSION 5</b>	<b>ARBITRATION ETHICS (PART 1)</b> (Munro, Casey, Hopkins, Goldstein, Cicchetti) <b>Wednesday, November 3, 2021, 6:30 p.m. to 8:30 p.m.</b>
	<ul style="list-style-type: none"> <li>• Arbitrator interviews</li> <li>• Conflicts of interest</li> <li>• Disclosure obligations</li> <li>• Discussion of arbitrator ethics scenarios</li> </ul>

<b>SESSION 6</b>	<b>ARBITRATION PROCEDURE (PART 1)</b> (Keenberg, Morrison, Walker) <b>Wednesday, November 17, 2021, 6:30 p.m. to 8:30 p.m.</b>
	<ul style="list-style-type: none"> <li>• Sources of procedural rules</li> <li>• International vs non-international procedure</li> <li>• <i>Ad hoc</i> vs institutional</li> <li>• Procedural options and preferences</li> <li>• Optimizing the First Procedural Meeting (meeting agenda)</li> <li>• Procedural Order #1</li> </ul>

*Materials for Mock First Procedural Meeting exercise will be handed out at Session 6.*

<b>SESSION 7</b>	<b>ARBITRATION PROCEDURE (PART 2)</b> (Keenberg, Harrison, Munro, Horton, Morrison, Leon, Kuehl) <b>Wednesday, December 1, 2021, 6:30 p.m. to 8:30 p.m.</b>
	<ul style="list-style-type: none"> <li>• Exercise: Mock First Procedural Meeting</li> <li>• Discussion of mock exercise</li> <li>• Master Class on First Procedural Meeting</li> </ul>

**Video Supplement:** Focus on International Arbitration (Terry, Judge, Horton)

<b>SESSION 8</b>	<b>JURISDICTION (PART 1) (Munro, Barrington, McArthur, McCutcheon) Wednesday, December 8, 2021, 6:30 p.m. to 8:30 p.m.</b>
	<ul style="list-style-type: none"> <li>• Jurisdictional challenges and grounds</li> <li>• Preliminary motions to determine jurisdiction</li> <li>• Motions to stay litigation in favour of arbitration</li> <li>• Overview of award writing</li> </ul>

*Materials for jurisdiction exercise will be handed out at Session 8. Due Friday, January 7, 2022.*

<b>SESSION 9</b>	<b>JURISDICTION (PART 2) (Munro, Cundari, Doria) Wednesday, January 19, 2022, 6:30 p.m. to 8:30 p.m.</b>
	<ul style="list-style-type: none"> <li>• Feedback on writing a decision on jurisdiction</li> <li>• Motions to stay litigation in favour of arbitration</li> <li>• Court intervention in arbitrations</li> </ul>

<b>SESSION 10</b>	<b>MOTIONS FOR EMERGENCY AND INTERIM RELIEF/ CYBER SECURITY AND DATA PROTECTION (Morgan, Cohen) Wednesday, February 2, 2022, 6:30 p.m. to 8:30 p.m.</b>
	<ul style="list-style-type: none"> <li>• Interim relief from the courts</li> <li>• Interim relief from the tribunal</li> <li>• Interim relief from an emergency arbitrator</li> <li>• Procedures and standards for the granting of interim relief</li> </ul> <p>Cyber security and data protection concerns in international and domestic arbitration</p>

*Materials for interim relief exercise will be handed out at Session 10. Due Friday, February 11, 2022.*

<b>SESSION 11</b>	<b>ARBITRATION ETHICS (Part 2) (Munro, Seers, Meighen, Tomasich) Wednesday, February 16, 2022, 6:30 p.m. to 8:30 p.m.</b>
	<ul style="list-style-type: none"> <li>• Right to appear as counsel in arbitrations</li> <li>• Right to practice as arbitrator</li> <li>• Legal culture and arbitration ethics in international arbitration</li> <li>• Right of the tribunal to control counsel conduct</li> <li>• Arbitrator authority to impose cost sanctions for misconduct</li> <li>• Insurance for arbitration practice</li> <li>• Ethical issues re arbitrator compensation</li> </ul>

<b>SESSION 12</b>	<b>MOTION FOR INTERIM RELIEF (Morgan, Munro, Keenberg, Karton, Harrison)</b> <b>Wednesday, March 2, 2022, 6:30 p.m. to 8:30 p.m.</b>
	Feedback on Deciding a Motion for Interim Relief/Open Discussion on Session

<b>SESSION 13</b>	<b>THE HEARING (Harrison, Leon, Hopkins)</b> <b>Wednesday, March 9, 2022, 6:30 p.m. to 8:30 p.m.</b>
	<ul style="list-style-type: none"> <li>• Material for the hearing</li> <li>• Schedule and time allocations (equality vs fairness)</li> <li>• Due process issues (adjournments, new evidence)</li> <li>• Rules of evidence (relevance, materiality, <i>Browne v Dunn</i>)</li> <li>• Privilege (applicable law issues)</li> <li>• Tribunal interactions and etiquette</li> <li>• Pre- and post-hearing submissions</li> </ul>

**Video Supplement:** Advocacy in International Arbitration (Jones, Webster, Rees, Horton)

<b>SESSION 14</b>	<b>ARBITRAL AWARDS (Harrison, Horton)</b> <b>Wednesday, March 23, 2022, 6:30 p.m. to 8:30 p.m.</b>
	<ul style="list-style-type: none"> <li>• Types of awards and decisions</li> <li>• Formal requirements of an award</li> <li>• Substantive requirements</li> <li>• Fairness issues</li> <li>• Dealing with costs and interest</li> <li>• Drafting an award</li> </ul>

*Initial materials for the Final Award writing exercise will be distributed at Session 14.*

<b>SESSION 15</b>	<b>TRIBUNAL DYNAMICS (Harrison, Richler, Whitesell, Alvarez)</b> <b>Wednesday, April 6, 2022, 6:30 p.m. to 8:30 p.m.</b>
	<ul style="list-style-type: none"> <li>• Role of the chair</li> <li>• Role of the party-appointed tribunal members</li> <li>• Allocation of responsibilities</li> <li>• Coordinating fees</li> <li>• In the hearing room</li> <li>• Deliberations and drafting</li> <li>• Dissenting reasons</li> </ul>

**Video Supplement:** Tribunal Dynamics (Binnie, Morrison, Horton)

Second set of materials for the Final Award writing exercise will be delivered at Session 15.

<b>SESSION 16</b>	<b>APPEALS, SETTING ASIDE AND ENFORCEMENT OF AWARDS</b> (Harrison, Sirivar) <b>Wednesday, April 20, 2022, 6:30 p.m. to 8:30 p.m.</b>
	<ul style="list-style-type: none"> <li>• Availability of an appeal</li> <li>• Leave to appeal (where applicable)</li> <li>• Standard of review on appeal</li> <li>• Grounds for setting aside an award</li> <li>• Enforcement of an award</li> </ul>

**Video Supplement:** Investment Arbitration (Wisner, Kronby)

*Final Material for the Final Award writing exercise will be delivered at Session 16. Final awards will be due at 9 am on Friday, April 22, 2022.*

<b>*SESSION 17</b>	<b>CONCLUDING SESSION</b> (Harrison, Karton, Keenberg, Morgan, Munro, Barrington, Luu, Crow, Ghikas, Horton, Cicchetti) <b>Saturday, May 7, 2022, 11:00 a.m. to 3:00 p.m. [Note: 4-hour class]</b>
	<ul style="list-style-type: none"> <li>• Discussion of award writing exercise</li> <li>• Arbitration Hearings</li> <li>• The Arbitration marketplace</li> <li>• Development of an arbitration career</li> </ul>