



Young Canadian Arbitration Practitioners
Jeunes praticiens canadiens de l'arbitrage



YCAP/Secretariat Costs Survey – The Cost of Arbitration in Canada

REPORT PREPARED BY
Young Canadian Arbitration Practitioners (YCAP) and
Secretariat Advisors

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Overview

“How much will an arbitration cost?”...

...is a common and completely reasonable question that many parties ask counsel when considering arbitration as a means of dispute resolution - often followed by “How much of that can I get back if I win?”. Because of the confidential nature of most arbitrations, counsel are often left to draw only on their own experiences and those of their immediate colleagues to try to provide an answer.

Young Canadian Arbitration Practitioners (YCAP) and Secretariat Advisors therefore undertook a survey to collect widely and share widely concrete data from a broad range of arbitrations seated in Canada to provide parties, counsel and arbitrators with better information about costs in arbitration. Reflecting two years of work, the results of the survey are set out below. This analysis is based on over 50 anonymized survey responses about Canadian-seated arbitrations and their costs awards, meaning legal and expert fees and disbursements. Like any survey, this work has its limitations, but the survey provides a better understanding of how much parties sought in costs, how much they were awarded, and why.

Report Sections

This report is divided into four sections:

- **Section A** describes the core attributes of the arbitrations that make up the survey results (e.g. domestic or international; ad hoc or institutional; and sole arbitrator or a panel of arbitrators).
- **Section B** describes the key findings of the survey regarding the amounts claimed, the amounts awarded and the reasons for the awards.
- **Section C** describes the methodology used to collect and analyze the data.
- **Appendix 1** contains a copy of the survey questions.

Overview

Key Findings

The key findings of the survey are:

- In the majority of cases surveyed, the costs claim was less than or equal to 10% of the main claim value.
- Claimants were more successful in their costs claims when they had succeeded overall, rather than when they had experienced mixed success, but even in the latter category they made material costs recoveries. By comparison, whereas respondents also recovered a significant portion of their costs claimed when they were successful, in cases of mixed success, respondents only rarely recovered their costs.
- While claimants (on average) recovered around three-quarters of claimed costs when the main claim succeeded in full, respondents who successfully defended claims in full recovered just over half of their claimed costs on average.
- Costs claimed tend to be higher in international cases than in domestic matters, but costs recovery percentages tend to be lower. There is a less clear signal emerging from the ad hoc versus institutional analysis.
- Overall, when there is a clear 'winner' and a costs award is made, the successful party tends to recover around 80% of its claimed costs on average.
- Even when there is a mixed result, the party that recovers costs can still make a substantial recovery, averaging in the region of 60%.
- By far the most common arguments deployed to support claims for costs related to the outcome of the claim, and the norm that the losing party should pay the winning party's costs. Settlement-related conduct was also relevant, but it appears that refusal to mediate did not arise (at least within this survey population) as an argument relating to costs.

We hope that this survey report is instructive and stimulates further investigation and debate. With better information and understanding, parties, counsel and arbitrators should be able to make better decisions to ensure that arbitration is a more cost-effective means of dispute resolution.

The survey's research was led by **Eric Morgan (Kushneryk Morgan LLP), Donny Surtani (Crown Office Chambers), Sarah Firestone (Osler, Hoskin & Harcourt LLP), Joanne Luu (Burnet, Duckworth & Palmer LLP), and Bruno Savoie (City-Yuwa Partners)**.¹ The tasks of collating and analysing the survey data, assembling and presenting the findings, were performed by **Chris Milburn CPA, CMA, CBV and Inkoo Lee CPA, CFA, CBV of Secretariat Advisors.**

Section A: Core Attributes of the Survey Data

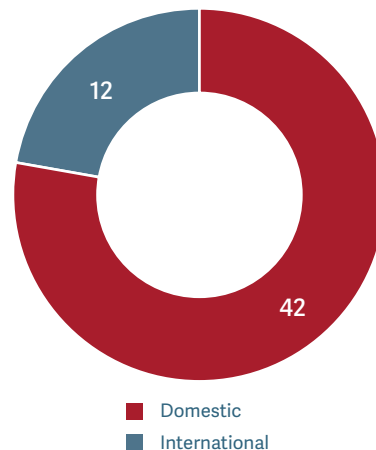
Summary

This section describes the core attributes of the survey population in terms of whether the arbitrations were domestic or international, whether they were conducted ad hoc or under institutional rules, the amounts in dispute, whether they were decided by a sole arbitrator or a three-member panel and where the arbitrations were seated.

Are the arbitrations domestic or international?

The survey results were mostly obtained in respect of domestic arbitrations (42 proceedings, representing 78% of the results). International matters account for 22% of the cases, with a total of 12 cases. Whether an arbitration was categorized as domestic or international was up to the survey participants to determine, presumably, based on the definition of an international commercial arbitration as set out at Article 1(3) of the 2006 UNCITRAL Model Law on International Arbitration.

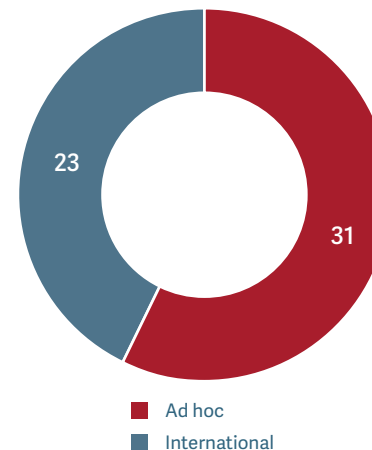
Figure 1. The number of domestic and international arbitrations.



Going at it alone or with institutional assistance?

Regarding the type of arbitration, ad hoc arbitrations were more prevalent in the survey results than institutional arbitrations. Ad hoc arbitrations accounted for 57% of the surveyed cases, with 31 cases, while institutional arbitrations represented 43% of the cases, with a total of 23 cases.

Figure 2. The number of ad hoc and institutional arbitrations



Focusing on domestic arbitrations, ad hoc proceedings accounted for a greater number of cases with 26 cases while institutional arbitration accounted for 16 cases. Overall, ad hoc and institutional arbitrations represented 57% and 43% of the surveyed cases, respectively. In contrast, international arbitration saw a greater use of institutional arbitration with 7 cases compared to 5 cases of ad hoc arbitration.

Figure 3. The number of cases surveyed and % by core attributes

Number of cases	Ad hoc	Inst.	Total
Domestic	26	16	42 (77.8%)
International	5	7	12 (22.2%)
Total	31 (57.4%)	23 (42.6%)	54 (100%)

Section A: Core Attributes of the Survey Data

What were the amounts in dispute?

The survey elicited data regarding arbitrations involving a wide range of amounts in dispute. The distribution of amounts in dispute was categorized into eight dollar intervals based on the amount claimed (in Canadian dollars) and one category where a party primarily sought declaratory relief.

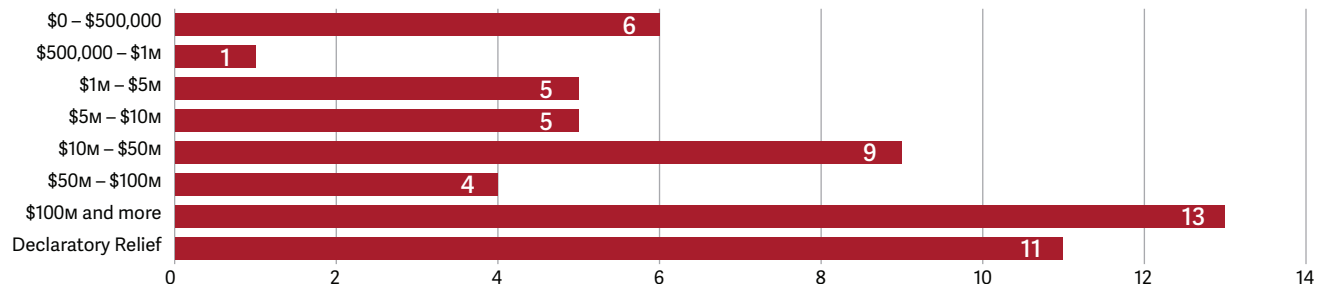
The survey data included arbitrations involving the following amounts in dispute: Arbitrations involving very high amounts in dispute (\$100 million or more) accounted for the largest number of cases among all surveyed cases, totalling nearly a quarter of cases surveyed. This pattern held true across sub-groups of arbitrations, such as within ad hoc

or institutional, as well as within domestic or international. In both types of arbitrations, and in both domestic and international matters, disputes involving large amounts were the most common among the surveyed cases.

The survey found that most cases seeking declaratory relief were domestic arbitrations, with 10 cases, compared to only one international arbitration case. Within the domestic cases, 6 were ad hoc and 4 were institutional, indicating that there is no clear preference for a specific arbitration format when the parties are seeking non-monetary relief.

Figure 4. Dispute amounts from the surveyed cases

Amounts in Dispute (Claimed Amounts)	Number of cases	% of cases
\$0 – \$500,000	6	11.1%
\$500,000 – \$1M	1	1.9%
\$1M – \$5M	5	9.3%
\$5M – \$10M	5	9.3%
\$10M – \$50M	9	16.7%
\$50M – \$100M	4	7.4%
\$100M and more	13	24.1%
Declaratory Relief	11	20.4%
Total	54	100%

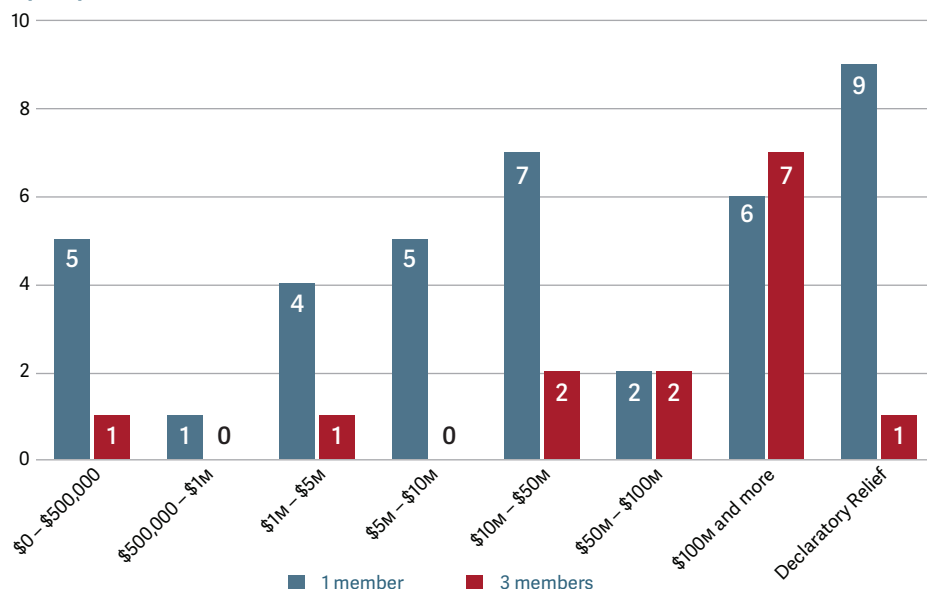


Section A: Core Attributes of the Survey Data

Are three heads better (or more frequently used) than one?

The survey data revealed that cases with a single tribunal member made up 72% of the cases surveyed across all types of arbitrations, regardless of the amount in dispute or whether declaratory relief was sought. Arbitrations with three tribunal members made up 26% of the cases surveyed, however, these tended to involve a greater amount in dispute and were less common in cases where non-monetary relief was sought. In cases involving more than \$100 million having a three person tribunal was slightly more common than a single arbitrator: 54% (7 cases) were decided by a panel as compared to 46% (6 cases) by a sole arbitrator.

Figure 5. The distribution of answered cases by amount in dispute per the number of tribunal members²



Where are the arbitrations seated?

In the instructions and communications to solicit participants, the survey only sought to collect data regarding arbitrations which were seated in Canada, irrespective of the nationalities of the parties, counsel or arbitrators. Among the Canadian cases, 16 were located in Ontario (with seats in Kingston, Ottawa, and Toronto), 15 in Alberta (with seats in Calgary and Northern Alberta First Nation), 13 in British Columbia (with seats in Vancouver, Victoria and Kamloops), 6 in Quebec (with a seat in Montréal), and 1 in Saskatchewan (with a seat in Saskatoon).

Notwithstanding the scope of this survey, data in respect of a small number of arbitrations seated outside Canada was submitted by survey participants. Out of the 54 surveyed cases, 51 were seated in Canada, with one case each in the U.S., the U.K., and Brazil.³

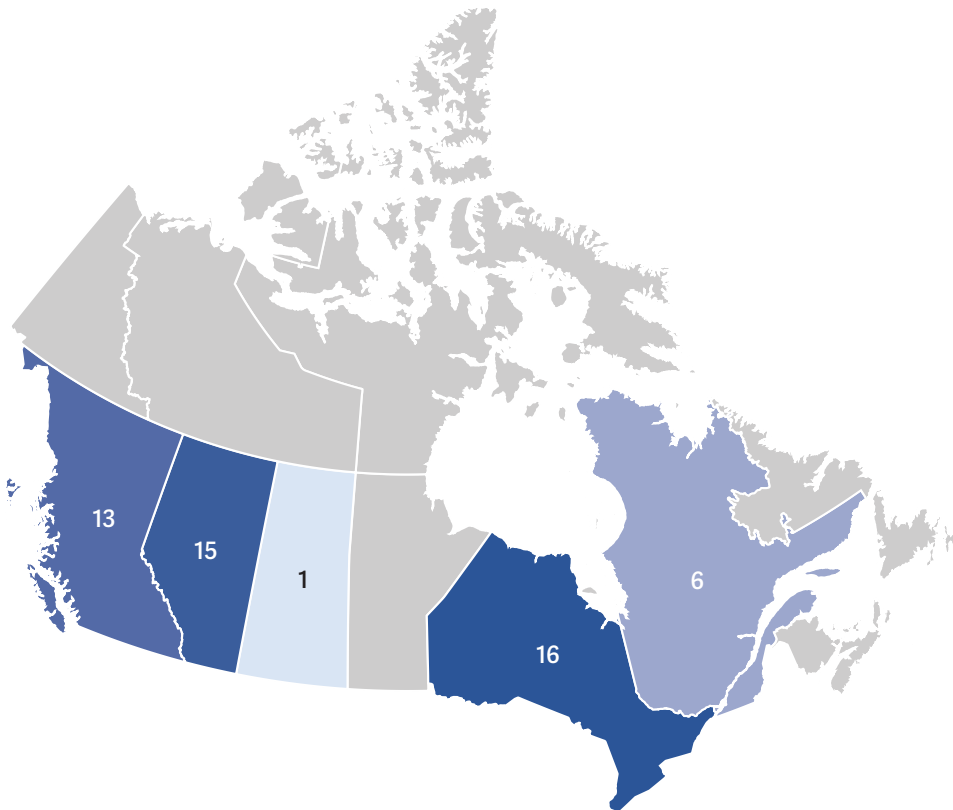
Figure 6. Claim amount distribution by province

Claim amount group (CAD)	Location of Venue					Total Canada	Outside of Canada
	AB	BC	ON	QC	SK		
\$0 – \$500,000	1	2	1	2	–	6	–
\$500,000 – \$1M	–	1	–	–	–	1	–
\$1M – \$5M	1	1	2	1	–	5	–
\$5M – \$10M	2	1	2	–	–	5	–
\$10M – \$50M	3	2	1	1	1	8	1
\$50M – \$100M	–	–	3	1	–	4	–
\$100M and more	4	1	5	1	–	11	2
Declaratory Relief	4	5	2	–	–	11	–
Total	15	13	16	6	1	51	3
% by Canada Total	29.4%	25.5%	31.4%	11.8%	1.9%	100%	

2. In one case where declaratory relief was sought, there was no response to the question regarding the number of tribunal members. As a result, it has been omitted from the chart.
 3. The survey was publicized to a primarily Canadian group of respondents. Cases seated outside Canada were included as appropriate.

Section A: Core Attributes of the Survey Data

Figure 7. Map of claim amount distribution by province



Ontario was the most popular province among the 51 Canadian-seated survey results, accounting for 31% with a total of 16 cases. Alberta accounted for 29% of the cases with 15 cases, followed by British Columbia with 25% of the cases with 13 cases. Quebec represented 12% of the cases with 6 cases, and Saskatchewan accounted for 2% of the cases with only 1 case.

The vast majority of the highest value cases (\$100 million and more) had a seat in the provinces of Ontario (5 cases) and Alberta (4 cases), while only one such case had a seat in each of British Columbia and Quebec. By contrast, British Columbia and Quebec prevailed as a seat in the least expensive cases (\$0 – \$500,000) with two cases seated in each of those provinces, while in each Alberta and Ontario, only one of such cases had a seat. In cases where declaratory relief was sought, British Columbia had the most cases (5 cases), followed closely by Alberta (4 cases) and Ontario (2 cases).

In terms of arbitrations seated outside Canada, the disputes in these cases involved disputed amounts with \$500 million for the case in the U.S., \$1.3 billion for the case in the U.K., and \$26 million for the case in Brazil.

Section B: Costs

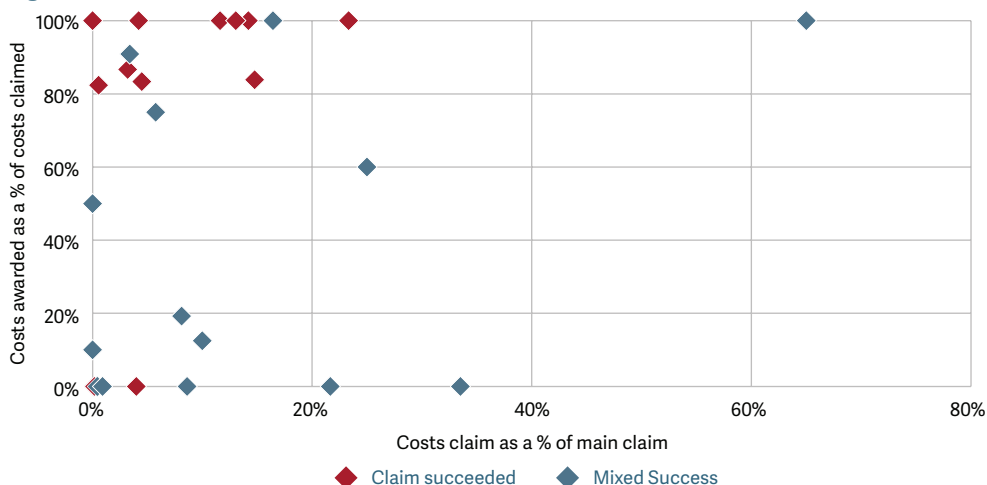
Are costs claims generally successful?

CLAIMANTS' COSTS CLAIMS

The survey identified 19 cases (16 domestic, three international) where the claim was reported to have succeeded. In 13 of those, the claimant advanced a claim for its costs.⁴ In a further 18 cases (14 domestic, four international), the outcome was described as "mixed success" and of these 18 cases, there were 14 instances where the claimant advanced a costs claim.

Taking the 27 claimants' costs claims together (13 successful claims and 14 "mixed success" claims), the claimant secured a costs award in 22 instances (and in 9 of those cases it was awarded the full amount sought). The distribution of the amount of the costs claimed as a percentage of the main claim value, and the amount of the costs awarded as a percentage of costs claimed, is shown below.⁵

Figure 8. Claimants' costs claims



In many cases, the costs claim was less than or equal to 10% of the main claim value, but in 10 instances it exceeded 10%. Only in five of the 27 cases did the cost claim exceed 20% of the main claim value. However, the fact that the costs claim exceeded 10% of claim value does not appear to have prevented the tribunal from awarding the full amount of costs sought – that happened in six cases in the survey population, including on two occasions when the claim outcome was described as "mixed success".

Overall, as one might expect, claimants were more successful in their costs claims when they had succeeded overall, rather than when they had enjoyed mixed success, but even in the latter category they made material costs recoveries:

Figure 9. Claimant costs recovery summary

	Claim succeeded	Mixed success	Overall
Total number of cases	13	14	27
Awarded with full amount claimed	7	2	9
Claimant denied costs recovery	–	5	5
Average costs claimed (\$M)	2.18	4.54	3.4
Award as % of costs claim			
Simple average	79.7	37.0	57.6
Weighted average	91.3	33.7	51.4

4. Where it did not, this appears to have been because the applicable rules and/or the parties' agreement precluded a claim for costs.
 5. Where the claim was for declaratory relief, it was not possible to calculate a figure for costs claimed as a percentage of the claim value. In these cases, the main claim value was shown as nil in the chart.

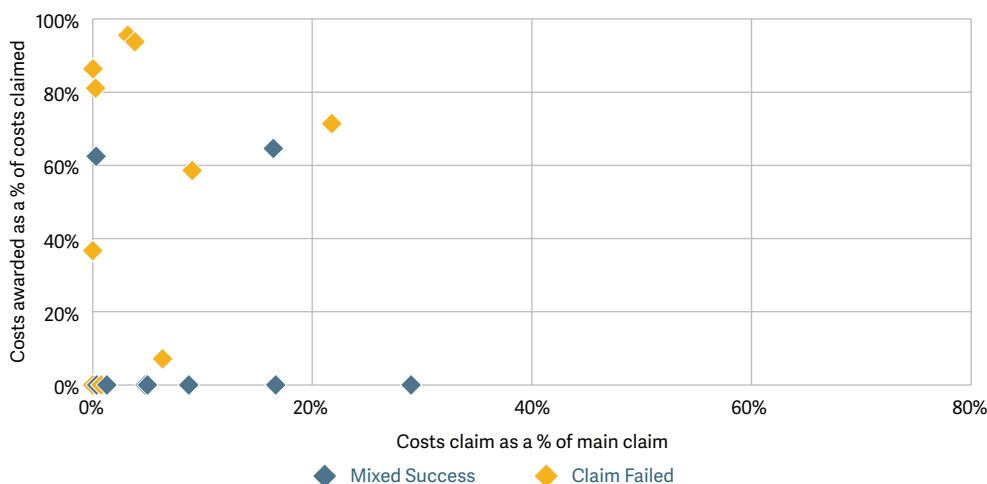
Section B: Costs

RESPONDENTS' COSTS CLAIMS

The survey identified 18 cases of "mixed success" referred to in the preceding discussion; the respondent advanced a costs claim in 12 of them.⁶ Further, of 12 cases (seven domestic, five international) where the claim failed; the respondent claimed costs in 10 of those.

Taking together the 22 cases where the respondent advanced a costs claim, it successfully obtained a costs award in 10 instances. The distribution of these claims is as follows:

Figure 10. Respondents' costs claims



This chart indicates that:

- in cases of 'mixed success', respondents only rarely made a costs recovery (two occasions out of 10); and,
- whilst none of the respondents in the survey population recovered 100% of their claimed costs, they often made substantial costs recoveries when they had successfully defended the main claims in full, including recoveries upwards of 80% of claimed costs, especially when the costs appeared modest (<5%) relative to the main claim value.

This is reflected in the summary table below:

Figure 11. Respondent costs recovery summary

	Mixed success	Claim Failed	Overall
Total number of cases	12	10	22
Awarded with full amount claimed	–	–	–
Respondent denied costs recovery	10	2	12
Average costs claimed (\$M)	3.48	2.29	2.94
Award as % of costs claim			
Simple average	10.6	53.1	29.9
Weighted average	11.0	53.1	25.9

It also appears that whilst claimants (on average) recovered around three-quarters of claimed costs when the main claim succeeded in full, respondents who successfully defended claims in full recovered just over half of their claimed costs on average, in this survey population. It is not immediately obvious why this difference exists.

6. Note that in 11 out of these 12 cases of "mixed success", the claimant also advanced a costs claim so these 11 cases are also included in the data analysed in the figures above.

Section B: Costs

Does costs recovery vary by core attributes of arbitration?

Of the 23 cases where there was a clear outcome (either the claim succeeded, or it failed entirely) and the tribunal awarded costs, the weighted average level of costs recovery can be seen below, broken down between domestic and international cases (Figure 12). A similar breakdown can be undertaken as between ad hoc and institutional proceedings (Figure 13).

Figure 12. Clear outcomes where costs awarded

	Domestic	International	Overall
Cases	19	4	23
Average costs claimed (\$M)	1.51	4.7	2.07
Average costs awarded (\$M)	1.34	3.15	1.65
Percentage Recovery	88.7	67.0	79.7

Figure 13. Clear outcomes where costs awarded

	Ad hoc	Institutional	Overall
Cases	14	9	23
Average costs claimed (\$M)	2.64	1.18	2.07
Average costs awarded (\$M)	2.04	1.05	1.65
Percentage Recovery	77.3	89.0	79.7

Similarly, for the 12 cases where there was a mixed outcome and the tribunal awarded costs, the weighted average level of costs recovery, broken down between domestic and international cases, is as follows (Figure 14). And when the mixed success cases are analysed by whether they were ad hoc or institutional (Figure 15).

Figure 14. Mixed success cases where costs awarded

	Domestic	International	Overall
Cases	9	3	12
Average costs claimed (\$M)	3.68	4.42	3.88
Average costs awarded (\$M)	2.65	1.59	2.36
Percentage Recovery	72.0	36.0	60.8

Figure 15. Mixed success cases where costs awarded

	Ad hoc	Institutional	Overall
Cases	7	5	12
Average costs claimed (\$M)	1.07	8.81	3.88
Average costs awarded (\$M)	0.74	5.19	2.36
Percentage Recovery	69.2	58.9	60.8

Section B: Costs

Whilst caution is required given the low sample size involved, it appears from the above that:

- Costs claimed tend to be higher in international cases than in domestic matters, but costs recovery percentages tend to be lower;
- There is a less clear signal emerging from the ad hoc versus institutional analysis;
- Overall, when there is a clear 'winner' and a costs award is made, the successful party tends to recover around 80% of its claimed costs on average; and,
- Even when there is a mixed result, the party that recovers costs can still make a substantial recovery, averaging in the region of 60%.

Focusing on the seven international arbitration cases where costs awards were made (out of the 12 international arbitration cases in the survey data), we see a wide variation in outcomes:

Figure 16. Details of international arbitration cases where claimants were awarded costs

	Outcome	Costs awarded to	Costs award % over the costs claimed	Tribunal's consideration in costs award
Case 1	Claim succeeded	Claimant	100%	Award pursuant to the contract
Case 2	Mixed success	Claimant	12.5%	The outcome of the counterclaim
Case 3	Mixed success	Claimant	100%	The settlement offers made on the merits of the dispute
Average Costs Award %		70.8% (simple average)		38.4% (weighted average)

Figure 17. Details of international arbitration cases where respondents were awarded costs

	Outcome	Costs awarded to	Costs award % over the costs claimed	Tribunal's consideration in costs award
Case 1	Claim failed	Respondent	93.8%	Claimant filed a Request for Supplementary Decision.
Case 2	Claim failed	Respondent	71%	Settlement offers were made on the merits of the dispute. Each party bears their own legal costs. Arbitration cost apportioned.
Case 3	Claim failed	Respondent	81.1%	Solicitor-and-own-client costs were sought. Approx. 75% of solicitor-and-client costs were awarded.
Case 4	Mixed success	Respondent	62.5%	
Average Costs Award %		61.1% (simple average)		62.7% (weighted average)

This suggests that, although on average recoveries in international cases appeared to be lower than in domestic cases, a high level of recovery of costs sought is also observed: in three out of the seven international cases seen, the party recovering costs obtained over 90% of the amount sought.

By contrast, in the 28 domestic cases in which costs were awarded (see Figures 12 and 14 above), the recovery rate ranged between 10% and 100%, with a simple average of 70% and a weighted average of 80%.

Section B: Costs

Scales applied in costs claims and awards

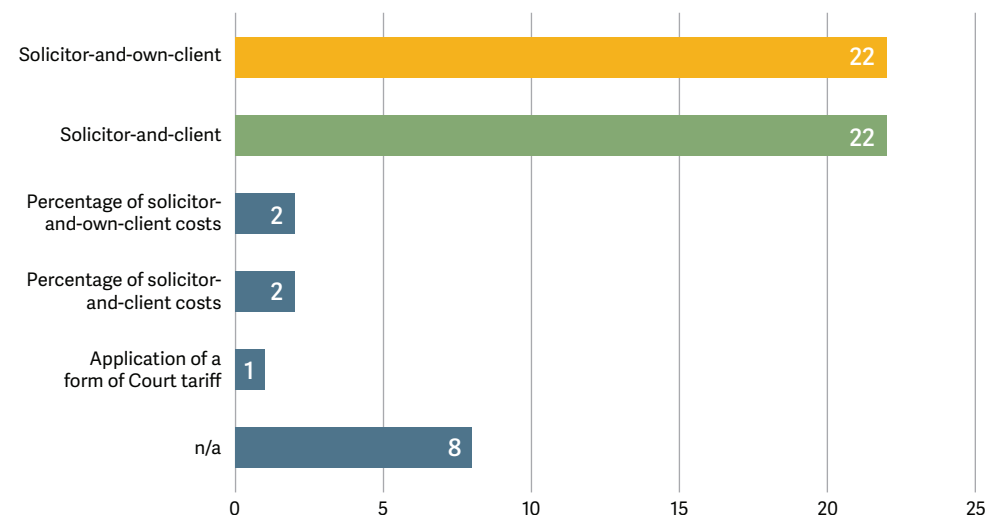
Whilst strictly speaking, costs scales such as solicitor-and-own-client and solicitor-and-client bases are creatures of domestic court litigation (with terminology varying by jurisdiction), it is not uncommon to see such concepts referred to in costs claims in arbitration, both by the parties seeking costs and by the tribunal when deciding what costs to award.

Survey respondents were asked to identify whether any of the following scales were used in formulating the claim for costs:

- solicitor-and-own-client (or full indemnity) costs;
- solicitor-and-client (or substantial indemnity assessed based on reasonability of fees) costs;
- percentage of solicitor-and-own-client costs;
- percentage of solicitor-and-client costs;
- application of a form of court tariff; or
- other.

It was possible to select more than one response to this question, recognising that different approaches might have been taken to different components of costs. This arose in three instances, and as such, although there were 54 survey responses, there were 57 responses to this question. They break down as follows:

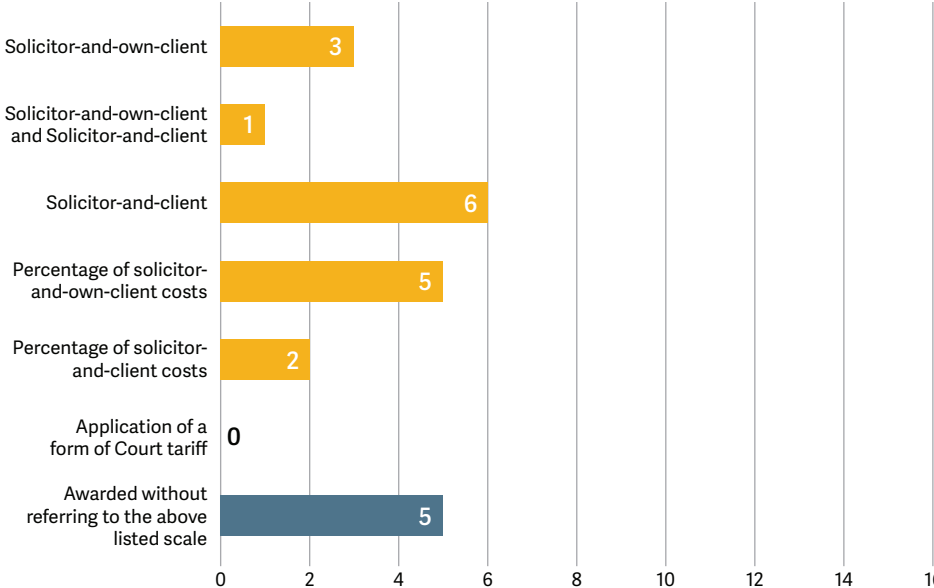
Figure 18. Scale of costs referenced in the costs claim



Section B: Costs

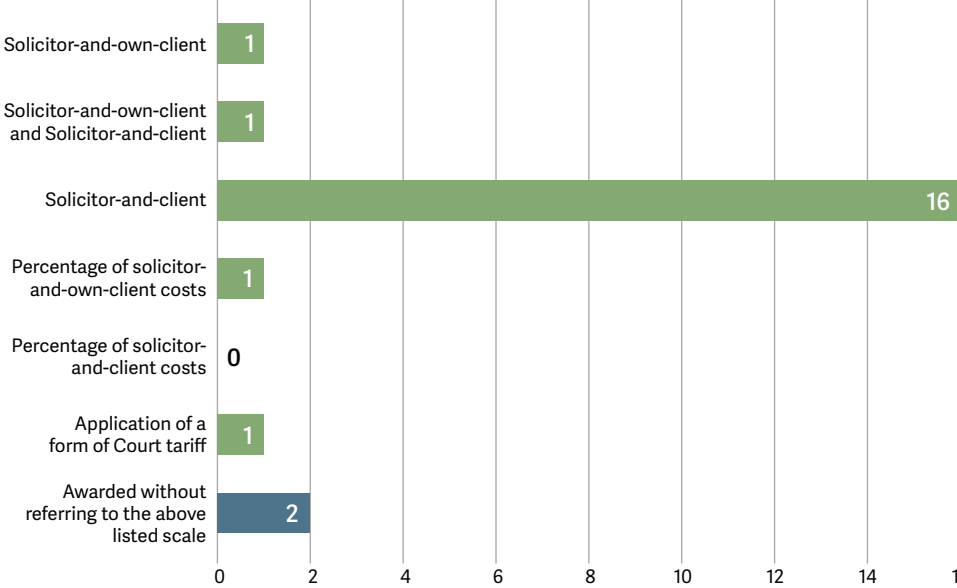
Of the 44 responses in the first two categories, the two figures below show how costs were awarded in response to those claims (whilst in the five cases in the next three categories, the tribunal accepted the claiming party’s proposed approach to scale in all five cases):

Figure 19. Scale of costs referenced in the award when solicitor-and-own-client scale was sought (in 22 of the costs claims reviewed)



Again, perhaps not surprisingly, claims for costs on the solicitor-and-own-client scale are difficult to achieve in full: out of 22 such claims, only three were granted on that basis. In six cases, the award was made on the solicitor-and-client basis, whilst in seven other cases, costs were awarded on the basis of a percentage of either the solicitor-and-client or solicitor-and-own-client scale. In five cases, the tribunal awarded costs without reference to the scale.

Figure 20. Scale of costs referenced in the award when solicitor-and-client scale was sought (in 22 of the costs claims reviewed)



By contrast, of the 22 claims for costs on the solicitor-and-client scale (i.e. substantial indemnity based on reasonability), the tribunal awarded costs on that scale on 16 occasions (a success rate of nearly 73%). On two occasions costs were awarded without reference to a scale, and in one case the tribunal reverted to a court tariff.

Section B: Costs

Which arguments were used, and were they successful?

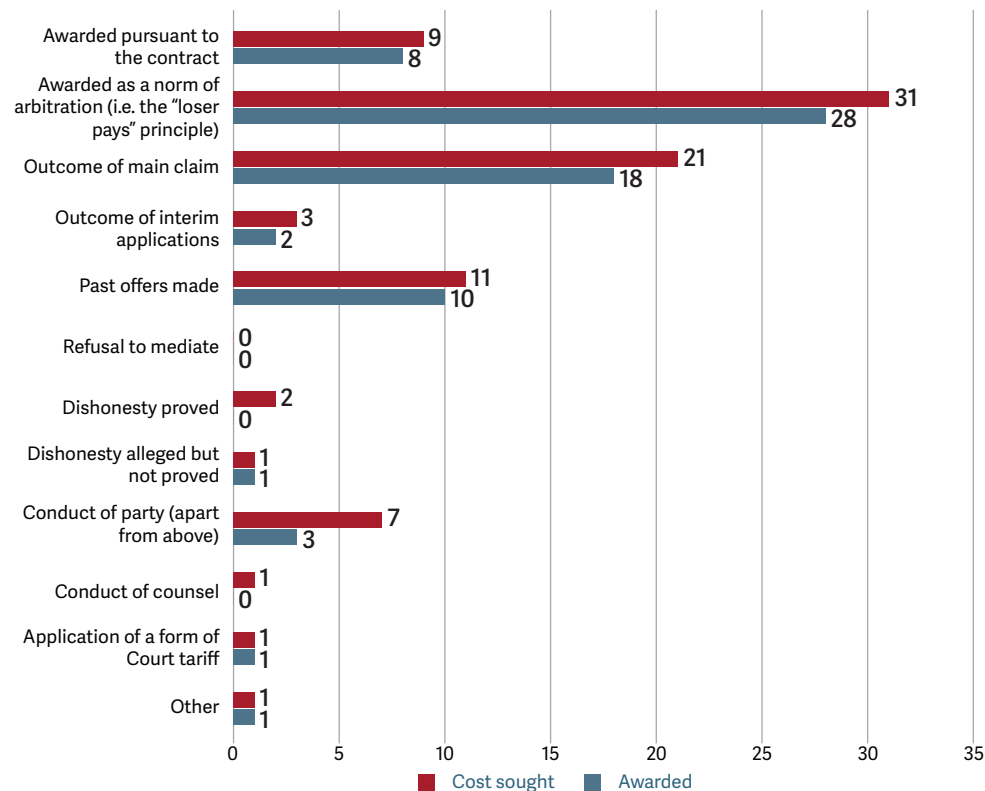
Survey respondents were also asked what arguments had been deployed in costs claims, and what reasons were used by tribunals in reaching their decisions on costs.

The possible arguments or reasons identified in the survey were:

- costs sought pursuant to the contract between the parties;
- indemnity (or near full indemnity) costs sought as a norm of arbitration (i.e. the “loser pays” principle);
- the outcome of the main claim;
- the outcome of interim applications;
- past offers made;
- refusal to mediate;
- dishonesty proved;
- dishonesty alleged but not proved;
- conduct of a party (excluding the above);
- conduct of counsel; and,
- application of a form of court tariff.

Again, as more than one of these could be selected for a given case, there were 88 responses to this question, broken down as follows:

Figure 21. The basis on which costs were sought and the basis on which they were awarded



Section B: Costs

By far the most common arguments deployed related to the outcome of the claim, and the norm that the losing party should pay all (or nearly all) of the winning party's costs.

Settlement-related conduct was also relevant, in that references to past offers were made 11 times, but it appears that refusal to mediate did not arise as an argument relating to costs. In 10 of these cases, past offers apparently formed part of the tribunal's reasoning in awarding costs.

In two cases, costs were claimed partly on the basis that dishonesty had been proved in the proceedings, although in neither case did the tribunal accept that argument.

By contrast, in the one case where dishonesty was alleged but not proved, that argument does appear to have been part of the tribunal's reasoning, along with the fact that the respondent "beat their offer substantially", leading to recovery on a full indemnity basis (the respondent was awarded 96% of costs claimed).

There were eight cases where costs arguments were made by reference to the conduct of the parties or their counsel. Only in three of these cases did such matters form part of the tribunal's reasoning when deciding costs.

The survey responses contained specific information about various cases. For instance, in one case that failed on the merits, the tribunal considered costs settlement offers and decided to award the respondent 50% of its legal fees plus 100% of its disbursements as the costs award. In this case, the costs claim was based on the scale of solicitor-and-own-client and percentage of solicitor-and-own-client costs. The tribunal considered a "norm of arbitration" and "past offers made" and explained that it was "reasonable" for the claimants to bring their claim, so the arbitrator refrained from awarding full indemnity costs.

Another case from the survey responses involved a costs award decision where the tribunal granted 80% of the claimed cost, comprising 60% for the successful claims and an additional 20% for beating the offer to settle. While the claimant argued for the solicitor-and-own-client costs scale, the tribunal used the percentage of solicitor-and-own-client costs scale. The claimant and tribunal referred to a "norm of arbitration" and "past offers made" to support the costs arguments and award, and the tribunal also considered the outcome of the main claim.

Section C: Methodology

In October 2021, YCAP Costs Project Subcommittee initiated a comprehensive, web-based survey concentrating on the subject of costs awards with a focus on Canadian-seated arbitrations. The survey, composed of sixteen questions, featuring multiple sub-categories, sought to gather data among others regarding the sums claimed by parties, expenses incurred on various aspects, and the awarded amounts (if any). The survey sought data about “costs” meaning legal and expert fees and disbursements, and not the costs of the arbitration itself (e.g. the arbitrator’s fees and any institutional fees).

The survey was distributed throughout the Canadian arbitration community, including to law practices of all sizes, in-house lawyers, arbitral institutions, and independent arbitrators. The survey submissions were anonymous and the survey participants did not identify themselves.

Data from this survey was gathered from November 2021 until October 2022. The analysis incorporated information from 54 arbitration cases, which featured final awards issued between April 2014 and August 2022. Of those surveyed, three cases were excluded from the costs analysis in Section C due to inconsistencies and apparent errors in the survey responses.

Due to the survey’s constraints and the databases employed, a purely random sampling of individual disputes was unattainable. Consequently, the results presented in this survey emerged from a convenience sample and should be treated as such. The calculated percentages are based on both a weighted average and a simple average, as noted in the respective analysis.

Appendix 1. YCAP/Secretariat Survey of Costs in Canadian Arbitration

1. Date of Final Award (DD/MM/YYYY)

Date: (/ /)

2. Core Attributes: ad hoc or institutional

- Ad hoc
- Institutional

3. Core Attributes: domestic or international

- Domestic
- International

4. Core Attributes: number of tribunal members

Number of Members: _____

5. Core Attributes: Seat (i.e., name of city)

City: _____

6. Amount in dispute:

(If there was a counterclaim, please aggregate the claim and counterclaim values. If the claim values changed through time, please use the figures that were in play at the start of the final hearing. Please treat non-monetary relief as being nil. If currency is not in Canadian dollars, please indicate currency.)

Amount: _____

7. Outcome

- Claim succeeded
- Claim failed
- Mixed success
- Other (please explain)

8. Costs claimed:

(If currency is not in Canadian dollars, please indicate currency.)

Costs claimed by claimant:

Costs claimed by respondent:

9. Costs awarded to

10. What scale of costs were sought?

- Solicitor-and-own-client (or full indemnity) costs;
- Solicitor-and-client (or substantial indemnity assessed based on reasonability of fees) costs;
- Percentage of solicitor-and-own-client costs;
- Percentage of solicitor-and-client costs;
- Application of a form of court tariff; or
- Other.

11. What scale of costs were awarded?

12. On what basis were costs sought?

(Please tick as many as are applicable)

- Costs sought pursuant to the contract between the parties;
- Indemnity (or near full indemnity) costs sought as a norm of arbitration (i.e. the "loser pays" principle);
- the outcome of the main claim;
- the outcome of interim applications;
- past offers made;
- refusal to mediate;
- dishonesty proved;
- dishonesty alleged but not proved;
- conduct of a party (excluding the above);
- conduct of counsel; and
- application of a form of court tariff.

Appendix 1. YCAP/Secretariat Survey of Costs in Canadian Arbitration

13. What factors formed part of the Tribunal's costs award?

(Please tick as many as are applicable)

- Costs sought pursuant to the contract between the parties;
- Indemnity (or near full indemnity) costs sought as a norm of arbitration (i.e. the "loser pays" principle);
- the outcome of the main claim;
- the outcome of interim applications;
- past offers made;
- refusal to mediate;
- dishonesty proved;
- dishonesty alleged but not proved;
- conduct of a party (excluding the above);
- conduct of counsel; and
- application of a form of court tariff.

14. Settlement Offers made on the merits of the dispute:

Did the parties raise settlement offers during the costs proceeding?

- Yes
- No

If so, did the Tribunal take the settlement offers into account?

- Yes
- No

15. Third Party Funding/Was a third party funder involved?

- Yes
- No

16. Any other comments about costs / costs recovery in this case?

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About YCAP

Since 2004, Young Canadian Arbitration Practitioners has promoted an interest in international arbitration and has provided professional development and networking opportunities for young lawyers and other young professionals.

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