



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *55104 Newfoundland and Labrador Inc. v. Wärtsilä Canada
Incorporated*, 2026 NLSC 29

Date: March 18, 2026

Docket: 202101G5623

BETWEEN:

**55104 NEWFOUNDLAND AND
LABRADOR INC.**

FIRST PLAINTIFF

AND:

**OCEAN CHOICE INTERNATIONAL
by its managing Partner 55104
Newfoundland and Labrador Inc.**

SECOND PLAINTIFF

AND:

**WÄRTSILÄ CANADA
INCORPORATED**

DEFENDANT

Before: Justice Justin S.C. Mellor

Place of Hearing:

St. John's, Newfoundland and Labrador

Date of Hearing:

December 15, 2025

Summary:

The Plaintiffs commenced an action alleging a breach of contract in relation to the Defendant's overhaul of a ship's engine. The Contract specified that all disputes must be arbitrated before the International Court of Arbitration of the International Chamber of Commerce in Paris, France. The Defendant applied

for a stay of proceedings pursuant to the *International Commercial Arbitration Act (ICAA)*.

Held: A stay of proceedings is ordered. The dispute is commercial and international and falls under the *ICAA*, not the *Arbitration Act*. The *ICCA* incorporates into provincial law the *Model Law on International Commercial Arbitration* which makes referral to arbitration compulsory. The Court has no discretion in the matter.

Appearances:

Christopher D. Goodridge Appearing on behalf of the Plaintiffs

George J. Pollack Appearing on behalf of the Defendant

Authorities Cited:

CASES CONSIDERED: *Szeto v. Dwyer*, 2010 NLCA 36; *Uber Technologies Inc. v. Heller*, 2020 SCC 16; *Midnight Marine Ltd. v. Lloyd's Underwriters*, 2010 NLCA 64; *Diamond Estate v. Robbins*, 2006 NLCA 1

STATUTES CONSIDERED: *International Commercial Arbitration Act*, R.S.N.L. 1990, c. I-15; *Arbitration Act*, R.S.N.L. 1990, c. A-14; *Arbitration Act, 1991*, S.O. 1991, c. 17; *Interpretation Act*, R.S.N.L. 1990, c. I-19; *Judicature Act*, R.S.N.L. 1990, c. J-4

TEXTS CONSIDERED: Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Canada: Butterworths Canada Ltd., 2002)

REASONS FOR JUDGMENT

MELLOR, J.:

INTRODUCTION

[1] 55104 Newfoundland and Labrador Inc. and Ocean Choice International (“OCI”) commenced an action against Wärtsilä Canada Incorporated for breach of contract. The Agreement contains an international commercial arbitration clause

requiring the Parties to refer disputes to arbitration before the International Court of Arbitration of the International Chamber of Commerce in Paris, France. Wärtsilä has applied to this Court to stay OCI's action.

[2] I have determined that the *International Commercial Arbitration Act*, R.S.N.L. 1990, c. I-15 (*ICAA*) applies to the Contract, not the *Arbitration Act*, R.S.N.L. 1990, c. A-14 (*AA*). The *ICAA* makes it mandatory that I refer this matter to arbitration.

BACKGROUND

[3] 55104 Newfoundland and Labrador Inc. owns the fishing vessel *Aqviq*, which is operated by a partnership called Ocean Choice International.

[4] The main engine of the *Aqviq* required an overhaul. In July 2020, OCI entered into an agreement with Wärtsilä to complete the required work. Under the terms of the Contract, Wärtsilä warranted the engine overhaul for six months.

[5] On 24 September 2020, Wärtsilä completed the work, and the *Aqviq* was returned to OCI. The vessel was employed in fishing operations until January 2021, when it began having engine problems.

[6] In March 2021, Wärtsilä denied coverage under the warranty on the basis that the engine was operated in an overload condition. OCI maintains that the engine failure was caused by defective parts supplied by Wärtsilä and negligent workmanship.

[7] The vessel was repaired at OCI's expense between 23 March 2021 and 13 April 2021. On 18 October 2021, OCI filed a statement of claim in this Court seeking damages from Wärtsilä for a breach of the warranty.

[8] Wärtsilä applied to stay the action on 2 May 2022 on the basis that the Contract required disputes be arbitrated before the International Court of Arbitration in Paris, France.

ISSUE

[9] There is a single issue in this application: should the action be stayed and the dispute referred to arbitration?

ANALYSIS

[10] This application turns on the question of which legislation applies to the Contract: the *ICAA* or the *AA*. If the *ICAA* applies, then this Court is required to enter a stay of proceedings, however, if the *AA* applies then the Court has a degree of discretion as to whether to enter a stay.

The Parties' Positions

Wärtsilä's Position

[11] The Contract between Wärtsilä and OCI contains an international arbitration clause. The provision requires that all contractual disputes be arbitrated before the International Court of Arbitration. Section 15.1 states:

Any controversy, claim or dispute between the parties hereto arising out of or related to this Contract shall be submitted to the International Court of Arbitration

of the International Chamber of Commerce for final and binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules. The arbitration process shall be in the English language and shall take place in Paris, France.

[12] Wärtsilä asserts that this is an international commercial dispute to which the *ICAA* applies. That legislation makes international law on commercial arbitration part of the law of this province. Section 3 of the *ICAA* incorporates the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (the “*Convention*”), and section 5 makes the *Model Law on International Commercial Arbitration* (the “*Model Law*”) applicable. The *Convention* and the *Model Law* are Schedules to the *ICAA*.

[13] Both the *Model Law* and the *Convention* contain provisions specifying when a court must refer a matter to arbitration. Article 8(1) of the *Model Law* states:

A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

[14] Article II(3) of the *Convention* contains very similar wording. It states:

The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

[15] Based on these provisions Wärtsilä argues that the only way in which this Court may decline to refer this dispute to arbitration is if the Agreement “... is null and void, inoperative or incapable of being performed.” It points out that OCI has not made any such claim.

OCI's Position

[16] OCI argues that the AA applies to this matter. Section 4(2) states that a court may order a stay of proceedings "... upon being satisfied, (a) that there is no sufficient reason why the matter should not be referred to arbitration ...". OCI asserts that this provides a court with discretion as to whether to stay a matter. It argues that the exercise of that discretion should be dictated by the proportionality principle which requires considering factors such as "... the nature of the issues engaged; the amount of money involved; the time reasonably necessary to resolve the issue; the complexity of the issues and the overall cost of the litigation that can be reasonably expected." (*Szeto v. Dwyer*, 2010 NLCA 36, at para. 54) OCI argues that it is both inconvenient and costly to conduct an international arbitration in Paris, France.

[17] In support of this position, OCI points to the Supreme Court of Canada's decision in *Uber Technologies Inc. v. Heller*, 2020 SCC 16, at para. 39, in which the court held that a stay of proceeding should not have been issued in part, because the high cost of the arbitration was a barrier to access to justice and staying the action "... would be tantamount to denying relief for the claim."

[18] If I determine that the ICAA does apply, OCI asserts that I still have limited discretion. It argues that I should apply the "strong cause" test. In *Midnight Marine Ltd. v. Lloyd's Underwriters*, 2010 NLCA 64, Justice Barry explained the "strong cause" test at paragraph 76 as follows:

... once a court is satisfied that a validly concluded contract otherwise binds the parties, it must grant the stay unless the plaintiff can show sufficiently strong reasons to support the conclusion that it would not be reasonable or just in the circumstances to require the plaintiff to adhere to the terms of the clause.

[19] Under the "strong cause" test, a court considers the following factors:

- where the evidence is situated

- whether foreign law applies, and, if so, whether foreign law is different from the law of present jurisdiction
- with which countries the parties are connected
- whether the defendants genuinely desire a trial in a foreign country, or are only seeking procedural advantages
- whether the plaintiffs would be prejudiced by having to sue in a foreign jurisdiction

The Court's Decision

[20] Having considered these arguments, I accept Wärtsilä's position that a stay of proceeding must be entered in this matter for the reasons that follow.

[21] First, the arbitration clause in the Contract is undisputedly commercial and international in nature. While both Parties are in Canada, they voluntarily agreed to have disputes arbitrated in Paris before the International Court of Arbitration. Article 1(3)(b)(i) of the *Model Law*, which is referentially incorporated through the *ICAA*, provides that a matter is "international" if the arbitration agreement makes the place of arbitration "... outside the State in which the parties have their places of business ...". Article 8(1) of the *Model Law* leaves the Court with no discretion. It states that a court "... shall ... refer the parties to arbitration ...". As section 11(2) of the *Interpretation Act*, R.S.N.L. 1990, c. I-19 states, "The word "shall" shall be construed as imperative ...".

[22] Second, I cannot accept OCI's position that the *AA* applies to this dispute. The *AA* and the *ICAA* are in conflict as to whether a court has discretion to refuse to stay the proceedings. This conflict can be resolved by examining the nature of the legislation. The *ICAA* is special legislation which deals with matters in which there is a right of international commercial arbitration, whereas the *AA* is general arbitration legislation employed in domestic matters. It is a well established principle of statutory interpretation that when statutes conflict, specific legislation prevails

over a general statute. As explained in *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Canada: Butterworths Canada Ltd., 2002), “When two provisions are in conflict and one of them deals with the matter in question while the other is of more general application, the conflict may be avoided by applying the specific provision to the exclusion of the more general one. The specific prevails over the general; it does not matter which was enacted first.” (see also *Diamond Estate v. Robbins*, 2006 NLCA 1, at para. 52)

[23] I do not accept OCI’s position that if the *ICAA* is applicable then I should apply the “strong cause” test utilized by the Newfoundland and Labrador Court of Appeal in *Midnight Marine Ltd.* To apply the “strong cause” test, a court must possess some level of discretion as to whether to grant a stay. *Midnight Marine Ltd.* was decided pursuant to section 97(1) of the *Judicature Act*, R.S.N.L. 1990, c. J-4, which states that a “... court may direct a stay of proceeding pending before it.” [emphasis added] This is obviously different from the *Model Law*’s requirement that a court “... shall ... refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.” [emphasis added] While the Court of Appeal referred to the *ICAA* in its decision, it did so in *obiter*. It did not apply or interpret the *ICAA*, nor did it deal with the obvious conflict between section 97 of the *Judicature Act* which grants discretion, and the *Model Law* which is expressly clear that no such discretion exists.

[24] In argument, both Parties referred to *Uber* which is distinguishable from this matter. While the contract in *Uber* called for the application of the *ICAA*, the Supreme Court of Canada determined that it was an employment, not a “commercial” dispute, therefore the *Arbitration Act, 1991*, S.O. 1991, c. 17, applied. The Court also found that the arbitration clause was void because of the doctrine of unconscionability. In the matter before me, it was not disputed that the matter was commercial nor was the issue of unconscionability raised. *Uber* is simply not applicable.

[25] In conclusion, the Court has no choice in this matter. Under the Contract, the Parties have endowed an international arbitration panel with the power to determine disputes. The *ICAA* is a complete code, and it requires the Court to respect the

Parties' choice and refer the matter to arbitration. To find otherwise, requires not just ignoring the intention of the Parties but also overriding the will of the Legislature.

COSTS

[26] The Parties filed briefs in this matter in 2022. Subsequently, Wärtsilä changed counsel and in September 2025 it filed an amended application, and a new brief. The new application and brief contained a substantively different argument than the one OCI initially responded to. In light of this, each party shall bear their own costs.

DISPOSITION

[27] The action is stayed and the matter is referred to arbitration in accordance with the terms of the Contract.

JUSTIN S.C. MELLOR
Justice