



# The Arbitration Review of the Americas 2022

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Borden Ladner Gervais LLP

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Center for Arbitration and Mediation of the Chamber  
of Commerce Brazil-Canada

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A Global Arbitration Review Special Report

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## The Arbitration Review of the Americas 2022

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Welcome to *The Arbitration Review of the Americas 2022*, one of *Global Arbitration Review's* annual, yearbook-style reports. For the uninitiated, *Global Arbitration Review* is the online home for international arbitration specialists everywhere, telling them all they need to know – about everything that matters.

Throughout the year, we deliver pitch-perfect daily news, surveys and features, organise the liveliest events (under our GAR Live and GAR Connect banners ("Connect" when it is online)) and provide our readers with innovative tools and know-how products.

In addition, assisted by external contributors, we curate a series of regional reviews – online and in print – that go deeper into local developments than the exigencies of journalism allow. *The Arbitration Review of the Americas*, which you are reading, is part of that series.

It contains insight and thought leadership inspired by the recent past from 43 pre-eminent practitioners. Across 19 articles and 123 pages, they provide an invaluable retrospective on the year just gone. All contributors are vetted for their standing and knowledge before being invited to take part.

Together, their articles capture and interpret the most substantial recent international arbitration events across the region, supported by footnotes and relevant statistics. Elsewhere they provide valuable background so that you can get up to speed quickly on the local arbitration infrastructure or the essentials of a particular country as a seat.

This edition covers Argentina, Bolivia, Canada, Ecuador, Mexico, Panama, Peru and the United States; and has eleven overviews, including two on arbitrability (one focused on Brazil in the context of allegations of corruption, the other on the relationship with competence-competence across the region). There's also a lucid guide to the interpretation of "concurrent delay" around the region, using five scenarios.

Other nuggets this reader has mentally noted for future reference include:

- helpful statistics from Brazil's CAM-CCBC, showing just how often public entities form one side of an arbitration;
- an exegesis on the questions that US courts must still grapple with when it comes to enforcing intra-EU investor-state awards;
- a similarly helpful summary of recent Canadian court decisions;
- another on Mexican court decisions that showed a rather mixed year; and
- the discovery that the AmCham in Peru as of July 2021 now engages in ICC-style scrutiny of awards.

Plus much, much more.

We hope you enjoy the review. If you have any suggestions for future editions, or want to take part in this annual project, my colleagues and I would love to hear from you. Please write to [insight@globalarbitrationreview.com](mailto:insight@globalarbitrationreview.com).

**David Samuels**

Publisher

July 2021

# Consistent Self-Development at CAM-CCBC

**Eleonora Coelho and Ana Flávia Furtado**

Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada

## In summary

CAM-CCBC had a very unique year in 2020, as well as in the beginning of 2021. The centre faced one of the greatest challenges of its existence, adapting its institutional and administrative activities to the covid-19 pandemic, updating its emergency arbitrator's proceedings and approving its expedited arbitration rules. Greater experience and several important developments resulted from those turbulent times, and CAM-CCBC is glad to present its latest developments to the market.

## Discussion points

- Brazil and its south-east's alternative dispute resolution situation
- CAM-CCBC statistics
- Case management developments
- Covid-19-related initiatives

## Referenced in this article

- Law No. 9,307 of 23 September 1996
- Law No. 13,129 of 26 May 2015
- Decree No. 4,311 of 23 July 2002
- Brazilian public administration entities
- Gabrielle Kaufmann-Kohler
- Constantine Partasides
- Juan Fernández-Armesto

The Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC) is the most traditional and pioneer arbitral institution in Brazil. CAM-CCBC has over 40 years of experience in administering arbitration proceedings. Presently, it also offers mediation, dispute boards and domain name dispute resolution services, as well as acts as appointing authority in ad hoc proceedings upon request.

The institution's recognition was achieved through years of dedication and consistent excellence in alternative dispute resolution (ADR) case management. The centre has administered over 1,200 ADR proceedings<sup>1</sup> involving a total amount of 100 billion reais – equivalent to US\$19 billion.<sup>2</sup>

This is mainly the result of having a modern and solid arbitration legal system in Brazil since 1996 and the support of state courts; case administration best practices; and the centre's active role in the development of arbitration in both domestic and international cases.

In 2020, the centre faced a unique challenge, one of the largest in its history: adapting its services owing to the covid-19 pandemic while maintaining cutting-edge quality, as well as prioritising health and security for all parties involved.

However, 2020 was not only about adjustability to the pandemic scenario. The hurdles did not prevent the institution from growing and further developing its services. In 2020, it witnessed an increase in registered proceedings. The amount of filed arbitration proceedings grew 8.2 per cent, and the number of initiated mediation proceedings observed an 87 per cent jump in the past year.

Furthermore, CAM-CCBC is continuously invested in designing modern regulations, having released, in the past months, relevant Administrative Resolutions.<sup>3</sup> Emergency Arbitrator Rules, Expedited Arbitration Rules and Notes on Remote Hearings are just a few of CAM-CCBC's recent technical improvements, confirming that versatility and progress usually come together, especially in times of crises.

## Brazilian arbitration-friendly jurisdiction

The Brazilian arbitration legal framework has proven to be solid and reliable, setting the foundations that turned the country into an actual arbitration-friendly jurisdiction.

The enactment of the Brazilian Arbitration Act took place in 1996,<sup>4</sup> based on the UNCITRAL Model Law. In 2001, the Brazilian Superior Court of Justice confirmed the constitutionality of the Brazilian Arbitration Act through a decision rendered in a paradigm case. With that and the adoption of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, ratified through a presidential decree on 23 July 2002,<sup>5</sup> Brazil suitably established a legal framework in line with international standards.

The Brazilian Arbitration Act was revised in 2015<sup>6</sup> and included clarifications concerning emergency proceedings and disputes involving the state entities. In addition to that, Brazilian courts have consistently shown a deep understanding and regard for party autonomy and best practices in arbitration.

São Paulo (where CAM-CCBC's main headquarters are located) is one of the most important financial hubs and largest business centres in Latin America. It is also considered one of the safest seats in Latin America and the wisest choice for arbitration according to relevant arbitrators, counsels and companies throughout the globe.

## State-of-the-art facilities and policies

The arbitration-friendly environment described above has helped the centre to continuously develop and improve the administration of arbitration and other ADR.

To keep applying and promoting best practices, CAM-CCBC has been constantly improving its internal proceedings and institutional work. The unique case management model, certified by ISO 9001:2015 – an international certification for quality service providers – guarantees the continuous promotion of efficiency and speed to ADR proceedings.

In 2019, and through an independent audit process, the centre expanded this certification to all services offered, ensuring

a high-quality management standard also for mediation, dispute boards and Brazilian domain name dispute resolution.

Keeping up with international standards, CAM-CCBC's main hearing centre is located in Vila Olímpia, in the heart of São Paulo's business hub. It has state-of-the-art infrastructure, sound technology and IT, providing the best environment for the development of proceedings. The centre in São Paulo was remodelled in 2020 to provide a safe infrastructure for clients and personnel, fully adapted in accordance with security standards.

In 2019, CAM-CCBC expanded its presence in Brazil and opened a unit in Rio de Janeiro. Its offices there include rooms for meetings and events and are ready to receive documents and take phone calls. Rio de Janeiro is a strategic business hub in the country and the second-largest economy in Brazil.<sup>7</sup> The centre has administered over 86 arbitration and mediation proceedings seated in Rio, 19 of which are ongoing at the time of writing.<sup>8</sup>

Rio de Janeiro has issued specific rules establishing the requirements for arbitration agreements included in public contracts. Pursuant to those rules, the arbitration should be institutional, and once the dispute arises, one of the listed arbitral institutions should be appointed. CAM-CCBC meets the requirements and is listed among those institutions. CAM-CCBC's Rio de Janeiro unit's launch has increased the centre's involvement in public administration-related disputes, some of the largest and most important cases in the country.

#### Statistics

The result of this continuous commitment and hard work has brought impressive results that reflect in the centre's statistics. Since CAM-CCBC's foundation,<sup>9</sup> the 1,219 arbitration proceedings initiated amount to almost US\$18.96 billion in dispute.<sup>10</sup> In turn, the 82 mediation proceedings administered amount to over US\$2.1 billion.<sup>11</sup>

At present, there are over 300 ongoing arbitration proceedings, distributed among eight case management teams. In the past four years, an average of 110 cases were initiated before CAM-CCBC per year, and the average length of the proceedings is 16.18 months.<sup>12</sup>

Considering CAM-CCBC's ongoing arbitration cases in 2020, 41 involved the Brazilian public administration. The latest issue of the research paper 'Arbitration in Numbers and Values', conducted annually by lawyer and professor Selma Lemes, showed that, from all Brazilian arbitration institutions, CAM-CCBC recorded the highest amount of new and ongoing arbitrations with state entities.

Additionally, parties informed the involvement of a third-party funder in 10 cases and, in 2020, 57 per cent of the new cases involved multiple parties as claimants or respondents.

CAM-CCBC has registered proceedings with parties from several countries, such as Brazil, Japan, Spain, Norway, Seychelles, Germany, Australia, China, the United Arab Emirates, the United Kingdom, Ireland, Singapore and the United States, while seats include São Paulo, London, Rio de Janeiro and Brazil's capital city Brasília.

Concerning the disputes' profile, corporate contracts still represented the majority of cases in 2020 (43.81 per cent). Business contracts for sale of goods or services, or both, (15 per cent) and construction and infrastructure-related contracts (13 per cent) also stood out as subjects in many cases. Real estate, insurance and loans are other identified recurring subjects.

#### The CAM-CCBC DNA

One of the main reasons why CAM-CCBC is an industry leader in Brazil and recognised globally is because of its excellence in every aspect of the administration of ADR proceedings. The work developed by the centre is based upon six major pillars: efficiency, transparency, impartiality, independency, confidentiality and continuous improvement. These principles, along with the Secretariat's work, have set the benchmark for quality secretarial services and established a solid reputation for the centre in both Brazil and abroad.

Each member of the eight CAM-CCBC case managers teams, all certified lawyers with extensive practical and academic experience, will closely follow every step of the proceedings, from the filing of the request for arbitration until the rendering of the final arbitral award, with the aid of an assistant.

The case managers will also assist the arbitral tribunal and serve as a direct channel of communication between parties, counsel for parties and arbitrators, always observing the principles of impartiality and isonomy. Since 2018, each Secretariat team was appointed a specific area, including intellectual property, construction, oil and gas, and so forth.

To comply with its goals of promoting a high level of technicality and transparency, CAM-CCBC publishes administrative resolutions (ARs) to supplement its Rules in order to rule on sensitive issues and provide more effectiveness to its services.

Some of the latest ARs published include the Expedited Arbitration Rules (AR 46/2021)<sup>13</sup> and the Rules on Emergency Arbitrator Proceedings (44/2020).<sup>14</sup>

In light of the measures taken to guarantee safety during the covid-19 pandemic, CAM-CCBC also drafted the Notes on CAM-CCBC Remote Meetings and Hearings, which provide clear recommendations to the parties, attorneys, experts, arbitrators and other participants navigating virtual hearings and meetings in CAM-CCBC administered proceedings.

Apart from the above-mentioned regulations, CAM-CCBC is working on several other fronts to optimise its work and forward the transparency of the market. Below, we briefly describe some of them.

#### Working group for award-extract publication

Throughout 2019, CAM-CCBC organised a working group in partnership with the University of São Paulo to conduct research on the publication of arbitral awards' extracts. It aimed to provide more transparency regarding CAM-CCBC's cases, as well as to publish the content of arbitral decisions for market usage. No information concerning the specific cases will be released.

#### Secretariat coordination

CAM-CCBC created a pioneer case management model in Brazil. Today, the centre is still innovating the market to provide even better case management and support to each of the 300 plus ongoing cases. The Secretariat Coordination began its activities in 2020. Cristiane Gertel and Silvia Salatino, two very experienced case managers, oversee the work of the eight case management teams and develop optimisations to train Secretariat members and all technology-related initiatives. They also provide a transparent and uniform decision-making process among the eight teams of case managers; hence, users experience the same model of case management through all secretariats.

The coordinators are a key asset for CAM-CCBC since they manage to equalise the tailor-made needs of parties in CAM-CCBC's case management modus operandi.

### Covid-19-related initiatives

The covid-19 pandemic presented a challenge to all business sectors and areas of practice. For ADR methods and CAM-CCBC, it was no different. However, several measures taken by the centre mitigated possible damage, as will be described, and provided the necessary means for parties, lawyers and arbitrators to proceed with proceedings.

The first measure taken was the transfer of all employees to home office activities, as of March 2020, ensuring their security and health.

Subsequently, following all international health and security provisions and considering CAM-CCBC's commitment to service excellence and the preservation of the legal security in Brazil, it issued two ARs on the subject.

AR 39/2020<sup>15</sup> was the first. It established emergency measures, valid from March to 1 April 2020, including the suspension of in-person delivery of documents and petitions, recommendations concerning meetings and hearings, temporary remote attention to clients and other important measures.

The second AR, 40/2020,<sup>16</sup> is valid from 2 April 2020 until revoked<sup>17</sup> and establishes broader rules for the continuance of proceedings 100 per cent remotely. It is applicable for ongoing and new proceedings.

The in-person filing of manifestations and documents is now made digitally, via email and through a secure digital platform for document upload. The appointed case management team personally provides the links and oversees the document exchange through electronic means, ensuring security, equal treatment for all parties and the secrecy of proceedings.

In 2018, CAM-CCBC had already established rules for the digital conduct of the proceedings before the constitution of the arbitral tribunal, through AR 29/2018.<sup>18</sup> Since then, it has been working on establishing full digital proceedings. This process was accelerated because of the pandemic, and the implementation of the remote conduct of proceedings was successful (ie, hearings, meetings, protocols and the filing of new proceedings).

In terms of infrastructure, CAM-CCBC also took a step further in 2020, renovating the hearing rooms to meet public health recommendations.

To safeguard participants, a team of architects carefully redesigned the hearing rooms following social distancing specifications. In-person hearings and meetings at CAM-CCBC's headquarters are conducted only on an exceptional basis and in strict compliance with safety rules and guidelines, all of them carefully drafted and publicised in Administrative Resolution 43/2020.<sup>19</sup>

This translates into one more commitment to providing efficient case management while preserving the ADR community's safety.

Since the beginning of the pandemic, 96 per cent of CAM-CCBC's hearings were conducted virtually, only 3 per cent were in person, and the remaining 1 per cent were hybrid hearings. This was only possible because of the clear set of guidelines provided by the institution, detailing the technical requirements needed for smooth online meetings and valuable insights on the planning and conduct of remote hearings.<sup>20</sup>

Additionally, CAM-CCBC has top-of-the-line cybersecurity measures in place, with several walls of protection from the choice of equipment to the implementation of software and technical training of staff.

The IT department is prepared to assist remote hearings, and case managers have been trained to conduct virtual hearings following the best international arbitration practices. The parties

can even choose the preferred platform to conduct meetings and hearings from a menu of videoconferencing software duly approved by the IT team.

To summarise, CAM-CCBC has always been a full-service ADR case management institution. It offers constant support throughout the proceedings, as well as sophisticated hearings facilities and virtual resources at no extra cost and without hidden fees. Consequently, while maintaining the focus on the core elements of its case management DNA, CAM-CCBC has successfully adapted its services to the unprecedented challenges imposed by the covid-19 pandemic.

### Expedited arbitration

On 1 February 2021, CAM-CCBC published Administrative Resolution 46/2021, inaugurating its newly designed expedited arbitration.

The CAM-CCBC Rules on Expedited Arbitration provide for faster and more cost-effective arbitration proceedings.

The rules apply automatically to disputes under 3 million reais in which the arbitration agreement had been signed after the Administrative Resolution came into force. The proceedings will be conducted preferably by a sole arbitrator and 100 per cent through electronic means of communications.

This is a significant technical development taken by the centre to meet the market's needs to achieve effective results in an appropriately shorter time frame, without renouncing the CAM-CCBC's case management expertise.

### Institutional and social activities

CAM-CCBC is aware of the importance of its institutional role to promote ADR and accomplishes it with merit, celebrating cooperation agreements with peer institutions; granting scholarships to law students, counsel and practitioners; promoting internships for students; granting sponsorships; supporting academic initiatives; and promoting academic events.

The centre divides its efforts in the development of arbitration in Brazil, on one hand, by giving opportunities to students and practitioners here and abroad; and, on the other hand, in the world's knowledge of Brazil as an arbitration hub.

Worldwide, CAM-CCBC has several partnerships with chambers, institutions and universities, and is also present in many initiatives.

In Brazil, CAM-CCBC is recognised as the pioneer institution in assisting the study and practice of arbitration and ADR. The centre regularly grants scholarships to Brazilian law students and practitioners in events and universities, such as the Washington College of Law and the University of Miami School of Law, and organisations such as the Max-Planck Institute for Comparative and International Private Law in Germany, the Société de Legislation Comparée in Paris and the International Dispute Professional Academy in Vienna.

As a not-for-profit organisation, CAM-CCBC has also provided financial aid on numerous occasions to law students and numerous sponsorships to events such as the International Arbitration Competition of Asunción, the International Negotiation Competition, the Consensual Dispute Resolution Competition (IBA-VIAC Mediation and Negotiation Competition) and the Willem CVis Moot International Commercial Arbitration Moot (Vis Moot).

In support of students for the Vis Moot, CAM-CCBC organises two pre-moots: one in São Paulo and the other in Hamburg. Considering the social distancing policies, in 2021, CAM-CCBC had its first experience with the virtual pre-moot.

The São Paulo Pre-Moot involved the participation of 40 teams from seven countries and over 300 people logging in from all around the globe to compete and act as arbitrators. In the 2021 Hamburg Pre-Moot, 38 teams from 14 countries participated.

CAM-CCBC also holds an annual international arbitration congress and organises the São Paulo Arbitration Week, a collaborative calendar of events put together by several institutions and law firms dedicated to the best practices on international arbitration.

In 2019, the CAM-CCBC Arbitration Congress was the largest in history, receiving over 500 enrolments and leaders in the field as speakers, such as Gabrielle Kaufmann-Kohler and Constantine Partasides, as was the São Paulo Arbitration Week, with 26 events promoted by 29 institutions in the course of one week.

In 2020, CAM-CCBC Arbitration Congress experienced a remodel and was live streamed from a studio in São Paulo. This new model of events permitted greater internationalisation of the event. Around 45.5% of the speakers were foreign, and Juan Armesto performed the keynote speech, calling all arbitration practitioners to commit themselves into developing legitimacy to the international arbitration system.

From CAM-CCBC's perspective, now is the time to adapt to continue the exchange of knowledge, forward the study of ADR and promote social awareness in the ADR market. As was done with case management, CAM-CCBC also adapted its institutional and social activities to the situation regarding the covid-19 pandemic and future perspectives.

CAM-CCBC is actively developing its institutional activities remotely, including research, events and committees. Focusing on digital communications and client attention, some new ways of reaching the community are proving to be very effective.

Through digital platforms, the centre is able to reach further attendees and locations with webinars, as well as promoting events with greater regularity. The centre's rule of at least 30 per cent female speakers in all events is being observed.

Solidarity is another important focus: CAM-CCBC donated the amount initially destined for the sponsorship of the notorious Annual Congress of the Brazilian Arbitration Committee (CBAr) to São Paulo University's Medical School Hospital. With CBAr's support, the centre granted its contribution in support of covid-19 medical activities.

CAM-CCBC intends to continue to promote such solidarity and social actions, as it already did before the pandemic, even after the crisis is over. Creativity, innovation and socially responsible leadership are the main goals for the years to come, and in 2021 the international arbitration community can expect further innovations from CAM-CCBC's institutional initiatives.

#### Future perspectives

The challenges faced are many and will continue to rise in ways we cannot currently imagine. For CAM-CCBC, it was a special challenge to adapt and expand digital proceedings already being developed in record time, continuing to offer services for administration proceedings and promoting social and institutional activities to the community.

In these hard times, the centre's focus is on maintaining the excellence of its services with the smallest degree of interference in proceedings, while ensuring their security and secrecy, as well as the community's integrity. However, the steps taken must be celebrated, and we are certain they will ultimately benefit institutional dispute resolution as a whole and the global community.

#### Final remarks

CAM-CCBC is constantly challenging itself to raise its standards in case management and institutional activities, leading the Brazilian and Latin American market and standing out in the international market for increasingly efficient service and promotion of ADR and Brazil.

The Arbitration Rules in force since 2012 and complemented by the ARs are aligned with the most internationally recognised arbitration rules and are one of the most important key elements to the centre's success. They are guided mainly by the principle of party autonomy and seek to inject a considerable degree of flexibility to the arbitral proceedings.

CAM-CCBC's work goes far beyond the delivery of cutting-edge services in the administration of ADR proceedings. The centre is constantly contributing to the development of the market in its daily activities. This hard and constant work, along with the serious commitment to its role in the administrative, institutional and international fields, has guaranteed CAM-CCBC leadership among arbitral institutions not only in Brazil and Latin America, but worldwide.

Aware of its unparalleled position towards the Brazilian arbitral community, CAM-CCBC is prepared to tackle future challenges with the best and most reliable structure, norms and internal processes to increase the professionalisation and internationalisation of its services, and it will continue to support and publicise arbitration and other ADR in Brazil and abroad.

#### Notes

- 1 Data updated on 13 May 2021.
- 2 Based on the exchange rate of US\$1 = 5.3 reais of 12 May 2021.
- 3 CAM-CCBC has established recommendations regarding its activities in a series of Administrative Resolutions issued since 2012. They allow the incorporation of best practices to the service provided by the institution.
- 4 Law No. 9,307, 23 September 1996.
- 5 Decree No. 4,311, 23 July 2002.
- 6 Law No. 13,129, 26 May 2015.
- 7 According to [www.riodejaneiro.com/v/economy](http://www.riodejaneiro.com/v/economy).
- 8 Data updated on 13 May 2021.
- 9 All data updated until 12 May 2021.
- 10 Based on the exchange rate of US\$1 = 5.388 reais of 12 May 2021.
- 11 Based on the exchange rate of US\$1 = 5.388 reais of 12 May 2021.
- 12 Cases initiated between 2017 and 2020 analysed
- 13 Available at CAM-CCBC's website: <https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/en/ar-46-2021-expedited-arbitration-rules/>.
- 14 Available at CAM-CCBC's website: <https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/en/ar-44-2020/>.
- 15 Available at CAM-CCBC's website: <https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/en/ar-39-2020/>.
- 16 Available at CAM-CCBC's website: <https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/en/ar-40-2020/>.
- 17 AR 40/2020 remains effective to this date.
- 18 Available at CAM-CCBC's website: <https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/en/administrative-resolutions/ar-29-2018-electronic-communication-during-the-administrative-phase-of-arbitral-proceedings/>.
- 19 Available at CAM-CCBC website: <https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/en/ar-43-2020-resumption-of-physical-hearings/>.
- 20 Available at CAM-CCBC website: <https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/en/remote-hearings/>.



**Eleonora Coelho**

Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC)

Eleonora Coelho has been the president of CAM-CCBC since 2019. She obtained her law degree from the University of São Paulo and her master's degree in civil law, arbitration and alternative dispute resolution methods from Paris II – Panthéon-Assas University. She acts as arbitrator and attorney in several national and international arbitration proceedings.

Ms Coelho is a member of the body of arbitrators of many arbitration and mediation institutions. She was also part of the commission of attorneys responsible for the reform of the Arbitration Act, which originated Law 13,129/15, and has published several articles on alternative dispute resolution methods, as well as ministered classes and lectures regarding the subject.



**Ana Flávia Furtado**

Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC)

Ana Flávia Furtado has acted as case manager at CAM-CCBC since 2017, and in 2020 she became the centre's institutional development adviser. Ana Flávia Holds a bachelor's degree in law from the Pontifical Catholic University of Minas Gerais, and she is an MBA candidate at Getulio Vargas Foundation (FGV), with a concentration in international affairs.



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