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DENTONS

Arbitration

2025 Year in Review

February 2026

Arbitration in Canada continued to evolve in 2025 as legislative reform, institutional rule updates and judicial decisions shaped how arbitration agreements are interpreted and applied. Throughout the year, courts and policymakers engaged with recurring issues, including procedural fairness, stepped dispute resolution clauses, enforcement of foreign awards and the growing influence of technology on arbitral proceedings.

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Legislative rules and updates

1. New Rules, guidelines and programs in arbitration

a. New ADR Institute of Canada (ADRIC) Rules

Effective March 1, 2025, the ADR Institute of Canada (**ADRIC**) implemented **new Rules** and a **new arbitrator appointment protocol**. The updates follow a two-year review process and substantially update the prior rules.

The new framework is intended to create efficient processes while maintaining flexibility, party autonomy and confidentiality. Highlights include:

- **Customizable services from an “à la carte menu”:** Parties are able to choose specific ADRIC supports as needed. Parties may seek support from ADRIC with respect to a “menu” of optional supports: (i) the appointment of an arbitrator, interim arbitrator or tribunal; (ii) applications for urgent interim measures; and (iii) challenges to arbitrators.

Parties may also agree to vary or exclude any of the Rules, except those relating to procedural fairness, arbitrator independence and impartiality, arbitrator immunity and payment of ADRIC fees.
- **Application to both international and domestic disputes:** The new Rules eliminate the prior default to the UNCITRAL Arbitration Rules for international cases. Regardless of whether the dispute is international or domestic, the new Rules apply where the parties’ arbitration agreement or submission to arbitration expressly or implicitly provides that the arbitration will follow ADRIC’s Rules or the rules of certain affiliated and predecessor organizations.
- **Revised arbitrator appointment process:** ADRIC helps select arbitrators by making direct appointments upon request or providing a list of qualified candidates to the parties. The selection or list is based on any criteria the parties have agreed to and ADRIC’s own standards.

A new committee oversees appointments and list creation. Members of this committee are appointed by ADRIC’s executive director, who must consider equity, diversity and inclusion in selecting members.

To become an arbitrator, candidates must be ADRIC members in good standing, carry at least CA\$1 million in arbitrator errors and omissions insurance, and maintain a public profile detailing expertise, experience and rates.

- **Arbitrator conflicts, disclosure and challenge processes:** Prior to appointing an arbitrator, parties must disclose any circumstances that may give rise to doubts about the arbitrator’s independence or impartiality. Similarly, before accepting an appointment, arbitrators must disclose any such circumstances. Where an arbitrator becomes aware of circumstances after accepting the appointment and before the arbitration concludes, these must be disclosed as soon as possible.

To challenge an arbitrator, the new Rules provide an expedited process that remains confidential. Arbitrators can be challenged on the basis of independence, impartiality or qualifications. A challenge application must be brought by a party within 15 days of a party becoming aware of the grounds for such application. The decision on a challenge is final and not subject to any appeal.
- **Precedents:** The new Rules include precedents and standard terms that can be tailored to suit parties’ needs and include: (a) a checklist for the first procedural meeting; (b) a draft first procedural order; (c) standard terms of appointment of an arbitrator; and (d) a standard statement of arbitrator independence and impartiality. These can reduce the administrative and procedural burden on parties.

For more information on ADRIC’s new framework, see our blog post [here](#).

b. New Guidelines on the use of AI in arbitration from the Chartered Institute of Arbitrators (CIArb)

On September 5, 2025, the Chartered Institute of Arbitrators (**CIArb**) launched their new *Guideline on the Use of AI in Arbitration* (the **Guidelines**). The Guidelines offer a useful framework for parties and arbitrators to incorporate artificial intelligence (**AI**) in their arbitrations, while mitigating certain associated risks.

The Guidelines are structured as follows:

- **Part I** outlines the benefits and risks of the use of AI in arbitration.

Among its benefits, AI can enhance efficiency and reduce costs by enabling faster transcription, translation, document analysis and evidence review. Certain AI tools can also support research, data analysis and the generation of text for use in submissions or arbitration awards. At the same time, the Guidelines highlight potential risks, including threats to confidentiality, data integrity and security, impartiality and independence, due process, the “black box” problem, and the enforceability of arbitration awards that incorporate AI in the arbitral process.

- **Part II** sets out general recommendations on the use of AI in arbitration.

Taking into account the benefits and risks of AI use outlined in Part I, the Guidelines recommend that parties and arbitrators make “reasonable enquiries” before deciding whether to incorporate AI in the arbitration process. These enquiries should include research into any applicable laws, rules or regulations governing AI use. The Guidelines emphasize that while AI can support the arbitration process, it must never replace human responsibility, as the parties and arbitrators still remain accountable.

- **Part III** addresses the parties’ use of AI in an arbitration and the arbitrators’ powers to give directions and make rulings on the use of AI.

For arbitrators, the Guidelines recommend they review the arbitration agreement for any provisions on the use of AI and, where none exist, raise the issue with the parties at an appropriate stage, while respecting the parties’ autonomy to agree on AI use subject to applicable law. Arbitrators may also issue procedural directions regarding AI where necessary to safeguard the integrity of the proceedings, the enforceability of the award or to resolve disputes between the parties, but should not regulate private AI use that does not affect the arbitration.

- **Part IV** addresses the use of AI by arbitrators.

The Guidelines outline that arbitrators should not delegate decision-making to AI. Arbitrators may, however, rely on AI to enhance the arbitral process including its efficiency and the quality of the arbitrators’ decision-making. Arbitrators should refrain from using AI in ways that could compromise the integrity of the proceedings or the validity or enforcement of the award.

The Guidelines also include a template Agreement on the Use of AI in Arbitration (Appendix A) and a template Procedural Order on the Use of AI in Arbitration (Appendix B).

The Guidelines anticipate growing reliance on AI in evidentiary analysis and arbitral decision-making, a development that may lead to debates over due process and the quality of decision-making in the arbitration process. Ultimately, effective and responsible use of AI in arbitration will depend on cooperation between parties, transparency and the careful assessment of whether AI tools are appropriate in each case.

For more information on the CIArb’s Guidelines, see our blog post [here](#).

c. The Institut de médiation et d'arbitrage du Québec (IMAQ) launches a new accelerated arbitration program

On December 3, 2024, the *Institut de médiation et d'arbitrage du Québec (IMAQ)* launched an accelerated arbitration service (the **Service**), which officially began operating in January 2025. As the first of its kind in Quebec, the Service is designed to meet the growing demand for the timely resolution of civil and commercial disputes.

Unlike traditional litigation, the Service provides private dispute resolution within 120 days (or 180 days when expert input is required) from the parties' signing of the arbitration agreement. This efficiency is achieved by reducing the pre-trial steps and fast-tracking disputes to a hearing on the merits. In addition to streamlined proceedings, the Service offers predictable pricing, with arbitration costs capped at CA\$15,000 per party.

The Service is designed to resolve a wide range of issues, including those arising from contractual, commercial, consumer-related or professional disputes. For businesses in Québec, it provides a predictable and efficient alternative to traditional litigation, allowing parties to avoid the time and expense associated with court proceedings. To qualify, the parties must agree to the process, enter into a formal arbitration agreement, and submit a request for services on the IMAQ website. IMAQ will then appoint an experienced and trained arbitrator from its team.

For more information, reach out to **Pierre D. Grenier**, IMAQ president and partner in the Montréal Litigation and Dispute Resolution group.

d. A matter of time: BC's prohibition on arbitration clauses in consumer contracts

In March 2025, British Columbia enacted amendments to its consumer protection laws that prohibit mandatory arbitration clauses and class action waivers in consumer contracts. In *Vandenbosch v. Rogers Communications Canada Inc.*, **2025 BCSC 1199**, British Columbia's Supreme Court considered whether these amendments apply retroactively or retrospectively and accordingly whether they applied to the dispute in that case, which would only be the case if the amendments applied retroactively.

The amendments took effect during the hearing of the defendant's stay applications, which began in November of 2024 and continued in April of 2025. A transitional provision of the amendments provided that the new sections at issue applied to "contracts entered into before, on or after the coming into force" of the amendments.

The plaintiff customer, who brought numerous claims for damages arising from a person impersonating one of the defendant corporation's technicians who hacked her phone and stole between CA\$500,000-CA\$1 million worth of bitcoin, argued that the defendant corporation's attempt to stay the proceedings must fail because the amendments rendered the arbitration clause void.

The court disagreed. The court held that the amendments apply retrospectively to future disputes relating to contracts concluded before the amendments were enacted, but not retroactively to disputes based on events that occurred prior to the amendments. Accordingly, the defendant corporation was able to rely on the arbitration clause in its wireless services agreement with the plaintiff because the dispute arose from events that occurred prior to the amendments.



The court relied on the presumption against retroactivity and interpreted the transitional provision to mean that the amendments applied to *new* disputes arising under contracts entered into before the amendments. The provision was not clear enough to indicate that the amendments apply retroactively, changing the parties' substantive rights under old contract for disputes arising before the amendments. The court also relied on the *Hansard* debates in reaching this conclusion.

Rogers was successfully represented by Emma Irving and Mélanie Power of Dentons Canada LLP.

Case law developments

2. The basis of bias – clarification from the Court of Appeal for Ontario

In a three-month period at the end of 2024 and early 2025, the Court of Appeal for Ontario released two decisions relating to reasonable apprehension of bias in arbitration: *Franchise Company, Inc. v. Aroma Espresso Bar Canada Inc.*, 2024 ONCA 839 [*Aroma*] and *Vento Motorcycles, Inc. v. The United Mexican States*, 2025 ONCA 82 [*Vento*]. In *Aroma*, the Court of Appeal found there to be no reasonable apprehension bias. In *Vento*, there was a reasonable apprehension of bias, and the Court of Appeal set aside the underlying award. Given the different outcomes in the two cases, some wondered whether the Supreme Court of Canada would grant leave in both cases to deal broadly with the issue of bias. It did not. *Aroma* and *Vento* are therefore, for now, the last word on reasonable apprehension of bias and the remedy that flows where bias is found.

When is disclosure required? In *Aroma*, the Court of Appeal held that an arbitrator did not have to disclose their appointment as an arbitrator in a separate, unrelated arbitration involving the same counsel as the winning party in the first arbitration. On the facts, this non-disclosure did not amount to a reasonable apprehension of bias. The court held that the test contemplated by the applicable provisions contained in Article 12 of the UNCITRAL Model Law on International Arbitration (adopted in the *International Commercial Arbitration Act, 2017*, SO 2017, c.2, Sched. 5) necessitated an objective standard considering whether a fair-minded and informed third party would have justifiable doubts about the arbitrator's impartiality or independence. The application judge failed to apply the objective test. By considering the IBA Guidelines' subjective test and considering correspondence that the arbitrator was not aware of, the judge converted the objective test into a subjective one.

Assessed objectively, this situation did not give rise to a reasonable apprehension of bias requiring disclosure because the second appointment involved different parties and there was no significant overlap of issues between the two appointments. This decision signals that arbitrators are not necessarily required to disclose every appointment involving the same counsel, unless the circumstances are such that they could reasonably create justifiable doubts about impartiality. If there are overlapping issues or parties, *Aroma* suggests that disclosure may be necessary.

The court also clarified that the duty to disclose and the reasonable apprehension of bias are related but distinct issues. A failure to disclose may be relevant to a finding of bias, but it is not determinative.

What is the remedy? In *Vento*, the Court of Appeal held that once an arbitrator is found to have a reasonable apprehension of bias, an arbitration award must be set aside. The set-aside remedy applies even where the biased arbitrator was just one of a multi-member panel and no other panel members were biased. The number of arbitrators on the panel, cost, delay, unanimity and presumed independence of others are irrelevant. This Court of Appeal overturned the lower court's decision that one arbitrator's reasonable apprehension of bias did not necessarily taint the entire panel or the award.

This decision illustrates the importance of a fair arbitration process: "parties to an arbitration are entitled to an independent and impartial tribunal, not simply the decision of a quorum of panel members who are unbiased" (para 46). A reasonable apprehension of bias constitutes "a major violation of procedural fairness" that invokes this hard-line rule: where a reasonable apprehension of bias is present, an adjudicator is disqualified and the substantive decision is void.

Other cases: Bias remains a live issue in arbitration. It remains to be seen exactly how the decisions in *Vento* and *Aroma* will impact arbitration in Canada. One early example of *Aroma* being applied is the case of *MTCC No. 1251 v. Windsor Arms Hotel Corp.*, 2025 ONSC 5009, where the Ontario Superior Court of Justice (Commercial List) disqualified an arbitrator for a reasonable apprehension of bias. Applying an objective test, the court disqualified the arbitrator not on the basis of an actual conflict, but because of how the arbitrator handled the issue after disclosure. In this case, the arbitrator emailed the parties approximately 30 hours before the hearing was set to commence to advise that there was “a clear appearance of conflict” because an expert witness involved in the case had recently referred an unrelated litigation matter to the arbitrator’s law firm.

The arbitrator initially offered to resign if parties did not waive the conflict, but later decided that there was no conflict and refused to resign, despite one party’s refusal to waive the conflict. The reasonableness of the apprehension of bias in this case was grounded in the fact that the arbitrator himself initially characterized the situation as giving rise to a clear appearance of conflict. Further, the sudden changing of his mind and proceeding despite one party’s objection contributed to the appearance of bias. Citing *Aroma*, the court observed that one referral does not necessarily give rise to an apprehension of bias. However, once an Arbitrator determines there is an appearance of conflict, the only two remedies are obtaining a waiver from each party or withdrawal. This decision not only illustrates that an appearance of bias – rather than actual bias – can be sufficient for finding a reasonable apprehension, but also demonstrates that effective management of a potential conflict after it has been flagged is critical.

For further information on the Ontario Court of Appeal’s *Vento* decision, see our blog post [here](#).

3. Stepping up for arbitration: The right to arbitrate with “stepped” dispute resolution clauses

In *J.P. Architects Ltd. v. Greater Essex County District School Board*, 2025 ONCA 378, the Court of Appeal for Ontario adopted a generous interpretation of a “stepped” or “multi-tiered” dispute resolution clause, deciding that failure to complete pre-arbitration steps within a specified timeframe did not bar access to arbitration. The Court of Appeal emphasized the need to interpret dispute resolution clauses purposively, with regard to their commercial purpose.

The contractual clause at issue provided various stages to resolving a dispute, each with a 30-day timeframe: negotiations, then mediation, then arbitration. The lower court interpreted this standard form clause as providing a strict condition precedent, and stayed the arbitration based on non-compliance with the mediation step because mediation was not sought within 30 days of a dispute being unresolved.

The Court of Appeal overturned this decision, interpreting the clause to mean that parties had a minimum of 30 days to attempt to resolve their dispute prior to seeking mediation, and a minimum of 30 days to attempt to mediate before seeking arbitration. The Court of Appeal allowed the appeal and directed the parties to proceed to mediation, with the appellant maintaining the right to seek arbitration if mediation failed.

This case illustrates Ontario courts’ commitment to interpreting stepped resolution clauses in a manner that preserves parties’ right to arbitrate and resistance to allowing parties to avoid arbitration (and any dispute resolution mechanism) based on a technical interpretation of a clause that is contrary to the parties’ intentions.

This decision also reinforces the competence-competence principle: where a dispute may fall within the terms of an arbitration agreement, an arbitration tribunal should determine its own jurisdiction under an agreement prior to court intervention. The application judge failed to apply this principle by making numerous findings of fact, rather than considering only whether the parties had a dispute that arguably triggered a right to arbitration.

This decision is a reminder of the importance of clear drafting to give effect to parties' intentions. In the absence of unequivocal language to the contrary, courts are likely to interpret such clauses in a way that preserves the right to arbitration.

4. From Dubai to Ontario: A global arbitration win anchored by the New York Convention

The Ontario Superior Court of Justice recognized and enforced a Dubai-seated arbitral award in *InFrontier AF LP v. Rahmani*, 2025 ONSC 3968, where the award was granted pursuant to a set of rules that differed from those initially provided for by the parties in their agreement. This decision reaffirms Ontario's commitment to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

In this case, the governing arbitration clause provided that disputes would be resolved by arbitration through a specific institution and associated rules in Dubai. That institution was later abolished through a decree of the local government. The local government transferred all of that institution's rights and obligations to another arbitral institution and introduced a new set of rules.

The arbitration was completed under the new rules. The successful party in the arbitration, a UK-based private equity firm, sought enforcement of the arbitral award that found Mr. Rahmani, a Canadian resident, liable for more than US\$2.8 million.

The court found that the preamble to the original rules stated that parties are taken to have agreed to conduct arbitration in accordance with "such amended version of those rules..." The enactment of the local law meant that the new rules became an "amended version" of the rules that the parties had originally agreed to. While the parties could have opted out of the new rules by agreeing to be bound by another set of rules, they did not. The new rules governed and the award was enforceable.

The court enforced the award. This decision demonstrates the importance of parties contemplating whether they are willing to have rules evolve through institutional changes. Parties preferring a specific set of procedural rules must explicitly incorporate language to that effect in an agreement.

InFrontier was successfully represented by [Michael D. Schafler](#) and [Ekin Cinar](#) of Dentons Canada LLP. For more information on this case, see our blog post [here](#).

5. Where arbitration and judicial review intersect: The BizTech turning point

In *BizTech v. Accreditation Canada*, 2025 ONSC 2689, Ontario's Divisional Court issued a decision that appears to be the first of its kind in Canadian jurisprudence. The court found that arbitration was an appropriate alternative to judicial review and stayed a judicial review proceeding under s. 7(1) of the *Arbitration Act, 1991*, SO 1991, c. 17 to allow the arbitration to proceed.

In this case, BizTech, a private college, sought judicial review of a decision relating to its accreditation status that was made pursuant to the exercise of delegated statutory authority. The court granted Accreditation Canada's motion to stay the judicial review under subsection 7(1) of the *Arbitration Act, 1991*, SO 1991, c. 17 on the basis that it had an arbitration clause in its contract with BizTech.

The technical requirements for a stay of proceedings in favour of arbitration were met. The court recognized that the constitutional right to seek judicial review does not amount to an unqualified right and rejected the argument that judicial review could never be stayed in favour of arbitration where a public body exercising delegated statutory authority is involved. In the circumstances, arbitration was an adequate alternative remedy to justify refusal to hear a judicial review application. The evidence suggested that BizTech freely agreed to the arbitration agreement with Accreditation Canada and there was no reason to refuse to enforce it.

This decision demonstrates Ontario courts' support for arbitration and contractual autonomy, even where public law is engaged. The court's reasons illustrate how the practical benefits of arbitration are not confined to private disputes and withstand scrutiny in the public law sphere.

For more information, see this [case note](#) written by [Chloe Snider](#) of Dentons Canada LLP.

6. Model arbitration clause in a standard form contract (contract of adhesion) found unenforceable in Québec

In *Terrassement St-Louis inc. v. Hydro-Québec*, 2024 QCCS 3819, the plaintiff Terrassement St-Louis inc. (TSL) sought damages for work performed under a public-tender contract. Hydro-Québec invoked an arbitration clause contained in the general provisions of the governing contract, which required all disputes to be heard by a three-member panel of arbitrators in Montréal, unless otherwise decided by the parties in a subsequent arbitration agreement. In the first instance decision, the Superior Court declined to refer the matter to arbitration, primarily on the basis that the arbitration clause was contained in a contract of adhesion that TSL did not negotiate. In the circumstances of this case, where the plaintiff was seeking roughly CA\$250,000, the Superior Court found that imposing a three-member panel arbitration against TSL created an excessive and disproportionate disadvantage, since TSL would be left with no practical means of pursuing recovery.

On appeal, the Court of Appeal, in *Hydro-Québec v. Terrassement St-Louis inc.*, 2025 QCCA 900, upheld the Superior Court's ruling that the arbitration clause was unreasonable and could not be enforced given the particular facts of the case. It confirmed that public-tender contracts are contracts of adhesion and that courts may directly examine the validity of an arbitration clause when access to justice is at stake. The court held that the arbitration clause was problematic due to its inflexibility as it imposed a uniform, complex, and costly procedure on all disputes regardless of their monetary value. The court further noted that the clause appeared designed for large-scale disputes and, when applied to lower-value claims, it operated a disproportionate advantage.

The decision underscores that while arbitration remains an important dispute-resolution tool, arbitration clauses contained in contracts of adhesion must be flexible and proportionate, offering mechanisms to scale the arbitration process.

Looking ahead to 2026

Canadian arbitration is poised for continued popularity and evolution.

AI tools

We expect that the increasing use of generative AI in dispute resolution will continue to be a trend in 2026. For example, the American Arbitration Association–International Centre for Dispute Resolution (AAA-ICDR) has implemented an AI arbitrator to resolve documents-only construction arbitrations, with resulting decisions subject to validation by a human arbitrator. We expect Canadian arbitration institutions will consider the use of AI and how it can assist with making processes more efficient and cost-effective.

Developments in Québec

2026 may also bring important jurisprudential developments. The Supreme Court of Canada is expected to decide whether to grant leave to appeal in *Investissements D. Vachon inc. v. Ernst & Young inc.*, 2025 QCCA 476. In this case, the Court of Appeal confirmed that even a valid arbitration agreement may be unenforceable in restructuring proceedings. The Court of Appeal upheld the Superior Court’s decision refusing the minority shareholders’ application for a partial lifting of the stay of the creditors’ proceedings in the restructuring process under the Companies’ Creditors Arrangement Act, RSC 1985, c C-36 (the **CCAA**). The former majority shareholders (who became minority shareholders after the sale of the majority of their shares) sought to submit a dispute arising for the refund of taxes to arbitration in New York, in accordance with an arbitration clause contained in the share purchase agreement. Reaffirming the broad discretionary powers conferred by section 11 of the CCAA, the Court of Appeal maintained the stay of proceedings, concluding that arbitration would compromise the orderly, centralized, and timely resolution of the restructuring process under the CCAA.

The Court of Appeal clarified the interpretation of article 622 of the Code of Civil Procedure, CQLR c C-25.01 (the **CCP**). Although a literal reading of this provision suggests that an arbitration agreement may be set aside only on the ground of nullity, the Court of Appeal held that such an interpretation is too narrow. The Court of Appeal concluded that the term “null” cannot be read to apply only to invalid agreements. Consistent with the New York Convention and the UNCITRAL Model Law, article 622 of the CCP must be understood as encompassing situations in which an arbitration agreement, while formally valid, is unenforceable or incapable of being performed, including in the context of restructuring or insolvency proceedings. The decision confirms that courts may decline to refer parties to arbitration where enforcement would undermine the objectives of insolvency or restructuring legislation. If leave to appeal is granted, the Supreme Court’s decision could have significant implications for the interaction between arbitration agreements and insolvency or restructuring proceedings across Canada.

Changes to Ontario rules

Sweeping changes to the Rules of Civil Procedure in Ontario may encourage more parties to pursue arbitration in order to adopt processes to which parties (and counsel) may be more accustomed, particularly as Ontario courts, practitioners, and parties try to grapple with and adapt to new procedures.

For more information on this topic, please reach out to [Chloe Snider](#), [Ioana Jurca](#) or any member of our [Arbitration team](#).

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