

ADRIC's New Arbitration Rules: How You Benefit

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ADRIC's new arbitration rules simplify the arbitration process, saving time and money. The rules themselves have been streamlined, making them clearer for everyone. Significant changes have been made to give the tribunal more control over document production, oral examinations and other procedural matters. There are also new rules for urgent interim relief. ADRIC's standing committee on arbitration rules spent considerable time and effort to reach a consensus on rules that are flexible and consistent with provincial laws throughout Canada and are more consistent with international commercial arbitration rules.

ADRIC's standing committee on arbitration rules has finalized a new set of rules for use in Canada. Taken together, these changes simplify the arbitration process, saving parties time and money. The new rules set out a predictable road map for conducting arbitrations and they reflect current legislation and best practices within Canada, including Quebec.

Over the last ten years we have seen a movement away from court-based practices in arbitration; the rules were updated to reflect those changes. Experienced arbitrators and their clients now expect a process that looks less like litigation and more like international models. The new rules adopt the best features of international arbitration, while being consistent with Canadian federal and provincial legislation and functional within each province.

The update to the rules comes at the end of lengthy and involved process, one designed to bring about a unique set of rules for Canada. The committee held over seventy meetings, undertaking an enormous consultation across the country. They spoke with all of the major arbitration societies and with leading practitioners, including those in Quebec. As you might expect, there was a lot of debate over crucial issues, including some difficult disagreements. (Happily, consensus was reached on the final version.)

The committee understood that arbitrations are more likely to go smoothly if they are done according to a predictable process, and if everyone involved understands the process. For that reason, they worked hard to improve the format and accessibility of the rules. The new rules are written in plain language and legal jargon has been kept to a minimum. If parties agree to adopt these rules early on, they avoid the need for a separate negotiation (possibly expensive and time-consuming) about the process of the arbitration itself.

The most notable change in the rules is that parties must now apply to hold oral examinations. Examinations for discovery are to take place only if ordered by the arbitration tribunal. As well as being more in line with international practice, this change should save parties time and money. It forces everyone involved to consider carefully what is needed for resolution of the dispute. Similarly, the production of documents, including requests for documents and timelines for their production, has been streamlined and is now under control of the tribunal.

Another significant change in the rules is the possibility for the appointment of an interim arbitrator who has the power to award urgent relief. Such an appointment can happen early in the process, even before the appointment of the tribunal, and even in the case that one of the parties has refused to co-operate. The scope of possible relief has also been greatly widened. An interim arbitrator has the power to grant any relief that he or she considers appropriate, and the decision to grant interim relief is normally to be

made within 15 days of the arbitrator's appointment. (It should be noted that the tribunal is not bound by the interim arbitrator's order and has the power to modify or annul it.)

A further important benefit for parties is that the new rules contain provisions to ensure that the process is private and confidential. Surprisingly, this had not been part of standard rules in Canada.

The new rules were designed with commercial disputes in mind and can be applied to any kind of commercial dispute, including disputes of an international scope. ADRIC's goal is to have the new rules written into all commercial contracts in Canada, and they have provided a "model clause" consistent with Canadian law that can simply be copied into contracts. Parties who use this clause will have the confidence of knowing that, should they have a conflict down the road, they will have a clear procedure for resolving it. The rules are also meant to be flexible, so that parties can "tweak" them to suit their particular dispute. Although not every rule can be amended, rules regarding discovery, witnesses, and evidence are among those most often amended.

ADRIC has made the arbitration process even more convenient by providing an administration service. The service is comprehensive, highly adaptable to the needs of different parties, and can be provided in either French or English. ADRIC can supply impartial arbitrators, educate parties if necessary, and keep the process running smoothly. They can take care of deposits, notifications, and generally keep the parties in line by doing the day-to-day administration. They will even take care of fee collection – a potentially awkward task for those involved in dispute resolution who may fear the perception of bias.

The new rules are provided free of charge and can be used by anyone who wishes. You can view them online in a searchable format or download them at <http://adric.ca/arbrules/>. (Alternatively, contact ADRIC for a printed booklet.) And if you've already used the new rules, ADRIC would love to hear from you. The standing committee is already busy collecting comments to improve the next revision.

David practices as a commercial litigator and ADR specialist, focusing on real estate, environmental law, construction, corporate/commercial and shareholder rights. David is recognized nationally and internationally as a leading practitioner in the areas of litigation and arbitration. In particular, David is recognized in Chambers Global: The Guide to the World's Leading Lawyers for Business published by Chambers & Partners, and Experts in Commercial Arbitration, published by Euromoney. David has achieved an "AV" Peer Review Rating from Martindale-Hubbell, one of the leading authorities on the legal profession. The AV rating demonstrates that a lawyer has reached the height of professional excellence. <http://www.dentons.com/en/david-mccutcheon>