

UNVEILING THE NEW ADRIC ARBITRATION RULES: AN UPDATED APPROACH TO COMMERCIAL ARBITRATION IN CANADA

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I. INTRODUCTION

In early 2025, the ADR Institute of Canada Inc. (“ADRIC”) will adopt new Arbitration Rules (the “Rules”). They represent a comprehensive rethinking of the current version of the Rules, adopted in 2014. The Rules reflect over two years of thoughtful discussion and analysis by the drafters, a committed group of arbitrators and arbitration counsel representing all regions in Canada.¹ The focus of the discussions has been to provide a framework for arbitration as a means of resolving disputes in a full, fair and final manner using up-to-date arbitration procedures and streamlined institutional support when needed.

The changes to ADRIC’s arbitration rules are being accompanied by structural changes to improve ADRIC’s services to users through the oversight of an “Arbitration Committee”

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comprised of leading practitioners, as well as a more robust and transparent appointment process.

The new ADRIC Rules have been written from a Canadian national perspective. They are designed for use in ad hoc arbitrations, which remain the majority in Canada, but are flexible enough to include services from ADRIC on an *à la carte* basis, so that parties can also use the Rules for an administered arbitration or choose only those services from ADRIC that they want to use. The Rules recognize that in some cases legislation or jurisprudence may not allow parties in one part of Canada to agree to or adopt certain rules, for example with respect to rights of appeal or grounds for non-enforcement. However, they are also sufficiently flexible to adapt to the slightly different regulatory regimes for domestic arbitration in the various provinces. They do not conflict with substantive law applicable to a particular issue that may result in a different outcome, such as with respect to with-prejudice and without-prejudice offers to settle. The new ADRIC Rules respect these limitations where they apply (Rules 1.3.3 and 4.7.1).

The Rules are also customizable on a case-by-case basis, so that they can be tailored to the particular needs of each dispute. Parties are free to agree in writing to vary or exclude any of the Rules except the provisions that require procedural fairness, arbitrator independence and impartiality, arbitrator immunity, and payment of fees for ADRIC services (Rule 1.3.4).

A key change in the New ADRIC Rules is that ADRIC only provides services if they are needed by one or more parties. Parties are not required to provide notice of commencement of an arbitration to ADRIC and no initiation or case maintenance fee is required. However, under the Rules, ADRIC provides those aspects of administered arbitrations that are of use to the parties.

The ADRIC Rules assume that parties who choose arbitration want an effective and self-contained process that avoids the courts and their inefficiencies. Given the perennial

backlogs affecting Canadian courts and their lack of capacity to deal with civil disputes in a timely way, this assumption is more important than ever. Under the New ADRIC Rules, appeals of awards are excluded by default. ADRIC also provides a service whereby arbitrator challenges are determined by a “Challenge Adjudicator” without recourse to the courts (Rule 3.6). The role of “Interim Arbitrators” has been expanded from the previous version of the Rules to explicitly include the power to order alternative means of delivering a “Notice to Arbitrate” where needed (Rule 2.1.1). Steps have been taken to provide greater consistency and expedition in the appointment of Challenge Adjudicators and Interim Arbitrators by standardizing terms of appointment. Applications to challenge an arbitrator and to seek interim measures prior to constitution of the tribunal are treated with the same urgency.

The New ADRIC Rules also provide a practical and flexible procedural framework for parties, counsel and the tribunal to apply. Best practice case management is built into the process, with a detailed outline of issues that should be considered at a first procedural meeting (Appendix R1) and a Sample Procedural Order (Appendix R2), which parties and the tribunal can adopt in whole or in part or use as a reference in crafting their own procedure.

Consistent with the needs and expectations of modern arbitration users, the new ADRIC Rules impose an obligation upon parties and their counsel to cooperate with each other and with the tribunal to achieve the objectives of a just, speedy, and cost-effective determination of the dispute on its merits, taking into account the values that distinguish arbitration from litigation (Rule 4.8) – and they expressly allow the arbitrator to consider compliance with these obligations when making a cost award (Rule 5.3.2).

By emphasizing cooperation between parties, streamlining processes, and integrating modern practices, the New ADRIC Rules are designed to meet the needs of contemporary arbitration users, who can confidently adopt the Rules to

provide either default or bespoke dispute resolution procedures that position them to get back to business quickly.

II. HIGHLIGHTS OF THE NEW ADRIC RULES

The new ADRIC Rules contain a variety of new provisions intended to promote efficiency and minimize court intervention, without sacrificing flexibility. In this section, we describe the most significant of these features of the new Rules.

1. Commencement of an Arbitration

Under Rule 2.1, parties may validly initiate an arbitration simply by delivery of a Notice of Arbitration to other parties, without notifying ADRIC, thereby eliminating an additional step and avoiding possible disputes over the date of commencement (which can occur under most institutional rules when the institutional rules are not strictly complied with). This means that the Rules do not add any requirement for commencement of an arbitration beyond the minimum required by applicable legislation, typically the delivery of a request to arbitrate to a respondent. The lack of any requirement to immediately notify ADRIC of an arbitration or to have ADRIC automatically retain a record of pleadings and correspondence also provides an enhanced level of confidentiality for the dispute as compared to the involvement of institutional staff and processes.

The New ADRIC Rules also recognize that delivery of the Notice of Arbitration to respondents can sometimes be difficult, so delivery is also possible to ADRIC as an initial step. ADRIC also provides support via the Interim Arbitrator process, as Interim Arbitrators have the power to order alternative means of delivery (Rule 2.1.1).

2. Customized Support from ADRIC Based on a Menu of Available Services

Most commercial arbitrations that take place within Canada, whether the disputes are international or non-international in

nature, are conducted on an *ad hoc* basis without the involvement of an arbitral institution. Due to the widespread and successful use of *ad hoc* arbitration in Canada, parties often do not see the value of institutional involvement, and either do not include an institution in their arbitration agreement or dispose of institutional involvement after a dispute arises. This is especially likely if parties are able to form a tribunal without the aid of the institution. The New ADRIC Rules do not attempt to overpower this resistance but instead offer to provide the parties only with the services they require. Parties are free to arbitrate under the ADRIC Rules without initially involving an institution but also have the benefit of ADRIC's assistance as appointing authority (to which parties agree when they adopt the ADRIC Rules), instead of having to go to court. The parties can therefore resolve most procedural issues that arise without having to go to court.

By adopting the New ADRIC Rules, parties agree that the services described in the Rules will be provided exclusively by ADRIC, but unless and until they are needed, ADRIC will not be involved. No case initiation fees are payable, only fees for services provided.

The services that ADRIC provides on this basis include:

- a. approving alternative means for delivering the Notice to Arbitrate (Rule 2.1.1(b));
- b. assisting the parties with tribunal formation (Rule 3.1.4(a));
- c. appointing an arbitrator or tribunal (Rule 3.1.4(b));
- d. deciding applications for urgent interim measures, including applications without notice where justified (Rule 3.7);
- e. resolving challenges to arbitrators (Rule 3.6);
- f. appointing an Appeal Tribunal (Appendix R4);
- g. creating and maintaining a record of the arbitration (Schedule A(1)); and
- h. holding and administering deposits for arbitrators' fees and expenses (Schedule A(2)).

The services listed in a. to e. are automatically and exclusively provided by ADRIIC when the parties adopt the new ADRIIC Rules. An additional agreement of the parties (either in the original agreement to arbitrate or later) is necessary for provision of any of the services listed in f. to h..

3. Elimination of Distinction between International and Non-international Disputes

The New ADRIIC Rules apply equally to international and non-international disputes. The superseded old Rule 1.3.2 provided that unless the parties agreed otherwise, an arbitration that is international under the law of the seat of the arbitration was governed by the UNCITRAL *Arbitration Rules* to the extent of any inconsistency with the old Rules. This provision had the potential to cause confusion about which aspects of the old Rules applied and which were displaced by the UNCITRAL *Rules*. Indeed, the distinction between international and non-international disputes can itself give rise to debates which are ultimately fruitless, especially if there is a dispute as to the seat of the arbitration. The new ADRIIC Rules follow the modern trend toward integration of many international procedures into all commercial arbitrations. The new ADRIIC Rules avoid the need to characterize an arbitration as international or non-international. Rule 1.3.1 has been simplified to provide that the Rules apply if an “Arbitration Agreement” or “Submission to Arbitration” expressly or implicitly adopts them.

This revision aims not only to clarify when the Rules apply, but also to reflect that the Rules provide an effective platform for international commercial arbitrations conducted in Canada, without the need for any additional analysis or scope for potential disagreement. Alongside the revision to Rules 1.3.1, the new ADRIIC Rules:

- a. reflect that there may be more than one language of the arbitration (Rule 4.2);

- b. encourage an “evidence-first” approach that is common to international arbitration practice and essential to arbitration efficiency;
- c. place limitations on requests for information and documents (Rule 4.7.2, Appendix R3 - Sample Procedural Order), which adopt many key aspects of international practice while maintaining some disclosure requirements that meet standards of fairness considered to be essential in Canadian legal culture (see below); and
- d. clarify the definition of the “Seat of Arbitration” (Rule 1.2).

With an emphasis on flexibility and the ability to create tailored procedures, the new ADRIC Rules provide the parties and the tribunal (as the case may be) with the freedom to apply or be guided by principles best suited to the particular dispute at hand.

4. Enhanced Arbitrator Appointment Process

ADRIC’s new Arbitrator Appointment Protocol, enacted with the new Rules, prescribes how arbitrator appointments will be made, what criteria will be applied, and by whom.²

An “Appointment Committee” has been established for this purpose, comprised of ADRIC members who are arbitrators and arbitration counsel from across Canada. The makeup of this Committee ensures greater knowledge of local markets and arbitrator candidates across the country, which in turn allows for consideration of a broader range of arbitrator candidates. Parties will have greater access to arbitrators they may not be familiar with, but who have expertise and a degree of experience appropriate for the dispute. Simultaneously, arbitrators seeking

² The Arbitrator Appointment Protocol was drafted by a sub-committee chaired by Lisa Munro and comprised of Amy Crosbie, Stephen Drymer, Douglas Harrison, Matti Lemmens, Jim McCartney, Sabri Shawa, and Junior Sirivar.

appointments will have greater access to opportunities and the arbitration field in Canada can work toward greater diversity.

An arbitrator who would like to be considered for appointment must complete an online profile that contains information such as the arbitrator's location, areas of expertise, professional designations, experience, and rates. This information will be found on the new "RADAR" platform on ADRI's website. The Appointment Committee will use it to make arbitrator appointments; however, anyone can access this information. RADAR allows users to search multiple fields at one time to identify arbitrator candidates who best suit the nature of the dispute and the needs of the parties.

There is explicit provision for the recognition of equity, diversity and inclusion criteria in the appointment of members of the Arbitration Committee and arbitrators appointed by the Committee. The objective is to ensure that arbitrator candidates reflect a broad range of perspectives and backgrounds, including representation from equity-seeking groups.

These measures will ensure the quality of arbitrator appointments, the transparency of the appointment process, and the integrity of ADRI's role as appointing authority.

5. Expedited and Integrated Challenge Process

The new ADRI Rules provide for a comprehensive and streamlined arbitrator challenge procedure, one that allows parties to avoid the need for resort to the courts. Arbitrator challenges processed in the courts can disrupt and delay the arbitration and inevitably publicize the dispute. Occasionally, court decisions on such challenges are not based on a good understanding of arbitration culture and standards. In jurisdictions where institutional arbitration is more common, most arbitrator challenges are dealt with by an institution, whether it administers the arbitration or acts only as appointing authority. The new ADRI Rules provide for arbitrator

challenges to be decided by ADRIC in an expedited process, even if the arbitration is not otherwise administered. (Rule 3.6).

Under Rule 3.6, a party seeking to challenge an arbitrator must submit a “Challenge Application”, including a statement of the grounds for the challenge and any evidence and submissions relied upon in support of the challenge. ADRIC will appoint a “Challenge Adjudicator”, normally within two days. Standard terms of appointment for a Challenge Adjudicator are pre-set and a procedure for challenging a Challenge Adjudicator is also provided to avoid delay in the appointment process and the Challenge Application.

Either the party making the Application or any party responding to it may request that the challenge be decided by a panel of three Challenge Adjudicators. This may be desired by some parties, as there is no right of appeal. Evidence and submissions will be exchanged in writing and normally the decision will be made based on the written submissions. However, there is provision for a party to request additional process if these are needed for factually or legally complex challenges.

An arbitrator who is challenged may, but is not required to, deliver a response to the Challenge Application.

The decision on the challenge must state the reasons on which it is based and must be rendered within 15 days of delivery of all evidence and submissions, unless the parties agree or the Challenge Adjudicator orders otherwise.

Taken together, the provisions establishing the arbitrator challenge process ensure that challenges to arbitrators will be resolved confidentially, and expeditiously by expert decision-makers familiar not only with the law applicable to arbitrator challenges in Canada but also with the Canadian arbitration market and professional community.

6. *Conflicts Disclosure Processes and Standards*

The new ADIC Rules affirm the requirement that arbitrators must be, and remain, independent and impartial (Rule 3.3.1). Opting out of this standard is not allowed under the new ADIC Rules (Rule 1.3.4(a)). Realistically, it is recognized that parties may agree to proceed with party-appointed arbitrators who may not meet these criteria. However, the drafters of the new ADIC Rules have expressed their emphatic view that this would be a departure from what ADIC considers to be a minimum requirement for an arbitration conducted under its Rules.

The new ADIC Rules adopt the standard in the UNCITRAL *Model Law* (and, accordingly, in the provinces' *International Commercial Arbitration Acts*) that arbitrators may be challenged if circumstances give rise to justifiable doubts as to their independence and impartiality (Rule 3.6.1). They do not seek to change applicable law or influence developing jurisprudence as to how that standard should be applied. In this, as in other areas, the Rules are designed to work with Canadian legislation and case law, not to push against them.

In the interests of ensuring that potential arbitrators are, to the greatest extent possible, wholly aware of all circumstances surrounding their appointment, Rule 3.3.2 now requires each party to provide a "Party Disclosure" before an arbitrator is appointed that sets out any information reasonably known to the party that would enable the arbitrator to assess whether circumstances exist that could give rise to justifiable doubts as to their independence or impartiality. Examples of information to be disclosed in the Party Disclosure include: (i) all parties to the dispute; (ii) other individuals or entities with a significant financial interest in the result of the arbitration; (iii) expected witnesses; (iv) individual counsel and law firms; and (v) any other information that would assist the arbitrator in assessing whether to accept an appointment and what circumstances to disclose. The Rules take into account the reality that parties may not, at the outset of arbitral proceedings, have access to all

information that will eventually become relevant to arbitrator conflicts of interest. Accordingly, Rule 3.3.2 provides that “reasonably known” information should be included in the initial Party Disclosure. Rule 3.3.2(c) requires each party to update its Party Disclosure as soon as information changes or additional information becomes available (e.g., a change in party counsel or additional witnesses).

Rule 3.3.3 establishes the arbitrator’s reciprocal obligation to deliver a statement (the “Arbitrator Disclosure”), before accepting an appointment, disclosing “to the best of their knowledge” any circumstances that may give rise to justifiable doubts as to their independence and impartiality. The Arbitrator Disclosure must be accompanied by a declaration that they will act with independence and impartiality, among other things. Like the Party Disclosure, the arbitrator is required to update the Arbitrator Disclosure “as soon as possible” if any circumstances arise after acceptance of the appointment and before the arbitration concludes.

While the Party and Arbitrator Disclosures might at first glance appear to place additional obligations on parties and arbitrators, their effect is to streamline the appointment process and reduce the need for challenges. The new ADRIC Rules put the responsibility on both counsel and arbitrators to determine on an ongoing basis what information they must disclose.

Rule 3.3.5 clarifies a matter that has occasionally been the subject of controversy. It provides that arbitrators cannot be disqualified or challenged because they and another arbitrator, counsel, or party are fellow members of any professional, legal or arbitration-related association or body; or they have jointly participated in a program, project, or activity of any such association or body. This is an expanded version of the old Rule, which only applied to common membership and activity within ADRIC. This revision is particularly important given Canada’s relatively small arbitration community, where practitioners are likely (and arguably expected) to be active members of the same professional associations or bodies.

7. *Sample Procedural Order*

The old Rules were prescriptive as to various procedures and timelines, which in many ways mirrored actions in court. While the procedures could be modified by agreement or direction of the tribunal, they established expectations. Those expectations were appropriate when the old Rules were written but are no longer in tune with the expansion of commercial arbitration, the increased sophistication of arbitration practitioners with different expectations, and the availability of tested “evidence-first” procedures.

Rule 4.7 replaces the old regime with a tiered approach. The arbitration “must” be conducted in accordance with the parties’ agreement, unless the tribunal finds that this would violate mandatory requirements of applicable law. Absent party agreement, the tribunal has discretion to set the procedure. However, both the parties and the tribunal are encouraged to consider adopting the “Sample Procedural Order” attached to the Rules as Appendix R3, making any necessary modifications (Rule 4.7.1(c)). The objective is to guide users away from inefficient rules of court and toward procedures that have been proven to allow most disputes to be fully, fairly and finally decided within a year or less.

If the tribunal sets the procedure, the new ADRIC Rules require the tribunal to be guided by the following sets of principles, unless it is satisfied that there are good reasons not to do so (Rule 4.7.2):

- a. principles relating to evidence-first arbitration, whereby the first substantive submission by any party must include all the evidence within that party’s possession or control, including any witness statements, on which it intends to rely in advancing its claims or defences, or in resisting the claims or defences of an opposing party. The drafters considered such evidence-first procedures to be the key to efficient arbitration procedure and the most significant differentiator from normal court proceedings;

- b. principles relating to the right of a party to seek and obtain relevant and material documents and information from an opposing party where the written request is narrow and specific, to avoid the “fishing expeditions” common in litigation practice.

The new ADRIC Rules are consistent with international arbitration practice in that they apply the restrictions on disclosure set out in Article 3(3) of the *IBA Rules on the Taking of Evidence*. In recognition of longstanding Canadian practices, they depart from common international arbitration practice in that they contemplate a right to seek information as well as documents, albeit only information that fits within the limitations prescribed by the *IBA Rules* (Rule 4.7). The limitation of disclosure obligations to documents places the rights of a party to seek “relevant and material” information in the possession of an opposing party at the hazard of an opposing party’s record keeping practices. Applying the same limitations to requests for information as to requests for documents ensures that abusive requests will not be made or allowed. Experience has shown that the tribunal’s supervision of the entire process is an effective control on abuse.

Appendix R3 is a detailed “Sample Procedural Order” that addresses most issues that need to be considered at the outset of the arbitration. Like Rule 4.7.2, Appendix R3 contemplates an evidence-first approach. Evidence is adduced primarily through sworn witness statements. For information in the possession of the opposing party, parties may make and the tribunal may grant evidentiary requests as follows:

- a. Requests for information or documents will not be granted by the tribunal, in the absence of party agreement, unless they are:
 - i. with respect to specific and narrowly defined areas of inquiry;
 - ii. reasonably known or expected to exist and to be within the control of the requested party;
 - iii. not reasonably available to the requesting party;

- iv. not disproportionate to the facts or conclusions sought to be proved; and
- v. not privileged.

Pre-hearing witness examinations will only be allowed if the requests meet the same criteria as required for disclosure requests and all other means of obtaining the disclosure provided by the Procedural Order have failed. This, too, is a potential departure from international arbitration practice. However, it is a useful safeguard against non-co-operation by a party with the other prescribed means of disclosure. In the drafters' experience, where an initial procedural order similar to the Sample Procedural Order has been used, requests for pre-hearing examinations of witnesses are rare and, when made, are even more rarely allowed. That is the drafters' expectation with respect to the use of this provision of the Sample Procedural Order when it is adopted by the parties or the tribunal.

To complement the Sample Procedural Order, the new ADRIC Rules contain a detailed checklist for the first procedural meeting setting out most, if not all, issues that may need to be considered in modifying or supplementing the Sample Procedural Order, or in choosing a different procedure (Appendix R1). The overall approach taken by the new Rules to questions of procedure and evidence is to make it easy for parties and arbitrators to adopt modern, efficient procedures, while preserving flexibility for cases where it makes sense to depart from the standard procedures.

8. Access to Expedited/Simplified Procedures and Med-Arb

Under the new ADRIC Rules, parties have the benefit of access to "Expedited/Simplified Procedures" (Rule 6.2.1 and Appendix R2) and the "ADRIC Med-Arb Rules" (Rule 4.20.1).

Rule 4.7.1(c) encourages parties and tribunals to consider whether the Expedited/Simplified Arbitration Procedures (Appendix R2) can be used because of the size, simplicity or urgency of the dispute. The new ADRIC Rules avoid mandating

the use of the Expedited/Simplified Procedures for use in claims of a certain type or below a specified monetary threshold, which is the only criterion under many institutional rules. Using a single, rigid criterion can handcuff lower-value but complex disputes to inappropriate procedures with unrealistic timelines, and equally can leave parties with the “full” process for disputes where the parties disagree on only a small number of legal or factual matters. Under the new ADRIC Rules, the Expedited/Simplified Arbitration Procedures are available to be adopted by party agreement or by tribunals in the exercise of their discretion.

The Expedited/Simplified Procedures contain a model compressed procedure, subject to modification by agreement of the parties, which provides that the dispute will be resolved by a single arbitrator to be appointed by agreement of the parties within two days of delivery of the Notice to Arbitrate. Failing such agreement, either party may request that ADRIC appoint the arbitrator using the same procedures applicable to ADRIC’s appointment of an Interim Arbitrator. Where a three-person tribunal has already been formed at the time the parties agree or the tribunal orders the application of the Simplified/Expedited Procedures, the parties may agree or, if the value of the dispute is less than \$2.5 million, the tribunal may decide that the arbitration will proceed with the Chair as sole arbitrator.

After the tribunal’s appointment, the exchange of statements, evidence, and the hearing take place within approximately one month and the tribunal must deliver its award within 7 days thereafter. In the interest of efficiency, the award may state the reasons for the decision briefly. As with other awards made under the New ADRIC Rules, there is no appeal from an award made pursuant to the Expedited/Simplified Procedures unless the parties expressly agree otherwise.

The new ADRIC Rules provide that the tribunal may encourage settlement of the dispute and recommend that the

parties use mediation, conciliation, or other dispute resolution procedures at any time during the arbitration proceedings (Rule 4.20).

With respect to Med-Arb, Rule 4.20.1 provides that the parties may agree to “continue” the arbitration as a Med-Arb and, unless they agree otherwise, the tried and tested ADRIC Med-Arb Rules apply. This flexible approach gives parties the opportunity to engage in constructive dialogue at any time facilitated by the arbitrator, who will already have a deep understanding of the case and each party’s specific needs and interests. Few institutions that offer arbitration services also provide Med-Arb rules, and this is another area where the New ADRIC Rules allow parties to establish procedures that work for their dispute, without having to go outside the proceedings by adopting procedures not contemplated in the Rules or by resorting to court action.

9. Post-Award Recourse to the Tribunal

The new ADRIC Rules provide procedures, including strict time limits, for the parties to return to the tribunal after an award has been issued to seek an amendment, clarification, or correction of awards, rulings, orders, or decisions, or delivery of an additional award (Rule 5.4). The grounds for seeking recourse are expanded beyond those provided by other rules and applicable statutes, which typically limit post-award recourse to mathematical, typographical, and clerical errors or other “slips and omissions” (Rule 5.4.2). These limitations often leave one or more parties feeling that they have been the victim of an injustice where a seemingly obvious error has been made that does not fit the narrow test, but the only recourse is an appeal or set-aside application in court. The new ADRIC Rules give a tribunal the opportunity to address a broader scope of potential errors before, and possibly instead of, a lengthy court proceeding. Although the wording differs, the new ADRIC Rules are in line with arbitration legislation in some provinces, which allow a tribunal to “amend the award so as to correct an injustice caused by an oversight on the part of the arbitral tribunal”.

The new ADRIC Rules do not preclude an application to the court following a request to the tribunal, but the complaint must first have been raised with the tribunal. Timelines have been kept short to prevent applications under Rule 5.4 from becoming a source of undue delay or expense.

Rule 5.4.1 entitles parties to apply for amendments, variations, or clarifications within 15 days of issuance of the relevant award, ruling, order or decision. The tribunal does not have discretion to make amendments, variations or clarifications its own initiative—relief under Rule 5.4.1 is only available upon a party’s application.

Rule 5.4.2 entitles a tribunal, on its own initiative or at the request of a party, “to correct” (i) clerical or typographical errors; (ii) errors, slips, omissions, or “other similar mistake[s]”; and (iii) arithmetical errors.

Rule 5.4.3 prohibits a tribunal from amending an award, ruling, order or decision more than 30 days after delivery of the award, ruling, order or decision unless the parties agree otherwise.

The practical effect of these provisions is to enable parties to seek correction of obvious errors or omissions within the arbitral proceeding. In their absence, a party that thinks a mistake has been made has no option other than to commence lengthy, expensive, and usually public court proceedings, which could result in the dispute being referred, many years later, to a second arbitration before a different tribunal. Under Rule 5.4, if the tribunal rejects the suggestion that an error has been made, the rights of the applicant to seek recourse in the courts are preserved. If the tribunal recognizes that an error has been made, the new ADRIC Rules give the tribunal an opportunity to amend the award, so the parties need not seek recourse in the courts. However, the rights of parties to seek recourse in the courts are also preserved.

This approach supports the concept of arbitration as a self-contained dispute resolution process that does not require the courts to assist on all matters that arise in the arbitration process. All decision makers, whether judges or arbitrators, are vulnerable to human error and such errors should be open to amendment or correction. On the other hand, the requirement of finality requires that arbitrations not be recapitulated after an award is rendered or the proceedings unnecessarily reopened. Winning parties are entitled to receive promptly the remedy granted to them, and losing parties should not be able to drag out the proceedings by re-arguing the entire contents of the award. The strict time limits of the new ADRI Rules on the correction process ensures that undue delays will not occur, and that the types of errors that are the subject of Rule 5.4 applications will be focussed and finite.

10. Optional, Limited, and Integrated Right of Appeal

Under the new ADRI Rules, the default position is that there is no appeal from an award, ruling, order, or decision unless the parties agree otherwise (Rule 5.4.6). This is in keeping with the *Uniform Arbitration Act* (2016) adopted by the Uniform Law Conference of Canada, which specifies that appeals to the court from arbitration awards should be on an “opt-in basis” only, i.e., where the parties have expressly made that choice in their arbitration agreement. As with all of the Rules, this provision is subject to applicable laws that prevent parties from limiting appeals to the court from arbitration awards. Equally, nothing in the new ADRI Rules prevents parties from agreeing to pursue appeals in the courts on whatever basis the applicable law allows.

Subject to those qualifications, where parties agree, the new ADRI Rules provide for appeal within the arbitration process on an “extricable question of law that is material to the outcome of the case”. The availability of an “internal” appeal process is consistent with the recommendations of the Uniform Law Conference of Canada, except that the new ADRI Rules make it explicit that appeals are to be brought only on “extricable”

questions of law. Canadian jurisprudence is somewhat equivocal on the significance and application of the requirement of “extricability”. The new ADRIC Rules make it clear that the element of extricability of the question of law is important. The assumption is that by choosing an arbitration appeal process, the parties are seeking a more focused right of appeal that does not involve re-arbitrating issues of fact and issues of mixed fact and law unique to the case.

For parties that choose this appeal option, the process is efficient. Per Appendix R4, the appealing party must commence the process within 20 days of delivery of the award and, unless the parties agree otherwise, the appeal proceeds entirely in writing before a panel of three arbitrators. The Rules provide that the appeal tribunal will decide the process to be used in the appeal but must do so “with the goal of” completing the appeal process within 3 months of delivery of the Notice of Appeal (Appendix R4, Rule 10).

The appeals procedure in the new ADRIC Rules strikes a balance between party autonomy, finality, and flexibility. The opt-in appeals process is efficient both in terms of time limits and in that it limits the scope of appealable matters. At the same time, it preserves the parties’ expectations of privacy and confidentiality expressed by when they agreed to arbitrate.

III. CONCLUSION

In the decade since the old ADRIC Rules were adopted, arbitration practice has evolved to meet the needs of parties and counsel who are increasingly turning to arbitration, both in response to court backlogs and because of the distinct benefits of arbitration. Increasingly, users recognize that procedural flexibility and active case management are hallmarks of good arbitration. The new ADRIC Rules reflect these developments, showing how these procedures can be used in practice, for example, by including the Sample Procedural Order.

Parties can adopt the new ADRIIC Rules as-is without modification, or tailor them to suit their specific needs. Either way, ADRIIC remains available to provide efficient administrative support on an as-needed basis, without the unnecessary additional processes (and fees) that sometimes characterize institutional involvement. Ultimately, the new ADRIIC Rules provide the flexibility that reflects arbitration's *raison d'être*: party autonomy.

Ultimately, though, ADRIIC's commitment to providing parties with flexible and customized processes to achieve full, fair, speedy, and final adjudication will only succeed if users provide feedback on the new ADRIIC Rules. Parties, counsel, and arbitrators are invited to reach out to any member of the Committee that drafted the Rules, provide comments on the ADRIIC website (<https://adric.ca/rules-codes/arbrules/>), or contact ADRIIC Case Services at arb-admin@adric.ca. With this feedback, the Rules will continue to evolve to achieve their purposes.