Commercial Arbitration

"Enforcement risk depends heavily on jurisdiction. Canadian courts treat consent to arbitrate as consent to enforcement."

What was the most interesting development of 2025, and why?

Arbitrator impartiality and the limits of judicial intervention remained a central theme in 2025. The Ontario Court of Appeal reaffirmed the judiciary's strong commitment to arbitral finality alongside a heightened sensitivity to procedural fairness in *Vento Motorcycles, Inc v Mexico*. The Court held that a reasonable apprehension of bias on the part of any arbitrator taints the award as a whole and requires it to be set aside, even where the decision was unanimous and the impugned arbitrator did not control the outcome. The Supreme Court of Canada's denial of leave to appeal in *Aroma Franchise Company, Inc v Aroma Espresso Bar Canada Inc* and *Vento Motorcycles, Inc v Mexico* left this approach intact.

Together, these decisions confirm that courts will not entertain merits-based appeals under the guise of set-aside applications but will intervene where procedural fairness is genuinely at issue.

Courts approached interlocutory matters with the same perspective. In *Lochlan v Binance*, the Court granted an anti-suit injunction to stop an arbitration from proceeding in Hong Kong where the arbitration clause had previously been found unconscionable by the Ontario court. At the same time, courts confirmed the principle of deference to arbitral tribunals on jurisdictional, interlocutory, and procedural matters in *Fredericks v South Western Insurance Group Limited*, *2859824 Ontario Limited v Gen Digital Inc*, and *Alberta Investment Management Corporation v LAPP Corporation* (Lenczner Slaght represented the respondents in this matter).

What's the primary takeaway for businesses from the past year?

Canada's pro-enforcement stance in arbitration remained strong in 2025, including in cases involving sovereign states. In *CCDM Holdings LLC v Republic of India*, the Québec Court of Appeal confirmed that India waived any claim to sovereign immunity at the enforcement stage by agreeing to arbitrate under a bilateral investment treaty. Enforcement proceedings in Canada could therefore move forward in respect of the USD $111 million award, clearing a major jurisdictional hurdle for investors seeking recovery.

This case stands in contrast to enforcement efforts in other jurisdictions involving the same parties. The United Kingdom High Court refused to enforce the award on the basis that India retained state immunity in *CC/Devas (Mauritius) Ltd & Ors v Republic of India*. That Court held that while India had agreed to arbitrate, consent was not sufficient on its own to waive immunity under the UK's *State Immunity Act*.

The Full Federal Court of Australia reached a similar conclusion, holding that India's agreement to arbitrate under a treaty did not waive its immunity from enforcement proceedings under Australia's *Foreign States Immunities Act*.

For businesses and investors with awards against states or state-owned entities, the takeaway is clear: enforcement risk depends heavily on jurisdiction. Canadian courts, as confirmed in *CCDM*, treat consent to arbitrate as consent to enforcement, offering a more predictable and efficient path to recovery than the UK or Australia.

What's one trend you are expecting in 2026?

We expect the use of artificial intelligence in arbitration to prompt greater procedural oversight in 2026. In late 2025, the Chartered Institute of Arbitrators released its *Guideline on the Use of AI in International Arbitration*, calling for early disclosure of AI tools, clear agreement between parties on how AI will be used, and confirmation that decision-making remains with the arbitrators.

Although the guideline isn't binding, we expect it will have an impact on practice, especially in places like Canada where arbitrators have wide procedural discretion but no specific rules on AI. Even without legislation, Canadian tribunals can still adopt these principles through procedural orders and party agreements.

For parties, the message is simple: address AI early and openly. Mismanaging AI use could raise fairness concerns and even enforcement risks. As AI tools become routine, tribunals and counsel will need to treat them like any other procedural issue.

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OUR ARBITRATION EXPERTISE

Clients sometimes choose arbitration for cases involving complex or confidential matters that can be resolved more efficiently, expeditiously and predictably behind closed doors. In other cases, clients turn to arbitration for cross-border disputes or cases involving multiple jurisdictions, where the legal issues are typically complex and often involve competing jurisdictions and conflicting substantive law. In either case, our