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### **INNOVATIVE DISPUTE RESOLUTION: THE ALTERNATIVE**

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**Release No. 5, December 2024**

This comprehensive work offers a thorough analysis of available alternative dispute resolution techniques, including mediation, arbitration, fact-finding, mini-trial and private court. Extensive case histories illustrate practical applications of resolution techniques in actual fact situations, and practical precedents to provide guidance on how best to structure and manage ADR agreements. Includes techniques and tips on the selection of experts, timing considerations, the role of lawyers and on the dispute resolution process itself.

### **What's New in this Update:**

This release features a new Chapter 1 (Year in Review) and 2 Issues in Focus updates (IF 1: Are statutory claims arbitrable following the Supreme Court of Canada decision in *Seidel v. Telus Communications Inc.*? and IF: 2 What amounts to a waiver of clauses pertaining to arbitration and choice of forum in commercial agreements?) There are also valuable case and commentary updates to Chapter 6 (Arbitration).

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## Highlights

**Year in Review—2024 Year in Review—**The 2024 Year in Review examines developments, trends and some of the decisions made over the year in relation to alternative dispute resolution. This summary touches on the most pertinent recent developments: Employer Arbitration; Mediation; and Unconscionability in Arbitration.

**Arbitration—The Technique—The Timing; Emergency Arbitration Under the ICC Rules—The Timing—**In *2329716 Alberta Ltd. v. Jagroop Randhawa*, the Alberta Court of King’s Bench considered interim and injunctive relief applications.

**Arbitration—The Technique—The Process—Appeals and Judicial Review—**In *Laysun Service Co Limited v. Del Monte International GMBH*, the English High Court provided additional insights into s. 69 of the *Arbitration Act 1996*.

**Arbitration—Case Study Examples—Employment Contract—Overview—**The precedent set out by the United States Court of Appeals for the Eighth Circuit was that a party waives its right to arbitration if it knew of the right, acted inconsistently with the right, and prejudiced the other party through its inconsistent actions. However, the US Supreme Court’s decision in *Morgan v. Sundance, Inc* eliminated the need for the employee to demonstrate that the delay prejudiced them in any way.

**Arbitration—The Technique—The Person—Arbitrator Jurisdiction—**In *Coinbase, Inc. v. Suski*, the United States Supreme Court determined that when contracts conflict on whether dispute resolution jurisdiction is directed to arbitration or the courts, a court must decide the issue.

**Arbitration—Class-Wide Arbitration—Mandatory Arbitration Clauses and Class Proceedings—The United States—**In *Viking River Cruises v. Moriana*, the United States Supreme Court stated that the *Federal Arbitration Act* (FAA) allows employers to enforce arbitration agreements against individual claims under the *California Private Attorneys General Act* (PAGA).

**Arbitration—The Technique—The Timing; Emergency Arbitration Under the ICC Rules—The Timing—**In *Biancucci v. Buttarazzi*, the Ontario Superior Court of Justice applied the Haas framework for a stay application pursuant to s. 7 of the *Arbitration Act*.

**Arbitration—The Technique—The Process—The Award—**In *Brazeau (County) v. Drayton Valley (Town)*, the Alberta Court of Queen’s Bench held in obiter that the limitation period for challenging an arbitration decision begins when the arbitrator signs the decision.