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## DRAFTING ADR AND ARBITRATION CLAUSES FOR COMMERCIAL CONTRACTS

Wendy J. Earle Release No. 7, October 2025

This publication provides, to counsel drafting a commercial agreement, all the tools and information necessary to design and draft an effective ADR/ arbitration clause that accomplishes the intentions and desires of the parties who have chosen ADR/arbitration to resolve their disputes. It canvasses the various forms of ADR, including ones on the cutting edge, such as "collaboration" and "cybersettle.com." It considers some of the pitfalls and dangers in poorly drafted clauses, which only become apparent when the ADR/arbitration process is underway. Issues specific to ADR/arbitration clauses in commercial agreements that are addressed include: Rent renewals, Shareholder agreements, Options to purchase land, Agreements involving parties outside Canada. This publication also features appendices containing numerous precedent arbitration, mediation and different types of ADR clauses, as well as summaries of the procedural rules of the major arbitration institutions and legislation governing arbitrations in place across Canada.

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## What's New in this Update:

This release features updates to Appendix WP—Words and Phrases Judicially Considered.

## Highlight:

- Appendices—Appendix WP—Words and Phrases Judicially Considered—Arguable Case—Ontario—An "arguable" case is clearly something less than the standard of "correctness" or even "likely to succeed". It is more like "a reasonable prospect of success" or "not obviously doomed to fail". Crosslinx Transit Solutions v. Ontario Infrastructure (2023), 2023 CarswellOnt 9601, 2023 ONSC 3500 (Ont. S.C.J. [Commercial List].
- Appendices—Appendix WP—Words and Phrases Judicially Considered—Audi Alteram Partem—British Columbia—. . . the right of the parties to be heard, including the right to know the case to meet and have a full and fair chance to respond. . . Liberal Party of Canada v. The Complainants (2024), 2024 CarswellBC 1372, 2024 BCSC 814, 33 Admin. L.R. (7th) 27 (B.C. S.C.).