

# LEXPERT®

CANADA'S LEADING LAWYERS  
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SPECIAL EDITION: LITIGATION 2022

## DYNAMICS OF LAW

THE EVOLUTION OF  
CLASS ACTIONS,  
MASS TORTS, AND  
ALTERNATIVE DISPUTE  
RESOLUTION



**MASS TORT TREND**  
Tempting new tool  
for litigators

**APPEAL OF ADR**  
Pandemic catalyst for surge  
in mediation and arbitration

**CLASS ACTION CLOCK**  
Pendulum swings toward  
fewer certifications

## Sometimes litigation is the best choice

**M**ost businesspeople hate litigation and would prefer to focus on running their businesses. The cost, slowness, and lack of confidentiality when fighting in court make alternatives welcome.

“The use of ADR generally produces a resolution more quickly than using a court system that can be backlogged,” says Rachael Saab at Torys LLP (p. 16).

Michelle Awad at McInnes Cooper says the pandemic made the potential advantages of ADR even more apparent, especially as technology for remote proceedings offered even more flexibility (p. 16). Even mundane technological developments can make ADR seem more appealing. Lawrence Thacker at Lenczner Slaght LLP says international arbitration rules often have a “well-thought-out” system for numbering and ordering documents, making it easier to put together a hyperlinked electronic record (p. 20).

But the fact that court proceedings are so public is one of the biggest reasons many businesses want to steer clear. “There are sometimes cases where both sides don’t want anything in the public realm, so they’ll agree to arbitrate,” says Thacker.

But therein lies the rub. Because ADR occurs behind closed doors, only the parties to the dispute benefit from the results.

In this issue, we also provide the top ten business decisions (p. 26), which represent how courts are providing not just resolutions for the parties but also precedents for Canadian business.

Our list of top cases includes a class action against CIBC for overtime pay, a decision on whether plaintiffs should receive an injunction against “Freedom Convoy” defendants who were attempting to dissipate funds, a request to approve a remediation agreement for SNC-Lavalin, and a corporate governance question in the Rogers family dispute.

These cases will not just provide a resolution to the parties. Publicly reported decisions can help businesspeople who face similar circumstances avoid a fight.

This advantage may be cold comfort for those involved in protracted litigation. We should not expect businesses to help develop the law. But as any litigator would attest, sometimes a public dispute is the only option.

The litigators in these pages can help their clients decide when that time has come – and if it has, how to achieve the best results.

*Tim Wilbur, global managing editor*

# LEXPERT

*fortuna favet fortibus*

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