COURT OF APPEAL FOR ONTARIO

CITATION: InFrontier AF LP v. Rahmani, 2026 ONCA 289
DATE: 20260421
DOCKET: COA-25-CV-1016

Huscroft, Zarnett and Pomerance JJ.A.

BETWEEN

InFrontier AF LP

Applicant (Respondent)

and

Roeen Rahmani

Respondent (Appellant)

Eric Morgan and Oliver Wookey, for the appellant

Michael D. Schafler and Ekin Cinar, for the respondent

Heard: March 11, 2026

On appeal from the judgment of Justice Peter J. Cavanagh of the Superior Court of Justice, dated July 3, 2025, with reasons reported at 2025 ONSC 3968.

Zarnett J.A.:

[1] In Ontario, recognition and enforcement of foreign arbitration awards is governed by the *International Commercial Arbitration Act, 2017*, S.O. 2017, c. 2, Sched. 5 ("*ICAA*"). One way in which it does so is by giving force of law to the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*,

adopted by the United Nations Conference on International Commercial Arbitration in New York on 10 June 1958 (the "Convention"). The provisions of the Convention apply to the recognition and enforcement of an arbitral award made in another "State" that has accepted the Convention.[1]

[2] The Convention favours enforcement of arbitral awards while respecting the parties' autonomy to choose their own arbitral procedure. Under Article V of the Convention, recognition and enforcement may be refused only if the party resisting it establishes one or more specified grounds including, under Article V 1(d), that "[t]he composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place".

[3] In the judgment under appeal, the application judge recognized, as binding and enforceable in Ontario, an arbitral award (the "Award") that resulted from an arbitration conducted in the Dubai International Financial Centre ("DIFC"), a common law jurisdiction in Dubai, United Arab Emirates. He ordered the appellant to pay amounts that were owing under the Award, totaling over $2.5 million USD, to the respondent.

[1] The *ICAA* also gives force of law to the *UNCITRAL Model Law on International Commercial Arbitration,* adopted by the United Nations Commission on International Trade Law on 21 June 1985, as amended on 7 July 2006. The Model Law also has recognition and enforcement provisions relating to foreign or international arbitration awards not governed by the Convention. The Model Law, and its recognition and enforcement provisions, are not in issue in this appeal.

[4] The principal issue on this appeal concerns whether the application judge erred in considering the law of Dubai in determining that the appellant had not established the ground set out in Article V 1(d) of the Convention. The appellant argues that the application judge was not permitted to consider the law of Dubai—the place where the arbitration was conducted—because the parties had an agreement about arbitral procedure.

[5] For the reasons that follow, I conclude that the application judge did not, contrary to the Convention, allow the law of the place of arbitration to oust or override the parties' agreement as to the applicable procedure. Rather, he interpreted their agreement to determine what procedure they had agreed to. He found that the parties agreed to rules in place at the time of agreement or "such amended version" as had been adopted when their arbitration commenced. He considered the law of Dubai as it bore on the questions of whether the rules had been amended and what that amended version was.

[6] The application judge's interpretation of the agreement, and his finding of what the amended version of the rules was, is free of extricable legal error and subject to deference on appeal.

[7] There is also no reversible error in the application judge's finding that the appellant had not established any other Convention ground to refuse recognition and enforcement.

[8] I would therefore dismiss the appeal.

Background

[9] The appellant, Roeen Rahmani, an Afghani citizen residing in Ontario, is the founder of a university and several schools in Afghanistan. Under a September 2020 Term Loan Agreement (the "Agreement"), the respondent, a United Kingdom based private equity firm, made a substantial loan to two of the schools, the Kardan School and the Kardan School for Girls (the "Schools"). The appellant guaranteed repayment of the loan.

[10] When the Agreement was made, a partnership existed between the Dubai International Financial Centre Arbitration Institute (the "DIFC Arbitration Institute") and the London Court of International Arbitration ("LCIA"). The partnership operated as the DIFC-LCIA Arbitration Centre, and enacted a set of rules known as the Rules of Arbitration of the DIFC-LCIA Arbitration Centre (the "DIFC-LCIA Rules"). The DIFC-LCIA Rules contemplated that an agreement to arbitrate under them was to be taken as an agreement to any amended version of the rules that the DIFC-LCIA Arbitration Centre might adopt prior to the commencement of an arbitration.

[11] The Agreement provided that disputes were to be resolved by arbitration to be held in the DIFC under the DIFC-LCIA Rules by one or more arbitrators appointed in accordance with said rules.

[12] The respondent commenced arbitration proceedings in 2023, alleging that the Schools defaulted in repayment of the loan in December 2022.

[13] By that time, three events had occurred relevant to how an arbitration under the Agreement would be conducted:

(1) In September 2021, the government of Dubai enacted a law ("Decree 34") that abolished the DIFC Arbitration Institute and transferred its rights and obligations to the Dubai International Arbitration Centre ("DIAC"). Under Decree 34, the arbitration rules adopted by the DIFC Arbitration Institute continued in force until new DIAC rules of arbitration were approved by DIAC's Board of Directors.

(2) DIAC's Board approved its own arbitration rules (the "DIAC Rules") effective March 21, 2022. Once effective, those rules were stated to apply regardless of the date of the underlying agreement, "unless the parties agree otherwise".

(3) On March 29, 2022, DIAC and LCIA issued a press release (the "Press Release"). It provided that all arbitrations commenced after March 21, 2022 under agreements that referred to the DIFC-LCIA Rules would be administered by DIAC in accordance with the rules of procedure of DIAC, "unless otherwise agreed by the parties".

[14] Over the objection of the appellant, an arbitrator was appointed and the arbitration conducted under the DIAC Rules. The arbitrator made rulings about deadlines and extensions of time that the appellant argues compressed the proceedings, leaving insufficient time for the Schools and the appellant to be properly represented by legal counsel—rulings he says were the product of the DIAC Rules.

[15] Ultimately, the arbitrator rejected the defences raised and made the Award requiring the Schools and the appellant to pay the respondent $2.5 million USD for the outstanding principal under the Agreement, and further amounts for interest, penalties, and costs.

[16] The respondent then applied to the Superior Court of Justice under the *ICAA* for an order recognizing and enforcing the award in Ontario.

The Statutory Provisions

[17] Article V of the Convention sets out a number of grounds on which recognition and enforcement of a foreign arbitral award may be refused. Of particular relevance to this appeal, Article V 1(b) and (d) provide:

> 1 Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
>
> […]

> (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
>
> […]
>
> (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place

[18] Additionally, Article V 2(b) states that recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that "[t]he recognition or enforcement of the award would be contrary to the public policy of that country."

[19] The Convention has force of law in Ontario under s. 2 of the *ICAA*.

The Decision Below

[20] The appellant submitted before the application judge that the Award should not be recognized and enforced on three Convention grounds: 1) the composition of the tribunal and the arbitration procedure was not in accordance with the agreement of the parties because the arbitrator was appointed and the arbitration conducted under the DIAC Rules rather than the DIFC-LCIA Rules; 2) the arbitration was conducted in such a manner that the appellant was unable to present his case; and 3) recognition and enforcement of the Award would be contrary to public policy principles applicable in Ontario.

[21] The application judge rejected each of these arguments and ordered the Award recognized and enforced in Ontario.

[22] He began by addressing what the Agreement provided for in respect of the composition of the arbitral tribunal and procedure for the arbitration. The Agreement expressly referred to the DIFC-LCIA Rules as the applicable rules. However, he noted that the Preamble to the DIFC-LCIA Rules stated that any agreement to their application is an agreement to conduct any arbitration in accordance with the DIFC-LCIA Rules or "such amended version of those rules as the DIFC-LCIA Arbitration Centre may have adopted hereafter" that were in place when an arbitration commenced. Thus, the question was whether the DIAC Rules were an "amended version" of the DIFC-LCIA Rules.

[23] The application judge went on to review Decree 34, which provided that DIAC would replace the DIFC Arbitration Institute "in considering and determining all Disputes… unless otherwise agreed by the parties". He noted that the DIAC Board had approved the DIAC Rules before the subject arbitration had been commenced and described the terms of the Press Release by which DIAC and LCIA announced that future arbitrations would be conducted under the DIAC Rules.

[24] He concluded that Decree 34 was intended to replace the DIFC-LCIA Rules with a new version of the rules, the DIAC Rules. Those rules became an amended

version of the DIFC-LCIA Rules referred to in the Agreement, which the parties had agreed to follow. He stated:

> By force of [Decree 34], the [DIAC Rules], once they were effective on March 21, 2022, became an amended version of the [DIFC-LCIA Rules], and, therefore, as provided for in the Preamble [to the DIFC-LCIA Rules], the parties to the…Agreement are taken to have agreed that any arbitration between them shall be conducted in accordance with the [DIAC Rules].

The parties were permitted to agree to use any other rules after this point but did not do so.

[25] The application judge therefore did not consider it necessary to determine whether the differences between the DIFC-LCIA Rules and the DIAC Rules were material, as the arbitrator had "correctly applied" the DIAC Rules.

[26] As such, the appellant did not meet the burden of proving that the ground specified in Article V 1(d) was met.

[27] The application judge also found that the public policy ground was not made out. The appellant argued that this standard was met because the Award was obtained through the Arbitrator's incorrect application of procedural rules to which the parties did not agree, and the Award depended on Decree 34, which amended the arbitration agreement without the consent of the parties. The application judge found that Decree 34 did not do so: it created a revised version of the arbitration rules, as the parties agreed might occur.

[28] Finally, the application judge rejected the appellant's contention that the arbitrator's rulings had unfairly prevented him from presenting his case. He stated:

> I do not accept Mr. Rahmani's submission that he was denied procedural fairness in the arbitration proceeding. Mr. Rahmani has not shown that the procedure was unfairly compressed. He has not shown that there was unfairness in how the Arbitrator decided issues in relation to legal representation. He has not shown that he was unfairly denied access to relevant documents.

Analysis

1. Did the application judge err in his approach to Article V 1(d) of the Convention by taking into account Dubai law, specifically Decree 34?

a. The Parties' Positions

[29] The appellant submits that this issue, rooted in the meaning and interpretation of legislation and the correct legal test under it, is subject to a correctness standard of appellate review: *Teal Cedar Products Ltd. v. British Columbia,* 2017 SCC 32, [2017] 1 S.C.R. 688, at paras. 43-47.

[30] According to the appellant, the application judge followed the wrong legal approach under Article V 1(d). That provision calls for a comparison between the procedure that was followed and one of two alternatives: the procedure called for under the parties' agreement or, if there was no agreement about procedure, the procedure called for by the law of the place of arbitration. Since in this case the Agreement specified the arbitration procedure as the DIFC-LCIA Rules, the application judge was required to consider solely whether the arbitrator followed

those procedural rules. Instead, he found that Decree 34—a law of the place of arbitration—modified the agreed upon DIFC-LCIA Rules, resulting in their replacement with the DIAC Rules. The law of the place of arbitration is, according to the appellant, irrelevant where the parties have an agreement about arbitral procedure. While the DIAC replaced the DIFC-LCIA Arbitration Centre as the administering institution, the DIFC-LCIA Rules still applied by virtue of the Agreement. Consideration of Decree 34 was an error of law.

[31] The respondent advances a different characterization of what the application judge did. In the respondent's view, the application judge correctly appreciated that he had to compare the procedure agreed to by the parties with the procedure that was followed. However, to do that, he had to determine the procedural rules to which the parties had agreed, as they had agreed to a set of rules that could be amended. The application judge looked at Decree 34 for this purpose: as a necessary step in determining the procedural rules the parties had agreed to. Absent an extricable legal error, contractual interpretation is subject to appellate review on a deferential standard: *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 50; *Teal*, at para. 47.

b. Discussion

[32] The "purpose of the [Convention] is to facilitate the enforcement of arbitration agreements by ensuring that effect is given to the parties' express intention to seek arbitration": *GreCon Dimter inc. v. J. R. Normand inc*., 2005 SCC

46, [2005] 2 S.C.R. 401, at para. 43. Canada ratified the Convention to further the "presumptive enforceability and overall predictability of arbitration agreements": *Peace River Hydro Partners v. Petrowest Corp*., 2022 SCC 41, [2022] 3 S.C.R. 265, at para. 123. The Convention has an "enforcement facilitating thrust", while recognizing the "central role of the parties in fashioning the arbitration procedure and provid[ing] sanctions for failure to adhere to the agreed procedures": *Polimaster Ltd. v. RAE Systems Inc.*, 623 F (3d) 832 (9th Cir. 2010), at p. 16566, citing Gary B. Born, *International Commercial Arbitration in the United States*, 3rd ed. (Deventer: Kluwer Law and Taxation Publishers, 1994), at p. 44.

[33] Article V 1(d) of the Convention "gives effect, in recognition proceedings, to the parties' autonomy to agree upon internal 'arbitral procedures' different from those prescribed by the laws of the place of the arbitration": Gary B. Born, *International Commercial Arbitration*, 2nd ed., vol. 2 (Alphen aan den Rijn: Kluwer Law International, 2014), at §11.03[C], p. 1549. "If the parties have made an agreement on the composition of the arbitral tribunal and the arbitral procedure, according to Article V (1)(d), the alleged irregularity of these matters has to be determined under the agreement alone": Albert Jan van den Berg, *The New York Convention of 1958*, (The Hague: Kluwer Law and Taxation Publishers, 1981), at p. 324.

[34] The appellant is correct (and the respondent does not dispute) that the question was whether the procedure followed was "not in accordance with the

agreement of the parties". However, before comparing the procedure agreed to and the procedure that was followed, it is necessary to interpret the parties' agreement to determine "what they have agreed": International Council for Commercial Arbitration, *ICCA's Guide to the Interpretation of the 1958 New York Convention*, 2nd ed. (2024), at p. 95.

[35] The application judge correctly identified the key question as a matter of interpretation of the parties' agreement. As he stated: "In order to determine whether the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, I must determine what their agreement provides for in these respects".

[36] He then turned to the wording of the Agreement, noting that it specified the DIFC-LCIA Rules as "being the applicable procedural rules". He reviewed those rules and observed that they contemplated that they might be amended and that parties who referred to them in an arbitration agreement were taken to have referred to any amended version in place when their arbitration commenced. The Preamble to the DIFC-LCIA Rules provided:

> Where any agreement, submission or reference howsoever made or evidenced in writing (whether signed or not) provides in whatsoever manner for arbitration under the rules of or by the DIFC-LCIA Arbitration Centre or DIFC-LCIA, the parties thereto shall be taken to have agreed in writing that any arbitration between them shall be conducted in accordance with the Rules of Arbitration of the DIFC-LCIA Arbitration Centre as set forth below or such amended version of those rules as the DIFC-LCIA Arbitration Centre may have adopted

> hereafter to take effect before the commencement of the arbitration and that such Rules of Arbitration form part of their agreement (collectively, the "Arbitration Agreement"). These Rules of Arbitration of the DIFC-LCIA Arbitration Centre comprise this Preamble, the Articles and the Index, together with the Annex and the Schedule of Arbitration Costs as from time to time may be separately amended by the DIFC-LCIA Arbitration Centre (the "DIFC-LCIA Rules").

[37] In conducting this analysis, the application judge did not stray from the question of what procedural rules the parties had agreed to. The application judge was entitled to find that parties had not agreed to a static set of rules—rules as they stood at the time of the Agreement, unaffected by any changes to them made thereafter. Rather, by referring to the DIFC-LCIA Rules, they had agreed to “such amended version” of those rules as adopted by the DIFC-LCIA Arbitration Centre. In so concluding, he was engaged in interpreting the whole Agreement, including terms that had been referentially incorporated.

[38] Was the application judge barred from looking at Dubai law, specifically Decree 34, in deciding whether there was an amended version of the DIFC-LCIA Rules in place at the time the arbitration commenced? The appellant says he was, because Article V 1(d) has two mutually exclusive branches. Under the first branch, if the parties have an agreement, only the agreement is looked to. If there is no agreement, the second branch is engaged and the law of the place of arbitration governs.

[39] I agree that the branches of Article V 1(d) are mutually exclusive. But it does not follow that, when proceeding under the first branch, the law of the place of

arbitration can never be relevant. As the Supreme Court has noted, parties to an arbitration agreement are free, subject to any mandatory provision by which they are bound, to choose any procedures they consider appropriate, basing them on local or foreign law or the rules of a variety of arbitration organizations. Importantly, "the rules become those of the parties, regardless of where they are taken from": *Union des consommateurs c. Dell Computer Corp*., 2007 SCC 34, [2007] 2 S.C.R. 801, at para. 52 (emphasis added).

[40] Thus, parties could state in their arbitration agreement that the procedure will be the rules for arbitration enacted and amended from time to time by the legislature of the place where the arbitration is to be conducted. If they did, the court in a recognition proceeding would have to look at the enactments and amendments of that legislature to determine the agreed upon procedure. The court would be doing so under the first branch of Article V 1(d), not the second, because the parties' agreement about procedure made the law of the place of the arbitration relevant to the question of what rules the parties had agreed to.

[41] This case presents a variation of that situation. The parties' Agreement about procedure makes the law of the place of arbitration relevant to the question of what rules the parties agreed to.

[42] The application judge explained, at para. 43 of his reasons, that he looked at Decree 34 because the DIFC-LCIA Arbitration Centre, which enacted the DIFC-

LCIA Rules, was subject to the laws of Dubai for arbitrations seated there. In other words, Dubai had the legal power to affect that institution and its rules. He concluded that Decree 34 expressly did so. As noted, it abolished one half of the partnership that enacted the rules—the DIFC Arbitration Institute—and transferred its property to DIAC, while making provision for the DIAC Rules, once effective, to replace the rules that had been adopted by the DIFC Arbitration Institute. As he interpreted Decree 34, "the [DIAC Rules], once they became effective on March 21, 2022, became an amended version of the [DIFC-LCIA Rules]".

[43] In my view, the application judge did not err by looking at Decree 34 for this purpose. He did not allow the law of the place of arbitration to contradict the parties' autonomy by imposing on them a set of rules to which they did not agree. Rather, because the parties had agreed to such amended version of the DIFC-LCIA Rules as were in place at the time their arbitration commenced, he was entitled to take into account a decree passed by a jurisdiction with authority over the institution that enacted the rules to determine if an amendment had been effected.

[44] The appellant argues that it was nevertheless an error for the application judge to rely just on Dubai law to find that the DIAC Rules became an amended version of the DIFC-LCIA Rules, because the Preamble stated that an amended version of the DIFC-LCIA Rules was one "adopted" by the DIFC-LCIA Arbitration Centre. Regardless of what Dubai law purported to do, a final step was necessary before the DIAC Rules could have been said to be adopted by the relevant

institutions making up that partnership, so that the amendment was one taken to have been agreed to by the parties.

[45] Although the application judge did not expressly describe the final step of the analysis, his overall chain of reasoning can be inferred. He referred, albeit earlier in his reasons, to the Press Release and there is no question that it shows the necessary adoption took place. Every entity that could be involved in the adoption of an amended version of the DIFC-LCIA Rules made it clear that after March 21, 2022, arbitrations under agreements that had specified the DIFC-LCIA Rules would proceed under the DIAC Rules, absent agreement to other rules.

[46] In the Press Release, reference was made to DIFC Arbitration Institute's announcement, in October 2021, that:

> existing cases will continue to be administered by the DIFC-LCIA casework team and the LCIA. However, all arbitrations, mediations and other ADR proceedings arising out of agreements referencing the DIFC-LCIA referred for resolution after the date of the enactment of the Decree will be administered by DIAC in accordance with the DIAC Rules, unless the parties thereto agree otherwise.

Moreover, DIAC and LCIA jointly announced in the Press Release that:

> All arbitrations, mediations and other alternative dispute resolution proceedings referring to the respective rules of the DIFC-LCIA, including ad hoc proceedings where the DIFC-LCIA is requested to act as appointing authority or administrator, commenced on or after 21 March 2022 (or commenced before 21 March 2022 but not registered by

> the DIFC-LCIA under a designated case number) shall be registered by DIAC and administered directly by its administrative body in accordance with the respective rules of procedure of DIAC…. [Emphasis added.]

[47] The appellant also contends that the application judge failed to properly consider the fact that Decree 34, the DIAC Rules, and the Press Release all provided that the DIAC Rules did not apply if the parties agreed otherwise. He submits that the parties did agree otherwise, in the Agreement formed in September 2020.

[48] This argument is unpersuasive. The application judge interpreted the phrase "unless the parties agreed otherwise" to refer to an agreement made after the DIAC Rules became the amended version of the DIFC-LCIA Rules. In my view, this is a reasonable interpretation and was open to the application judge. In other words, it was open to the parties to agree, after March 21, 2022, that the DIFC-LCIA Rules in the form they were in at the time of the Agreement, without amendments, should govern their arbitration. Or they could have specified any other set of rules. No such agreement was made.

[49] The application judge was, throughout, engaged in the process of interpreting the Agreement to determine the set of procedural rules to which the parties had agreed. He made no reversible error in that exercise, and his interpretation is subject to deference on appeal. On his interpretation, the rules agreed to and the rules the arbitrator used were the same. Accordingly, the

appellant has not shown a reversible error in the application judge's conclusion that the Article V 1(d) ground was not established. The appellant did not show that the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties.[2]

2. Did the application judge err in recognizing and enforcing an award by an authority under an unfair procedure to which the parties did not consent, contrary to Ontario public policy and Articles V 1(b) and V 2(b) of the Convention?

[50] The appellant's argument that the procedure followed was one to which the parties did not consent is derivative of its argument under the Article V 1(d) ground. It fails for the same reasons. The application judge's finding that the appellant was not prevented from presenting his case and that the procedure followed was not otherwise unfair was the result of his careful review of the rulings complained of. No ground for appellate interference has been established.

[51] "[T]o succeed on [the public policy ground] the award must fundamentally offend the most basic and explicit principles of justice and fairness in Ontario, or evidence intolerable ignorance or corruption on the part of the Arbitral Tribunal": *Corporacion Transnacional de Inversiones, S.A. de C.V. v. STET International,*

[2] The parties did not agree on what degree of variation between agreed to rules of procedure and those under which an arbitration was conducted would warrant the exercise of discretion to refuse recognition and enforcement. Nor did they agree on whether there was a material difference between the DIAC Rules and the DIFC-LCIA Rules as they stood at the time of the Agreement. The appellant referred us to decisions of Singapore courts that view the differences as significant: *DFL v DFM*, [2024] SGHC 71, aff'd [2024] SGCA 41. On the other hand, a U.S. Circuit Court has referred to the two sets of rules as "nearly identical": *Baker Hughes Saudi Arabia Company Limited v. Dynamic Industries, Incorporated*, 126 F (4th) 1073 (5th Cir. 2025). In view of the conclusion above, it is unnecessary to consider either question.

S.p.A., 45 O.R. (3d) 183 (S.C.), at para. 30, aff'd (2000) 49 O.R. (3d) 414 (C.A.); see also *Clayton v. Canada (Attorney General)*, 2024 ONCA 581, 500 D.L.R. (4th), at paras. 35-37. The application judge made no reversible error in finding that such circumstances were not present here.

Conclusion

[52] I would dismiss the appeal.

[53] In accordance with the agreement of the parties, I would award costs to the respondent in the all-inclusive amount of $30,000.

Released: April 21, 2026 "G.H."

"B. Zarnett J.A."
"I agree. Grant Huscroft J.A."
"I agree. R. Pomerance J.A."