

# Deadline or lifeline? Ontario Court of Appeal provides guidance on dispute resolution clauses' timeline requirements

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Parties frequently include clauses in their agreements requiring them to attempt informal means to settle a dispute before proceeding to a formal arbitration<sup>1</sup>. But how binding are those timeline requirements? Do they create a limitation period resulting in a jurisdictional bar if they are not met?

The Court of Appeal for Ontario's recent decision in *J.P. Thomson Architects Ltd. v. Greater Essex County District School Board*<sup>2</sup> reflects that courts will interpret these clauses in a pragmatic way to facilitate dispute resolution, rather than as a sword to undercut it. The Court also reaffirmed the importance of the competence-competence principle and recognized that it is for the arbitrator to determine the scope of (i) the dispute being arbitrated and (ii) their jurisdiction. The decision underscores the weight of commercial reasonableness and good business sense in interpreting dispute resolution clauses between parties in a long-standing and complex relationship.

## What you need to know

- **Time periods are lifelines, not deadlines.** Courts will interpret time periods to negotiate informally in dispute resolution clauses as minimum requirements for parties to meet before triggering a more formal dispute resolution process. They are not limitation periods that risk losing the right to engage in dispute resolution if they are not met. Here, the parties were found to retain the right to arbitration despite failing the requirement to mediate within 30 days of the dispute arising<sup>3</sup>.
- **“Good business sense” drives contractual interpretation.** The Court was not driven by the contract's technical language but by arriving at a result that “makes good commercial sense in the context of long-standing and complex relationships”. It was motivated not to interpret alternative dispute resolution clauses in a manner that undermines their purpose, but rather with “sound commercial principles and good business sense”<sup>4</sup>.

## The background

### The underlying dispute regarding the parties' alternative dispute resolution clause

The appellant, J.P. Thomson Architects Ltd. (Thomson) was awarded two contracts to provide architectural services to the Greater Essex County District School Board (the Board) for two new schools<sup>5</sup>. Each contract contained GC18, the dispute resolution clause that was in the then-standard form Ontario Association of Architects contract. GC18

provided specified a procedure and timelines for negotiation, mediation, and arbitration<sup>6</sup>.

The portion of GC18 that gave rise to the dispute was the provision's 30-day deadline for referring a matter to mediation as a precondition to initiating arbitration. It provided, in relevant part, that:

Any dispute between the parties arising out of or relevant to this Agreement which cannot be resolved by the parties within thirty (30) days of the dispute arising, shall be referred to mediation, upon the request of either party...In the event that the parties have not selected a mediator within thirty (30) days of the giving of notice of mediation by one party to the other, either party may proceed to the arbitration process as hereinafter set forth. In the event that any dispute between the parties has not been resolved by such mediation within thirty (30) days following selection of the mediator, such dispute shall be settled and determined by binding arbitration requested by either party, pursuant to the Arbitration Act of Ontario, in which case the following provisions shall apply<sup>7</sup>.

In 2021, Thomson requested that the Board engage in mediation pursuant to GC18, referencing communicated disagreements over the preceding 15 months<sup>8</sup>. The Board refused to appoint a mediator, contending that there was no dispute between them to refer to mediation under GC18 because all disputes arose more than 30 days before Thomson requested mediation. It took the same position when Thomson served a notice to arbitrator<sup>9</sup>.

## The decision by the application judge

Thomson applied to the Ontario Superior Court of Justice to appoint an arbitrator. The application judge dismissed Thomson's application, holding that GC18 imposed a strict 30-day deadline from when a dispute arises to request mediation, failing which the right to arbitration would lapse. The application judge focused on the first sentence of GC18 and understood it to have "unambiguously required a party to request mediation within 30 days of any dispute arising"<sup>10</sup>. For the application judge, this restrictive interpretation served the clause's purpose to "deal with disputes... promptly"<sup>11</sup>.

The application judge then considered whether, on the record before her, any dispute Thomson sought to mediate was "outstanding" and if so, whether the dispute had arisen between the parties no more than 30 days before Thomson made the mediation request<sup>12</sup>. She found that any disputes had been resolved by the parties, or that the window to request mediation had elapsed by the time Thomson did so in October 2021<sup>13</sup>.

## The Ontario Court of Appeal's decision

Thomson's appeal to the Ontario Court of Appeal was allowed, with the Court finding that the application judge had erred in law in interpreting the dispute resolution clause<sup>14</sup>.

Writing for the Court of Appeal, Justice Gomery held that the standard of review for the application judge's interpretation of GC18 was correctness, because GC18 is a standard form clause that can be interpreted without consulting facts specific to the parties: "[t]here is no factual matrix that would assist in interpreting the parties' intentions"<sup>15</sup>.

Justice Gomery found that the application judge's interpretation—which would cause a party to GC18 to lose all right to engage in dispute resolution by failing to serve a mediation request within 30 days of a dispute arising—was inconsistent with the language of the clause, the overall dispute resolution scheme, other contractual terms, sound commercial principles, and good business sense<sup>16</sup>.

The language of GC18, properly interpreted, "does not require the parties to seek mediation within 30 days of a dispute arising. It instead sets a minimum 30-day period for the parties to attempt to resolve a dispute prior to requesting the appointment of a mediator"<sup>17</sup>. The phrase "within thirty (30) days" in GC18 qualifies the language that immediately precedes it and sets a minimum time for the parties to attempt to resolve a dispute before they can make such a request—it is not a deadline to request mediation. As held by Justice Gomery, "[i]nterpreting this sentence to impose a deadline for requesting mediation would require reading in language that is simply absent"<sup>18</sup>.

This interpretation is also supported by the overall scheme of GC18 and good commercial sense. At each stage, the clause requires the parties to attempt to settle their differences before escalating their dispute to the next level. Justice Gomery held that this interpretation made "good commercial sense" because it would oblige parties in a long-

standing and complex relationship to “negotiate informally before triggering a more formal dispute resolution process overseen by a third party”, potentially avoiding unnecessary costs<sup>19</sup>. Conversely, “it would not make sense to interpret the clause to require the parties to serve notices of mediation every time they were unable to resolve their differences within 30 days”<sup>20</sup>. She further took note of other contractual terms that gave the Board the right to terminate the contracts if Thomson became a party to pending or threatened proceedings. The application judge’s interpretation of GC18 would mean that every time a dispute arose that was not resolved within 30 days, Thomson would have to choose between risking the Board terminating its contract or waiving its right to ever seek mediation or arbitration<sup>21</sup>.

Justice Gomery also held that the application judge made a second legal error by making findings about the scope of the parties’ dispute, such as factual findings about the parties’ history of interactions<sup>22</sup>. In doing so, the application judge failed to respect arbitrators’ jurisdiction to determine the scope of the dispute being arbitrated and of their jurisdiction<sup>23</sup>.

## Implications

The Court of Appeal’s decision confirms the role of pragmatism and commercial reasonableness in the interpretation process. Commercial parties who negotiate dispute resolution clauses to facilitate informal dispute resolution should not be permitted to rely on the same provisions to frustrate dispute resolution.

The decision also indicates that the standard of correctness applies not only to the interpretation of standard-form contracts but also to that of standard-form *clauses*. Here, the Court found GC18 to be a standard-form clause subject to review on the standard of correctness, even though the Court did not explicitly find the contract to be standard form in full. On appeal, litigants should anticipate the interpretation of standard-form clauses to be reviewed without deference to lower courts and decision makers.

Finally, the decision confirms the long-standing jurisprudence that parties cannot easily circumvent arbitrators’ jurisdiction by applying to court; the question of jurisdiction is itself within the jurisdiction of the arbitrator.

### FOOTNOTES

[1.](#) Prepared with assistance from Zeru Hu.

[2.](#) [2025 ONCA 378](#) (*J.P. Thomson*).

[3.](#) *Ibid.*, [para. 25](#).

[4.](#) *Ibid.*, [paras. 23, 25](#).

[5.](#) *Ibid.*, [para 3](#).

[6.](#) *Ibid.*, [para 5](#).

[7.](#) *Ibid.*

[8.](#) *Ibid.*, [para 6](#).

[9.](#) *Ibid.*, [para 7](#).

[10.](#) *Ibid.*, [para 9](#).

[11.](#) *Ibid.*

[12.](#) *Ibid.*, [para 10](#).

[13.](#) *Ibid.*, [para 15](#).

[14.](#) *Ibid.*, [para. 16](#).

[15.](#) *Ibid.*, [para. 17](#).

[16. \*Ibid.\*, para. 25.](#)

[17. \*Ibid.\*, para. 16.](#)

[18. \*Ibid.\*, para. 19.](#)

[19. \*Ibid.\*, para. 23.](#)

[20. \*Ibid.\*](#)

[21. \*Ibid.\*, para. 24.](#)

[22. \*Ibid.\*, paras. 26-29.](#)

[23. \*Ibid.\*, paras. 27-29.](#)

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