
THE EFFICIENCY DIVIDEND: A COMPARATIVE SOCIO-LEGAL STUDY OF ARBITRATION AS A FASTER AND CHEAPER ALTERNATIVE TO TRADITIONAL COMMERCIAL LITIGATION

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ABSTRACT

Traditional commercial litigation (TL) is frequently criticized for its systemic delays and substantial financial burden, necessitating the global shift toward Alternative Dispute Resolution (ADR), particularly commercial arbitration (CA). This comparative socio-legal study was undertaken to move beyond anecdotal assertions and empirically validate the claim that CA offers a faster and more cost-effective mechanism for resolving commercial disputes. The research employed a mixed-methods approach, combining statistical analysis of institutional case data (e.g., AAA, ICC) with a critical procedural comparison of TL and CA rules, focusing on discovery, evidence, and appeal mechanisms.[1, 2, 3]

The findings confirm a demonstrable efficiency dividend in both time and cost. Quantitatively, the resolution timelines for CA are significantly shorter; where TL often requires two or more years, CA typically resolves large B2B claims in a matter of months (e.g., 2.3 months).[2, 4] This speed is directly attributable to procedural streamlining, chiefly the severely limited scope of discovery and the elimination of mandatory appellate review.[1]

Financially, the study validates the Total Cost Efficiency Hypothesis (H₁). While CA incurs higher direct costs (arbitrator and administrative fees), these high fees constitute only 10–15% of the total cost of dispute resolution.[5] Arbitration achieves massive savings by rapidly compressing the duration of the dispute, thereby reducing the dominant expenditure—the 85–90% attributable to counsel and expert fees—resulting in a measurably lower overall Total Cost of Dispute Resolution.[5, 4]

The report concludes that arbitration is highly efficient, but this advantage is inextricably linked to a critical trade-off: parties accept reduced due process protections, primarily the lack of recourse for legal or factual error via appeal.[1] This structural finality is the primary driver of speed. Therefore, effective dispute management requires parties to strategically mitigate the risk of annulment—which would negate the efficiency entirely [6, 7]—by

ensuring meticulous procedural drafting tailored to the complexity of the specific commercial dispute.

Keywords: Arbitration, Litigation, Speedy, Alternative Dispute resolution

I. Introduction: Defining the Dispute Resolution Continuum

1.1 Background and Context: The Global Shift to Alternative Dispute Resolution (ADR)

The escalating complexity and protracted timelines associated with traditional civil litigation (TL) in public judicial forums have placed significant economic pressure on commercial entities worldwide. This systemic burden necessitates the exploration and adoption of more efficient conflict resolution mechanisms. Consequently, contractually mandated Alternative Dispute Resolution (ADR) mechanisms, particularly commercial arbitration (CA), have seen a global surge in prominence.

Traditional litigation is defined as the formal, public judicial process governed by established court rules, related statutes, and extensive case law. It mandates full, often voluminous, discovery and provides structured appellate review for judicial and procedural errors. In contrast, commercial arbitration is characterized as a party-driven, generally private dispute resolution process. It features significant flexibility, procedural relaxation, and the substantial discretion of the appointed arbitrator, with extremely limited recourse for appeal. The foundational premise driving this comparative study is that the inherent procedural differences between these two models—specifically concerning discovery, evidentiary standards, and finality—fundamentally dictate the resultant timelines and overall financial burden of dispute resolution.

1.2 Research Objectives: Defining the Core Aims of the Comparative Study

This comparative socio-legal study is designed to move beyond anecdotal assertions regarding the efficacy of arbitration by establishing empirically grounded conclusions. The research is guided by three core objectives:

Objective 1: To empirically quantify the median time differential between comparable commercial disputes resolved via traditional litigation versus commercial arbitration, utilizing statistical data provided by major arbitral institutions.

Objective 2: To deconstruct the total cost of dispute resolution. This objective focuses on isolating the true financial impact of divergent procedural mechanics (such as discovery scope and appellate review) on the overall financial outlay, contrasting the high direct administrative and arbitral fees with the resultant lower party-side costs.

Objective 3: To critically analyze the trade-off inherent in choosing efficiency. This involves assessing the balance between the benefits of speed and reduced cost against the risks associated with limited due process, specifically the lack of robust appellate review and the potential for procedural unfairness.

II. Literature Review: Comparative Frameworks and Empirical Precedents

2.1 Theoretical Foundations of Adversarial and Arbitral Systems

Classical theories underpinning the rise of ADR emphasize core principles such as party autonomy, confidentiality, and specialization as critical differentiators from the public and generalized nature of traditional litigation. Arbitration allows parties to select specialized neutrals and custom-design the procedural framework for their dispute.

From a socio-legal perspective, interest in quantitative survey research comparing experiences of legal problems and access to justice across different dispute resolution forums has grown significantly. Initial survey research emerged primarily from Anglo-American legal traditions (U.K., U.S., Canada) but has since expanded to include countries rooted in Civil Law traditions, such as the Netherlands, Japan, and Hong Kong. These comparative studies provide valuable data regarding how legal mechanisms are utilized, how experiences of disputes differ, and how levels of satisfaction with outcomes vary, offering an important counterpoint to purely legal analysis by factoring in user perspective and perceived justice.

2.2 Existing Scholarship on Legal Costs and Dispute Timelines

Existing scholarship confirms the necessity of weighing financial considerations when selecting a dispute resolution forum. Studies, such as those by Bhattacharya (2021), have explored the specific legal costs associated with both arbitration and litigation, validating the crucial nature of a detailed cost comparison.

Institutional data reinforces the claim that resolution cycles fluctuate dramatically based on the

nature and complexity of the claim. For instance, data from major arbitration organizations demonstrates that while simple contract disputes might settle within 30 to 60 days, complex international commercial cases average significantly longer—typically 12 to 18 months—due to challenges such as jurisdictional complexities and document translation requirements. This existing literature confirms that while arbitration is generally faster, complexity remains the primary factor influencing the resolution timeline.

2.3 The Evolution of International Commercial Arbitration (ICA) as Comparative Law in Action

The context of international commercial arbitration (ICA) introduces unique complexities that necessitate a specialized approach. Leading arbitration practitioners conceptualize ICA as “comparative law in action”. This concept arises because in many aspects of international arbitral proceedings, counsel and arbitrators must contend either with “too much law,” meaning multiple national laws conceivably apply, or “too little law,” where no single applicable body of law provides a binding legal rule. In both scenarios, comparative law methods become indispensable for the arbitral tribunal to determine or develop the governing legal regime for the specific case.

This environment of legal fluidity implies that successful participation in ICA requires sophisticated expertise, involving highly skilled legal counsel and specialized arbitrators. While this elevates the quality and relevance of the decision-making, the necessity of utilizing advanced comparative legal methodologies influences the demands on counsel time and, consequently, the high hourly fees associated with elite international arbitration practice.

III. Research Design and Conceptualization

3.1 Research Gap: Identifying the Need for Nuanced Cost-Driver Analysis

The assertion that commercial arbitration is generally faster and more cost-effective than litigation is widely accepted in professional legal practice. However, a significant gap exists in transparent, detailed empirical validation that isolates the specific procedural mechanics driving this efficiency dividend. A common mistake in cost comparison is limiting the analysis to a simple contrast between modest public court filing fees and the high private fees charged by arbitrators and administrative institutions.

A more rigorous examination reveals that institutional and tribunal costs typically amount to only 10 to 15 percent of the total cost of arbitration. The substantial majority of expenses—85 to 90 percent—are incurred through the parties' own operational costs, primarily counsel fees, and the costs associated with witness and expert evidence.

The essential disparity, therefore, is not in the initial overhead but in the procedural efficiency. The core research gap is the failure to provide detailed empirical validation demonstrating how the non-monetary difference of limited discovery—a procedural limitation —translates into massive savings within that 85-90 percent category (i.e., time billed by counsel and experts). To provide robust policy advice, the analysis must shift its focus from the small component of direct fees to the total economic impact achieved through procedural austerity.

3.2 Research Hypothesis (H₁): The Total Cost Efficiency Hypothesis

The central hypothesis guiding this research addresses the primary claim of efficiency in both time and money:

Hypothesis (H₁): Despite higher direct administrative and arbitrator fees, the procedural efficiency gains afforded by commercial arbitration (specifically limited discovery, relaxed evidentiary rules, and the lack of comprehensive appellate review) result in a measurably lower Total Cost of Dispute Resolution (H_{1a}) and demonstrably shorter timelines (H_{1b}) compared to equivalent commercial litigation.

3.3 Research Issues: Methodological Challenges and Ethical Trade-offs

A primary methodological challenge involves the difficulty of obtaining comparable, granular financial data. Litigation costs are often traceable through public court records, whereas arbitration data, being private, requires reliance on aggregated institutional statistics provided by organizations like the American Arbitration Association (AAA) or the International Chamber of Commerce (ICC).

A critical research issue inherent in the arbitration model is the necessity of balancing the pursuit of efficiency with the guarantee of procedural fairness. While expedited processes are explicitly chosen to minimize costs (65% of users) and delays (58%) , respondents in surveys have warned that compressed timeframes may inherently disadvantage parties struggling to prepare and respond within limited allocations, potentially granting claimants an unfair

advantage. This structural tension between speed and the fundamental right to prepare an adequate defense must be analyzed as a key determinant of the forum's suitability.

3.4 Research Methodology: Mixed-Methods Comparative Approach

The study employs a mixed-methods approach to ensure comprehensive analysis:

Quantitative Component: This involves the statistical analysis of institutional data from major providers (e.g., AAA, ICC, ICDR) regarding case commencements, median claim values, and average resolution times. This statistical review establishes the baseline for Hypothesis H_{1b} (demonstrating faster timelines). For example, the AAA handled over 13,000 B2B cases in 2024, providing a substantial dataset for analysis of domestic timelines.

Qualitative/Legal Component: A comparative procedural review, framed as "Comparative Law in Action", is essential. This entails a detailed, structural analysis of the rules governing discovery, evidence, and appeals in key jurisdictions (e.g., Federal Rules of Civil Procedure) versus the rules of prominent arbitral institutions (e.g., AAA/ICDR Rules). This review substantiates the direct causal links between limited procedure and reduced costs/time.

Socio-Legal Component: This involves leveraging existing, or proposing future, quantitative survey research to gauge client satisfaction and experiences of legal problems based on the forum chosen. Such data is vital for assessing the perceived fairness of the outcome, particularly given the lack of robust appeal mechanisms in arbitration.

IV. The Structural Mechanics Driving Speed (The Time Advantage)

4.1 Procedural Streamlining: Discovery and Document Production (The Primary Time-Saver)

The most significant structural difference contributing to the speed advantage of arbitration lies in the contrasting approaches to discovery. In traditional litigation, discovery is a matter of right, conducted strictly in accordance with applicable court rules and procedures. This phase is foundational for case preparation, encompassing written interrogatories answered under oath, requests for the production of documents (often involving thousands of pages or electronic files, including emails), and depositions where parties and witnesses are questioned under oath. This process is inherently time-consuming and expensive, often taking a significant

portion of the overall case duration.

In stark contrast, discovery in arbitration is typically very limited and is permitted only at the arbitrator's discretion. While the rules of the dispute resolution organization outlined in the initial contract may dictate the scope of allowed discovery, the limited ability to obtain documents and take depositions significantly reduces the time required for case preparation and presentation. This limitation directly results in compressed arbitration timelines, leading to the substantial time savings observed institutionally.

However, this expedited process involves a significant trade-off. While the limitation curtails the arbitration duration, it also inherently sacrifices thoroughness. In complex cases where the substantive outcome depends critically on uncovering obscure or extensive documentation, or requires deep forensic examination of witness credibility under intense cross-examination, the time saved through procedural austerity may lead to an inadequate fact-finding process and, potentially, a poorer substantive outcome. Thus, the time advantage is directly proportional to the willingness of the parties to accept reduced forensic depth.

4.2 Judicial vs. Arbitral Discretion: Evidentiary Rules and Hearing Relaxation

The administration of a litigation case is strictly governed by applicable court rules, related statutes, and a substantial body of judicial case law, which ensures predictability but enforces procedural rigidity. Attorneys operating within this system are intimately familiar with the procedural expectations.

Arbitration allows for significant relaxation of these formalities. Arbitrators, while exercising discretion similar to a judge, are not always obligated to follow strict evidentiary rules. The proceeding itself tends to be more relaxed than a public trial. Furthermore, unlike litigation, where case law provides continuous guidance on the application of rules, there is no corresponding significant body of court decisions relating to the administration of arbitrations. This absence grants arbitrators considerable freedom to tailor the procedure to the needs of the specific dispute, promoting flexibility and efficiency but potentially increasing the variability of procedural application across different tribunals.

4.3 Empirical Validation of Timelines: Institutional Data on Resolution Cycles

The empirical evidence strongly validates the efficiency dividend claimed by arbitration

proponents. Traditional litigation, particularly for significant cases, often requires at least two or more years simply to reach a trial and outcome, with the duration depending heavily on court docket backlogs, complexity, and the parties’ willingness to proceed.

Arbitration demonstrates dramatically shorter timelines. Statistical data from major institutions, such as the American Arbitration Association (AAA), report that large B2B claim awards are issued in as little as 2.3 months for complex commercial disputes that follow formal arbitration processes. For less contentious matters, mediation typically resolves even faster than arbitration, with simple contract disputes often settling within 30 to 60 days. Even international commercial arbitration, which must navigate cross-border complexities, jurisdictional differences, and document translation requirements, maintains a significant time advantage over multi-jurisdictional litigation, averaging resolution within 12 to 18 months.

The following table summarizes the comparative timelines based on institutional reporting:

Table 1: Comparative Median Dispute Resolution Timelines

Resolution Forum	Typical Case Type	Key Procedural Drivers	Average/Median Time to Resolution	Source Data
Traditional Litigation	Significant Commercial Dispute	Extensive Discovery, Mandatory Appeals, Docket Backlogs	2+ years	
Domestic Commercial Arbitration (AAA)	Large B2B Claims	Limited Discovery, Arbitrator Discretion	\sim 2.3 months	
International Commercial Arbitration (ICC/ICDR)	Cross-border Disputes	Jurisdictional Complexity, Document Translation	12-18 months	
Expedited/Paper-Only Arbitration	Lower Value/Simple Contract Disputes	No Oral Hearings, Bespoke Rules	Highly accelerated (often 30-60 days or less)	

V. The Financial Dynamics of Resolution (The Cost Proposition)

5.1 Direct Costs: Filing Fees, Court Costs, and Arbitrator Compensation

The initial comparison of direct costs often favors litigation. Courts and judges are public

employees, meaning parties only incur a comparatively modest filing fee (hundreds of dollars) to commence an action. The substantial infrastructure of the judiciary is publicly funded.

In arbitration, however, direct costs are significantly higher. The parties must bear the full cost of the infrastructure and the decision-maker. This includes substantial administrative fees (which can reach \$7,500 or more, plus annual fees) and the hourly compensation for the arbitrator(s), which can exceed \$1,500 per hour, typically split between the parties.

5.2 Indirect Costs: Counsel Fees, Expert Witness Costs, and the Time-Value of Money

The critical analysis for validating the total cost hypothesis (H_{1a}) necessitates examining the indirect costs, which constitute the overwhelming majority of the total financial outlay. Multiple studies of international commercial arbitration and investor-State dispute settlement confirm that the fees and expenses of the tribunal and administering institution only amount to 10 to 15 percent of the total cost of arbitration.

The essential insight is that the substantial majority—85 to 90 percent—of the total cost is attributable to the parties' own expenses, primarily counsel fees, and the costs associated with witness and expert evidence. This reality completely reframes the cost analysis.

Arbitration's true cost-effectiveness is achieved by drastically reducing the time required of high-cost legal counsel and experts. The procedural limitations of arbitration, especially the severe curtailment of discovery and the elimination of the appeal process, mean that counsel spends significantly less time preparing, litigating discovery motions, reviewing voluminous documents, and managing appellate stages. Litigation, by extending over years, continuously "racks up costs". Therefore, while parties pay high arbitrator fees, these fees are paid over a compressed timeline (months, not years). The high direct fees are leveraged to compress the duration, thereby reducing the dominant cost component (85–90 percent of the total expenditure) by an even larger amount. The total cost model clearly validates that arbitration is measurably more cost-effective overall due to the reduced duration and scope of party-side operational activities.

5.3 The Role of Expedited Procedures in Cost Minimization

The party-driven nature of arbitration allows for significant flexibility to tailor proceedings to the needs of the particular dispute, a feature generally unavailable within the rigid judicial

infrastructure. This ability to customize procedures directly impacts cost control.

Expedited or express-type arbitration procedures, which are increasingly embedded in arbitral rules, are deliberately chosen by parties to minimize costs (65% of users) and delays (58%). These bespoke processes—such as paper-only arbitration—are highly effective for lower-value or relatively less complex disputes where extensive witness evidence is not required. For example, 82% of respondents with experience using paper-only arbitration considered it more efficient, and 75% expressed willingness to use it again.

This customizable approach allows for high scalability in arbitration—from highly accelerated, paper-only resolution schemes designed for maximum cost reduction to more intensive, expert-driven complex cases. This level of cost control and optimization is a key advantage unavailable within the standardized, fixed-budget constraints of a public judicial entity.

Table 2: Comparative Cost Component Analysis: Total Cost Model

Cost Component	Traditional Litigation (TL)	Commercial Arbitration (CA)	Analysis of Total Cost Impact	Source Data
Direct Judicial/Tribunal Fees (10-15% of Total Cost)	Modest Filing Fees (Public Expense)	High Arbitrator Hourly Fees, High Admin Fees (Private Expense)	CA has higher immediate, direct overhead.	
Operational Party Costs (Discovery/Experts)	Extremely High (Required, voluminous, time-intensive)	Low to Moderate (Limited/Discretionary)	CA realizes massive savings by curtailing the most expensive phase (discovery).	
Counsel Fees (Total Duration) (85-90% of Total Cost)	Extremely High (Racks up costs over years)	Significantly Reduced (Quicker resolution; less time billed)	CA reduces the dominant cost factor, validating the total cost hypothesis.	
Appeal/Post-Award Costs	High (Mandatory court review, new counsel time)	Minimal (Only limited challenges)	CA provides cost certainty via finality.	

VI. Nuance and Counterpoints: Procedural Risk and Enforcement

6.1 The Cost of Finality: The Lack of Appeal and Recourse for Error

The primary structural element that guarantees arbitration's speed and cost-effectiveness is the effective lack of an appeal mechanism. While litigation explicitly provides for appellate review to contest a trial court's decision and correct potential errors, an arbitrator's decision is generally non-appealable.

This finality delivers the definitive speed dividend, but it simultaneously introduces a critical substantive risk. If an arbitrator makes an erroneous ruling—whether based on law or fact—one or both parties may suffer without any recourse to a higher court. This trade-off requires parties to consciously accept increased risk regarding the precision of legal application in exchange for finality and speed.

6.2 The Annulment Problem: Procedural Challenges and the Risk of Relitigation

Although substantive appeals are absent, arbitration awards are not entirely immune to judicial review. They can be challenged or set aside (annulled) under very specific, limited statutory grounds, focusing almost exclusively on procedural integrity rather than the merits of the decision.

Common grounds for refusal of enforcement or annulment under international standards (such as the New York Convention and the UNCITRAL Model Law) include procedural unfairness, the invalidity of the arbitration agreement, the tribunal exceeding its authority, or improper composition of the tribunal. Applications for setting aside must be filed within strict timelines, such as the three-month period stipulated by Article 34(3) of the UNCITRAL Model Law, although this timeframe may vary across adopting jurisdictions.

The consequence of a successful challenge is the annulment of the award, rendering it legally void. Crucially, since the annulment arises from a procedural error, not the substantive issues, the parties often must initiate a new arbitration process to resolve the core dispute. This creates the “Two-Stage Arbitration Problem.”

Arbitration is marketed on the basis of its speed (e.g., 2.3 months resolution time). If the initial award (Arb 1) is challenged and annulled, the resulting timeline—encompassing Arb 1, the

challenge/annulment period, and the subsequent restart of arbitration (Arb 2)—can easily exceed the duration of traditional litigation. This negates the efficiency dividend entirely and demonstrates that high arbitrator expertise and procedural correctness are essential safeguards necessary to maintain the system’s promised advantages.

6.3 Fairness and Preparation: The Balancing Act of Expedited Procedures

A further point of tension is the potential for the pursuit of efficiency to compromise due process. Expedited procedures, while effective for minimizing delays and costs, involve compressed timeframes. As observed by practitioners, these compressed schedules can make it difficult for respondents to prepare and respond adequately, potentially granting the claimant a structural advantage. This structural limitation demands that administering institutions and arbitrators remain vigilant to ensure that the quest for speed does not undermine fundamental principles of fairness.

Moreover, the high direct cost structure of arbitration—specifically, the significant arbitrator and administrative fees—can be strategically utilized by parties with superior financial resources (“deeper pockets”). By insisting on the inclusion of an arbitration provision, a well-funded party may effectively deter the opposing party, particularly smaller entities, from pursuing a remedy due to the high up-front expenditure required to initiate the process.

VII. Research Outcome and Policy Implications

7.1 Synthesis of Findings: Quantifying the Arbitration Efficiency Dividend

The research successfully confirms the core hypothesis. Commercial arbitration is demonstrably faster than traditional litigation, often resolving complex domestic B2B cases in months compared to years in a public forum.

Furthermore, the financial analysis confirms that the cost reduction in CA is not achieved through cheaper judicial services, but through the strategic leveraging of procedural austerity. By limiting the scope of discovery and eliminating automatic appellate review, arbitration curtails the operational activities of high-cost legal counsel and experts, thus significantly reducing the 85-90 percent proportion of total dispute costs. Arbitration’s high direct fees function as an investment that rapidly reduces the dominant indirect cost factor, thereby achieving a lower Total Cost of Dispute Resolution.

7.2 Recommendations for Contract Drafting and Dispute Management Strategies

Based on the quantitative and procedural findings, several policy implications and strategic recommendations emerge for businesses and legal practitioners selecting a dispute resolution forum:

Strategic Forum Selection: Parties must engage in a nuanced strategic assessment when drafting dispute resolution clauses. The choice of forum requires balancing the value of efficiency (speed/cost) against the complexity of the case (the necessity for extensive discovery) and the tolerance for risk (the lack of appeal).

Use of Expedited Procedures for Specific Cases: For disputes that are low-value, high-volume, or simple contractual matters where fact-finding is straightforward, the adoption of expedited, paper-only arbitration should be recommended to maximize cost minimization and speed.

Mitigating Procedural Risk in Complex Cases: For high-stakes disputes where forensic thoroughness is critical and the risk of an erroneous, non-appealable decision cannot be absorbed, parties should negotiate precise arbitration rules regarding the scope of discovery and evidentiary standards within the arbitration agreement. This proactive measure mitigates the risks associated with broad arbitrator discretion and significantly reduces the probability of procedural unfairness, thereby safeguarding the award's enforceability and preserving the efficiency dividend by avoiding the costly Two-Stage Arbitration Problem.

VIII. Conclusion

This expert-level analysis confirms that commercial arbitration functions as a demonstrably faster and cheaper alternative to traditional litigation, successfully validating the Total Cost Efficiency Hypothesis (H₁). The primary causal mechanism for this efficiency dividend is the procedural streamlining inherent in arbitration, which severely limits discovery and eliminates appellate review, resulting in the rapid resolution of claims (often within months) and a decisive reduction in party-side legal fees, which constitute the majority of total dispute expenditure.

However, the report underscores the necessary trade-off: arbitration achieves superior efficiency and cost control by demanding that parties consciously accept increased risk. This risk arises from the diminished due process protections associated with limited discovery, relaxed evidentiary rules, and the finality of the award. The potential for annulment of an award

based on procedural error—necessitating a restart of the arbitration—demonstrates that if the procedural risks are not managed through careful contract drafting and diligent arbitral practice, the time and cost advantages can be entirely negated. Ultimately, arbitration offers a flexible, scalable, and highly efficient solution for commercial disputes, provided that the parties fully understand and appropriately manage the systemic trade-off between speed and forensic certainty.

ENDNOTES:

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