

Ontario Court of Appeal sets aside award based on reasonable apprehension of bias

by [Practical Law Arbitration](#), with [Fasken](#)

Legal update: case report | [Published on 14-Feb-2025](#) | Canada

In *Vento Motorcycles Inc v United Mexican States 2025 ONCA 82*, the Ontario Court of Appeal allowed an appeal and set aside an award issued by a three-arbitrator panel on the basis that Mexico had offered various work-related opportunities to its party-appointed arbitrator that had not been disclosed. The Court of Appeal held that the application judge in the lower court had erred in failing to remedy the reasonable apprehension of bias that she found to have been established.

David Ziegler (Partner), Fasken

The Ontario Court of Appeal has allowed an appeal from the Ontario Superior Court of Justice (OSCJ) and set aside an award on grounds that the claimant (Vento) had established a reasonable apprehension of bias by Mexico's appointed arbitrator in favour of Mexico.

Vento brought an arbitration against Mexico under Chapter 11 of the North American Free Trade Agreement relating to Mexico's denial of preferential import tariffs. The tribunal comprised three arbitrators: two party-appointed arbitrators, and the third appointed by agreement. The panel issued a unanimous award in Mexico's favour (see [Legal update, Mexico defeats NAFTA claims \(ICSID Additional Facility\)](#)).

After the award was issued, Vento learned that Mexican officials, including Mexico's lead counsel, had communicated with Mexico's appointed arbitrator during the arbitration, and those communications had not been disclosed. In particular, Mexico had offered the arbitrator opportunities to be listed on panels of arbitrators under certain trade agreements.

Vento applied to the OSCJ to set aside the award pursuant to article 34 of the UNCITRAL Model Law, which the court declined to do. Although Vento successfully persuaded the court that the arbitrator's conduct gave rise to a reasonable apprehension of bias and that the appointments were valuable professional opportunities within Mexico's discretion, the court exercised its discretion not to set aside the award. It found it significant that the arbitrator was part of a three-member panel that had reached a unanimous decision (see [Legal update, Ontario Superior Court of Justice declines to set aside award after finding reasonable apprehension of bias](#)). Vento appealed.

The Ontario Court of Appeal allowed the appeal and set aside the award. It noted that a reasonable apprehension of bias is "no minor procedural defect" and constitutes a finding that the integrity and legitimacy of an adjudicative process have been compromised irreparably. The court concluded that one member's bias taints the whole tribunal and that "the participation of a biased member requires the decision to be set aside regardless of the unanimity of the panel".

Although the court recognised finality and efficiency as important goals, it determined that they should not be achieved at the cost of an impartial hearing.

This decision is a stark reminder that fairness (including perceived fairness) is an important feature of Ontario jurisprudence and courts can require that parties go to great lengths and incur great expense (including redoing an entire arbitration) to ensure that principles of impartiality are met.

Case: [Vento Motorcycles Inc v United Mexican States 2025 ONCA 82 \(4 February 2025\)](#) (Grant Huscroft JA, Gary Trotter JA and J Dawe JA).

END OF DOCUMENT