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Arbitrators should think of AI as Arbitrators' Intelligence. This article explains that arbitrators should consider the technical and legal limitations when using AI. If arbitrators use AI for decision relevant tasks without the explicit consent of all the parties, the arbitral award could be set aside or not be enforced based on Art. V of the New York Convention. Specifically, the Superior Court of Québec showed in its decision of April 22, 2026, how a losing party may successfully attack an award on illegal use of AI by arbitrators in making the decision or drafting the award.

AI = Arbitrators' Intelligence - Technical and Legal Limitations on Using AI

ABOUT THE AUTHOR



Dr. Anton G. Maurer is a highly accomplished arbitrator and Fellow of the Chartered Institute of Arbitrators (FCIArb). He is trained both in civil and common law. His focus is international commercial arbitration, and he is experienced in a great variety of commercial disputes ranging from the breach of commercial contracts, to post m&a, agency and distributorship and construction disputes. In the U.S., he is listed as foreign arbitrator with CPR, ICDR, and JAMS. When appointed as an arbitrator he does not charge airfares. He can be reached at anton.maurer@am-legal.com.

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Daniela Karollus-Bruner
Vice Chair of Publications
CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH
daniela.karollus-bruner@cms-rrh.com

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Arbitrators should think of AI as “Arbitrators’ Intelligence”.

Generative AI is revolutionizing industries worldwide. Will AI also reshape arbitration? The temptation for arbitrators to use AI is strong. How much AI can be used by arbitrators without endangering the recognition and enforcement of arbitral awards? As always, whether AI is used or not, the goals must be to preserve the integrity of the procedure, and to protect the enforceability of an award. These goals can only be achieved if arbitrators think of AI as “Arbitrators’ Intelligence”.

Therefore, it is necessary to consider the technical and legal limitations in the use of AI.

What is AI?

Despite the label, AI is not intelligent in the human sense. Large language models (LLMs) do not think, understand, or know. The outputs are not based on thinking, but on statistical predictions. LLMs generate text by predicting the most likely next word based on patterns in training data. This has immediate consequences for the use of AI in arbitration proceedings:

- **AI simulates understanding.** It does not possess it. An AI can even produce a polished summary of a book it has never read, based only on the title and related material.
- **AI is a black box.** Providers do not fully disclose their training data or

internal methods. It can process gigabytes of data quickly, but one cannot trust whether all relevant data are included or whether other material was added by hallucination. In a recent test, AI added in a summary of facts information which no party had provided.

- **AI simulates empathy.** It produces responses that may sound responsive, confident, and even reassuring. But that does not mean they are true.

For arbitration, these limitations are fundamental.

Technical Limitations of AI in Arbitration

AI can do many things quickly. But even in a task that looks straightforward, such as translation, AI has limits. Translation may be only more or less correct but may miss nuances of the language. A mistranslation from “I assume” to “I believe” can turn uncertainty into conviction, altering the legal meaning of a statement and potentially the outcome of a case.

From these technical realities, several hard limits follow:

- AI cannot exercise discretion. Discretion is not a mathematical formula. It is judgment informed by law, equity, and context. No algorithm can fully capture what is

“reasonable” or “proportionate” in a concrete dispute.

- AI cannot assess credibility the way experienced arbitrators do. It will give hear-say testimony or polished and rehearsed witness statements the same weight and credibility as documents.
- AI cannot exercise good faith, fairness, reasonableness or equity. Those are value judgments not data points.
- AI has no personal wisdom. Arbitrators are appointed for their legal knowledge but also for life experience and judgment.
- AI also lacks transparency and may carry hidden bias from the data on which it was trained.
- AI has no emotional intelligence.

In short, AI cannot replace the human capabilities that lie at the heart of adjudication.

And AI may produce misleading hallucinations that look precise, often complete with citations, but are entirely made up and may be hard to detect. As of July 2026, more than 1,800 hallucination cases had been identified in litigation.¹ At least one arbitral award cited hallucinated cases; and it would be naïve to think that this was the only one. Many hallucinations may have entered briefs and awards without detection. This uncertainty should concern

anyone who cares about due process and enforceability.

Legal Limitations of AI in Arbitration

There are also legal limits on arbitrators’ use of AI. The starting point is the tribunal’s basic duty: to render an enforceable award, both at the seat and abroad.

Under Article V of the New York Convention, recognition and enforcement may be refused if

- the arbitration agreement is invalid;
- a party was unable to present its case;
- the procedure did not conform to the parties’ agreement or the law of the seat; or
- enforcement would violate public policy.

When the New York Convention and most national arbitration laws were drafted, “arbitration” meant a dispute decided by one or more human arbitrators. AI did not exist. The premise of arbitration is still the same: the case must be heard and decided by a human decision-maker.

New technology does not change that meaning. Nor does it change the parties’ legitimate expectation that the arbitrators they selected will decide the case, and not a hidden (second or fourth) arbitrator. States could refuse the application of the New York

¹ [Damiencharlotin.com/hallucinations](https://damiencharlotin.com/hallucinations)

Convention because such an agreement may not consider an arbitration agreement under the New York Convention.

Disclosure is not enough, parties' consent is needed

How far can arbitrators go in using AI without violating the agreed procedure, due process, or public policy?

Recent institutional guidance from CIArb², Silicon Valley³, and others tends to be permissive. Arbitrators may use AI if they disclose it and verify the outputs. But those guidelines predate the well-reasoned judgment of the Superior Court of Quebec of April 22, 2026⁴ which covers all the reasons why an award which was drafted with the help of AI may be set aside or not be enforced. The judge didn't need to do that; he could have set aside the award just based on hallucinations.

Based on this judgment, disclosure is not enough. The Québec court held that an award may be set aside if the arbitrators do not follow the procedure agreed by the parties. A unilateral statement by the arbitrator that he or she will use AI does not amend the parties' agreement. Silence is not consent. Only the explicit consent of the parties can change the procedure and

restrict challenges under Article V (1) of the New York Convention.

AI may be used for limited purposes

Arbitrators may use AI for several tasks that are not related to judgment to

- identify potentially relevant documents, and decisions quickly;
- draft standard orders, schedules, and routine correspondence;
- organize large document sets;
- draft the mechanical or administrative parts of the award: the names of the parties, and the summary of the procedural history.

But control over what is legally significant must remain with the tribunal. The line should be drawn where AI begins to shape the framing of facts or the articulation of reasons. That is where the arbitrator's distinctive role lies.

May AI draft the summary of facts, the reasoning or the decision?

Some arbitrators may even use AI for drafting the summary of facts or the first draft of the award. But the Quebec decision said that this is not permitted because it would violate Art. V (1) (b) and (d) and Art. V

² CIArb Guidelines on the Use of AI in Arbitration (2025)

³ SVAMC Guidelines on the use of Artificial Intelligence in Arbitration (2024)

⁴ Superior Court of Québec, April 22, 2026, Association des ressources intermédiaires

d'hébergement du Québec (ARIHQ) v. Santé Québec – Centre intégré universitaire de santé et de services sociaux du Centre Sud de l'Île de Montréal, 2026 QCCS 1369 CanLII, <https://canlii.ca/t/kkjtjm>

(2) (b) of the New York Convention. The court reasoned that by choosing a particular arbitrator, the parties are entitled to expect that this arbitrator will decide the case. The Québec Court referred to the observation of the Supreme Court of Canada: “It has been argued that writing reasons promotes better decision-making because it required well-formulated questions and reasoning, and consequently, more rigorous analysis.”⁵ The drafting of reasons significantly reduces the risk of arbitrary decisions.⁶

Anyone who has written reasons knows the point. Writing is not a transcription exercise. It is part of the thinking process. As we write, we refine, prioritize, and sometimes revise what we thought we knew. That is true for legal reasoning but also for fact-finding. Summarizing the facts is not a mechanical recording exercise. It is part of the cognitive process, and it shapes how the case is understood. If that function is delegated to AI, part of the decision-making power is delegated too. At that point, the AI is becoming an invisible second or fourth arbitrator.

The Québec court went further; it said that it is impermissible to involve a third party in the tribunal’s deliberations or drafting of the award. The arbitrator who hears the case must decide it. Otherwise, due process and constitutional rights may be violated. Even a carefully reviewed first draft generated by AI can influence the arbitrator’s independent

analysis of facts, law, and evidence. Seen this way, using AI to draft significant portions of the award can be understood as a breach of the parties’ agreement on procedure, even if the draft is carefully reviewed. In some jurisdictions, that may be classified as a violation of due process, and of public policy.

Enforcement and Public Policy

If an award may have to be enforced in the European Union, the EU AI Act also deserves attention. The EU AI Act treats adjudicative AI as high-risk technology and ties it to fundamental rights and public policy concerns.⁷ Other jurisdictions are moving in the same direction. Many countries, and several U.S. states⁸, are developing their own AI laws. Arbitration practitioners cannot ignore those developments and possible public policy restrictions. An award that seems acceptable at the seat may still face resistance elsewhere. The prudent line should be drawn where AI begins to influence how facts are framed and how reasons are articulated – that is where the arbitrator’s distinctive role lies.

Could parties agree in advance that an arbitrator may use generative AI to decide the dispute or draft the award? The likely answer is no because such a clause including AI in the decision-making process is not an arbitration agreement as considered under the New York Convention and many arbitration laws, e.g. made by humans, and

⁵ 2026 QCCS 1360 para79; Baker v. Canada, 1999 CanLII 699, [1999] 2 RCS 817 para. 39

⁶ 2026 QCCS 1360 para. 87

⁷ Art. 86 in combination with Art. 6 and Annex III no.

⁸ (a) EU AI Act

⁸ California, Colorado

it may not survive public policy reviews in many countries. Therefore, courts could argue that the New York Convention is not applicable for the lack of a proper arbitration agreement, or if it would be applicable, it may violate Art. V (1) and (2) of the New York Convention.

Seven recommendations for PO No. 1

To use AI responsibly, the following seven safeguards should be included in Procedural Order No. 1:

1. Require hard copies of all cited decisions and scholarly articles from authoritative sources. This reduces the risk of hallucinated authorities slipping onto the record.
2. Require parties, counsel, and experts to disclose whether and how they use LLMS.⁹
3. Prohibit hidden prompts, including white-on-white instructions and metadata manipulation.
4. Prohibit deepfake software.
5. Require parties to review the platform's data-use, storage, and retention policies before uploading case materials. Uploading or translating documents is communicating with a third party, whether a fee is paid or not.
6. Remind parties to comply with data-protection laws; uploading documents, witness statements or drafts may violate applicable data

protection laws, and constitutional rights.

7. Allow arbitrators to use LLMS only with the parties' explicit consent. That consent should be specific. It should define the permitted uses and expressly exclude any decision related drafting: findings of fact, legal analysis, conclusions, and reasoning. And the arbitrator should be prepared that parties who want to challenge the award and reviewing courts may ask for the prompts used.

The relevant question is not how much arbitration practitioners can offload to AI; the relevant question is how AI may enhance the arbitrator's ability and efficiency without violating public policy. Arbitrator's Intelligence is required. The future of arbitration is not machine-led decision making. It is human-led decision-making supported by AI.

⁹ Such disclosure is already mandatory in litigations in Florida, and Canada

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