

Ontario Superior Court enforces CIETAC award rejecting incapacity and public policy defences as collateral attack

by *Practical Law Arbitration*, with *Fasken*

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In *Feicheng Mining Group v Liu*, 2026 ONSC 1969, the Ontario Superior Court recognised and enforced a CIETAC arbitral award. In doing so, the court rejected the respondent's defences that he lacked capacity when he signed the underlying repayment agreement due to alleged coercion and mental distress, and that enforcement would be contrary to Ontario public policy. The court held that the respondent's arguments effectively sought to relitigate factual findings already made by the tribunal, falling well short of the "exceptionally high" threshold for refusing enforcement of an award on public policy grounds in Ontario.

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The Ontario Superior Court has recognised a CIETAC award as enforceable in Ontario.

The claimant (Feicheng), a Chinese state-owned entity, sought to enforce a CIETAC award issued in China in Ontario.

The award stemmed from a repayment agreement between Feicheng and a Canadian company (Dehua), which defaulted on amounts owed to Feicheng. The respondent (Liu) is a director and 50% shareholder of Dehua.

The agreement revised the payment schedule and required Liu to provide collateral security and assume joint and several liability for Dehua's obligations, personal exposure he had not previously assumed. It also required disputes to be arbitrated at CIETAC under the laws of the People's Republic of China (PRC).

Ontario's International Commercial Arbitration Act 2017 incorporates the New York Convention and the UNCITRAL Model Law, both of which allow only limited defences to recognition and enforcement. In seeking to resist enforcement, Liu invoked two defences, incapacity and public policy, alleging that:

- Feicheng leveraged criminal fraud accusations and pressure from local authorities to intimidate him into signing under duress.
- Enforcing an award grounded in a coerced contract would offend Canadian values of autonomy and free will in contracting.

The court held that these submissions were, substantively, a "collateral attack" on the CIETAC decision. The tribunal had already rejected the coercion narrative, concluding that the agreement was "a true expression of the parties' intention" and valid under PRC law. With no allegations of corruption, bias, or any jurisdictional defect in the arbitration process, there was no basis to reopen the merits at the enforcement stage.

The court reiterated that refusing enforcement is reserved for circumstances where an award would offend the "essential morality of the people of Ontario", which is an exceptionally high bar. With no attack on the integrity of the tribunal or arbitration process, the respondent was effectively trying to relitigate factual issues that had already been decided.

Crucially, regarding the public policy defence, the court emphasised that it is to be invoked as "a condemnation of the foreign law on which an arbitral award is based, not the factual underpinnings of the award". The tribunal's decision that the applicant did not sign the agreement under coercion was a factual determination made within the tribunal's jurisdiction and not an attack on PRC laws.

The decision illustrates the limited means available to litigants to oppose enforcement of awards in jurisdictions governed by the New York Convention and Model Law.

Case: *Feicheng Mining Group v Liu*, 2026 ONSC 1969 (1 April 2026) (Mills J).

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