File No. 36595

**IN THE SUPREME COURT OF CANADA**
**(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)**

BETWEEN:

**TEAL CEDAR PRODUCTS LTD.**

**APPELLANT**
(Respondent)

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**

**RESPONDENT**
(Appellant)

-and-

BETWEEN:

**TEAL CEDAR PRODUCTS LTD.**

**APPELLANT**
(Respondent)

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**

**RESPONDENT**
(Appellant)

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# APPELLANT'S FACTUM

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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## PART I – STATEMENT OF FACTS

### Overview

1. In 2003, the British Columbia Legislature enacted a statute, the *Forestry Revitalization Act*[1] which had the effect of reducing the harvesting rights held by a number of companies, including the Appellant, under forest tenures issued under the *Forest Act*[2]. The *Revitalization Act* provided for compensation to be paid for two elements: (i) for the reduction in harvesting rights; and (ii) for the value of improvements associated with these reductions. Absent agreement, the amount of such compensation was required to be determined by arbitration.

2. The parties agreed on compensation for the reduced harvesting rights, but could not reach agreement on the value of improvements. The parties then appointed Thomas R. Braidwood, QC, a retired justice of the British Columbia Court of Appeal, as sole arbitrator to determine the quantum of compensation owed to Teal for the value of the improvements. Mr. Braidwood conducted lengthy hearings and in April 2011 released his award fixing the compensation for these improvements.

3. The British Columbia *Arbitration Act*[3] like many provincial statutes governing arbitration proceedings, restricts appeals of arbitration awards to questions of law for which leave to appeal has been granted. Both parties applied for leave to appeal various aspects of the award. The two issues raised by the Government were whether the governing legislation permitted compensation to be determined by the methodology selected by the arbitrator, and whether the arbitrator erred in concluding that interest had not been waived by the parties.

4. The leave judge concluded that the interest issue did not raise a question of law. He concluded that the question of the interpretation of the *Revitalization Act* raised a question of law, but that as a matter of law it was open to the arbitrator to select the valuation methodology he had chosen.

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[1] *Forestry Revitalization Act*, SBC 2003, c 17 (the "*Revitalization Act*") [Appellant's Book of Authorities ("BA") Tab 29].
[2] *Forest Act*, RSBC 1996, c 157.
[3] *Arbitration Act*, RSBC 1996, c 55 (formerly entitled the *Commercial Arbitration Act*) [BA Tab 26].

5. On appeal, the British Columbia Court of Appeal reversed on both points: setting aside the arbitrator's choice of valuation methodology and remitting that issue to the arbitrator with a direction to consider the Appellant's "actual loss" and granting leave on, and setting aside, the award of interest made. The Appellant sought leave to appeal to this Court. While that leave application was pending, this Court released *Sattva Capital Corp v Creston Moly Corp* ("*Sattva*"),[4] clarifying the scope of an appealable point of law. This Court remitted the Appellant's leave application for reconsideration by the Court of Appeal in light of the *Sattva* decision, but the Court of Appeal reiterated its earlier decision.

6. The position of the Appellant is that the Court of Appeal judgment is not consistent with the principles set out in *Sattva* and the restricted appeal rights provided for appeals from arbitral awards, and requests that the judgment of the leave judge be restored.

**Statement of Facts**

***Background***

7. The Appellant, Teal Cedar Products Ltd ("Teal"), is a family-owned, integrated wood products company that holds various timber tenures throughout British Columbia, and engages in timber harvesting and processes the timber it harvests at sawmills and shake and shingle facilities it owns. It "grew from one man cutting shakes in his back yard" ... to a multi-million dollar company embracing three sawmills and multiple timber interests."[5]

8. The *Revitalization Act* empowered the Province to reduce the harvesting rights and associated Crown land base available to major licensees, including Teal, by approximately 20%.[6]

9. Three of Teal's tenures were affected by the *Revitalization Act*: (a) Tree Farm Licence 46 ("TFL 46") on Vancouver Island; (b) Forest Licence A18699 in the Lillooet Timber Supply Area

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[4] *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 [*Sattva*] [BA Tab 19].
[5] Award of Thomas R. Braidwood, QC dated April 27, 2011, as amended June 30, 2011 (collectively, the "Award") at para 15, 131 [Appellant's Record ("AR") Tab 19, Ex A, pp 182, 207]. Reasons for Judgment of Bauman CJ ("SC Reasons") at para 2 [AR, Tab 1, p 2].
[6] Award at para 2 [AR, Tab 19, Ex A, p 179] ;SC Reasons at para 1 [AR, Tab 1, p 2]; Court of Appeal Reasons dated July 10, 2013 ("CA *Teal* #1") at para 1 [AR, Tab 4, p 35]; Court of Appeal Reasons dated June 9, 2015 ("CA *Teal* #2) at para 8 [AR, Tab 8, pp 85 – 86].

(the "Lillooet Licence"); and (c) Forest Licence A19201 in the Fraser Timber Supply Area (the "Fraser Licence").[7]

10. TFL 46 is a tree farm licence, which is what is commonly known as an area based licence. This means the allowable annual cut ("AAC") for the licence is tied to specific operating areas identified in the license. A tree farm license gives the licensee the exclusive right to harvest in the licence area. They are long term replaceable tenures.[8]

11. The Lillooet and Fraser Licences are forest licences, which are volume based tenures. This means that the allowable annual cut under these licences is linked to a broad area, usually one of the timber supply areas ("TSAs") within the Province. Operating areas within this broader area are then assigned to each licensee. While these areas are non-exclusive licensees will generally not harvest within another's operating area. Except for this difference, forest licences are substantially akin to tree farm licences and are also long term replaceable tenures.[9]

12. Teal – as licensee – had the authority it needed to construct roads, bridges and other improvements to access and harvest the timber available under its tenures or, alternatively, had the right to use or upgrade existing roads and bridges for this purpose. These rights were conferred on Teal as licensee and were governed by road permits and cutting permits issued to Teal, from time to time, both under its licences and pursuant to the *Forest Act*.[10]

***Forestry Revitalization Act***

13. The *Revitalization Act* came into force on March 31, 2003 and prescribed the aggregate AAC reductions to be imposed on each licensee and identified the major tenures (e.g., forest licences and tree farm licences) that would be affected for those licensees. The specific cut

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[7] Award at para 16 [AR, Tab 19, Ex A, p 182); SC Reasons at paras 3, 11 [AR, Tab 1, pp 2-4]; CA *Teal* #1 at para 3 [AR, Tab 4, p 35]. CA *Teal* #2 at para 6 [AR, Tab 8, p 85].

[8] Award at para 40 [AR, Tab 19, Ex A, p 186]; SC Reasons at para 12 [AR, Tab 1, p 4]; CA *Teal* #1 at para 10 [AR, Tab 4, p 37]; CA *Teal* #2 at para 6 [AR, Tab 8, p 85].

[9] Award at para 22 [AR, Tab 19, Ex A, p 183]; SC Reasons at para 12 [AR, Tab 1, p 4]; CA *Teal* #1 at para 9 [AR, Tab 4, pp 36 – 37]; CA *Teal* #2 at para 6 [AR, Tab 8, p 85]; See also: Award at paras 19, 24-25, 29, 32, 34 [AR, Tab 19, Ex A, pp 183 – 185].

[10] Award at para. 7, 81 – 83 and 93 [AR, Tab 19, Ex A, pp 180, 195, 196, 198];CA *Teal* #1 at paras 11-12 [AR, Tab 4, p 37]; CA *Teal* #2 at para 7 [AR, Tab 8, p 85].

reductions allocated to each licence and any associated area deletions (from area based tenures) were implemented by Ministerial Order.[11]

14. Section 6 of the *Revitalization Act* provides that affected licensees are entitled to compensation for two specific heads of loss arising from the cut reductions:

(a) the value, for the unexpired portion of the licence, of the harvesting rights taken by way of the reductions made to the AAC of the licence (s 6(3)); and

(b) "compensation ... equal to the value of improvements made to Crown land" (s 6(4)).

15. Any dispute as to the amount of compensation is required to be submitted to arbitration pursuant to the *Arbitration Act.*[12]

16. The *Revitalization Act* reduced Teal's total allowable annual cut by 216,000 cubic metres. This reduction was allocated between Teal's affected tenures by various Ministerial Orders. Those Orders were deemed to come into force and Teal's right to compensation for these reductions vested effective March 31, 2003.[13]

17. In addition to the volume reductions, Orders were made deleting specific areas from the land base under TFL 46. Teal also relinquished certain operating areas within the Fraser TSA that had been associated with its Fraser Licence. No agreement on the operating areas to be relinquished in the Lillooet TSA was reached because Teal sold the remaining volume under the Lillooet Licence (following the taking of volume under the *Revitalization Act*) to a third party rendering further negotiations regarding the surrender of operating areas unnecessary. [14]

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[11] *Revitalization Act*, s 2-3 and Schedule [BA Tab 29]; Award at para 60 [AR, Tab 19, Ex A, p 190]; SC Reasons at paras 1, 13 [AR, Tab 1, pp 2, 4]; CA *Teal* #1 at paras 13 - 15 [AR, Tab 4, p 37]; CA *Teal* #2 at paras 8-9 [AR, Tab 8, pp 85 – 86].

[12] *Revitalization Act*, ss 6 – 7; Award at para 62 [AR, Tab 19, Ex A, pp 190 – 191];
SC Reasons at para 4 [AR, Tab 1, pp 2 – 3]; CA *Teal* #1 at paras 16 - 19 [AR, Tab 4, p 38]; CA *Teal* #2 at paras 10, 16 [AR, Tab 8, pp 86, 88].

[13] *Revitalization Act*, ss 3, 6; Award at paras 25, 34, 42, 64 [AR, Tab 19, Ex A, pp 184, 185, 187,191]; SC Reasons at paras 3, 11, 13 [AR, Tab 1, pp 2 – 4]; CA *Teal* #1 at paras 20 - 23 [AR, Tab 4, pp 38 – 40]; CA *Teal* #2 at paras 8, 9 [AR, Tab 8, pp 85 – 86].

[14] Award at paras 36, 65-68 [AR, Tab 19, Ex A, pp 186, 191 – 192]; SC Reasons at paras 4, 13 [AR, Tab 1, pp 2 – 4]; CA *Teal* #1 at paras 21-23 [AR, Tab 4, pp 39 – 40]; CA *Teal* #2 at para 9 [AR, Tab 8, p 86].

***Compensation***

18. Teal and the Province agreed on the compensation owing to Teal for the harvesting rights (i.e., volume) taken under the *Revitalization Act*. The Province paid Teal approximately $5.1 million in December 2004 as part of a Settlement Framework Agreement dated December 31, 2004 (the "Framework Agreement") reached between the parties.[15]

19. The parties were unable to reach agreement on the compensation owing for the "value of improvements". The improvements that formed the subject matter of Teal's claim comprised approximately 1,000 km of roads, associated bridges, culverts and other structures within the area of three of Teal's tenures in southwestern British Columbia and on Vancouver Island that were affected by the Province's actions under the *Revitalization Act*. While the parties were unable to agree on the value of these improvements, the Province made two advance payments to Teal.[16]

20. The fundamental issue between the parties was the valuation method to be applied to determine the "value of improvements" at issue.[17]

21. Section 9 of the Framework Agreement provided that "[n]o interest shall be payable by the Province in respect to this or any other compensation that may be due to [Teal] under the [*Revitalization Act*]".[18]

22. However, on October 27, 2005, the parties entered into an Addendum to the Framework Agreement in which the parties agreed that the question of what further "compensation" (above the amount advanced by the Province), if any, was owed on account of the improvements would be arbitrated in accordance with subsection 6(6) of the *Revitalization Act*.[19]

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[15] Award at para 70 [AR, Tab 19, Ex A, p 192]; SC Reasons at paras 4, 14 [AR, Tab 1, pp 2 – 4]; CA *Teal* #1 at para 24 [AR, Tab 4, p 40]; CA *Teal* #2 at para 11 [AR, Tab 8, p 86]; See also AR, Tab 19, Ex B, pp 223 - 225 (Settlement Framework Agreement, dated December 31, 2004).

[16] Award at para 7 [AR, Tab 19, Ex A, p 180]; SC Reasons at paras 5-6 [AR, Tab 1, p 3]; CA *Teal* #1 at paras 27 - 28 [AR, Tab 4, pp 40 – 41]; CA *Teal* #2 at para 12 [AR, Tab 8, p 87].

[17] SC Reasons at para 15 [AR, Tab 1, p 5].

[18] Award at para 178 [AR, Tab 19, Ex A, p 218]; SC Reasons at para 16 [AR, Tab 1, p 5]; CA *Teal* #1 at para 26 [AR, Tab 4, p 40]; CA *Teal* #2 at para 14 [AR, Tab 8, pp 87].

[19] SC Reasons at para 17 [AR, Tab 1, pp 5-6]; CA *Teal* #1 at para 28 [AR, Tab 4, pp 40 – 41]; See also Addendum #2 to Settlement Framework Agreement, dated October 27, 2005 [AR, Tab 19, Ex B, pp 227 – 228].

***Arbitration***

23. The arbitration took place before the Honourable Thomas R Braidwood, QC, who was selected by agreement of the parties. The central issue, as noted, was the determination of the proper valuation method to be applied in valuing the improvements at issue. Notably, the *Revitalization Act* grants the Province the authority to make regulations with respect to determining value under the Act (s 13(2)), but Cabinet has not done so. The appropriate valuation method was left for determination by the arbitrator.[20]

24. Teal asserted that the value of the improvements should be determined by a cost savings approach, a valuation methodology based on the net present value of the depreciated replacement cost[21] of the improvements. This claim was supported by the evidence of an expert (Doug Ruffle) in the valuation of forest resources and in integrated logging and sawmilling operations. Using this valuation method, Teal claimed $16,370,000 plus compound interest[22] at prime +2%.[23]

25. The Province asserted that the improvements at issue should be valued using a market based approach and under that approach Teal's claim was worth somewhere in the range of $1.1 to $3 million. The arbitrator ultimately found that this valuation bore "no relationship to the actual value of the improvements themselves"[24] (and that valuing a road network with a new replacement cost of $65 million at $1 million at the date of the taking "defies any sanity check").[25]

26. In response to the Province's market value approach, and as a reasonableness check on his cost savings valuation, Mr. Ruffle used a "Value to Teal" approach to value the improvements as a portion of the piece taken from Teal's tenures as a whole. This approach

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[20] SC Reasons at para 19 - 20 [AR, Tab 1, pp 6 – 7]; CA *Teal* #1 at para 2 [AR, Tab 4, p 35].
[21] The Arbitrator found that the evidence of both parties established that the "as new" construction cost of the improvements was more than $64 million. See e.g. Award at para 84 [AR, Tab 19, Ex A, p 196].
[22] The award of compound interest was conditional on the outcome of an appeal in a related matter. That appeal determined that compound interest was not available on claims determined under the *Arbitration Act*: See *British Columbia v Teal Cedar Products Ltd*, 2013 SCC 51 [BA Tab 6].
[23] Award at paras 73 – 75 [AR, Tab 19, Ex A, pp 193 – 194]; SC Reasons at paras 22-23 [AR, Tab 1, pp 8 – 9]; CA *Teal* #1 at paras 32 - 33 [AR, Tab 4, pp 41 – 42]; CA *Teal* #2 at para 18 [AR, Tab 8, p 89].
[24] Award at paras 121 – 124 [AR, Tab 19, Ex A, p 205]; CA *Teal* #1 at para 34 [AR, Tab 4, p 42].
[25] Award, para. 137 [AR, Tab 19, Ex A, p 209]. See also: Award, para 126 [AR, Tab 19, Ex A, p 206].

rests on the accepted premise that forest tenures consist of two sets of rights: (a) the right to harvest timber, and (b) the right to access that timber (i.e., the right to construct and/or use improvements to access timber). This method generated a value for the improvements of $19,568,000.[26]

27. The arbitrator found that the *Revitalization Act* was a species of expropriation legislation, and that the word "compensation" means compensation required to make the aggrieved party "economically whole for the lost value to it of the improvements associated with the volumes taken".[27]

28. Within that framework, the arbitrator adopted the "cost savings approach" advanced by Teal in valuing the compensation owing in respect of the improvements, expressly finding that the "cost savings approach" was the only valuation method that determined the value of improvements independent of the value of harvesting rights in the manner directed by the statute. The arbitrator also found that the market approach advocated by the Province "bears no relationship to the actual value of the improvements themselves"[28].

29. Using the cost savings method, the arbitrator assessed the compensation owing to Teal for the improvements at $9.15 million.[29] This Award did not include any compensation for improvements under the Lillooet Licence.[30]

30. The Arbitrator further concluded that Teal was entitled to interest notwithstanding section 9 of the Framework Agreement. After considering the factual background, he concluded that

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[26] Award at paras 96 – 102, 109 [AR, Tab 19, Ex A, pp 199 – 200, 202].
[27] Award at paras 8, 105-106, 108(a) [AR, Tab 19, Ex A, pp 180, 201 – 202]; SC Reasons at para 54 [AR, Tab 1, p 18]; See also Award at paras 9-11 [AR, Tab 19, Ex A, pp 180 – 181]; SC Reasons at paras 50 - 56 [AR, Tab 1, pp 17 – 19]; *MacMillan Bloedel v British Columbia* (1995), 12 BCLR (3d) 134 (CA) [BA Tab 12].
[28] Award, para 124. See also Award at paras 93 – 94, 108 – 115, 119, 123, 124, 137-139; [AR, Tab 19, Ex A, pp 198, 202 – 205, 209]; CA *Teal* #1 at paras 35-36 [AR, Tab 4, pp 43 – 44]; CA *Teal* #2 at para 18 [AR, Tab 8, p 89].
[29] See Amendment to the Award, dated June 30, 2011 [AR, Tab 20, Ex A, p 302].
[30] Award at paras 169 - 170 [AR, Tab 19, Ex A, pp 216 – 217]; SC Reasons at paras 82 – 88 [AR, Tab 1, pp 26 – 28]; CA *Teal* #1 at paras 101 - 130 [AR, Tab 4, pp 62 -71].

section 9, read in context, was modified by the election made in the Addendum to the Framework Agreement to arbitrate the question of compensation, including interest[31]:

> The context applying here is that when the original Framework Agreement was signed, the parties had not reached any agreement with reference to the matters now in dispute, and that they were hopeful of reaching a settlement through the arbitration process. When it became apparent that a settlement could not be reached, then, later on October 27, 2005, they agreed that the question of compensation would go to arbitration.
>
> I am of the opinion that the word "compensation" as used in the latter agreement includes interest and, accordingly, modifies the clause in the first agreement and, accordingly, interest is available to Teal. [emphasis added]

***Supreme Court of British Columbia***

31. The Province sought leave to appeal the entire Award[32] to the Supreme Court of British Columbia on the grounds that the arbitrator erred in (a) adopting a valuation methodology that was inconsistent with section 6 of the *Revitalization Act*, and (b) interpreting the Settlement Framework and Addendum #2 to permit an award of interest to Teal. An appeal to that court lies, with leave, on "any question of law which arises out of the award".[33]

32. The chambers judge (Bauman CJSC, as he then was) granted leave on the question of whether the Arbitrator erred in law in his interpretation of subsection 6(4) of the *Revitalization Act*,[34] and addressed the merits of the Province's appeal.[35] He dismissed the Province's appeal

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[31] Award at paras 180-181 [AR, Tab 19, Ex A, p 218]; SC Reasons at para 73 [AR, Tab 1, p 24]; CA *Teal* #1 at para 103 [AR, Tab 4, p 63]; CA *Teal* #2 at para 20 [AR, Tab 8, p 90].

[32] Prior to the hearing of the applications for leave of the Award, the Arbitrator issued an additional Award Regarding Tax Gross-Up, Interest and Solicitor and Client Cost Issues (the "Supplemental Award") [AR, Tab 22, Ex A, pp 443-454] which, among other things, dismissed Teal's claim for a tax gross-up. Teal's appeal of the tax gross-up aspect of this Supplemental Award was dismissed by the B. C. Supreme Court in separate proceedings (2013 BCSC 788) and an appeal of this decision to the B.C. Court of Appeal remains pending.

[33] *Arbitration Act*, s 31(1)(b). SC Reasons at para 28 [AR, Tab 1, p 10]; CA *Teal* #1 at para 41 [AR, Tab 4, p 47]; CA *Teal* #2 at paras 24-25 [AR, Tab 8, p 91].

[34] Order of Bauman CJSC, April 16, 2012, para 1 (granting leave to appeal on the "question of whether the Arbitrator erred in law in his interpretation of s 6(4) of the *Forestry Revitalization Act*") [AR, Tab 2, pp 29 – 30].

on that issue, finding that "[n]o error of law can be sustained in the manner of the learned Arbitrator's approach to the matter of statutory construction before him. ... What the Arbitrator has done here is to construe s.6(4) in a manner open to him in light of the applicable rules of statutory interpretation."[36]

33. The chambers judge denied the Province's application for leave on the interest question finding that the Arbitrator was engaged in the interpretation of the Framework Agreement and Addendum #2 in the context of the factual matrix. This was a question of mixed fact and law from which leave to appeal was not available under section 31 of the *Arbitration Act*.[37]

34. Teal sought leave to appeal on the narrow question of whether it was an error of law to deny Teal any compensation for "value of improvements" associated with the volume reductions made to the Lillooet Licence. Bauman CJBC granted leave on this issue and, after considering the merits, remitted the question of the compensation owing in respect of the improvements associated with the Lillooet Licence back to the Arbitrator for reconsideration.[38]

***Court of Appeal for British Columbia: 2013 BCCA 326 ("Teal #1")***

35. The Province appealed the decision of Bauman CJSC to the Court of Appeal. In majority reasons, Madam Justice MacKenzie (Lowry JA concurring) overturned the Chief Justice's decision in its entirety. As to the valuation method, the majority found that the cost savings

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[35] The leave judge considered the Arbitrator's refusal to take into account stumpage fees, ongoing maintenance, and decommissoning costs to contain questions of fact or mixed fact and law which cannot form the basis of appellate review. He nevertheless considered the arbitrator's treatment of these matters, and considered that the arbitrator was correct in his analysis of these considerations. SC Reasons at paras 57-71 [AR, Tab 1, pp 19 – 24]; Award at paras 127-129, 155-159 [AR, Tab 19, Ex A, pp 206 – 207, 212 – 214].

[36] SC Reasons at paras 49-50 [AR, Tab 1, p 17]; CA *Teal* #1 at paras 43-45 [AR, Tab 4, pp 47 – 48]; CA *Teal* #2 at para 25 [AR, Tab 8, p 91]..

[37] SC Reasons at paras 72-81 [AR, Tab 1, pp 24 – 26]; CA *Teal* #1 at para 46 [AR, Tab 4, p 48]; CA *Teal* #2 at para 25 [AR, Tab 8, p 91].

[38] On July 3, 2012, the Arbitrator issued a further award, granting Teal additional compensation of $3,928,500, plus compound interest and costs, in respect of the "value of improvements" associated with the cut reductions made to the Lillooet Licence: Lillooet Award,p 9 – 10 [AR, Tab 23, p464 – 465]; CA *Teal* #1 at para 48 [AR, Tab 4**,** p 48 – 49]. The Lillooet Award was amended on August 17, 2012 to correct a typographical error and to clarify that the interest forming part of the award was to be compounded monthly: Amendment to Award Dated July 3, 2012 [AR, Tab 24, p 467 – 468]**.** SC Reasons at paras 85-88 [AR, Tab 1, pp 27 – 28]; CA *Teal* #1 at paras 42, 47 [AR, Tab 4, pp 47 – 48]; CA *Teal* #2 at para 25 [AR, Tab 8, p 91].

approach was "not the correct valuation method … because it is inconsistent with a correct interpretation of s. 6(4) of the *Revitalization Act*" (para 68), and since the cost saving approach was "inconsistent with the evidence of the nature of Teal's interest in the improvements and with Teal's actual loss" (para 95). The majority set aside the decision of the chambers judge on this issue, restored the arbitrator's original award regarding the Lillooet Licence, and remitted the issue of the compensation payable for the improvements under TFL 46 and the Fraser Licence to the arbitrator for reconsideration with a direction to "consider the nature of [the Appellant's] interest and its actual loss" (paras 133-134).[39]

36. On interest, the majority held that the chambers judge erred in finding this to be a question of mixed fact and law. MacKenzie JA held that it was a pure question of law since the arbitrator should have construed section 9 in accordance with its plain meaning without resort to any factual matrix evidence; and, having done so, he adopted an approach that was contrary to established principles of contractual interpretation, resulting in an error of law. The majority granted leave to appeal and set aside the interest award.[40]

37. In dissenting reasons, Finch CJBC (as he then was) found no error and agreed with Bauman CJSC's findings and would have dismissed the Province's appeal. Specifically, Finch CJBC found that there was no basis to interfere with Bauman CJSC's conclusions that:

(a) it was open to the arbitrator to adopt the valuation methodology he did under the applicable rules of statutory interpretation and he saw "no basis on which [the Court of Appeal] could interfere with this aspect of" the decision as he was "unable to detect any error";

(b) the application of the valuation method by the arbitrator consisted largely of questions of fact or mixed fact and law which were immune from appellate review; and

(c) interpreting the word "compensation" in the addendum to the Framework Agreement as including interest was a question of mixed fact and law based on

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[39] CA *Teal* #1 at paras 57 – 100, 133-134 [AR, Tab 4, pp 52 – 62, 71]; CA *Teal* #2 at paras 27-28 [AR, Tab 8, pp 91]; Order of B.C. Court of Appeal (File CA 039893) at para 3 [AR, Tab 5, pp 75 – 76].
[40] CA *Teal* #1 at paras 101 – 130, 135 - 136 [AR, Tab 4, pp 62 – 71 and 72]; CA *Teal* #2 at paras 41-43 [AR, Tab 8, p 96].

consideration of the factual matrix leading up to the execution of the addendum.[41]

***Decision of Court of Appeal on Remand: 2015 BCCA 263 ("Teal #2")***

38. Leave to appeal was sought by Teal from *Teal* #1 to this Court, which remanded the case to the Court of Appeal for disposition in accordance with *Sattva*[42]. On remand, the Court of Appeal (Lowry, Chiasson and MacKenzie JJA) found the decision in *Teal* #1 was not inconsistent with *Sattva*, and that its earlier decision in *Teal* #1 remained unaltered.[43]

***The Valuation Issue***

39. As to the valuation issue, the Court of Appeal stated that the "award is unrelated to any actual financial expense borne by Teal itself in building or maintaining roads and bridges" (para 19) and that in its earlier judgment the majority had found that the award "did not compensate for an actual financial loss" (paras 27, 39). Despite *Sattva*, the Court found that the standard of review was correctness and in the course of its discussion in this regard stated the *Revitalization Act* was not the arbitrator's "home" statute (para 35).[44]

40. The Court affirmed its previous determination in *Teal* #1 that the award as to valuation was "not correct" (para 37). The Court further considered that the award was also unreasonable since it provided a "substantial publicly financed windfall, which would serve no purpose", and the "only reasonable interpretation of that provision" is one that compensates for Teal's "actual financial loss" (para 38-39).[45]

***The Interest Issue***

41. As to interest, the Court found that despite *Sattva*, the interest appeal was one of pure law and not mixed fact and law as found by the chambers judge. While the arbitrator had considered the contractual question in the context of the surrounding circumstances, the Court nevertheless affirmed its decision in *Teal* #1 that the issue was one of pure law for which leave could be

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[41] CA *Teal* #1 at paras 138 - 149 [AR, Tab 4, pp 73 – 74].
[42] (SCC no 35563; AR, Tab 7, p 81)
[43] CA *Teal* #2 at para 60 [AR, Tab 8, p 101]; Orders in BCCA Appeal Nos CA039893 and CA039894 [AR, Tabs 9 and 10, pp 102 – 113].
[44] CA *Teal* #2 at paras 19, 27, 35, 39 [AR, Tab 8, pp 89, 92, 94 – 95].
[45] CA *Teal* #2 at paras 37 - 39 [AR, Tab 8, pp 94 – 95].

granted. As to the merits, the Court did not engage in a standard of review analysis, but reasoned that "[r]egardless of the standard of review employed" the "arbitrator was in error" (para 59) in interpreting the contract in the way he did.[46]

## PART II – QUESTIONS IN ISSUE

42. The questions in issue as framed by the Court of Appeal in the judgment under appeal are as follows:

> (i) Statutory Interpretation Issue: How should compensation for the value of improvements made to Crown land be valued under s. 6(4) of the *Forestry Revitalization Act?*
>
> (ii) Contractual Interpretation Issue: Did the judge err in dismissing the Province's application for leave to appeal the arbitrator's interest award?[47]

43. The statutory interpretation issue might more directly be framed as:

> (i) Is it open to an arbitrator assessing compensation under s. 6(4) of the *Forestry Revitalization Act* for the value of improvements to utilize a depreciated replacement cost methodology to assess value?

44. The underlying principle at stake in this appeal is that of appellate restraint in the review of arbitration awards. This Court addressed this restraint in *Sattva* as it related to contract interpretation. One question in this appeal is whether the same principles apply to commercial arbitration awards involving the interpretation of a statute.

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[46] CA *Teal* #2 at para 59 [AR, Tab 8, p 101]
[47] CA *Teal* #2 at para 26 [AR, Tab 8, p 91].

## PART III – STATEMENT OF ARGUMENT

### Appellate Restraint in reviewing Arbitration Awards

45. The background to modern arbitration legislation in Canada was described in a recent decision of this Court in this way:

> In British Columbia, the current approach to arbitration was adopted in 1986 with the enactment of the *Commercial Arbitration Act*, S.B.C. 1986, c. 3 ("1986 *CAA*"). The 1986 *CAA* replaced the *Arbitration Act*, R.S.B.C. 1979, c. 18, which had essentially remained unchanged since 1893. The new legislation was modelled primarily on the recommendations of a 1982 Law Reform Commission of British Columbia *Report on Arbitration* ("LRC Report"). In enacting it, British Columbia took a "leadership role" by being the first common law province to modernize its approach to arbitration (J. K. McEwan and L. B. Herbst, *Commercial Arbitration in Canada: A Guide to Domestic and International Arbitrations* (loose-leaf), at pp 1-10).[48]

46. One of the innovations recommended in the LRC Report and adopted by the British Columbia Legislature[49] was a limited right of appeal from an arbitration award. The right of appeal was limited in three ways. It was available only for questions of law arising out of the award; leave to appeal such questions of law was required; and leave was to be granted only for matters of importance as described in the statute. These limitations were included in the 1986 *Commercial Arbitration Act*[50] and remain in the current *Arbitration Act* applicable to this appeal.

47. The current Act provides a right of appeal in these terms:

> 31 (1) A party to an arbitration, other than an arbitration in respect of a family law dispute, may appeal to the court on any question of law arising out of the award if
>
> (a) all of the parties to the arbitration consent, or
>
> (b) the court grants leave to appeal.
>
> (2) In an application for leave under subsection (1) (b), the court may grant leave if it determines that

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[48] *Seidel v TELUS Communications Inc*, 2011 SCC 15 at para 104 (per LeBel and Deschamps JJ., dissenting in result) [BA Tab 20]. British Columbia's *Commercial Arbitration Act* has since been renamed the *Arbitration Act*, and is the legislation at issue in this appeal.

[49] Most other provincial statutes dealing with domestic arbitration provided for a similar limited right of appeal, but some legislation did not provide for any appeal of an arbitration award. See e.g. *Commercial Arbitration Act*, RSC 1985, c 17 (2nd Supp) [BA Tab 27]; *International Commercial Arbitration Act*, RSBC 1996, c 233 [BA Tab 30].

[50] SBC 1986, c 3, s 31 [BA Tab 28].

> (a) the importance of the result of the arbitration to the parties justifies the intervention of the court and the determination of the point of law may prevent a miscarriage of justice,
>
> (b) the point of law is of importance to some class or body of persons of which the applicant is a member, or
>
> (c) the point of law is of general or public importance.[51]

48. It was in reference to these provisions that this Court stated that "[a]ppeals from commercial arbitration decisions are narrowly circumscribed" under the *Arbitration Act*.[52] The comments of the British Columbia Court of Appeal in a different case seem apposite for the case at bar:

> This appeal serves as a reminder of the importance of judicial restraint in the review of arbitral awards, at least in the commercial context. When sitting on appeal from an arbitral award, a court's jurisdiction is narrow. The inquiry differs fundamentally from a trial, and even from a judicial review of an administrative decision. … Parties are afforded such narrow scope to appeal arbitral awards because arbitration in intended to be "an *alternate* dispute mechanism" rather than "one more layer of litigation."[53]

49. The position of the Appellant is that the Court of Appeal has not given effect to this judicial restraint, but rather has reviewed the award in the same manner as it would a trial judgment. This approach offends not only the principles set out in *Sattva*, but also the proper approach to reviewing arbitral awards more generally.

**FIRST ISSUE: The Statutory Interpretation Issue**

**What is the Question of Law?**

50. Under subsection 6(6) of the *Revitalization Act*, "a dispute ... as to the amount of the compensation to which the holder is entitled" must be submitted to arbitration under the *Arbitration Act*.[54] The head of compensation at issue in these proceedings is "compensation

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[51] *Arbitration Act*, *supra*, s 31. Section 14 of the *Arbitration Act* provides that "[t]he award of the arbitrator is final and binding on all parties to the award" [BA Tab 26].
[52] *Sattva*, *supra* at para 38 [BA Tab 19].
[53] *Boxer Capital Corporation v JEL Investments Ltd*, 2015 BCCA 24 at paras 4 and 6 [emphasis added, citations omitted] [BA Tab 5].
[54] *Revitalization Act*, *supra*, s 6(6).

from the government in an amount equal to the value of improvements made to Crown land."[55] The statute does not give any guidance to the arbitrator as to how the value of improvements is to be determined, other than to say that this value is "in addition to" the value of the harvesting rights. No specific methodology for valuing the improvements is set out in the statute.

51. Under subsection 13(2) of the *Revitalization Act*, the Lieutenant Governor in Council is authorized to make regulations determining value and defining the components that comprise value, prescribing methods of evaluation for use in determining value, prescribing factors to be taken into account in an evaluation, and defining the role of evaluators in a determination of value. No regulations were published pursuant to this authority. As Bauman CJSC put it after reviewing this regulation-making power:

> But Cabinet has not done so. This has left the appropriate valuation methodology as a matter at large before the Arbitrator. His chosen methodology lies at the centre of the Province's complaints with the award.[56]

52. By framing the "statutory interpretation" issue as "[h]ow should compensation for the value of improvements … be valued ",[57] the Court of Appeal has taken the factual issue (selection and application of valuation methodology) that is to be determined by the arbitrator and re-characterized it as a question of law to be determined by the Courts.

53. Appellate courts and leave judges in analogous circumstances have consistently held that the approach or methodology used by a valuator to value assets does not raise a question of law, but rather is a question of fact or, at most, mixed fact and law. For example, the Manitoba Court of Appeal in upholding the refusal of a leave judge to grant leave to appeal from a valuation has held that:

> As far as I can tell from my reading of the Board's reasons, it appreciated that replacement cost was merely an approach to market valuation. *Whether it was justified in using this approach exclusively depends upon its interpretation of the*

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[55] *Revitalization Act*, *supra*, s 6(4).
[56] SC Reasons at paras 19-20 [AR, Tab 1, pp 6 – 7].
[57] CA *Teal* #2 at para 26 [AR, Tab 8, p 91].

> *evidence*. The point involved is not one of law alone which could result in this court deciding the case differently.[58]

54. The Alberta Court of Appeal has taken the same approach:

> The correctness of the choice of method of assessment turns upon the arbitrator's analysis of the facts. It is therefore properly characterized as a question of mixed fact and law.[59]

55. The Ontario Court of Appeal came to a similar conclusion in an analogous situation:

> The complaint by the owner that the Board erred in its determination of the rate of capitalization to be used and in its finding that the market value arrived at by it was not inequitable disclosed no error in law. Its findings in both respects were questions of fact. ... In any event, it cannot be said that in determining the net income on the basis of the actual rents, the Board erred in law. There was ample evidence before the Board upon which it could make that determination which was a question of fact.[60]

56. It is noteworthy that the Court of Appeal in the case at bar did not specify what approach or methodology for valuing the improvements was the correct one under the statute.[61] The answer is that there is no one correct methodology because the statute leaves the determination of the appropriate methodology to the arbitrator chosen by the parties.

57. The only question of law that arises from this statute on methodology is whether it was open to the arbitrator to assess the value of improvements through a depreciated replacement cost

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[58] *Re West-Man Culvert & Metal Co v Provincial Municipal Assessor*, [1992] 5 WWR 56 (MBCA) [emphasis added] [BA Tab 17]. See also *Richmond Six Ltd v Winnipeg (City)*, 2009 MBCA 58 at paras 2, 8-10 [BA Tab 18]; *Assessor for the City of Winnipeg v Norwood Hotel Co Ltd*, 1999 CanLII 4118 (MBCA) at paras 2, 12 [BA Tab 4]; *Winnipeg City Assessor v Great-West Life*, 2004 MBCA 35 at para 6 [BA Tab 25]; *1379025 Ontario Ltd v Winnipeg (City) Assessor*, 2005 MBCA 46 at para 2 [BA Tab 2]; and *Consumers' Assn of Canada (Manitoba) Inc v Manitoba Hydro Electric Board (Manitoba Hydro)*, 2005 MBCA 55 at paras 9, 68 – 69 [BA Tab 9].

[59] *Pachanga Energy Inc v Mobil Investments Canada Inc*, [1994] 3 WWR 350 (Alta CA) at para 2, aff'g [1993] 4 WWR 176 (Alta QB) at para 12 [BA Tab 15] ("the method or approach to the valuation of the equipment used by the arbitrator in fixing the amount of the award involved a question of mixed fact and law and it is not a question of law within … the Act.")

[60] *Re A Merkur & Sons Ltd and Regional Assessment Commissioner, Region No 14 et al* (1978), 21 OR (2nd) 797 (CA) at para 7 [BA Tab 16].

[61] On the contrary, in *Teal* #1 the majority expressly acknowledged that its task was not "to decide on an appropriate valuation method or a value for Teal's loss relating to the improvements. There may be various suitable ways to do so, depending on the evidence." [emphasis added]: CA *Teal* #1 at para 98 [AR, Tab 4, p 62].

method, a method all the valuators recognized was an accepted valuation technique. The answer to that question must be in the affirmative.

58. Having determined value by a recognized methodology of valuation, the arbitrator was then required by the statute to fix compensation at that amount, that is, the amount "equal to the value of improvements." This he did[62]. It would have been an error of law to fix compensation under subsection 6(4) on any basis other than an amount equal to the value of the improvements.

**The Criticisms of the Methodology Selected by the Arbitrator**

59. Throughout the proceedings below and on the application for leave to this Court,[63] the Province criticizes the valuation methodology selected by the arbitrator because it does not address the question of stumpage and the licensee's road maintenance and deactivation obligations. In *Teal* #1, the majority of the Court of Appeal expressed its views on how the matter of stumpage fees should impact the valuation exercise,[64] a point not returned to in *Teal* #2 aside from a passing reference[65].

60. The arbitrator considered and rejected each of these concerns in his review and analysis of the competing valuation methodologies advanced by the parties.[66] Bauman CJSC correctly identified the treatment of stumpage fees and maintenance and deactivation costs in the valuation method analysis as matters of fact or mixed fact and law which are immune from appellate review,[67] and in any event properly considered that the Arbitrator's treatment of these issues was correct.[68]

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[62] see Award at para 139.
[63] See, for example, Response of Her Majesty the Queen in Right of British Columbia to the Application for Leave to Appeal of Teal Cedar Products Ltd, filed October 7, 2015 at para 26.
[64] CA *Teal* #1 at para 74 [AR, Tab 4, p 56]. Later in *Teal* #1, the majority acknowledged that considerations such as stumpage fees and maintenance costs were factual matters for the arbitrator, and erroneously implied that the arbitrator had not considered them (CA *Teal* #1 at para 97 [AR, Tab 4, pp 61], although the Arbitrator had plainly done so in his Award at paras 127 – 129, 155-56 and 158 [see AR, Tab 19, Ex A, pp 206 – 207, 213 – 214]).
[65] CA *Teal* #2, para 7.
[66] Award at paras 116-131, 155-59 [AR, Tab 19, Ex A, pp 204 – 207, 212 – 214].
[67] SC Reasons at para 58 [AR, Tab 1, p 20].
[68] *Ibid* at para 63 - 64 [AR, Tab 1, pp 21 – 22].

61. In addition, with respect to stumpage, it is significant that the arbitrator expressly found that stumpage was the "economic rent payable to the Province for the timber harvested from a particular tenure. It is a cost of harvesting incurred by the licensee that ultimately affects the value of the harvesting rights, not the value of improvements."[69] This finding of fact or, alternatively, mixed fact and law, is a full answer to any criticism that the cost savings method did not address stumpage in its valuation of the improvements. Stumpage is not relevant to the value of the improvements.

62. The arbitrator similarly considered and dismissed the Province's criticism that the cost savings approach did not address the ongoing maintenance and deactivation obligations of Teal with respect to the improvements. Future costs like deactivation and maintenance costs that may or may not be incurred may be relevant to an income based valuation but the improvements do not generate income and an income based approach was not advanced by either party or adopted by the arbitrator. Here the valuation was based on a depreciated replacement cost rather than income, and future deactivation and maintenance costs are not relevant to that type of valuation exercise.[70]

**Standard of Review**

63. Even if the methodology for assessing value could be characterized as a question of law, it would be necessary to consider the standard of review of the arbitrator's award. Here the Court of Appeal failed to follow the standard of review set out in *Sattva*.

64. *Sattva* sought to provide certainty as to the principles of judicial deference applicable to commercial arbitration awards. Rothstein J held that subject to two limited exceptions expressly noted in the judgment, the applicable standard of review on such an appeal is reasonableness:

> As I will later explain, reasonableness will almost always apply to commercial arbitrations conducted pursuant to the *AA, except in the rare circumstances where the question is one that would attract a correctness standard, such as a constitutional question or a question of law of central importance to the legal system as a whole and outside the adjudicator's expertise*. [emphasis added][71]

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[69] Award, para 127 [AR, Tab 19, Ex A, p 206].
[70] Award, paras 113, 128 – 129, 157-159 [AR, Tab 19, Ex A, pp 204, 206 – 207].
[71] *Sattva, supra,* at para 75 [BA Tab 19].

65. This Court reiterated these two exceptions later in the judgment:

> *In the context of commercial arbitration, where appeals are restricted to questions of law, the standard of review will be reasonableness unless the question is one that would attract the correctness standard, such as constitutional questions or questions of law of central importance to the legal system as a whole and outside the adjudicator's expertise* (*Alberta Teachers' Association.*, at para. 30). The question at issue here, whether the arbitrator interpreted the Agreement as a whole, does not fall into one of those categories. The relevant portions of the *Dunsmuir* analysis point to a standard of review of reasonableness in this case.[72]

66. However, in *Teal* #2, the British Columbia Court of Appeal quoted paragraph 106 from *Sattva*[73] but nevertheless found that this Court had left "open questions" about the standard of review analysis for commercial arbitrations:

> In *R. v. Henry*, 2005 SCC 76 at para. 58, the Court made it clear that general comments made that are not necessary for a decision are "not part of the analysis, and should not be taken as imposing a rule or norm or even a statistical hurdle limiting other courts". The Court's comments in *Sattva* suggest that the standard of review in commercial arbitration is reasonableness when the error of law is within the expertise of the arbitral tribunal and is not a question of law of central importance to the legal system as a whole. *Open questions are whether the application of legal principles in the interpretation of contracts is a matter of expertise and whether this involves a question of law of central importance to the legal system as a whole*. [emphasis added][74]

67. *Teal* #2 went on to reason that *Sattva* did not restrict or provide an exhaustive list of the circumstances where a standard of review was correctness:

> None of the criteria that might justify the deference associated with the reasonableness standard of review in respect of statutory interpretation is present here. Specifically, it is not suggested the arbitrator had any specialized expertise in forest legislation or forestry tenures and it certainly could not be said the Act was his "home" statute. Although the parties chose the arbitrator (the Court is not privy to the reasons for his selection), it is significant that arbitration was statutorily required (Act, s. 6(6)). As the Province says, the statutory interpretation question that arose – the meaning of compensation in s. 6(4) – was an issue of importance to compensation statutes generally, and arose for the first time under the Act in this arbitration. We agree with the Province these factors

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[72] *Sattva, supra* at para 106. See also *Sattva, supra* at para 105 [BA Tab 19].
[73] CA *Teal* #2, *supra* at para 30 [AR, Tab 8, pp 92 – 93].
[74] CA *Teal* #2 at para 33 [AR, Tab 8, pp 93 – 94]. See also CA *Teal* #2 at para 29 ("No mention [in *Sattva*] was made of statutory interpretation") [AR, Tab 8, p 92].

> point to a standard of correctness on the analysis in *Dunsmuir* to which Rothstein J. refers.
>
> In any event, *Sattva did not explicitly restrict, or provide an exhaustive list of, the exceptional circumstances in which an arbitrator's award based on a question of law would be reviewable on a standard of correctness. The Court was providing examples that cannot be read as excluding the interpretation of a statute*. [emphasis added][75]

68. The proposition in *Teal #2* that this Court did not settle the law in Canada as to the circumstances in which a reasonableness standard applies is inconsistent with *Sattva*: see *Sattva, supra* at paras 75 and 106, as discussed above. It is also at odds with other appellate decisions in Canada which have not expressed doubt that the categories of cases where correctness applies have been settled.

69. In *Urban Communications Inc v BCNET Networking Society*,[76] the British Columbia Court of Appeal stated that *Sattva* directs the following approach to the standard of review in arbitration appeals:

> Even where leave to appeal is granted, the court's standard of review of the arbitrator's decision on the merits is one of reasonableness unless the question is one that would attract a correctness standard, such as a constitutional question or a question of law of central importance to the legal system as a whole and outside of the arbitrator's experience ... .[77]

70. In *Loewen v MTS*, the Manitoba Court of Appeal stated that "the recent Supreme Court of Canada jurisprudence clearly favours a reasonableness standard of review with respect to most decisions of administrative decision-makers, including those of labour arbitrators and commercial arbitrators"[78] and that:

> The court, in *Sattva*, held that aspects of the *Dunsmuir* framework established with respect to judicial review of administrative decisions, could be applied in the context of an appellate review of a commercial arbitration award (see para. 105). Rothstein J. held that *generally a reasonableness standard of review with respect to tribunal decisions which involve the interpretation of contracts governing the relationship between parties is appropriate unless the nature of the question in*

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[75] CA *Teal* #2 at para 35 - 36 [AR, Tab 8, p 94]
[76] *Urban Communications Inc v BCNET Networking Society*, 2015 BCCA 297 ("*Urban Communications*"), Leave to SCC granted February 18, 2016 (File No 36639) [BA Tab 22].
[77] *Urban Communications, supra*, at para 64(5) [BA Tab 22].
[78] *Loewen v MTS*, 2015 MBCA 13, at para 47 [BA Tab 11].

> *issue falls within one of the Dunsmuir correctness categories (see para. 75).* Additionally, the court held that similar to judicial review, expertise is a factor in commercial arbitrations where it may be presumed that such decision-makers are chosen either based on their expertise in the area or are otherwise qualified in a manner that is acceptable to the parties (see para. 105). [emphasis added][79]

71. The Manitoba Court of Appeal further expressed the view, when adopting a reasonableness standard to an arbitration appeal, that the categories of cases in which the reasonableness standard can be rebutted had been limited by this Court's existing jurisprudence:

> I acknowledge that the "general rule" or "presumption" of a reasonableness standard is not set in stone. The court has continued to assert that even if the question involves an administrative decision-maker's interpretation of its home statute or the contractual terms of an arbitration agreement, a correctness standard *will be applied if it falls within one of the correctness categories identified in Dunsmuir*. But, since *Dunsmuir*, there has been no case arising from the Supreme Court of Canada which identifies a question of general law that is of central importance to the legal system and outside of the expertise of the decision-maker so as to attract a correctness standard.[80]

72. Despite the inapplicability of the two enumerated exceptions to the reasonableness standard, *Teal* #2 nevertheless found the standard of review to be correctness, and went on to affirm its earlier analysis that the "arbitrator's interpretation was not correct."[81]

73. The British Columbia Court of Appeal in *Teal* #2 reasoned that the arbitrator had been appointed by the parties and could not be said to be interpreting his "home" statute.[82] However, this basis for adopting a correctness approach is belied by *Sattva* which stated that when parties choose their arbitrator it is to be presumed that the decision-maker has expertise acceptable to the parties.[83]

74. The principles of judicial deference set out in *Sattva* apply no less to commercial arbitrations made in a statutory context than to those in a contractual setting. This Court in *Sattva* held that principles of administrative law regarding the appropriate standard of review should apply to commercial arbitration appeals. There is no reason in principle or policy for the standard

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[79] *Loewen v MTS, supra,* at para 46 [BA Tab 11]
[80] *Loewen v MTS, supra,* at para 48 [italics added; underlining in the original] [BA Tab 11].
[81] CA *Teal* #2 at para 37 [AR, Tab 8, p 94].
[82] CA *Teal* #2 at para 35 [AR, Tab 8, p 94].
[83] *Sattva, supra* at para 105 [BA Tab 19].

of review analysis set out in *Sattva* to not also apply on an appeal of an award where an arbitrator has interpreted and applied a statute central to the arbitrator's statutory mandate. An arbitrator appointed to resolve a dispute as to the amount of compensation under subsection 6(6) of the *Revitalization Act,*[84] as in the case at bar, functions in the same manner as, for example, a grievance arbitrator in a labour context: the latter circumstance being recently confirmed as being presumptively subject to a standard of reasonableness.[85] In the case at bar there is no basis to rebut the presumption that the standard of review of reasonableness applies to Arbitrator Braidwood's interpretation of s.6(4) of the *Revitalization Act*.

**Reasonableness of the Arbitrator's Award**

75. The Court of Appeal came to the conclusion that because the value of the improvements was not fixed in relation to Teal's "actual financial loss", it constitutes a "publicly financed windfall."[86] This conclusion mischaracterizes the result of the arbitration and misconceives the task assigned to an arbitrator under the *Revitalization Act*.

76. There is no legal principle that value must be assessed by reference to "actual financial loss," nor is that concept part of the statutory compensation scheme at issue here.[87] Section 6 of the *Revitalization Act* requires that compensation be equal to the value of the improvements. Thus, the central (factual) task of the arbitrator was to assess the value of the improvements.

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[84] As noted, s. 6(6) provides that: "A dispute … as to the amount of the compensation to which the holder is entitled under this section must be submitted to arbitration under the *Arbitration Act*." See *Dunsmuir v New Brunswick*, 2008 SCC 9, Bastarache and LeBel JJ at para 54 (deference will usually result where a tribunal is interpreting it own statute or statutes closely connected to its function) [BA Tab 10]; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 34 [BA Tab 3]; *Smith v Alliance Pipeline Ltd*, 2011 SCC 7 at para 26 [BA Tab 21].

[85] *Commission scolaire de Laval v Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8, Gascon J at paras 32-39 [BA Tab 8]. See also *Dunsmuir, supra* at para 68 [BA Tab 10].

[86] CA *Teal* #2 at para 38 [AR, Tab 8, p 95].

[87] In pointing out how the statute is structured, Teal does not wish to be understood that it did not suffer actual financial loss in an amount comparable to the compensation that was awarded. There was ample evidence before the arbitrator to demonstrate significant financial loss from this 20% takeback, including losses relating to the improvements whether funded by Teal or acquired by Teal through acquisition of the tenures. The point is simply that this factual matter is not the basis for compensation under the statute.

77. The arbitrator heard extensive valuation evidence from both parties[88] and it was common ground that depreciated replacement cost was a generally accepted valuation approach.[89] The arbitrator considered other valuation approaches – market value and the income approach –but found on the evidence that those methods were inapplicable to the task of valuing the improvements.[90] This weighing of the evidence was precisely the task assigned to the arbitrator by the statute.

78. In coming to his conclusion regarding the appropriate valuation method, Mr Braidwood considered evidence of guidelines and principles used by appraisers in the United States forestry industry to reinforce the appropriateness of the depreciated replacement cost approach.[91] None of the valuators and none of the generally accepted valuation approaches related value to "actual financial loss". It is unclear where the Court of Appeal found this concept, but it was not in the evidence before the arbitrator or any legal principle identified by the Court of Appeal.

79. In this regard, it is noteworthy that the arbitrator also considered the structure and language of the statute in his selection of the appropriate valuation method. The statute draws an express distinction between the value of harvesting rights and the value of improvements, "a distinction that is not generally found in the forest industry because tenures as a whole (i.e. the sum of the harvesting rights and associated improvements) are what are typically valued." [92] To give that distinction meaning, the value of improvements must be determined independent of the considerations that would be at play in valuing the harvesting rights taken.[93] On the evidence before him, the cost savings approach was the only valuation methodology which valued the improvements qua improvements (i.e. independent of the right to harvest timber).[94]

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[88] The arbitrator described the volume of evidence before him as a "mass of material" produced by "intensive and time consuming teams applying their detailed efforts": Award at para 139 [AR, Tab 19, Ex A, p 209].
[89] Award at para 112 [AR, Tab 19, Ex A, p 203]. See also SC Reasons at para 55 [AR, Tab 1, p 18], in which the leave judge cited some of the evidence and concluded "[t]he adoption of the costs avoided methodology is not precluded by the statutory scheme."
[90] *Ibid* at paras 112 – 140 [AR, Tab 19, Ex A, pp 203 – 209].
[91] *Ibid* at paras 116-118 [AR, Tab 19, Ex A, p 204].
[92] Award at paras 109 and 110 [AR, Tab 19, Ex A, pp 202 – 203].
[93] To hold otherwise would be inconsistent with the presumption against tautology: see *McDiarmid Lumber Ltd v God's Lake First Nation*, 2006 SCC 58 at para 36 [BA Tab 13].
[94] Award at paras 94, 109, 110 [AR, Tab 19, Ex A, pp 198, 202 – 203].

80. In any event, the assertion that somehow the arbitrator was not valuing Teal's "actual loss" is erroneous.[95] In the course of his Award, the arbitrator (by way of analogy) observed that Teal had a strong history of economic achievement, having grown from a "one man cutting shakes in the back yard... to a multi-million dollar company", and was confident it would have used the improvements to their fullest.[96] In other words, in the absence of the taking, Teal would have made use of the improvements over the balance of the term of its licences. That is the loss that the arbitrator sought to value in his compensation award and this factual finding wholly supports the compensation awarded.

81. In this connection, contrary to the Court of Appeal's statements in both *Teal #1* and *Teal #2*, the arbitration award did not constitute a "windfall": the arbitrator simply assessed compensation under the *Revitalization Act* on the basis of an established valuation methodology. Moreover, while the Court of Appeal below acknowledged that the selection and application of an appropriate valuation methodology was not for it to determine in the arbitration appeal[97], its characterization of the award as representing a "substantial ... windfall"[98] indicates that the Court of Appeal's analysis on the valuation issue moved into a factual realm (by suggesting that the quantum of compensation to which Teal should be entitled was substantially less than that which it had been awarded ) and beyond the scope of the appeal court's jurisdiction.

82. The error of the Court of Appeal appears to have been in focussing on the word "compensation" to the exclusion of the word "value." Under the statute, this head of compensation is expressly said to be "compensation from the government in an amount equal to the value of improvements to Crown land."[99] It is the value of the improvements that must be assessed. Once that has been done, compensation is the amount "equal to" that value.

83. The value of the improvements to Teal is as an integrated part of its operations, not simply in the bare physical use of those improvements. The arbitrator expressly recognized this

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[95] See Award at paras. 8-10, 105-111 where the arbitrator construed the Act as requiring "full compensation" to the appellant Teal on a "value to the owner basis" in accordance with the principles applicable in the expropriation context [AR, Tab 19, Ex A, pp 180-181, 201-203]. See also, Award at 189 [AR, Tab 19, Ex A, pp 220].
[96] *Ibid* at para 131 [AR, Tab 19, Ex A, p 207]; SC Reasons at paras 86-87 [AR, Tab 1, pp 27 – 28].
[97] CA *Teal* #1, para 98.
[98] CA *Teal* #2, para 38.
[99] *Revitalization Act*, *supra*, s 6(4).

at paragraph 18 of the Award stating that, but for the taking, Teal would have used the improvements in the course of its forest operations to access timber and other "than in the course of such operations, these improvements have little or no value".[100] In other words, without the associated harvesting volume, the value of the improvements to Teal is lost.

84. Once Teal's harvesting rights were reduced, the value of the improvements associated with those volumes was lost to Teal's ongoing operations. While Teal may have been able to physically drive some of the roads comprising its claim post-taking, that no longer had value to Teal following the taking of the harvesting rights associated with those areas. The valuation method selected by the arbitrator valued this loss independent of the value of the harvesting rights[101] as directed by the statute.

85. Moreover, the arbitrator assessed the value in accordance with a methodology that both valuators agreed was a generally accepted valuation approach.[102] In addition, in the course of his reasons the arbitrator referred to two reasonableness checks contained within the evidence.[103] His assessment was a factual one, which should in itself foreclose appellate review. But if appellate review is to be undertaken, the appropriate response is that using such a generally acceptable valuation approach was not unreasonable. The arbitrator's reasoning amply meets the reasonableness threshold of "justifiability, transparency and intelligibility".[104]

86. Bauman CJSC was correct in concluding that no error of law had been shown. It was clearly open to the arbitrator to select the valuation methodology he did. The judgment of the leave judge should be restored.

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[100] Award at para 18 [AR, Tab 19, Ex A, pp 182 – 183].

[101] The arbitrator found that the "costs savings approach is the only valuation methodology that determines the value of the improvements *qua* improvements (i.e. independent of the harvesting of timber rights)." Award, para 94 [AR Tab 19 Ex A p 198].

[102] Award, para 112 [AR Tab 19, Ex A p 203]; SC Reasons para 55 [AR Tab 1, p 18].

[103] Teal's average historic road construction costs yielded a replacement value for the roads within 8% of the value generated by the cost savings approach, which the arbitrator considered reasonable: see Award, para 95 [AR, Tab 19, Ex A, p 198]. Teal also performed a further reasonableness check, by valuing its tenures as a whole and backing out the compensation received for the harvesting rights taken. This yielded a value of approximately $19.6 million for the value of improvements: see Award, para 96 - 102 [AR, Tab 19, Ex A, pp 199 – 200]. The arbitrator expressly considered Teal's historic construction costs again when concluding that a 'reasonable businesslike estimate' of the value of improvements was $15 million, noting that this figure was "actually lower than if one examined the historical costs expended by Teal on roads and bridges and such improvements" : see Award, para 140 [AR, Tab 19, Ex A, p 209].

[104] *Sattva*, *supra* at para 119.

**SECOND ISSUE: The Contract Interpretation Issue**

87. The interest issue arises from an agreement reached by the parties at a time when compensation was under negotiation that interest would not be payable on the compensation due to Teal, an agreement which was then varied by an Addendum Agreement signed 10 months later which provided that the amount of compensation would be referred to arbitration.

88. The arbitrator heard evidence on the factual circumstances giving rise to these agreements and concluded, in part, as follows:

> The context applying here is that when the original Framework Agreement was signed, the parties had not reached any agreement with respect to the matters now in dispute, and that they were hopeful of reaching a settlement through the arbitration process. When it became apparent that a settlement could not be reached, then, later on October 27, 2005, they agreed that the question of compensation would go to arbitration.
>
> I am of the opinion that the word "compensation" as used in the latter agreement includes interest and, accordingly, modifies the clause in the first agreement and, accordingly, interest is available to Teal.[105]

89. The Province challenged this interpretation of the agreements. The leave judge, Bauman CJSC, concluded that "the Arbitrator was interpreting Addendum #2 in the context of the factual matrix and accordingly, he was engaged in a question of mixed fact and law."[106] He declined to grant leave.

90. Although the judgment of Bauman CJSC pre-dated *Sattva*, it characterized the contract interpretation question in precisely the same way. In *Sattva*, this Court noted that "[c]ontractual interpretation involves issues of mixed fact and law as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix," and thus is "inherently fact specific".[107]

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[105] Award at paras 180 – 181 [AR, Tab 19, Ex A, p 218].
[106] SC Reasons at para 81 [AR, Tab 1, pp 26]. Bauman CJSC further oberved at para 79 [AR, Tab 1, pp 25 – 26] that it "is clear that the notion of 'compensation' in an expropriation context includes interest in the normal course", referring to *British Columbia (Minister of Highways) v Richland Estates* (1973), 4 LCR 85 (BCCA) [BA Tab 7] and *Morriss v British Columbia*, 2007 BCCA 337 [BA Tab 14].
[107] *Sattva, supra* at para 50, 55 [BA Tab 19].

91. This Court has recognized the importance of limiting the intervention of appellate courts when the Legislature has restricted appeals to questions of law:

> One central purpose of drawing a distinction between questions of law and those of mixed fact and law is to limit the intervention of appellate courts to cases where the results can be expected to have an impact beyond the parties to the particular dispute. It reflects the role of courts of appeal in ensuring the consistency of the law, rather than in providing a new forum for parties to continue their private litigation.[108]

92. The case at bar is not one "where the results can be expected to have an impact beyond the parties to the particular dispute."

93. The narrow exception to this principle arises when an extricable question of law can be identified. This Court pointed out in *Sattva* that "courts should be cautious in identifying extricable questions of law in disputes over contractual interpretation" and that the circumstances in which a question of law can be extricated "will be rare."[109]

94. Appellate courts since *Sattva* have observed that this Court's ruling dictates that leave to appeal will rarely be granted from arbitral awards on a question of contractual interpretation[110] and that the interpretation of a contract is a question of mixed fact and law.[111]

95. Similarly, in *090032 BC Ltd v 3 Oaks Dairy Farms Ltd*., the B.C. Court of Appeal observed that: "[w]hat <u>was</u> new in *Sattva* was the direction that contractual interpretation should henceforth be seen generally as a matter of mixed fact and law rather than law alone" (emphasis in the original).[112]

96. Despite this clear direction, the Court of Appeal in *Teal #2* held that the arbitrator's interpretation of the effect of the two agreements did raise a question of law, and further held that the arbitrator's interpretation was wrong.

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[108] *Sattva, supra,* at para 51 [BA Tab 19].
[109] *Sattva, supra,* at para 54, 55 [BA Tab 19].
[110] *Boxer Capital Corp v JEL Investments Ltd*, 2015 BCCA 24 at para 9 [BA Tab 5].
[111] *Vancouver Canucks Limited Partnership v Canon Canada Inc*, 2015 BCCA 144 at para 94 [BA Tab 24]; *Vallieres v Vozniak*, 2014 ABCA 290 at para 12 [BA Tab 23].
[112] *090032 BC Ltd v 3 Oaks Dairy Farms Ltd*., 2015 BCCA 332 at para 7 [BA Tab 1].

97. The only extricable question of law identified by the Court of Appeal was "whether, as the Province contends, the arbitrator wrongly permitted the surrounding circumstances to overwhelm the express language of the Settlement Agreement and Addendum #2."[113] This articulation misconceives the narrow exception this Court set out in *Sattva* and the exercise that the arbitrator engaged in.

98. A useful illustration of an extricable question of law can be found in the analysis in *Sattva* based on the fundamental principle that a contract must be construed as a whole.[114] If an arbitrator failed to take into account an important provision of the contract, that might be capable of giving rise to an error in principle that could be extricated from the interpretation exercise. *How* the arbitrator takes into account the factual matrix when interpreting a contract is a question of mixed fact and law, not law[115].

99. This Court emphasized the distinction in this passage:

> As I read its reasons, rather than being concerned with *whether* the arbitrator ignored the maximum amount proviso, which is what Creston alleges in this Court, the CA Leave Court decision focused on *how* the arbitrator construed s. 3.1 of the Agreement, which included the maximum amount proviso.[116]

100. In the case at bar, the issue was not whether the arbitrator considered the entire contract, or particular provisions in the contract, but *how* he interpreted them in the factual matrix: referring in his interpretation to the "context applying here"[117]. The arbitrator was tasked with reconciling the clear inconsistency between section 9 of the Framework Agreement (which contained the waiver of interest language at issue) and the language of Addendum #2 which provided that "compensation" (which includes interest in the context of a taking) [118] would be referred to arbitration. To overcome this inconsistency, he interpreted the agreements in the

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[113] CA *Teal* #2 at para 52.
[114] *Sattva*, *supra* at para 63 [BA Tab 19].
[115] see *Sattva*, *supra*, para 66 [BA Tab 19].
[116] *Sattva*, *supra* at para 65 [emphasis added] [BA Tab 19].
[117] Award para 180.
[118] As noted by Bauman CJSC, "'compensation' in an expropriation context includes interest in the normal course": SC Reasons at para 79 [AR, Tab 1, pp 25 – 26].

factual matrix evidence before him. This is precisely the "inherently fact-specific" exercise that engages mixed fact and law and is immune from appellate review in the arbitration context.[119]

101. This Court's judgment in *Sattva* provided a needed brake on appellate intervention in arbitral awards. The judgment under appeal demonstrates that some clarification is necessary to ensure that the "narrowly circumscribed" rights of appeal from arbitration awards are respected by appellate courts.

102. The judgment of the leave judge, Bauman CJSC, correctly anticipated this development in the law. His judgment denying leave to appeal on this issue was correct and should be restored.

103. In any event, even if leave to appeal were granted on this issue, the arbitrator's decision on the interest issue was not unreasonable. That the arbitrator was entitled to consider factual matrix evidence in interpreting the Framework Agreement and Addendum #2 is not in dispute. *Sattva* confirms the admissibility of such evidence and the propriety of having regarding to such evidence in the interpretive exercise. It serves as an interpretive aid that deepens the decision maker's understanding of the objective intentions of the parties as expressed in the written words they chose. Consideration of the factual matrix is part of the contextual inquiry that is at the heart of the exercise.[120]

104. Mr Braidwood reviewed the contractual documents in their entirety against the factual matrix evidence before him.[121] That matrix informed his interpretation of – but did not overwhelm -- the contractual provisions. Moreover, the factual matrix evidence gave him an evidentiary foundation, based on the intentions of the parties, which resolved the inconsistency on the face of the contractual documents. Thus, even if leave to appeal were granted on the

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[119] See also *Urban Communications, supra* at para 71 [BA Tab 22] (arbitrator's determination of the true meaning of words in the conxtext and surrounding circumstances in which they were written engages questions of mixed fact and law, and is not reviewable under the *Arbitration Act*).

[120] *Sattva, supra* at paras 50, 58, 60 [BA Tab 19].

[121] There was ample evidence before the arbitrator to support his factual findings regarding the prevailing circumstances at the time of both the Framework Agreement and Addendum #2: See Transcript Excerpts of the direct and cross examination of Hanif Karmally, Affidavit of Hanif Karmally, Ex E [AR, Tab 20, Ex E, pp 412 – 431], Framework Agreement [AR, Tab 19, Ex B, pp 223 – 225] and Addendum #2 [AR, Tab 19, Ex B, pp 227 – 228].

interest issue, the arbitrator's interpretation of the contract in light of the factual matrix was reasonable and should not have been reversed by the Court of Appeal.

## PART IV – COSTS

105. The Appellant seeks its costs in this Court, in the two proceedings in the British Columbia Court of Appeal, and in the Supreme Court of British Columbia.

## PART V – ORDER SOUGHT

106. The Appellant requests that the appeal be allowed, the Orders of the British Columbia Court of Appeal (in docket nos. CA039893 and CA039894) set aside, and the judgment of Bauman, CJSC (in docket nos. S114301 and S114381) restored, with costs to the Appellant in all courts.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Vancouver, BC, this 29th day of March, 2016.

John J.L. Hunter, Q.C.

K. Michael Stephens

Mark S. Oulton

Counsel for the Appellant, Teal Cedar Products Ltd.

## PART VI - TABLE OF AUTHORITIES

## PART VII – STATUTES AND REGULATIONS

### Statutes

*Arbitration Act*, RSBC 1996, c 55

**Appeal to the court**

31 (1) A party to an arbitration, other than an arbitration in respect of a family law dispute, may appeal to the court on any question of law arising out of the award if

(a) all of the parties to the arbitration consent, or

(b) the court grants leave to appeal.

(2) In an application for leave under subsection (1) (b), the court may grant leave if it determines that

(a) the importance of the result of the arbitration to the parties justifies the intervention of the court and the determination of the point of law may prevent a miscarriage of justice,

(b) the point of law is of importance to some class or body of persons of which the applicant is a member, or

(c) the point of law is of general or public importance.

(3) If the court grants leave to appeal under subsection (2), it may attach conditions to the order granting leave that it considers just.

(3.1) A party to an arbitration in respect of a family law dispute may appeal to the court on any question of law, or on any question of mixed law and fact, arising out of the award.

(4) On an appeal to the court, the court may

(a) confirm, amend or set aside the award, or

(b) remit the award to the arbitrator together with the court's opinion on the question of law that was the subject of the appeal.

*Commercial Arbitration Act*, RSC 1985, c 17 (2nd Supp )

*Commercial Arbitration Act*, SBC 1986, c 3, s 31

**Appeal to the court**

**31.** (1) A party to an arbitration may appeal to the court on any question of law arising out of the award where

(a) all of the parties to the arbitration consent, or

(b) the court grants leave to appeal.

(2) In an application for leave under subsection (1) (b), the court shall not grant leave except where it determines that

(a) the importance of the result of the arbitration to the parties justifies the intervention of the court and the determination of the point of law may prevent a miscarriage of justice,

(b) the point of law is of importance to some class or body of persons of which the applicant is a member, or

(c) the point of law is of general or public importance.

(3) Where the court grants leave to appeal under this section, it may attach conditions to the order granting leave that it considers just.

(4) On an appeal to the court, the court may

(a) confirm, vary or set aside the award, or

(b) remit the award to the arbitrator together with the court's opinion on the question of law that was the subject of the appeal.

*Forestry Revitalization Act,* SBC 2003, c 17

**Harvesting rights reduced for timber licences and certain replaceable licences**

2 (1) The allowable annual cut of an ungrouped licence identified in an item of the Schedule is reduced by the amount specified in Column 3 of that item.

...

(3) The total of the allowable annual cuts of the licences in a group of licences listed in an item of the Schedule is reduced by the amount specified in Column 3 of that item opposite the group name, assigned in Column 1, under which the licences are listed.

**Minister's orders**

3 (2) By one or more orders in writing, the minister

(a) must attribute a reduction of allowable annual cut under section 2 (3) in equal or unequal portions, specified in the order, to one or more of the licences in a group of licences, and

(b) for a licence to which all or a part of the reduction referred to in paragraph (a) is attributed, may provide that the reduction is to be accomplished by means of

(i) one reduction, or

(ii) a series of reductions occurring on different dates specified in an order.

(3) The allowable annual cut of a licence to which the minister attributes

all or part of a reduction made under section 2 (3) is reduced by the amount attributed by the order to that licence.

(4) By one or more orders in writing, the minister may specify, for each tree farm licence in a group of licences, the area of Crown land in the tree farm licence area that

(a) remains after the reduction made by subsection (3), or

(b) is deleted from the tree farm licence area as a result of the reduction.

(5) A minister's order under this section

(a) may be made or amended

(i) on any date in the 3 years after March 31, 2003 if it is an order referred to in subsection (2),

(ii) on any date in the 5 years after March 31, 2003 if it is an order referred to in subsection (1) or (1.1), or

(iii) at any time, if it is an order referred to in subsection (4),

(b) may differ for different timber, places or transactions or for different licences or timber licences, and

(c) may specify a date for subsection (5.1) that is subsequent to the date the order is made.

(5.1) On

(a) the date when a minister's order under this section is made, if no subsequent date is specified for this subsection under subsection (5) (c), or

(b) the subsequent date, if one is specified for this subsection under subsection (5) (c),

the minister's order

(c) is deemed to have come into force on March 31, 2003, and

(d) is retroactive to the extent necessary to give it effect on and after March 31, 2003.

(6) Written notice of an order under this section must be delivered to the holder of a

(a) licence, or

(b) timber licence

that is affected by the order.

**Compensation**

6 (3) Each holder of a licence in a group of licences is entitled to

compensation from the government in respect of the part, if any, of a reduction of the allowable annual cut of the licence that is made under section 2 (3) and that is attributed under section 3 (2) to that licence, in an amount equal to the value, for the unexpired portion of the term of the licence, of the harvesting rights taken by means of the reduction.

(4) In addition to the compensation to which the holder of an ungrouped licence, a timber licence or a licence in a group of licences is entitled under subsection (1), (2) or (3), the holder is entitled to compensation from the government in an amount equal to the value of improvements made to Crown land that

(a) are, or have been, authorized by the government,

(b) are not improvements to which section 174 of the Forest Practices Code of British Columbia Act applies, and

(c) are not, or have not been, paid for by the government under the Forest Act or the former Act as defined in the Forest Act.

(4.1) Subsection (4) also applies to a holder of a tree farm licence that is subject to a deletion of Crown land from the tree farm licence area under section 39.1 of the Forest Act, if the deletion

(a) is in respect of a reduction of allowable annual cut under section 3 (3) of this Act, and

(b) is made before the date this subsection comes into force.

(5) An entitlement to compensation under this section vests in the holder to which it applies on March 31, 2003.

(6) A dispute between the minister and the holder of an ungrouped licence, a timber licence or a licence in a group of licences as to the amount of the compensation to which the holder is entitled under this section must be submitted to arbitration under the Arbitration Act.

**Limit on compensation**

7 (1) In this section, "compensation" includes damages.

(2) The compensation to which the holder of an ungrouped licence, of a timber licence or of a licence in a group of licences, is entitled under section 6 is limited to the amount of compensation determined in relation to that licence under this Act.

(3) No action lies, and an action or other proceeding must not be brought or continued, against the government for compensation

(a) arising out of this Act,

(b) because of any of the things specified in or under this Act, or

(c) because of any of the things specified in or under this Act in combination with any or all of the other things specified in or under this Act,

in an amount that exceeds the amount limited under subsection (2).

(4) The Expropriation Act does not apply to a reduction under section 2 or 3 of this Act or to anything done under a minister's order referred to in section 3 of this Act.

**Schedule**

| Item | Column 1<br>Licensees | Column 2<br>Licence Number | Column 3<br>Allowable Annual Cut (cubic metres) |
|---|---|---|---|
| **21** | **TEAL CEDAR PRODUCTS GROUP** | | **216 215** |
| | **Teal Cedar Products Ltd.** | **A18699** | |
| | **Teal Cedar Products Ltd.** | **A19201** | |
| | **Teal Cedar Products Ltd.** | **TFL46** | |

*International Commercial Arbitration Act*, RSBC 1996, c 233