SCC File Number: 37748

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

APPELLANT
(Respondent on Appeal)

- and -

ALEXANDER VAVILOV

RESPONDENT
(Appellant on Appeal)

- and -

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INTERVENERS

and

DANIEL JUTRAS and AUDREY BOCTOR

AMICUS CURIAE

SCC File Number: 37896

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

BELL CANADA and BELL MEDIA INC.

APPELLANTS
(Appellants)

-and-
ATTORNEY GENERAL OF CANADA

RESPONDENT
(Respondent)

-and-
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SCC File Number: 37897

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

NATIONAL FOOTBALL LEAGUE, NFL INTERNATIONAL LLC and NFL PRODUCTIONS LLC

APPELLANTS
(Appellants)

-and-

ATTORNEY GENERAL OF CANADA

RESPONDENT
(Respondent)

-and-

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TABLE OF CONTENTS

Part I: OVERVIEW AND FACTS 1
Part II: STATEMENT OF POSITION.....2
Part III: ARGUMENT.....2
(i) Arbitrations and the Pre-*Sattva* World 2
(ii) *Sattva* and *Teal*: Deference is the Rule.....4
(iii) There is no reason to change *Sattva*/*Teal* 6
(iv) Refinements to the Law: Exceptions to Deference and "Margins of Appreciation" 7
Part IV: SUBMISSIONS CONCERNING COSTS.....10
Part V: ORDER SOUGHT AND PERMISSION TO PRESENT ORAL ARGUMENT.....10
Part VI: TABLE OF AUTHORITIES.....11
Part VII: STATUTORY PROVISIONS RELIED ON 14

PART I: OVERVIEW AND FACTS

1. These appeals provide this Court with an opportunity to decide questions with a broad impact to tribunals of all shapes and forms—and raise the question of whether a one-size fits all approach is the correct solution. These appeals confront the question of the proper nature and scope of judicial review of administrative action, as addressed in *Dunsmuir v. New Brunswick*, ("*Dunsmuir*"),[1] and the standard to apply in the court of that review. But the effect of this Court's decision in *Dunsmuir* does not stop at administrative decision-makers. In two seminal decisions, *Sattva Capital Corp. v. Creston Moly Corp*. ("*Sattva*")[2] and *Teal Cedar Products Ltd. v. British Columbia* ("*Teal*")[3], this Court extended the *Dunsmuir* judicial review framework to the world of private ordering and the "tightly-defined" scheme of commercial arbitration. Accordingly, these appeals transcend administrative law, and speak to the relationship between courts and alternative (and in the case of commercial arbitrations, consensually appointed) decision makers generally.

2. While noting that *Dunsmuir* was not wholly applicable to arbitrations, *Sattva* and *Teal* confirmed that the "reasonableness" standard of review should be applied when the court considers the merits of an appeal from a commercial arbitration award. This Court confirmed that a deferential standard of review was consistent with the policy underpinning arbitrations: adjudicative efficiency, judicial economy, and finality.

3. The British Columbia International Commercial Arbitration Centre Foundation ("BCICAC") respectfully submits that the *Dunsmuir* framework should continue to apply in the commercial arbitration context, and that changes to that framework in the context of administrative law, if any, should be carefully confined to avoid undesirable developments in the law governing judicial intervention in the field of arbitrations, which is significantly circumscribed both by legislation, and this court's jurisprudence. This Court was correct in 2014 in *Sattva* and it was correct in 2017 in *Teal*; nothing has changed to merit a departure from the presumption of deference applied to an arbitrator's award, in interpreting a contract, or otherwise. Exceptions to the deference standard must be truly exceptional. The BCICAC submits

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1 *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9 [*Dunsmuir*].

2 *Sattva Capital Corp. v. Creston Moly Corp.*, [2014] 2 S.C.R. 633, 2014 SCC 53 [*Sattva*].

3 *Teal Cedar Products Ltd. v. British Columbia*, [2017] 1 S.C.R. 688, 2017 SCC 32 [*Teal*].

that while reasonableness review must take into account the nature and context of a decision-maker, this Court should not accede to arguments that the rigorousness of the standard varies on the type of issue that has been determined; rather, it should be determined by the nature of the decision maker who has determined. To hold otherwise in the context of arbitrations would undermine the public policy aims recognized in *Sattva* and other decisions of this court.

PART II: STATEMENT OF POSITION

4. The BCICAC takes no position on the merits or outcome of any of the appeals. The BCICAC's position in these appeals is limited to submissions on the law of standard of review, specifically in the arbitral context. The BCICAC asks the Court to be alert to the impact of *Dunsmuir* on non-administrative, commercial decision-makers empowered by consensual agreement, and to preserve the system of limited curial review adopted in *Sattva*.

PART III: ARGUMENT

5. The BCICAC submits that this Court should reach the following conclusions on the law: First, *Dunsmuir*, and the leading cases that follow it, have created a presumption that reasonableness is the standard of review for both private and public adjudicative decision-makers, albeit for different reasons, with some limited exceptions.[4] Second, the rules established in *Sattva* and *Teal*, which make deference the presumption for judicial review of an arbitral decision, should continue to apply, even if the *Dunsmuir* analysis is abandoned or substantially changed. This is a natural recognition that standard of review takes its content from the decision-maker and legislative direction. Third, this Court should continue to reject any temptation to segment or add variability to the standard of review of reasonableness. Creating variability within the standard would substantially undermine the policy objectives recognized in *Sattva*, chief among them certainty, efficiency, and predictability.

(i) Arbitrations and the Pre-*Sattva* World

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[4] *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, [2011] S.C.R. 654, 2011 SCC 61 [*Alberta Teachers*]; *Mouvement laïque québécois v. Saguenay (City)*, [2015] 2 S.C.R. 3, 2015 SCC 16 at para. 46; *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, [2016] 2 S.C.R. 293, 2016 SCC 47 at paras. 22-23 [*Edmonton East*]; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31.

6. As a matter of public policy, arbitration has been recognized by legislatures and jurists as a social good. Parties who elect arbitration take often complex, time-consuming litigation out of the court system. This leaves more time and money for family and criminal matters which require public adjudication, as well as matters of significant public importance. Access to justice is enhanced while Canada can offer local and global business an attractive forum for effective, efficient dispute resolution with a strong grounding in a rules-based private order. This Court has regularly confirmed the legitimacy and desirability of a consent-based system of private adjudication.[5]

7. Consistent with these broader public policy goals, one of the key legislative purposes behind the British Columbia *Arbitration Act*[6] was to provide a "modern, simpler, and more certain" dispute resolution process to encourage persons to resolve disputes through arbitration.[7] The British Columbia Legislature, deciding that arbitration was a public good to be advanced and preserved, sought to protect that process by making appeals from arbitral awards the rare exception, not the rule. Sections 31 and 32 of the *Arbitration Act* are the legislative expression of this policy of promoting private alternative dispute resolution and discouraging judicial intervention. Section 32 is a true or "full" privative clause; judicial review is limited to what the legislation says.[8] Additionally, Section 31 states judicial review of an award is only permissible with leave on a question of law and where the court determines it is a question of importance or that its determination "may prevent a miscarriage of justice".[9]

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5 *Desputeaux v. Éditions Chouette (1987) inc*., [2003] 1 S.C.R. 178, 2003 SCC 17 at paras. 40-41; *Dell Computer Corp. v. Union des consommateurs*, [2007] 2 S.C.R. 801, 2007 SCC 34 at para. 51; *Seidel v. TELUS Communications Inc.*, [2011] 1 S.C.R. 531, 2011 SCC 15 at para. 23 [*Seidel*].

6 *Arbitration Act*, R.S.B.C. 1996, c. 55 [*BC Arbitration Act*].

7 British Columbia, *Debates of the Legislative Assembly*, 4th sess. 33rd Parl. (April 21, 1986), p. 7865; 2nd sess. 34th Parl. (June 27, 1988), pp. 5417-5418.

8 *Vancouver Aboriginal Justice Centre v. Legal Services Society of BC* (1997), 43 B.C.L.R. (3d) 242 (C.A.), 96 B.C.A.C. 312. See also *International Commercial Arbitration Act*, R.S.B.C. 1996, c. 233, s. 5.

9 In Ontario, Alberta, Saskatchewan, Manitoba and New Brunswick, appeals are limited to questions of law where the importance of the matter justifies appeal and the question significantly affects the rights of the parties, subject to agreement between the parties: Nova Scotia does not permit appeals of an award absent agreement. Alberta also does not permit appeals when the question of law has been expressly referred to by the arbitral tribunal. See *Arbitration Act*, 1991, S.O. 1991, c. 17, s. 45; *Arbitration Act*, R.S.A. 2000, c. A-43, s. 44;

8. Decisions of this Court and lower courts have consistently recognized the importance of these legislative purposes. Even before *Sattva*, this Court discouraged multiple appeals as "contrary to the legislative purpose".[10] Other courts have affirmed the policy of judicial restraint with respect to reviews of arbitral awards,[11] recognizing that if leave is granted too readily, and judicial review too exacting, efficiency and finality will be lost, impairing "the integrity of the arbitration system".[12]

9. Despite these clear policy objectives, parties who had bargained for arbitration clauses routinely faced protracted appeals arising from 'final' arbitral awards. The trend was one of an increased ambit of judicial intervention in arbitration in relation to applications for leave to appeal, appeals of the resulting order, returning before the arbitrator, and further applications for leave to appeal thereafter.[13] It was in this context that this Court rendered its decision in *Sattva*.

(ii) *Sattva* and *Teal*: Deference is the Rule

10. In *Sattva*, this Court confirmed that the common law should carefully circumscribe judicial intervention in arbitral awards, in keeping with legislative directions. It did so by confirming that issues of contractual interpretation are questions of mixed fact and law, for which leave to appeal cannot be granted, and by confirming that only "extricable" errors of law can attract leave. This Court cautioned that "extricable" errors of law will be rare, and should not

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Arbitration Act, C.C.S.M. c. A120, s. 44; *Arbitration Act*, S.S. 1992, c. A-24.1, s. 45; *Arbitration Act*, R.S.N.B. 2014, c. 100, s. 45; *Commercial Arbitration Act*, S.N.S. 1999, c. 5, s. 48.

[10] *British Columbia (Forests) v. Teal Cedar Products Ltd.*, [2013] 3 S.C.R. 301, 2013 SCC 51, para. 31.

[11] *Quintette Coal Ltd. v. Nippon Steel Corp.*, (1991), 50 B.C.L.R. (2d) 207 (C.A.), [1991] 1 W.W.R. 219 leave to appeal refused [1990] SCCA No. 431; *Sarabia v. Oceanic Mindoro (The)*, [1996] B.C.J. No. 2154 (C.A.), [1997] 2 W.W.R. 116 at para. 33, leave to appeal refused [1997] SCCA No. 69;

[12] *Elk Valley Coal Partnership v. Westshore Terminals Ltd.*, 2008 BCCA 154, 77 B.C.L.R. (4th) 53 at para. 17.

[13] See for example *Creston Moly Corp. v. Sattva Capital Corp.*, 2010 BCCA 239, 7 B.C.L.R. (5th) 227; *Creston Moly Corp. v. Sattva Capital Corp.*, 2012 BCCA 329, 36 B.C.L.R. (5th) 71; *Boxer Capital Corporation v. JEL Investments Ltd.*, 2013 BCCA 297, 48 B.C.L.R. (5th) 165; *Boxer Capital Corporation v. JEL Investments Ltd.*, 2015 BCCA 24, 70 B.C.L.R. (5th) 249 at para 4 [*Boxer Capital*] ("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.").

be readily found, lest the system of restricted judicial intervention be undermined.[14] In considering whether leave to appeal should be granted, an applicant must demonstrate the alleged legal error is material to the final result and has arguable merit in order to establish that its determination "may prevent a miscarriage of justice". Even if an error of law and potential miscarriage of justice is found, a court must still exercise its discretion to determine whether to grant leave, considering a set of non-exhaustive factors.[15]

11. In addition to these gate-keeping restrictions, *Sattva* installed a substantive barrier to discourage excessive appeals of arbitral awards: it held that even when leave is granted, the *Dunsmuir* and post-*Dunsmuir* line of cases provided "helpful" guidance with respect to standard of review—the standard of review 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.[16] As is addressed in more detail below, given the very nature of commercial arbitration, such issues must be very rare indeed, if they can ever arise. In almost all appeals from commercial awards, *Sattva* held that deference is the rule.[17] In this way, this Court recognized a further rule to discourage appeals and enhance the integrity and finality of the arbitral system.

12. At the outset of its reasons, the *Teal* majority held that "[t]ogether, limited jurisdiction and deferential review advance the central aims of commercial arbitration: efficiency and finality".[18] The Court confirmed the applicability of the *Dunsmuir* framework, which, in the context of a commercial arbitration, presumed a deferential review, even for legal questions.[19]

13. This conclusion logically flows from the nature of commercial arbitration: an *ad-hoc*, private decision-maker, selected by the parties to resolve their dispute. Courts must presume the arbitrator is an expert; as such, a rule which permitted preliminary challenges to expertise as a

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[14] *Sattva* at paras. 50, 53-55.
[15] *Sattva* at paras. 79, 91-92.
[16] *Sattva* at paras. 102-106.
[17] *Sattva* at para. 75; *Teal* at para. 79.
[18] *Teal* at para. 1.
[19] *Teal* at paras. 79-80.

basis to escape the reasonableness standard was rejected as "antithetical to the efficiencies meant to be gained through the arbitration process."[20]

14. In the result, the Court reiterated that reasonableness was the applicable standard, a result which was driven in large measure by policy objectives:

> [T]he applicability of a reasonableness standard of review in this case is hardly disputable. We are, after all, in a commercial arbitration context, in which, from a policy perspective, the deliberate aim is to maximize efficiency and finality. Further, the arbitrator was specifically assigned jurisdiction over the discrete issue of valuation by the *Revitalization Act* (s. 6(6)), an issue in which he, having been chosen by consent of the parties, is expected to have specialized expertise. This merits deferential review.[21]

(iii) There is no reason to change *Sattva*/*Teal*

15. To the extent this Court intends to change the *Dunsmuir* framework for judicial review of administrative actors, the BCICAC respectfully submits that the principles articulated in *Sattva* and affirmed in *Teal* should continue to apply to arbitral awards. At a minimum, the BCICAC urges this Court to be mindful of the consequential effects of any changes it may make to the standard of review analysis, which applies not only to public law administrative decision-makers but also to privately constituted tribunals.

16. The BCICAC submits that this Court can and should continue the *Sattva*/*Teal* approach for three reasons.

17. The first reason is simple: the concerns animating this Court's decisions in *Sattva* and *Teal* relevant to the standard of review of an arbitrator's decision in a commercial context have not changed. Certainty and finality remain desirable, and systemic considerations regarding the administrative review of public law powers do not alter the specific issues, objectives, and considerations which arise in the arbitral context.[22]

18. The second reason *Sattva*/*Teal* can and should remain the rule for review of arbitral awards is that it is consistent with this Court's prescription that the standard of review must turn

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[20] *Teal* at para. 81.
[21] *Teal* at para. 83.
[22] *Sattva* at paras. 53-54; *Teal* at para. 45.

on the context of the decision-maker; that is (1) its legislative regime and the presence of privative clauses; (2) the purpose of the tribunal, based on the legislative mandate; (3) the nature of the question at issue; and (4) the expertise of the tribunal. An analysis of these factors justify retaining the *Sattva*/*Teal* approach of reasonableness review.[23]

19. Commercial arbitration is unique:

(a) It is consensual. Parties participate by choice, often seeking an efficient, one-stop dispute resolution forum. Barring specific legislation,the parties have complete control over the choice of their decision-maker and the process they will follow.[24]

(b) The *Arbitration Act*, and similar legislation in other provinces, contains a true privative clause, narrowly defining the permissible grounds of appeal and forbidding any challenges to the facts found by the arbitrator.

(c) Arbitration is confidential, and seldom do the awards have precedential value.[25]

20. These essential, immutable characteristics of commercial arbitration continue to support the conclusion that presumptive deference is the rule, even if the *Dunsmuir* framework for other 'public law' decision makers is changed.

21. Third, the deferential standard adopted in *Sattva* and *Teal* is part of a cohesive and considered system of dealing with arbitral litigation. Since *Teal* and *Sattva,* courts have applied a deferential standard of final review to the other gate-keeping measures found in the *Arbitration Act*, creating a well-integrated system for limiting judicial involvement with arbitrations. Underpinning this system is the fundamental justification for deference: while deference to administrative decisions is grounded, at its core, on the basis of democratic legitimacy,[26] deference to arbitral decision is grounded on private ordering, party autonomy, and the attendant goals of judicial economy and access to justice.[27]

(iv) <u>Refinements to the Law: Exceptions to Deference and "Margins of Appreciation"</u>

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[23] *Dunsmuir* at para. 64.
[24] *Sattva* at paras. 9, 104; *Teal* at paras. 82-83.
[25] *Seidel* at para. 38.
[26] *Dunsmuir* at paras. 27-28.
[27] *Teal* at para. 1; *GreCon Dimter inc. v. J.R. Normand inc.*, [2005] 2 S.C.R. 401, 2005 SCC 46 at para. 22.

22. If changes are to be made to *Dunsmuir*, the BCICAC submits that two are appropriate. First, exceptions to the deference rule, already narrowly defined, should be refined to remove questions of general legal importance. Second, this Court should confirm that reasonableness should not contain any variability within it; "margins of appreciation" should be rejected.

23. On the first point, the BCICAC argues that exceptions to the presumption of reasonableness should be construed extremely narrowly. In particular, the BCICAC argues that an exception to the reasonableness standard for "legal questions of general importance" outside the expertise of the arbitrator is incompatible with the arbitral context. The exception contemplates a system governed by a set of uniform, substantive rules with precedential effect. Arbitrations do not work that way.[28] As set out above, there is no public set of arbitral jurisprudence to draw upon. Arbitrators rely on legislation and judicial pronouncement. Each decision starts from square one. When reasons are provided, they go to the parties, but otherwise generally remain out of the public eye. Broad acceptance of an exception to deference for a system like this if the legal issue was deemed to be "important" in the abstract would undermine the objectives which lead to arbitration in the first place.

24. Second, it is submitted that there is and should only be one standard of "reasonableness". The BCICAC respectfully disagrees with the majority of the Court of Appeal in *Vavilov*. As this Court has repeatedly held, reasonableness as a conceptual device must "take its colour from the context".[29] But this "colour" must turn on the nature of the decision maker, not the issue being determined.

25. This Court has previously rejected attempts to "calibrate" the reasonableness standard "by applying a potentially indeterminate number of varying degrees of deference within it". Such a move "unduly complicates an area of law in need of greater simplicity."[30] In *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, for example, this

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[28] *Seidel* at para. 38.

[29] *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339, 2009 SCC 12 at para. 59, per Binnie J.; *Alberta Teachers* at para. 47; *Catalyst Paper Corp. v. North Cowichan (District)*, [2012] 1 S.C.R. 5, 2012 SCC 2 at para. 18; *Edmonton East*.

[30] *Wilson v. Atomic Energy of Canada Ltd.*, [2016] 1 S.C.R. 770, 2016 SCC 29 at para. 18, per Abella J, at para. 78 per Cromwell J [*Wilson*].

Court held "there is no determination of the intensity of the review with some reviews closer to a correctness review and others not."[31]

26. It is submitted that this Court should not depart from this opinion. Calibration of the reasonableness standard would unduly complicate the law, in both the administrative context and the arbitral one. It is unclear, for example, how a court would intelligibly reconcile the context already applied to the reasonableness standard with a further segmentation depending on the precise issue. It could be used as a device to reach something akin to correctness review by other means.

27. But more specifically, in the arbitral context, this Court's decision in *Teal* also stands against the idea of "calibration" of the standard of review depending on the specific type of issue before the Court on judicial review. In that case, the Court of Appeal had concluded that the standard of review for an arbitral award considering an issue of statutory interpretation (and not contractual) should be correctness. On further appeal, this Court confirmed that an issue of statutory interpretation may fall under correctness as between courts, but the policy behind arbitral deference mandated a reasonableness standard. The Court made no effort to qualify the "reasonableness" standard on the basis it was a court reviewing an arbitrator's interpretation of a statute. In fact, the majority of the Court in *Teal* criticized the dissenting justices for conducting an analysis akin to "disguised correctness."[32]

28. Herein lies the problem with the acceptance of variability of reasonableness: it would invite parties to appeal in the hope that they could (a) extract a question of law; and (b) push the reviewing court to a standard of review approaching correctness. This would encourage appeals (and satellite litigation in each appeal concerning the specific scope of the standard of review to be applied), and undermine the twin policy goals of finality and efficiency. Adopting a varying reasonableness standard would be inconsistent with the objectives of the *Arbitration Act* and the project so recently undertaken in *Sattva* and *Teal*.

29. One of the primary virtues of the *Sattva*/*Teal* approach has been its clarity and simplicity. Parties and their counsel are able to reasonably predict whether appeals from arbitral awards

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[31] *Alberta Teachers* at para. 47. See also Jonathan M. Coady, "The Time Has Come: Standard of Review in Canadian Administrative Law" (2017) 68 UNBLJ 87 at 100-101.

[32] *Teal* at para. 99, citing *Wilson* at para. 27.

have merit, practically speaking, because of the high threshold for acceptance of an extricable error of law and the nearly invariable deferential standard of review. This simplicity and predictability, in the world of administrative law which has so vexed courts, commenters and counsel alike, is desirable in and of itself. The BCICAC respectfully submits that it is not the time to add variability and complexity to a corner of the law that has only so recently emerged from a morass.

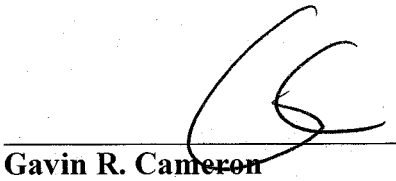
PART IV: SUBMISSIONS CONCERNING COSTS

30. Pursuant to the order of Justice Karakatsanis, the interveners shall pay to the appellants and respondents any additional disbursements occasioned by their interventions. Beyond this, the BCICAC requests that no order for costs be made against it and seeks no costs.

PART V: ORDER SOUGHT AND PERMISSION TO PRESENT ORAL ARGUMENT

31. The BCICAC takes no position on the disposition of the within appeals, other than to urge this Honourable Court to preserve the framework of analysis adopted in *Sattva* and *Teal* which protects arbitral autonomy and ensures efficient and final dispute resolution is available to commercial parties who choose to arbitrate their disputes. In addition, the BCICAC seeks leave to present ten (10) minutes of oral argument at the hearing of the within appeals.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Gavin R. Cameron
Counsel for the Intervener, British Columbia International Commercial Arbitration Centre Foundation

October 25, 2018
Vancouver, British Columbia

PART VI: TABLE OF AUTHORITIES

	Authority	Paragraph(s)
	CASES	
1.	*Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, [2011] S.C.R. 654, 2011 SCC 61	5, 24-25
2.	*Boxer Capital Corporation v. JEL Investments Ltd.*, 2013 BCCA 297, 48 B.C.L.R. (5th) 165	9
3.	*Boxer Capital Corporation v. JEL Investments Ltd.*, 2015 BCCA 24, 70 B.C.L.R. (5th) 249	9
4.	*British Columbia (Forests) v. Teal Cedar Products Ltd.*, [2013] 3 S.C.R. 301, 2013 SCC 51	8
5.	*Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339, 2009 SCC 12	24
6.	*Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31	5
7.	*Catalyst Paper Corp. v. North Cowichan (District)*, [2012] 1 S.C.R. 5, 2012 SCC 2	24
8.	*Creston Moly Corp. v. Sattva Capital Corp.*, 2010 BCCA 239, 7 B.C.L.R. (5th) 227	9
9.	*Creston Moly Corp. v. Sattva Capital Corp.*, 2012 BCCA 329, 36 B.C.L.R. (5th) 71	9
10.	*Dell Computer Corp. v. Union des consommateurs*, [2007] 2 S.C.R. 801, 2007 SCC 34	6
11.	*Desputeaux v. Éditions Chouette (1987) inc.*, [2003] 1 S.C.R. 178, 2003 SCC 17	6
12.	*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9	1, 18, 21
13.	*Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, [2016] 2 S.C.R. 293, 2016 SCC 47	5, 24
14.	*Elk Valley Coal Partnership v. Westshore Terminals Ltd.*, 2008 BCCA 154, 77 B.C.L.R. (4th) 53	8

15.	*GreCon Dimter inc. v. J.R. Normand inc.*, [2005] 2 S.C.R. 401, 2005 SCC 46	21
16.	*Mouvement laïque québécois v. Saguenay (City)*, [2015] 2 S.C.R. 3, 2015 SCC 16	5
17.	*Quintette Coal Ltd. v. Nippon Steel Corp.*, (1991), 50 B.C.L.R. (2d) 207 (C.A.), [1991] 1 W.W.R. 219	8
18.	*Sarabia v. Oceanic Mindoro (The)*, [1996] B.C.J. No. 2154 (C.A.), [1997] 2 W.W.R. 116	8
19.	*Sattva Capital Corp. v. Creston Moly Corp.*, [2014] 2 S.C.R. 633, 2014 SCC 53	1, 10-11, 17, 19
20.	*Seidel v. TELUS Communications Inc.*, [2011] 1 S.C.R. 531, 2011 SCC 15	6, 19, 23
21.	*Teal Cedar Products Ltd. v. British Columbia*, [2017] 1 S.C.R. 688, 2017 SCC 32	1, 11-14, 17, 19, 21, 27
22.	*Vancouver Aboriginal Justice Centre v. Legal Services Society of BC* (1997), 43 B.C.L.R. (3d) 242 (C.A.), 96 B.C.A.C. 312	7
23.	*Wilson v. Atomic Energy of Canada Ltd.*, [2016] 1 S.C.R. 770, 2016 SCC 29	25, 27
	SECONDARY AUTHORITIES	
	Debates	
24.	British Columbia, *Debates of the Legislative Assembly*, 4th sess. 33rd Parl. (April 21, 1986) at p. 7865	7
25.	British Columbia, *Debates of the Legislative Assembly*, 2nd sess. 34th Parl. (June 27, 1988) at p. 5417-5418	7
	Journal Articles	
26.	Jonathan M. Coady, "The Time Has Come: Standard of Review in Canadian Administrative Law" (2017) 68 UNBLJ 87 at p. 100-101	25
	LEGISLATION	
27.	*Arbitration Act*, R.S.B.C. 1996, c. 55, ss. 31, 32	7
28.	*Arbitration Act*, 1991, S.O. 1991, c. 17, ss. 45	7

29.	*Arbitration Act*, R.S.A. 2000, c. A-43, ss.44	7
30.	*Arbitration Act*, C.C.S.M. c. A120, ss. 44	7
31.	*Arbitration Act*, S.S. 1992, c. A-24.1, ss. 45	7
32.	*Arbitration Act*, R.S.N.B. 2014, c. 100, ss. 45	7
33.	*Commercial Arbitration Act*, S.N.S. 1999, c. 5, ss. 48	7
34.	*International Commercial Arbitration Act*, R.S.B.C. 1996, c. 233, ss. 5	7

PART VII: STATUTORY PROVISIONS RELIED ON

1. **The *Arbitration Act*, R.S.B.C. 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	No Official French Translation Available.

(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. **Extent of judicial intervention** 32 Arbitral proceedings of an arbitrator and any order, ruling or arbitral award made by an arbitrator must not be questioned, reviewed or restrained by a proceeding under the Judicial Review Procedure Act or otherwise except to the extent provided in this Act.	

2. **The *Arbitration Act*, 1991, S.O. 1991, c. 17:**

Appeals 45 (1) If the arbitration agreement does not deal with appeals on questions of law, a party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that: (a) the importance to the parties of the matters at stake in the arbitration justifies an appeal; and (b) determination of the question of law at issue will significantly affect the rights of the parties. (2) If the arbitration agreement so provides, a party may appeal an award to the court on a question of law. (3) If the arbitration agreement so provides, a party may appeal an award to the court on a question of fact or on a question of mixed fact and law. (4) The court may require the arbitral tribunal to explain any matter.	**Appels** 45 (1) Si la convention d'arbitrage ne traite pas des appels interjetés relativement aux questions de droit, une partie peut faire appel d'une sentence devant le tribunal judiciaire relativement à une question de droit, sur autorisation de ce tribunal. Il n'accorde son autorisation que s'il est convaincu : (a) d'une part, que l'importance pour les parties des questions en cause dans l'arbitrage justifie un appel; (b) d'autre part, que le règlement de la question de droit en litige aura une incidence importante sur les droits des parties. (2) Si la convention d'arbitrage le prévoit, une partie peut faire appel devant le tribunal judiciaire d'une sentence relativement à une question de droit. (3) Si la convention d'arbitrage le prévoit, une partie peut faire appel devant le tribunal judiciaire d'une sentence relativement à une question de droit ou à une question mixte de fait et de droit.

(5) The court may confirm, vary or set aside the award or may remit the award to the arbitral tribunal with the court's opinion on the question of law, in the case of an appeal on a question of law, and give directions about the conduct of the arbitration. (6) Any appeal of a family arbitration award lies to, (a) the Family Court, in the areas where it has jurisdiction under subsection 21.1 (4) of the *Courts of Justice Act*; (b) the Superior Court of Justice, in the rest of Ontario.	(4) Le tribunal judiciaire peut exiger du tribunal arbitral qu'il donne des explications sur un point quelconque. (5) Le tribunal judiciaire peut confirmer, modifier ou annuler la sentence ou la renvoyer devant le tribunal arbitral, accompagnée de l'avis du tribunal judiciaire sur la question de droit, dans le cas d'un appel sur une question de droit, et donner des directives touchant la conduite de l'arbitrage. (6) Il peut être interjeté appel d'une sentence d'arbitrage familial devant : (a) la Cour de la famille, dans les secteurs où elle a compétence aux termes du paragraphe 21.1 (4) de la *Loi sur les tribunaux judiciaires;* (b) la Cour supérieure de justice, dans le reste de l'Ontario.

3. **The *Arbitration Act*, R.S.A. 2000, c. A-43:**

Appeal of award 44 (1) If the arbitration agreement so provides, a party may appeal an award to the court on a question of law, on a question of fact or on a question of mixed law and fact. (2) If the arbitration agreement does not provide that the parties may appeal an award to the court on a question of law, a party may, with the permission of the court, appeal an award to the court on a question of law. (2.1) The court shall grant the permission referred to in subsection (2) only if it is satisfied that (a) the importance to the parties of the matters at stake in the arbitration justifies an appeal, and	No Official French Translation Available.

(b) the determination of the question of law at issue will significantly affect the rights of the parties. (3) Notwithstanding subsections (1) and (2), a party may not appeal an award to the court on a question of law that the parties expressly referred to the arbitral tribunal for decision. (4) The court may require the arbitral tribunal to explain any matter. (5) The court may confirm, vary or set aside the award or may remit the award to the arbitral tribunal and give directions about the conduct of the arbitration. (6) Where the court remits the award to the arbitral tribunal in the case of an appeal on a question of law, it may also remit to the tribunal the court's opinion on the question of law.	

4. **The *Arbitration Act*, C.C.S.M. c. A120:**

Appeal of award 44 (1) If the arbitration agreement so provides, a party may appeal an award to the court on a question of law, on a question of fact or on a question of mixed fact and law. (2) If the arbitration agreement does not provide that the parties may appeal an award to the court on a question of law, a party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that (a) the importance to the parties of the matters at stake in the arbitration justifies an appeal; and (b) determination of the question of law at issue will significantly affect the rights of the parties.	**Appel d'une sentence arbitrale** 44 (1) Si la convention d'arbitrage le prévoit, une partie peut faire appel devant le tribunal judiciaire d'une sentence relative à une question de droit, à une question de fait ou à une question mixte de fait et de droit. 44 (2) Si la convention d'arbitrage ne prévoit pas d'appel devant le tribunal judiciaire d'une sentence relative à une question de droit, une partie peut faire appel de cette sentence devant le tribunal judiciaire, sur autorisation du tribunal. Le tribunal n'accorde son autorisation que s'il est convaincu: (a) d'une part, que l'importance pour les parties des questions en cause dans l'arbitrage justifie un appel;

(3) The court may require the arbitral tribunal to explain any matter. (4) The court may confirm, vary or set aside the award or may remit the award to the arbitral tribunal, with the court's opinion on the question of law, in the case of an appeal on a question of law, and give directions about the conduct of the arbitration. (5) Subsections (1) and (2) do not apply to an arbitration agreement that provides for an appeal to The Court of Appeal where the Minister of Justice is satisfied that the arbitration relates to a matter of major importance to the province, in which case subsections (3) and (4) apply to the appeal with necessary modifications.	(b) d'autre part, que le règlement de la question de droit en litige aura une incidence importante sur les droits des parties. 44 (3) Le tribunal judiciaire peut exiger du tribunal arbitral qu'il donne des explications sur un point quelconque. 44 (4) Le tribunal judiciaire peut confirmer, modifier ou annuler la sentence arbitrale ou la renvoyer devant le tribunal arbitral, accompagnée de l'avis du tribunal judiciaire sur la question de droit, dans le cas d'un appel sur une question de droit, et donner des directives touchant la conduite de l'arbitrage. 44 (5) Les paragraphes (1) et (2) ne s'appliquent pas aux conventions d'arbitrage qui prévoient un appel à la Cour d'appel lorsque le ministre de la Justice est convaincu que l'arbitrage se rapporte à une question très importante pour la province. Dans un tel cas, les paragraphes (3) et (4) s'appliquent à l'appel avec les adaptations nécessaires.

5. **The *Arbitration Act*, S.S. 1992, c. A-24.1:**

Appeal of award 45 (1) If the arbitration agreement so provides, a party may appeal an award to the court on a question of law, on a question of fact or on a question of mixed law and fact by notice of motion that briefly states the grounds of the appeal. (2) If the arbitration agreement does not provide that the parties may appeal an award to the court on a question of law, a party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that: (a) the importance to the parties of the matters at stake in the arbitration	No Official French Translation Available.

justifies an appeal; and (b) determination of the question of law at issue will significantly affect the rights of the parties. (3) On being served with a notice of motion, the arbitral tribunal shall transmit a copy of the award, the evidence received and the record of the arbitration proceedings forming the subject-matter of the appeal: (a) to the local registrar of the judicial centre that is closest to the place where the arbitration was conducted; or (b) where the arbitration was conducted at more than one place, to the local registrar of the judicial centre that is closest to the place where the greatest part of the arbitration was conducted. (4) The court may require the arbitral tribunal to explain any matter. (5) The court may confirm, vary or set aside the award or may remit the award to the arbitral tribunal with the court's opinion on the question of law, in the case of an appeal on a question of law, and give directions about the conduct of the arbitration.	

6. **The *Arbitration Act*, R.S.N.B. 2014, c. 100:**

Appeal of award 45 (1) A party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that (a) the importance to the parties of the matters at stake in the arbitration justifies an appeal, and (b) determination of the question of law at issue will significantly affect the rights of the parties.	**Appel de la sentence arbitrale** 45 (1) Une partie peut appeler à la cour, avec sa permission d'une sentence arbitrale sur une question de droit, et celle-ci n'accorde sa permission que si elle est convaincue de ce qui suit : (a) l'importance pour les parties des questions en jeu à l'arbitrage justifie l'appel; (b) la décision concernant la question

(2) If the arbitration agreement so provides, a party may appeal an award to the court on a question of law. (3) If the arbitration agreement so provides, a party may appeal an award to the court on a question of fact or on a question of mixed fact and law. (4) The court may require the arbitral tribunal to explain any matter. (5) The court may confirm, vary or set aside the award or may remit the award to the arbitral tribunal, with the court's opinion on the question of law, in the case of an appeal on a question of law, and give directions about the conduct of the arbitration.	de droit litigieuse peut porter atteinte de manière significative aux droits des parties. 45 (2) Si la convention d'arbitrage le prévoit, une partie peut appeler à la cour de la sentence arbitrale sur une question de droit. 45 (3) Si la convention d'arbitrage le prévoit, une partie peut appeler à la cour de la sentence arbitrale sur une question de fait ou sur une question mixte de fait et de droit. 45 (4) La cour peut exiger du tribunal arbitral des explications sur une question quelconque. 45 (5) La cour peut confirmer, modifier ou annuler la sentence arbitrale ou la déférer au tribunal arbitral, accompagnée de son avis sur la question de droit, dans le cas d'un appel sur une question de droit, et donner des directives concernant la conduite de l'arbitrage.

7. **The *Commercial Arbitration Act*, S.N.S. 1999, c. 5:**

Prerequisite to right to appeal 48 (1) Unless the parties otherwise agree, there is no appeal of an award. (2) Where an arbitration agreement so provides, a party may appeal an award to the court on a question of law, on a question of fact or on a question of mixed law and fact.	No Official French Translation Available.

8. **The *International Commercial Arbitration Act*, R.S.B.C. 1996, c. 233**:

Extent of judicial intervention 5 In matters governed by this Act, (a) a court must not intervene unless so provided in this Act, and	No Official French Translation Available.

(b) an arbitral proceeding of an arbitral tribunal or an order, ruling or arbitral award made by an arbitral tribunal must not be questioned, reviewed or restrained by a proceeding under the *Judicial Review Procedure Act* or otherwise except to the extent provided in this Act.	