



Case in Brief: ***Uber Technologies Inc. v. Heller***

Judgment of June 26, 2020 | On appeal from the Court of Appeal for Ontario
Neutral citation: 2020 SCC 16

An agreement saying an UberEats driver had to go to arbitration instead of suing in Ontario was so unfair it was invalid, the Supreme Court has ruled.

Uber was a company that created software (phone apps) to arrange ride-sharing and food delivery.

Mr. Heller was a driver for UberEats, the food delivery service. To become a driver, Mr. Heller had to click to agree to a long, standard contract. He didn't have any power to negotiate any of it. His only option was to accept or reject it. The contract said any legal problem Mr. Heller had with the company had to be resolved by the International Chamber of Commerce in the Netherlands, not a court. This part of a contract is called an "arbitration clause." The agreement meant Mr. Heller wasn't allowed to sue the company in court.

When Mr. Heller clicked on the contract, he didn't know how much arbitration would cost. The contract didn't say anything about this. He later found out that it would cost him almost \$15,000 (U.S. dollars) just to start the process. This didn't count legal fees, travel costs, or lost wages. Mr. Heller earned between \$400 and \$600 (Canadian dollars) each week. This was before he paid taxes and expenses. Starting the arbitration would cost most of his yearly income.

In 2017, Mr. Heller said Uber was breaking the terms of the contract and Ontario employment law. He decided to sue Uber. His lawsuit was about whether he and other drivers were employees of the company.

Uber said Mr. Heller couldn't sue in Ontario courts. This was because he had agreed to go to arbitration.

Mr. Heller said the arbitration clause was "unconscionable" (so unfair it was invalid).

The motion judge stayed (stopped) the lawsuit. He agreed with Uber that the arbitrator should decide if the arbitration clause was unfair. The Court of Appeal, on the other hand, agreed with Mr. Heller that Ontario courts should decide whether the arbitration agreement was valid. The Court of Appeal decided the agreement was invalid.

The majority of judges at the Supreme Court agreed that courts should decide if the arbitration clause was unfair. They also agreed that it was invalid.

The majority said Ontario's *Arbitration Act* applied in this situation. The Act said a lawsuit in court shouldn't go forward in court if both sides had agreed to arbitration, but there were exceptions. One exception was if the agreement was invalid.

In this case, the majority said upholding the arbitration agreement would deny Mr. Heller access to a remedy (that is, a way to get compensated for harm or wrongdoing). There would be no way he could even have his arguments heard without paying most of his yearly income and likely having to go to the Netherlands. He didn't know any of this when he agreed to the contract. The majority said this made the arbitration agreement unconscionable, so it was invalid.

Courts use unconscionability to protect weaker parties in contracts with stronger parties. When one party has no choice, or doesn't understand what they are signing, their bargaining power is weaker. Courts can set aside the agreement if a stronger party gets too much of an advantage (even if it doesn't mean to).

Because it found the arbitration clause to be invalid for unconscionability, the majority didn't need to decide if it was also invalid for avoiding mandatory employment laws. The result meant Mr. Heller could continue his lawsuit in Ontario courts.

Arbitration agreements are becoming more common in many contracts. The Supreme Court previously dealt with Ontario arbitration laws in [*TELUS Communications Inc. v. Wellman*](#).

Breakdown of the decision: *Majority:* Justice Rosalie Silberman [Abella](#) and Justice Malcolm [Rowe](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Karakatsanis](#), [Martin](#), and [Kasirer](#) agreed) | *Concurring:* Justice Russell [Brown](#) said the agreement was invalid because it denied Mr. Heller access to justice by imposing undue hardship and undermining the rule of law, not because of unconscionability | *Dissenting:* Justice Suzanne [Côté](#) said the courts should respect the parties' agreement to arbitrate, and would have allowed the appeal and entered a conditional stay of proceedings

More information (case # 38534): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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