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Arbitral Authority

Lawrence Thacker is quoted in the 2017 Lexpert/ROB Special Edition: Canada's Leading Litigation Lawyers article *Arbitral Authority* where he discusses the implications of the ruling in *Teal Cedar Products v. BC* and the scope of appeals stemming from arbitral decisions.

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Lawrence Thacker, a partner at Lenczner Slaght Royce Smith Griffin LLP in Toronto, agrees. "Appeals are less frequent than in civil litigation cases, but attempts to change the outcome [of an arbitration] are probably as frequent or more frequent. Sometimes you have to use a non-appeal route," such as an application for judicial review. "In the end, arbitral awards are more final than court awards because most of those other attempts to change the outcome don't succeed."

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The SCC also reaffirmed *Sattva* by saying lower courts must be careful to distinguish between a claim that a legal test may have been altered when applied — which is an extricable question of law — and a claim that a legal test, when applied to an arbitration decision, would have resulted in a different outcome. "The court said we have to be careful about distinguishing the use of the wrong test, when applying a test, from the application of the right test with an outcome that one side doesn't like," says Thacker. "It is only if you can show that the wrong test was applied that you have a pure question of law."

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Says Thacker: "The primary aim for parties when they enter into an arbitration agreement is finality and efficiency. For that reason, they're probably not going to include rights of appeal. But parties will have to be warned when entering into an arbitration provision, they are putting their fates in the hands of a decision-maker who can make a legally incorrect decision and it will still be binding against them. My experience is that, when deals are happening, the parties are prepared to live with that risk."

Continue reading: <http://www.lexpert.ca/article/arbitral-authority/?p=29|179&sitecode=SE-LIT>