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The first (tentative) steps toward the application of Sattva in Ontario

The Supreme Court of Canadas decision in Sattva Capital Corp. v. Creston Moly Corp., 2014 SCC 53 (Sattva) appeared to herald a new era of deference to arbitrators: on at least ordinary questions of law, courts are now to review arbitration awards on a reasonableness standard.

The Supreme Court of Canada's decision in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 ("*Sattva*") appeared to herald a new era of deference to arbitrators: on at least ordinary questions of law, courts are now to review arbitration awards on a reasonableness standard. *Saatva* also confirmed that questions of contractual interpretation are usually questions of mixed law and fact. This seemingly left little scope for courts to interfere with arbitrators' interpretation of contracts.

But in the first application of *Sattva* to an arbitrator's award in Ontario, Justice J.R. MacKinnon in *Ottawa (City) v. The Coliseum Inc.*, 2014 ONSC 3838 ("*Coliseum*"), reversed a decision of an arbitrator interpreting a commercial agreement involving a lease for a stadium.

Coliseum suggests that at least some Superior Court judges will not hesitate to find arbitrators' contract interpretation awards "unreasonable". However, it hints at the potential for some confusion as to what an "unreasonable" interpretation of a contract looks like.

Arbitration Award

In 2000, Coliseum signed a lease with the City to operate a domed sports field at Frank Clair Stadium, the former home to the Ottawa Rough Riders CFL team. A delay in the start of the lease (to accommodate the 2004 Grey Cup) led to litigation. That was settled with Minutes of Settlement which provided that the lease was to be continued, conditional on the City's redevelopment plans for the stadium.

As it happened, a redevelopment plan which ultimately resulted in the stadium being renovated (and now hosting new CFL and MLS franchises) meant that the City sought to terminate the lease in 2010. The City and Coliseum could not come to an agreement on the terms of a new lease for another site and the matter went to arbitration.

Despite finding that the City had negotiated in good faith, the

arbitrator held that the City had breached the Minutes, which he held had necessarily required Ottawa to grant another option on another property.

Appeal

The City appealed the award to the Superior Court of Justice under Section 45(1) of the *Arbitration Act, 1991*, S.O. 1991. Justice MacKinnon granted leave to appeal under that section, granted the appeal, and set aside the arbitrator's award.

Leave under Section 45(1) can only be granted on a question of law. In granting leave, the Court held that there were several extricable legal issues entitling it to consider the arbitrator's interpretation of the Minutes. This, despite the suggestion in *Sattva* that "courts should be cautious in identifying extricable questions of law in disputes over contractual interpretation".

The "extricable" legal errors identified by the Court included the arbitrator's apparent failure to consider "the principle according to which an agreement to agree is unenforceable" and that which required that "general language must yield to specific language".

The Court held that the arbitrator's interpretation of the contract had also "overlook[ed]" the requirement for Coliseum to exercise an option to lease before an obligation to negotiate arose.

The reasoning employed by the Court suggests the application of something closer to a "correctness" standard. If anything, it suggests that "standard of review" is likely to continue to feature prominently in litigation over arbitration awards in Canada.

Click here to read a related article on *Sattva Capital Corp. v. Creston Moly Corp.,* published in the October-December, 2014 issue of Corporate Disputes.