



WESTERN
CANADA
COMMERCIAL
ARBITRATION
SOCIETY

7th Annual Energy, Mining And Resources Arbitration Conference

Update on Legal Developments

Tina Cicchetti, Fasken Martineau DuMoulin, Vancouver

Janet Mills, Bay Street Chambers, Toronto

Gerry Ghikas, Q.C., Vancouver Arbitration Chambers, Vancouver

Ken Bailey, Parlee McLaws LLP, Edmonton

What's happening in “domestic” arbitration legislation in Canada?

- Piecemeal reform
- Wholesale reform

Particular Changes Being Discussed

- Should there be more convergence between domestic and international arbitration statutes?
- Right of appeal and appeal procedures
- Process for a stay of litigation or arbitration
- Considerations for consolidation and joinder

Current Section 31(2) of the Arbitration Act, RSBC 1996 c. 55

(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.

Selected Recent Cases of Note

- Coastal Contacts Inc. v. Elastic Path Software Inc., 2013 BCSC 133 [arbitrator with expertise, award appealed]
- Boxer Capital Corp. v. JEL Investments Ltd., 2013 BCSC 678 [arbitrator's award appealed – “appeal nightmare”]
- Creston Moly Corp. v. Sattva Capital Corp., 2012 BCCA 329, leave to appeal granted by SCC [“appeal nightmare”]
- Lussier v Lussier et al., 2013 BCSC 280 [arbitration arising out of settlement agreement reached at mediation]
- Greenfield Energy Centre LP v. Ontario Power Authority, 2012 ONSC 3132 [court takes a pragmatic approach to interpretation of arbitration agreement(s) in contract]
- Sistem Mühendisklik Insaat Sanayi Ve Ticaret Anonim Sirketi v. Kyrgyz Republic, 2012 ONSC 4351 [enforcement of award]