

Western Canada Commercial Arbitration Society

9th Annual Energy, Mining and
Resources Arbitration Conference

Calgary, Alberta

May 12, 2015

Confidentiality and Arbitration

Canada Transportation Act,
SC 1996, c 10

PART IV

ARBITRATIONS

Division I

Final Offer Arbitration

Confidentiality of information

167. Where the Agency is advised that a party to a final offer arbitration wishes to keep matters relating to the arbitration confidential,

(a) the Agency and the arbitrator shall take all reasonably necessary measures to ensure that the matters are not disclosed by the Agency or the arbitrator or during the arbitration proceedings to any person other than the parties; and

(b) no reasons for the decision given pursuant to subsection 165(5) shall contain those matters or any information included in a contract that the parties agreed to keep confidential.

DIRECTION

Each party shall have 10 days in which to make any submissions that they wish to make as to redactions that should be made to the decision before it is released publicly.

**British Columbia International
Commercial Arbitration Centre
Rules of Procedure for
Domestic Commercial
Arbitration for Domestic
Commercial Arbitration as
amended June 1, 1998**

25. Confidentiality

Unless otherwise agreed by the parties or required by law, all hearings, meetings and communications shall be private and confidential as between the parties, the arbitration tribunal and the Centre

Rules for International International Commercial Arbitration and Conciliation Proceedings in the British Columbia Commercial Arbitration Centre

Hearings

26.

(7) All oral hearings and meetings and arbitral proceedings are to be held in camera

International Bar Association Guidelines for Drafting International Arbitration Clauses

Confidentiality

The existence and content of the arbitral proceedings and any rulings or award shall be kept confidential by the parties and members of the arbitral tribunal except (i) to the extent that disclosure may be required of a party to fulfil a legal duty, protect or

or pursue a legal right, or enforce or challenge an award in *bona fide* legal proceedings before a state court or other judicial authority, (ii) with the consent of all parties, (iii) where needed for the preparation or presentation of a claim or defence in this arbitration, (iv) where such information is already in the public domain other than as a result of a breach of this clause, or (v) by order of the arbitral tribunal upon application of a party.

LCIA Rules, Article 30:

(1) Unless the parties expressly agree in writing to the contrary, the parties undertake as a general principle to keep confidential all awards in their arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain – save and to

The extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.

(2) The deliberations of the Arbitral Tribunal are likewise confidential to its members, save and to the extent that disclosure of an arbitrator's refusal to participate in the arbitration is required of the other members of the Arbitral Tribunal under Articles 10, 12 and 26.

(3) The LCIA Court does not publish and award or any part of an award without the prior written consent of all parties and the Arbitral Tribunal.

Proposed Confidentiality Addendum/Order

Where a party is required to disclose the existence and content of arbitral proceedings or any rulings or award for the purposes of protecting or pursuing a legal right or to enforce or challenge an award in *bona fide* legal proceedings before a state court or other judicial authority all parties to this agreement agree to apply to the court or other judicial authority for a sealing order or other protective order in respect of all material which

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would otherwise be public by virtue of the legal proceedings which may disclose the existence and content of the arbitral proceedings and any rulings or awards.

List of Authorities

- *Telsat v. Boeing* [2010] ONSC 22
- *Glidepath BV et al v. Thompson et al* [2005] EWHC 818 (comm) (High Court of Justice Queens Bench Division Commercial Court)
- *Department of Economic Policy and Development of the City of Moscow v. Bankers Trust Company* [2004] EWCA CIV 314 (CA)
- *Television New Zealand v. Langley Productions Ltd.* [2000] 2 NZLR 250 (HC)