



WESTERN
CANADA
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10th ANNUAL WCCAS
ENERGY, MINING AND
RESOURCES ARBITRATION
Conference

Calgary, 10 May 2016

LEGAL UPDATE : INTERNATIONAL ARBITRATION

Stephen L Drymer
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- Decisions of Canadian courts
 - Popack v. Lipszyc, 2016 ONCA 135 at 17, 21
Only if a procedural error in an arbitration results in « *real unfairness* » or « *real practical injustice* » will an award be set aside.
 - AG Canada v. Mobil *et al.*, 2016 ONSC 790, at 8
Courts must take a narrow view of what constitutes a « *true question of jurisdiction* » to ensure that they do not « *advertently or inadvertently stray into the merits of the question decided by the [arbitral] tribunal.* »
 - Zamongo Inc. v. Fisher Enterprises, 2016 ABPC 19, at 4
Even though the defendant submitted « perhaps inadvertently » to the jurisdiction of the Court, litigation is stayed « in favour of arbitration pursuant to the arbitration clause. »



- **Decisions of foreign courts (concerning Canadian arbitrators & conflicts of interest)**
 - **Columbus Acquisitions v. AGI *et al***, Cour de Cassation, Decision 1433-DF, 22 December 2015 (France)
Award set aside due to « reasonable doubt » as to arbitrator’s impartiality and independence even though he was unaware of his law firm’s involvement with a party
 - **W Ltd. v. M SDN BHD** [2016] EWHC 422 (Comm) (England)
Application to set aside dismissed. « The fair minded and informed observer, having considered the facts, would not conclude that [the arbitrator] was biased or lacked independence » where he was unaware of his law firm’s involvement with a party.



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(Thank you)

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