

# Case Law Update - 2014

Western Canada Commercial Arbitration Society  
13 May 2014

Ronald M. Kruhlak, QC

Robert J.C. Deane



MCLENNAN ROSS LLP  
LEGAL COUNSEL



Borden Ladner Gervais

# Case Law Review

## – International Arbitration

### Recognition and Enforcement of Foreign Arbitral Awards

- ***CE International Resources Holdings LLC v. Yeap***, 2013 BCSC 1804 (1 October 2013)
  - BC Court orders recognition and enforcement of an award made against a non-signatory who was added as a party to the arbitration.
  - strong statements in support of the New York Convention and the facilitation of predictability in the resolution of international commercial disputes.



# Case Law Review

## – International Arbitration

### Recognition and Enforcement of Foreign Arbitral Awards

- ***Assam Co. India Ltd. v. Canoro Resources Ltd.***, 2014 BCSC 370 (7 March 2014): BC Court supports approach from *CE International Resources*, confirming that a party is not entitled to abandon arbitration and then re-litigate its case during the recognition and enforcement application.
- “Broad deference and respect” will be afforded to tribunals, and public policy grounds for refusing recognition or enforcement will be “narrowly construed”.



# Case Law Review

## – International Arbitration

### Recognition and Enforcement of Foreign Arbitral Awards

- ***New York Stock Exchange, LLC v. Orbixa Technologies, Inc.***, 2013 ONSC 5521 (6 September 2013): Ontario Court grants application recognizing and enforcing foreign award, providing brief analysis regarding the finality of an award.
- ***Rusk Renovations Inc. v. Dunsworth***, 2013 NSSC 179 (14 June 2013): Nova Scotia Court declines recognition of an award against a non-signatory who did not participate in the arbitration. The demand for arbitration was unclear whether it was naming the non-signatory as a party.



# Case Law Review

## – International Arbitration

### Recognition and Enforcement of Foreign Arbitral Awards

- ***Sociedade-de-Fomento Industrial Private Limited v. Pakistan Steel Mills Corporation (Private) Limited***, 2013 BCSC 1304 (22 July 2013): BC Court set aside a *Mareva* injunction in support of enforcement of an ICC award. The duty of full and frank disclosure was not met since the *Mareva* applicant did not inform the Court of attempts to enforce the award in the judgment debtor's home jurisdiction. Despite the *New York Convention*, the Court suggested that judgment creditors must first attempt enforcement in the debtor's home jurisdiction before looking to assets located in BC. Appeal decision pending.



# Case Law Review

## – International Arbitration

### Recognition and Enforcement of Foreign Arbitral Awards

- ***Sistem Muhendislik Insaat Sanayi Ve Ticaret Anonim Sirkieti v. Kyrgyz Republic and Kyrgyzaltyn JSC*, 2014 ONSC 2407 (15 April 2014):** Turkish claimant sought to enforce investor-State award against the Republic's interest in Centerra shares registered in Kyrgyzaltyn JSC's name. Court held that the Republic had a beneficial interest in the shares, as a matter of fact and Kyrgyz law. Sheriff ordered to seize the shares, and the associated rights.



# Case Law Review

## – International Arbitration

### Enforcement of Arbitration Agreements – Stays

- ***Ciano Trading & Services C.T. & S.R.L. v. Skylink Aviation Inc.***, 2014 ONSC 1686 (17 March 2014): Ontario Court defers to arbitrator to determine whether arbitration clause survived the termination of the agreement between the parties. Stay granted.



# Case Law Review

## – Domestic Arbitration

### Enforcement of Arbitration Agreements – Stays

- ***Murphy v. Amway Canada Corporation***, 2013 FCA 38 (17 February 2013): Appeal court confirmed that *Competition Act* claims arbitrable; proposed class action stayed and arbitration compelled.
  - Absent statutory language expressing clear legislative intent, courts will not interfere with parties' class action waivers or agreements to arbitrate their disputes, including statutory claims.
- ***Robinson v National Money Mart Co.***, 2013 BCSC 967 (31 May 2013): application to stay action dismissed; *BPCPA* claims, including derivative claims made against non-parties to the agreement, not arbitrable.



# Case Law Review

## – Domestic Arbitration

### Enforcement of Arbitration Agreements – Stays

- ***Briones v. National Money Mart Co.***, 2013 MBQB 168 (11 July 2013): Stay refused because arbitrable claims overlapped with non-arbitrable claims – avoid multiple proceedings.



# Case Law Review

## – Domestic Arbitration

### Enforcement of Arbitration Agreements – Stays

- ***Strata Plan BCS 3165 v. 1100 Georgia Partnership***, 2013 BCSC 1708 (17 September 2013): stay of the action granted in competing applications to stay arbitration or action, and to revoke authority of arbitrator
- ***Lambsmead Limited v. Pharmawest Pharmacy Ltd.***, 2014 BCSC 218 (11 February 2014): Arbitration clause stated that disputes would be resolved “by arbitration or mediation as opposed to litigation”.
  - Court held that language of “as opposed to litigation” was sufficient to oust the Court. Stay granted.



# Case Law Review

## – Domestic Arbitration

### Enforcement of Arbitration Agreements – Stays

- ***Lafarge Canada Inc. v. Edmonton (City)***, 2013 ABCA 376 (31 August 2013): Service of a Statement of Claim is not sufficient notice of an intention to arbitrate.
  - If there is a mandatory arbitration agreement, short of a standstill agreement between the parties, filing a lawsuit within the limitation period does not protect the claim. An arbitration must be commenced.



# Case Law Review

## – Domestic Arbitration

### Appeal of Arbitral Awards

- ***British Columbia (Forests) v. Teal Cedar Products Ltd.***, 2013 SCC 51 (4 October 2013): Arbitrators do not have the authority to award compound, as opposed to simple, interest.
- ***Capital Power Corp v. Lehigh Hanson Materials Ltd.***, 2013 ABQB 413 (18 July 2013): Leave granted but appeal of arbitral award dismissed; cannot appeal a question of law that was considered by the arbitrator.
- ***Suncor Energy Inc. v. Alberta***, 2013 ABQB 728 (10 December 2013): leave denied. The arbitration panel had jurisdiction to order production of documents in the possession of third parties. Since it was a procedural order, not the proper subject of an appeal under the Act.



# Case Law Review

## – Domestic Arbitration

### Petition to Remove Arbitrator

- ***Ben 102 Enterprises Ltd. v. Ben 105 Enterprises Ltd.***, 2014 BCSC 64 (16 January 2014): Arbitrator withheld decision due to non-payment of fees from one of the parties.
  - The non-paying party brought a petition to remove the arbitrator for undue delay.
  - The Court held that outstanding fees is a valid reason to refuse to deliver decision. Petition dismissed.

