



WESTERN
CANADA
COMMERCIAL
ARBITRATION
SOCIETY

12th Annual WCCAS Energy, Mining and Resources Arbitration Conference

Finding the Balance: Applying the Law

Presented By:

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BAY STREET CHAMBERS



Is an Arbitrator required to decide in accordance with the law?

- Is an Arbitrator required to decide in accordance with the law?
- What law shall he apply?
- What if he is not a lawyer?

Is an Arbitrator required to decide in accordance with the law? (Cont'd)

- What if the law to be applied is that of a jurisdiction he is not qualified in?
- When must the law be proven as a fact by witnesses expert in that law?

Is an Arbitrator entitled to do his own legal research?

- Must he/she?
- Can an Arbitrator decide on law not argued?
- Must the Parties be afforded the opportunity to make submissions?



Is an Arbitrator entitled to do his own legal research? (Cont'd)

- Can an Arbitrator decide on the basis of legal theories not raised (e.g. unlawful enrichment in a breach of contract case)?
- What if, by suggesting the Parties consider an additional legal theory, the result would change? Is it fair to raise the new theory?



What is an Arbitrator to do if there is relevant law not raised by the Parties which, if pointed out to them would likely lead to a different Award that one based on the legal authorities advanced in argument?

- How does this square with the adversarial nature of the process?
- Can the Parties agree that the Arbitrator cannot do independent legal research and must decide based on the law (and evidence) argued by the Parties?

What is an Arbitrator to do if there is relevant law not raised by the Parties which, if pointed out to them would likely lead to a different Award that one based on the legal authorities advanced in argument? (Cont'd)

- If the result would be an Award wrong in law, could a court (or Arbitral Review Tribunal) reverse?
- Can the Arbitrator be reversed for an error in law if the decision falls within the Arbitrator's jurisdiction?