When Crypto Claims Collide with Multiple Jurisdictions: Lessons from Coinbase

April 23, 2025

In **Shirodkar v. Coinbase Global, Inc., 2025 ONCA 298**, the Court of Appeal for Ontario grappled with a question that often arises in modern crypto-related disputes. A Canadian plaintiff, seeking to sue a network of Coinbase entities spanning multiple jurisdictions, challenged whether an Ontario court could properly assume authority over all of them. This judgment delves into **jurisdiction simpliciter**, the principle of **forum non conveniens**, and how **user agreements** can affect a court's ability to hear a dispute against global crypto exchanges with tentacles spread across borders.

In the decision, the plaintiff claimed that various Coinbase entities violated **Ontario's Securities Act** by trading or offering what he argued were securities without complying with mandatory disclosure and registration requirements. He aimed to lead a proposed class action on behalf of all Canadians who had transacted in crypto tokens on the Coinbase platform during a specified period. Yet, his biggest hurdle was showing that Ontario was the right (and legally permissible) place to litigate against Coinbase's U.S. and Irish operations, in addition to its Canadian subsidiary.

The Court of Appeal began by analyzing whether there was **consent-based jurisdiction** over the international Coinbase defendants. The plaintiff insisted that a 2023 Canadian User Agreement, which contained a **non-exclusive choice of forum** clause favoring Ontario, applied retroactively to all the Coinbase entities. The motion judge, whose order was under

appeal, found that **only Coinbase Canada** was a party to that Canadian User Agreement. The foreign Coinbase companies were not signatories and thus had not agreed to have all claims against them heard in Ontario. The Court of Appeal endorsed this reading. It concluded that a forum clause in a contract between one Canadian entity and a user cannot automatically rope in non-parties—even if they belong to the same corporate group.

Much of the decision revolves around whether Coinbase's dealings with Ontario securities regulators or the fact that its overall crypto platform is accessible in Ontario could confer jurisdiction over the other foreign-based entities. The appellant argued that Coinbase Global, Coinbase Inc., and Coinbase Europe all should face claims in Ontario because they allegedly operate in an **"intertwined web of Coinbase entities."** The court rejected this argument, emphasizing that the plaintiff must show more than a general connection to Ontario. A regulatory application or any parallel oversight by Canadian authorities is not, in itself, proof that a foreign defendant consented to or expected that private litigants could sue it in Ontario. The mere existence of corporate affiliations also does not automatically expand the reach of Ontario's courts.

On the question of **jurisdiction simpliciter** (whether an Ontario court has the authority to decide the matter at all), the Court of Appeal turned to the criteria developed in **Club Resorts Ltd. v. Van Breda**. Under **Van Breda**, certain "connecting factors" link a defendant to a forum in a way that allows an assumption of jurisdiction. The fact that the plaintiff accessed the Coinbase platform from a computer in Ontario, or suffered financial loss in Ontario, was not by itself enough to pin down the foreign Coinbase entities. Otherwise, as the judgment explained, a global internet company could be sued nearly anywhere in the world, simply because a user clicked "buy" or "sell" from a particular

location.

The final issue was the question of **forum non conveniens**, which arises when a court has jurisdiction but wonders whether another forum would be better suited to hear the dispute. The court recognized that it did have jurisdiction over **Coinbase Canada**, because that entity is domiciled in Ontario and had taken clear steps indicating its presence in the province. Yet, the Court of Appeal affirmed the stay of the action even against Coinbase Canada. The motion judge found that **Ireland** was plainly the more appropriate forum for the dispute, since the relevant agreements and transactions all pointed toward Irish-based Coinbase operations. Ontario's connection to the plaintiff's claims was weak and essentially hinged on the plaintiff's personal decision to trade from within the province at certain points. From a policy standpoint, the court also stressed the **comity** principle. This means courts in one jurisdiction should not take it upon themselves to regulate activity that occurred primarily elsewhere, especially when the dispute could be fairly addressed in the foreign forum.

For investors considering disputes against a **multi-entity, multi-jurisdictional crypto exchange**, this decision underlines the importance of clarifying which corporate entity the claim actually targets. It also shows that **choice of law** and **choice of forum** clauses in standard user agreements can be quite powerful, but they are only binding on those actually signing them. Where an exchange sets up numerous subsidiaries in different countries, an investor must establish clear links between each named entity and the chosen forum. This can be an uphill battle if most platform operations happen abroad or on servers located elsewhere.

Another critical takeaway is that **local regulators** can oversee certain aspects of a global crypto firm's business, but that does not automatically allow investors to sue the entire organization in one forum (court or arbitration). This

decision also signals that, in cross-border disputes, a court might still keep jurisdiction over the local subsidiary, but it can choose to **stay** the claim if a foreign venue is the "clearly more appropriate" forum. Ireland, in this case, was deemed preferable because that is where the primary defendant (Coinbase Europe) is located, and that is where the core of the alleged wrongdoing occurred.

Shirodkar v. Coinbase Global, Inc. underscores how critical **forum selection**, **corporate structure**, and **regulatory engagement** are when deciding where to sue a multinational crypto exchange. For anyone considering litigation or arbitration, it is wise to carefully check the **user agreements** they accepted, evaluate how and where the trades took place, and weigh the pros and cons of the available forums. Otherwise, the case might ultimately unfold in the exchange's home jurisdiction, leaving investors facing unfamiliar procedures.

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Supreme Court of British Columbia Overturns Arbitrator's Decision Due to Procedural Unfairness

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In the recent decision by the Supreme Court of British Columbia *Niroei v Bushell*, the court delved into the critical issue of **procedural fairness in arbitration**. The case, involving a dispute between a landlord (the petitioner) and tenants (the respondents), highlights the importance of adhering to principles of natural justice during arbitration proceedings.

Background

The petitioner rented out a property to the respondents under a rental agreement with a monthly rent of $3,000. On February 28, 2023, the petitioner issued a two-month notice to end tenancy, stating that the rental unit would be occupied by the petitioner's son. However, on March 1, 2023, through text messages, the parties agreed to extend the move-out date to July 1, 2023, with an increased rent of $4,000 for May and June. Crucially, during these communications, it was conveyed that **the petitioner herself would be moving into the property**, not her son.

After vacating the property, the respondents applied to the Residential Tenancy Branch (RTB) for a return of the security deposit and later sought compensation under section 51 of the **Residential Tenancy Act** (RTA) for the petitioner's alleged failure to accomplish the stated purpose of the notice to end tenancy.

An arbitrator at the RTB heard the dispute and issued a decision granting the respondents a monetary award. The petitioner sought a judicial review, arguing that the decision was **patently unreasonable** and that the arbitrator failed to act fairly.

The Court's Analysis on Procedural Fairness

The court's decision hinged on two main issues:

1. Whether the arbitrator's decision was patently unreasonable due to misapprehension or ignorance of evidence.
2. Whether there were breaches of natural justice and procedural fairness during the arbitration proceedings.

Patent Unreasonableness and Misapprehension of Evidence

The court noted that under sections 5.1 and 84.1 of the RTA and section 58 of the **Administrative Tribunals Act** (ATA), the standard of review for findings of fact or law by the RTB is **patent unreasonableness**. A decision is patently unreasonable when it is "openly, evidently and clearly irrational."

The petitioner argued that the arbitrator ignored or misapprehended critical evidence—specifically, the text messages where the parties agreed that the petitioner would be moving into the property herself. The arbitrator had acknowledged these messages but concluded:

"I am not convinced that the evidence supports this claim. There was no clear communication that the Two Month Notice was verbally amended or modified."

The court found this conclusion illogical, stating:

"On the face of the evidence, which the arbitrator previously accepted established an amendment to the effective date of the Two Month Notice, the finding of no clear communication was not clearly available to the arbitrator on a rational or tenable line of analysis on the evidence."

Thus, the decision was deemed patently unreasonable because it failed to consider all material evidence relevant to the ultimate issue.

Procedural Fairness and Natural Justice

The court emphasized that procedural fairness requires that parties know the case against them and have an opportunity to

respond. The petitioner raised concerns about procedural unfairness, particularly regarding the handling of late evidence and the arbitrator's failure to identify key issues during the hearing.

Late Evidence Submission

The respondents submitted additional evidence past the RTB deadline, which the petitioner did not receive in time. The arbitrator allowed this late evidence without exploring why it was not available earlier and without advising the petitioner of her right to address any prejudice arising from its acceptance.

The court highlighted the RTB's Rules of Procedure:

"Rule 3.17 expressly requires the arbitrator to give both parties an opportunity to be heard on the question of accepting late evidence."

By failing to comply with this rule, the arbitrator breached principles of procedural fairness.

Failure to Identify Key Issues

During the continuation of the hearing, the arbitrator did not clarify the main issues or invite submissions on whether extenuating circumstances existed that prevented the petitioner from accomplishing the stated purpose of the notice. The court observed:

"In my view, it was incumbent upon the arbitrator to at least clarify for the parties the main issues he must decide on and the scope of the hearing."

Without this guidance, the petitioner could not meaningfully respond to critical aspects of the case, further breaching procedural fairness.

Conclusion

The court concluded:

“The petitioner has established the Decision was patently unreasonable and that there were breaches of the rules of natural justice and procedural fairness in relation to the conduct of the hearing before the arbitrator.”

As a result, the decision was set aside and remitted back to the RTB for reconsideration before a different arbitrator in a hearing de novo.

Implications for Arbitration Proceedings

This case underscores the essential role that procedural fairness plays in arbitration. Arbitrators must ensure that:

- **All material evidence is considered**: Ignoring or misapprehending key evidence can render a decision patently unreasonable.
- **Parties are informed of the case against them**: Failing to provide adequate notice or clarify key issues prevents parties from meaningfully participating in the proceedings.
- **Rules of Procedure are followed**: Adhering to established procedures, especially regarding the submission and acceptance of evidence, is crucial for maintaining fairness.

Key Takeaways

- **Procedural fairness is paramount**: Arbitrators have a duty to conduct proceedings fairly, ensuring both parties can present their case fully.
- **Clarity in communication is essential**: Parties should document any amendments to agreements or notices clearly and in compliance with statutory requirements.
- **Arbitrators must actively manage hearings**: By identifying key issues and guiding the process, arbitrators help prevent misunderstandings and ensure

justice is served.

Final Thoughts

The court’s decision serves as a significant reminder that **procedural fairness is not a mere formality but a fundamental component of justice**. Arbitrators must be vigilant in upholding these principles to maintain the integrity of the arbitration process. As this case demonstrates, failure to do so can result in decisions being overturned, prolonging disputes and undermining confidence in the system.

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Ontario Appeals Court on Arbitration Act Restricting Appeals of Arbitrator Appointment

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In a recent decision by the Ontario Court of Appeal—*Toronto Standard Condominium Corporation No. 2299 v. Distillery SE Development Corp.*, 2024 ONCA 712—the court tackled the thorny issue of appealing court-appointed arbitrators. This case serves as a stark reminder of the limitations imposed by arbitration legislation on court intervention and the appealability of certain orders.

Background of the Dispute

The parties, Toronto Standard Condominium Corporation No. 2299 (“Condo Corp.”) and Distillery SE Development Corp. (“Distillery”), were embroiled in a dispute arising from their Shared Facilities Agreement (“SFA”). The SFA contained a dispute resolution process that culminated in binding arbitration. Notably, it allowed the parties to agree on a single arbitrator or, failing agreement, to each appoint an arbitrator who would then select a single arbitrator.

In 2018, after unsuccessful negotiations and mediation, the Condo Corp. served a notice of arbitration and both parties agreed that the Honourable Colin Campbell, K.C. would serve as arbitrator. However, the arbitration did not proceed at that time.

Fast forward to 2022, the Condo Corp. served a fresh notice of arbitration, leading to disagreements over the scope of the arbitration and the identity of the arbitrator. While Distillery insisted on the prior agreement to appoint Mr. Campbell, the Condo Corp. hesitated, proposing a different arbitrator before eventually expressing willingness to proceed with Mr. Campbell under certain conditions.

The Application to the Court

The Condo Corp. brought an application seeking, among other things, an order appointing Mr. Campbell as arbitrator and confirming that all issues raised in the 2022 notice were within his jurisdiction. Distillery opposed, arguing that the agreement to appoint Mr. Campbell had been repudiated and that the new issues required fresh negotiation and mediation as per the SFA.

Justice Julia Shin Doi of the Superior Court of Justice found that the agreement to appoint Mr. Campbell remained valid and that any disputes over the scope of the arbitration should be determined by Mr. Campbell himself. She dismissed Distillery’s

motion to quash the 2022 notice.

The Appeal and the Central Issue

Distillery appealed the decision, essentially on two grounds: first, that the application judge erred in not finding the agreement to appoint Mr. Campbell repudiated; and second, that even if the agreement stood, the judge erred in not limiting his appointment to the issues from the 2018 notice.

However, the crux of the matter before the Court of Appeal was whether an appeal from a court-ordered appointment of an arbitrator is permissible under the **Arbitration Act, 1991, S.O. 1991, c. 17**. Specifically, does Section 10(2) of the Act, which states, **"There is no appeal from the court's appointment of the arbitral tribunal,"** preclude such an appeal?

The Court of Appeal's Analysis

Justice Zarnett, writing for the court, concluded that the order appointing Mr. Campbell was indeed made under Section 10(1) of the Act, and therefore, **no appeal lies by reason of Section 10(2)**.

Addressing Distillery's arguments, the court noted that even though the Condo Corp. did not explicitly cite Section 10(1) in its application, the authority to appoint an arbitrator under the Act is clear. The court emphasized that **Section 6 of the Act prohibits court intervention in matters governed by the Act, except as provided within it**.

Justice Zarnett interpreted "a person with power to appoint the arbitral tribunal" in Section 10(1)(b) as including situations where parties jointly have the power to appoint but fail to agree or one party refuses to follow through. He stated:

"The phrase 'person with power to appoint an arbitrator' is not limited to a person with the sole or exclusive authority

to make the appointment. It clearly extends to a person whose power resides in the requirement for their agreement to an appointment."

This interpretation aligns with the purpose of the Act, which seeks to facilitate arbitration and limit court intervention. Allowing an appeal in this context would undermine these objectives.

Implications of the Decision

This decision underscores the importance of understanding the limitations imposed by arbitration legislation on appeals. Parties should be aware that when a court appoints an arbitrator under Section 10(1) of the Act, **there is no right of appeal**. Attempts to circumvent this by arguing the court acted outside its jurisdiction are unlikely to succeed if the appointment falls squarely within the Act's provisions.

Furthermore, the court reinforced that issues concerning the scope of the arbitration and the arbitrator's jurisdiction are matters for the arbitrator to decide, not the courts. Justice Zarnett highlighted:

"An appointment order will always relate to a dispute to be arbitrated. In giving effect to the principle in s. 17 of the Act, which contemplates the arbitrator first ruling on his own jurisdiction… the application judge did not step outside the authority to make an appointment under the Act."

Key Takeaways

- **Section 10(2) of the Arbitration Act precludes appeals from court appointments of arbitrators made under Section 10(1).**
- **Parties jointly possessing the power to appoint an arbitrator fall under "a person with power to appoint" in Section 10(1)(b).**
- **Court intervention is limited under the Act, and**

attempts to use general jurisdiction to appeal such appointments are inconsistent with the Act's intent.

- **Disputes over the arbitrator's jurisdiction and the scope of arbitration are to be determined by the arbitrator, not the courts.**

Conclusion

The *Toronto Standard Condominium Corporation No. 2299 v. Distillery SE Development Corp.* decision serves as a critical reminder of the limitations on appealing court-appointed arbitrators under arbitration legislation. Parties entering arbitration agreements must recognize that the courts have a limited role and that certain orders, once made, are final and not subject to appeal. Understanding these nuances is essential to navigating the arbitration process effectively.

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Bitcoin Loans Upheld by the British Columbia Supreme Court

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The recent judgment in **Nguyen v. Tambosso (2024 BCSC 1551)** is significant for its recognition of loans made in **cryptocurrency**, specifically **Bitcoin**, under standard legal

principles of contract law. The **Supreme Court of British Columbia** unequivocally held that loans denominated in Bitcoin are enforceable and treated in the same manner as loans involving traditional forms of currency or property. This decision underscores the legal recognition of cryptocurrency in contractual arrangements.

The core issue of the case was whether a loan agreement involving **Bitcoin** could be enforced in court. The plaintiff, **Nguyen**, had loaned **22 Bitcoins** to the defendant, **Tambosso**, under two agreements. The loan was to be repaid within **48 hours**, and in the event of a successful transaction, **Tambosso** promised to pay additional compensation in Bitcoin. When the loan was not repaid as agreed, **Nguyen** sought to recover the value of the **22 Bitcoins**.

The court explicitly recognized that **Bitcoin** can be the subject of a legally binding loan agreement. **Madam Justice Fitzpatrick** emphasized that, despite Bitcoin's technical complexity, the principles of contract law still apply. As she noted, **"This case involves a modern twist, in that the 'something' said to have been loaned and which was to be repaid was cryptocurrency, namely, Bitcoin."** This statement confirmed the court's view that **cryptocurrency** is not beyond the scope of enforceable legal agreements.

Tambosso's defense centered on arguments that no binding contract had been formed and that the failure of the speculative **Bypass Procedure** absolved him of the obligation to return the Bitcoin. The court rejected both arguments. On the issue of contract formation, **Tambosso** claimed that minor changes to the contract were not signed by **Nguyen**, which he argued should invalidate the agreement. The court dismissed this, stating, **"The two deletions in the First Contract only refer to minor matters and do not alter the substance of it."**

More importantly, the court held that **Tambosso** was obligated to repay the **22 Bitcoins**, regardless of the outcome of the

Bypass Procedure. The contracts clearly placed the risk of failure on **Tambosso**, and the court emphasized that **“There is no merit in Mr. Tambosso’s suggestion that repayment to Mr. Nguyen of any Bitcoin was subject to the Bypass Procedure being successful.”** By agreeing to the contract, **Tambosso** assumed the risk that the **Bypass Procedure** could fail, but his obligation to repay the loaned **22 Bitcoins** remained intact.

The judgment is critical for its clear and unambiguous recognition of **cryptocurrency loans** as valid and enforceable under the law. The court treated **Bitcoin** as a form of property or currency, applying standard contractual principles to the dispute. It concluded that **Bitcoin**, despite its fluctuating value and decentralized nature, does not fall outside the scope of enforceable legal obligations. In fact, the court calculated the value of the **22 Bitcoins** as of the date of the breach, determining the total damages at over **$1.24 million CAD**, reflecting the price of Bitcoin at the time.

This case serves as a pivotal moment in acknowledging **cryptocurrency** within the legal framework of contracts. It confirms that loans made in **Bitcoin** are subject to the same legal scrutiny and obligations as any other loan.

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British Columbia Supreme

Court on Court Applications Rendering Arbitration Agreements Inoperable

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In the recent case **Montaigne Group Ltd. v. St. Alcuin College for the Liberal Arts Society, 2024 BCSC 1465**, the Supreme Court of British Columbia examined the interaction between court applications and the enforceability of arbitration agreements. The court's findings provide significant insights into how actions taken in court can potentially render an arbitration agreement inoperative.

Context and Overview

The case centered around a Joint Venture Agreement (JVA) between Montaigne Group Ltd. (Montaigne) and St. Alcuin College for the Liberal Arts Society (St. Alcuin). The JVA included a dispute resolution clause that emphasized self-settlement, mediation, and ultimately arbitration as mechanisms for resolving disputes between the parties. When disputes arose, Montaigne initiated litigation, which led to a legal examination of whether the arbitration clause in the JVA remained enforceable.

St. Alcuin applied to stay the court proceedings, arguing that the matter should be resolved through arbitration as stipulated in the JVA. Montaigne opposed the stay, contending that St. Alcuin had waived its right to arbitration by taking substantive steps in the litigation process.

Court's Analysis

The court's analysis was focused on whether St. Alcuin's

actions constituted a waiver of its right to arbitrate, thereby rendering the arbitration agreement inoperative under the **Arbitration Act**. Section 7(2) of the Act mandates that a court must stay proceedings unless the arbitration agreement is found to be void, inoperative, or incapable of being performed.

The central issue was whether St. Alcuin's motion to strike Montaigne's amended notice of civil claim amounted to a "step in the proceedings," which would preclude a mandatory stay under section 7(1) of the Act. The court noted that while St. Alcuin had initially filed its notice of application to stay the proceedings before taking any other steps, the subsequent decision to bring a motion to strike was significant.

The court found that the motion to strike sought substantive relief from the court and addressed the core issues of the dispute. This action, according to the court, demonstrated an implicit affirmation of the court's jurisdiction over the matter, which was inconsistent with the intent to arbitrate. The court concluded that by bringing the motion to strike, St. Alcuin had taken a substantive step in the proceedings that precluded it from later seeking to enforce the arbitration agreement.

Key Legal Principles

The court referenced the **Supreme Court of Canada's decision in Peace River Hydro Partners v. Petrowest Corp.**, which established a framework for determining when court proceedings should be stayed in favor of arbitration. The framework includes technical prerequisites that must be met, such as whether an arbitration agreement exists and whether the court proceedings concern a matter agreed to be submitted to arbitration. The fourth prerequisite is particularly relevant in this case: whether the party seeking a stay has taken any steps in the court proceedings.

The court also drew comparisons with the Ontario Court of Appeal's decision in **RH20 North America Inc. v. Bergmann**, where the defendant's participation in a motion to strike was found to constitute a waiver of the arbitration agreement. The Ontario court held that by seeking to strike out substantive claims, the defendant had elected to have the dispute resolved by the court, thereby rendering the arbitration agreement inoperative.

In applying these principles, the court determined that St. Alcuin's motion to strike constituted a substantive step in the litigation process. This action was found to be inconsistent with the arbitration agreement, leading to the conclusion that the agreement was rendered inoperative.

Impact on Arbitration Agreements

The court's findings highlight the importance of adherence to the dispute resolution mechanisms outlined in contracts. When a party takes a step in the court proceedings that seeks substantive relief, such as a motion to strike, this can be viewed as a waiver of the right to arbitrate. This case reinforces the principle that arbitration agreements must be respected, and parties should be cautious in how they engage with the court system when an arbitration agreement is in place.

Conclusion

In **Montaigne Group Ltd. v. St. Alcuin College for the Liberal Arts Society**, the Supreme Court of British Columbia provided clear guidance on the interplay between court applications and arbitration agreements. The court concluded that St. Alcuin's decision to pursue a motion to strike amounted to a step in the proceedings that rendered the arbitration agreement inoperative. This decision underscores the need for parties to carefully consider their actions in court when an arbitration agreement governs their dispute.

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Landmark Ontario Superior Court of Justice Ruling on Arbitration Agreements and Unforeseeable Ground Conditions in Construction (CCDC)

April 23, 2025

The recent decision in **The Trustees of the Knox Presbyterian Church Manotick v. Oakwood Designers & Builders Inc.** issued by the Ontario Superior Court of Justice on 10 June 2024 provides a compelling examination of **arbitration agreements** and the **interpretation of construction contracts**. Justice Corthorn's ruling addressed critical issues related to **dispute resolution methods**, the potential **joinder of Hydro One**, and **unforeseeable ground conditions in construction claims**. This article highlights the key aspects of the judgment, focusing on the arbitration agreement within the CCDC contract and the construction portion related to unforeseeable ground conditions.

The Arbitration Agreement

The heart of the dispute between Knox Presbyterian Church and Oakwood Designers & Builders Inc. revolved around which dispute resolution method applied to their disagreements. The applicant argued that the CCDC14 Design-Build Stipulated Price Contract (CCDC Contract) governed the resolution process, which mandated **negotiation, mediation, and arbitration** as outlined in GC 8.1. Conversely, the respondent contended that the disputes should be resolved under Section 36 of the Oakwood General Construction Contract (Construction Contract), which required court adjudication.

Justice Corthorn sided with the applicant, emphasizing that:

“Resolution of the existing disputes between the parties falls within the scope of the CCDC Contract. The parties must therefore follow the dispute resolution process prescribed in GC 8.1 of the CCDC Contract.”

This decision underscored the priority of the CCDC Contract’s broader terms over the more specific, day-to-day operational terms of the Construction Contract. The judge noted that the CCDC Contract, developed by the Canadian Construction Documents Committee, provided a comprehensive framework intended to cover general and broad disputes, including the unforeseen discovery of a buried Hydro One power line.

Analysis of the CCDC Contract

Justice Corthorn’s analysis of the CCDC Contract revealed that it was designed to handle significant project issues, such as unforeseen ground conditions, which were at the center of the dispute. The buried Hydro One power line discovered during excavation work was classified as a **“concealed or unknown condition”** under GC 6.4 of the CCDC Contract. This clause details the procedures for addressing unexpected conditions, including potential adjustments to the contract price.

The judge noted:

“The impact, or potential impact, of the discovery of a concealed or unknown condition on the Project site is specifically addressed in the CCDC Contract. The respondent relied on GC 6.4 to issue a notice of the resulting increase in the Contract Price.”

This reliance on the CCDC Contract for issuing a notice of increased costs further solidified the contract’s applicability in resolving the disputes.

Joinder of Hydro One

The respondent’s attempt to include Hydro One as a necessary party to the arbitration was another critical aspect of the case. Oakwood Designers & Builders argued that since the Hydro One power line was a central issue, Hydro One should be involved in the arbitration process. However, the court ruled that this determination fell within the arbitrator’s jurisdiction.

Justice Corthorn stated:

“Whether Hydro One is a necessary party to the arbitration is a matter within the jurisdiction of the arbitrator. The request for a stay of the application should be dismissed.”

This decision reinforced the **competence-competence principle**, which gives precedence to the arbitration process and the arbitrator’s authority to decide on their jurisdiction and related matters.

Unforeseeable Ground Conditions in Construction Claims

The construction portion of the judgment highlighted the challenges posed by unforeseeable ground conditions. The discovery of the buried Hydro One power line, which halted the

project until its relocation and repair, exemplified such challenges. The respondent’s subsequent demand for a $180,000 increase in the contract price due to these unforeseen conditions brought to light the importance of having robust mechanisms in place to address such issues.

GC 6.4 of the CCDC Contract, titled **“Concealed or Unknown Conditions”**, played a pivotal role in this context. It outlined the procedures for notifying the owner, investigating the conditions, and making necessary adjustments to the contract. Justice Corthorn’s ruling emphasized that:

“GC 6.4 sets out the rights of the parties in the event of the discovery of concealed or unknown conditions at the Project site.”

This clause ensures that both parties have clear guidelines to follow, which can help mitigate disputes arising from unforeseen ground conditions.

Conclusion

The judgment in **The Trustees of the Knox Presbyterian Church Manotick v. Oakwood Designers & Builders Inc.** is a landmark case that highlights the importance of clearly defined arbitration agreements and the proper interpretation of construction contracts. By affirming the applicability of the CCDC Contract and addressing the issues surrounding the joinder of Hydro One and unforeseeable ground conditions, Justice Corthorn’s decision provides valuable insights for future construction disputes. The ruling underscores the necessity of adhering to agreed-upon dispute resolution processes and the critical role of comprehensive contractual frameworks in managing complex construction projects.

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Ontario Court of Appeal Clarifies the Bounds of 'Constructive Fraud' in Arbitration Awards

April 23, 2025

Brief

The Ontario Court of Appeal's decision in *Campbell v. Toronto Standard Condominium Corporation No. 2600, 2024 ONCA 218* critically examines the conceptual boundaries of "fraud" within the ambit of the Arbitration Act, 1991. At the heart of this deliberation is whether "constructive fraud" falls under the legislative framework's definition of "fraud," particularly in sections 46(1)9 and 47(2), concerning the setting aside of arbitral awards and the exceptions to the appeal time limit, respectively.

Facts

The dispute traces back to the alleged breach by the respondents, Walter Campbell and Olakemi Sobomehin, of condominium rules against short-term rentals, culminating in

an arbitration award in favor of Toronto Standard Condominium Corporation No. 2600 (the “Condo Corp.”), ordering costs of $30,641.72. The respondents sought to vacate the award, invoking “constructive fraud” due to the Condo Corp.’s expansion of arbitration issues beyond agreed terms.

Arguments

In the Superior Court (the prior level of litigation), the application judge approached the term “fraud” within the Arbitration Act, 1991, with a broader lens, concluding that it encompassed “constructive fraud.”

The Condo Corp. challenged the Superior Court ‘s inclusion of “constructive fraud” within the statutory interpretation of “fraud” in the Act, arguing for a narrower, conventional understanding that excludes such an expansive interpretation. The respondents countered, urging a broader, equitable reading of “fraud” to encompass instances of “constructive fraud,” aimed at preserving fairness and justice within the arbitration process.

The appellants, Condo Corp., posited that the statutory language of the Act does not support the inclusion of “constructive fraud” within the ambit of “fraud,” emphasizing the need for a strict construction that aligns with the Act’s objectives of efficiency and finality in arbitration.

Court Interpretation

The Ontario Court of Appeal anchored its reasoning in the statutory language and precedent, underscoring a principle of legal interpretation that the same words within a statute are presumed to have consistent meanings across its provisions. This presumption applies directly to the usage of “fraud” in sections 46(1)9 and 47(2) of the Act, implying a need for a consistent, narrow interpretation aligned with established legal definitions.

The court observed that “fraud” possesses a well-established meaning in common law, typically requiring an element of dishonesty or intent to deceive. The Supreme Court has clarified that statutory terms with well-understood legal meanings should be interpreted in line with those meanings unless the legislature explicitly indicates a broader or different application. The Superior Court’s inclusion of “constructive fraud,” a concept markedly broader and not necessitating dishonesty for its establishment, into the definition of “fraud” was found to deviate from this principle. The court reasoned that if the legislature had intended for “fraud” within the Act to include “constructive fraud,” it would have explicitly done so.

Moreover, the Court of Appeal considered the broader implications of interpreting “fraud” to include “constructive fraud” within the framework of arbitration disputes. It highlighted that such an interpretation would be incongruent with the overarching objectives of the Arbitration Act, 1991, namely efficiency and finality. The Act and relevant case law emphasize a narrow basis for court intervention in arbitration awards to prevent the arbitration process from becoming merely a precursor to prolonged judicial proceedings. Expanding the definition of “fraud” to include “constructive fraud” could potentially open the floodgates to strategic litigation efforts, undermining the arbitration process’s efficiency and finality.

The court also pointed out that, in this particular case, the respondents attempted to utilize the broader interpretation of “fraud” to circumvent the strict 30-day time limit for contesting arbitration awards set by section 47(1) of the Act. This strategic move was criticized as it sought to exploit the judicial system to review the arbitrator’s decision under the guise of “constructive fraud.” The court deemed such actions as contrary to the spirit of arbitration, which relies on the finality and binding nature of arbitration awards, barring

exceptional circumstances like actual fraud.

In its decision, the Court of Appeal firmly rejected the Superior Courts' interpretation that "constructive fraud" falls within the scope of "fraud" under the Arbitration Act, 1991. It concluded that such an interpretation not only lacks statutory and jurisprudential support but also poses significant risks to the arbitration framework's intended efficiency and finality. The court thereby restored the original arbitral award, reinforcing the narrow path for legal recourse against arbitration decisions, strictly confined to instances of actual fraud as traditionally understood in legal practice.

Significance

The *Campbell v. Toronto Standard Condominium Corporation No. 2600* judgment marks a pivotal moment in clarifying the distinction between "fraud" and "constructive fraud" within the Arbitration Act, 1991. By explicitly excluding "constructive fraud" from the ambit of "fraud," the Ontario Court of Appeal fortifies the arbitration process's efficiency and finality. This delineation not only restricts the avenues for challenging arbitral awards but also reinforces the paramountcy of adhering to the explicit terms of arbitration agreements. Consequently, this decision shapes future arbitration conduct, emphasizing the necessity for parties to precisely define their terms of engagement and for arbitrators to navigate disputes with a clear understanding of the boundaries set by statutory law.

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Crypto Disputes in Arbitration or Court? Impact of the Lochan v. Binance Judgment

April 23, 2025

Introduction to the Case

In the case of Lochan v. Binance Holdings Limited, 2023 ONSC 6714, the Ontario Superior Court of Justice addressed a motion by Binance Holdings Limited to stay proceedings in favor of arbitration, as per the arbitration agreement digitally signed by the plaintiffs and potential class members. The plaintiffs, Christopher Lochan and Jeremy Leeder, initiated a proposed class action against Binance, alleging the sale of crypto derivatives products to Canadians without the necessary regulatory compliance, specifically the failure to file or deliver a prospectus as required by the Ontario Securities Act.

The Court’s Deliberation

Justice E.M. Morgan presided over the matter, hearing arguments that touched upon the enforceability of the arbitration agreement under the International Commercial Arbitration Act and the UNCITRAL Model Law on International Commercial Arbitration. Binance argued for the stay based on the general principle that courts should uphold the terms of commercial contracts, including arbitration clauses. The plaintiffs countered by asserting that the arbitration

agreement was void and inoperative on the grounds of being contrary to public policy and unconscionable.

Public Policy and Unconscionability Concerns

Justice Morgan's analysis focused on two main issues: whether the arbitration agreement was contrary to public policy and whether it was unconscionable. On public policy grounds, the court found that the arbitration agreement was unenforceable due to its potential to effectively immunize Binance from litigation by imposing prohibitive costs on claimants, particularly given the small average investment by Canadian crypto investors. The choice of Hong Kong as the arbitral forum, with no substantive connection to the parties or the dispute, was seen as particularly problematic.

The Court's Decision

On the issue of unconscionability, the court again found the arbitration agreement unenforceable. The agreement was part of a standard form contract, with terms non-negotiable by the plaintiffs, and contained provisions that could impose significant financial burdens on claimants seeking to resolve disputes. The court highlighted the inequality of bargaining power and the lack of transparency regarding the arbitration process's costs and logistics as factors contributing to the agreement's unconscionability.

Implications for the Crypto Industry

Ultimately, Justice Morgan dismissed Binance's motion for a stay of proceedings, allowing the class action to proceed in court. This decision underscores the judiciary's willingness to scrutinize arbitration agreements in standard form contracts, particularly in the context of consumer protection and the accessibility of legal remedies for individuals against large corporations.

Global Impact and Regulatory Considerations

The judgment in Lochan v. Binance Holdings Limited has implications that extend beyond the borders of Ontario or even Canada, touching on the global landscape of litigation against cryptocurrency companies. The decision to not enforce the arbitration agreement on the grounds of it being contrary to public policy and unconscionable sets a precedent that could influence courts in other jurisdictions when faced with similar claims against cryptocurrency entities.

The Tension Between Global Operations and Local Laws

The ruling highlights the tension between the global nature of cryptocurrency operations and the local legal frameworks within which they must operate. Cryptocurrency companies, by their nature, transcend traditional geographic boundaries, often leading to complex legal questions about jurisdiction, regulatory compliance, and consumer protection. The Ontario Superior Court of Justice's decision underscores the need for such companies to carefully consider the legal environments of the countries in which they operate, particularly regarding standard form contracts and arbitration clauses.

Future Directions for Crypto Disputes

This judgment may encourage courts in other jurisdictions to take a closer look at arbitration agreements that could potentially shield cryptocurrency companies from litigation by imposing onerous conditions on claimants. It signals to these companies the importance of ensuring that their contracts, especially arbitration clauses, are not only clear and transparent but also fair and equitable in the eyes of the law.

Conclusion: Balancing Consumer Interests and Industry Innovation

Furthermore, the decision may prompt regulatory bodies and legislators around the world to scrutinize the practices of cryptocurrency companies more closely, potentially leading to

more stringent regulations and oversight to protect investors. This could result in a more standardized approach to the regulation of crypto assets and a clearer framework for resolving disputes between consumers and cryptocurrency companies.

The Lochan v. Binance Holdings Limited judgment could have significant ramifications for the global cryptocurrency industry, potentially affecting how companies structure their user agreements and how disputes are resolved across jurisdictions. It serves as a reminder of the legal complexities and challenges that arise in the rapidly evolving world of digital assets and the need for a balanced approach that protects both the interests of consumers and the innovation that drives the cryptocurrency sector.

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Designer / Architect Delay Claims: Insights from the Ontario Superior Court of Justice

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In the realm of construction, project delays are inevitable

yet potentially costly occurrences. The ability to accurately identify and claim these delays is a crucial skill for any party involved in a construction project. A recent case from the Ontario Superior Court of Justice in Onespace Unlimited Inc. v. Plus Development Group Corp. sheds light on the evidentiary standards required to substantiate claims of project delays, particularly for claims related to design errors and omissions.

Overview

In this case, the owner/developer claimed a sum of about $760,000 for a 100-day extended duration delay allegedly caused by the architect due to various design errors and omissions. The alleged errors encompassed a wide range of issues including missing gas lines, incorrect details for a windowsill, inadequate personnel, and poor work review, among others.

However, the court found several shortcomings in the owner/developer's claim. Firstly, there was a lack of clarity in defining the alleged design errors and omissions. The owner/developer failed to identify the specific drawings containing these errors, which is a fundamental step in substantiating a claim of design-related delays. Without pinpointing the exact source of the errors, it becomes a herculean task to prove the alleged delays.

Furthermore, the court noted a significant lack of evidence supporting the claim that the architect was responsible for these errors and omissions. The days of delay claimed were merely unsubstantiated estimates provided by an individual from the owner/developer's side, which were reviewed but not corroborated with concrete evidence demonstrating the impact on the overall project duration.

The court also highlighted an essential distinction between a delay event and an overall project delay. A delay in a

particular activity does not necessarily translate to an extended project duration. For a claim of extended duration to hold water, a causal link between the alleged delays and the extended project duration is imperative. The owner/developer's failure to provide evidence corroborating the delay from the alleged errors and omissions was a significant blow to their claim.

Moreover, the court found that the owner/developer did not meet the evidentiary onus of demonstrating any breach of contract or the standard of care by the architect, which would support liability for the alleged project delays. This underlines the necessity of a well-documented and evidence-backed claim when alleging project delays.

This case serves as a stark reminder of the rigorous evidentiary standards required to successfully claim project delays. It emphasizes the importance of clear documentation, precise identification of errors, and the provision of cogent evidence to support claims of project delays in the complex landscape of construction disputes.

Takeaway

Evidencing delay caused or not caused by design errors and omissions generally requires a delay claim methodology, which in most cases is a schedule analysis. In a schedule analysis aimed at identifying delays due to design errors and omissions, the process begins with a thorough review of the project's baseline schedule and the as-built schedule. The baseline schedule represents the initial plan, while the as-built schedule reflects what actually transpired on the ground.

The crux of the analysis lies in identifying the design errors and omissions through a careful examination of the design drawings and other related documentation. Once these errors are identified, they are mapped to the specific activities in

the schedule they affected. This mapping is crucial as it establishes the link between the design discrepancies and the activities that were delayed as a result.

The next step involves quantifying the delay caused by each design error or omission. This is achieved by comparing the planned and actual completion dates of the affected activities. The difference in completion dates illustrates the extent of delay attributable to the design errors.

Furthermore, the analysis delves into how these delays impacted the overall project timeline. It is not just about identifying the days of delay, but also understanding how these delays affected the sequence of activities, especially those on the critical path which directly impact the project's completion date.

The data extracted from this analysis provides a clear illustration of the delay days caused by design errors and omissions. It evidences the direct and indirect impacts of these errors on the project schedule, thereby providing a solid foundation for any claims or discussions related to project delays.

In essence, the schedule analysis serves as a practical tool to not only identify and quantify the delays but also to provide a clear, evidence-backed narrative of how design errors and omissions contributed to these delays.

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Supreme Court of British Columbia Weighs In: Arbitrator Discretion in Evidence Review

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Introduction

In a recent judgment issued on 28 August 2023, the Supreme Court of British Columbia in the case of Ball v Bedwell Bay Construction Ltd. has provided invaluable insights into the complex interplay between procedural fairness and substantive review in arbitration proceedings. This article aims to dissect these critical elements by closely examining this landmark ruling. Drawing upon key passages and principles outlined in the judgment, we will explore the tests and criteria that both arbitrators and courts employ to ensure procedural fairness and conduct substantive review. This novel discussion serves as a comprehensive guide to understanding the current legal landscape of arbitration in Canada, particularly in light of the court's nuanced approach to the arbitrator's discretion in evidence review.

Procedural Fairness in Arbitration

Arbitrators are tasked with ensuring a fair process. As stated in "Ball v Bedwell Bay," the arbitrator took "exceptional care to ensure the proceedings before him were fair" by setting clear deadlines for evidence submission and extending the hearing time from one hour to four hours (Ball v Bedwell Bay Construction Ltd., 2023 BCSC 1470, paras. 32-34).

Courts employ specific criteria for evaluating procedural fairness. In “Ganitano v. Yeung,” the court noted that procedural fairness requires that reasons “allow the parties to know why, how, and on what evidence a decision-maker reached his or her decision” (Ganitano v. Yeung, 2016 BCSC 2227, para. 35).

Substantive Review in Arbitration

Arbitrators are responsible for making decisions that are substantively sound. They must consider the facts and apply the relevant laws. In “Speckling v. British Columbia,” the court stated that it may intervene only if the arbitrator’s findings are “openly, clearly, evidently unreasonable” (Speckling v. British Columbia (Workers’ Compensation Board), 2005 BCCA 80, para. 39). The focus is not on re-weighing the evidence but on assessing whether the conclusions are supported by the facts and the law.

“Simply put, a decision-maker is not required to address every piece of evidence or to make findings on every element or claim put before them” as noted in “Ball v Bedwell Bay” (Ball v Bedwell Bay Construction Ltd., 2023 BCSC 1470, para. 36). This principle is rooted in the understanding that arbitrators are best positioned to determine what evidence is most pertinent to the case at hand.

Distinguishing Between Procedural Fairness and Substantive Review

While procedural fairness focuses on the manner in which the arbitration was conducted, substantive review is concerned with the correctness of the decision. Courts are generally more willing to intervene on grounds of procedural unfairness than substantive errors, given the deference accorded to the arbitrator’s expertise.

The arbitration process is a delicate balance of procedural fairness and substantive review, each with its own set of

tests and criteria. Courts serve as the guardians of this process, ensuring that it adheres to the principles of justice and equity. While the tests for procedural fairness and substantive review may evolve, the core principles remain constant: a commitment to a fair process and a just outcome.

The Role of Guidelines and Statutory Provisions

Arbitrators often rely on guidelines and statutory provisions to navigate the complex terrain of procedural fairness and substantive review. For instance, the MHPTA served as a crucial framework in the “Ball v Bedwell Bay” case, providing the arbitrator with criteria for evaluating tenancy agreements1.

Courts also use these guidelines as a benchmark for their own review. In “Ball v Bedwell Bay,” the court found the arbitrator’s interpretation of the MHPTA to be reasonable, stating that the definition of a tenancy agreement “clearly captures the connection between an individual and a specific site” (Ball v Bedwell Bay Construction Ltd., 2023 BCSC 1470, para. 42).

The Arbitrator’s Discretion: A Balancing Act

Arbitrators must weigh various factors to arrive at a decision that is both procedurally fair and substantively sound. In “Ball v Bedwell Bay,” the arbitrator considered factors such as the nature of the home, the type of rent, and the park rules, among others (Ball v Bedwell Bay Construction Ltd., 2023 BCSC 1470, paras. 46-52). The court found this weighing of factors to be reasonable, stating that the arbitrator reached his conclusion “on a principled, well-reasoned basis” (Ball v Bedwell Bay Construction Ltd., 2023 BCSC 1470, para. 54).

The arbitration process is a symbiotic relationship between procedural fairness and substantive review. Arbitrators are tasked with the challenging role of balancing these elements,

and courts serve as the final arbiters, ensuring that the principles of justice and equity are upheld.

In conclusion, the arbitration process is a complex but necessary mechanism for resolving disputes outside the traditional court system. It relies on a delicate balance of procedural fairness and substantive review, guided by established tests and criteria. While arbitrators have the discretion to focus on the most relevant evidence, this discretion is not unlimited and is subject to judicial review to ensure that it is exercised in a manner that is both fair and legally sound.

This comprehensive analysis underscores the intricate balance that must be maintained to ensure a fair and equitable arbitration process. It also highlights the critical role of judicial oversight in preserving the integrity of this alternative dispute-resolution mechanism.

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