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

September 2, 2023

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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