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Arbitration Case Comment
Sattva Capital Corp v. Creston Moly Corp, 2014 SCC 53 (Sattva)

In the past I have posed the question as to whether Arbitration can be more cost effective and efficient than a court process. The recent Supreme Court of Canada decision, Sattva, provides a complete compendium on the right to appeal a decision of an arbitrator. The upshot of that case is to clarify (if it had been required) that the right to appeal an arbitrator's decision, particularly when the subject matter of the arbitration is the interpretation of a contract, is very limited- even more so than an appeal from a decision of an inferior court. The result is that it presents another benefit to the insertion of an arbitration clause in an agreement for those parties who wish to ensure that, in the event of a dispute, the outcome of a decision by the arbitrator is likely to be final, thus limiting the cost and enhancing the efficiency of this alternative dispute mechanism. Sattva represents the latest pronouncement of the Supreme Court of Canada's philosophical adherence to providing parties access to justice by limiting the ability to appeal an arbitrator's decision, thus ensuring that the more financially robust party will not be able to "tilt the playing field."

Briefly, the facts in Sattva involved a contractual dispute over a finder's fee that Sattva alleged was owing to it. In particular, under their contract, Sattva was to be paid a fee of US $1.5 million in shares. The issue that the arbitrator was asked to consider was the date the shares were to be valued. Nine million shares hung in the balance based on the alternative dates each of the parties contended for.

The Court first dealt with principles of contract interpretation and concluded that as most contracts involved a consideration of mixed fact and the law, the right to appeal under S. 31 of the Arbitration Act, SBC 2004, which is limited to questions of law, would rarely be able to be resorted to. The result of this is that in arbitrations involving an interpretation of a contract, which is most often the case, the arbitrator's decision is likely to be final.

Additionally, the Court weighed in on the test to be applied by a court reviewing an arbitral decision, if it has the jurisdiction to do so. The Court's approach was to re-iterate the importance it places on giving great latitude or deference to the arbitrator in his decision making process. This stems from recognition of the importance of maintaining the integrity of the arbitral process. As the Court noted at paragraph 89 of Sattva, arbitration often is chosen "…to obtain a fast and final resolution…" Later at paragraph 105, the Court observed that "… it may be presumed that [because the parties choose their decision maker] such decision makers are either chosen based upon their expertise in their area which is the subject matter of the dispute or are otherwise qualified in a manner acceptable to the parties." For these reasons, the Court identified that the test for overturning an arbitral decision should be akin to that of overturning a decision by an administrative tribunal-*reasonableness.* This presents a high bar to overturn an arbitral decision.

The Sattva case represents, in my opinion, a high water mark in the promotion of an efficient and cost effective process that the parties can look to if they choose to have any disputes that may arise in their commercial relationship governed by arbitration.

Herb Silber brings a strong combination of experience, knowledge and empathy to the arbitration process as Arbitrator or counsel. Herb's approach creates the positive, respectful atmosphere critical to a successful arbitration process.

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