

# Here One Minute, Gone the Next: BC Court of Appeal Overturns Chambers Judge's Decision to Grant Leave to Appeal an Arbitral Award in *Richmont Mines Inc. v. Teck Resources Limited*

December 17, 2018

In its recent decision in *Richmont Mines Inc. v. Teck Resources Limited*, the British Columbia Court of Appeal emphasized the strict limits on the availability of appeal for arbitral awards.<sup>[i]</sup> Arbitral awards are difficult to appeal and for good reason: one of the principal benefits of arbitration is that the parties involved can avoid the costs, time, and multiple appearances associated with litigating before the courts. Arbitration is, after all, intended to be an alternative means of resolving legal disputes.

## Overview

*Richmont v. Teck* is an appeal of an order granting the Respondent, Richmont Mines Inc. ("Richmont"), leave to appeal an arbitral award made in favour of the Appellant, Teck Resources Limited ("Teck"). The arbitral award concerned four patented mineral claims on two parcels of land for which Richmont was a successor in interest, and Teck was a successor in interest as to a 2% royalty. The central question was whether or not Teck's 2% royalty extended over 100% or 69% of the gold produced from the mineral claims, based on an interpretation of the word "Property" in the agreement. The arbitrator ultimately sided with Teck in finding that the royalty extended over 100% of the gold produced.

Following the arbitral award, Richmont applied for leave to appeal under section 31 of British Columbia's *Arbitration Act* (the "Act"), which provides:

- (1) A party to an arbitration, other than an arbitration in respect of a family law dispute, may appeal to the court on any question of law arising out of the award if
  - (a) all of the parties to the arbitration consent, or
  - (b) the court grants leave to appeal.
- (2) In an application for leave under subsection (1)(b), the court may grant leave if it determines that
  - (a) the importance of the result of the arbitration to the parties justifies the intervention of the court and the determination of the point of law may prevent a miscarriage of justice,
  - (b) the point of law is of importance to some class or body of persons of which the applicant is a member, or

(c) the point of law is of general or public importance. [\[iii\]](#)

Ontario's *Arbitration Act, 1991*, contains a similar provision addressing leave to appeal of arbitral awards at section 45:

(1) If the arbitration agreement does not deal with appeals on questions of law, a party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that,

(a) the importance to the parties of the matters at stake in the arbitration justifies an appeal; and

(b) determination of the question of law at issue will significantly affect the rights of the parties. [\[iii\]](#)

The basis of Richmont's application for leave to appeal was that the arbitrator erred in law in his interpretation of the word "Property" in the agreement by ignoring evidence and failing to interpret the words defining "Property" based on their plain and ordinary meaning and in the context of the agreement as a whole. The Chambers Judge agreed with Richmont that the arbitrator had erred in law, and specifically found that the arbitrator had interpreted the agreement incorrectly. The Chambers Judge also determined that the appeal had merit under subsection 31(2)(a) of the Act, finding that it may prevent a miscarriage of justice.

Teck, in turn, appealed the decision granting leave to appeal on the basis that the Chambers Judge erred in law by, among other things, identifying an error in law where none existed and substituting his own findings for those of the arbitrator. The Court of Appeal agreed, allowing the appeal and setting aside the Chambers Judge's order granting leave to appeal.

### Legal Framework

The two leading cases from the Supreme Court detailing the analytical framework applicable to appeal of arbitral awards under the Act are *Sattva Capital Corp. v. Creston Moly Corp.*[\[iv\]](#) and *Teal Cedar Products Ltd. v. British Columbia.[\[v\]](#) The framework articulated in *Sattva* and refined in *Teal* emphasizes the narrow jurisdiction of the courts to grant leave to appeal of arbitral awards on questions of law alone, and that there is no jurisdiction to grant leave to appeal on findings of fact or of mixed fact and law, even where those findings may be wrong.*

The Supreme Court in *Sattva* confirmed that contractual interpretation cases generally give rise to questions of mixed fact and law.[\[vi\]](#) The Court also emphasized the need for careful review of the proposed grounds of appeal, given that the party seeking leave to appeal has an obvious interest in characterizing – or mischaracterising – mixed questions of fact and law as extricable questions of law in order to shoehorn them into the narrow jurisdiction for appeal.[\[vii\]](#)

Finally, in the limited circumstances where an extricable question of law is identified, arbitral awards will "almost always" attract a reasonableness standard of review in light of the policy considerations of efficiency and finality underlying arbitral awards.[\[viii\]](#)

### Analysis

The Court of Appeal concluded, based on a correctness standard of review, that the Chambers Judge erred in law by not applying the framework articulated in *Sattva* and *Teal*. The only question before the Chambers Judge was whether or not Richmont identified an extricable question of law in the arbitrator's award that met the merit considerations under section 31(2) of the Act. Instead, the Chambers Judge focused on the issue of whether or not the interpretation of the relevant provisions by the arbitrator was substantively correct, found that they were not, and in turn, concluded that an extricable question of law existed.[\[ix\]](#)

The Court of Appeal then engaged in its own analysis of the merits of Richmont's application for leave to appeal. The Court identified "precedential value" as a distinguishing factor between questions of mixed fact and law and questions of law in the post-*Sattva*

jurisprudence.<sup>[x]</sup> Essentially, on appellate review of arbitral awards, the question must have precedential value beyond the specific facts of a given case in order to truly be an extricable question of law. The Court concluded that this was not the case in *Richmont v. Teck*, as the issues identified by Richmont in its application for leave to appeal were dependent on the specific facts of the case relating to, among other things, ownership of land and predecessors and successors in interest.

The Court also held that a further distinguishing factor between questions of mixed fact and law and questions of law is whether the initial decision maker – in this case, the arbitrator – considered the appropriate legal test, stating that “[s]o long as the decision maker applied the appropriate test, the resulting decision can give rise only to a question of mixed fact and law.” <sup>[xi]</sup> The Court concluded that the arbitrator turned his mind to the correct test, including the factual matrix of the agreement, the relevant words of the agreement, and the overarching requirement that his decision accord with “sound commercial principles and good business sense”.<sup>[xii]</sup>

Based on this analysis, the Court of Appeal held that Richmont’s proposed grounds for appeal, at best, raised only questions of mixed fact and law, and accordingly, allowed the appeal and set aside the order granting leave to appeal. In so doing, the Court emphasized the need for judicial restraint in the commercial arbitration context, in order to preserve the efficiency and finality of the process as an alternative to litigation.<sup>[xiii]</sup>

<sup>[ii]</sup> 2018 BCCA 452 [*Richmont v. Teck*].

<sup>[iii]</sup> RSBC 1996, c 55, s 31 [the Act].

<sup>[iv]</sup> SO 1991, c 17, s 45(1).

<sup>[v]</sup> 2014 SCC 53 [*Sattva*].

<sup>[vi]</sup> *Sattva*, at para. 50.

<sup>[vii]</sup> *Ibid.* at para. 53.

<sup>[viii]</sup> *Richmont v. Teck*, at para. 15, citing *Teal*, at para. 1.

<sup>[ix]</sup> *Richmont v. Teck*, at para. 61.

<sup>[x]</sup> *Ibid.* at para. 67.

<sup>[xi]</sup> *Ibid.* at para. 69.

<sup>[xii]</sup> *Ibid.* at para. 71.

<sup>[xiii]</sup> *Richmont v. Teck*, at paras. 79-80.

***The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.***

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