

Commercial Litigation Insights: Preserving Efficiency and Finality: Court of Appeal Clarifies Scope of “Fraud” in Arbitration

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Arbitration offers contracting parties a typically faster and more cost-effective dispute resolution alternative to traditional court proceedings. While the *Arbitration Act*, [1991, SO 1991, c 17](#) limits court interference in arbitral proceedings, it allows for arbitral awards to be set aside on limited and specific grounds such as fraud. Recently, the Court of Appeal in *Campbell v Toronto Standard Condominium Corporation No 2600*, [2024 ONCA 218](#) (“*Campbell*”) clarified that the term “fraud” within the *Act* does not include constructive fraud, as it risks significantly undermining the principles of efficiency and finality in arbitral proceedings.

Campbell was concerned with whether the word “fraud” in sections 46(1)9 and 47(2) of the *Act* encompasses the concept of “constructive fraud”. In this case, the former unit owners commenced an application to set aside an arbitrator’s decision awarding costs to the condominium corporation on a number of grounds, including that the award was obtained by fraud (s. 46(1)9). The application was commenced after the normal 30-day time limit under the *Act*; however, exceptions to this time constraint are applicable in instances where allegations of fraud or corruption are raised. While the application judge held that no actual fraud occurred, it set aside the arbitral award based on constructive fraud. In the application judge’s decision, he interpreted “fraud” in s. 46(1)9 and s. 47(2) to include constructive fraud, which focuses on unfairness more than it does on deceit. The application judge held that it was “unconscionable and unfair” that the condominium corporation lured the former unit owners, their counsel, and the Arbitrator into adjudicating issues beyond those of costs.

The condominium corporation appealed the application judge’s decision on the basis that the word “fraud” should be construed narrowly, excluding constructive fraud. The Court of Appeal agreed. It highlighted the objectives and legislative intent of the *Act*: efficiency, finality, and limited court intervention. Appeals from arbitration decisions are neither required nor routine, and courts are advised against strategic attempts to enlarge the scope of appeal beyond what was agreed-upon. *Campbell* emphasized that s. 46 provides a narrow basis for court intervention in arbitral awards and broadening the interpretation of s. 46(1)9 could undermine the objectives and legislative intent of the *Act*. The Court ultimately held that the word “fraud” does not encompass constructive fraud as it is a much broader concept than fraud in that it eliminates the requirements of knowledge and intent to deceive. If the legislature intended to expand the meaning of “fraud”, it would have done so explicitly; the term “fraud” was not defined in the *Act*. Consequently, the Court allowed the appeal, held that the application judge erred in its expansive interpretation of “fraud”, and restored the arbitral award.

Key takeaways

Campbell serves as a reminder that court intervention in arbitral proceedings should be limited and underscores the importance of adhering to the terms of arbitration agreements. Arbitration is designed to offer a quicker and more cost-effective alternative to traditional court proceedings, and courts are to intervene only on limited grounds, such as fraud. By affirming a narrow interpretation

of the word “fraud”, *Campbell* upheld the efficiency and finality in arbitration proceedings, discouraging strategic efforts to expand the grounds of appeal beyond what the contracting parties have agreed to.

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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