

# THE DOCKSIDE COVE “FIVE”

Issue 1:

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*Cases reported in  
Q3 of 2025*

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A quarterly selection of five significant Canadian court decisions on arbitration practice and procedure, curated by The Honourable David M. Brown, FCIArb, principal of Dockside Cove Arbitration, who offers arbitration and mediation services in commercial and estates disputes as a roster member of Arbitration Place, Toronto and Ottawa, as well as appeal advocacy advisory services ([dmbrown@arbitrationplace.com](mailto:dmbrown@arbitrationplace.com)).

## BRITISH COLUMBIA COURT OF APPEAL

***SEYLYNN (NORTH SHORE) PHASE II GP LTD. v. SEYLYNN (NORTH SHORE) PROPERTIES PHASE II LIMITED PARTNERSHIP, 2025 BCCA 330*** (September 22, 2025)

**Issue:** A single judge of the BCCA refused to grant the applicant leave to appeal an arbitration award. The applicant applied to a panel of the court to vary the decision of the Chambers Judge.

**Disposition:** The panel dismissed the application to vary the refusal of the Chambers Judge. The panel noted that whether a leave application under the *Arbitration Act* raised an extricable question of law was a question on which no deference was owed to the Chambers Judge. However, the panel concluded that the Chambers Judge was correct to hold that none of the grounds of appeal asserted by the applicant – failure to properly apply the “related contracts doctrine”; failing to give meaning to a backdating clause; erring in its treatment of the rectification claim – constituted a “question of law arising out of an arbitral award”, as required by s. 59(2) of the *B.C. Arbitration Act*. Accordingly, the BCCA had no jurisdiction to entertain an appeal.

**Significance:** The panel engaged in a lengthy consideration of (i) the leave to appeal test under the *B.C. Arbitration Act* and (ii) ascertaining whether a ground of appeal raises a “question of law”.

## BRITISH COLUMBIA COURT OF APPEAL (CHAMBERS)

***SINCLAIR v. T.D.M.C. HOLDINGS LTD., 2025 BCCA 322 (CHAMBERS JUDGE)***  
(September 8, 2025)

**Issue:** What governs the time limit for filing an application for leave to cross-appeal an arbitral award: the *B.C. Arbitration Act* or the *B.C. Court of Appeal Rules*?

The appellants brought an appeal of the arbitral award within the statutory stipulated time limit of 30 days. Although the respondents' application for leave to cross appeal was filed more than 30 days after the award was issued, it was filed within the 15 days of service of the application for leave to appeal set out in the *Court of Appeal Rules*. A motion was brought to quash the application for leave to cross-appeal.

**Disposition:** The motion to quash the application for leave to cross-appeal the award was dismissed. The chambers judge held that Rule 9 of the *Court of Appeal Rules* governs the time limit for filing an application for leave to cross appeal from an arbitral award, not s. 60 of the *Arbitration Act*. The chambers judge declined to follow *obiter dicta* to the contrary in *Desert Properties Inc. v. G&T Martini Holdings Ltd., 2024 BCCA 24*.

## MANITOBA COURT OF APPEAL

***BUFFALO POINT FIRST NATION v. BUFFALO POINT COTTAGE OWNERS ASSOCIATION INC, 2025 MBCA 72*** (August 12, 2025)

**Issue:** What is the standard of review for appeals of commercial arbitration awards? Is the standard that set out in *Sattva Capital Corp v Creston Moly Corp, 2014 SCC 53* and *Teal Cedar Products Ltd v British Columbia, 2017 SCC 32*: namely, reasonableness unless the question is one that would attract the correctness standard, such as a constitutional question or question of law of central importance to the legal system as a whole and outside the adjudicator's expertise? Or is it that described in *Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65*: namely, reasonableness as the default standard unless a legislature had indicated a different standard should apply?

**Disposition:** *Sattva* remains good law and still governs commercial arbitration appeals. On a reasonableness analysis, the arbitrator's decision, "while perhaps unorthodox and not within the traditional solutions that may have presented themselves, is sufficiently within the expectations of the parties under a reasonable reading of the terms of the Settlement Agreement." **NOTE:** In *Wastech Services Ltd v Greater Vancouver Sewerage and Drainage District, 2021 SCC 7*, at para. 46, the majority of the Supreme Court of Canada left for another day consideration of the effect, if any, of *Vavilov* on the standard of review principles articulated in *Sattva* and *Teal Cedar*.

## ONTARIO SUPERIOR COURT OF JUSTICE

### ***FREDERICKS v. SOUTH WESTERN INSURANCE GROUP LIMITED, 2025 ONSC 4637*** (August 8, 2025)

**Issue:** Whether an injunction should issue to prevent the arbitrator from deciding a motion to challenge his jurisdiction.

After the parties appointed an arbitrator, one side, the Fredericks, commenced a court action and moved in the arbitration to challenge the arbitrator’s jurisdiction. The other party, South Western, moved to stay the action pursuant to s. 7(1) of the Ontario *Arbitration Act*. That prompted Fredericks to bring a cross-motion to set aside the arbitration agreement. Before the challenge to jurisdiction was heard by the arbitrator, the Fredericks moved in court for an injunction to prevent the arbitrator from hearing the challenge to jurisdiction until the court decided the cross-motion to set aside the arbitration agreement.

**Disposition:** The court dismissed the motion for an injunction holding that: (i) the Fredericks had not raised a serious question to be tried because “it is beyond any doubt that [the arbitrator] should be the first person to answer all questions related to his own jurisdiction and that he should do so free from interference by the court”; and (ii) they had not demonstrated any irreparable harm as the issue of jurisdiction could be argued before the arbitrator.

## ONTARIO SUPERIOR COURT OF JUSTICE

### ***MTCC NO. 1251 v. WINDSOR ARMS HOTEL CORP., 2025 ONSC 5009*** (August 31, 2025)

**Issue:** Should the arbitrator be disqualified and removed pursuant to s. 13(1) of the Ontario *Arbitration Act* as a result of a reasonable apprehension of bias?

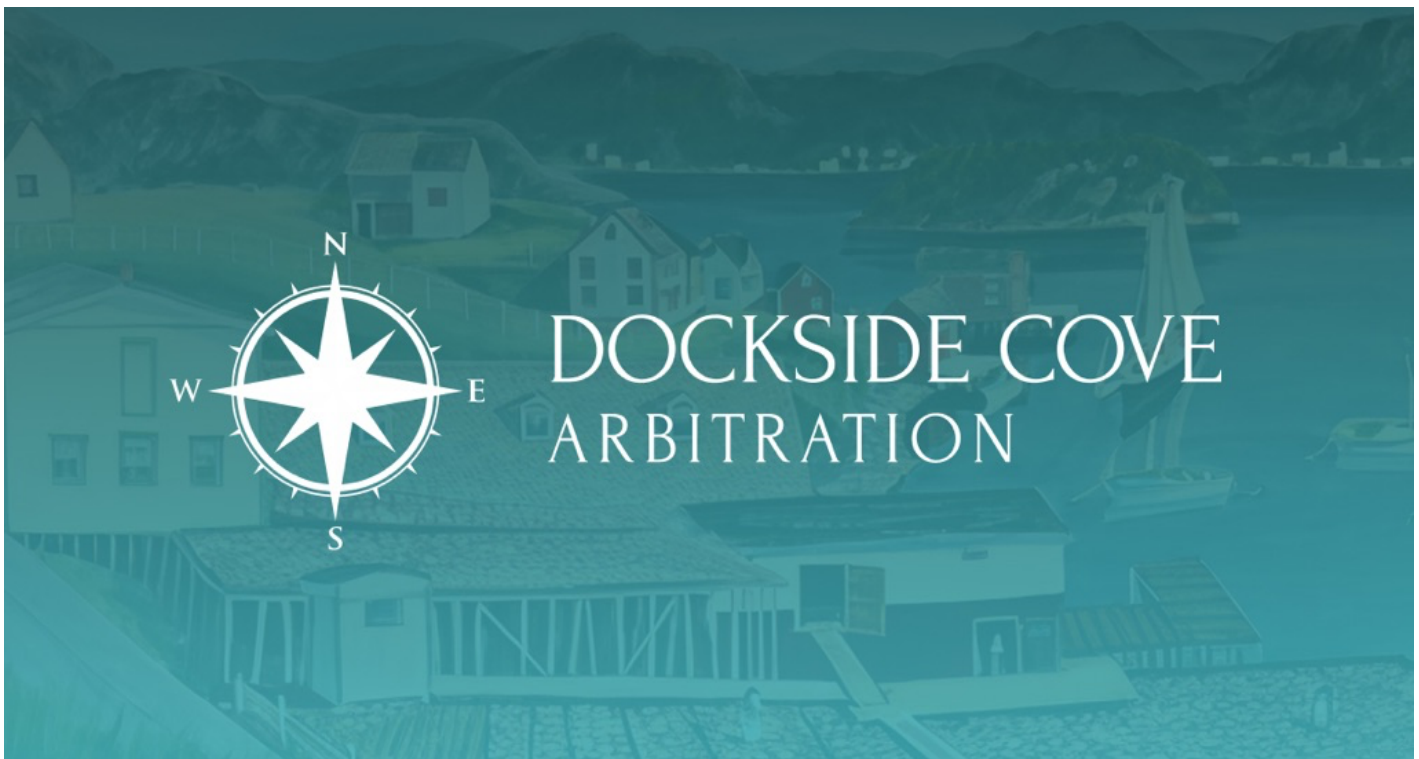
In the arbitration the applicant proposed to call a tax lawyer to give expert opinion evidence on an issue. A few days before the arbitration was scheduled to start, the arbitrator advised the parties of the existence of “a clear appearance of conflict” on the basis that the lawyer had recently referred a separate, unrelated litigation matter to the arbitrator’s law firm. The tax lawyer was the instructing lawyer on the matter and the arbitrator had been “tasked with preparing the pleadings and assuming carriage of it.” The arbitrator disclosed the conflict, proposed options to the parties, including waiver of the conflict or his withdrawal. The respondent refused to waive the conflict. At that point, the arbitrator “reversed his position” and refused to resign.

**Disposition:** The arbitrator was disqualified because the “reasonableness of the apprehension of bias flows from the manner in which the potential conflict was managed” after the arbitrator disclosed it. Central to the court’s conclusion was the arbitrator’s express recognition that there was a “clear appearance of conflict”. Once the arbitrator had made that determination, “the only possible remedies were to obtain a waiver from each party or withdraw...Instead of doing one of those two things, the Arbitrator proceeded with the other subsequent events...”

## CONTACT INFORMATION:

Information about the experience and practice of The Honourable David M. Brown, FCI Arb, can be found on the websites of Dockside Cove Arbitration ([www.docksidecove.ca](http://www.docksidecove.ca)) and Arbitration Place ([www.arbitrationplace.com](http://www.arbitrationplace.com)).

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**About the name:** “Dockside” was the name of my maternal grandparents’ home in Burin, Newfoundland, a home we acquired, restored, and enjoyed for two decades. As the name suggests, Dockside was located beside one of the many coves that make up Burin’s outstanding harbour. The background in the logo above depicts how the cove looked in my grandparents’ time, cod flakes and all.