CITATION: Cameron v. Toronto Standard Condominium Corporation No. 2078, 2025 ONSC 4413
COURT FILE NO.: CV-21-00669274-0000
DATE: 20250731

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: DONALD CAMERON, Plaintiff

AND:

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2078 and HEARTHSTONE COMMUNITIES SERVICES, Defendants

BEFORE: Merritt J.

COUNSEL: *Andrew Ostrom* and *Shawn Pulver* Counsel, for the Plaintiff

Victor J. Yee Counsel, for the Defendant TSCC No. 2078

David J. Wilson, Counsel for the Defendant Hearthstone Communities Services

HEARD: June 13 and 20, 2024

ENDORSEMENT

OVERVIEW

[1] The Plaintiff Donald Cameron seeks leave to appeal the arbitration award of P. David McCutcheon (the "Arbitrator") dated November 22nd, 2023 (the "*Interpretation Award*") pursuant to the *Arbitration Act* 1991, S.O. 1991, c. 17.

[2] This was a private Arbitration between Mr. Cameron, who is a condominium unit owner, the Defendant Toronto Standard Condominium Corporation No. 2078 ("TSCC 2078"), and the Defendant Hearthstone Communities Services by the Bay Ltd. ("Hearthstone"), which is a 3rd party service provider to the residents of TSCC 2078.

[3] In the *Interpretation Award*, the Arbitrator dismissed Mr. Cameron's submission that the Condominium Services Agreement (the "CSA") prohibited Hearthstone from increasing its service package ("BSP") fees during the COVID-19 pandemic.

BACKGROUND FACTS

[4] TSCC 2078 is a non-profit residential condominium corporation that was created under the *Condominium Act*, 1998, S.O. 1998, c. 19 on May 20th, 2010. TSCC 2078 consists of 144

residential units, located at 3 Marine Parade Drive, Etobicoke. TSCC 2078 is governed by a volunteer five-member board of directors.

[5] Mr. Cameron and his wife are the owners, and were the residents, of Suite 1805.

[6] Hearthstone provides various ancillary services, including convenience and wellness services, to the residents of TSCC 2078 pursuant to the 99 year CSA between TSCC 2078 and Hearthstone and the Declaration that created TSCC 2078 on May 20th 2010.

[7] Hearthstone owns two floors of the condominium complex, which feature a movie theatre, a pool, a fitness area/gym, library, dining and meeting room facilities, a restaurant, a pub and games area and various wellness facilities for the benefit of the residents of the Condominium Complex. Hearthstone purchased these real property facilities and amenities from the property developer in order to fulfil its contractual obligations under the CSA.

[8] TSCC 2078 agreed to pay Hearthstone a basic fee for the BSP and to collect from each individual unit owner, as part of the common expenses, the fee applicable to the owner's BSP.

[9] Residents also have the option of subscribing to a broader additional service package which includes nursing and assisted-living services.

[10] Mr. Cameron sued TSCC 2078, Hearthstone and Jane Doe under the Simplified Procedure set out in r. 76 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. His claim against TSCC 20278 is for damages for oppression in the amount of $24,000 and related declarations. The claim against Hearthstone is damages of $20,000 for intentional interference with economic relations and $5,000 for trespass. Mr. Cameron claims against Jane Doe, who is an unidentified employee of either Hearthstone or TSCC 2028, for damages of $100,000 for defamation.

[11] Mr. Cameron, TSCC 2078, and Hearthstone mutually agreed to appoint the Arbitrator to arbitrate Mr. Cameron's dispute against TSCC 2078 and Hearthstone regarding Hearthstone's increases to its BSP fees during the COVID-19 pandemic when services were curtailed. Initially, after March 2020, the pool, fitness centre, dining room and pub were all closed. All social outings and events were cancelled. In 2021, some of the services resumed or partially resumed.

[12] On December 4, 2020, Mr. Cameron and his spouse were notified that their BSP fees for the forthcoming year would be increased by 3 percent, to $2,118.31 per month. The BSP fees were increased again in December 2021 by 2.9%.

[13] The Arbitrator directed the parties to a mini-arbitration or motion regarding Mr. Cameron's allegations that the CSA contains an implied term that prohibited the BSP fee increases levied by Hearthstone. The Arbitrator invited submissions from the parties and subsequently ruled that the CSA did not contain such an implied term, and, as a matter of contractual interpretation, that the CSA did not prevent Hearthstone from charging a profit when its costs decreased.

[14] Mr. Cameron now seeks to appeal or set aside the *Interpretation Award*.

POSITIONS OF THE PARTIES

[15] Mr. Cameron submits that the Arbitrator's holdings "eviscerate" the contract term in issue and leave the quantum of future fee increases in Hearthstone's discretion. He says the Arbitrator permitted the factual matrix (including the commercial reasonableness of the CSA) to overwhelm the words of the CSA, failed to consider the CSA as a whole and relied on emails between Hearthstone and its counsel which evidence Hearthstone's subjective intentions. Mr. Cameron also submits that the Arbitrator's comments about the effect of the *Interpretation Award* on the remaining issues in dispute, give rise to a reasonable apprehension of bias.

[16] TSCC 2078 concedes some elements of the test for leave to appeal: the arbitration involves issues of importance to the parties and that the determination of the questions of law raised will significantly impact the rights of the parties. Hearthstone submits that because Mr. Cameron is not a party to the CSA, he cannot meet the test for leave to appeal.

[17] TSCC 2078 and Hearthstone submit that the Arbitrator did not make any extricable errors of law, the *Interpretation Award* is correct, and it should not be set aside.

[18] Both TSCC 2028 and Hearthstone submit that there was no reasonable apprehension of bias because there is no indication that the Arbitrator has closed his mind with respect to the remaining issues.

THE ISSUES

[19] There are four issues as follows:

(1) Should leave to appeal the *Interpretation Award* be granted under s.45 of the *Arbitration Act* ?

(2) If leave is granted, what is the standard of review?

(3) Did the Arbitrator make extricable errors of law by a) allowing the factual matrix to overwhelm the words of the contract, b) by failing to consider the contract as a whole, or c) by considering Hearthstone's subjective intentions?

(4) Should the *Interpretation Award* be set aside under s. 46 of the *Arbitration Act* for bias?

DECISION

[20] Leave to appeal is granted on the following issues which are extricable questions of law:

1) Did the Arbitrator err in allowing the factual matrix to overwhelm the words of the CSA?

2) Did the Arbitrator err in failing to construe the CSA as a whole by failing to take into account a specific and relevant provision of the contract? and,

3) Did the Arbitrator err in relying on Hearthstone's subjective intentions?

[21] The appeal is dismissed. The Arbitrator did not err in law. His consideration of both the factual matrix and words of the CSA did not constitute an extricable error of law. The Arbitrator considered the CSA as a whole including the entire provision concerning increases in the BSP fees and the term of the CSA. The Arbitrator considered emails between Hearthstone and its counsel; however, he relied on these emails for information that was known to both parties and not Hearthstone's subjective intentions.

[22] The *Interpretation Award* is not set aside under s. 46 because the Arbitrator's comments concerning the potential impact of the *Interpretation Award* on the remaining outstanding issues between the parties do demonstrate that the Arbitrator has closed his mind and do not give rise to a reasonable apprehension of bias.

ANALYSIS

ISSUE 1: Leave to Appeal

[23] There is no arbitration agreement between the parties governing appeal rights and therefore the default provisions of the *Arbitration Act* apply.

[24] Section 45 of the *Arbitration Act* provides:

> (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.

[25] There is no dispute that the *Interpretation Award* is an "award" for the purposes of s. 45 because it determines a substantive issue and is dispositive of the contractual basis for Mr. Cameron's claim.

[26] Leave to appeal is only permitted on a question of law. Thus, I must determine whether the issues raised by Mr. Cameron raise questions of law that are appealable under s. 45: *York Condominium Corporation No. 201 v. York Condominium Corporation No. 366*, 2017 ONSC 3975, at para. 19, motion for leave to appeal dismissed, unreported Ontario Court of Appeal File No. M48094.

[27] In this case, there is no dispute that the decision made by the Arbitrator was a ruling on the contractual interpretation of the CSA: *Interpretation Award* para. 1.

[28] Contractual interpretation involves questions of mixed fact and law "as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix": *Sattva Capital Corp. v. Creston Moly Corp*, 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 50.

[29] In decisions involving contractual interpretation, there may be an extricable question of law such as "the application of an incorrect principle, the failure to consider a required element of a legal test, or the failure to consider a relevant factor": *Sattva*, at para. 53 citing *King v. Operating Engineers Training Institute of Manitoba Inc.*, 2011 MBCA 80, 270 Man. R. (2d) 63, at para. 21.

[30] Courts should be cautious in identifying extricable questions of law in matters of contract interpretation. In such cases, extricable questions of law will be rare and uncommon: *Earthco Soil Mixtures Inc. v. Pine Valley Enterprises Inc.* 2024 SCC 20, 175 O.R. (3d) 240, at para. 28. As noted in *Ontario Minister of Transportation v. Link 427 General Partnership*, 2025 ONSC 2375, at para. 18:

> This admonition [by the Supreme Court in Earthco] not to strain to find extricable questions of law on an appeal is equally, if not more, applicable in the appeal of arbitration decisions, where the deference to be afforded to the factual findings of the parties' chosen decision-maker is heightened. Judicial intervention in commercial arbitrations is the exception, not the rule.

[31] Mr. Cameron relies on *Kilitzoglou v. Curé*, 2018 ONCA 891, 143 O.R. (3d) 385, at para. 41, which stands for the proposition that it is an error of law to permit the factual matrix to overwhelm the words of a contract.

[32] The Defendants rely on *Earthco*, where the court considered whether the "trial judge erred by reading the language of the exclusion clauses in broader terms than their actual words and, in doing so, considered the Contract's factual matrix, also known as the surrounding circumstances, beyond its permissible use": at para. 24. The court held that this was not an extricable question of law: at para. 113.

[33] Whether the Arbitrator applied the wrong principle is an extricable question of law. Whether the Arbitrator applied the correct principle inappropriately is not an extricable question of law. An extricable legal question is one that can be considered without regard to the facts. Once the Arbitrator engages in the application of the correct principle, the question of how the Arbitrator applies the proper principles of contractual interpretation is a question of mixed fact and law. "Extricable questions of law must be focused on whether the arbitrator: a. applied the correct legal principle, b. considered all the relevant elements of a legal test, and c. considered the relevant factors.": *Ontario Minister of Transportation*, at paras. 19 and 20; *DesRochers v. Fis*, 2013 ONSC 6467, at para. 45.

[34] In *BBL. Con Design Build Solutions Limited v. Varcon Construction Corporation*, 2022 ONSC 5714, at para. 86, Perell J. explained:

> In deciding whether to grant leave to appeal, there is no requirement that the court doubt the correctness of the arbitrator's award; in considering whether to grant leave, the court decides only whether the matter warrants granting leave, not whether the appeal will succeed. At the leave stage, the court does not make a final determination whether an error of law was made, but the court determines whether the appeal has the potential to succeed and thus to change the result of the case. Thus, for leave to appeal, three criteria must be satisfied.
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> > a. First, the putative appellant must identify one or more arguable errors of law as opposed to questions of fact or questions of mixed fact and law.
> >
> > b. Second, the importance to the parties of the matters at stake in the arbitration must justify an appeal.
> >
> > c. Third, the identified question of law must significantly affect the rights of the parties. Once a question of law has been identified, the court must be satisfied that the determination of that point of law on appeal may prevent a miscarriage of justice

[35] In this case, the question of whether the Arbitrator permitted the factual matrix to overwhelm the words of the contract is an extricable question of law. Whether the Arbitrator erred by putting too much weight on the factual matrix is not an extricable question of law.

[36] It is also an error of law to fail to construe a contract as a whole by failing to take into account a specific and relevant provision of the contract. "This is a question of law that is extricable from a finding of mixed fact and law": *Sattva*, at para. 64.

[37] It is an extricable legal error to rely on the subjective intentions of the parties to a contract: *Waldron v. Canada (Attorney General)*, 2024 FCA 2, at paras. 76 and 82.

[38] Mr. Cameron has satisfied the first branch of the test for leave to appeal.

Importance to the Parties

[39] I reject Hearthstone's submission that Mr. Cameron cannot satisfy s. 45(1)(a) or (b) because he is not a party to the CSA. Subsections 45(1)(a) and (b) refer to the parties to the arbitration, not the parties to the CSA. The dispute arose in the context of Mr. Cameron's claim for oppression and intentional interference with economic relations. Those are the claims which are the subject of Mr. Cameron's Notice of Arbitration. It is not necessary for Mr. Cameron's oppression claim that he be a party to the CSA.

[40] A significant financial impact on the parties is not a necessary factor for leave to appeal. Section 45(1) (a) "should not be read in a way that automatically precludes an appeal unless money is involved": *Aronowicz v. Aronowicz*, 84 O.R. (3d) 428 (Ont. S.C.), at para. 32.

[41] Mr. Cameron submits the matters at stake are highly important in terms of money and principle. The amount of Hearthstone's fees was $2,056.61 per month during 2020, $2,118.31 per

month during 2021, and $2,179.75 per month during 2022 and the impact going forward is unknown if Hearthstone's ability to increase its profit is unlimited. Also, other unit holders are impacted.

[42] Mr. Cameron submits that as a matter of principle, all of the unit owners ought to be able to rely on strict compliance, by both Hearthstone and TSCC 2078, with the terms of the CSA, given that it is incorporated by reference into TSCC 2078's constating documents. Anyone contemplating purchasing a unit at TSCC 2078 ought to be able to conduct due diligence, review the CSA, and rest assured that their fees payable to Hearthstone will comply with the terms of the CSA going forward.

[43] TSCC 2078 concedes that if any of the identified issues are questions of law, they involved issues of importance to the parties.

[44] I find that the matters at stake in the arbitration are of importance to the parties because of the potential financial impact of the *Interpretation Award*.

[45] Mr. Cameron has satisfied the second branch of the test for leave to appeal.

Impact on the Rights of the Parties

[46] The rights of the parties are significantly affected where correcting identified errors would decisively alter the outcome: *Burwell et. al. v. Wozniak*, 2024 ONSC 5851, 174 O.R. (3d) 544, at para. 28.

[47] The purpose of s.45(1)(b) is to eliminate appeals that are not decisive to the outcome of the arbitration: *Ledore Investments Ltd. V. Ellis-Don Construction Ltd* ., 2015 ONSC 6536, at para. 15.

[48] Leave should not be granted where the error of law would not provide a reason for overturning the award: *Ottawa (City) v. The Coliseum Inc* ., 2014 ONSC 3838, at para. 41, citing *Aronowicz*, at paras. 28-30.

[49] In this case, determination of the questions of law at issue will significantly affect the rights of the parties because the *Interpretation Decision* is dispositive of the contractual basis for the Plaintiff's claim. TSCC 2078 concedes that if any of the identified issues are questions of law, their determination will significantly impact the parties.

[50] I find that the rights of the parties will be significantly impacted if I find there are legal errors to be corrected such that the Arbitrator's interpretation of the CSA is incorrect.

[51] Mr. Cameron has satisfied the third branch of the test for leave to appeal.

[52] The Plaintiff is granted leave to appeal on the following extricable questions of law:

1) Did the Arbitrator permit the factual matrix to overwhelm the words of the contract?

2) Did the Arbitrator failed to construe the CSA as a whole by failing to take into account specific and relevant provisions?

3) Did the Arbitrator rely on the subjective intentions of the parties?

ISSUE 2: Standard of Review

[53] The parties agree that the standard of review is correctness.

[54] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, the Supreme Court of Canada charted a new course forward and laid out a revised framework for determining the standard of review for administrative decisions. The presumption is that the standard of review is reasonableness and "courts should derogate from this presumption only where required by a clear indication of legislative intent or by the rule of law: para. 16.

[55] The presumption that reasonableness is the standard of review is rebutted where the legislature indicates that a different standard of review is to apply. One example is "Where the legislature has provided a statutory appeal mechanism from an administrative decision to a court, thereby signalling the legislature's intent that appellate standards apply when a court reviews the decision": *Vavilov*, at para. 17.

[56] Although the law is somewhat unsettled regarding the applicability of *Vavilov* to appeals of arbitration decisions, the reasoning in the cases which say the appellate standard of review articulated in *Vavilov* applies to commercial arbitration decisions is persuasive: *Burwell et al v. Wozniak*, 2024 ONSC 5851, 174 O.R. (3d) 544, at paras. 35-46; *Kumer v. MTCC No 775*, 2021 ONSC 1181, at paras. 32-34.

[57] Section 45 of the *Arbitration Act* provides for a right of appeal. "The arbitral context does not change the need to give effect to the legislature's intention in creating a statutory appeal mechanism": *Burwell* notes at para. 44:

> Applying the appellate standards of review gives effect to the legislature's intention under the Arbitration Act, 1991. The appeal provision in s. 45 expressly uses the word "appeal". As the majority observed in *Vavilov*, at para. 44, "there is no convincing reason to presume that legislatures mean something entirely different when they use the word "appeal" in an administrative law statute than they do in, for example, a criminal or commercial law context". Then why assume the legislature means something different when it uses the word "appeal" in the arbitral context?

[58] The standard of review of the *Interpretation Award* on extricable questions of law is correctness.

ISSUE 3: No errors of law

[59] The main issue before the Arbitrator was whether the increases in the BSP Fees under s. 13 of the CSA can include a profit for Hearthstone. Section 13 provides:

> The Corporation hereby covenants and agrees to pay to Hearthstone Communities or its agent in advance, on a monthly basis, for the Service Package(s) to be provided by Hearthstone Communities to the Corporation and its unit owners and residents hereunder during the term of this Agreement […] The Basic Fees may be adjusted annually by such amounts as may be necessary in order to fully compensate Hearthstone Communities for any incremental costs it may reasonably incur in order to deliver the Service Package(s) to the unit owners and residents.

[60] The Arbitrator held that costs under s. 13 can include a profit for Hearthstone.

Factual matrix and wording of the CSA

[61] Mr. Cameron submits the Arbitrator erred in allowing factual matrix to overwhelm the wording of the CSA.

[62] At the Arbitration, Mr. Cameron argued that if Hearthstone's costs decreased, so must the BSP fees. He argued there was an implied term to this effect. The Arbitrator did not find that there was an implied term, and Mr. Cameron does not seek leave to appeal this finding. Mr. Cameron's position at the arbitration was that s. 13 of the CSA means that Hearthstone is only entitled to an increase if it is required to cover incremental costs' increases and that Hearthstone cannot increase BSP fees beyond what is essential for that purpose because "costs" does not mean "profits". He submitted that the factual matrix confirmed his interpretation of the CSA because it was negotiated between TSCC 2078 and Hearthstone and they did not provide for any other fee adjustment mechanism in the CSA.

[63] At the Arbitration TSCC 2078 submitted that s. 13 does not preclude profit and Hearthstone can make a profit, or a larger profit, if its cost of supplying the BSP services decreases.

[64] At the Arbitration, Hearthstone submitted that Mr. Cameron sought to re-write the CSA which he was not entitled to do, particularly as he is not a party to the CSA and the parties to the CSA do not dispute its terms. Hearthstone also submitted that the wording of the CSA is permissive, not mandatory. The BSP fees "may" be adjusted but an adjustment is not mandatory.

[65] The Arbitrator correctly summarized the principles of contractual interpretation at para. 12 of the *Interpretation Award* as follows:

a) the overriding concern is to determine the intent of the parties and the scope of their understanding;

b) to do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract;

c) while the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement;

d) evidence of the surrounding circumstances, or factual matrix, should consist only of objective evidence of the background facts at the time of the execution of the contract, that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting;

e) since factual matrix evidence is used as an interpretative aid and not to change or overrule the meaning of the written words chosen by the parties, its admission is not precluded by the parol evidence rule;

f) evidence of the subjective intentions of the parties by contrast, is not admissible; and

g) evidence of the parties' conduct subsequent to entering into the agreement does not form part of the factual matrix and should be admitted only if the contract remains ambiguous after considering its text and its factual matrix.

[66] Correctly referring to the applicable principles is not sufficient; the Arbitrator must also apply them: *Ontario Minister of Transportation*, at para. 23 citing *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, at para. 39, and *Teal Cedar Products Ltd. v. British Columbia*, 2017 SCC 32, [2017] 1 S.C.R. 688, at para. 44.

[67] To determine the objective intention of the parties the court must consider the actual words of the contract and the factual matrix surrounding the contract: *Earthco*, at para. 65.

[68] The interpretation of a contract must be grounded in the text and read in light of the entire contract. While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement: *Sattva*, at para. 57.

[69] "Applicable case law mandates a shift away from a method of contractual interpretation "dominated by technical rules of construction" and requires that words be understood in their factual matrix, with the paramount goal of ascertaining the parties' objective intention": *Earthco*, at para. 48 citing *Sattva*, at para. 47; but see *Pine Valley Enterprises Inc. v. Earthco Soil Mixtures Inc.*, 2022 ONCA 265, 468 D.L.R. (4th) 78, at para. 55.

[70] In *Wyerhaeuser Company Limited v. Ontario (Attorney General), 2017 ONCA 1007*, at para. 65, the court cited *Stava* and set out the correct approach:

> 1. Determine the intention of the parties in accordance with the language they have used in the written document, based upon the "cardinal presumption" that they have intended what they have said;
>
> 2. Read the text of the written agreement as a whole, giving the words used their ordinary and grammatical meaning, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective;

> 3. Read the contract in the context of the surrounding circumstances known to the parties at the time of the formation of the contract. The surrounding circumstances, or factual matrix, include facts that were known or reasonably capable of being known by the parties when they entered into the written agreement, such as facts concerning the genesis of the agreement, its purpose, and the commercial context in which the agreement was made. However, the factual matrix cannot include evidence about the subjective intention of the parties; and
>
> 4 Read the text in a fashion that accords with sound commercial principles and good business sense, avoiding a commercially absurd result, objectively assessed.

[71] Mr. Cameron submits that the following paragraphs from the *Interpretation Award* exemplify the Arbitrator allowing the factual matrix to overwhelm the wording of the contract:

> 31. I reject the argument that the profit was fixed at the outset of the contract and not subject to increases. That conclusion is not commercially reasonable in the context of a long-term continuing contract. The amount of profit in real money terms would diminish over time with inflation and would not match the increases in costs.
>
> 32. I find that the word "costs" in the CSA must have been intended to include a profit for Hearthstone. The words "fully compensate Hearthstone Communities for any incremental costs ..." must have contemplated that Hearthstone would earn a profit on those costs. Hearthstone was a for profit enterprise from the outset. The parties must have understood that Hearthstone was entitled to make a profit in the services charges. It makes commercial sense that there would be a profit element in the increase in service charges for the incremental costs in order to fully compensate Hearthstone. This conclusion is supported by the June 19, 2009 exchange of emails between Hearthstone and its legal counsel discussing the potential increases and the effect such increases might have on the future residents of 2078.

[72] Mr. Cameron relies on cases which define "costs" according to the dictionary definition: *Yukon Energy Corporation v. Yukon (Utilities Board)*, 2017 YKCA 15, 417 D.L.R. (4th) 71, at paras. 58-60; *Hudson King v. Lightstream Resources Ltd*, 2020 ABQB 149, at para. 507. In *Hudson King*, at para. 507, the court defines "cost" as "what [one] had to spend to get something." Mr. Cameron submits that "costs" does not include "profits".

[73] The Arbitrator was correct that contracts should be construed as a whole and in accordance with sound commercial principles and good business sense: *Scanlon v. Castlepoint Development Corp.*, 11 O.R. (3d) 744 (C.A.), at para. 88. He considered that the parties entered into a 99 year agreement and Hearthstone is a for profit company.

[74] This is not a case where the Arbitrator allowed the factual matrix to overwhelm the words of the contract. The Arbitrator considered the parties' intentions and the meaning of the words "fully compensate Hearthstone Communities for any incremental costs" in the CSA.

[75] The Arbitrator's interpretation of the words of the CSA is consistent with the court's decision in *Magill v. Expedia Inc.*, 2014 ONSC 2073 where the plaintiff objected to Expedia Inc. charging a profit. In *Expedia Inc.*, the contract provided: "The service fees compensate Expedia for its costs in servicing your travel reservation." Perell J. rejected the argument that this wording precluded a profit. He held that the word "compensate" can include a profit and adding the words "its costs in" did not create a promise not to charge a profit: at paras. 94, 96-101.

[76] The Arbitrator found that the parties must have intended that the CSA would include a profit for Hearthstone. He considered the words "fully compensate Hearthstone Communities for any incremental costs ..." and found that these words "must have contemplated that Hearthstone would earn a profit on those costs".

[77] I note that there is no suggestion anywhere in the CSA that Hearthstone would not earn a profit. There is nothing in the CSA to preclude Hearthstone including a profit in its fees. The CSA does not say that Hearthstone can **only** increase the Basic Fees in an amount equal to the increase in the costs it reasonably incurs in order to deliver the Service Package(s) to the unit owners and residents. Section 13 of the CSA says the BSP fees "may be adjusted annually by such amounts as are necessary", it does not say the BSP fees "may be adjusted annually by **only** such amounts as are necessary".

[78] The Arbitrator did not err by allowing the factual matrix to overwhelm the wording of the CSA. The Arbitrator correctly determined the intention of the parties by considering the wording of the agreement and the factual matrix and considered whether the proposed interpretation of the CSA accords with sound commercial principles and good business sense. The manner in which he did so, or the emphasis he placed on the wording of the CSA and the factual matrix, is the application of the principles of contractual interpretation and does not raise an extricable question of law. Once the Arbitrator engages in the application of the correct principles of contractual interpretation, the exercise becomes a matter of determining a question of mixed fact and law.

Construing the CSA as a Whole

[79] After the Arbitrator rendered the *Interpretation Award*, Mr. Cameron's counsel wrote on December 1, 2023, seeking clarification as follows:

> With respect to the holding, at paragraph 32 of the decision, that "the word "costs" in the CSA must have been intended to include a profit for Hearthstone," the question which naturally arises from this interpretation is, if such is the case under the CSA, how much of a profit is Hearthstone entitled to charge? Has a decision been made on this point? Or is this critical point to be the subject of a further round of submissions on interpretation?

[80] On December 11, 2023 the Arbitrator responded as follows:

> With respect to paragraph 32 of the decision, no decision has been made on the amount of the profit. It may or may not be relevant to other claims made by Mr. Cameron, but it is not a matter of contract interpretation.

[81] Mr. Cameron submits this response demonstrates an extricable error of law because it fails to give effect to the entire wording of the relevant sentence from para. 31 of the CSA as follows:

> The Basic Fees may be adjusted annually by such amounts as may be **necessary** in order to fully compensate Hearthstone Communities for any incremental costs it may **reasonably incur** in order to deliver the Service Package(s) to the unit owners and residents. [Emphasis added.]

[82] Mr. Cameron says that in para. 32 of the *Interpretation Award,* the Arbitrator merely quotes the phrase "fully compensate Hearthstone Communities for any incremental costs ..." and does not quote the words "necessary" or "reasonably incur" or how these words affect the interpretation of the terms "fully compensate" and "incremental costs".

[83] Mr. Cameron submits that the amount of profit Hearthstone is entitled to earn is a matter of contractual interpretation. He submits that the words "necessary" and "reasonably incur" crucially inform the meaning of the words "fully compensate" and "incremental costs" and that, by failing to turn his mind to this issue, the Arbitrator erred in his interpretation of the sentence as a whole. Mr. Cameron says that based on the ordinary grammatical meaning of "necessary," Hearthstone is only entitled to an increase if it is required to fully compensate its reasonably incurred incremental costs, meaning it cannot arbitrarily increase the fees beyond the amount that is essential to cover those costs.

[84] Simply because the Arbitrator did not specifically refer to the words "necessary" and "reasonably incur" from s. 13 of the CSA in para. 32 of the *Interpretation Award* does not mean he failed to construe the CSA as a whole by failing to take into account a specific and relevant provision of the contract. It is apparent from a reading of the whole of the *Interpretation Award* that the Arbitrator did consider the words "necessary" and "reasonably incur".

[85] The Arbitrator referred to the whole of s. 13 at para. 13 of the *Interpretation Award* where he put the following phrase in bold:

> **The Basic Fees may be adjusted annually by such amounts as may be necessary in order to fully compensate Hearthstone Communities for any incremental costs it may reasonably incur in order to deliver the Service Package(s) to the unit owners and residents.**

[86] The Arbitrator also quoted the bolded phrase above at para. 8 of the *Interpretation Award,* where he identified it as the provision in the CSA which addresses the amount of fees. It is obvious that the Arbitrator was alive to Mr. Cameron's submission regarding the words "necessary" and "reasonably incur". He said at paras. 14, 15 and 26 of the *Interpretation Award*:

> 14. The Claimants' submission is that two key conclusions may be drawn from the clause:
>
> a. That the Basic Fees are the specific amounts set out in Appendix 1, subject to annual increase, and

> b. The annual increases are to be by the amounts "necessary" to "fully compensate" Hearthstone for "any incremental costs"; all of which terms are undefined.
>
> 15. The Claimant submits that the word "necessary" means that Hearthstone is only entitled to an increase if the increase is required to fully compensate incremental costs and that it cannot increase the fees beyond what is essential for that purpose. Costs does not mean profits. Hearthstone would continue to earn the original profit but not increases in profits.
>
> 26. Looking at the wording of the agreement as a whole it was intended to ensure that the Hearthstone services would be available to residents of 2078 on a continuing basis, that Hearthstone could increase its cost of services to 2078 no more frequently than annually and that any increases would be based on fully compensating Hearthstone for its incremental costs. The costs charged were to be based on costs that were "necessary" to fully compensate Hearthstone for "any incremental costs".

[87] The Arbitrator ultimately rejected Mr. Cameron's argument that the profit was fixed at the outset of the CSA and not subject to increases over its 99 year term.

[88] He considered the wording of the CSA as a whole (including that the CSA was a "long-term continuing contract") and the factual matrix (including that Hearthstone is a for profit enterprise) and, as set out above, did not make an inextricable error of law in finding that the word "costs" "must have been intended to include a profit" and "[t]he words "fully compensate Hearthstone Communities for any incremental costs ..." must have contemplated that Hearthstone would earn a profit on those costs."

[89] The Arbitrator found that including an amount for profit was necessary for Hearthstone to be fully compensated for its incremental costs increases and that such profit was a reasonable part of the BSP fees charged by Hearthstone.

[90] The Arbitrator did not fail to take into account the meaning of the words "necessary" and "reasonably incur". The manner in which he considered the words, or the respective emphasis he placed on the wording of the CSA and the factual matrix, involves the application of the principles of contractual interpretation and is thus a question of mixed fact and law which does not raise an extricable error of law.

[91] The Arbitrator did not err by fail to construe a contract as a whole by failing to take into account a specific and relevant provision of the contract.

[92] Mr. Cameron is concerned that the practical consequence of the *Interpretation Award* is that the amount of profit Hearthstone may charge is unlimited. That may or may not be the case. The issue before the Arbitrator is not whether the CSA is unfair or whether the amount of profit that Hearthstone may charge is unlimited. The issue before the Arbitrator related to the BSP fee increases levied by Hearthstone and accepted by TSCC 2078 after 2019 in the context of Mr. Cameron's claims for oppression and intentional interference with economic relations.

[93] In his answer to Mr. Cameron's request for clarification the Arbitrator said:

> This decision only dealt with the interpretation of the contract. The conclusions reached in the decision are likely relevant for other claims made by Mr. Cameron but are not dispositive of those claims.
>
> With respect to paragraph 32 of the decision, no decision has been made on the amount of the profit. It may or may not be relevant to other claims made by Mr. Cameron, but it is not a matter of contract interpretation.
>
> With respect to paragraph 34 of the decision, it is intended to lead to the conclusion that no term can be implied into the agreement by Mr. Cameron. This decision was intended to be dispositive of the contractual basis for Mr. Cameron's claim.

[94] As the Arbitrator said, the amount of Hearthstone's profit might be relevant to Mr. Cameron's oppression claim. That is a question for the future, and is not the subject of this appeal.

[95] At the hearing of this appeal, Mr. Cameron submitted, for the first time, that that Arbitrator erred in failing to consider that the CSA provides for other revenue streams for Hearthstone. Mr. Cameron conceeds that the issue of other revenue streams was not raised in the hearing before the Arbitrator. Mr. Cameron submits that he is raising the issue of other revenue streams in response to the Arbitrator's statement in his response to the request for clarification that the amount of profit is not a matter of contractual interpretation.

[96] The provisions in the CSA regarding revenue streams for Hearthstone should have been raised in the context of Mr. Cameron's submissions regarding the need to consider the provisions of the agreement as a whole. I do not accept that the existence of other revenue streams only became relevant once the Arbitrator responded to the request for clarification.

[97] The general rule prohibits a party from raising entirely new arguments on appeal. It is unfair to raise a new argument on appeal where evidence might have been led below had it been known the matter would be an issue on appeal: *Kaiman v. Graham*, [2009] O. J. No, 324, 2009 ONCA 77, 245 O.A.C. 130 at para. 18; *York Condominium Corp. No. 221 v. Mazur*, [2004] O. J. No. 47, 2024 ONCA 5 at para. 12.

[98] To overcome the prohibition against raising new arguments on appeal Mr. Cameron must satisfy the three pre-conditions from *R. v. Reid*, 2016 ONCA 524, leave to appeal refused, [2016] S.C.C.A. No. 432, citing *R. v. Brown*, [1993] 2 S.C.R. 918, at p. 927:

i. the evidentiary record must be sufficient to permit the appellate court to fully, effectively, and fairly determine the issue raised on appeal;

ii. the failure to raise the issue at trial must not be due to tactical reasons; and

iii. the court must be satisfied that no miscarriage of justice will result from the refusal to consider the new argument on appeal.

[99] An appellant may not raise an issue that was not argued at an arbitration unless all relevant evidence is in the record: *Arnand Murtty v. Security National Insurance Co.*, 2012 ONFSCDRS 113, at para. 3, citing *Budd and Personal Insurance Company of Canada*, [2001] O.F.S.C.I.D. No. 6, and *Blake and Jevco Insurance Company*, [2001] O.F.S.C.I.D. No. 83.

[100] In this case, there was no evidence of the details or significance of these other revenue streams. Mr. Cameron did not seek leave to introduce new evidence concerning the quantum of these other revenue streams. It is not possible to determine if these other revenue streams would have affected the Arbitrator's decision regarding the commercial reasonableness of Mr. Cameron's interpretation of the CSA had they been brought to his attention. The evidentiary record is not sufficient to allow me to fully, effectively and fairly determine whether the Arbitrator's failure to consider these other revenue streams was an extricable error of law that would justify allowing the appeal.

[101] Leave to raise new arguments should not be granted where it is unclear whether the failure to raise the issue below was a tactical decision: *Cannon v. Gerrits*, 2022 ONSC 6867, at para. 41; *Zuchelkowski v. Zenith Insurance Co.*, 2024 ONSC 3512 at para. 17. Leave should not be granted where the appellant fails to adequately explain why the issue was not raised below: *R. v. Kuruvilla*, 2012 ONSC 5331, at para. 17.

[102] Mr. Cameron did not provide evidence that this failure was an oversight. He did not provide any evidence concerning the reason for the failure to draw the Arbitrator's attention to the other revenue streams other than submitting that it was not relevant until after the clarification, which submission I have rejected.

[103] I do not grant Mr. Cameron leave to argue that the existence of other revenue streams is a reason why the parties did not intend s. 13 to include any profit in the BSP fees and that the Arbitrator committed an error of law by not considering other revenue streams.

Hearthstone's Subjective Intentions

[104] The Plaintiff submits that the Arbitrator made an extricable error of law by considering Hearthstone's subjective intentions when he considered emails exchanged between Hearthstone and its counsel (the "Emails").

[105] In the Emails, Hearthstone discusses with its counsel that they have not increased the fees since the fees were established 4-5 years earlier. They discuss the amount and timing of potential increases. They discuss the cost of labour, wages and supplies that are "now 4-5 years behind". They discuss whether Hearthstone should keep the rates the same in the first year of operation and "catch up" in the second year to make up for the 4-5 years where there were no increases or whether to "phase in" any significant increases over several years. They ultimately decide on a 3% increase to give the owners "a true picture of what is ahead".

[106] The parties to the CSA are TSCC 2078 and Hearthstone. In its factum, TSCC 2078 submits that TSCC 2078 was not registered, and was still controlled by Hearthstone, at the time the CSA was made. TSCC 2078 therefore submitted that Hearthstone was in fact "both parties" to the

CSA. In its oral argument on the motion TSCC 2078 admitted that Hearthstone was not, in fact, on both sides of the CSA and that the parties to the agreement were the developer of the condominium Davies Smith and Hearthstone. .

[107] Evidence of subjective intentions has no independent place in the determination of contractual meaning: *Waldron*, at paras. 76 and 82.

[108] The Arbitrator expressly said that evidence of the surrounding circumstances should consist only of objective evidence of the background facts, meaning knowledge that was or ought to have been within the knowledge of both parties, and that evidence of the subjective intentions of the parties is not admissible: *Interpretation Award* at paras. 12 d) and f).

[109] The Arbitrator relied on the Emails to support his factual findings that Hearthstone was a for profit enterprise from the outset and that the parties must have understood that Hearthstone was entitled to make a profit in the BSP fees: *Interpretation Award* at para. 32.

[110] The fact that Hearthstone was a for-profit company must have been known to both parties at the time the CSA was made.

[111] The Arbitrator did not rely on Hearthstone's subjective intentions; he relied on what was patently obvious and what both parties must have known.

[112] Even if I am wrong and the Emails are evidence of Hearthstone's subjective intentions to earn a profit, and the Arbitrator erred in considering them, it is of no moment because the Emails simply confirm that Hearthstone was a for-profit enterprise, which was known or should have been known to the parties in any event and part of the factual matrix.

ISSUE 4: Alleged Bias

[113] Per s. 46(1), on a party's application, the court may set aside an award on any of the following grounds:

> 6. The applicant was not treated equally and fairly, and was not given an opportunity to present a case or to respond to another party's case, or was not given proper notice of the arbitration or of the appointment of an arbitrator.
>
> 8. An arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias.

[114] Section 19 of the *Arbitration Act* provides that the parties to an arbitration shall be treated equally and fairly and that each party shall be given an opportunity to present a case and to respond to the other parties' cases. Section 19 incorporates the principles of natural justice: *McClintock v. Karam*, 2015 ONSC 1024, 124 O.R. (3d) 616, at para. 67.

[115] The Arbitrator determined the issues of contractual interpretation, and whether a term should be implied, on a preliminary motion prior to the adjudication of the other issues raised in

the arbitration. The balance of the issues to be decided by the Arbitrator include whether TSCC 2078's conduct oppressed Mr. Cameron.

[116] In the *Interpretation Award* the Arbitrator said:

> 33. The Claimant argues that the principle of *contra proferentem* applies in the circumstances of this case. Since this was a foundation contract made by the developer on behalf of the future 2078 and Hearthstone, the Claimant is a third party to the contract. Neither 2078 nor Hearthstone, the actual parties to the contract, assert that there is an implied term. The Claimant has no standing to make a claim for implying a term into the CSA. The doctrine of *contra proferentem* does not apply in the circumstances of this case.
>
> 34. While the Claimant is an interested third party affected indirectly by the contract he does not have standing to enforce or vary the contract. While 2078 may well have had good reason to question the charges in question it has not done so.
>
> 35. As a matter of interpretation only 2078 had the right to question the costs. It chose not to do so and had the sole right to make that choice. Owners can disagree with the actions of the condominium and there are statutory rights and other remedies of owners in that situation.
>
> 36. On the record on this motion and given my findings on the interpretation issues, and without deciding the issues on the other causes of action raised by the Claimant, I doubt that the conduct of 2078 is oppressive to the Claimant. There is no evidence that the Claimant as owner was affected in any way that did not affect the other unit owners or that the Claimant has suffered some burden or cost not shared by the other unit owners in 2078. Although the Claimant has raised legitimate business concerns about the costs charged by Hearthstone, I have no evidence that the business judgment of the board of directors and management was improper or illegal. That business judgment could even be legitimately exercised by them to accept charges from Hearthstone for reasons beyond the strict wording of the agreement. The Claimants' economic relations with 2078 and the other owners of units in 2078 are governed by the condominium agreements, the governance structure of the condominium and the statutes. The Claimant bought the unit with knowledge of the agreements and presumed knowledge of the statute. Since I am not making a finding on these causes of action in this decision, I will not assume any additional facts or speculate on the circumstances.

[117] In response to Mr. Cameron's request for clarification the Arbitrator wrote:

> This decision only dealt with the interpretation of the contract. The conclusions reached in the decision are likely relevant for other claims made by Mr. Cameron but are not dispositive of those claims.
>
> […]

> With respect to the obiter statement about my doubt that the conduct of 2078 is oppressive, I was not making any final conclusion but simply noting that the conclusions in this decision would narrow the relevant facts and circumstances supporting an oppression claim and make it more difficult to prove. It was not intended to pre-judge any other claim that Mr. Cameron may have.
>
> […]
>
> I reject your concerns about a reasonable apprehension of bias. All parties to this matter have been treated equally and fairly and will continue to be treated equally and fairly as this matter proceeds.

[118] Mr. Cameron alleges there is a reasonable apprehension of bias. He submits that it is apparent that the parties will not be on an even ground when addressing the oppression claim since the Arbitrator has already formed an opinion and expressed skepticism as to the merits of the claim such that it can readily be inferred that the Arbitrator has already made up his mind to the extent that further representations from Mr. Cameron are unlikely to be effective.

[119] The strong presumption of judicial impartiality applies to arbitrators: *Jacob Securities Inc. v. Typhoon Capital B.V.*, 2016 ONSC 604, at para. 40.

[120] The test for determining whether there is a reasonable apprehension of bias was set out by de Grandpré J. *in Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369, at pp. 394-395 as follows:

> What would an informed person viewing the matter realistically and practically -- and having thought the matter through – conclude? Would he think that it is more likely than not that [the Arbitrator], whether consciously or unconsciously, would not decide fairly?
>
> I can see no real difference between the expressions found in the decided cases, be they "reasonable apprehension of bias", "reasonable suspicion of bias", or "real likelihood of bias". The grounds for this apprehension must, however, be substantial and I entirely agree with the Federal Court of Appeal which refused to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience".
>
> This is the proper approach which, of course, must be adjusted to the facts of the case. The question of bias in a member of a court of justice cannot be examined in the same light as that in a member of an administrative tribunal entrusted by statute with an administrative discretion exercised in the light of its experience and of that of its technical advisers.
>
> The basic principle is of course the same, namely that natural justice be rendered. But its application must take into consideration the special circumstances of the tribunal.

[121] It is important that the Arbitrator remains open to persuasion and refrains from expressing strong views that might disclose a predisposition to decide one way or the other: *McClintock*, at

para. 75. In *McClintock*, the court found an informed person would conclude that the Arbitrator had made up his mind and would not decide the case fairly: at para. 77.

[122] The objective of the test is to ensure not only the reality, but the appearance of a fair adjudicative process: *GFC Landscaping v. Januszewigz*, 2018 ONSC 637, at para. 11, citing *Yukon Francophone School Board, Education Area No. 23 v. Yukon Territory (Attorney General)*, 2015 SCC 25, 2 S.C.R. 282, at paras. 20-24.

[123] Prejudgment of the case is a species of bias: *Re Downer and the Queen*, [1977] O.J. No. 417 (S.C.), at paras. 7-10.

[124] An adjudicator can hold or express tentative views, provided that a reasonable, fully informed, objective person would appreciate that he or she still had an open mind on the matter in issue: *Authorson (Litigation Guardian of) v. Canada (Attorney General)*, [2002] 161 O.A.C. 1 (Div. Ct.), at para. 14.

[125] In *100 Bloor Street West Corporation v. Barry's Bootcamp Canada Inc.*, 2025 ONCA 447, at para. 36, the court considered whether comments by a judge at a case conference demonstrated that he had "effectively predetermined" the issue. The court said:

> The application judge, having already held a case conference and adjudicated the application, was familiar with the issues, and it is clear from his case conference endorsements that the parties had put their positions before him and knew beforehand that they would be expected to do so. It is inevitable in these circumstances that the judge gained a preliminary impression of the likely merits of the parties' positions. He ultimately decided not to give the guidance that Barry's sought but, concerned about the costs and delays in fully adjudicating the issues, and mindful of his role as a case conference judge in an overburdened court, he encouraged the parties to settle. He shared what he explicitly said was his: (1) "preliminary view", (2) "based on the materials before [him]" (emphasis added). It is obvious that he did this to encourage 100 Bloor to reflect on its position with an appreciation of the challenges it faced, while assuring the parties that he had an open mind and would decide the motion based on the materials and arguments made at the motion. 100 Bloor has not persuaded me that it was inappropriate for the judge to make such comments while conducting a case conference.

[126] In the present case, the interpretation of the CSA is at the heart of Mr. Cameron's claim for oppression under s. 135 of the *Condominium Act*. He pleads that TSCC 2078 has failed to enforce its rights under the CSA and failed to ensure that Hearthstone complies with its obligations under the CSA. The decision in the *Interpretation Award* is critical to these allegations, as Mr. Cameron has set out in the Notice of Arbitration as follows:

> [T]he Corporation has failed to enforce its rights and to ensure compliance by Hearthstone Communities with its obligations pursuant to the Hearthstone Agreement. Specifically, the Corporation has permitted Hearthstone Communities to raise the BSP fees notwithstanding the long-term withdrawal of most of the BSP services, and the inevitable cost savings which have accrued to Hearthstone Communities as a result. Further, the Corporation has

failed to insist that Hearthstone Communities pass the savings it has achieved through the withdrawal of BSP services to the residents in the form of rebates or reductions to the BSP fees;

[127] It is not surprising that the Arbitrator expressed some preliminary views regarding the impact of his ruling in the *Interpretation Award* on the remaining issues. The primary basis for Mr. Cameron's oppression claim against TSCC 2078 is that TSCC 2078 ought to have prevented Hearthstone from including profit in the BSP fees. If, as the Arbitrator found, Hearthstone is permitted to include profit in the BSP fees, then it follows that TSCC 2078 did not fail to properly enforce the CSA against Hearthstone.

[128] The Arbitrator did not express a firm opinion such that it could be inferred that further representations from Mr. Cameron were unlikely to be accepted. The Arbitrator specifically refrained from expressing a firm opinion and left the door open. He said "without deciding the issues on the other causes of action raised… I doubt that the conduct of 2078 is oppressive to the Claimant". He provided some reasons for his doubt and concluded "Since I am not making a finding on these causes of action in this decision, I will not assume any additional facts or speculate on the circumstances."

[129] In his response to the request for clarification, the Arbitrator said he was not making any final conclusions, but simply noted that his conclusions in *Interpretation Award* would narrow the relevant facts and circumstances supporting an oppression claim and make it more difficult to prove. He said his award "was not intended to pre-judge any other claim that Mr. Cameron may have". He assured the parties that "[a]ll parties to this matter have been treated equally and fairly and will continue to be treated equally and fairly as this matter proceeds."

[130] Forming tentative impressions or even conclusions does not necessarily create a reasonable apprehension of bias if the decision maker remains open to persuasion and is not predisposed: *McClintock*, at para. 75.

[131] The Plaintiff relies on *Central Capital Corp. v. 819187 Ontario Ltd.*, 1993 CarswellOnt 4447 (Ont. C.A.). This case is distinguishable. In *Central Capital Corp.*, the judge hearing a summary judgment motion, held "I find in the circumstances that at that time, the defendant was clearly in contempt of the order of Eberle J." Subsequently a contempt motion was heard before the same judge and the court found that there was a reasonable apprehension of bias. In the present case, the Arbitrator's words fall far short of a clear finding.

[132] A person having seen both the *Interpretation Award* and the response to the request for clarification, and viewing the matter realistically and practically — and having thought the matter through — would likely conclude that the Arbitrator had expressed some preliminary views but would not conclude that the Arbitrator, whether consciously or unconsciously, would not decide fairly.

[133] The *Interpretation Award* is not set aside under s. 46.

COSTS

[134] I encourage the parties to agree on costs. If they cannot agree, I will consider brief written submissions. These costs submissions shall not exceed five pages in length (not including any bill of costs or offers to settle). The Defendants shall file their written submissions within ten days of the date of these reasons. The Plaintiff's responding submissions shall be delivered within five days of receipt of the Defendant's costs submissions. Any reply submissions shall be delivered within three days of receipt of responding submissions and shall be no more than three pages long. Costs submissions shall be uploaded to CaseCenter and delivered to me by way of email to my Judicial Assistant.

Merritt J.

Date: July 31, 2025