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IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION (GENERAL)

Citation: *Dewey v. Kruger Inc.*, 2017 NLTD(G) 203
Date: December 15, 2017
Docket: 201504G0120

BETWEEN:

RICHARD DEWEY, WILLIAM PERRY, CHARLOTTE JACOBS, WILLIAM TURNER

PLAINTIFFS

AND:

KRUGER INC., DEER LAKE POWER COMPANY LIMITED, CORNER BROOK PULP & PAPER LIMITED, THE TOWN OF DEER LAKE, AND HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND LABRADOR

DEFENDANTS

BROUGHT UNDER THE *CLASS ACTIONS ACT*

Before: Justice David F. Hurley

Place of Hearing: Corner Brook, Newfoundland and Labrador

Summary:

Corner Brook Pulp & Paper Limited, one of the Defendants, made application to have Court proceedings initiated by the Plaintiffs stayed as legislation provided that the matter be referred to mandatory arbitration.

The application was granted with no order as to costs.

Appearances:

Raymond F. Wagner, Q.C. and Madeleine A.D. Carter	Appearing on behalf of the Plaintiffs
Thomas J. O'Reilly, Q.C. and F. Richard Gosse	Appearing on behalf of Corner Brook Pulp & Paper Limited
Daniel M. Boone, Q.C.	Appearing on behalf of the Town of Deer Lake
Philip W. Osborne	Appearing on behalf of Her Majesty the Queen in Right of Newfoundland and Labrador
No appearance	on behalf of Deer Lake Power Company Limited and Kruger Inc.

Authorities Cited:

CASES CONSIDERED: *Hammersmith & City Railway Co. v. Brand*, [1869], L.R. 4 H.L. 171 (Eng.); *Manchester Corp. v. Farnsworth*, [1930] A.C. 171; *Ryan v. Victoria (City)*, [1999] 1 S.C.R. 201; *Tock v. St. John's Metropolitan Area Board*, [1989] 2 S.C.R. 181; *Ruddell v. BC Rail Ltd.*, 2007 BCCA 269, *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929; *Bisaillon v. Concordia University*, 2006 SCC 19; *Long Harbour Employers Assn. Inc. v. Resource Development Trades Council of Newfoundland and Labrador*, 2011 NLTD(G) 167; *Seidel v. Telus Communications Inc.*, 2011 SCC 15; *Dell Computer Corporation v. Union des consommateurs*, 2007 SCC 34;

Rogers Wireless Inc. v. Muroff, 2007 SCC 35; *Wheeler v. Hwang*, 2007 NLTD 145; *Hurley v. Slate Ventures Inc.* (1996), 136 Nfld. & P.E.I.R. 341, 423 A.P.R. 341 (Nfld. S.C. (T.D.))

STATUTES CONSIDERED: *Judicature Act*, R.S.N.L. 1990, c. J-4; *International Paper Co., Ltd. Act*, 18 Geo. V, c. 4; *Newfoundland Products Corporation Act*, 6 Geo. V, c. 4; *Nfld. Power and Paper Co., Ltd., Act*, 14 Geo. V, c. 1; *Lands Act*, S.N.L. 1991, c. 36; *Class Actions Act*, S.N.L. 2001, c. C-18.1; *Petroleum and Natural Gas Act*, R.S.N.L. 1990, c. P-10, s. 21; *Petroleum Regulations*, C.N.L.R. 1151/96, s. 68; *Muskrat Falls Project Land Use and Expropriation Act*, S.N.L. 2012, Part II, c. M-25

TEXTS CONSIDERED: Fleming, J.G., *The Law of Torts*, 5th ed. (Sydney: Law Book, 1977)

REASONS FOR JUDGMENT

HURLEY, J.:

INTRODUCTION

[1] This is an application by Corner Brook Pulp & Paper Limited (the "Company") one of the Defendants seeking an Order pursuant to Section 97 of the *Judicature Act*, R.S.N.L. 1990, c. J-4 staying the within proceedings pending the arbitration of the Plaintiffs' claim as required by statute.

[2] The Plaintiffs commenced the proposed class action against the five named Defendants on May 22, 2015. The proceeding asserts a cause of action against the Defendants and specifically against the Company arising from the creation and operation of a "Water Control System" related to a hydroelectric power generating system which provides power to the Company's paper mill at Corner Brook.

[3] The application to stay proceedings is opposed by the Plaintiffs, and by the Defendants: The Town of Deer Lake (the "Town") and Her Majesty the Queen in Right of Newfoundland and Labrador (the "Province"). Kruger Inc. did not

participate in the application nor did Deer Lake Power Company Limited. The Court was advised that the latter corporate entity is no longer in existence.

FACTS

[4] Since 1915 the Company has operated under agreements with the Province which were incorporated into legislation. The Company maintains that the legislation provides that disputes arising from such operations, including any alleged injurious impact upon private rights, including the cause of action alleged by the Plaintiffs in these proceedings be resolved by arbitration. Therefore, the Company argues that these proceedings must be stayed.

[5] The Company maintains that the Plaintiffs' claims are subject to binding arbitration according to arbitration provisions now set forth in the *International Paper Co., Ltd. Act*, 18 Geo. V, c. 4 (the "*1927 Act*"). As stated, the interpretation of the Company that the legislation provides for binding arbitration of the Plaintiffs' claim is opposed by the Plaintiffs, the Town and the Province.

ISSUES

[6] The following issues are submitted as relevant to the determination of this matter:

1. Is there a provision for mandatory arbitration that prohibits the Plaintiffs' action against the Company?

2. In any event, should the Court exercise its discretion and refrain from staying the proceedings against the Company?

CONSIDERATION

[7] In order to determine whether the Plaintiffs' claim should be stayed, the Court must interpret the various arbitration provisions in legislation commencing in 1915 with any applicable changes in 1923 and ultimately in 1927 when the Company alleges that the legislation confirmed the recourse to binding arbitration for the Plaintiffs' claim.

[8] There is general consensus among the parties that the relevant legislation and agreements include the following:

(i) An Act for the Confirmation of a Contract with the Newfoundland Products Corporation, Limited (the "*1915 Act*") and the attached Schedule (the "1915 Agreement").

(ii) An Act for the Confirmation of a Contract with the Newfoundland Products Corporation, Limited (the "*1923 Act*") and Part I of the Schedule to the *1923 Act* and Part II of the Schedule to *1923 Act* (the "1923 Agreements").

(iii) An Act for the Confirmation of an Agreement between the Government and International Paper Company and Newfoundland, Limited (the "*1927 Act*") and the attached Schedule (the "1927 Agreement").

The 1915 Legislation

[9] The *1915 Act* and its schedule, the 1915 Agreement, are the instruments whereby the then Government of Newfoundland conveyed and demised to the Newfoundland Products Corporation, Limited, a predecessor of the Company, "the water power or powers in and upon the Humber River, and in and upon Junction Brook" with certain rights and privileges. The recitals of the 1915 Agreement state that the Newfoundland Products Corporation, Limited has been incorporated "for the purpose chiefly of developing certain waters for the manufacture of fertilizers

and such other articles and substances in connection with the Company's business." [1]

[10] As is recognized by the parties, there are certain clauses dealing with arbitration in the 1915 legislation. However, a review of the legislation supports the position that Claimants under the legislation at that point in time maintained the right to pursue their claim in Court without being restricted to arbitration. I will now deal with the various clauses dealing with arbitration in the 1915 legislation:

1915 Act

[11] Section 13 of the *1915 Act* amends the arbitration procedure set out in Clause 10 of the 1915 Agreement relating to compensation where the Company has expropriated land. This provision is not applicable to the present proceedings.

[12] Section 19 of the *1915 Act* deals with arbitration involving claims against the Company resulting in a decrease or deprivation of water power by the holder of a grant, license or timber lease. This provision is not applicable to the present proceedings.

[13] Section 14 of the *1915 Act* is of significant relevance to these proceedings as it amends or extends the rights of claimants to pursue an action in Court without being restricted to arbitration as required in certain provision of the 1915 Agreement. Section 14 provides:

> 14 Nothing herein or in the Schedule hereto in relation to the settlement of claims by arbitration shall be held or construed to prejudice or exclude the right of any claimant to institute an action in a Court of competent jurisdiction in respect to any such claim.

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[1] The 1915 Agreement (second recital)

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1915 Agreement

[14] Clause 2 of the 1915 Agreement refers to dams with may be constructed by the Company in Labrador. Should the structures be a benefit to other companies, a proportionate cost of maintenance and operation shall be paid to the Company. In the absence of an agreement the amount to be paid shall be determined by arbitration. This provision is not relevant to these proceedings.

[15] Clause 3 of the 1915 Agreement obliges the Company to provide electrical services to certain parties in Labrador. In the absence of an agreement as to compensation, the matter is to be settled by arbitration. This provision is not relevant to these proceedings.

[16] Clause 10 of the 1915 Agreement permits the Company to expropriate certain lands with a different procedure from that set out in Clause 3 of the 1915 Agreement. Section 55 of the *Lands Act* sets out the procedure to be used. This procedure was again changed in Clause 13 of the *1915 Act*. This provision is not relevant to these proceedings.

[17] Clause 15 of the 1915 Agreement is also of particular relevance to these proceedings. It provides as follows:

> 15 If the Company, in or by reason of the exercise of any of the rights hereby granted, submerge, destroy, damage or injuriously after any private rights, interest, lands or property, and shall be unable to agree with the owner thereof as to compensation to be paid Therefore, the Company, with the consent of the Governor in Council, may proceed with the exercise of said rights, by the presents granted to the said Company, and the compensation to be paid by the Company to the owner, for or in respect to such rights, interest, lands or property, shall be settled by arbitration in the manner hereinbefore provided.

[18] Clause 16 of the 1915 Agreement is similar to Clause 15 except it provides for compensation for damages affecting Crown or public rights which are to be settled by arbitration. This provision was not referred to by the parties.

[19] The damages claimed by the Plaintiffs against the Company in negligence and in particular nuisance are those generally described in Clause 15 of the 1915 Agreement. However, the Province has pointed out that Clause 15 does not address the issue of liability. It maintains arbitration could be considered when the Company has accepted liability, but is unable to reach an agreement as to the amount of compensation to be paid.

[20] In my opinion, Clause 15 is a provision Courts sometimes refer to a compensation clause whereby liability for a nuisance-causing activity is not an issue. Clause 15 does not state the reason for the absence of the requirement in this Clause to establish liability as against the Company. However, compensation clauses are often provided where a potential nuisance may occur where the activity is carried out under statutory authority. The basic rule is that if the nuisance is an inevitable result of legislatively authorized undertaking, and was not negligently carried out, no liability attaches. (*Hammersmith and City Railway Co. v. Brand*, [1869], L.R. 4 H.L. 171 (Eng.); *Manchester v. Farnsworth*, [1930] A.C. 171 at para. 183; *Ryan v. Victoria (City)*, [1999] 1 S.C.R. 201 at para. 238).

[21] Compensation clauses are seen as an aspect of policy to distribute the damages among all who benefit from an activity rather than to have one or more individuals to be left uncompensated.

[22] Reference to compensation clauses was made in Fleming, J.G., *The Law of Torts*, 5th ed. (Sydney: Law Book, 1977) at para. 23 wherein it is stated, "Customarily cited as axiomatic is the principle that if, the nuisance is an inevitable consequence of an authorized undertaking, it is implicitly legalized and, in the absence of a compensation clause, all legal redress is barred".

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[23] Similarly, Sopinka, J. observed in *Tock v. St. John's Metropolitan Area Board,* [1989] 2 S.C.R. 1181 at para. 91:

> 91 The rationale of the defence is that if the legislature expressly or implicitly says that a work can be carried out which can only be done by causing a nuisance, then the legislations has authorized an infringement of private rights. If no compensation provision is included in the statute, all redress is barred. ...

[24] I therefore conclude that liability is not an issue in Clause 15 of the 1915 Agreement.

[25] The Company refers to Section 14 of the *1915 Act* as an incongruity or an inconsistency in the legislation. I do not agree. In Section 1 of the *1915 Act*, the legislation clearly states that the agreement "dated the 16th day of April A. D. 1915 and forming the schedule to this Act, is hereby approved and confirmed, subject to the conditions and exceptions hereinafter contained". Therefore, where there is a difference or conflict between *1915 Act* and the 1915 Agreement, the *1915 Act* take precedence. Quite simply, when the *1915 Act* was passed on June 5, 1915, the legislation changed some aspects of the agreement entered into by the parties on April 16, 1915.

[26] Therefore, I find that under the 1915 legislation, a claimant had the right to pursue a claim in Court and was not restricted to arbitration by virtue of Section 14 of the *1915 Act*.

[27] To fully determine the Company's position that the Plaintiffs' claim should be stayed and determine by arbitration, it is necessary to review the impact of the legislation of 1923 and 1927.

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The 1923 Legislation

[28] The *1923 Act* states that its purpose is to amend the *1915 Act*. In its preamble, reference is made to the speedy development of the water powers of the Humber Valley and the intentions to modify certain conditions in the 1915 Agreement attached as a Schedule to the *1915 Act*. As well, the legislation noted that the Newfoundland Products Corporation, Limited has changed its name to the Newfoundland Power and Paper Company, Limited.

[29] The 1923 legislation consists of three parts.

1923 Act

[30] First, there is the main section of the *Act* passed July 13, 1923, which may be referred to as the *1923 Act*. There are various sections in this part of the *Act* modifying or confirming matters dealt with in the *1915 Act* and 1915 Agreement including two provisions confirming hunting rights on lands transferred to the Company. There are no provisions in this part of the legislation which affects the right of claimants to pursue remedies in Court. As well, the issue of arbitration is not referred to in this aspect of the legislation.

1923 Agreements

[31] The 1923 legislation contains a schedule consisting of Part I and Part II, each part being a contract previously entered into by the Parties:

[32] Part I of the Schedule to the *1923 Act* is an agreement dated June 9, 1923 between Newfoundland Power and Paper Company, Limited, Whitworth & Company, Limited and the Government of Newfoundland. This document is referred to as a financial agreement for the project. This agreement does not refer to matters relevant to these proceedings.

[33] Part II of the Schedule to the *1923 Act* is an agreement between the Government of Newfoundland and Newfoundland Power and Paper Company, Limited. According to its introductory recital, the agreement relates to lands granted to The Reid Newfoundland Company, in which certain interests were also conveyed to the Company. The agreement also contains certain other peripheral matters.

[34] The parties raised Clause 8 of Part II of the Schedule to the *1923 Act*. Clause 8 provides:

> 8 ANY questions, disputes or differences arising out of, under or in connection with this agreement or the execution thereof shall, on the application of either party, be referred to the award and find determination of two disinterested persons, one to be appointed by each of the parties in difference, and if the arbitrators fail to agree, then to the award, umpirage and find determination of an umpire to be appointed by the arbitrators, and the award of such arbitrators or umpire shall be final and binding on both parties, and any such reference shall be deemed a submission to arbitration within the meaning of the Judicature Act, Chapter 83 of the Consolidated Statues of Newfoundland (Third Series).

[35] The Company takes the position that Clause 8 of the Agreement being Part II of the Schedule to *1923 Act* made arbitration mandatory in all matters without preserving any prerogative to litigate. I do not accept the Company's argument on this issue.

[36] The Plaintiffs have submitted, in my opinion correctly, that Clause 8 relates only to the specific agreement set out in Part II of the Schedule to the *1923 Act*. Clause 8 is restricted in application to "questions, disputes or difference arising out of, under or in connection with this Agreement or the execution thereof" [emphasis added]. The Part II agreement was executed more than a month earlier than the passage of the *1923 Act*. As well "this Agreement" in Clause 8 does not refer to or include the 1915 Agreement as by Clause 1 of Part II of the Schedule to the *1923 Act*, the agreement dated April 16, 1915 is defined as "The Agreement of 1915".

[37] Accordingly, Clause 8 of Part II of the Schedule to the *1923 Act* does not amend or vary the rights of a claimant to initiate and pursue a claim in Court as was provided in the 1915 legislation. The interpretation of this Clause is not relevant after the passage of the *1927 Act* with the annexed agreement.

THE 1927 LEGISLATION

[38] The 1927 legislation must now be reviewed to ascertain any effect it may have on these proceedings.

1927 Act and 1927 Agreement

[39] The *1927 Act* was passed September 6, 1927 confirming an agreement dated August 2, 1927 between the Government of Newfoundland and the International Paper Company (the "1927 Agreement"). The objective of the *1927 Act* is stated to be the acquisition by the International Paper Company Co. Ltd. of all the property and assets of Newfoundland Power and Paper Company, Limited.

[40] For the purposes of dealing with the issue before this Court, the Company relied primarily on Clause 2(n) of the 1927 Agreement, which provides:

> (n) Clause 8 of the Agreement of 1923 shall not apply to the Company; but the following provision shall apply to the Company:
>
> Any questions, disputes or differences between the parties hereto, or between the Company and third parties where provision for arbitration is made herein, or in the Act or Agreement of 1915 or any of the Subsequent Acts and Agreements, arising out of, under or in connection with this Agreement or the Agreement of 1915 or any of the Subsequent Acts and Agreements, or the execution thereof, shall on the application of either party be submitted to the arbitration of three arbitrators and the provisions of Part VI of the Judicature Act, Chapter 83 of the Consolidated Statues (Third Series), except Section 212 and except as modified in this Clause, shall apply to any such submission. One arbitrator shall be appointed by each of the parties and the third by the

> two so appointed. If either party does not appoint an arbitrator within twenty days after request in writing from the other party, or if the two arbitrators do not appoint the third within twenty days of the appointment of the second of such two, the Supreme Court or a Judge thereof may upon application be either party appoint such arbitrator or arbitrators. The award of the arbitrators or any two of them shall be final and binding upon the parties thereto, unless appeal therefrom shall be made to the Supreme Court and notice of such appeal shall be filed in the Registry of the Supreme Court within thirty days from the date of such award.

[41] The parties generally conceded that the Plaintiffs' right to initiate and maintain their action in Court depended upon the proper interpretation of that Clause. As well, it was generally accepted that the 1915 legislation gave claimants this right. Contrary to the argument put forth by the Company, I found that this right granted in Section 14 of the *1915 Act* was not changed by legislation passed in 1923.

[42] In my opinion, the 1927 legislation removed the rights of the claimants such as the Plaintiffs to pursue their claim in Court as originally provided in Section 14 of the *1915 Act*. The opening wording of Clause 2 of the 1927 Agreement confirms the rights and obligations of the Company except as affected by the various provisions of that Clause. While Clause 2(n) does not explicitly refer to Section 14 of the *1915 Act*, the matters set out in that clause effectively take away the right to litigate a claim in Court in favor of mandatory arbitration.

[43] First of all, Clause 2(n) of the 1927 Agreement applies to "any questions, disputes or differences" both between the Government and the Company and between the Company and third parties where there is a provision for arbitration. Contrary to the position advanced by the Town, it would be unreasonable to exclude claims between the Company and third parties from the scope of this clause in view of the language of the provision. There was no convincing argument why these parties and their disputes should be treated differently.

[44] According to the Plaintiffs, the requirement that the relevant claims be subject to a "provision for arbitration" means the Company must identify a clause that actually implies mandatory arbitration relating to these proceedings. The Plaintiffs then argue that as Section 14 of the *1915 Act* gives the claimants the right to litigate in Court, there is no provision mandatory for arbitration. However, Clause 2(n) makes no reference to mandatory arbitration. The various clauses and provisions relating to claims and in particular Clause 15 of the 1915 Agreement contain an optional provision for arbitration which can be chosen by the claimants.

[45] The fact that a claimant could opt to initiate a claim in Court does not mean that there was no provision for arbitration.

[46] As well, the Plaintiffs maintain that Section 14 of the *1915 Act* has not been replaced or repealed by Clause 2(n), and that the clause relates to procedure only. I do not accept this position as Section 14 and Clause 2(n) cannot continue together. Section 14 gave the option of arbitration or Court to a claimant, while Clause 2(n) mandated that both parties had to resort to arbitration.

[47] Finally, reference is made to Clause 5 of the 1927 Agreement which provides that the Company will pay for damages caused by the regulation of water in the streams referred to in Clause 1 of 1915 Agreement and will pay for such damages in accordance with the 1915 or subsequent legislation. While Clause 5 made no specific reference to arbitration, this provision is basically a confirmation to pay damages in accordance with the compensation clause (Clause 15 of the 1915 Agreement) which did contain a provision for arbitration.

[48] While there has been finding for mandatory arbitration, the Plaintiffs, the Province and the Town have requested that, in any event, the Court should exercise its discretion to refrain from staying the proceedings against the Company.

SHOULD A STAY OF PROCEEDINGS BE ENTERED?

[49] The Plaintiffs joined by the Province, and the Town maintained that notwithstanding any interpretation of the 1915, 1923 and 1927 legislation as reviewed, the Court should not make an order staying the proceedings. Granting the requested stay, according to their argument would lead to inefficiency, multiplicity of proceedings and added cost of delay.

[50] Their arguments appear to be related to the advantage of generally proceeding in Court which, unlike arbitration, would permit access to class action as set out in the *Class Actions Act*, S.N.L. 2001, c. C-18.1.

[51] In *Ruddell v. BC Rail Ltd*, 2007 BCCA 269, the British Columbia Court of Appeal observed that both class actions and arbitrations have certain advantages. Deference, however, must be given to the legislative stated preference for arbitration if provided.

[52] The Supreme Court of Canada has consistently held in a number of recent decisions that the presence of a mandatory arbitration clause precludes the Courts from having jurisdiction to determine the matter. In one of its earlier decision *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, the Court found the arbitration provided for the settlement of grievances deprived the Court of jurisdiction to entertain an action in respect of a dispute. McLachlin, J. (as she then was) for the majority concluded at paragraph 67:

> 67 I conclude that mandatory arbitration clauses such as s. 45(1) of the Ontario *Labour Relations Act* generally confer exclusive jurisdiction on labour tribunals to deal with all disputes between the parties arising from the collective agreement. The question in each case is whether the dispute, viewed with an eye to its essential character, arises from the collective agreement. This extends to *Charter* remedies, provided that the legislation empowers the arbitrator to hear the dispute and grant the remedies claimed. The exclusive jurisdiction of the arbitrator is subject to the residual discretionary power of courts of inherent jurisdiction to grant remedies not possessed by the statutory tribunal. Against this background, I turn to the facts in the case at bar.

[53] Similar to the present proceedings, the Supreme Court in *Bisaillon v. Concordia University*, 2006 SCC 19 reviewed in effect what was essentially a request filed by a unionized employee of the University to by-pass the grievance and arbitration process and to institute a class action in order to contest a number of decisions made with respect to the administration and use of the pension fund. The majority found that the class action procedure cannot confer jurisdiction on the Courts over issues that would otherwise fall within the subject-matter jurisdiction of another tribunal. The Court held that the class action is a "procedural vehicle that neither modifies nor creates substantive rights" (para. 17). On the issue of jurisdiction the Court confirmed at paragraph 47:

> 47 The Superior Court lacks subject-matter jurisdiction with respect to both the dispute between Mr. Bisaillon and Corcordia and most of the disputes concerning the other members of the group covered by the class action. These various disputes fall within the exclusive jurisdiction of the grievance arbitrators appointed under the applicable collective agreements.

See also *Long Harbour Employers Assn. Inc. v. Resource Development Trades Council of Newfoundland and Labrador*, 2011 NLTD(G) 167.

[54] The Supreme Court in *Seidel v. Telus Communications Inc.*, 2011 SCC 15 reviewed the jurisdictional issue relating to a standard form written cellular phone service contracts entered into by the parties referring disputes to mediation and arbitration. Unlike *Weber* and *Bisaillon* and the present proceedings, the referral to arbitration was not subject to a statutory provision. Seidel commenced an action in Court asserting causes of action under Sections 171 and 172 of the British Columbia *Business Practices and Consumer Protection Act* alleging deceptive practices together with an application to have her claim certified as a class action. In confirming a stay of proceedings with respect to relief under Section 171 of the *Act* and lifting the stay in relation to Section 172 claims, the Court confirmed in following its previous decisions that it would give effect to the terms of a commercial contract freely entered into unless the legislation prohibited such an agreement. Binnie, J. for the majority observed at paragraph 42:

> 42 For present purposes, the relevant teaching of *Dell* and *Rogers Wireless* is simply that whether and to what extent the parties' freedom to arbitrate is limited or curtailed by legislation will depend on a close examination of the law of the forum where the irate consumers have commenced their court case. *Dell* and *Rogers Wireless* stand, as did *Desputeaux*, for the enforcement of arbitration clauses *absent legislative language to the contrary.*
>
> See *Dell Computer Corporation v. Union des consommateurs*, 2007 SCC 34; *Rogers Wireless Inc. v. Muroff*, 2007 SCC 35; *Wheeler v. Hwang*, 2007 NLTD 145.

[55] In effect, the Supreme Court lifted the stay with respect to the matter under Section 172 and allowed the certification proceeding to continue as the consumer's right to bring an action under Section 172 was protected by legislation while there was no such restriction or actions under Section 171 of the *Act*.

[56] Of relevance to the proceedings, the Court recognized its ruling meant that Ms. Seidel's claims would be subjected to bifurcated proceedings which the Court said could not be avoided based on the nature of the legislation. In these proceedings, the Plaintiffs have requested a stay in part that in allowing the claim against the Company to proceed by arbitration would simply mean possibly two adjudications should the Plaintiffs continue to pursue their claims against the Town and the Province.

[57] These decisions support the assertion that Canadian Courts have accepted and affirmed arbitration jurisdiction both when provided by legislation or agreed to by the parties in the absence of language confirming a statutory right to proceed to Court.

[58] The Town and the Province referred to the decision of this *Hurley v. Slate Ventures Inc.* (1996), 136 Nfld. & P.E.I.R. 341, 423 A.P.R. 341 (Nfld. S.C. (T.D.)) where Green, J. (as he then was) refused to enter a stay of proceedings where a shareholders agreement mandating arbitration only pertained to certain aspects of the litigation. The ruling was based on the fact otherwise there would be a

bifurcation of the dispute between arbitration and Court proceedings which would have the potential of lengthening the resolution of the disputes.

[59] However, the decision in *Hurley* pre-dated *Seidel* in which the Supreme Court made two important findings. Firstly, the majority found that the possible bifurcation of proceedings was not a determining factor to deny a party its contractual right to arbitration. Secondly, the Court held that if a legislature intended to exclude arbitration as a method for resolving a particular type of dispute, it must do so explicitly.

[60] Finally, arbitration is regarded as efficient means of dispute resolution particularly in areas of the development of resources for the public good. (See *Petroleum and Natural Gas Act*, R.S.N.L. 1990, c. P-10, s. 21; *Petroleum Regulations*, C.N.L.R. 1151/96, s. 68; *Muskrat Falls Project Land Use and Expropriation Act*, S.N.L. 2012, Part II, c. M-25.

[61] The Plaintiffs, the Province and the Town have not established that the Court should not follow the legislation which provides that the questions, disputes or differences between the Plaintiffs and Corner Brook Pulp & Paper Company be referred to arbitration. Therefore, the application by Corner Brook Pulp & Paper Company Limited to stay proceedings in the Court is allowed.

[62] In accordance with Section 37 of the *Class Actions Act*, there will be no order as to costs on this and the previous application relating to scheduling.

DAVID F. HURLEY
Justice