

When Is an Arbitration Decision Really Final? Supreme Court of Canada to Consider Important Appeal

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The Supreme Court of Canada (**SCC**) has granted leave to appeal in *Vancouver School District No. 39 v. Kingsgate Property Ltd.*, 2026 BCCA 98 (**Kingsgate**), which will determine the extent to which parties can rely on earlier arbitral decisions when disputes arise under the same agreement. Additionally, the appeal requires the SCC to determine when changing circumstances may justify departure from those earlier decisions. *Kingsgate* is poised to attract significant attention from arbitration experts across the country.

Factual Background

The dispute concerns the Kingsgate Mall property in Vancouver, which is subject to a long-term ground lease between the Vancouver School Board and the tenant. The lease provides that if the parties cannot agree on the renewal rent amount, then it is to be determined through arbitration.

A key provision of the lease requires the property to be valued as though it was vacant and available for "immediate development" to its "highest and best lawful use".

In 1999, an arbitral panel interpreted this language as referring to uses permitted as of right under existing zoning. Twenty years later, however, a different panel held that the valuation could consider a higher-density use requiring discretionary approvals. The difference was significant. The 1999 panel valued the property at roughly \$20 million, while the later panel valued the property at \$116.5 million.

The dispute reached the British Columbia Court of Appeal, where the key issue became whether the later arbitration panel was entitled to depart from the interpretation adopted by the earlier panel.

The Court of Appeal's Majority Decision

A majority of the Court of Appeal concluded that the later arbitration panel should have followed the interpretation adopted in the 1999 decision. The 1999 panel had already resolved the meaning of the relevant lease provisions. The later panel was not entitled to reinterpret the provision.

The majority relied on the doctrine of issue estoppel, which generally prevents parties from re-litigating issues that have been finally decided between them. The majority emphasized that parties to long-term commercial agreements are entitled to certainty when interpreting their contracts. Accordingly, parties should not have to revisit the same legal question every time a dispute arises.

The majority's reasoning was grounded in the central objective of arbitration: finality. The majority noted that efficiency, predictability and certainty are what make arbitration attractive to parties. Re-litigating issues that have already been decided is antithetical to this process.

The Dissenting View

In dissent, Justice Willcock would have upheld the later arbitration award. Justice Willcock accepted that issue estoppel serves an important role but emphasized that long-term commercial relationships do not exist in a vacuum. In his view, the later arbitration panel was entitled to consider evidence that the practical realities surrounding development approvals had changed over time.

Justice Willcock was concerned that applying issue estoppel rigidly may prevent arbitrators from responding to meaningful changes in circumstances. Where assumptions underlying an earlier decision no longer reflect commercial reality, there may be good reason to revisit the issue.

Takeaways

The majority and dissent reflect two competing views of arbitration. The majority prioritized certainty and finality, whereas the dissent placed greater emphasis on flexibility and the ability of arbitrators to adapt to changing circumstances.

The SCC will now consider how much weight should be given to an earlier arbitral decision when the same issue is raised down the road. The decision will affect the degree of certainty parties can expect when arbitrating disputes under long-term agreements. We anticipate that the SCC decision will provide guidance on the broader role of issue estoppel in arbitration.

Notably, the appeal arises against the backdrop of uncertainty regarding the appropriate role of courts in reviewing arbitral decisions. Arbitration practitioners should closely monitor the appeal for any further guidance on the relationship between arbitral decision-making and judicial oversight.

Given the prevalence of arbitration clauses in commercial agreements and the relatively small number of civil cases that are granted leave to appeal to the SCC, *Kingsgate* will be of particular interest to businesses, in-house counsel, and arbitrators across Canada.

To discuss how these issues may affect you or your business, please contact the authors or a member of BD&P's [Litigation group](#).