

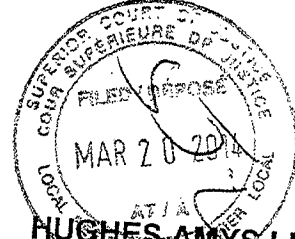
L. Kiley for moving party / Appellants
D. R. Boney for Dominion of Canada
S. Zane for McLean

Ontario
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Proceedings commenced at Toronto

Motion Record

When people choose to use alternative dispute resolution or ADR processes, they necessarily choose to avoid the cost, publicity, delay, procedures and procedures of the Courts. One aspect of Court proceedings is broad appellate review of the correct results that seem to be of odds with the facts, law or a mix of both. Fact and law. ~~The court~~ ~~for use of~~ Unless the parties to an arbitration choose to agree to come to Court for an appeal, they are entitled to do so is quite narrow. Section 45 of the Arbitration Act states Courts grant leave to appeal on questions of law only and then only if the question is sufficiently important to the parties and their rights. I have no doubt that the issue in this proposed appeal is important. The Award of the Arbitrator may greatly expand the availability of claims against employers' ~~workers~~ ~~insurers~~. ~~employees are not at all, I agree with~~ But, in agreeing to arbitrate ~~with~~ out of Court, to leave only grant leave to appeal, it is if



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authorized § 5, 45. That is, no matter how much I might
 question or even disagree with the decision, the parties
 have ~~been~~ chosen to make it none of my business
 unless the issue at stake is a question of law.

Here it is clear that the Arbitrator ~~is~~ set out
 the correct legal test as ~~proposed~~ ^{established} in the
 ACC decision. The key also agreed that
 the Arbitrator set out the correct "control" test
 from the Dominion v. Federated case. The Appellate
 complaint is that on the facts, the arbitrator did
 not meet the test while the Arbitrator ~~is~~ ^{is}
 did. ~~He~~ The key said that Dominion v. Federated
 cannot apply because Ms. Ryan was not an owner
 or manager and she did not have unrestricted
 access to the employer's vehicle. These are factual
 matters. At page 10 of the Arbitrator's decision
 he found that ~~that~~ Ms. Ryan had
 sufficient managerial duties to qualify as a "deemed
 honest insured." That is either a finding of
 fact or a finding of mixed fact and law
 that turns on the facts rather than the law.

If parties do not want courts involved with
 the wants of the system, it cannot suddenly come
 out for courts to come in later to "do justice"
 under legal-based rules that the parties have
 chosen ~~to~~ not to abide.
 Arbitration does not

Any
Domain seeks cost of \$2,000 to \$3,000.
As per the seeks cost of \$7,500.
Both are on a partial, interest basis,
costs should follow the event. Costs to
people } Northridge / limited to Domain of
\$3,000 cost to review of \$7,500. Both
accounts are reasonable for a period of
this importance.

John J.