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Appeal court sides with Huberman in landmark commercial arbitration case

By AdvocateDaily.com Staff

The impact of a landmark Ontario Court of Appeal decision on the enforceability of arbitral awards could ripple around the world, says Toronto lawyer and arbitrator Marvin Huberman (http://www.marvinhuberman.com/).

Huberman, the editor of *A Practitioner's Guide to Commercial Arbitration (https://www.irwinlaw.com/titles/practitioner%E2%80%99s-guide-commercial-arbitration)*, acted as co-counsel with Daniel Sheppard for the successful appellant in the case (http://canlii.ca/t/hszrj), where a unanimous panel of the province's top court agreed that the arbitration award of a New York rabbinical court should be recognized and enforced in Ontario.

"This decision strongly reinforces the general trend of Canada being in favour of the enforcement of commercial arbitral awards, whether conducted domestically or internationally," he tells AdvocateDaily.com (http://www.advocatedaily.com/).

"It's a precedent-setting decision that should be of great interest to lawyers, arbitrators, business people, courts, academics, and the public across Canada and internationally, including in the U.S. and the U.K."

Huberman explains that the decision is particularly significant because it marks the first time an appellate court has considered, in any depth, the judicial recognition and enforcement provisions of the UNCITRAL (http://www.uncitral.org/) Model Law on International Commercial Arbitration, which is incorporated into Ontario's *International Commercial Arbitration Act 2017 (https://www.canlii.org/en/on/laws/stat/so-2017-c-2-sch-5/latest/so-2017-c-2-sch-5.html).*

The model law has also been adopted by every jurisdiction in Canada, as well as at least 25 countries around the world.

"This is a very well-written, clear, concise and informative decision that is going to provide a terrific precedent for other jurisdictions to take into account when interpreting and applying their own versions of the model law," Huberman says.

The case dates back to 2005 when a dispute blew up between Huberman's client and a number of his business partners in a commercial real estate investment. After an eight-week arbitration hearing at the New York rabbinical court, the panel made an award of $400,000 in favour of Huberman's client.

Unsatisfied with the amount, his client subsequently applied in Ontario to have the arbitral award set aside, alleging the arbitration panel had breached its agreed procedure. Ontario's appeal court ruled the award should stand, but when Huberman's client sought payment in 2016, a dispute arose over its terms.

In a 2017 decision, Ontario Superior Court Justice Grant Dow ruled that the arbitral award was not yet binding on the parties under art. 36 of the model law, in part because of post-award statements by the rabbinical court that suggested the arbitration process had yet to wrap up.

However, the appeal court overturned the decision, citing Ontario's pro-enforcement legal regime for the recognition of commercial arbitration awards, and previous decisions indicating that grounds for refusal of the recognition and enforcement provisions of the model law are "to be construed narrowly."

Even if the rabbinical court had jurisdiction to decide new issues arising after its original ruling, the court found it "does not affect the binding nature of the Award."

"The Award is framed as a final one. The Arbitration Agreement did not permit any review or appeal from the Award," the three-judge panel wrote. "The Award therefore is 'binding' for the purposes of arts. 35 and 36 of the Model Law and should be recognized and enforced."

"This is the end of a long road of hotly contested litigation for my client, both in the court and at the arbitral tribunal," Huberman says. "For him, it was more about the principle than the amount involved and we are quite pleased with the result."

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