Federal Court of Appeal  Cour d'appel fédérale

Date: 20130214

Docket: A-487-11

Citation: 2013 FCA 38

CORAM: **NADON J.A.**
GAUTHIER J.A.
TRUDEL J.A.

BETWEEN:

KERRY MURPHY

Appellant

and

AMWAY CANADA CORPORATION
and
AMWAY GLOBAL

Respondents

Heard at Montreal, Quebec, on November 7, 2012.

Judgment delivered at Ottawa, Ontario, on February 14, 2013.

REASONS FOR JUDGMENT BY: NADON J.A.

CONCURRED IN BY: GAUTHIER J.A.
TRUDEL J.A.

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REASONS FOR JUDGMENT

NADON J.A.

[1] On October 23, 2009, the appellant, Kerry Murphy, began a proposed class action proceeding against Amway Canada Corporation and Amway Global (hereinafter the "respondent"), claiming that their business practices were in violation of sections 52, 55 and 55.1 of the *Competition Act*, R.S.C. 1985, c. 34. The appellant's proposed class action proceeding prompted the respondent to file several motions, including a motion to stay and to compel arbitration, which Boivin J. (the "Judge") of the Federal Court of Canada allowed with costs on November 23, 2011, reported as 2011 FC 1341. As a result, the appellant's class proceeding was stayed.

[2] The Judge's decision has led to the appeal now before us, wherein the appellant seeks to have the stay granted by the Judge set aside to pursue his class proceeding before the Federal Court. One of the questions raised by the appeal is whether the Judge's decision can be appealed to this Court. If that question is answered in the affirmative, then the second question we must address is whether the substantive issues raised by the appellant in his Statement of Claim are issues which, although clearly within the ambit of the Agreement to Mediate and Arbitrate Disputes (the "Arbitration Agreement") entered into by the parties, are indeed arbitrable.

The Facts

[3] The appellant is a small business owner and is registered as an Independent Business Owner ("IBO") under the umbrella of the respondent, Amway Canada (also operating under its trade name, Amway Global). Amway Canada is a wholesaler of home, personal care, beauty, and health products. It sells its products through a multi-level marketing plan. It is structured with a large number of IBOs, who in turn recruit additional distributors for further sales, resulting in multiple levels of distribution. Each IBO must review the Business Opportunity brochure and sign a Registration Agreement in order to become part of the distribution framework. The Registration Agreement, which every individual must execute in order to become an IBO, includes an Arbitration Agreement, wherein the parties agree to submit any possible claims to arbitration. The Registration Agreement incorporates by reference the IBO Compensation Plan and the Amway Rules of Conduct (the "Rules of Conduct").

[4] The appellant registered, in the province of British Columbia, as an IBO with Amway Canada four separate times over the course of a number of years (first registration in 1980-82). For the purpose of this appeal, suffice it to say that the appellant registered as an IBO on June 5, 2008, which registration was valid until the end of that year. On November 26, 2008, the appellant renewed his registration for the year 2009 and that registration expired on December 31, 2009.

[5] On October 23, 2009, the appellant commenced proceedings in the Federal Court of Canada, pursuant to section 36 of the *Competition Act*. By his Statement of Claim, the appellant alleged that, *inter alia*, the respondent was operating a multi-level marketing plan, as that term is defined in subsection 55(1) of the *Competition Act*, and that in the operation thereof, the respondent had failed to provide its distributors with accurate information concerning the compensation which they could earn. The appellant further alleged that the respondent operated an illegal scheme of pyramid-selling in violation of subsection 55(1) of the *Competition Act*, and that the respondent's business was built on the misleading of potential distributors with regard to the business opportunities that were offered to them by the respondent. In so doing, the appellant said that the respondent was in breach of sections 52 and 55 of the *Competition Act*.

[6] Consequently, the appellant sought damages in the sum of $15,000 and filed a motion for the certification of a proposed class action. No other potential class members were identified.

[7] Following the filing of the appellant's Statement of Claim and his proposed class proceeding, the respondent filed a motion for an order dismissing or permanently staying the appellant's action and to compel arbitration on the ground that the Federal Court had no jurisdiction.

More particularly, the respondent argued that the matters raised in the Statement of Claim were subject to compulsory arbitration under the terms of the Arbitration Agreement entered into by the parties.

[8] On May 5, 2010, Mainville J. of the Federal Court (as he then was) directed that the respondent's motion be heard on June 18, 2010 (2010 FC 498).

[9] On June 18, 2010, Mainville J. heard the respondent's motion, and on July 2, 2010, he delivered his reasons in support of an order dismissing the respondent's motion with costs (2010 FC 724). As Mainville J. explained at paragraph 3 of his reasons, the parties had argued before him at the hearing which led to his direction of May 5, 2010, that the respondent's motion to stay and to compel arbitration raised the issue of the scope, validity and enforceability of the Arbitration Agreement, and of the limited class action waiver contained therein, and whether that issue should be decided by the Federal Court or by an arbitrator.

[10] However, as Mainville J. further explained at paragraph 4 of his reasons, the parties took a different view of the respondent's motion to stay and to compel arbitration at the hearing before him on June 18, 2010. More particularly, the parties limited their arguments on the motion to the question of whether the issue raised by the motion should be decided by the Federal Court or by an arbitrator. Thus, the hearing before Mainville J. proceeded on the jurisdictional issue only, leaving aside the substantive issue which, per the parties' agreement, would be decided later by an arbitrator in arbitration proceedings or by the Federal Court at the certification stage of the class action.

[11] After canvassing the arguments submitted the appellant and the respondent, Mainville J. closely examined the Arbitration Agreement concluded between the parties and, more particularly, Rules 11.3.9 and 11.3.10 of the Rules of Conduct, pointing out that the parties were in agreement that their binding Arbitration Agreement applied and that it was governed by the *Ontario Arbitration Act*, S.O. 1991, c. 17 (the "*OAA*").

[12] In Mainville J.'s view, the Rules of Conduct were clear in that they provided that class action claims were excluded from arbitration and that any controversy regarding the enforceability or applicability of the limited class action waiver set out at Rule 11.3.9 of the Rules of Conduct was to be decided by the Court. Consequently, he was satisfied that "class action claims and any controversies concerning the enforceability or applicability of the limited class action waiver are not matter[s] 'to be submitted to arbitration under the Arbitration Agreement' as contemplated by subsection 7(1) of the *Ontario Arbitration Act*" (Mainville J.'s reasons, paragraph 20).

[13] At paragraph 25 of his reasons, Mainville J. held that the Arbitration Agreement entered into by the parties conferred jurisdiction and authority on the Court regarding class action claims and over the enforceability or applicability of the limited class action waiver. He concluded that the substantive issue raised by the appellant's motion was one that had to be determined by the Federal Court and not by an arbitrator.

[14] On October 3, 4, and 5, 2011, the Judge heard the parties' arguments regarding the substantive issue raised by the respondent's motion, namely, the scope, validity, and enforceability

of the Arbitration Agreement and of the limited class action waiver contained therein. As I have already indicated, the Judge allowed the respondent's motion with costs.

Decision of the Federal Court

[15] After carefully reviewing the facts, the Judge proceeded with an analysis of the Rules of Conduct, the Arbitration Agreement, the procedural history of the motion leading to the judgment itself, and of the recent jurisprudence concerning class action waivers in the context of arbitration agreements and consumer protection. In each discrete part of his judgment, the Judge set out the position of both parties before proceeding with his analysis. He came to the forthright conclusion that the Arbitration Agreement is applicable, enforceable, and serves to bar the initiation of a class proceeding for any amount exceeding $1,000.

[16] Both parties relied on the Supreme Court of Canada's recent decision in *Seidel v. Telus Communications Inc.*, 2011 SCC 15, [2011] 1 S.C.R. 531 ("*Seidel*"). The appellant invoked *Seidel* in his attempt to demonstrate that both the class action waiver and a resolution of the dispute through private, confidential arbitration were against the public interest. He argued an analogy between the provisions of the *Competition Act* and the legislative scheme at issue in *Seidel*, the British Columbia *Business Practices and Consumer Protection Act*, SBC 2004, c. 2 (the "*BPCPA*"). The respondent relied on *Seidel* and on other Supreme Court jurisprudence in support of its contention that agreements to arbitrate must be enforced except when there is clear legislative language to the contrary. In its submission, *Seidel* was not analogous because of the interaction between sections 3 and 172 of the *BPCPA*.

[17] The Judge emphasized that a long line of Canadian cases have confirmed Canada's status as an "arbitration-friendly jurisdiction". Without express legislative language to the contrary, courts must give effect to the parties' agreement to arbitrate. While the appellant submitted that such language could be found in section 36 of the *Competition Act*, the Judge disagreed. In his view, section 36 simply identifies the Federal Court as a court of competent jurisdiction for disputes arising under Part VI of the *Competition Act*, but does not declare it to be the only competent forum. Therefore, section 36 does not prevent parties from contracting out of that jurisdiction through a valid arbitration process.

[18] The Judge went on to say that the comparison between section 36 of the *Competition Act* and sections 3 and 172 of the *BPCPA* was incommensurate: Section 3 states that any waivers or releases of an individual's rights are void unless they are expressly permitted by the *BPCPA* and section 172 governs court actions respecting consumer transactions for parties to contracts and third parties, allowing for both declaratory and injunctive relief. Neither of these provisions is analogous to section 36 of the *Competition Act*. Moreover, the *Competition Act* does not contain a provision similar to section 3 of the *BPCPA*. Accordingly, the Judge concluded that *Seidel* was not an appropriate analogue for the instant case.

Registration Agreement

[19] As I indicated earlier, the Registration Agreement, amended as of September 1, 2008, includes an agreement to arbitrate and incorporates the IBO Compensation Plan and the Rules of Conduct. The following provisions of the Arbitration Agreement and of the Rules of Conduct are relevant to the determination of this appeal:

Arbitration Agreement

Amway Canada Corporation d/b/a Amway Global ("Amway Global") and its IBOs mutually agree to resolve all claims and disputes arising out of or relating to an Independent Business, the Amway Global Independent Business Owner Compensation Plan ("IBO Compensation Plan"), or the Rules of Conduct, as well as disputes involving Support Materials (SMs), as defined below under the Dispute Resolution Procedures described in the Rules of Conduct, specifically Rule 11. The Rules of Conduct shall be part of this IBO Registration Agreement and are incorporated by reference.

I agree to submit any dispute I may have with another IBO, Amway Global, or an approved seller or supplier of SM, that is not resolved informally under Rule 11.1 to Conciliation under Rule 11.2. The Conciliation requirement is reciprocal and binds both Amway Global and IBOs.

I further agree that if any dispute cannot be resolved by good faith efforts in Conciliation under Rule 11.2, I will submit any remaining claim or dispute arising out of or relating to my Independent Business, the IBO Compensation Plan, or the IBO Rules of Conduct (including any claim against another IBO, or any such IBO's officers, directors, agents, or employees; or against Amway Corp. d/b/a Amway Global, Amway Canada Corporation d/b/a Amway Global, and any parent, subsidiary, affiliate, predecessor or successor thereof, or any of their officers, directors, agents, or employees) as well as disputes involving SMs, to binding arbitration in accordance with Rule 11.3. The arbitration award shall be final and binding and judgment may be entered upon it by any court of competent jurisdiction. Demand for arbitration shall be made within 2 years after the claim arose, but in no event after the date when the initiation of legal proceedings would have been barred by the applicable statute of limitations, subject to the tolling provision in Rule 11.3.4. I acknowledge that this Agreement evidences a transaction involving interstate and interprovincial commerce. The Ontario Arbitrations Act (1991) or any Canadian arbitration statute that may supersede it, shall govern the interpretation, enforcement, and proceedings in any federal or provincial court in Canada. The parties intend for the Dispute Resolution Procedures to apply to the maximum degree possible in any arbitration. The agreement to arbitrate and conciliate under Rule 11 is reciprocal and binds both Amway Global and IBOs.

[Emphasis added]

Rules of Conduct

11.3 Arbitration.

All disputes not resolved through the process described in Rules 11.1 and 11.2 above shall be settled in arbitration as stated below. The arbitration award shall be final and binding and judgment thereon may be entered by any court of competent jurisdiction. As stated in Rule 1, Michigan law applies; but IBOs and the Corporation acknowledge that the IBO Contract and each of its parts evidence a transaction involving interstate commerce, and the United States Arbitration Act shall govern the interpretation and enforcement of the arbitration rules and arbitration proceedings.

11.3.1. The arbitration requirement is reciprocal and binds both the Corporation and IBOs.

…

11.3.5. If IBOs become involved in a claim or dispute under the arbitration rules, they will not disclose to any other person not directly involved in the conciliation or arbitration process (a) the substance of, or basis for, the claim; (b) the content of any testimony or any other evidence presented at an arbitration hearing or obtained through discovery; or (c) the terms or amount of any arbitration award. However, nothing in these Rules shall preclude a party from, in good faith, investigating a claim or defense, including interviewing witnesses and otherwise engaging in discovery.

…

11.3.7. To reduce the time and expense of the arbitration, the arbitrator will not provide a statement of reasons for his or her award unless requested to do so by all parties. The arbitrator's award shall be limited to deciding the rights and responsibilities of the parties in the specific dispute being arbitrated.

…

11.3.9. No party to this agreement shall assert any claim as a class, collective or representative action if (a) the amount of the party's individual claim exceeds $1,000, or (b) the claiming party, if an IBO, has attained the status of Platinum either in the current fiscal year or any prior period. This subparagraph shall be enforceable when the applicable law permits reasonable class action waivers and shall have no effect when the applicable law prohibits class action waivers as a matter of law. In any case, the class action waiver provision, as well as any other provision of Rule 11, is severable in the event any court finds it unenforceable or inapplicable in a particular case.

> **11.3.10.** Class action claims are not arbitrable under these Rules under any circumstances; but in the event a court declines to certify a class, all individual plaintiffs shall resolve any and all remaining claims in arbitration.
>
> [Emphasis added]

[20] A few words concerning the Arbitration Agreement are in order. It begins by incorporating the Rules of Conduct. It then states that any dispute between an IBO and the respondent, if not resolved informally, must proceed to conciliation. It then further states that if conciliation is not successful, the parties must proceed to binding arbitration in accordance with Rule 11.3, and that any arbitration award rendered will be final and binding. Lastly, the Arbitration Agreement provides that the *OAA* "shall govern the interpretation, enforcement and proceedings in any federal or provincial court in Canada". Although the words used by the parties are not entirely clear, I take it that their intent was to make their Arbitration Agreement and any proceedings undertaken in respect thereof subject to the *OAA*.

[21] I now turn to the Rules of Conduct. Rule 11.3 provides the following dispute resolution scheme: first, if mediation is unsuccessful, the parties must proceed to arbitrate their dispute. Second, any arbitration award made shall be final and binding. Third, the law of the state of Michigan shall apply to the arbitration proceedings and the *United States Arbitration Act* shall govern the interpretation and enforcement of the arbitration rules and proceedings. Fourth, a demand for arbitration must be filed with either JAMS (the former Judicial Arbitration and Mediation Services) or the American Arbitration Association (the "AAA"). The arbitration will be conducted in accord with the Commercial Rules of Arbitration of either JAMS or the AAA, subject to any modification or clarification specified in Rule 11.3. The Commercial Rules of Arbitration

and Rules of Conduct of either JAMS or the AAA shall apply to the arbitration, and any conflict between those rules and Rule 11.3 of the Rules of Conduct shall be resolved in favour of Rule 11.3

[22] I note here that there appears to be a conflict between the Arbitration Agreement and Rule 11.3 in that the former provides for the applicability of the *OAA* while the latter provides for the applicability of the *United States Arbitration Act*. In my view, to the extent that the issues raised in the appellant's Statement of Claim are subject to arbitration, the *OAA* is the applicable statute.

[23] The other provisions of the Rules of Conduct which are pertinent are Rules 11.3.9 and 11.3.10. Rule 11.3.9 bars the assertion of any claim as a class with regard to claims exceeding $1,000. This is the limited class action waiver that Mainville J. recognized in his reasons and that is at the heart of the dispute between the parties. In other words, can the appellant assert his claim of $15,000 as a class action in the Federal Court, notwithstanding Rule 11.3.9? With respect to all other claims, *i.e.*, claims not exceeding $1,000, Rule 11.3.10 provides that class action claims are not arbitrable under any circumstances. The Rule goes on to provide, however, that if the courts refuse to certify such a claim as a class action, the matter must be dealt with by way of arbitration.

Analysis

[24] As I indicated at the outset of my reasons, the first issue for determination is whether the Judge's decision can be appealed to this Court. If not, that is the end of the appeal. I now turn to that question.

1. Does Subsection 7(6) of the OAA Bar this Appeal?

[25] The specific provision of the *OAA* at issue is subsection 7(6) of the *OAA*, which is best viewed in the context of the entirety of section 7, which provides as follows:

7. (1) If a party to an arbitration agreement commences a proceeding in respect of a matter to be submitted to arbitration under the agreement, the court in which the proceeding is commenced shall, on the motion of another party to the arbitration agreement, stay the proceeding.	7. (1) Si une partie à une convention d'arbitrage introduit une instance à l'égard d'une question que la convention oblige à soumettre à l'arbitrage, le tribunal judiciaire devant lequel l'instance est introduite doit, sur la motion d'une autre partie à la convention d'arbitrage, surseoir à l'instance.
(2) However, the court may refuse to stay the proceeding in any of the following cases: 1. A party entered into the arbitration agreement while under a legal incapacity. 2. The arbitration agreement is invalid. 3. The subject-matter of the dispute is not capable of being the subject of arbitration under Ontario law. 4. The motion was brought with undue delay. 5. The matter is a proper one for default or summary judgment.	(2) Cependant, le tribunal judiciaire peut refuser de surseoir à l'instance dans l'un ou l'autre des cas suivants : 1. Une partie a conclu la convention d'arbitrage alors qu'elle était frappée d'incapacité juridique. 2. La convention d'arbitrage est nulle. 3. L'objet du différend ne peut faire l'objet d'un arbitrage aux termes des lois de l'Ontario. 4. La motion a été présentée avec un retard indu. 5. La question est propre à un jugement par défaut ou à un jugement sommaire.
(3) An arbitration of the dispute may be commenced and continued while the motion is before the court.	(3) L'arbitrage du différend peut être engagé et poursuivi pendant que la motion est devant le tribunal judiciaire.
(4) If the court refuses to stay the proceeding, (a) no arbitration of the dispute shall be commenced; and (b) an arbitration that has been commenced shall not be continued, and anything done in connection with the arbitration before the court made its decision is without effect.	(4) Si le tribunal judiciaire refuse de surseoir à l'instance : a) d'une part, aucun arbitrage du différend ne peut être engagé; b) d'autre part, l'arbitrage qui a été engagé ne peut être poursuivi, et tout ce qui a été fait dans le cadre de l'arbitrage avant que le tribunal judiciaire ne rende sa décision est sans effet.

(5) The court may stay the proceeding with respect to the matters dealt with in the arbitration agreement and allow it to continue with respect to other matters if it finds that, (a) the agreement deals with only some of the matters in respect of which the proceeding was commenced; and (b) it is reasonable to separate the matters dealt with in the agreement from the other matters.	(5) Le tribunal judiciaire peut surseoir à l'instance en ce qui touche les questions traitées dans la convention d'arbitrage et permettre qu'elle se poursuive en ce qui touche les autres questions, s'il constate : a) d'une part, que la convention ne traite que de certaines des questions à l'égard desquelles l'instance a été introduite; b) d'autre part, qu'il est raisonnable de dissocier les questions traitées dans la convention des autres questions.
(6) There is no appeal from the court's decision.	(6) La décision du tribunal judiciaire n'est pas susceptible d'appel.

[26] Subsection 7(1) provides that the court in which a proceeding has been commenced shall stay that proceeding if the matter raised by the proceeding is one which, by reason of the Arbitration Agreement, should be submitted to an arbitrator. Subsection 7(2) then provides for situations where the court may refuse to stay such a proceeding. Subsection 7(4), it provides that if the court refuses to stay the proceeding, there shall be no arbitration, and where the arbitration has already commenced, it shall not be continued. Subsection 7(5) of the *OAA* deals with situations where some of the issues raised in the proceeding fall within the Arbitration Agreement and other issues do not. Finally, subsection 7(6) provides in unequivocal terms that the decision rendered by the court cannot be appealed.

[27] In my opinion, an appeal from the Judge's decision lies to this Court. I come to that conclusion for the following reasons.

[28] The respondent, relying on subsection 7(6) of the *OAA*, argues that there can be no appeal from the Judge's decision. More particularly, the respondent argues that because the parties have agreed to have their Arbitration Agreement subject to the provisions of the *OAA*, this Court cannot, by reason of subsection 7(6) thereof, entertain any appeal from the decision of the Federal Court determining whether or not the issues raised in the appellant's Statement of Claim are issues that may properly be resolved by way of arbitration. In support of that view, the respondent refers us to a decision of Shaw J. of the Ontario Superior Court of Justice in *Fowler v. 1752476 Ontario Ltd.*, 2010 ONSC 779 ("*Fowler*"); and to a decision of the Ontario Court of Appeal giving effect to subsection 7(6) of the *OAA*, namely, *Huras v. Primerica Financial Services Ltd.*, [2000] 137 OAC 79 ("*Huras*") (see also, to the same effect, the Ontario Court of Appeal's decisions in *Mantini v. Smith Lyons LLP*, [2003] 228 D.L.R. (4th) 214, 174 O.A.C. 138; and *Brown v. Murphy* (2002), 59 O.R. (3d) 404). The respondent also relies on the Alberta Court of Appeal's decision in *Lamb v. AlanRidge Homes Ltd.*, 2009 ABCA 343, where that Court gave effect to a similar provision found in the *Alberta Arbitration Act*, R.S.A. 2000, c. A-43. Finally, the respondent relies on this Court's decision in *Halterm Ltd. v. Canada*, [1984] F.C.J.. No. 541 (Q.L.), 55 N.R. 541 (F.C.A.) ("*Halterm*"), in which the Court gave effect to a contractual undertaking precluding an appeal from a decision of the Federal Court.

[29] The point which I wish to make here is that contrary to the situation found in the cases decided by the Ontario Court of Appeal, the *OAA* is not before us in this matter by reason of force of law, but because the parties have incorporated it into their Arbitration Agreement. In the cases decided by the Ontario Court of Appeal, the parties had agreed to settle their disputes by way of arbitration, and to that effect, arbitration agreements had been entered into. These arbitration

agreements were entered into in Ontario and were subject to the provisions of the *OAA*. In other words, the "law of the land", *i.e.*, the law of Ontario, applied to the arbitration agreements.

[30] Consequently, the Ontario Court of Appeal was bound to apply the terms of the *OAA* to the arbitration agreements and the proceedings instituted in connection therewith. The same can be said with regard to the decision of the Alberta Court of Appeal, where the parties entered into an arbitration agreement in Alberta, and the *Alberta Arbitration Act* was applicable thereto. Thus, like the Ontario Court of Appeal, the Alberta Court of Appeal had no choice but to give effect to the provisions of that statute. At paragraph 14 of its reasons, the Alberta Court of Appeal made the following point:

> In our view, section 7(6) [identical to subsection 7(6) of the *OAA*] reflects an equally important policy consideration, namely, that the process of determining whether the parties should proceed with arbitration, or legal proceedings, should not become bogged down by resort to the appeal process. The legislator obviously intended that the decision of the Court of Queen's Bench should be final, so as to promote an expeditious determination of the forum to hear the disputes of the parties.
>
> [Emphasis added]

[31] Consequently, notwithstanding a party's right to appeal a final order of a judge of the Superior Court of Justice under paragraph 6(1)(*b*) of the *Ontario Courts of Justice Act*, R.S.O. 1990, c. C-43, the Ontario Court of Appeal was bound to follow the Ontario legislature's intent that decisions rendered by a judge of the Superior Court of Justice pursuant to subsection 7(6) of the *OAA* were not appealable.

[32] However, in the present matter, the *OAA* has no force of law before this Court. Simply put, we are not bound by the terms of that statute. The question which arises is whether the parties can,

by incorporating the *OAA* into their bargain, oust this Court's jurisdiction found in subsection 27(2) of the *Federal Courts Act*, R.S. 1985, c. F-7, which provides that an appeal lies from either an interlocutory or a final judgment of the Federal Court. In my view, the answer to that question is that the parties cannot prevent this Court from exercising its jurisdiction to hear this appeal.

[33] The issue before us is not whether this Court is prepared to decline to exercise its jurisdiction so as to give effect to the parties' intention to settle their disputes by way of arbitration. There is no question that this Court is prepared to give effect to arbitration agreements if the subject matter of the proceedings falls within the ambit thereof. Rather, the issue before us in this appeal is whether an appeal lies from a decision which concludes that the questions raised in the appellant's Statement of Claim are the proper subject of an arbitration agreement, *i.e.*, that these questions are arbitrable. In other words, the question which we must determine is whether the Judge's conclusion on the arbitrability of the matters raised in the Statement of Claim is correct or not.

[34] This Court has jurisdiction pursuant to subsection 27(2) of the *Federal Courts Act*, and consequently, we must hear the appeal unless there are proper grounds justifying a refusal on our part to exercise our jurisdiction. No such grounds have been put forward, other than the fact that the parties have incorporated the *OAA* into their Arbitration Agreement. In my view, that is not sufficient to oust this Court's jurisdiction to hear the appeal.

[35] There remains for me to deal with this Court's decision in *Halterm*, where Halterm Ltd. entered into a lease agreement with the National Harbours Board regarding a container terminal

facility at the port of Halifax, Nova Scotia, for a term of 20 years. One of the clauses of the agreement provided that Halterm Ltd., as lessee, could apply to the Federal Court for a determination of the appropriate rental rate, and that neither party would exercise any right of appeal from the decision of the Federal Court. In concluding that the Federal Court's decision could not be appealed to the Federal Court of Appeal, Mahoney J.A. stated at paragraph 9 his reasons:

> …The question is the intention of parties to a commercial contract. Ordinary commercial practice would dictate that the settlement of such an anticipated dispute be committed to arbitration. It seems clear that, in opting for a proceeding in the Exchequer Court, the parties intended the judgment at first instance to be final, as an arbitrator's award would be, and not subject to appeal. …

[36] In other words, the Court viewed the Federal Court's decision as akin to that of an arbitrator in respect of which the parties had agreed that the decision would be final. With respect, that is not the situation that arises in the present matter, where the issue is whether the matter raised by the appellant's Statement of Claim should or should not go to arbitration.

[37] Consequently, it is open to us, pursuant to subsection 27(2) of the *Federal Courts Act*, to hear this appeal. I now turn to a different issue.

2. Does the Arbitration Agreement Automatically Stay a Class Proceeding Commenced in a Court of Competent Jurisdiction?

[38] In his Notice of Appeal and at paragraph 18 of his Memorandum of Fact and Law, the appellant submits that the Judge erred in his interpretation of Rules of Conduct 11.3.9 and 11.3.10. In the appellant's view, it is only if a court refuses to certify a class proceeding that the parties are required to proceed to arbitration. With respect, this is not what the Rules of Conduct state. As the respondent argues, the Rules of Conduct include both an arbitration agreement and a class action

waiver. Class actions are actually permitted for amounts below $1,000. However, class actions that exceed $1,000 are expressly prohibited by the Arbitration Agreement. The appellant, with his $15,000 claim, is barred from bringing a motion for certification of a class proceeding by reason of this provision. At paragraphs 28 and 31 of his reasons, the Judge dealt with this issue as follows:

> [28] The Court finds the parties' arbitration agreement to be clear. First, section 11.3.9 of the Rules of Conduct allows class actions for an amount not exceeding $1,000. Second, claims over $1,000 are subject to a class action waiver. Third, as stated in section 11.3.10, class actions are not arbitrable under the Rules of Conduct under any circumstances. Finally, for claims under $1,000, in the event a court declines to certify a class, all individual plaintiffs shall resolve any and all remaining claims in arbitration.
>
> …
>
> [31] Against this background, and considering the clear wording of both sections 11.3.9 and 11.3.10, the Court rejects the plaintiff's contention that the Court has jurisdiction over its class action claim and accordingly concludes that the plaintiff's claim for $15,000 must be heard (i) by an arbitrator and (ii) on an individual basis in accordance with the parties' arbitration agreement.

[39] The respondent points out, correctly in my view, that the appellant's arguments in this appeal are directed solely at the arbitrability issue, not to the contract interpretation issue. Consequently, I have not been persuaded that there is any basis to disagree with the Judge regarding the meaning of the Arbitration Agreement subject to the appellant's arguments regarding the arbitrability issue, to which I now turn.

3. Is a Private Claim for Damages under Section 36 of the Competition Act Capable of Being the Subject of Arbitration?

[40] The fundamental legal issue raised by this appeal is whether a private claim for damages brought under section 36 of the *Competition Act* is arbitrable. For the reasons that follow, I conclude that it is.

[41] The appellant argues that private claims under section 36 are not arbitrable. From this premise, he says that if the claim under section 36 is not arbitrable, the Judge had no jurisdiction to stay his action, and hence, the *OAA* does not apply to the dispute. The appellant says that compelling public policy reasons and the legislative intent of the *Competition Act* support his submissions. He quotes passages from the Supreme Court's decision in *General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 R.S.C. 641, as it pertains to the importance of competition to the Canadian market, the American anti-trust experience and the public policy foundations which support competition law. The appellant expresses concern that if forced to proceed to arbitration, the claim under section 36 will be submitted to an American arbitrator who will apply the laws of Michigan. The appellant contends that this undesirable outcome, combined with the private and confidential nature of arbitration proceedings, indicates that arbitration should not be permitted for public interest reasons.

[42] As he did before the Judge, the appellant relies on the Supreme Court's recent decision in *Seidel* as authority for the proposition that the Federal Court is a competent court of jurisdiction in which to bring forward his class action proceeding, notwithstanding the Arbitration Agreement. In particular, the appellant asserts a public interest rationale as justification for why the class action

should be permitted: he asserts the private and confidential nature of arbitration as being manifestly incompatible with the underlying objectives of the *Competition Act* of promoting an economic environment free of anti-competitive practices. The appellant further argues that *Seidel* stands for the proposition that public interest concerns—and in particular, class action waivers—can displace an arbitration agreement.

[43] The respondent, on the other hand, says that if the appellant's argument is accepted, no claim under section 36 of the *Competition Act* could ever be sent to arbitration, under any circumstances. The respondent goes on to reference additional recent jurisprudence that recalls that public order concerns do not impact whether or not arbitration is permitted: *Dell Computer Corp. v. Union des consommateurs et al*, 2007 SCC 34, [2002] 2 S.C.R. 801 ("*Dell*"), *Rogers Wireless Inc. v. Muroff*, 2007 SCC 35, [2007] 2 S.C.R. 921 ("*Rogers Wireless*"); *Desputeaux v. Éditions Chouette (1987) inc.*, [2003] 1 S.C.R. 178, 2003 SCC 17 ("*Éditions Chouette*"); and *Jean Estate v. Wires Jolley LLP.*, 2009 ONCA 339.

[44] The respondent submits that these decisions entirely support its view that the matters raised by the appellant in his action brought under section 36 of the *Competition Act* are matters that are arbitrable and thus subject to the Arbitration Agreement. The respondent further submits that the cases support the proposition that an Act, like the *Competition Act*, should not be interpreted as excluding arbitration unless legislative language to the contrary can be found in the Act. To this, the respondent adds that there is no language to be found in the *Competition Act* which would exclude arbitration as a vehicle to settle matters falling under section 36 thereof.

[45] As a final argument, the respondent says that the Supreme Court's decision in *Seidel* has put the last nail in the coffin. The appellant's action under section 36 of the *Competition Act* is arbitrable.

[46] In my view, the answer to the question of whether or not the subject matter of the appellant's Statement of Claim is arbitrable is found in *Seidel*, to which I now turn.

[47] In *Seidel*, the Supreme Court was concerned with a dispute between Telus Communications Inc. ("Telus") and Ms. Seidel, one of its customers, over a cell phone contract which provided that any disputes had to be resolved by way of a private, confidential and binding arbitration.

[48] Disregarding the arbitration agreement, Ms. Seidel commenced an action in the Supreme Court of British Columbia wherein she asserted that she was the victim of deceptive and unconscionable business practices contrary to sections 4, 5, paragraph 8(3)*(b)* and section 9 of the *BPCPA*. In making her claim against Telus, Ms. Seidel invoked the remedies set out in the *BPCPA* at sections 171 and 172. Lastly, she sought certification to act on her own behalf and on behalf of a class of allegedly overcharged customers, pursuant to the *Class Proceedings Act* of British Columbia, R.S.B.C. 1996, C-50.

[49] Because the provisions at issue in *Seidel* are of relevance to the determination which we have to make herein, I reproduce section 3, subsections 171(1), and subsections 172(1) and (3) of the *BPCPA*. I also reproduce section 36 of the *Competition Act*, which bears close similarity to

subsection 171(1) of the *BPCPA* (**NOTE**: the French version of the relevant *BPCPA* provisions is reproduced from the French version of the Supreme Court's decision in *Seidel*):

The *BPCPA*	**La *BPCPA***
3. Any waiver or release by a person of the person's rights, benefits or protections under this Act is void except to the extent that the waiver or release is expressly permitted by this Act.	**3.** Sauf dans la mesure où elle est expressément permise par la présente loi, la renonciation aux droits, avantages ou protections qui y sont prévus est nulle.
…	…
171. (1) Subject to subsection (2), if a person, other than a person referred to in paragraphs (a) to (e), has suffered damage or loss due to a contravention of this Act or the regulations, the person who suffered damage or loss may bring an action against a (a) supplier, (b) reporting agency, as defined in section 106 [*definitions*], (c) collector, as defined in section 113 [*definitions*], (d) bailiff, collection agent or debt pooler, as defined in section 125 [*definitions*], or (e) a person required to hold a licence under Part 9 [*Licences*] who engaged in or acquiesced in the contravention that caused the damage or loss.	**171.** (1) Sous réserve du paragraphe (2), la personne, autre qu'une personne visée aux alinéas a) à e), qui a subi un préjudice ou une perte en raison d'une infraction à la présente loi ou à ses règlements, peut intenter une action contre : a) le fournisseur, b) une agence d'évaluation de crédit, au sens de l'article 106 [*définitions*], c) un collecteur, au sens de l'article 113 [*définitions*], d) un huissier, un agent de recouvrement ou un administrateur de dettes, au sens de l'article 125 [*définitions*], e) une personne tenue de détenir une licence sous le régime de la partie 9 [Licences] qui a commis l'infraction ayant causé le préjudice ou la perte ou qui y a acquiescé.
…	….
172. (1) The director or a person other than a supplier, whether or not the person bringing the action has a special interest or any interest under this Act or	**172** (1) Le directeur ou une personne autre qu'un fournisseur — que cette personne ait ou non un intérêt, particulier ou autre, à faire valoir sous

is affected by a consumer transaction that gives rise to the action, may bring an action in Supreme Court for one or both of the following:

(a) a declaration that an act or practice engaged in or about to be engaged in by

(b) an interim or permanent injunction restraining a supplier from contravening this Act or the regulations.

…

(3) If the court grants relief under subsection (1), the court may order one or more of the following:

(a) that the supplier restore to any person any money or other property or thing, in which the person has an interest, that may have been acquired because of a contravention of this Act or the regulations;

(b) if the action is brought by the director, that the supplier pay to the director the actual costs, or a reasonable proportion of the costs, of the inspection of the supplier conducted under this Act;

(c) that the supplier advertise to the public in a manner that will assure prompt and reasonable communication to consumers, and on terms or conditions that the court considers reasonable, particulars of any judgment, declaration, order or injunction granted against the supplier under this section.

le régime de la présente loi ou qu'elle soit ou non touchée par l'opération commerciale à l'origine du litige — peut intenter une action devant la Cour suprême en vue d'obtenir

a) un jugement déclarant qu'un acte commis par un fournisseur, ou sur le point de l'être, ou une pratique qu'il utilise, ou est sur le point d'utiliser, en ce qui concerne une opération commerciale contrevient à la présente loi ou à ses règlements;

b) une injonction provisoire ou permanente interdisant au fournisseur de contrevenir à la présente loi ou à ses règlements.

. . .

(3) Si la Cour accueille l'action sous le régime du paragraphe (1), elle peut ordonner

a) que le fournisseur restitue à une personne les sommes ou autres biens ou choses, à l'égard desquels cette personne a un intérêt, et qui peuvent avoir été obtenus par suite d'une contravention à la présente loi ou à ses règlements;

b) si l'action est intentée par le directeur, que le fournisseur lui rembourse la totalité ou une partie raisonnable des frais engagés pour soumettre le fournisseur à une inspection sous le régime de la présente loi;

c) que le fournisseur informe le public, de manière efficace et rapide et suivant les modalités que la cour estime raisonnables, du contenu de tout jugement, jugement déclaratoire, ordonnance ou injonction prononcé contre le fournisseur sous le régime du présent article.

The *Competition Act*

36. (1) Any person who has suffered loss or damage as a result of

(a) conduct that is contrary to any provision of Part VI, or

(b) the failure of any person to comply with an order of the Tribunal or another court under this Act,

may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

(2) In any action under subsection (1) against a person, the record of proceedings in any court in which that person was convicted of an offence under Part VI or convicted of or punished for failure to comply with an order of the Tribunal or another court under this Act is, in the absence of any evidence to the contrary, proof that the person against whom the action is brought engaged in conduct that was contrary to a provision of Part VI or failed to comply with an order of the Tribunal or another court under this Act, as the case may be, and any evidence given in those proceedings as to the effect of those acts or omissions on the person bringing the action is evidence thereof in the action.

La *Loi sur la Concurrence*

36. (1) Toute personne qui a subi une perte ou des dommages par suite :

a) soit d'un comportement allant à l'encontre d'une disposition de la partie VI;

b) soit du défaut d'une personne d'obtempérer à une ordonnance rendue par le Tribunal ou un autre tribunal en vertu de la présente loi,

peut, devant tout tribunal compétent, réclamer et recouvrer de la personne qui a eu un tel comportement ou n'a pas obtempéré à l'ordonnance une somme égale au montant de la perte ou des dommages qu'elle est reconnue avoir subis, ainsi que toute somme supplémentaire que le tribunal peut fixer et qui n'excède pas le coût total, pour elle, de toute enquête relativement à l'affaire et des procédures engagées en vertu du présent article.

(2) Dans toute action intentée contre une personne en vertu du paragraphe (1), les procès-verbaux relatifs aux procédures engagées devant tout tribunal qui a déclaré cette personne coupable d'une infraction visée à la partie VI ou l'a déclarée coupable du défaut d'obtempérer à une ordonnance rendue en vertu de la présente loi par le Tribunal ou par un autre tribunal, ou qui l'a punie pour ce défaut, constituent, sauf preuve contraire, la preuve que la personne contre laquelle l'action est intentée a eu un comportement allant à l'encontre d'une disposition de la partie VI ou n'a pas obtempéré à une ordonnance rendue en vertu de la présente loi par le Tribunal ou par un autre tribunal, selon le cas, et toute preuve fournie lors de ces

	procédures quant à l'effet de ces actes ou omissions sur la personne qui intente l'action constitue une preuve de cet effet dans l'action.
(3) For the purposes of any action under subsection (1), the Federal Court is a court of competent jurisdiction.	(3) La Cour fédérale a compétence sur les actions prévues au paragraphe (1).
(4) No action may be brought under subsection (1), (a) in the case of an action based on conduct that is contrary to any provision of Part VI, after two years from (i) a day on which the conduct was engaged in, or (ii) the day on which any criminal proceedings relating thereto were finally disposed of, whichever is the later; and (b) in the case of an action based on the failure of any person to comply with an order of the Tribunal or another court, after two years from (i) a day on which the order of the Tribunal or court was contravened, or (ii) the day on which any criminal proceedings relating thereto were finally disposed of, whichever is the later.	(4) Les actions visées au paragraphe (1) se prescrivent : a) dans le cas de celles qui sont fondées sur un comportement qui va à l'encontre d'une disposition de la partie VI, dans les deux ans qui suivent la dernière des dates suivantes : (i) soit la date du comportement en question, (ii) soit la date où il est statué de façon définitive sur la poursuite; b) dans le cas de celles qui sont fondées sur le défaut d'une personne d'obtempérer à une ordonnance du Tribunal ou d'un autre tribunal, dans les deux ans qui suivent la dernière des dates suivantes : (i) soit la date où a eu lieu la contravention à l'ordonnance du Tribunal ou de l'autre tribunal, (ii) soit la date où il est statué de façon définitive sur la poursuite.

[50] After referring to his Court's jurisprudence regarding the availability of commercial arbitration to settle disputes, namely, *Dell*, *Rogers Wireless*, *Éditions Chouette*, *Bisaillon v. Concordia University*, 2006 SCC 19, [2006] 1 S.C.R. 666, and *GreCon Dimter Inc. v. J.R. Normand Inc.*, 2005 SCC 46, [2005] 2 S.C.R. 401, Binnie J. noted that a number of provincial legislatures had intervened in the marketplace to place restraints on arbitration clauses in consumer

contracts, *i.e.*, Quebec, Ontario and Alberta. He then set out the question which the Supreme Court had to determine: whether section 172 of the *BPCPA* contained limitations the effect of which would restrict the enforceability of the arbitration clause. The specific question posed by Binnie J. was: does section 172 of the *BPCPA* override the mediation/arbitration provision in a consumer contract?

[51] Binnie J. began by referring to section 3 of the *BPCPA*, which provides that any waiver of a person's rights, benefits or protections under the *PBCPA* is void "except to the extent that the waiver or release is expressly permitted by this Act." In Binnie J.'s view, the intent of section 3 was to invalidate an arbitration clause to the extent that it took away a right, benefit or protection conferred by the *BPCPA*.

[52] He then turned to section 172 of the *BPCPA*, pursuant to which part of Ms. Seidel's claim had been brought. He then commented that contrary to section 171 of that Act, which only allowed the person who suffered damages to claim thereunder, section 172 allowed, in his view, "virtually anyone" to initiate a claim under section 172. The fact that claims were not restricted to the person who actually suffered damages highlighted the public interest nature of the remedy brought under section 172. At paragraph 32 of his reasons, Binnie J. wrote:

> … Opening the door to private enforcement in the public interest vastly increases the potential effectiveness of the Act and thereby promotes adherence to the consumer standards set out therein. <u>The legislature clearly intended the Supreme Court to be able to enjoin a supplier guilty of infractions of the *BPCPA* from practicing the offending conduct against any consumer (orders which only courts can issue), rather than just in relation to a particular complainant</u> (as in a "private" and "confidential" arbitration created by private contract).
>
> [Emphasis added]

[53] He then opined that the internal structure of section 172 demonstrated that the provincial legislature was cognizant of the fact that declarations and injunctions, in a consumer context, were the preferred remedies to protect the interests of the broader public and consumers, to deter unlawful supplier conduct, and that damages were in many cases of lesser importance, in view of the small amounts of money at issue.

[54] Binnie J. then turned to the statutory context and said that section 172 stood out as a public interest remedy, in that the remedy was available regardless of whether or not the "plaintiff" was affected by a consumer transaction. He compared section 172 to section 171, where the "plaintiff" had to be someone who had suffered a damage or loss. In his view, that difference was not accidental because section 171 confers a private cause of action only, whereas section 172 "treats the plaintiff as a public interest plaintiff intended to shine a spotlight on allegations of shabby corporate conduct, and the legislative intent thereby manifested should be respected by the court" (*Seidel*, paragraph 36).

[55] After stating that because the *BPCPA* was all about consumer protection and that, consequently, it should receive an interpretation generous to consumers, Binnie J. remarked that arbitration would not properly serve the policy objectives of section 172. He put it in the following terms at paragraph 37:

> … The policy objectives of s. 172 would not be well served by low-profile, private and confidential arbitrations where consumers of a particular product may have little opportunity to connect with other consumers who may share their experience and complaints and seek vindication through a well-publicized court action.

[56] Binnie J. went further. In his view, the arguments usually put forward to justify and support arbitration were incompatible with the objectives sought by the legislature under section 172. In other words, the objectives of private arbitration, *i.e.*, confidentiality, lack of precedential value, and the avoidance of publicity, had the effect of undermining the effectiveness of the remedy set out at section 172.

[57] Binnie J. also indicated that his proposed disposition of the case did not conflict with the Court's decisions in *Dell* or *Rogers Wireless*. In his view, there was nothing in the Quebec legislation at issue in those cases that resembled or was similar to section 172 of the *BPCPA* which directed "specific statutory claims to a specific forum" (*Seidel*, paragraph 41). He then reiterated the principle enunciated in *Dell*, *Rogers Wireless* and *Éditions Chouette* that arbitration clauses were to be enforced unless there was language in the statute at issue which militated against their enforcement.

[58] Binnie J. then turned to the question of whether Ms. Seidel's claim under 172 of the *BPCPA* could proceed as a class action, noting that the arbitration clause provided that the parties thereto agreed to waive their right to commence or participate in any class action against Telus.

[59] Binnie J. began by stating that the wording of the arbitration clause made it clear that it was only by virtue of that agreement that consumers waived their right to proceed by way of a class action. In his view, if the arbitration clause was invalid, as indeed it was, by reason of section 3 of the *BPCPA*, it necessarily followed that the class action waiver was also invalid. In so concluding, he pointed to the fact that the title to the arbitration clause was "Arbitration" and not "Arbitration

and Class Action Waiver". Because of the language of the clause, there could be no doubt that Ms. Seidel was not barred from pursuing certification of her section 172 claim as a class action.

[60] On the principles stated by Binnie J. in *Seidel*, I must conclude that the issues raised by the appellant in his Statement of Claim brought under section 36 of the *Competition Act* are arbitrable. The Supreme Court has made it clear that express legislative language in a statute is required before the courts will refuse to give effect to the terms of an arbitration agreement. In that regard, the *Competition Act* does not contain language which would indicate that Parliament intended that arbitration clauses be restricted or prohibited. More particularly, there is no language in the *Competition Act* that would prohibit class action waivers so as to prevent the determination of a claim by way of arbitration.

[61] Although the Supreme Court held in *Seidel* that Ms. Seidel's claim under section 172 of the *BPCPA* was not arbitrable, it nonetheless determined that her claim under section 171 could go to arbitration. As I indicated earlier in reviewing *Seidel*, Binnie J. contrasted the wording of section 171 with that of section 172, and found the differences meaningful in that they showed the legislature's intent in ensuring that the matters raised pursuant to section 172 be dealt with by the Supreme Court of British Columbia, and that where necessary, interim or permanent injunctions be issued against suppliers guilty of infractions under the *BPCPA*. In other words, by reason of the different wording of section 172, the legislature's intent was that matters raised under that section not be kept private and confidential, which would be the situation if the matter was dealt with by way of arbitration.

[62] As the respondent submits, the private action in damages under section 171 of the *BPCPA* and that created under section 36 of the *Competition Act* are very similar. It is clear that in deciding as it did with regard to section 172 of the *BPCPA*, the Supreme Court not only relied on the wording of the provision itself, but on the wording of section 3 of the statute, which stated in clear terms that the rights, benefits or protections given by the Act to consumers could not be waived or released, unless the waiver or release was allowed by the Act. On that basis, the Supreme Court held that Ms. Seidel's claims under section 172 could proceed in the Supreme Court of British Columbia, and that Ms. Seidel could pursue her certification proceedings.

[63] In closing on *Seidel*, I make mine the remarks of the Judge where, at paragraph 60 of his reasons, he states why he cannot accept the appellant's argument that section 36 of the *Competition Act* is akin to section 172 of the *BPCPA*:

> The Court does not accept the plaintiff's suggestion that the language and intent of section 36 of the *Competition Act* resembles the above-quoted provisions of the *BPCPA*. For instance, unlike section 172 of the *BPCPA*, section 36 makes no provision for injunctive relief or for third party claims. Likewise, the Competition Act does not include a provision similar to section 3 of the *BPCPA* stating that "Any waiver or release by a person of the person's rights, benefits or protections under this Act is void except to the extent that the waiver or release is expressly permitted by this Act ". In short, the Court is of the view that the wording of the *Competition Act* does not compare to the wording of the *BPCPA*, and that it is accordingly not justified to draw parallels with the *Seidel* case on this basis.

[64] In the end, as I understand the appellant's arguments, he says that competition law, by its very nature, should never be the subject of arbitration because arbitration is not compatible with the public interest objectives found in the *Competition Act*. In other words, there is something sacrosanct about competition law that trumps any arbitration agreement. Similar arguments were

made in *Dell* and *Rogers Wireless* in the context of consumer law, which arguments the Supreme Court rejected.

[65] In my view, there is no basis to conclude, as the appellant argues, that claims brought under section 36 of the *Competition Act* cannot be determined by arbitration. As the Supreme Court made clear in *Seidel*, and as it had done previously in *Dell* and in *Rogers Wireless*, it is only where the statute can be interpreted or read as excluding or prohibiting arbitration, as in the case of section 172 of the *BPCPA*, that the courts will refuse to give effect to valid arbitration agreements.

[66] The appellant's claim brought under section 36 of the *Competition Act* is a private claim and, in my respectful view, must be sent to arbitration as the parties intended when they entered into the Arbitration Agreement.

Disposition

[67] For these reasons, I would dismiss the appeal with costs.

"M. Nadon"

J.A.

"I agree.
Johanne Gauthier J.A."

"I agree.
Johanne Trudel J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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