



***The Supreme Court rules that an arbitration agreement does not trump a lawsuit.***

Peace River Hydro Partners is a partnership of several businesses formed to build a hydroelectric dam in northeastern British Columbia. In 2015, Peace River subcontracted some work to Petrowest Corporation, an Alberta-based construction company and its affiliates. The contracts for this work contained agreements that the two parties would settle any disputes through arbitration.

Not long after, Petrowest found itself in financial difficulty and could not repay its debts. Under the *Bankruptcy and Insolvency Act*, an Alberta court appointed the company Ernst & Young as “receiver” for Petrowest. That meant Ernst & Young were responsible for taking control of the company with the purpose of helping Petrowest repay its creditors.

The receiver started a lawsuit against the Peace River partnership in British Columbia, seeking to collect on money it said was owed to Petrowest and its affiliates for subcontracted work. Peace River responded by asking the court to stop the lawsuit. It argued that the dispute should be settled by arbitration, as outlined in its contract with Petrowest. Section 15(1) of British Columbia’s *Arbitration Act* states that if one party to an arbitration agreement starts legal action, the other party can ask the court to stop the lawsuit. Section 15(2) states that a court must stop the legal proceedings unless it determines that the arbitration agreement is void, inoperative or incapable of being performed.

The receiver opposed Peace River’s attempt to stop the lawsuit. Ernst & Young argued that the *Bankruptcy and Insolvency Act* permits the court to exercise central judicial control over the dispute instead of sending the receiver to multiple arbitration forums. The judge agreed with the receiver and allowed the lawsuit to proceed. Peace River appealed that decision to the Court of Appeal for British Columbia. When it dismissed the appeal, Peace River appealed to the Supreme Court of Canada.

The Supreme Court has dismissed the appeal. The lawsuit against Peace River can proceed to trial.

**The arbitration agreements are inoperative.**

The Supreme Court unanimously dismissed the appeal. Explaining why the majority of judges dismissed the appeal, Justice Suzanne Côté said the arbitration agreements were inoperative. She said section 15 of the *Arbitration Act* does not mean a court must always stop a lawsuit by a court-appointed receiver when there has been an agreement to arbitrate. Rather, a court may allow the lawsuit to proceed if the party trying to avoid arbitration proves the arbitration agreement is “void, inoperative or incapable of being performed” within the meaning of section 15(2). An arbitration agreement can be considered inoperative “if enforcing it would compromise the orderly and efficient resolution of the receivership”. This analysis is highly fact-specific.

In this case, there were multiple and overlapping arbitration agreements. This would have involved the receiver participating in and funding at least four different arbitrations with seven different sets of parties. Paying for these processes would have come from the assets of Petrowest and its affiliates. This would only hurt the creditors and run contrary to the objectives of the *Bankruptcy and Insolvency Act*. The majority found that settling the matter with one lawsuit would be faster and cheaper, which was in the interest of the receivership.

---

**Breakdown of the decision:** **Majority:** Justice [Côté](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Rowe](#) and [Kasirer](#) agreed) | **Concurring:** Justice [Jamal](#) agreed that the appeal should be dismissed, but found the arbitration agreements inoperative for different reasons (Justices [Karakatsanis](#), [Brown](#) and [Martin](#) agreed)

**More information (case # 39547):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** [judgment](#) (Supreme Court of British Columbia) | [appeal](#) (Court of Appeal for British Columbia)

---