

# APPLICABILITÉ DES CLAUSES D'ARBITRAGE DANS LES CONTRATS D'EMPLOI EN C.-B. (ARTICLE EN ANGLAIS)

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The BC Supreme Court recently considered the enforceability of arbitration clauses in employment contracts, as was addressed in *Heller v. Uber Technologies Inc. et al*, 2019 ONCA 1 ("*Uber*").

In *A-Teck Appraisals Ltd. v Constandinou*, 2020 BCSC 135 ("*A-Teck*"), the BC Supreme Court departed from the Ontario Court of Appeal's finding in *Uber* that an arbitration clause illegally contracts out of the Employment Standards Act ("**ESA**"). The *A-Teck* case involved a real estate appraiser who, after quitting his job, allegedly breached the non-solicitation and non-competition clauses in his employment contract. The parties' employment contract included an arbitration clause that excluded matters relating to non-solicitation and non-competition. As a result of this exclusion, the employer commenced a civil action for breach of contract, after which the employee filed a counterclaim for wrongful dismissal. The employer brought an application to stay the employee's counterclaim on the basis that his wrongful dismissal claim was governed by the arbitration clause.

The employee argued that the arbitration clause was unenforceable because it effectively contracted out of the ESA's "minimum requirements", namely, the employee's right to file a complaint to the Director of Employment Standards. In support, the employee relied on the *Uber* case in which the Ontario Court of Appeal held that arbitration clauses in employment contracts are unenforceable because they purport to contract out of the Ontario ESA's complaint and investigative process, thereby violating the ESA.

The BC Supreme Court rejected the employee's argument and stayed the action in favour of arbitration. In doing so, the Court noted a distinction between the wording of the respective "minimum standards" provisions of the BC and Ontario ESA. Regarding the BC

ESA, the Court stated that "it is not obvious that a statutory complaint/investigative mechanism becomes an employment standard itself rather than a procedure for enforcing employment standards." The Court, in comparing the BC and Ontario ESA, elaborated on the broad nature of the BC ESA's minimum standards provision:

The British Columbia legislation states that the requirements of the Act and regulations are "minimum requirements" which cannot be waived. This wording, which, unlike the Ontario legislation, does not refer to an employment standard, cannot easily be read to include a complaint/investigative procedure used to enforce those minimum requirements as itself a "minimum requirement".

Importantly, the BC Supreme Court recognized that Ontario's Uber case has been appealed to the Supreme Court of Canada and thus left the door open with respect to any future guidance that the Supreme Court of Canada may provide on this issue.

For all questions related to employment standards, employee claims and arbitration clauses, the Gowling WLG Employment, Labour & Equalities Group would be pleased to assist. Find out more about our Group and how to contact a specific lawyer.

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**Sujet(s) similaire(s)** Travail, emploi et droits de la personne

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