In the Court of Appeal of Alberta

Citation: Inter Pipeline Ltd v Teine Energy Ltd, 2026 ABCA 355

Date: 20261104
Docket: 2601-0245AC
Registry: Calgary

Between:

Inter Pipeline Ltd.

Applicant

- and -

Teine Energy Ltd.

Respondent

Reasons for Decision of
The Honourable Justice Karan M. Shaner

Application for Permission to Appeal

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The Honourable Justice Karan M. Shaner

[1] The applicant, Inter Pipeline Ltd (IPL), applies for permission to appeal an order dismissing its application to set aside an arbitral award. ***Inter Pipeline Ltd v Teine Energy Ltd***, 2026 ABKB 524 [***KB Decision***].

[2] The respondent, Teine Energy Ltd (Teine), is an oil and gas company that produces, among other things, light crude oil from oil fields in southwestern Saskatchewan. Teine ships its light crude oil on the Mid-Saskatchewan Pipeline System (MS Light), which IPL owns and operates. MS Light gathers light crude oil from fields in southwestern Saskatchewan and transports it to IPL's terminal, where it is transferred to the Enbridge Main Line. MS Light operates subject to IPL's published tariff (the tariff).

[3] Teine and IPL are parties to a Pipeline Connection Agreement, dated June 24, 2014, which contains an arbitration clause. Teine commenced the MS Light arbitration in May 2022, alleging IPL breached the Pipeline Connection Agreement and the tariff in multiple ways, including by blending products for its own benefit and using an improper method to calculate equalization. IPL advanced a limitation defence, arguing that Teine either knew or ought to have known about the equalization formula and failed to take legal action within the time for doing so.

[4] The arbitration proceeded before a panel of three arbitrators and took place over two weeks in January and February 2024. As part of the arbitration proceedings, the panel ordered Teine to produce records, including forecasts prepared for Teine by Boomerang Energy Marketing (Boomerang).

[5] The panel rendered its decision on August 19, 2024. It dismissed IPL's limitation defence, ruling there was insufficient evidence to find Teine knew or ought to have known of its claims until after the arbitration began. It also found IPL did not follow the correct equalization formula and awarding Teine damages and interest totalling approximately $80 million. It dismissed all of Teine's other claims.

[6] IPL filed an originating application on September 17, 2024, seeking an order setting aside the award pursuant to s 45 of the *Arbitration Act*, RSA 2000 (the set aside application) and leave to appeal the arbitration award.[1] The application was originally scheduled for mid-November 2025. In late September 2025, IPL learned through another arbitration involving the same parties that Teine had failed to produce Boomerang forecasts. These records fell within the scope of the arbitration tribunal's production orders. IPL made an urgent application for an order to compel

[1] This application concerns only the set aside application.

production of the forecasts with the intention of using them in the set aside application. The chambers judge dismissed the production application, concluding that although the records should have been disclosed, there was no reasonable basis to conclude their production would have affected the panel's conclusion on IPL's limitation defence. ***Teine Energy Ltd v Inter Pipeline Ltd***, 2025 ABKB 545. That ruling was reversed by this Court and Teine produced the forecasts. ***Inter Pipeline Ltd v Teine Energy Ltd***, 2025 ABCA 375.

[7] After it obtained the forecasts, IPL proceeded with the set aside application. It relied on ss 45(1)(f) and (g) of the *Arbitration Act* which allow the Court to set aside an arbitration award if:

> (f) the applicant was treated manifestly unfairly and unequally, was not given an opportunity to present a case or to respond to another party's case, or was not given proper notice of the arbitration or of the appointment of an arbitrator;
>
> (g) the procedures followed in the arbitration did not comply with this Act or the arbitration agreement ... .

[8] The chambers judge had to determine whether Teine's failure to produce the forecasts caused IPL to be treated manifestly unfairly, deprived it of an opportunity to present its case, or resulted in non-compliance with the arbitration agreement. He conducted the analysis relying on the framework set out in ***British Columbia Women's Hospital and Health Centre Society (Re)***, 29 CLRBR (2d) 72, [1995] BCLRBD No 346 at para 49 [***BC Women's Hospital***], which requires only that the undisclosed records be material and "may have affected the result of the case". He also considered ***R v Dixon***, [1998] 1 SCR 244 at para 34 [***Dixon***], which concerned production of fresh evidence in a criminal case where the Crown was alleged to have undermined the fairness of a trial by failing to disclose the relevant records. He concluded the standards were similar and he articulated the test as follows (***KB Decision*** at para 39):

> [39] The questions that must be asked are: (1) is there a reasonable possibility that the new evidence, if it had been available to the arbitration tribunal, would have affected the outcome of the arbitration? and (2) is there a reasonable possibility that the non-disclosure of records now sought to be admitted as new evidence affected the fairness of the arbitration? An affirmative answer to either question is sufficient to set aside the arbitration.

[9] The chambers judge found there was no reasonable possibility that Teine's failure to produce the forecasts would have affected the panel's conclusions, nor did it compromise fairness. He found, among other things, that the forecasts on their own provided no insight into whether IPL was complying with its contractual obligations; the forecasts contained information similar that which had already been produced; the new arguments IPL indicated it would have advanced had the forecasts been produced were already available based on other evidence before the panel and

accordingly, were not "essential" or "crucial" for IPL to put forward its case; and Teine's failure to produce the records was inadvertent.

[10] The following factors inform an application for permission to appeal an arbitration award:

(a) whether the questions raised are reasonably arguable;

(b) whether deciding the questions will likely affect the result of the litigation;

(c) whether the answers to the questions will be of interest to others or influence later suits; and

(d) whether there are any independent reasons not to relitigate the questions, or to otherwise limit the scope of the appeal.

See ***Frederico v Cabral***, 2026 ABCA 251 at para 14; ***Javaid v Javaid***, 2026 ABCA 240 at para 13; ***Nilsson v Alberta***, 1999 ABCA 340 at para 4. None of these factors are, on their own, determinative. ***UCANU Manufacturing Corp v Jardeg Construction Services Ltd***, 2015 ABCA 371 at para 21 [***UCANU***]. However, the absence of an arguable appeal is generally fatal because only appeals that meet "some standard of worthiness should receive permission to proceed". ***Sorenson v Stewart***, 2024 ABCA 336 at para 11; ***Kimberley Management Ltd v Klammer***, 2000 ABCA 271 at para 3.

[11] Whether a proposed appeal is reasonably arguable requires the Court to consider the relative merits of the appeal in the context of the applicable standard of review. There must be a possibility that the ground will succeed. ***UNCANU,*** at para 21.

[12] IPL does not dispute the way the chambers judge articulated the test, but rather, it argues the chamber's judge essentially applied the wrong test, giving rise to a reasonable argument on appeal. Specifically, IPL says the chambers judge erred by conducting an analysis and applying a standard more stringent than that set out in ***BC Women's Hospital*** and ***Dixon***: he required IPL to demonstrate the Boomerang forecasts were "essential" or "crucial" to IPL's case, rather than considering whether there was a "reasonable possibility" they could have affected the result; he speculated about what use IPL could have made of the records that *were* produced, rather than what IPL might have done with the forecasts had they been produced as required; he relied on "irrelevant facts and issues", including whether the non-production was inadvertent and that neither party considered the records to be a "smoking gun".

[13] Teine argues the chambers judge made factual findings, grounded in the record, which attract palpable and overriding error as the standard of review. It says it is not reasonably arguable that the Boomerang forecasts would have affected the result, nor did the failure to produce them adversely affect fairness, given the state of the record before the arbitration panel. It suggests IPL's arguments amount to a quarrel over the words used and not the substance of the chambers judge's

reasoning; and that they are in fact phrases the chambers judge used in response to IPL's arguments before him.

[14] IPL is not required to demonstrate it *will* succeed on appeal. Rather, it must show its appeal is reasonably arguable and that there is a possibility of success. It has done so. While the application of a legal test to the facts is generally a question of mixed fact and law, the applicant asserts that the chambers judge, in effect, applied the wrong test. Whether the "wrong" test has been applied is a question of law, which invites no deference to the decision of the chambers judge. ***Canada (Director of Investigation and Research) v Southam Inc***, 1997 CanLII 385 (SCC) at para 39; ***Housen v Nikolaisen***, 2002 SCC 33 at paras 8, 27.

[15] With respect to the remaining considerations, whether the chambers judge misapplied the test in ***BC Women's Hospital*** and ***Dixon*** by imposing a higher standard than directed will influence the litigation between IPL and Teine, and the result will be of interest to others. Disclosure – and the effect and consequences of non-disclosure – is of central importance to fair litigation. This offers a compelling reason to grant permission to appeal.

Disposition

[16] I grant IPL permission to appeal on the following question of law:

> Did the chambers judge err by applying a more stringent standard than required by ***BC Women's Hospital*** and ***Dixon*** or by making extricable errors of law when determining whether the respondent's failure to produce relevant records caused the applicant to be treated manifestly unfairly, deprived it of an opportunity to present its case, or resulted in non-compliance with the arbitration agreement?

Application heard on October 22, 2026

Reasons filed at Calgary, Alberta
this 4th day of November, 2026

Shaner J.A.

Appearances:

G. Tarnowsky, KC (no appearance)
R. Howie (no appearance)
B.H. Walker (no appearance)
G. Benediktsson
P. Brasch
for the Applicant

E.B. Mellett, KC
M.P. Theroux, KC
E. Allum (no appearance)
D. Wang
for the Respondent