

## What is the Standard of Review for contracts?

**Anita Varjadic & Rebecca Moore**  
**March 2017**

Clarification on the standard of review for appeals involving contractual interpretation was provided by the Supreme Court of Canada decision of *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53

The Court found contractual interpretation involves issues of mixed fact and law as it “is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix.” As such, deference should be accorded to the court of first instance.

However, the Court recognized this rule is not absolute. It’s possible to identify extricable questions of law within questions of mixed fact and law, although caution should be exercised when doing so. Examples of legal errors that will fall within this exception include the application of an incorrect principle, the failure to consider a required element of a legal test, or the failure to consider a relevant factor.

An example of the application of this principle can be seen in the Court of Appeal’s decision in *Deslaurier Custom Cabinets Inc. v. 1728106 Ontario Inc.*, 2016 ONCA 246. This case involved the interpretation of a commercial lease agreement following a fire. Applying *Sattva*, the Court of Appeal found the motions judge failed to apply binding appellate authority with respect to contractual allocation of risk, failed to adopt a construction of the subject lease that accorded with the governing principles of contractual interpretation, and also failed to assign meaning to the contested terms of the

lease. As these legal errors were found to involve extricable questions of law, a correctness standard of review applied.

Leave was sought to appeal the Deslaurier decision to the Supreme Court of Canada, which remanded the matter back to the Court of Appeal for disposition in accordance with *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37. The Court of Appeal's decision following the Supreme Court of Canada's direction is pending.

Notably, the Supreme Court of Canada decision of *Ledcor* recognizes an exception to *Sattva* when dealing with standard form contracts (specifically a builders' risk insurance policy). In upholding the general principles as articulated in *Sattva*, the Court held that standard form contracts involve a unique set of issues as their interpretation "is of precedential value and there is no meaningful factual matrix that is specific to the particular parties to assist in the interpretation process." As a result, these contracts are more appropriately classified as involving questions of law, thereby attracting a correctness standard of review.

In reaching this decision, the Court drew a distinction between the applicable standard of review generally to be applied in cases involving contractual interpretation (deferential), from those specifically involving standard form contracts (correctness). However, the Court appears to have left the door open for standard form contracts to still attract a deferential standard of review when involving a question of mixed law and fact. Overall, "[a]ppellate courts should consider whether 'the dispute is over a general proposition' or 'a very particular set of circumstances that is not apt to be of much interest to judges and lawyers in the future'."