

Case Note: William Litz and Others v. Russell Litz and Others

Canada – Manitoba Court of Queen’s Bench
Kennedy J.

10 December 1996 [1998] ARDJ 241

**Appointment of substitute arbitrator, private
reference to arbitration.**

This case dealt with the interesting question as to whether the general power of the Court to appoint a substitute arbitrator, where an arbitrator refuses to act or is disqualified from acting, also applies where the parties had submitted specific existing disputes to a named arbitrator.

The parties who were involved in the dispute concerning the ownership of family companies referred specific disputes by agreement to a named arbitrator.

There was evidence that the parties specifically wished the named arbitrator to determine the disputes, and no one else. The arbitrator was subsequently disqualified by the Court. Pursuant to the *Manitoban Arbitration Act* where an arbitrator was disqualified from acting, the Court may, on the application of a party to the submission, appoint a substitute arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all the parties. The general power of the Court under the *Manitoban Arbitration Act* to appoint a substitute arbitrator is similar to the general power of the Court to appoint a substitute arbitrator when there is a vacancy in the office of an arbitrator, or an arbitrator is removed by the Court, pursuant to ss10 and 11 of the *Commercial Arbitration Act 1994* (Vic.). One of the parties made application for the Court to appoint a substitute arbitrator pursuant to its general power. The Court held that the power conferred by the Arbitration Act only applied to cases involving a general submission to arbitration where arbitration is selected as the mechanism for resolving disputes of a general nature. The Act did not apply to a ‘private’ reference to arbitration, where the parties selected the arbitrator they both wished to determine an existing dispute, unless the submission to arbitration specifically contemplates doing so.

The parties were therefore left in a position as if no arbitration agreement had been entered into. They could either enter into a fresh agreement to arbitrate, or refer the dispute to litigation.

It is likely that the reasoning adopted by the Court will have similar application to provisions under the *Australian Uniform Commercial Arbitration Act* which give the Court power to appoint a replacement arbitrator.

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