

More On ICBC Claims Lawyers And ICBC's 'Strategic Alliance Agreement'

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Is your ICBC Claims Lawyer also in partnership with ICBC? The answer is sometimes yes and it is very important for any injured person looking to hire a lawyer for their ICBC Injury Claim to ask whether their lawyer has signed ICBC's SAA. (for background see my previous article [Does your Lawyer act fo ICBC, ask you may be surprised by the answer](#)).

Today the [BC Court of Appeal released reasons for judgement \(Tepei v. ICBC\)](#) confirming that lawyers (or law firms) that have signed ICBC's Strategic Alliance Agreement are in a 'partnership' type relationship with ICBC.

In upholding a previous judgement ruling that an arbitrator who signed ICBC's SAA agreement gave rise to a 'reasonable apprehension of bias' in presiding over an ICBC Injury Claim the Court of Appeal said the following about ICBC's SAA and ICBC's relationship with lawyers who signed it:

[1] **KIRKPATRICK J.A.:** *This is an appeal from an order removing an arbitrator and vacating his rulings founded on a reasonable apprehension of bias. The chambers judge found that the Strategic Alliance Agreement entered into by ICBC and lawyers it retains provided comprehensive terms which emphasized the firm's commitment to ICBC as "partners" in its enterprise rather than simply as counsel acting from time to time on individual cases.*

[2] *For substantially the reasons given by the chambers judge (2007 BCSC 1694, [2008] 3 W.W.R. 664, 78 B.C.L.R. (4th) 95), I would dismiss the appeal. In my opinion, a reasonable and right minded person would expect the arbitrator to disclose the fact that his firm was a signatory to the Strategic Alliance Agreement and that the arbitrator was the principal contact between his firm and ICBC. Similarly, the fact that the arbitrator's firm had signed a Strategic Alliance Agreement would give rise to a reasonable apprehension of bias.*

[3] *I am also not persuaded that the chambers judge erred in finding that the respondents' failure to comply with the rules of B.C. International Commercial Arbitration Centre (Domestic Commercial Arbitration Rules of Procedure of the British Columbia International Commercial Arbitration Centre) ("BCICAC") did not preclude them from claiming relief under s. 18 of Arbitration Act, R.S.B.C. 1996, c. 55. Section 18 of the Act permits a party, at any time, to apply to the Supreme Court for removal of an arbitrator who commits "arbitral error", which would include a reasonable apprehension of bias. The Act provides remedies wider in scope than a challenge to impartiality and independence under s. 15 of the BCICAC rules, including vacating the arbitrator's rulings and awards.*

[4] *It is obvious that arbitral error is central to the jurisdiction of the arbitrator. The jurisdiction of the Supreme Court cannot in these circumstances be trumped by the rules of the BCICAC.*