

Court of King's Bench of Alberta

Citation: Fraser N Peterson Professional Corporation v Mark WM Leishman Professional Corporation, 2026 ABKB 568

Date: 20260812
Action No: 2501 17587
Registry: Calgary

Between:

Fraser N. Peterson Professional Corporation

Applicant

– and –

**Mark W.M. Leishman Professional Corporation and
James McCartney aka Jim McCartney**

Respondents

Reasons for Decision of the Honourable Justice D. Jugnauth

I. Overview

[1] The Applicant, Fraser N. Peterson Professional Corporation ("**Peterson**"), seeks declarations that the arbitration commenced by the Respondent, Mark W.M. Leishman Professional Corporation ("**Leishman**"), is invalid because the arbitration agreement ceased to exist. Peterson also seeks a declaration that the arbitrator lacks jurisdiction and an order prohibiting the continuation of the arbitration.

[2] The central dispute concerns the effect of terminating an Associate Agreement that originally governed the commercial relationship between the parties. Peterson contends that the termination of the Associate Agreement extinguished the arbitration clause. Leishman contends that the arbitration clause survives termination and that any jurisdictional challenge should be determined by the arbitrator in the first instance.

[3] Although I conclude that the Arbitrator possesses jurisdiction to determine his own jurisdiction, the interests of efficiency and proportionality favour determining Peterson's jurisdictional challenge in this proceeding. Having done so, I am satisfied that the arbitration agreement survived the termination of the Associate Agreement. The application is dismissed.

II. Background

[4] The essential facts are not materially in dispute.

[5] On August 17, 2018, the parties entered into an Associate Agreement governing the provision of dental services by Peterson at Leishman's dental practice in Pincher Creek, Alberta.

[6] The Associate Agreement contained a broad dispute resolution clause requiring disputes arising out of or relating to the agreement to be resolved by arbitration in accordance with the rules of the ADR Institute of Canada (ADRIC). That clause referred to disputes arising out of or relating to the agreement, including disputes relating to its breach, termination or invalidity.

[7] The relationship subsequently came to an end. Peterson delivered a notice of termination and the parties thereafter entered into a written agreement terminating the Associate Agreement effective November 30, 2021.

[8] There is no dispute that the Associate Agreement terminated on that date and that the Termination Agreement stated that Peterson was bound post-termination by:

- (i) the insurance covenant,
- (ii) the confidentiality covenant,
- (iii) the non-solicitation covenant, and
- (iv) the non-competition covenant.

[9] Thereafter, a dispute arose between the parties. In September 2023, Leishman served a Notice of Request to Arbitrate alleging, among other things, breaches of restrictive covenants and other obligations said to arise under the Associate Agreement and related arrangements between the parties.

[10] Peterson did not participate in the arbitration process and consistently maintained the position that any arbitration agreement ceased to exist upon termination of the Associate Agreement. An arbitrator was ultimately appointed through the ADRIC process and this application followed.

[11] On November 18, 2025, Justice Magnan declined to grant interim injunctive relief and directed the balance of the matter to a Justice Special Chambers hearing, which is what has come before me.

[12] According to Leishman's materials, the arbitrator issued a written jurisdictional ruling on December 30, 2025 addressing the validity of the arbitration agreement, the validity of his appointment, and his jurisdiction over the matters in dispute.

[13] To be clear, my decision does not depend upon the existence or correctness of that ruling. Rather, it rests upon the statutory and contractual framework governing the parties, and the common law doctrines of competence-competence and separability, as reflected in sections 17(1) and 17(3) of the *Arbitration Act*, RSA 2000, c A-43 (“Act”).

III. Issues

[14] The issues before the Court are:

- (i) Has Peterson participated in the arbitration such that relief under section 47 is unavailable?
- (ii) If section 47 is available, should the Court determine the jurisdictional challenge advanced by Peterson?
- (iii) If the Court does determine the issue, is the arbitration agreement invalid or has it ceased to exist?
- (iv) Should the Court grant injunctive relief prohibiting continuation of the arbitration?

IV. Positions of the Parties

[15] Peterson submits that the parties agreed to terminate the Associate Agreement effective November 30, 2021 and that, upon proper interpretation of both the Associate Agreement and Termination Agreement, the arbitration provision did not survive.

[16] Peterson submits that it has not participated in the arbitration and therefore remains entitled to bring the present application pursuant to section 47 of the Act. To that end, Peterson submits that the dispute raises a question of contractual interpretation capable of determination by the Court, and asks the Court to exercise its jurisdiction to declare the arbitration invalid and enjoin it from proceeding.

[17] Leishman accepts that Peterson has consistently objected to the arbitrator’s jurisdiction but submits that the jurisdictional question should nevertheless remain with the arbitrator. Leishman relies upon the statutorily codified doctrines of competence-competence and separability. The latter directs that an arbitration agreement forming part of a larger agreement may survive the termination of the larger contract.

[18] In the alternative, Leishman argues that both the applicable statutory and contractual regimes governing the parties’ commercial relationship disclose an objective intention to preserve arbitration as the mechanism to resolve disputes arising after the termination of the Associate Agreement. This would permit the existing arbitration to continue.

V. Analysis

1) Did Peterson participate under section 47 of the Act?

[19] Section 47 of the Act permits a court, in certain circumstances, to grant relief to a party who has not participated in the arbitration. The leading Alberta authority on participation is ***Dow Chemical Canada ULC v NOVA Chemicals Corporation***, 2023 ABCA 343.

[20] In that case, both this Court and the Court of Appeal considered the extent to which a party had engaged in the arbitral process before raising a jurisdictional challenge. On the facts before me, I am satisfied that Peterson has not participated in the arbitration within the meaning of section 47. Leishman agrees.

[21] Unlike the circumstances in *Dow*, Peterson did not participate in the appointment of the arbitrator, did not engage in procedural conferences, did not advance the arbitration process and did not take steps that could reasonably be characterized as accepting the authority of the arbitral tribunal.

[22] Rather, Peterson consistently asserted that no valid arbitration existed and maintained that position throughout. Accordingly, I find that Peterson is entitled to invoke section 47 to ask the Court to exercise its jurisdiction to entertain the application.

[23] That conclusion does not, however, determine whether the Court ought to exercise that jurisdiction to decide the underlying jurisdictional question.

2) Should the Court determine the jurisdictional challenge advanced by Peterson?

a. The Competence-Competence principle

[24] Competence-competence is a principle that gives precedence to the arbitration process. It holds that “arbitrators should be allowed to exercise their power to rule first on their own jurisdiction”: ***Peace River Hydro Partners v Petrowest Corp***, 2022 SCC 41 at para 39.

[25] This principle, repeatedly affirmed by the Supreme Court of Canada, reflects a strong legislative and judicial preference that jurisdictional disputes be addressed first within the arbitral process. It has been codified in section 17(1) of the Act.

[26] However, this principle is not absolute. “A court *may* resolve a challenge to an arbitrator’s jurisdiction if the challenge involves pure questions of law, or questions of mixed fact and law requiring only superficial consideration of the evidentiary record”: ***Peace River Hyrdo*** at para 42 [emphasis added].

[27] Peterson submits that this case falls within that recognized exception because the dispute turns on the interpretation of written agreements and does not require the resolution of contested facts. I accept that there is force to that submission.

[28] However, the existence of such an exception does not compel judicial intervention. The competence-competence principle remains the starting point and the exceptions are permissive,

not mandatory. The question is not simply whether the Court may decide the issue, but whether it should do so in the particular circumstances of the case.

[29] Subject to my comments below, this would ordinarily not be an appropriate case to depart from the general rule. The dispute is fundamentally directed to whether the arbitration agreement survived termination of the larger contractual relationship, and whether it continues to govern disputes arising between the parties.

[30] That is precisely the type of jurisdictional question that section 17(1) contemplates may be determined by an arbitral tribunal. Moreover, section 17(3) directs that an arbitration agreement *shall* be treated as an independent agreement capable of surviving separately from the contract in which it is contained, even if the other agreement is found to be invalid.

[31] Peterson's position depends upon the proposition that termination of the Associate Agreement necessarily extinguished the arbitration agreement. Whether that proposition is correct is a question directed to the scope, effect, and continuing operation of the arbitration agreement itself.

[32] Section 17(3) demonstrates that the arbitration agreement cannot be assumed to fall with the termination of the larger contract. Rather, it must be examined as an agreement capable of surviving independently. So too does r 4.9.1 of the ADRIC Rules, which were incorporated into the arbitration agreement.

[33] Ultimately, Peterson's position requires a finding that the Arbitration Agreement ceased to exist notwithstanding that statutory and contractual framework. Ordinarily, questions arising from the interaction between those provisions would be determined by the arbitrator in the first instance.

[34] However, the Court also has jurisdiction under section 47 of the Act to determine the issue raised by Peterson. For the reasons that follow, I am satisfied that the circumstances of this case justify the Court exercising its jurisdiction to determine the issue now.

b. Foundational rules

[35] The foundational principles in the *Alberta Rules of Court*, Alta Reg 124/2010 ("*Rules*") are intended to promote the fair, timely, and cost-effective resolution of claims through a court process: rule 1.2. In this case, the material facts are not in dispute. The parties' positions have been fully developed, and the issue turns primarily on the interpretation of written agreements.

[36] Because the arbitrator made his determination without the benefit of adversarial submissions, Peterson asks the Court to exercise its jurisdiction. Peterson's non-participation was not through inadvertence or error. Section 47 of the Act required Peterson to forgo participating in the jurisdictional argument before the arbitrator to preserve his right to ask the Court to intervene.

[37] This statutory framework places a party challenging jurisdiction in a difficult position. Where a party advances argument before an arbitrator contesting the arbitrator's jurisdiction, it will have participated in the arbitration. In doing so, section 47 bars that party from challenging

the validity or existence of the purported arbitration agreement before the courts. However, non-participation deprives the arbitrator of the benefit of an important adversarial perspective.

[38] The practical consequence of declining to determine the issue would be further proceedings before either the Arbitrator or an appellate court before the parties obtain a final determination as to whether the arbitration agreement remains operative.

[39] In the present case, the parties have advanced comprehensive oral and written submissions on an uncontested factual record. The central issue is one of contractual interpretation. In these circumstances, I am well-positioned to determine the issue.

[40] Declining to address the issue now would likely result in additional delay, expense, and duplication of effort before the parties obtain a final answer to the central question at the heart of this dispute. Accordingly, I will go on to consider whether the arbitration agreement is invalid because it has ceased to exist.

3) Is the arbitration agreement invalid because it ceased to exist?

[41] As a preliminary matter, Peterson submitted that the Court's role under section 47 is limited. In his submission, the Court may intervene only if I am satisfied that the arbitration agreement has ceased to exist. If the Court is not prepared to make that determination, Peterson argues the application must be dismissed and the issue referred back to the arbitrator under the competence-competence principle.

[42] He argued that dismissal of the application would not amount to a finding that the arbitration agreement continues to exist. He analogized this result to the dismissal of a summary judgment application, which does not amount to judgment or findings of fact that favour the opposing party.

[43] Leishman disagreed. He submitted that once the Court elects to determine the jurisdictional issue itself, the Court must answer the question that has been placed before it. In his submission, if the Court concludes that the arbitration agreement has not ceased to exist, the substance of that conclusion is a determination that the agreement remains operative. He argued that there is no principled basis upon which the Court may assume jurisdiction to decide the issue while declining to resolve it.

[44] I do not accept Peterson's proposed distinction. The competence-competence principle is concerned with who decides jurisdiction in the first instance. If the matter is referred to the arbitrator, the Court expresses no view on the merits of the jurisdictional dispute.

[45] However, once the Court determines that it should decide the jurisdictional question itself, the Court must actually decide it. It cannot assume responsibility for determining jurisdiction and then decline to answer the very question it has undertaken to resolve.

[46] As discussed above, although I am satisfied that the competence-competence principle would ordinarily favour leaving this issue to the arbitrator, the foundational rules promote a timely and cost-effective resolution of the dispute. In the circumstances before me, the issue is ripe for determination, and no useful purpose would be served by requiring the parties to incur

the time and expense of further proceedings before either the arbitrator or an appellate court on the same question.

a. The agreements

[47] In my view, reading the Associate Agreement in conjunction with the ADRIK Rules incorporated therein leads to the conclusion that the Arbitration Agreement did not cease to exist upon the termination of the Associate Agreement. Support for this conclusion can be found in the contractual framework established by the parties.

[48] The Associate Agreement contains a broad arbitration provision in clause 1.2 (“**Arbitration Agreement**”), which reads:

This Agreement and all matters arising hereunder shall be governed by, construed and enforced in accordance with the law of the Province of Alberta and the federal laws of Canada Applicable herein. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the rules of the ADR Institute of Canada, Inc. [Underlining added]

[49] Several features of this clause are notable. First, the parties agreed that arbitration would extend beyond disputes concerning the performance of the Associate Agreement during its operation. This clause expressly contemplated any “dispute, controversy or claim arising out of or relating to [the Associate Agreement], *or the breach, termination or invalidity thereof*”. On its face, the arbitration clause contemplates circumstances in which the contractual relationship itself has come to an end, and a dispute remains to be resolved.

[50] Second, the Arbitration Agreement is drafted in expansive language. It is not confined to a narrow category of disputes. Instead, it reflects a clear intention that controversies arising from the parties’ contractual relationship would generally be resolved through arbitration rather than litigation.

[51] The parties subsequently entered into a Termination Agreement effective November 30, 2021. Importantly, the Termination Agreement did not bring the entirety of the parties’ contractual relationship to an end. Rather, the parties identified certain obligations that would continue notwithstanding termination.

[52] This is consistent with clause 5 of the Associate Agreement, which stipulated that Peterson would remain bound by, among other things, covenants pertaining to insurance, confidentiality, non-solicitation, and competition. This provision in the Associate Agreement is significant because it demonstrates a deliberate intention of the parties to preserve certain rights and obligations beyond the termination of that contract.

[53] In other words, the parties accepted that certain legal obligations would survive the termination date and remain enforceable thereafter. This is particularly important given the nature of the substantive dispute between the parties. The claims Leishman seeks to advance in arbitration are largely founded upon alleged breaches of covenants said to have survived

termination. Accordingly, the current arbitration concerns rights and obligations that the parties expressly intended would remain operative after termination.

[54] The Associate Agreement supports the conclusion that the parties contemplated the survival of contractual obligations beyond termination. In my view, the parties' contractual framework is inconsistent with an intention to preserve substantive post-termination obligations while simultaneously extinguishing the agreed mechanism for resolving disputes arising from them.

(i) The termination clause and ADRIC rules

[55] Peterson argues that the termination clause of the Associate Agreement makes the objective intention of the parties self-evident. That clause is titled "6.3 Effect of Termination" and states: "Upon the termination of this Agreement, the obligations of the parties shall cease and determine except [...]". The clause continues with a list of enumerated exceptions.

[56] Peterson emphasizes that the arbitration clause is not included among the exceptions designated to survive termination. According to Peterson, this makes it clear that the parties' intention was to discontinue the obligation to arbitrate disputes upon termination of the Associate Agreement. I do not agree.

[57] Although the arbitration clause is not specifically designated to survive termination, that omission is not determinative. Rule 4.9 of the ADRIC Rules contains an important component relevant to the analysis.

4.9 Authority of the Tribunal

4.9.1 The Tribunal may rule on its own jurisdiction, including ruling on any objections about the existence or validity of the Arbitration Agreement, and for that purpose:

- a) an arbitration clause that forms part of a contract must be treated as an agreement independent of the other terms of the contract; and
- b) the Tribunal's decision that the contract containing the arbitration clause is null and void does not invalidate the arbitration clause unless the Tribunal specifically finds that it does.

[58] The ADRIC Rules were expressly incorporated into the Arbitration Agreement. Objectively, the mandatory language that "an arbitration clause that forms part of a contract *must* be treated as an agreement independent of the other terms of the contract" was contemplated by the parties when the Associate Agreement was negotiated.

[59] Considering the Associate Agreement, the Termination Agreement, and the ADRIC Rules as a coherent contractual framework, I am not persuaded that the parties intended the Arbitration Agreement to cease upon termination of the Associate Agreement. The parties' use of broad language in the Arbitration Agreement, their express preservation of certain post-

termination obligations, and their incorporation of rules requiring the Arbitration Agreement to be treated independently of the contract in which it appears all point in the opposite direction.

[60] Read as a whole, the contractual documents are more consistent with an intention that disputes concerning surviving rights and obligations would continue to be resolved through arbitration. In the result, I am satisfied that the Arbitration Agreement survived termination of the Associate Agreement.

4) Should the Court prohibit the continuation of the arbitration?

[61] Having concluded that the Arbitration Agreement survived the termination of the Associate Agreement, there is no basis to enjoin the continuation of the arbitration.

VI. Conclusion

[62] Within the context of the positions and arguments advanced before me, I conclude that the Arbitration Agreement survived termination of the Associate Agreement and remains capable of governing disputes arising from the parties' surviving contractual obligations. This is without prejudice to other positions that Peterson may wish to take before the arbitrator that were not argued before me.

[63] In the result, I decline to grant the declarations sought by Peterson. Further, the application for injunctive relief is dismissed.

[64] Given that the merits of the parties' substantive dispute have yet to be adjudicated, costs shall be in the cause. Counsel for Leishman is directed to draft the order arising from these reasons.

Heard on the 9th day of July, 2026.

Dated at Calgary, Alberta this 12th day of August 2026.

Derek Jugnauth
J.C.K.B.A.

Appearances:

C.M. Smith, Smith Mack LaMarsh Barristers & Solicitors
for the Applicant

S. Elzen-Hoskyn and J.D. Kardosh, Dentons Canada LLP
for the Respondents