CITATION: Barton Malow Canada Ltd. v. AtkinsRéalis Construction (Pacific) Inc., 2026 ONSC 5903
COURT FILE NO.: CV-26-00103962
DATE: 2026/10/23

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Barton Malow Canada Ltd., Applicant

AND:

AtkinsRéalis Construction (Pacific) Inc., Respondent

BEFORE: Justice K.A. Jensen

COUNSEL: Joshua Strub and Leah Mangano, Counsel, for the Applicant

James Plotkin and Tristan Neill, Counsel, for the Respondent

HEARD: October 15, 2026

ENDORSEMENT

The Application

[1] This application concerns the enforcement of three arbitral awards issued in favour of Barton Malow Canada Ltd. against AtkinsRéalis Construction (Pacific) Inc. arising from a construction dispute.

[2] The arbitrator issued a merits award, a subsequent interest award and a costs award. AtkinsRéalis commenced proceedings challenging aspects of the arbitral decisions. Barton Malow thereafter brought this application under s. 50 of the *Arbitration Act, 1991*, SO 1991, c 17, seeking enforcement of the awards notwithstanding the pending challenge proceedings.

[3] By the time of the hearing, AtkinsRéalis had paid the principal amounts awarded by the arbitrator, together with the amounts that it understood the awards to require. The parties agreed that the only remaining monetary dispute concerned whether post-judgment interest was payable on the HST component of the merits award.

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[4] Barton Malow submits that the arbitrator intended post-judgment interest to apply to HST. It relies on portions of its submissions that were referenced in the interest award and seeks a declaration that a further amount remains owing. AtkinsRéalis submits that the arbitrator expressly limited post-judgment interest to the amount of $2,441,301, addressed HST separately, and did not award post-judgment interest on the HST component. It submits that the awards have therefore been fully satisfied.

[5] The issue before the court is not whether post-judgment interest ought to have been awarded on HST. Rather, the issue is whether, in the context of an enforcement application under s. 50 of the *Arbitration Act, 1991*, the court has jurisdiction to determine that the arbitrator intended to award relief that is not clearly expressed in the award.

Analysis

The Award

[6] The relevant portions of the interest award, dated October 23, 2025, provide at paragraphs 4 and 5:

> I see no proper reason for any reduction to the post judgment interest rate which would apply under the *Courts of Justice Act*, and order that rate. It applies to the awarded amount of $2,441,301.
>
> I turn to the submissions received regarding HST. I am persuaded by the submissions made by Mr. Strub and Ms. Mangano (in particular at paragraphs 7 through 10 of their Reply submissions). HST is to be paid by SNC on the awarded amount of $2,441,301.

[7] Barton Malow argues that the arbitrator's reference to paragraphs 7 through 10 of its reply submissions demonstrates that the arbitrator accepted its position that interest should apply to HST. AtkinsRéalis submits that the arbitrator considered post-judgment interest and HST as separate issues and intentionally restricted post-judgment interest to the amount of $2,441,301.

[8] I do not find it necessary to resolve that debate. It is sufficient to conclude that the award does not clearly and expressly provide for post-judgment interest on HST. At minimum, the award is ambiguous on that point.

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The Court's Role On An Enforcement Application

[9] The difficulty for Barton Malow is that its position necessarily requires the court to determine what the arbitrator intended by the award and to enforce the award on that basis. The authorities establish that this is not the role of an enforcement court. For example, in *Haratsis v. Haratsis* (2007), 36 R.F.L. (6th) 142 (Ont. S.C.J.), Thorburn J., as she then was, stated:

> This court has no jurisdiction to "reasonably interpret" the arbitrator's decision. This court may not interpret but may only enforce the clear decision of the arbitrator. If there is any ambiguity in the arbitrator's decision, the Court should not treat a request for enforcement as an opportunity to substitute its own assessment. (*Haratsis*, at para. 23).

[10] Thorburn J. relied on *Ben Plastering Ltd. v. Mollenhauer Residential Ltd. (*1994), 15 O.R. (3d) 418 (Gen. Div.), aff'd (1997), 33 O.R. (3d) 477 (C.A.), a case recognizing that the court's role on enforcement is to enforce the award, not to rewrite or supplement it.

[11] I agree with that principle. If an award is clear, the court may enforce it. If an award is ambiguous, an enforcement application is not an invitation for the court to determine what the arbitrator should be taken to have meant.

[12] That conclusion is reinforced by the structure of the *Arbitration Act, 1991*, which contains specific mechanisms dealing with correction, explanation and appellate review. Permitting an enforcement judge to resolve ambiguities by adopting one party's preferred interpretation would risk collapsing those distinct statutory remedies into the enforcement process itself.

The Authorities Relied Upon by Barton Malow

[13] Barton Malow relied upon a number of authorities addressing the interpretation of court orders, including *Fontaine v. Canada (Attorney General)*, 2020 ONCA 688; *Aizic v. Natcan Trust*

Company, 2025 ONCA 719; *Chippewas of Saugeen First Nation v. South Bruce Peninsula (Town)*, 2024 ONCA 884; *Koroluk v. KPMG Inc.*, 2022 SKCA 57; *Onion Lake Cree Nation v. Stick*, 2020 SKCA 101; and *Warde v. Slatter Holdings Ltd.*, 2016 BCCA 63.

[14] Those authorities stand for the uncontroversial proposition that courts may interpret court orders by examining the language of the order in its context, including the pleadings, surrounding circumstances and reasons. For example, the Court of Appeal stated in *Aizic* that interpretation of a court order is "much like the interpretation of a statute" and requires consideration of text, context and purpose: *Aizic*, at paras. 24-29.

[15] However, none of those cases arose in the context of an application to enforce an arbitral award under s. 50 of the *Arbitration Act, 1991*. Indeed, in *Haratsis*, Thorburn J. expressly addressed that issue and reached the opposite conclusion. She held that an enforcement court may enforce a clear arbitral award but has no jurisdiction to interpret an ambiguous one for the purpose of supplying relief not clearly awarded.

[16] The distinction is important. Courts inherently possess authority to interpret their own orders. An arbitral award, however, derives from a statutory regime that carefully circumscribes judicial intervention. The authorities relied upon by Barton Malow therefore do not answer the jurisdictional question raised here.

Sections 50(7) and 50(8) of the Arbitration Act, 1991

[17] I do not agree with Barton Malow's submission that either s. 50(7) or s. 50(8) of the *Arbitration Act, 1991* provides the necessary jurisdiction.

[18] Section 50(8) provides that the court has the same powers with respect to enforcement of awards as with respect to enforcement of its own judgments. In my view, that provision speaks to enforcement powers. It does not confer a free-standing authority to determine what an arbitrator intended when the award is unclear.

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[19] Nor does s. 50(7) of the Act assist Barton Malow. That subsection addresses circumstances where an arbitral award grants a remedy that the court lacks jurisdiction to grant or would not grant in analogous proceedings. That is not the situation here. The issue is not the nature of the remedy awarded. The issue is whether the arbitrator awarded the remedy at all.

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The Court of Justice Act

[20] Similarly, I reject Barton Malow's reliance on ss. 129 and 130 of the *Courts of Justice Act*, RSO 1990, C.43. Those provisions address post-judgment interest on court orders and the court's discretion concerning interest. They do not authorize an enforcement judge to add to or enlarge an arbitral award.

[21] Again, the question is not whether post-judgment interest on HST could have been awarded. The question is whether it was awarded. The *Courts of Justice Act* does not provide jurisdiction to answer that question in favour of Barton Malow where the award itself does not do so clearly.

Conclusion

[22] I am not satisfied that the arbitral award clearly requires AtkinsRéalis to pay post-judgment interest on the HST component of the merits award. To grant the relief sought would require the court to interpret, and potentially supplement, an arbitral award in the course of enforcement proceedings. Under s. 50 of the *Arbitration Act, 1991*, the court's role is to enforce the award, not to determine what the arbitrator may have intended where the award is ambiguous.

[23] Accordingly, the application for enforcement of the additional amount claimed by Barton Malow is dismissed.

Costs

[24] AtkinsRéalis was successful on the issue ultimately determined by the court and is therefore presumptively entitled to its costs of the application.

[25] However, that is not the end of the matter. The arbitral awards were not paid until after this application had been commenced. Although Barton Malow was unsuccessful on the remaining interest issue, I accept that it was required to incur legal costs in preparing and commencing an enforcement application in order to obtain payment of the awarded amounts. Had payment been made promptly following the awards, those costs would largely have been unnecessary.

[26] Barton Malow seeks costs that substantially exceed what I consider reasonable for that work. In all the circumstances, I fix Barton Malow's costs attributable to the commencement of the application at $15,000.

[27] I fix AtkinsRéalis' costs, as the successful party on the issues determined at the hearing, at $13,567.25.

[28] Setting off those amounts, there shall be a net costs award in favour of Barton Malow in the amount of **$1,432.75**.

Justice K.A. Jensen

Date: October 23, 2026

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Released: October 23, 2026

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