

**SUPREME COURT OF CANADA**

|  |  |
| --- | --- |
| **Citation:** British Columbia (Forests) *v.* Teal Cedar Products Ltd., 2013 SCC 51, [2013] 3 S.C.R. 301 | **Date:** 20131004**Docket:** 34769 |

**Between:**

**Her Majesty The Queen in Right of the Province of British Columbia**

**as represented by the Ministry of Forests**

Appellant

and

**Teal Cedar Products Ltd.**

Respondent

**Coram:** LeBel, Fish, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

|  |  |
| --- | --- |
| **Reasons for Judgment:**(paras. 1 to 41) | Rothstein J. (LeBel, Fish, Cromwell, Moldaver, Karakatsanis and Wagner JJ. concurring) |

British Columbia (Forests) *v.* Teal Cedar Products Ltd., 2013 SCC 51, [2013] 3 S.C.R. 301

Her Majesty The Queen in Right of the Province of British

Columbia as represented by the Ministry of Forests Appellant

v.

Teal Cedar Products Ltd. Respondent

Indexed as:  British Columbia (Forests) *v.* Teal Cedar Products Ltd.

2013 SCC 51

File No.:  34769.

2013:  March 21; 2013:  October 4.

Present:  LeBel, Fish, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

on appeal from the court of appeal for british columbia

 *Arbitration — Interest — Expropriation — Province reducing forestry company’s allowable annual cut to create park — Forestry company seeking compensation for partial expropriation — Arbitrator awarding forestry company compound interest from date when Province reduced allowable annual cut to date of award — Whether arbitrator could award compound or only simple interest — Commercial Arbitration Act, R.S.B.C. 1996, c. 55, s. 28 — Court Order Interest Act, R.S.B.C. 1996, c. 79, s. 1.*

 T, a forestry company, held a licence to harvest in the province of British Columbia a certain amount of timber known as an allowable annual cut. When the Province reduced T’s allowable annual cut to create a park, T began legal action against the Province under its *Forest Act*, claiming compensation for partial expropriation. If parties could not agree as to the appropriate compensation, the *Forest Act* provided that the dispute be resolved through arbitration under the *Commercial Arbitration Act* (“*CAA*”). In this case, the arbitrator awarded T over $6.3 million, including over $2.2 million in interest compounded annually from the date when the Province reduced the allowable annual cut to the date of the award. On appeal, the judge upheld the arbitrator’s award of compound interest. The Court of Appeal denied the Province’s further application for leave to appeal the issue of compound interest pursuant to s. 31 of the *CAA*.

 *Held*: The appeal should be allowed.

 Arbitrators operating under s. 28 of the *CAA* cannot award compound interest because s. 1 of the *Court Order Interest Act* (“*COIA*”) requires that a pecuniary court judgment bear simple interest, and only simple interest. While s. 28 of *CAA* does not expressly deem an arbitrator to be a court, this is the necessary implication of stating that a sum directed to be paid by an arbitration award is “a pecuniary judgment of the court”. Given both its ordinary meaning and its legislative history, s. 28 of the *CAA* requires arbitrators to apply the provisions of the *COIA*. There is no doubt that compound interest is a more accurate way of compensating parties for the time‑value of money. However, the legislature has not yet amended the *COIA* to remove the prohibition of interest on interest, so simple interest remains the rule in B.C. courts.

 Nor can arbitrators include compound interest *in the award* *itself*. If they could, there would be double recovery since s. 28 of the *CAA* would then operate to add interest on top of an award that already included interest. To the extent that the B.C. Court of Appeal included compound interest as a part of an arbitration award in *McKechnie*, that decision must no longer be considered good law.

 While courts presume that legislatures intend to provide full compensation for expropriations, that presumption can be rebutted by statutory provisions that demonstrate legislative intention to the contrary. Section 28 of the *CAA* limits the interest on a sum directed to be paid by an award to simple interest. This limitation reflects legislative intention not to provide for compound interest as an aspect of full compensation in this case.

 Finally, the arbitrator in this case did not have jurisdiction to consider equitable grounds for awarding compound interest. Under s. 23 of the *CAA*, an arbitrator can only consider equitable grounds where the parties specifically agree and in this case, T and the Province did not so agree.

**Cases Cited**

 **Disapproved:** *McKechnie v. McKechnie*, 2005 BCCA 570, 47 B.C.L.R. (4th) 228; **distinguished:** *Morriss v. British Columbia*, 2007 BCCA 337, 69 B.C.L.R. (4th) 1; **referred to:** *Hongkong Bank of Can. v. Touche Ross & Co.* (1989), 36 B.C.L.R. (2d) 381; *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61; *Irving Oil Co. v. The King*, [1946] S.C.R. 551; *Inglewood Pulp and Paper Co. v. New Brunswick Electric Power Commission*, [1928] A.C. 492; *British Pacific Properties Ltd. v. Minister of Highways and Public Works*, [1980] 2 S.C.R. 283.

**Statutes and Regulations Cited**

*Commercial Arbitration Act*, R.S.B.C. 1996, c. 55, ss. 22, 23, 28, 29.

*Court Order Interest Act*, R.S.B.C. 1996, c. 79, ss. 1, 2, 7(2).

*Expropriation Act*, R.S.B.C. 1996, c. 125.

*Forest Act*, R.S.B.C. 1996, c. 157, s. 60 [rep. S.B.C. 2004, c. 36, s. 38].

*Protected Areas Forests Compensation Act*, S.B.C. 2002, c. 51, s. 7.

**Authors Cited**

British Columbia. Law Reform Commission. *Report on Arbitration*. Vancouver: The Commission, 1982.

British Columbia. Law Reform Commission. *Report on the Court Order Interest Act*. Vancouver: The Commission, 1987.

British Columbia International Commercial Arbitration Centre. *Domestic Commercial Arbitration Rules of Procedure*. Vancouver: The Centre, 1998, Rule 37 (online: www.bcicac.com/arbitration/rules-of-procedure/domestic-commercial-arbitration-rules-of-procedure).

Sullivan, Ruth. *Sullivan on the Construction of Statutes*, 5th ed. Markham, Ont.: LexisNexis, 2008.

 APPEAL from a judgment of the British Columbia Court of Appeal (Saunders, Levine and Hinkson JJ.A.), 2012 BCCA 70, 29 B.C.L.R. (5th) 330, 317 B.C.A.C. 97, [2012] 6 W.W.R. 629, 105 L.C.R. 1, [2012] B.C.J. No. 275 (QL), 2012 CarswellBC 309, setting aside in part a decision of Macaulay J., 2011 BCSC 360, 23 B.C.L.R. (5th) 144, 103 L.C.R. 124, [2011] B.C.J. No. 497 (QL), 2011 CarswellBC 651, which partially upheld an arbitrator’s decision. Appeal allowed.

 *Karen A. Horsman*, *Barbara A. Carmichael* and *Johnny Van Camp*, for the appellant.

 *John J. L. Hunter*, *Q.C.*, and *K. Michael Stephens*, for the respondent.

 The judgment of the Court was delivered by

 Rothstein J. —

I. Introduction

1. In this appeal, the parties ask the Court to determine whether an arbitrator making an award under the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55 (“*CAA*”), now the *Arbitration Act*, may provide for compound interest or only simple interest on the sum directed to be paid by an award. For the reasons that follow, I find that compound interest cannot be awarded by arbitrators operating under the *CAA*. As a result, I would allow the appeal.

II. Facts

1. Teal Cedar Products Ltd. (“Teal”) is a forestry company in British Columbia (the “Province”). Teal had a forest licence to harvest timber in a particular area of the province, including the right to cut a certain amount of timber known as an allowable annual cut. In 1999, following the creation of a provincial park, Teal’s allowable annual cut was reduced by the Province. In 2001, Teal began legal action against the Province, claiming compensation for this partial expropriation.
2. In 2002, the Province enacted retroactive legislation in the form of the *Protected Areas Forests Compensation Act*, S.B.C. 2002, c. 51 (“*PAFCA*”), which restricted the ability of forestry companies to obtain compensation for reductions in allowable annual cut when such a reduction was caused by the creation of a provincial park. The *PAFCA* specified that the reduction did not constitute an expropriation within the meaning of the *Expropriation Act*, R.S.B.C. 1996, c. 125 (s. 7(3)). The *PAFCA* required Teal to seek compensation for the reduction of the allowable annual cut under s. 60 of the *Forest Act*, R.S.B.C. 1996, c. 157, as the *Forest Act* read at the time of the reduction (s. 7(1)). In the event that parties could not agree as to the appropriate compensation, s. 60(7) of the *Forest Act*, as it read at the time of Teal’s loss, provided for the dispute to be resolved through arbitration under the *CAA*. (The relevant statutory provisions are reproduced in the Appendix.)
3. As a result, Teal’s dispute with the Province was subject to arbitration under the *CAA*, with interim and final reasons being released in 2010. The arbitrator awarded Teal $6,350,000 plus legal costs. That award included interest at the prime rate compounded annually from the date in 1999 when the allowable annual cut was reduced to the date of the award, amounting to over $2.2 million in interest. The arbitrator concluded that compound interest could be awarded because it was not “proscribed by legislation” (interim decision, at para. 268 (A.R., at p. 183)). While a number of other issues were raised as part of that arbitration and in the lower courts, the only issue remaining before this Court is the validity of the award for compound interest.

III. Judicial History

A. *Supreme Court of British Columbia, 2011 BCSC 360, 23 B.C.L.R. (5th) 144*

1. Both Teal and the Province sought leave, in accordance with the *CAA*, to appeal certain questions of law arising from the arbitration decision before the Supreme Court of British Columbia. Of relevance now, the Province challenged the arbitrator’s decision to award Teal compound interest rather than simple interest. The Province argued that compound interest was prohibited under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 (“*COIA*”), which is incorporated into the *CAA* under s. 28 of that Act. Macaulay J. upheld the arbitrator’s award of compound interest. He relied upon the absence of a statutory bar to including compound interest *as part of* the award rather than *on* the award and earlier decisions which supported that conclusion. In particular, Macaulay J. relied on *McKechnie v. McKechnie*, 2005 BCCA 570, 47 B.C.L.R. (4th) 228 (where compound interest was awarded as part of an award governed by the *CAA*), and *Morriss v. British Columbia*, 2007 BCCA 337, 69 B.C.L.R. (4th) 1(where compound interest was ordered as a component of compensation in an expropriation case to which the *Expropriation Act* did not apply).

B. *Court of Appeal for British Columbia, 2012 BCCA 70, 29 B.C.L.R. (5th) 330*

1. The Court of Appeal concluded that its earlier decisions in *McKechnie* and *Morriss* were applicable and binding on the issue of compound interest and therefore denied the Province leave to appeal. The Court of Appeal concluded that it was not appropriate to revisit the decision in *Morriss* given that it was a recent case, where the judgment of the majority was fully reasoned and based on all the jurisprudence. The Court of Appeal noted that the Province “has, of course, a legislative remedy should it desire to act” (para. 59).

IV. Analysis

1. The only issue in this case is whether the arbitrator had the authority to award compound, as opposed to simple, interest to Teal to compensate the company for the time between the loss of its timber harvesting rights and the time of the arbitration award. While Teal has advanced a number of different grounds to support the award of compound interest, in my opinion, the statutory regime does not permit the arbitrator to make such an award. In reaching this conclusion, I consider the *COIA* and its interaction with the *CAA*, which in my view determine the outcome of this case. I also consider the arguments in respect of the compensation principle in expropriation cases and whether compound interest arbitration awards can be grounded in equity despite the *COIA*. Neither the principle of full compensation following an expropriation nor any equitable principle permits the award of compound interest in this case.

A. *Operation of the* *COIA*

1. The *COIA* contains two parts: one addressing prejudgment interest and one addressing postjudgment interest. Prejudgment interest is interest that compensates the plaintiff for the time period between when the cause of action arose and the date that the sum owed is ordered to be paid by judgment of the court: *COIA*, s. 1(1). Postjudgment interest is compensation that covers the time period between when the judgment is pronounced or the date when money is payable under the judgment, whichever is later, and when payment is made: *COIA*, s. 7(2). In both cases, compound interest is prohibited: s. 2(c) (prejudgment) and s. 7(2) (postjudgment).
2. The *COIA* provisions on interest are mandatory: “. . . a court must add to a pecuniary judgment an amount of interest” (s. 1(1) prejudgment) and “[a] pecuniary judgment bears simple interest” (s. 7(2) postjudgment). However, if there is an agreement between the parties about interest, then the court must not award prejudgment interest under s. 1 (s. 2(b)).
3. There is no doubt that compound interest is a more accurate way of compensating parties for the time-value of money. Indeed, the Law Reform Commission of British Columbia recommended eliminating the prohibition on compound interest in its 1987 *Report on the Court Order Interest Act*, at pp. 31-32. However, the legislature has not yet amended the *COIA* to remove the prohibition of interest on interest, so simple interest, despite its flaws, remains the rule in British Columbia courts.

B. *Interpreting the Interaction Between the COIA and the CAA*

1. According to the terms of the *Forest Act*, Teal’s dispute with the Province was to be resolved by arbitration under the *CAA*. The *COIA* does not apply directly to arbitrations under the *CAA*. Rather, the *CAA* states that the *COIA* applies by providing that “a sum directed to be paid by an award is a pecuniary judgment of the court” (s. 28). The interaction between these two statutes is key to understanding Teal’s entitlement to interest. In interpreting these statutes, I first consider the ordinary meaning of s. 28 of the *CAA* in light of its legislative history. In my view, this analysis reveals that only simple interest can be added to the sum directed to be paid by an award. I then consider Teal’s proposed interpretation of the *CAA*, which would permit the awarding of compound interest *as part of* an arbitration award. In my respectful opinion, Teal’s interpretation is untenable.

(1) Ordinary Meaning of Section 28 of the *CAA*

1. The *CAA* incorporates the *COIA* in s. 28:

For the purposes of the *Court Order Interest Act* and the *Interest Act* (Canada), a sum directed to be paid by an award is a pecuniary judgment of the court.

In my view, the effect of this provision, interpreted in light of its legislative history, is to cause arbitration awards to be treated like court judgments governed by the terms of the *COIA*, such that only simple interest can be added to the award.

1. As discussed above, s. 1 of the *COIA* provides that a court must add interest to a pecuniary judgment. Section 28 of the *CAA* deems the amount ordered to be paid by an arbitration award to be a pecuniary judgment of the court. The effect of that deeming rule is that an arbitrator must apply the provisions of the *COIA*. Since pecuniary court judgments have simple, not compound, interest added to them by operation of the *COIA*, the ordinary meaning of s. 28 is to cause simple, not compound, interest to be added to the sum directed to be paid by an award.
2. This conclusion is supported by the legislative history. In 1982, the Law Reform Commission of British Columbia released a report on arbitration stating:

We have concluded that an arbitrator should not have a discretion as to whether to award interest, and that all awards should automatically carry interest in the same manner as a judgment debt, which would include both post and pre-judgment interest. [Emphasis added.]

(*Report on Arbitration*, at p. 51)

As discussed above, the *COIA* provides for a pecuniary court judgment in British Columbia to bear simple interest pre- and postjudgment. If arbitration awards are to carry interest in the same manner as judgment debts, the outcome recommended by the Commission, the sum directed to be paid under an award must also be subject to simple interest pre- and post-award.

1. The Commission’s recommendation was motivated by a concern that absent an authority in the Act for awarding interest, an arbitrator operating under that Act might not have the power to order the payment of interest: *Report on Arbitration*, at p. 50. In support of their recommendations, the Commission provided a model arbitration act. This model act included a draft section that is virtually identical to s. 28 of the *CAA*. In the notes accompanying the proposed section on interest, the Commission indicated that the section was intended to give effect to the recommendation about aligning arbitration interest with judgment debt interest: p. 51. Thus, it appears that by enacting s. 28 of the *CAA*, the legislature adopted the recommendation of the Commission that court judgments and arbitration awards should be on equal footing when it comes to interest awarded under the *COIA*.
2. In light of both the ordinary meaning of the section and its legislative history, s. 28 of the *CAA* has the effect of requiring arbitrators to apply the provisions of the *COIA*. Subject to the exceptions listed in s. 2(a), (b), (d) and (e) in the *COIA*, arbitrators operating under the *CAA* cannot award compound interest on a sum directed to be paid by an award because the power to award interest is limited by the *COIA*, which provides for simple interest only both for the pre-award and post-award periods.

(2) Teal’s Position on the Interpretation of Section 28

1. Teal argues that it is possible for arbitrators to include compound interest *as part of the award* rather than on top of the award. In making this argument, Teal essentially adopts the reasoning in *McKechnie*. Teal argues that this is possible because s. 28 of the *CAA* refers to “a sum directed to be paid by an award” and nothing in the *CAA* precludes an arbitrator from including compound interest as part of that sum. This is the interpretation that the British Columbia Court of Appeal adopted in *McKechnie* in reaching the conclusion that s. 28 of the *CAA* did not restrict arbitrators from making an award including compound interest.
2. I cannot agree with this interpretation of the *CAA*. Similar language to that of s. 28 is used in s. 1 of the *COIA*: “. . . a court must add to a pecuniary judgment an amount of interest calculated on the amount ordered to be paid”. The phrase “amount ordered to be paid” in the *COIA* has been interpreted to mean only the principal of the judgment: *Hongkong Bank of Can. v. Touche Ross & Co.* (1989), 36 B.C.L.R. (2d) 381 (C.A.), at p. 391.
3. The language in the *COIA* is very similar to the language in the *CAA*: “amount ordered to be paid” (*COIA*) and “sum directed to be paid” (*CAA*). If the language of “a sum directed to be paid” in s. 28 of the *CAA* permitted interest to be included in the original award, then it would seem that such an interpretation would apply to s. 1(1) of the *COIA*, given the similarity of the language. That would mean that courts would be able to include interest, including compound interest, in the pecuniary judgment. This would undermine the statutory purpose of the *COIA* prejudgment interest provisions, since it would permit the awarding of compound interest despite s. 2(c) prohibiting interest on interest.
4. If interest can be included in the sum directed to be paid by an award, there would be double recovery with respect to interest since s. 28 of the *CAA* would then operate to add interest on top of an award that already included interest. While s. 2(c) of the *COIA* would prevent the award of interest on top of the interest portion of the award, there would still be double recovery because there would be interest payable twice on the principal portion of the award: once as a result of the inclusion *in the award* and once as a result of the operation of s. 28 of the *CAA*. This in an untenable result. Indeed, it was this concern about double recovery that motivated Saunders J.A. to dissent in *Morriss* when the B.C. Court of Appeal concluded that there was an equitable basis for compound interest to be awarded in expropriation cases not governed by the *Expropriation Act* (para. 48).

(a) *Teal’s Submissions on Avoiding Double Recovery*

1. Teal, however, argues that double recovery can be avoided by adopting a more restricted interpretation of s. 28 of the *CAA*. Teal advanced two different interpretations of s. 28 to avoid double recovery. Neither is based on a tenable interpretation of s. 28 of the *CAA*.
2. First, in its factum, Teal argued that s. 28 of the *CAA* only imposes the postjudgment provisions of the *COIA* on sums directed to be paid by awards. However, as the Province pointed out during oral argument, this would mean that s. 28 served no purpose during the six-year period running from when the *CAA* was enacted in 1986 to when the postjudgment provisions of the *COIA* were finally brought into force in 1992. During that six-year period, if Teal’s submission that s. 28 did not apply to the prejudgment provisions of the *COIA* was accepted, s. 28 would have had no purpose since only the prejudgment provisions of the *COIA* were in force, the provisions that Teal asserts s. 28 was not designed to capture.
3. If the intent of the legislature was to restrict the operation of s. 28 of the *CAA* to the postjudgment provisions of the *COIA*, it could have done so expressly. No such restrictive language is present. In my view, s. 28 cannot be read as being limited to only postjudgment interest.
4. Second, in oral argument, Teal presented a different interpretation of s. 28 that would permit both the pre- and postjudgment provisions to operate in respect of arbitration awards, but would restrict the operation of the prejudgment provisions to the time period between the issuance of the arbitration award and the time when a court enters the terms of the award as a judgment as part of an enforcement proceeding under s. 29 of the *CAA*. Teal argued that since s. 1 of the *COIA* speaks to interest running from the time the cause of action arose, s. 1 as applied to an arbitration award would only apply to the time period after an arbitration award is issued, because that arbitration award is itself the “cause of action”.
5. On this starting assumption, double recovery of interest is avoided because the arbitrator would have the jurisdiction to award interest from the date of the occurrence of the underlying facts to the date of the award (compound or simple interest at the discretion of the arbitrator). Then a court would have the jurisdiction to award interest from the date of the award to the date of the award being entered as a judgment as part of enforcement proceedings (prejudgment simple interest) and interest from the date of award being entered as a judgment as part of enforcement proceedings until such time as the amount is paid (postjudgment simple interest).
6. There are two problems with this approach. First, it relies on an unnatural and strained interpretation of the phrase “cause of action” in the context of arbitration under the *CAA*. An arbitration award is the result of a resolution of the cause of action and there is nothing to suggest that it gives rise to a new cause of action itself.
7. Second, Teal’s interpretation fails to recognize that s. 28 deems the sum directed to be paid by an award to be a pecuniary judgment of the court. Section 28 does not depend on a party taking the step of enforcing an arbitration award in court — the sum directed to be paid by the award is a pecuniary judgment of the court by virtue of s. 28 of the *CAA* *whether or not any enforcement proceedings are undertaken*. That is the ordinary meaning of s. 28. Section 28 does not contain any language requiring enforcement proceedings under s. 29 of the *CAA* to be undertaken in order for the interest provisions to become operational.
8. Under s. 29, a court enters “judgment . . . in the terms of the award”. The judgment *of a court* is already a judgment and does not need s. 28 to deem it “a pecuniary judgment of the court” *again*. And yet Teal’s interpretation requires that this be the case. The result is to render s. 28 meaningless. It is an accepted principle of statutory interpretation that legislative provisions should not be interpreted to be “mere surplusage”: R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at p. 210, citing *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, at para. 28, *per* Lamer C.J.

(b) *Absence of a Provision Deeming an Arbitrator to Be a Court*

1. Teal argues that one of its interpretations must be adopted because s. 1(1) of the *COIA* only imposes a duty to award interest on a “court” and not an arbitrator. Teal says that nothing in s. 28 deems an arbitrator to be a court. There is no doubt Teal is correct that s. 28 of the *CAA* does not expressly deem an arbitrator to be a court. However, it seems to me that this is the necessary implication of stating that a sum directed to be paid by an award is “a pecuniary judgment of the court”.
2. Section 28 of the *CAA* is the statutory authority that provides for the sums directed to be paid under awards to carry interest. Apart from s. 28, arbitrators operating under the *CAA* are not permitted to award interest since, as I discussed above, interest cannot be awarded *as part of the award itself*. Accepting that, it is then necessary to ask who is required to provide for interest under s. 28: the arbitrator or a court? If s. 28 is to have any practical effect, it seems to me, it must be the arbitrator who is directed to award interest under it.
3. If s. 28 required a court to be involved to make the interest order, the arbitrator would be able to award the principal amount but then the parties would have to go to court to get any interest on that amount. There are two problems with this approach. First, any efficiencies that were obtained as part of the arbitration process would be undermined, since parties would always need to involve the courts in order to get interest on the sums directed to be paid under their awards. Arbitration schemes are intended to be efficient methods of dispute resolution: *Report on Arbitration*, at pp. 2-3. An interpretation of s. 28 that requires the involvement of both an arbitrator and the court to provide for final resolution of a dispute including the award of interest runs contrary to that legislative purpose.
4. Second, it seems that this argument effectively makes an enforcement proceeding under s. 29 a prerequisite for receiving interest because a party would have to go to court in order to seek a judgment of the court for the award of interest. As such, this argument suffers from the same flaw I have discussed previously — it renders s. 28 surplusage. If a court is the only body that can award interest, there is simply no need for s. 28.

(3) Conclusion on the Interpretation of Section 28 of the *CAA*

1. As a result, I must reject Teal’s submission that interest can be included *in* an arbitration award under the *CAA*. As a necessary corollary to this conclusion, to the extent that the B.C. Court of Appeal relied on similar reasoning in permitting an award of compound interest *as a part of* an arbitration award in *McKechnie*, that decision must no longer be considered to be good law.
2. I note, in passing, that this conclusion is based on the specific statutory regime in place in B.C. Other provinces may well provide for the awarding of compound interest by arbitrators in situations where the B.C. statutes make no such provision.

C. *Role of the British Columbia International Commercial Arbitration Centre (“BCICAC”) Rules*

1. Teal also argues that s. 28 of the *CAA* is not the final answer on interest for arbitration awards since s. 22 of the *CAA* states that the British Columbia International Commercial Arbitration Centre rules (“BCICAC rules”), which permit arbitrators to award compound interest, apply to arbitrations under the *CAA*. In my view, however, the BCICAC rules do not create a power to award compound interest in arbitrations governed by the *CAA*.
2. I accept that s. 22 of the *CAA* provides that the BCICAC rules apply to arbitrations under the *CAA* and that Rule 37 of the BCICAC rules permits an arbitrator to order “simple or compound interest to be paid in an award”. However, s. 22(3) of the *CAA* makes clear that if the BCICAC rules are inconsistent with or contrary to the *CAA*, the *CAA* prevails: “If the [BCICAC rules] are inconsistent with or contrary to this Act, this Act prevails.” In my view, there is such an inconsistency in this case because s. 28 of the *CAA* specifically forecloses the possibility of awarding compound interest. Therefore, despite Rule 37 of the BCICAC rules, arbitrators operating under the *CAA* cannot award compound interest.

D. *Applicability of the* *Principle of “Full Compensation” and Equity*

1. Teal argues that since the underlying claim in this case is a type of expropriation, the principle of full compensation applies such that compound interest must be awarded. While compound interest is no doubt a better measure of the true cost of the loss suffered by Teal, there is a statutory requirement in this case to restrict Teal’s compensation by imposing simple interest. While courts presume that legislatures intend to provide full compensation for expropriations, that presumption can be rebutted by statutory provisions that demonstrate legislative intention to the contrary: *Irving Oil Co. v. The King*, [1946] S.C.R. 551, at p. 556; *Inglewood Pulp and Paper Co. v. New Brunswick Electric Power Commission*, [1928] A.C. 492 (P.C.), at p. 499. In my view, such provisions exist in this case.
2. Section 7(1) of the *PAFCA* limits Teal’s compensation in this case “to the amount of compensation determined . . . under section 60 of the *Forest Act* as it applies for the purposes of [the *PAFCA*]”. In turn, s. 60(7) of the *Forest Act* requires that Teal’s compensation be determined under the *CAA* (rep. S.B.C. 2004, c. 36, s. 38). As discussed above, s. 28 of the *CAA* limits the interest awarded on a sum directed to be paid by an award under that Act to simple interest. In my view, the interaction of these three statutes reflects legislative intention not to provide for compound interest as an aspect of full compensation in this case.
3. Therefore, many of the expropriation cases that Teal and the British Columbia Court of Appeal relied upon are irrelevant to this case because those cases did not involve the interpretation of the interaction between the *PAFCA*, the *Forest Act* and the *CAA*. In particular, this Court’s decision on the power of an arbitrator to award compound interest in an expropriation case in *British Pacific Properties Ltd. v. Minister of Highways and Public Works*, [1980] 2 S.C.R. 283, is not applicable because it predated the introduction of the *CAA*.
4. *Morriss* is also inapplicable to the case at bar because it concerned the jurisdiction of a *court* that was relying *on equity* to award compound interest. In reaching the conclusion that compound interest could be awarded by the court in that case, the B.C. Court of Appeal relied on the equitable jurisdiction of the court, which permitted the award despite the provisions of the *COIA*. The arbitrator in this case did not have jurisdiction to consider equity. Under the *CAA*, arbitrators can only consider equitable grounds where the parties specifically agree (s. 23). In this case, the agreement between Teal and the Province did not permit the arbitrator to deal with equitable grounds. As a result, the reasoning adopted by the B.C. Court of Appeal in *Morriss*, whether right or wrong,is not relevant to the resolution of this appeal.

V. Disposition

1. I would allow the appeal with costs throughout. The Province is to be granted leave, under the *CAA*, to appeal the arbitrator’s award of compound interest to Teal. I would set aside the arbitrator’s award of compound interest and substitute an award of simple interest.

**APPENDIX**

*Protected Areas Forests Compensation Act*,S.B.C. 2002, c. 51

 **Limit on compensation**

 **7** (0.1) In this section, “compensation” includes damages.

 (1) The compensation payable to the holder of a licence because of

 (a) a deletion under section 2 (1) affecting the licence,

 (b) an annual cut reduction affecting the licence, to the extent that it was or is attributable to the establishment of a protected area,

 (c) the establishment of a protected area that included all or part of the area under the licence, or

 (d) any of the things specified in paragraphs (a) to (c) in combination with either or both of the others

 is limited to the amount of compensation determined in relation to that licence under section 60 of the *Forest Act* as it applies for the purposes of this Act.

. . .

 (3) A deletion under section 2 (1), an annual cut reduction or the establishment of a protected area that included all or part of the area under a licence does not constitute an expropriation within the meaning of the *Expropriation Act*.

*Forest Act*, R.S.B.C. 1996, c. 157 (as it read on April 1, 1999)

 **Deletions and reductions**

 **60** (7) If the amount of compensation is not agreed on, it must be submitted for determination . . . under the *Commercial Arbitration Act* . . .

*Commercial Arbitration Act*, R.S.B.C. 1996, c. 55 (as it read on April 1, 1999)

 **International Commercial Arbitration Centre rules**

 **22** (1) Unless the parties to an arbitration otherwise agree, the rules of the British Columbia International Commercial Arbitration Centre for the conduct of domestic commercial arbitrations apply to that arbitration.

 (2) If the rules referred to in subsection (1) are inconsistent with or contrary to the provisions in an enactment governing an arbitration to which this Act applies, the provisions of that enactment prevail.

 (3) If the rules referred to in subsection (1) are inconsistent with or contrary to this Act, this Act prevails.

 **Legal principles apply unless excluded**

 **23** (1) An arbitrator must adjudicate the matter before the arbitrator by reference to law unless the parties, as a term of an agreement referred to in section 35, agree that the matter in dispute may be decided on equitable grounds, grounds of conscience or some other basis.

 **Interest**

 **28** For the purposes of the *Court Order Interest Act* and the *Interest Act* (Canada), a sum directed to be paid by an award is a pecuniary judgment of the court.

 **Enforcement of an award**

 **29** (1) With leave of the court, an award may be enforced in the same manner as a judgment or order of the court to the same effect, and judgment may be entered in the terms of the award.

*Court Order Interest Act*, R.S.B.C. 1996, c. 79

 **Court order interest**

 **1** (1) Subject to section 2, a court must add to a pecuniary judgment an amount of interest calculated on the amount ordered to be paid at a rate the court considers appropriate in the circumstances from the date on which the cause of action arose to the date of the order.

 **Interest not awarded in certain cases**

 **2** The court must not award interest under section 1

 (a) on that part of an order that represents pecuniary loss arising after the date of the order,

 (b) if there is an agreement about interest between the parties,

 (c) on interest or on costs,

 (d) if the creditor waives in writing the right to an award of interest, or

 (e) on that part of an order that represents nonpecuniary damages arising from personal injury or death.

 **Interest rate**

 **7** . . .

 (2) A pecuniary judgment bears simple interest from the later of the date the judgment is pronounced or the date money is payable under the judgment.

British Columbia International Commercial Arbitration Centre, *Domestic Commercial Arbitration Rules of Procedure*

 **37. Interest**

 On the basis of evidence presented, the arbitration tribunal may order simple or compound interest to be paid in an award.

 *Appeal allowed with costs throughout.*

 Solicitor for the appellant:  Attorney General of British Columbia, Vancouver.

 Solicitors for the respondent:  Hunter Litigation Chambers, Vancouver.