

**SUPREME COURT OF CANADA**

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| **Citation:** Teal Cedar Products Ltd. *v.* British Columbia, 2017 SCC 32, [2017] 1 S.C.R. 688 | **Appeal Heard:** November 1, 2016  **Judgment Rendered:** June 22, 2017  **Docket:** 36595 |

Between:

Teal Cedar Products Ltd.

Appellant

and

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

Respondent

**And Between:**

Teal Cedar Products Ltd.

Appellant

and

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

Respondent

**Coram:** McLachlin C.J. and Abella, Moldaver, Karakatsanis, Wagner, Gascon, Côté, Brown and Rowe JJ.

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| **Reasons for Judgment:**  (paras. 1 to 103) | Gascon J. (McLachlin C.J. and Abella, Karakatsanis and Wagner JJ. concurring) |

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| **Joint Reasons Dissenting in Part:**  (paras. 104 to 139) | Moldaver and Côté JJ. (Brown and Rowe JJ. concurring) |

Teal Cedar Products Ltd. *v.* British Columbia, 2017 SCC 32, [2017] 1 S.C.R. 688

Teal Cedar Products Ltd. Appellant

v.

Her Majesty the Queen in Right of the

Province of British Columbia Respondent

‑ and ‑

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

2017 SCC 32

File No.: 36595.

2016: November 1; 2017: June 22.

Present: McLachlin C.J. and Abella, Moldaver, Karakatsanis, Wagner, Gascon, Côté, Brown and Rowe JJ.

on appeal from the court of appeal for british columbia

Arbitration — Appeals — Jurisdiction — Standard of review — Commercial arbitration awards — *Province reducing forestry company’s access to improvements on Crown land used to harvest timber — Parties disagreeing as to amount of compensation owed to forestry company and entering into arbitration — Leave to appeal award sought by parties pursuant to s. 31(2) of the Arbitration Act — Appeal of award dismissed in part but dismissal reversed by Court of Appeal — Whether Court of Appeal erred in construing issues decided by arbitrator as questions of law subject to appellate review — Arbitration Act, R.S.B.C. 1996, c. 55, s. 31.*

*Contracts — Interpretation — Use of factual matrix* — *Province reducing forestry company’s access to improvements on Crown land used to harvest timber — Parties entering into agreement to negotiate compensation owed to forestry company for loss of access to improvements — Agreement precluding payment of interest as part of compensation — Parties disagreeing as to amount of compensation and entering into arbitration — Whether legal question arises from arbitrator’s contractual interpretation of forestry company’s entitlement to interest.*

*Natural resources — Forests — Permits and licences* — *Province reducing forestry company’s access to improvements on Crown land used to harvest timber — Parties disagreeing as to amount of compensation owed to forestry company and entering into arbitration — Whether arbitrator’s conclusion that forestry company’s losses may be valued on basis of depreciation replacement cost method was reasonable — Forestry Revitalization Act, S.B.C. 2003, c. 17, s. 6(4).*

T, a forestry company, holds licences to harvest Crown timber in the province of British Columbia. When the province reduced the volume of T’s allowable harvest and deleted certain areas from the related Crown land base, the parties were unable to settle how much compensation the province owed to T for reducing the latter’s access to certain improvements such as roads and bridges which T used to harvest the timber. Consequently, their dispute was submitted to arbitration in accordance with the *Forestry Revitalization Act* (“*Revitalization Act*”). The arbitrator was seized of an issue of statutory interpretation to determine the proper valuation method for the improvements pursuant to the *Revitalization Act*, which he found to be the depreciation replacement cost method. The arbitrator also ruled on an issue of contractual interpretation, concluding that an agreement reached by the parties prior to arbitration did not exclude interest from the province’s payment of compensation to T for the improvements. Finally, on an issue of statutory application, the arbitrator determined that T was not entitled to compensation for the improvements to which it did not lose access. On appeal, the application judge upheld the arbitrator’s award except in connection with the statutory application issue, which was remitted to the arbitrator and resulted in an additional award in an amount equal to the value of the improvements. A majority of the Court of Appeal reversed the application judge’s decision, finding that the arbitrator had erred on both the statutory interpretation and contractual interpretation issues, as well as in making his subsequent ruling regarding the statutory application issue. On remand for disposition in accordance with *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, a unanimous Court of Appeal held that its disposition of the appeal was unaltered by *Sattva*, reaffirming its conclusion that the issues ruled upon by the arbitrator are questions of law subject to appellate review, and that the arbitrator was in error regardless of the standard of review applied.

Held (Moldaver,Côté, Brown and Rowe JJ. dissenting in part): The appeal is allowed in part.

*Per* McLachlin C.J. and Abella, Karakatsanis, Wagner andGascon JJ.: The Court of Appeal’s decision on remand cannot stand in light of *Sattva*. The process for characterizing a question as one of three principal types — legal, factual, or mixed — is well‑established, as confirmed in *Sattva*: legal questions are questions about what the correct legal test is; factual questions are questions about what actually took place between the parties; and mixed questions are questions about whether the facts satisfy the legal test. While the application of a legal test to a set of facts is a mixed question, if, in the course of that application, the underlying legal test may have been altered, then a legal question arises. Such a legal question, if alleged in the context of a dispute under the *Arbitration Act*, and assuming the other jurisdictional requirements of that Actare met, is open to appellate review. These extricable questions of law are better understood as a covert form of legal question — where a judge’s (or arbitrator’s) legal test is implicit to their application of the test rather than explicit in their description of the test — than as a fourth and distinct category of questions.

Courts should, however, exercise caution in identifying extricable questions of law because mixed questions, by definition, involve aspects of law. The motivations for counsel to strategically frame a mixed question as a legal question — for example, to gain jurisdiction in appeals from arbitration awards or a favourable standard of review in appeals from civil litigation judgments — are transparent. A narrow scope for extricable questions of law is consistent with finality in commercial arbitration and, more broadly, with deference to factual findings. Courts must be vigilant in distinguishing between a party alleging that a legal test may have been altered in the course of its application (an extricable question of law), and a party alleging that a legal test, which was unaltered, should have, when applied, resulted in a different outcome (a mixed question).

The characterization of a question on review as a mixed question rather than as a legal question has vastly different consequences in appeals from arbitration awards and civil litigation judgments. The identification of a mixed question when appealing an arbitration award defeats a court’s appellate review jurisdiction under the *Arbitration Act.* In contrast, the identification of a mixed question when appealing a civil litigation judgment merely raises the standard of review.

Given these principles as confirmed in *Sattva*, a question of statutory interpretation is normally characterized as a legal question. In contrast, identifying a question, broadly, as one of contractual interpretation does not necessarily resolvethe nature of the question at issue. Contractual interpretation involves factual, legal, and mixed questions, and characterizing the nature of the specificquestion before the court requires delicate consideration of the narrow issue actually in dispute. In general, contractual interpretation remains a mixed question, not a legal question, as it involves applyingcontractual law (principles of contract law) to contractual facts (the contract itself and its factual matrix).

In the present case, the statutory interpretation issue, i.e. the issue of selecting a valuation method that complies with the *Revitalization Act*, involves two types of questions: (1) questions about the broad category of methods that are acceptable under the terms of the *Revitalization Act*; and (2) questions about the specific method, within that broad category of acceptable methods, that should ultimately be applied. The former questions — the methods that are acceptable under the *Revitalization Act* — are a matter of statutory interpretation and, accordingly, are questions of law. As a result, the courts have jurisdiction to review the arbitrator’s resolution of the issue in so far as that resolution involves identifying a pool of methodologies consistent with the *Revitalization Act*.

The latter questions — the preferable method among those that are consistent with the *Revitalization Act* — are inextricably linked to the evidentiary record at the arbitration hearing, where various experts opined on the virtues of conflicting valuation methodologies. They are mixed questions, if not pure questions of fact. Therefore, the courts lack jurisdiction to review the arbitrator’s selection of a specific methodology among the pool of methodologies which are consistent with the *Revitalization Act*.

As for the contractual interpretation issue, the courts have no jurisdiction to review the arbitrator’s decision in this regard. The arbitrator, after a lengthy and complex hearing, was best situated to weigh the factual matrix in his interpretation of the parties’ agreement regarding the payment of interest. The fact that he may have placed significant weight on that evidence in interpreting the agreement does not engage a legal question conferring jurisdiction on the courts under the *Arbitration Act* as it does not alter the underlying test he applied in this case. Further, the arbitrator’s interpretation was rooted in the words of the contract, not overwhelmed by them. While the arbitrator may have placed significant weight on the factual matrix when interpreting the meaning of “compensation”, there is no arguable merit to the claim that he interpreted that matrix isolated from the contract’s words so as to effectively create a new agreement.

Likewise, on the statutory application issue, the courts have no jurisdiction to review the arbitrator’s decision in this regard. The question implicated — whether the arbitrator correctly applied the valuation methodology to a licence — is a mixed question. As such, it is beyond the scope of appellate review.

It follows that the courts’ jurisdiction is limited to the statutory interpretation issue of identifying a pool of methodologies consistent with the *Revitalization Act.* The decision made on this issue was rendered in an arbitral context pursuant to the *Arbitration Act.* As confirmed in *Sattva*, the standard of review on legal questions arising from the arbitrator’s analysis of this statutory interpretation issue is reasonableness, which is almost always the applicable standard when reviewing commercial arbitration awards. This preference for a reasonableness standard dovetails with the key policy objectives of commercial arbitration, namely efficiency and finality. And this preference is not negated here in light of the nature of the question at issue and the arbitrator’s presumed expertise.

It would be an error to claim that all statutory interpretation by an arbitrator demands correctness review simply because it engages a legal question. In contrast, where the decision under review is, for example, a civil litigation judgment, the nature of the question is dispositive of the standard of review, with factual and mixed questions being reviewed for palpable and overriding error and legal questions — including extricable questions of law — being reviewed for correctness. It is therefore critical to bear these distinctions in mind when determining the appropriate standard of review in any given case.

The Court of Appeal erroneously held that the standard of review should be correctness for the statutory interpretation issue. Its decision appears to suggest that questions of law, such as statutory interpretation, necessarily attract a correctness standard of review. In so far as the Court of Appeal intended to make this suggestion, it is incorrect. While the nature of the question (legal, mixed, or fact) is dispositive of the standard of review in the civil litigation context, it is not in the arbitration context.

With respect to the review step of the analysis, the arbitrator’s determination that the depreciation replacement cost method was consistent with the *Revitalization Act* was reasonable. This decision fell within a range of possible, acceptable outcomes which were defensible in respect of the facts and law, and the decision was justified, transparent, intelligible, and defensible. The claim that this method results in a windfall begs the question, i.e. it assumes that compensation equal to the value of all improvements is excessive in the course of explaining that excess. And the basis for claiming that excessive compensation was paid in this case is the assumption that it was inappropriate for the arbitrator to order compensation in excess of T’s actual costs, despite the absence of any reference in the *Revitalization Act* limiting T’s compensation to its actual costs or expenses. The full “value of improvements made to Crown land” is the language chosen by the legislature as the quantum for the compensation provision. If the provincial legislature had wanted to pay companies less than the “value of improvements made to Crown land”, it would not have set the amount of compensation “equal to” it. As a consequence, the arbitrator’s reasoning is hardly indefensible, particularly when the wording of the compensation provision so clearly fixes compensation at the specific amount chosen by the arbitrator. In the end, the legislature is entitled to provide forestry companies with statutory compensation that is not quantified on the basis of the nature of their interests in the Crown land at issue and the arbitrator’s interpretation of the compensation provision is accordingly entitled to deference.

*Per* Moldaver, Côté, Brown and Rowe JJ. (dissenting in part): Regardless of the applicable standard of review, the arbitrator’s interpretation of s. 6(4) of the *Revitalization Act* cannot stand. The only interpretation of s. 6(4) that withstands scrutiny on either standard of review is that T, as a licence holder, was entitled to receive compensation only for its limited interest in the improvements. In valuing the improvements under s. 6(4), the arbitrator was required to take into account that T, as a licence holder, did not own the improvements, which belonged to the Crown.

The plain and ordinary meaning of s. 6(4) is that T is entitled to be compensated on a basis that reflects its limited interest in the improvements as a licence holder. This plain meaning of s. 6(4) is consistent with the purpose of the *Revitalization Act* and its expropriation context. The *Revitalization Act*’s purpose is to reduce the rights of licence holders — specifically, their rights to harvest timber and use the improvements — and to provide licence holders with compensation for these reductions. As a result of the takebacks at issue, reductions were made to T’s rights to use the improvements — not ownership rights over such improvements. It runs counter to the purpose of the *Revitalization Act* to award T compensation that exceeds the value of what it lost due to the takebacks.

The cost savings approach applied by the arbitrator may be an appropriate methodology in the context of privately owned land. But the roads and bridges at issue in this case belonged to the Crown. Given that T did not own the improvements and had only a limited interest in the improvements as a licence holder, it cannot be said that it lost the replacement cost of the improvements when the province made reductions to the land base under its licences, nor can it be said that T would pay the full cost to replace the network of improvements at issue.

The arbitrator construed s. 6(4) of the *Revitalization Act* too narrowly in concluding that the distinction drawn by this provision between the value of the improvements and the value of the harvesting rights means that the market value of the tenure as a whole cannot be considered when determining the value of the improvements. There is nothing in the language or context of the Act to support this unduly restrictive reading of s. 6(4). On the contrary, it was open to the arbitrator to select any valuation method that could evaluate the value of the improvements to T as a licence holder, as long as the approach valued the improvements as separate and distinct from the harvesting rights.

The market value method was available to the arbitrator under s. 6(4) of the *Revitalization Act*, and yet the arbitrator chose to apply a method that was inconsistent with this provision. This resulted in a substantial windfall for T. The matter of compensation for the improvements relating to the three licences at issue should accordingly be remitted to the arbitrator for reconsideration.

**Cases Cited**

By Gascon J.

**Applied:** *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633; **referred to:** *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Heritage Capital Corp. v. Equitable Trust Co*., 2016 SCC 19, [2016] 1 S.C.R. 306; *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40, [2014] 2 S.C.R. 135; *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 S.C.R. 23; *Hayes Forest Services Ltd. v. Weyerhaeuser Co.*, 2008 BCCA 31, 289 D.L.R. (4th) 230; *Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc.* (1997), 101 B.C.A.C. 62; *Black Swan Gold Mines Ltd. v. Goldbelt Resources Ltd.* (1996), 78 B.C.A.C. 193; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*, [1997] 1 S.C.R. 32; *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 S.C.R. 770.

By Moldaver and Côté JJ. (dissenting in part)

*CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn.*, [1993] 3 S.C.R. 724; *British Columbia (Forests) v. Teal Cedar Products Ltd.*, 2013 SCC 51, [2013] 3 S.C.R. 301; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160; *Diggon‑Hibben, Ltd. v. The King*, [1949] S.C.R. 712; *MacMillan Bloedel Ltd. v. British Columbia* (1995), 12 B.C.L.R. (3d) 134.

**Statutes and Regulations Cited**

*Arbitration Act*, R.S.B.C. 1996, c. 55, s. 31.

*Forest Act*, R.S.B.C. 1996, c. 157.

*Forest Planning and Practices Regulation*, B.C. Reg. 14/2004, s. 79(2).

*Forestry Revitalization Act*, S.B.C. 2003, c. 17, ss. 6, 13.

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Todd, Eric C. E. *The Law of Expropriation and Compensation in Canada*, 2nd ed. Scarborough, Ont.: Carswell, 1992.

APPEAL from a judgment of the British Columbia Court of Appeal (Lowry, Chiasson and MacKenzie JJ.A.), 2015 BCCA 263, 70 B.C.L.R. (5th) 320, 373 B.C.A.C. 211, 641 W.A.C. 211, 386 D.L.R. (4th) 40, 115 L.C.R. 1, [2015] B.C.J. No. 1180 (QL), 2015 CarswellBC 1550 (WL Can.), affirming on remand a judgment of the British Columbia Court of Appeal (Finch C.J. and Lowry and MacKenzie JJ.A.), 2013 BCCA 326, 46 B.C.L.R. (5th) 272, 340 B.C.A.C. 256, 579 W.A.C. 256, 364 D.L.R. (4th) 465, 109 L.C.R. 276, [2013] B.C.J. No. 1480 (QL), 2013 CarswellBC 2059 (WL Can.), setting aside a decision of Bauman C.J., 2012 BCSC 543, [2012] B.C.J. No. 735 (QL), 2012 CarswellBC 1054 (WL Can.), which partially upheld an arbitrator’s decision. Appeal allowed in part, Moldaver, Côté, Brown and Rowe JJ. dissenting in part.

John J. L. Hunter, Q.C., Mark S. Oulton and K. Michael Stephens, for the appellant.

Karen A. Horsman, Q.C., Barbara A. Carmichael and Micah Weintraub, for the respondent.

The judgment of McLachlin C.J. and Abella, Karakatsanis, Wagner and Gascon JJ. was delivered by

Gascon J. —

1. Overview
2. In British Columbia, the scope of appellate intervention in commercial arbitration is narrow in two key ways. First, there is limited jurisdiction for appellate review of arbitration awards because that jurisdiction is statutorily limited to questions of law (*Arbitration Act*, R.S.B.C. 1996, c. 55, s. 31). Second, even where such jurisdiction exists, our Court recently held that a deferential standard of review — reasonableness — “almost always” applies to arbitration awards (*Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at paras. 75, 104 and 106). Together, limited jurisdiction and deferential review advance the central aims of commercial arbitration: efficiency and finality.
3. The Province of British Columbia (“BC”) and a forestry company, Teal Cedar Products Ltd. (“Teal Cedar”), were unable to settle how much compensation BC owed to Teal Cedar for reducing the latter’s access to certain improvements on Crown land — such as roads and bridges — which it used to harvest timber. Consequently, their dispute was submitted to arbitration as required by the applicable legislation, the *Forestry Revitalization Act*, S.B.C. 2003, c. 17 (“*Revitalization Act*”).Teal Cedar, for the most part, won. Three questions arising from the arbitrator’s award are the subject of this appeal.
4. First, there is a question of statutory interpretation: whether the arbitrator erred in selecting a valuation method that was allegedly inconsistent with the section of the *Revitalization Act* providing Teal Cedar with compensation. In my opinion, this is a question of law falling within the scope of appellate review permitted under the *Arbitration Act*. However, the arbitrator, who relied on the plain meaning of the statute prescribing that valuation, reasonably selected a suitable valuation method. Accordingly, I find that his award in this regard cannot be overturned.
5. Second, there is a question of contractual interpretation: whether the arbitrator let the factual matrix overwhelm the words of the contract when he interpreted an amended settlement agreement between the parties in light of the factual matrix of their failed negotiations. This question may be formulated in two ways: (1) whether the arbitrator allocated excessive weight to the factual matrix; or (2) whether the arbitrator’s interpretation of the factual matrix was isolated from the words of the contract. The former formulation is a question of mixed fact and law and thus falls outside the scope of appellate review permitted under the *Arbitration Act*. The latter formulation, while it raises a question of law, lacks arguable merit in this case because the arbitrator’s interpretation was clearly anchored in the words of the contract, which he interpreted in light of the factual matrix. Without arguable merit, this formulation also fails to confer appellate review jurisdiction under the *Arbitration Act*.
6. Third, there is a question of statutory application: whether the arbitrator erred in denying compensation to Teal Cedar relating to the improvements associated with one of its licences because it never lost access to those improvements, in contrast with the other licences where it lost such access. Teal Cedar’s licence for that area is referred to in these reasons as the Lillooet Licence. This question involves the application of a specific valuation methodology to the intricate facts before the arbitrator, which qualitatively distinguished the Lillooet Licence from the other licences in dispute. On that basis, I consider that this a question of mixed fact and law outside the scope of appellate review permitted under the *Arbitration Act*.
7. As the Court of Appeal below reached the opposite conclusion on the first two questions, I would allow the appeal in part. Like the application judge, I would confirm the arbitrator’s award on these two questions. However, on the third question, like the Court of Appeal this time, I would restore the arbitrator’s original ruling that BC owed Teal Cedar no compensation relating to improvements for the Lillooet Licence.
8. Context
   1. The Timber Licences and the Revitalization Act
9. In British Columbia, forestry companies hold licences which regulate how those companies may harvest Crown timber. The appellant, Teal Cedar, is one such forestry company. Three of Teal Cedar’s licences are relevant to the current dispute, namely: (1) Forest Licence A19201 in the Fraser Timber Supply Area; (2) Tree Farm Licence 46 located on Vancouver Island; and (3) Forest Licence A18699 in the Lillooet Timber Supply Area (“Lillooet Licence”). In general terms, these licences entitle Teal Cedar to harvest timber and to use improvements, such as roads and bridges, to access timber.
10. In 2003, the respondent, BC, enacted the *Revitalization Act*. This Act changed forestry companies’ rights under their licences by deleting areas from their land base and reducing the volume of their allowable harvest. In particular, Teal Cedar’s licences were affected as follows:
    1. The Fraser Timber Supply Area licence’s allowable harvest was reduced by 37,500 cubic metres and many of Teal Cedar’s chart areas were removed from the associated land base.
    2. The Vancouver Island licence’s allowable harvest was reduced by 130,637 cubic metres and many of Teal Cedar’s operating areas were removed from the associated land base.
    3. The Lillooet Licence’s allowable harvest was reduced by 48,078 cubic metres, but, unlike the other two licences, this licence never lost any areas in its associated land base.
11. In response to these changes, the *Revitalization Act* provided compensation to forestry companies. The amount of that statutory compensation is at the heart of the dispute between BC and Teal Cedar. The relevant compensation provision is s. 6 and, in particular, subs. (4), which provides forestry companies with “compensation from the government in an amount equal to the value of improvements made to Crown land”:

**Compensation**

**6**  (1) Each holder of an ungrouped licence is entitled to compensation from the government for a reduction under section 2 (1) of the allowable annual cut of the ungrouped licence, in an amount equal to the value, for the unexpired portion of the term of the licence, of the harvesting rights taken by means of the reduction.

(2) Each holder of a timber licence is entitled to compensation from the government in respect of the part, if any, of a reduction in the area of Crown land described in the timber licence that is made under section 2 (2) and that is attributed under section 3 (1) to that licence in an amount equal to the value of the harvesting rights taken by means of the reduction.

(3) Each holder of a licence in a group of licences is entitled to compensation from the government in respect of the part, if any, of a reduction of the allowable annual cut of the licence that is made under section 2 (3) and that is attributed under section 3 (2) to that licence, in an amount equal to the value, for the unexpired portion of the term of the licence, of the harvesting rights taken by means of the reduction.

(4) In addition to the compensation to which the holder of an ungrouped licence, a timber licence or a licence in a group of licences is entitled under subsection (1), (2) or (3), the holder is entitled to compensation from the government in an amount equal to the value of improvements made to Crown land that

(a) are, or have been, authorized by the government,

(b) are not improvements to which section 174 of the Forest Practices Code of British Columbia Act applies, and

(c) are not, or have not been, paid for by the government under the Forest Act or the former Act as defined in the Forest Act.

(4.1) Subsection (4) also applies to a holder of a tree farm licence that is subject to a deletion of Crown land from the tree farm licence area under section 39.1 of the Forest Act, if the deletion

(a) is in respect of a reduction of allowable annual cut under section 3 (3) of this Act, and

(b) is made before the date this subsection comes into force.

(5) An entitlement to compensation under this section vests in the holder to which it applies on March 31, 2003.

(6) A dispute between the minister and the holder of an ungrouped licence, a timber licence or a licence in a group of licences as to the amount of the compensation to which the holder is entitled under this section must be submitted to arbitration under the Arbitration Act.

1. Conceptually, s. 6 provides for two types of compensation, namely compensation for: (1) reductions to harvesting rights (“Rights Compensation”, provided for in subss. (1) to (3)); and (2) the value of improvements made to Crown land (“Improvements Compensation”, provided for in s. 6(4)).
2. The *Revitalization Act* permits the Lieutenant Governor in Council to make regulations concerning, among other things, this compensation provision:

**Regulations**

**13** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations

(a) defining a word or expression not otherwise defined in this Act, and

(b) for the purposes of section 6, prescribing respecting value, including but not limited to

(i) determining value and defining the components that comprise value,

(ii) prescribing methods of evaluation for use in determining value,

(iii) prescribing factors to be taken into account in an evaluation,

(iv) defining the role of evaluators in a determination of value and prescribing qualifications for evaluators that are prerequisite to their participation in the determination of value, and

(v) prescribing requirements for the selection of arbitrators.

Accordingly, while s. 6(4) of the *Revitalization Act* provides for Improvements Compensation “in an amount equal to the value of improvements made to Crown land”, s. 13(2)(b)(ii) anticipates regulations “prescribing methods of evaluation for use in determining” that value. However, neither at the time of the dispute nor at the time of the hearing before this Court had any regulations been passed prescribing those valuation methods.

1. Lastly, in terms of process, s. 6(6) of the *Revitalization Act* provides that disputes relating to the amount of compensation BC owes to a forestry company must be submitted to arbitration. Again, the *Revitalization Act* permits the Lieutenant Governor in Council to make regulations “prescribing requirements for the selection of arbitrators” (s. 13(2)(b)(v)). As with the anticipated regulations concerning valuation methods, neither at the time of the dispute nor at the time of the hearing before this Court had any regulations been passed prescribing arbitrator selection requirements. Consequently, up until the time of the hearing before this Court, arbitrations regarding compensation under the *Revitalization Act* were presided over by arbitrators chosen by consent of the parties. There was no list of arbitrators limiting party autonomy in this respect.
   1. The Dispute Between Teal Cedar and British Columbia
2. Teal Cedar suffered compensable losses under the *Revitalization Act*. It negotiated the value of those losses with BC and the parties reached a partial settlement. They were able to settle the value of the Rights Compensation owed to Teal Cedar, but they were unable to settle the value of the Improvements Compensation.
3. To confirm their partial settlement and provide guidelines for their ongoing negotiations, the parties executed a Settlement Framework Agreement. That agreement contained a “No Interest Clause”, which precluded interest payments to Teal Cedar:

No interest shall be payable by [BC] in respect to this or any other compensation that may be due to [Teal Cedar] under the [*Revitalization Act*].

(A.R., vol. I, at p. 225)

1. Negotiations about the value of the Improvements Compensation were ultimately unsuccessful. Accordingly, 10 months after the Settlement Framework Agreement was first executed, the parties signed an amendment to that agreement (“Amendment”), resulting in a new agreement combining the Settlement Framework Agreement with the Amendment (“Amended Agreement”). The Amended Agreement provided that the parties were unable to agree on the proper amount of compensation, and thus, would submit the valuation of “compensation” to arbitration (“Arbitration Clause”):

[BC] hereby acknowledges that a dispute exists between the Parties and [Teal Cedar] intends to submit the dispute between the Parties as to the amount of the compensation for the Improvements to which it is entitled for arbitration pursuant to Section 6(6) of the [*Revitalization Act*].

(A.R., vol. I, at p. 228)

1. As there were no regulations prescribing the requirements for arbitrators, the parties were free to choose who would preside over the arbitration. They ultimately selected Thomas Braidwood, Q.C., a former Justice of the British Columbia Court of Appeal.
2. Judicial History
3. At the initial arbitration, there were two primary questions of interpretation, which have remained contested up to and including the appeal before this Court. Those questions of interpretation — one statutory and one contractual — are the following:
   1. What valuation methods for Improvements Compensation are consistent with the *Revitalization Act*? (“Valuation Issue”)
   2. Does the “compensation” for improvements submitted to arbitration under the Amended Agreement include interest? (“Interest Issue”)
4. In addition, another question emerged concerning Teal Cedar’s entitlement to compensation for improvements losses relating to the Lillooet Licence (“Lillooet Issue”).
   1. Arbitration Award (Thomas Braidwood, Q.C. — April 27, 2011, Amended June 30, 2011)
5. On the Valuation Issue, the arbitrator had to determine the proper valuation method for Improvements Compensation because no regulations prescribing such a method had been passed. During a “lengthy and complex hearing” (as noted by the application judge, at para. 7), he was presented with three “generally recognized valuation approaches” (para. 112):
   1. the “Market Value Method”, which the arbitrator rejected because the method is based on determining the market value of the improvements, and BC’s own expert conceded that no such market value exists in respect of improvements on Crown land (para. 113);
   2. the “Income Method”, which the arbitrator similarly rejected because the method is based on determining the income generated by the improvements, and BC’s own expert conceded that no such income exists in respect of improvements on Crown land (para. 113); and
   3. the “Depreciation Replacement Cost Method”, which the arbitrator accepted (paras. 93-94). This method, in simplified terms, valuates Improvements Compensation by estimating the notional cost of rebuilding the improvements from scratch (replacement) to their current degraded condition (depreciation). The arbitrator accepted this method in part because it was the only valuation methodology presented which determined Improvements Compensation separately from Rights Compensation, in keeping with their separate treatment in the *Revitalization Act* (para. 94; see *Revitalization Act*, ss. 6(1) to (3) and 6(4)).
6. On the Interest Issue, the arbitrator held that Teal Cedar was entitled to interest on the Improvements Compensation, despite the No Interest Clause, in light of the factual matrix. Specifically, he found that, at the time of the Settlement Framework Agreement, when the No Interest Clause was drafted, the parties were “hopeful” and in the midst of ongoing negotiations to resolve the Valuation Issue (para. 180). In contrast, at the time of the Amendment, when the Arbitration Clause was drafted, the parties had just endured 10 months of failed negotiations, and had come to terms with the need to resolve the Valuation Issue — including interest — through arbitration (para. 181).
7. Lastly, on the Lillooet Issue, the arbitrator ruled that Teal Cedar was not entitled to Improvements Compensation for the Lillooet Licence because it “had not lost any opportunity to use the roads” (paras. 169-70). Put differently, the arbitrator opined that BC owed no Improvements Compensation to Teal Cedar for the Lillooet Licence since the latter never lost access to any improvements associated with that licence.
   1. British Columbia Supreme Court (2012 BCSC 543, Bauman C.J.)
8. The courts reviewing the Arbitration Award had the additional burden of addressing their jurisdiction to review the award in the first place (“Jurisdiction Issue”). Specifically, the arbitration proceeded under the *Arbitration Act*, which limits appeals to questions of law (s. 31). The courts reviewing the Arbitration Award were consequently confronted with the threshold issue of whether the Valuation, Interest and Lillooet Issues involved questions of law — the sole type of question over which the courts have appellate review jurisdiction in commercial arbitration cases. As additional context, this Court’s decision in *Sattva* — where we clarified the general characterization of contract interpretation as a question of mixed fact and law — was not released until after the first decision in this case by the British Columbia Court of Appeal. As a result, the decision of the British Columbia Supreme Court and initial decision of the British Columbia Court of Appeal were issued without this Court’s guidance in *Sattva*.
9. On the Jurisdiction Issue, the application judge, Bauman C.J. (now Bauman C.J.B.C.), held that the Valuation Issue subsumed questions of law and questions of mixed fact and law. Specifically, the determination of whether the valuation method chosen was consistent with the *Revitalization Act* was a matter of “statutory construction” (para. 49 (CanLII)) and thus a question of law within his jurisdiction (para. 57). In contrast, he found that the application of that method to quantify the value of the Improvements Compensation involved questions of fact or of mixed fact and law outside his jurisdiction (para. 57). Similarly, he determined that the Interest Issue involved interpreting the Amended Agreement “in the context of the factual matrix” — a question of mixed fact and law outside his jurisdiction (para. 81). Finally, he held that the Lillooet Issue was a “question of law” because the arbitrator’s chosen methodology, when applied to the Lillooet Licence (which contains improvements), should have resulted in Improvements Compensation for Teal Cedar (para. 84).
10. On the Valuation Issue, Bauman C.J. concluded that the arbitrator’s reliance on the Depreciation Replacement Cost Method was not only proper but correct (para. 57). He noted that the arbitrator, “in the absence of any regulatory guidance”, had been forced to interpret the plain words of s. 6(4) (para. 46). Further, he opined that the arbitrator had interpreted s. 6(4) “in a manner open to him in light of the applicable rules of statutory interpretation” (para. 50).
11. Lastly, on the Lillooet Issue, Bauman C.J. remitted the issue of Improvements Compensation to the arbitrator because of “uncertainty” in his reasons (para. 88). Bauman C.J. felt the arbitrator was “not clear” as to why he denied Improvements Compensation for the Lillooet Licence (para. 85). He reasoned that, since the Lillooet Licence had associated improvements and the arbitrator’s methodology assumed that all improvements would be fully used (para. 86), then Improvements Compensation was apparently owed in respect of those improvements, just as such compensation was owed in respect of the improvements associated with the other two licences in dispute. On that basis, the application judge remitted the value of compensation for Teal Cedar’s losses in respect of the Lillooet Licence to the arbitrator “for reconsideration in light of the valuation methodology he has adopted” (para. 88).
    1. Additional Arbitration Award (Thomas Braidwood, Q.C. — July 3, 2012, amended August 17, 2012)
12. In view of Bauman C.J.’s ruling on the Lillooet Issue, the arbitrator issued an additional award “to an amount equal to the value of the improvements” relating to the Lillooet Licence (p. 10). He rendered this decision despite his initial holding that Teal Cedar’s right to Improvements Compensation was never triggered since it never factually lost its ability to use those improvements.
    1. British Columbia Court of Appeal Decision #1 (2013 BCCA 326, 364 D.L.R. (4th) 465)
13. The matter came twice before the British Columbia Court of Appeal. The first time, the Court of Appeal issued two opinions with diametrically opposed conclusions.
    * 1. Majority (MacKenzie J.A., Lowry J.A. concurring)
14. The majority allowed BC’s appeal for the most part. On the Jurisdiction Issue, MacKenzie J.A. held that the Valuation Issue (statutory interpretation) and the Interest Issue (contractual interpretation) were both questions of law and thus fell within the scope of appellate review of an arbitration award (paras. 57 and 114). In addition, while not explicit in this respect, the majority appeared to rule that the Lillooet Issue was within the courts’ reviewing jurisdiction because it related to “whether the arbitrator used the correct method of valuation in this case”, a question of law (paras. 55-57).
15. On the Valuation Issue, MacKenzie J.A. found that the arbitrator had erred in law by selecting the Depreciation Replacement Cost Method (paras. 131-33). Specifically, she noted that this method failed to recognize Teal Cedar’s actual interest in the improvements (para. 68) by compensating Teal Cedar as if it ownedthe improvements, whereas Teal Cedar had lost only its right to usethe improvements — which, in reality, were owned by the Crown (paras. 68 and 73).
16. On the Interest Issue, MacKenzie J.A. held that the arbitrator had erred in law by letting the factual matrix overwhelm the words of the contract (paras. 125 and 129). Specifically, she concluded that the arbitrator had erred by interpreting the Amended Agreement as including interest in Teal Cedar’s “compensation” submitted to arbitration (para. 136). On my reading, MacKenzie J.A.’s reasoning on this issue (at paras. 105-30) can be interpreted in two ways. Either she found that the arbitrator allocated excessive weight to the factual matrix or that the arbitrator interpreted the factual matrix isolated from the words of the contract.
17. Lastly, on the Lillooet Issue, MacKenzie J.A. concluded that Bauman C.J. had erred in remitting the issue of compensation for the Lillooet Licence to the arbitrator. MacKenzie J.A. found that the arbitrator had correctly denied Teal Cedar compensation for a licence in respect of which it had suffered no actual loss (paras. 78-79). As a result, she restored the arbitrator’s original decision to award Teal Cedar no compensation in respect of the Lillooet Licence (para. 134).
    * 1. Dissent (Finch C.J.)
18. For his part, Finch C.J., the dissenting judge, agreed with Bauman C.J. and would have dismissed the appeal in its entirety. On the Valuation Issue, he held that the arbitrator had not erred in law or otherwise (paras. 140-43), and thus he would have maintained the arbitrator’s selection of the Depreciation Replacement Cost Method. On the Interest Issue, he agreed with Bauman C.J. that the arbitrator’s interpretation of the Amended Agreement in light of the factual matrix was a question of mixed fact and law outside the scope of appellate review of an arbitration award (paras. 144-45). Finally, on the Lillooet Issue, he found that Bauman C.J. had made “no error of law” in remitting the valuation of compensation for the Lillooet Licence to the arbitrator (paras. 146-48).
    1. British Columbia Court of Appeal Decision #2 (Remanded Post-Sattva) (2015 BCCA 263, 386 D.L.R. (4th) 40, Lowry, Chiasson and MacKenzie JJ.A.)
19. In 2013, Teal Cedar sought leave to appeal to the Court from the British Columbia Court of Appeal’s decision. However, in the intervening period, the Court released *Sattva* in 2014. Consequently, the Court remanded the case to the British Columbia Court of Appeal for disposition in accordance with *Sattva* (file No. 35563, October 23, 2014, [2014] S.C.C. Bull. 1637).
20. On remand, a unanimous British Columbia Court of Appeal held that MacKenzie J.A.’s pre-*Sattva* disposition of the appeal (concurred in by Lowry J.A.) was unaltered by *Sattva* (para. 60).
21. On the Valuation Issue, the Court of Appeal held that the standard of review was correctness because the arbitrator lacked specialized expertise in forestry statutes (para. 35), the parties were statutorily compelled to resolve their dispute through arbitration (para. 35), and the Valuation Issue was (1) important to compensation statutes generally (para. 35) and (2) a question of law attracting a correctness standard (paras. 36-37). Further, the Court of Appeal ruled that the arbitrator’s award was, in this respect, both incorrect (para. 37) and unreasonable (para. 38) because it provided a “substantial publicly financed windfall” (para. 38) divorced from Teal Cedar’s “actual financial loss” (para. 39).
22. On the Interest Issue, the Court of Appeal opined that the arbitrator had made a legal error that gave the courts jurisdiction (para. 46) because he let the factual matrix overwhelm the contract (para. 52), despite its clear wording (para. 59). On my reading, the Court of Appeal’s second decision, like its first, supports two interpretations of what it means for the factual matrix to “overwhelm” a contract: (1) weighing that matrix excessively; or (2) considering that matrix in isolation from the words of the contract.
23. The decision of the Court of Appeal on remand was silent in respect of the Lillooet Issue.
24. Issues
25. In the end, this appeal involves two key interpretation issues, one statutory and one contractual, namely whether the arbitrator erred in law by: (1) interpreting the Depreciation Replacement Cost Method as being consistent with the *Revitalization Act* (the Valuation Issue); and (2) interpreting the Amended Agreement as including interest in BC’s Improvements Compensation payment to Teal Cedar (the Interest Issue). This appeal also involves a statutory application issue, namely whether the arbitrator erred in law by denying Improvements Compensation to Teal Cedar when he applied his chosen methodology to the Lillooet Licence (the Lillooet Issue). Whether the courts have jurisdiction to review these issues, and if so, the applicable standard of review, are also in dispute.
26. Analysis
27. According to the application judge, other than there being a “question” or “point” of law in dispute (see ss. 31(1)(b) and 31(2)), the requirements for leave under the *Arbitration Act* were met in this case on the Valuation Issue (para. 43). Those findings are not challenged before this Court, though I note that the application judge was silent with respect to these requirements on the Interest Issue, which he resolved on the basis of that issue not raising a question of law (para. 81). Similarly, once the statutory preconditions are met, granting leave to appeal an award under the *Arbitration Act* is a matter of judicial discretion: “. . . the court may grant leave . . .” (*Arbitration Act*, s. 31(2)). The application judge’s exercise of discretion in this regard is also not contested before us. As a result, per *Sattva* (paras. 38, 102 and 107), a three-step analysis for appellate review of the arbitration award below remains, namely:
    1. Jurisdiction: Whether the appellate court has jurisdiction to review the alleged error.
    2. Standard of review: If so, whether the standard for the review is reasonableness or correctness.
    3. Review: Whether the arbitration award withstands scrutiny under that standard of review (i.e. whether the award is reasonable or correct).
28. My analysis will proceed on the basis of this logical framework.
    1. Jurisdiction
       1. Jurisdiction to Review Commercial Arbitration Awards
29. The scope of jurisdiction in respect of a commercial arbitration award, such as the one at issue, is now well-established in the jurisprudence (*Sattva*, at para. 104). Here, as in *Sattva*, the arbitration was conducted under the *Arbitration Act*, which limits a reviewing court’s jurisdiction to questions of law:

**31**  (1) A party to an arbitration, other than an arbitration in respect of a family law dispute, may appeal to the court on any question of law arising out of the award if

(a) all of the parties to the arbitration consent, or

(b) the court grants leave to appeal.

(2) In an application for leave under subsection (1) (b), the court may grant leave if it determines that

(a) the importance of the result of the arbitration to the parties justifies the intervention of the court and the determination of the point of law may prevent a miscarriage of justice,

(b) the point of law is of importance to some class or body of persons of which the applicant is a member, or

(c) the point of law is of general or public importance.

1. Unlike privative clauses which merely “signa[l]” deference in the context of judicial review of administrative tribunal decisions, statutory limitations on the scope of appellate review of arbitration awards are “absolute” (*Sattva*, at para. 104). In consequence, a finding that the questions on appeal — the Valuation, Interest and Lillooet Issues — are not questions of law would wholly dispose of the issue of the courts’ jurisdiction to review those questions.
2. The process for characterizing a question as one of three principal types — legal, factual, or mixed — is also well-established in the jurisprudence (*Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, at para. 35). In particular, it is not disputed that legal questions are questions “about what the correct legal test is” (*Sattva*, at para. 49, quoting *Southam*, at para. 35); factual questions are questions “about what actually took place between the parties” (*Southam*, at para. 35; *Sattva*, at para. 58); and mixed questions are questions about “whether the facts satisfy the legal tests” or, in other words, they involve “applying a legal standard to a set of facts” (*Southam*, at para. 35; *Sattva*, at para. 49, quoting *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).
3. That said, while the application of a legal test to a set of facts is a mixed question, if, in the course of that application, the underlying legal test may have been altered, then a legal question arises. For example, if a party alleges that a judge (or arbitrator) while applying a legal test failed to consider a required element of that test, that party alleges that the judge (or arbitrator), in effect, deleted that element from the test and thus altered the legal test. As the Court explained in *Southam*, at para. 39:

. . . if a decision-maker says that the correct test requires him or her to consider A, B, C, and D, but in fact the decision-maker considers only A, B, and C, then the outcome is as if he or she had applied a law that required consideration of only A, B, and C. If the correct test requires him or her to consider D as well, then the decision-maker has in effect applied the wrong law, and so has made an error of law.

Such an allegation ultimately challenges whether the judge (or arbitrator) relied on the correct legal test, thus raising a question of law (*Sattva*, at para. 53; *Housen*, at paras. 31 and 34-35). Accordingly, such a legal question, if alleged in the context of a dispute under the *Arbitration Act*, and assuming the other jurisdictional requirements of that Actare met, is open to appellate review. These “extricable questions of law” are better understood as a covert form of legal question — where a judge’s (or arbitrator’s) legal test is implicit to their application of the test rather than explicit in their description of the test — than as a fourth and distinct category of questions.

1. Courts should, however, exercise caution in identifying extricable questions of law because mixed questions, by definition, involve aspects of law. The motivations for counsel to strategically frame a mixed question as a legal question — for example, to gain jurisdiction in appeals from arbitration awards or a favourable standard of review in appeals from civil litigation judgments — are transparent (*Sattva*, at para. 54; *Southam*, at para. 36). A narrow scope for extricable questions of law is consistent with finality in commercial arbitration and, more broadly, with deference to factual findings. Courts must be vigilant in distinguishing between a party alleging that a legal test may have been altered in the course of its application (an extricable question of law; *Sattva*, at para. 53), and a party alleging that a legal test, which was unaltered, should have, when applied, resulted in a different outcome (a mixed question).
2. From this standpoint, the characterization of a question on review as a mixed question rather than as a legal question has vastly different consequences in appeals from arbitration awards and civil litigation judgments. The identification of a mixed question when appealing an arbitration award defeats a court’s appellate review jurisdiction (*Arbitration Act*, s. 31; *Sattva*, at para. 104). In contrast, the identification of a mixed question when appealing a civil litigation judgment merely raises the standard of review (*Housen*, at para. 36).
3. Given these principles, a question of statutory interpretation is normally characterized as a legal question. In contrast, identifying a question, broadly, as one of contractual interpretation does not necessarily resolvethe nature of the question at issue. Contractual interpretation involves factual, legal, and mixed questions. In consequence, characterizing the nature of the specificquestion before the court requires delicate consideration of the narrow issue actually in dispute. In general, though, as the Court recently explained in *Sattva*, contractual interpretation remains a mixed question, not a legal question, as it involves applyingcontractual law (principles of contract law) to contractual facts (the contract itself and its factual matrix) (para. 50).
   * 1. Jurisdiction in the Instant Case
4. On that basis, jurisdiction in this case can be readily ascertained. First, I will explain the courts’ partial jurisdiction over the Valuation Issue. Second, I will explain the courts’ lack of jurisdiction over the Interest and Lillooet Issues.
   * + 1. Jurisdiction Over the Valuation Issue
5. As held by Bauman C.J. (at para. 57) and Finch C.J., dissenting (at paras. 140 and 143), the Valuation Issue — i.e. the issue of selecting a valuation method that complies with the *Revitalization Act* — involves a chain of issues, some raising legal questions and others raising mixed questions. Specifically, two types of questions are engaged by the Valuation Issue: (1) questions about the broad category of methods that are acceptable under the terms of the *Revitalization Act*; and (2) questions about the specific method, within that broad category of acceptable methods, that should ultimately be applied.
6. The former questions — the methods that are acceptable under the *Revitalization Act* — are a matter of statutory interpretation and, accordingly, are questions of law (*Heritage Capital Corp. v. Equitable Trust Co.*, 2016 SCC 19, [2016] 1 S.C.R. 306, at para. 23, citing *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40, [2014] 2 S.C.R. 135, at para. 33). As a result, the courts have jurisdiction to review the arbitrator’s resolution of the Valuation Issue in so far as that resolution involves identifying a pool of methodologies consistent with the *Revitalization Act*.
7. The latter questions — the preferable method among those that are consistent with the *Revitalization Act* — are inextricably linked to the evidentiary record at the arbitration hearing, where various experts opined on the virtues of conflicting valuation methodologies. They are mixed questions, if not pure questions of fact. Therefore, the courts lack jurisdiction to review the arbitrator’s selection of a specific methodology among the pool of methodologies which are consistent with the *Revitalization Act*.
8. The majority of the Court of Appeal in its first decision appears to have merged the two types of questions above and held that both were questions of law (para. 57). This is an error because selection among various technical methodologies which all comply with the compensation provision is undeniably linked to the complex evidentiary record before the arbitrator and engages at the very least mixed questions. The decision of the Court of Appeal on remand does not independently analyze jurisdiction, but it does describe the interpretation of the compensation provision as a question of law (para. 37). In so far as that decision recognizes that the courts’ jurisdiction is limited to determining methods that are consistent with the compensation provision and does not extend to choosing among those methods, it properly construes the courts’ jurisdiction over the Valuation Issue here.
   * + 1. Jurisdiction Over the Interest Issue
9. In contrast, as Bauman C.J. and Finch C.J., dissenting, both found, I conclude that the courts have no jurisdiction to review the arbitrator’s resolution of the Interest Issue.
10. In this case, the arbitrator interpreted the Amended Agreement — including its No Interest Clause, which originated in the Settlement Framework Agreement and was unchanged by the Amendment — in light of the factual matrix. That was the correct legal test (*Sattva*, at para. 50).
11. Still, BC argues that the arbitrator let the factual matrix overwhelm the words of the contract, which raises an extricable question of law. In my view, this “overwhelming” principle is subject to two formulations, neither of which confers appellate review jurisdiction in this case, albeit for different reasons.
12. The first formulation of this “overwhelming” principle is that the factual matrix overwhelms the words of a contract when it is weighed excessively. This formulation fails to confer appellate review jurisdiction here because it is a mixed question.
13. The goal of contractual interpretation is ascertaining “the objective intentions of the parties”, an “inherently fact specific” exercise (*Sattva*, at para. 55). In interpreting the parties’ intentions, the arbitrator weighed the factual matrix with the words of the Amended Agreement. He was alive to BC’s submission that the No Interest Clause, in isolation, precluded interest payments (paras. 178-79). Indeed, the arbitrator, on a preliminary basis, accepted this submission (para. 179). But he ultimately held that “[t]he context applying here” revealed a different objective intent, namely to suspend interest only for the duration of negotiations (paras. 180-81). Specifically, the arbitrator assessed the evolving circumstances between the execution of the Settlement Framework Agreement (when the parties were “hopeful” the dispute would be resolved by negotiation and inserted the No Interest Clause in respect of compensation owed) and the execution of the Amended Agreement (when the parties knew negotiations had failed and submitted the value of “compensation” to arbitration). He held that the parties, by submitting “compensation” to arbitration, had intended compensation, interest included, to be within his jurisdiction (para. 181).
14. The arbitrator, after a lengthy and complex hearing, was best situated to weigh the factual matrix in his interpretation of the Amended Agreement. The fact that he may have placed significant weight on that evidence in interpreting the agreement does not engage a legal question conferring jurisdiction on the courts under the *Arbitration Act* as it does not alter the underlying test he applied in this case.
15. In the Court of Appeal’s first decision, the majority at times appears to follow the first formulation of the “overwhelming” principle, and seems to imply that the arbitrator erred in law by placing excessive emphasis on the factual matrix (para. 125), even though that matrix had never been manifested in an “express provision” in the contract (para. 127). If this is the approach the majority chose, it improperly conflates questions of law (needed at the leave stage for jurisdiction) and errors of law (considered at the merits stage, once jurisdiction has been established). The identification of an alleged legal error should be based on the arbitrator’s application of the wrong test, not on the fact that one would have applied the appropriate legal test differently. Otherwise, it does not raise a legal question conferring jurisdiction on the courts to review the arbitration award (*Sattva*, at paras. 63-66); rather, it skips the jurisdiction stage and immediately proceeds with a review of the arbitrator’s analysis of a mixed question.
16. Likewise, it is improper to claim that a court should have jurisdiction to review the arbitrator’s contractual analysis merely on the basis that it was allegedly incorrect. Indeed, it would even be improper to claim jurisdiction to review an arbitrator’s analysis merely on the basis that it was unreasonable. A court looking at the Amended Agreement could have held that the No Interest Clause precluded interest payments and that the Arbitration Clause incorporated that preclusion when it submitted “compensation” (without interest) to arbitration. But to immediately launch into the merits of the arbitrator’s contractual analysis — whether it is incorrect or unreasonable — is to put the cart before the horse. His analysis must first be characterized as raising a legal question. And only on the basis of that characterization may his analysis then be reviewed.
17. Here, the relevant legal principle required the arbitrator to interpret the Amended Agreement “in light of the factual matrix” (*Sattva*, at para. 50). That is precisely what he did. It cannot be found that the arbitrator changed this legal principle simply because someone else might have appliedit differently in this case.
18. The second formulation of the “overwhelming” principle is that the factual matrix overwhelms the words of a contract when it is interpreted in isolation from the words of the contract, effectively creating a new agreement between the parties. This formulation of the “overwhelming” principle raises a legal question, but it lacks arguable merit here. As a result, it also fails to confer appellate review jurisdiction in this case.
19. In *Sattva*, this Court accepted that, in rare circumstances, the application of an incorrect principle or the failure to apply a principle could give rise to an extricable question of law (paras. 53 and 62-64; see also *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 S.C.R. 23, at para. 21, citing *Housen*, at para. 36). As the Court recognized in *Sattva*, the use of the factual matrix in contractual interpretation is limited by the legal principle that contractual interpretation must remain grounded in the text of the contract so as to avoid effectively creating a new agreement between the parties (para. 57; see also *Hayes Forest Services Ltd. v. Weyerhaeuser Co.*, 2008 BCCA 31, 289 D.L.R. (4th) 230; *Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc.* (1997), 101 B.C.A.C. 62; *Black Swan Gold Mines Ltd. v. Goldbelt Resources Ltd.* (1996), 78 B.C.A.C. 193; G. R. Hall, *Canadian Contractual Interpretation Law* (3rd ed. 2016), at p. 33).
20. Whether the arbitrator failed to apply the foregoing principle raises a legal question. That said, merely raising a legal question does not exhaust the requirements for jurisdiction under s. 31 of the *Arbitration Act*. To grant leave on such a question of law, the court must be satisfied that the ground of appeal has “arguable merit” (*Sattva*, at para. 74; *Arbitration Act*, s. 31(2)(a)). In my view, if the Court of Appeal on remand had properly conducted a “preliminary examination of the question of law” in light of the reasonableness standard to be applied (*Sattva*, at paras. 74-75 and 106), it would have concluded that there is no arguable merit to this alleged legal error. The arbitrator’s interpretation was rooted in the words of the contract, not overwhelmed by them. While the arbitrator may have placed significant weight on the factual matrix when interpreting the meaning of “compensation”, there is no arguable merit to the claim that he interpreted that matrix isolated from the contract’s words so as to effectively create a new agreement (*Sattva*, at para. 57; Hall, at pp. 33-34).
21. Again, contractual interpretation is a fact-specific exercise. It follows that a question of law premised on the failure to apply the principle that the factual matrix must not be interpreted in isolation from the words of the contract will be very difficult to extricate in practice. On closer examination, it will often amount to nothing more than a complaint about how much weight was allocated to the factual matrix — in effect, a disagreement about *how* the decision-maker interpreted the words of a contract in light of the factual matrix (*Sattva*, at paras. 50 and 65). In short, the supposed question of law will often reveal itself to be a question about whether the decision-maker applied the principle properly — a mixed question — and not about whether the decision-maker applied the proper principle*.* To extricate a question of law based on the alleged error of having overwhelmed the contract, a reviewing court must be satisfied that the decision-maker interpreted the factual matrix isolated from the words of the contract; an approach which could effectively create a new agreement. There is no arguable merit to the claim that the arbitrator’s analysis here adopted such a flawed approach.
22. Accordingly, on either formulation of the “overwhelming” principle, the majority of the Court of Appeal (in its first decision) and the unanimous Court of Appeal (in its second decision) erred in finding that the courts had jurisdiction to review the Interest Issue.
    * + 1. Jurisdiction Over the Lillooet Issue
23. The courts similarly lack jurisdiction over the Lillooet Issue because it does not raise a question of law. The majority of the Court of Appeal did not explicitly discuss jurisdiction over the Lillooet Issue, but found that the arbitrator had correctly denied Teal Cedar compensation for the Lillooet Licence. In contrast, the application judge reasoned that he had jurisdiction over the Lillooet Issue. I disagree with both the application judge’s finding of jurisdiction and his decision to remit the issue to the arbitrator for reconsideration.
24. Bauman C.J. held that the arbitrator’s application of his chosen methodology to the Lillooet Licence raised a pure question of law (para. 84):

Teal argues that as there were improvements associated with the lost volumes in the Lillooet [Timber Supply Area], in light of the methodology adopted by the Arbitrator, it is an error on a pure question of law to deny Teal any compensation for the improvements. I agree that this raises a question of law . . . .

1. In my respectful view, this approach improperly conflates jurisdiction with review. The alleged presence of an error in applying the methodology (review) does not necessarily translate into a question of law (jurisdiction). Rather, the question implicated — whether the arbitrator correctly applied the valuation methodology to the Lillooet Licence — is a mixed question. As such, it is beyond the scope of appellate review. A deeper consideration of the arbitrator’s reasoning reveals how the nature of the question raised here by the Lillooet Issue is mixed rather than legal.
2. In his initial award, the arbitrator denied Teal Cedar Improvements Compensation for the Lillooet Licence based on its unique factual attributes. He found that Teal Cedar lost no areas associated with that licence, and accordingly, suffered no loss of value in respect of improvements linked to that licence, all of which it was still free to use. In the arbitrator’s view, this distinguished the Lillooet Licence from the other two licences, where BC deleted areas, and therefore denied Teal Cedar access to certain improvements associated with those other licences.
3. In effect, the arbitrator reasoned that the Depreciation Replacement Cost Method, when applied, involves a preliminary assessment of some loss of access to improvements, in fact, before determining the value associated with that loss, in law. Consequently, the parties’ dispute in respect of Improvements Compensation for the Lillooet Licence relates to the arbitrator’s application of his chosen valuation methodology, a mixed question beyond the courts’ jurisdiction.
4. Indeed, the arbitrator’s basis for denying Improvements Compensation for the Lillooet Licence — that BC never took any areas, and thus never took any improvements, relating to that licence — is a factual inquiry best left to the expertise of the arbitrator whose greater proximity to the complex facts in this case leaves him best-situated to adjudicate this matter.
5. Having explained why the courts’ jurisdiction is limited to the Valuation Issue, I will now consider the two remaining steps in the framework for review of commercial arbitration awards — the standard of review and the review itself — for that issue alone.
   1. Standard of Review
      1. Standard of Review for Commercial Arbitration Awards
6. In an arbitralcontext like this one, where the decision under review is an award under the *Arbitration Act*, *Sattva* establishes that the standard of review is “almost always” reasonableness (para. 75). This preference for a reasonableness standard dovetails with the key policy objectives of commercial arbitration, namely efficiency and finality. In *Sattva*, Rothstein J. emphasizes that in “commercial arbitration, where appeals are restricted to questions of law, the standard of review will be reasonableness unless the question is one that would attract the correctness standard” (para. 106). He suggests that this may arise only in rare circumstances, such as where a constitutional question or a question of law of central importance to the legal system as a whole and outside the adjudicator’s expertise is at issue (paras. 75 and 106).
7. It follows that the nature of the question under review — i.e. legal, factual, or mixed — may inform whether one of those circumstances is present, but it is not dispositive, in itself, of the applicable standard of review. For instance, it would be an error to claim that all statutory interpretation by an arbitrator demands correctness review simply because it engages a legal question. While statutory interpretation is a legal question (*Heritage*, at para. 23, citing *Canadian National Railway*, at para. 33), the mere presence of a legal question does not, on its own, preclude the application of a reasonableness review in a commercial arbitration context. *Sattva* is clear in this regard.
8. In contrast, where the decision under review is, for example, a civil litigation judgment, the nature of the question is dispositive of the standard of review, with factual and mixed questions being reviewed for palpable and overriding error (*Housen*, at paras. 10 and 36) and legal questions — including extricable questions of law — being reviewed for correctness (*Housen*, at paras. 8 and 36). It is therefore critical to bear these distinctions in mind when determining the appropriate standard of review in any given case.
   * 1. Standard of Review for the Valuation Issue
9. The decisions below, other than that of the Court of Appeal on remand, largely avoid the question of the standard of review. Bauman C.J. held that the arbitrator had “correctly answered” the Valuation Issue, suggesting a correctness standard of review (para. 57). Similarly, the majority employed correctness language in their reasoning (para. 57). In dissent, Finch C.J. simply noted the absence of errors in Bauman C.J.’s Valuation Issue analysis, making the appropriate standard of review immaterial to his holding (para. 143). To be fair, these decisions predated *Sattva* and lacked this Court’s guidance on standard of review in a commercial arbitration context such as this one.
10. However, on remand, the Court of Appeal had the benefit of *Sattva*, and its decision was specifically directed toward reconsidering the majority’s decision in light of *Sattva*. In my view, the Court of Appeal erroneously held that the standard of review should be correctness for the Valuation Issue (paras. 35-37). Its decision appears to suggest that questions of law, such as statutory interpretation, necessarily attract a correctness standard of review (paras. 36-37). In so far as the Court of Appeal intended to make this suggestion, it is incorrect. As stated before, while the nature of the question (legal, mixed, or fact) is dispositive of the standard of review in the civil litigation context (*Housen*, at paras. 8, 10 and 36), it is not in the commercial arbitration context (*Sattva*, at paras. 75 and 106).
11. Rather, the standard of review on the legal questions arising from the arbitrator’s analysis of the Valuation Issue is reasonableness. As discussed, under *Sattva*, reasonableness review is almost always applied in commercial arbitration (para. 75). That preference is not negated here in light of the nature of the question at issue and the arbitrator’s presumed expertise.
12. The question at issue — determining the category of appropriate valuation methodologies under a BC forestry statute — is not a previously recognized exceptional question identified in *Sattva* (paras. 75 and 106). It is clearly not a constitutional question. Similarly, it is neither of central importance to the legal system as a whole (limited, as it is, to a single province and a single industry) nor is it outside the expertise of the arbitrator (whom the parties chose to adjudicate this very dispute and whose expertise is therefore presumed). Further, the relevant portions of the *Dunsmuir* analysis (as per *Sattva*, at para. 106) favour reasonableness review.
13. For example, specialized expertise supports reasonableness review here. As discussed, the parties selected the arbitrator to adjudicate this exact issue, hence unambiguously affirming their acceptance of his sufficient expertise. Despite this, in its decision on remand, the Court of Appeal held that the arbitrator’s lack of expertise regarding forestry statutes favoured a correctness standard of review (para. 35). With respect, that disregards this Court’s guidance in *Sattva* that arbitrators chosen by the parties “may be presumed . . . chosen either based on their expertise in the area which is the subject of dispute or . . . otherwise qualified in a manner that is acceptable to the parties” (para. 105). The Court of Appeal’s reasoning also disregards the practical reality that, to weigh an arbitrator’s actual (as opposed to presumed) expertise in every arbitration would require some sort of preliminary assessment of the arbitrator’s level of expertise with a view to establishing the standard of review for every particular hearing — which would be antithetical to the efficiencies meant to be gained through the arbitration process.
14. Of course, the presumed expertise of a decision-maker remains a “contextual” consideration (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 64). In *Sattva*, the arbitration was voluntary (para. 9), whereas arbitration in this case was statutorily imposed (*Revitalization Act*, s. 6(6)), a point specifically made by the Court of Appeal in its decision on remand (para. 35). But that distinction does not amount to much. The parties in this case still had complete control over the choice of their arbitrator; despite anticipated regulations “prescribing requirements for the selection of arbitrators” (*Revitalization Act*, s. 13(2)(b)(v)), no such regulations had been enacted at the time the arbitration arose. In addition, as noted, the arbitrator here considered the very issue he was mandated to address by both statute and party consent. If an issue were to arise in the course of an arbitration that was beyond the foreseeable scope of an arbitrator’s mandate, that could well undermine an arbitrator’s presumed expertise. But that is simply not the case before us.
15. In closing on this point, I observe that the applicability of a reasonableness standard of review in this case is hardly disputable. We are, after all, in a commercial arbitration context, in which, from a policy perspective, the deliberate aim is to maximize efficiency and finality. Further, the arbitrator was specifically assigned jurisdiction over the discrete issue of valuation by the *Revitalization Act* (s. 6(6)), an issue in which he, having been chosen by consent of the parties, is expected to have specialized expertise. This merits deferential review.
    1. Review of the Valuation Issue
16. Turning to the review step of the analysis, like the application judge and the dissent at the Court of Appeal, I find that the arbitrator’s determination that the Depreciation Replacement Cost Method was consistent with the *Revitalization Act* was reasonable. This decision fell within a range of possible, acceptable outcomes which were defensible in respect of the facts and law, and the decision was justified, transparent, intelligible, and defensible (*Dunsmuir*, at para. 47). In my view, the broad and open-ended language of the *Revitalization Act* does not inevitably lead to “a single reasonable interpretation” (*McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895, at para. 38) such as the market value approach endorsed by my colleagues’ reasons (paras. 133-34).
    * 1. Background Observations
17. Two background observations reinforce the reasonableness of the arbitrator’s decision in this case and should be discussed before the arbitrator’s specific line of reasoning is explored.
18. First, the *Revitalization Act* anticipated the Lieutenant Governor in Council passing regulations “prescribing methods of evaluation for use in determining value” (*Revitalization Act*, s. 13(2)(b)(ii)), but no such regulations had been passed at the time of dispute, or even at the time of the hearing before this Court (transcript, at p. 9). In the absence of such regulations, the legislative scheme acknowledges that determining “value” in these circumstances gives rise to a range of reasonable interpretations (see *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 18, citing *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 59). Put differently, the anticipated (yet non-promulgated) regulations suggest that determining “value” per the *Revitalization Act* is not an analysis in which “the ordinary tools of statutory interpretation lead to a single reasonable interpretation” (*McLean*, at para. 38). Indeed, if there were only one reasonable interpretation for determining value, the regulatory power provided in s. 13 of the *Revitalization Act* would be superfluous, contrary to established principles of statutory interpretation.
19. Second, the arbitrator’s determination of a reasonable valuation method must be assessed in the context of his reasons as a whole. Three “generally recognized valuation approaches” were presented to the arbitrator: Market Value, Income, and Depreciation Replacement Cost (para. 112). The arbitrator specifically explained his rejection of the first two methods on the basis that the value they generated did not correspond to a sensible value in the context of Crown land (which can neither be sold for market value nor generate income), a fact admitted by BC’s own expert at the hearing (para. 113). As a result, the reasonableness of the arbitrator’s analysis cannot be assessed solely with respect to the reasonableness of the Depreciation Replacement Cost Method in isolation. As the arbitrator recognized, all of the methods from the arbitration hearing had their own flaws (paras. 112-20). This was a reality the arbitrator had to grapple with while negotiating abundant expert evidence juxtaposing those methods. His ultimate choice — the Depreciation Replacement Cost Method — was defensible on the facts and the law.
    * 1. Arbitrator’s Award
20. With the above background points addressed, I now turn to the logic of the arbitrator’s award, which proceeded as follows:
    1. The compensation provision entitles Teal Cedar to “compensation . . . in an amount equal to the value of improvements made to Crown land”. Accordingly, the arbitrator must select a valuation method for the “value of improvements made to Crown land”.
    2. The valuation method need not be coterminous with the valueof Teal Cedar’s actual financial loss, as BC argues. Rather, the compensation provision expressly tells the arbitrator what the valuation method must be linked to, namely, “the value of improvements made to Crown land”.
    3. The Depreciation Replacement Cost Method was accepted by both parties as a reasonable means of valuing improvements made to Crown land.
    4. An interpretation of the *Revitalization Act* as a whole supports the Depreciation Replacement Cost Method because it is the only valuation methodology actually presented to the arbitrator that determines Improvements Compensation separately from Rights Compensation, in keeping with their separate treatment under the *Revitalization Act*.
    5. In any event, interpreting the *Revitalization Act* is impossible with the other main methods proposed at the hearing — the Market Value Method and Income Method — because these methods are inapplicable to Crown land, which cannot be sold and which cannot generate income.
21. This reasoning is supportable and understandable, and thus reasonable. As found by Bauman C.J. (para. 52) and Finch C.J., dissenting (paras. 141-43), it is logical to link the quantum of Improvements Compensation to “the value of improvements made to Crown land” when that is precisely what is prescribed by the *Revitalization Act*. Indeed, linking the quantum of Improvements Compensation to “the value of improvements made to Crown land” is the stronger plain language interpretation of the *Revitalization Act*.
    * 1. BC’s Arguments Against the Award
22. Conversely, BC’s attacks on the reasonableness of the arbitrator’s reasoning are, in reality, attacks on the correctness of the arbitrator’s reasoning. Similarly, the majority — which misidentified the standard of review as correctness — improperly conducted a correctness review of the arbitrator’s decision, rather than assessing its reasonableness (para. 68). This tainted their whole analysis of the decision.
23. BC’s first argument addresses the plain language interpretation of the compensation provision. BC’s position is based on a truncated version of the compensation provision, where BC interprets the word “compensation” in isolation and reasons that such compensation must be limited to Teal Cedar’s actual financial loss. This was, similarly, the approach taken by the majority of the Court of Appeal in its first decision (paras. 68 and 72-73) and subsequently by the Court of Appeal on remand (para. 38). However, the complete version of the compensation provision sets the value of the compensation at “an amount equal to the value of improvements made to Crown land”, as noted by Bauman C.J. (para. 52), and affirmed by Finch C.J., dissenting (paras. 141-43). If that amount exceeds Teal Cedar’s actual loss, such reasoning falls far short of indefensible, especially in so far as the arbitrator’s chosen methodology is: (1) consistent with common law principles informing the liberal interpretation of remedial expropriation legislation (*Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*, [1997] 1 S.C.R. 32, at pp. 44-46, as noted by Bauman C.J. (paras. 46-48)); and (2) the only methodology of the three presented which reflects the *Revitalization Act*’s deliberate separation of Rights Compensation and Improvements Compensation, also noted by Bauman C.J. (para. 63). Recall that the issue on review is not whether the arbitrator’s interpretation was correct, but rather whether that interpretation — which is supported by the plain language of the provision — was reasonable.
24. My colleagues suggest that the “obvious ordinary meaning” of the compensation provision limits compensation to Teal Cedar’s “limited interest in the improvements as a licence holder” (para. 112). I respectfully disagree that this is the only reasonable interpretation of the provision at issue. Admittedly, the provision mentions that this compensation is paid to licence holders. But it makes no mention of limiting compensation in accordance with the nature of a licence holder’s technical legal interest. Rather, it sets compensation equal to the “value of improvements made to Crown land”, the interpretation ultimately adopted by the arbitrator.
25. BC’s second argument addresses the purpose of the compensation provision. BC claims that the purpose of the compensation provision — i.e. paying back companies for the improvements they made and to which they were subsequently denied access — precludes a “windfall” payment to companies equal to the notional “value of [all] improvements made to Crown land”. The majority of the Court of Appeal in its first decision (at para. 73) and subsequently the Court of Appeal on remand (at para. 38) similarly felt that “[t]he Legislature could not have intended” such a “publicly financed windfall” in compensation. Likewise, my colleagues label this “gross overcompensation” effectively on the basis that it exceeded the market value of the improvements (para. 134-36). But characterizing the payment resulting from the Depreciation Replacement Cost Method as a windfall begs the question, i.e. it assumes that compensation equal to the “value of [all] improvements” is excessive in the course of explaining that excess. To result in a windfall, the method would have to provide excessive compensation to forestry companies. And BC’s basis for claiming that excessive compensation was paid in this case is the assumption that it was inappropriate for the arbitrator to order compensation in excess of Teal Cedar’s actual costs, despite the absence of any reference in the *Revitalization Act* limiting Teal Cedar’s compensation to its actual costs or expenses.
26. The full “value of improvements made to Crown land” is the language chosen by the legislature as the quantum for the compensation provision. If the BC legislature had wanted to pay companies less than the “value of improvements made to Crown land”, it would not have set the amount of compensation “equal to” it. As a consequence, the arbitrator’s reasoning is hardly indefensible, particularly when the wording of the compensation provision so clearly fixes compensation at the specific amount chosen by the arbitrator. Further, it is hardly indefensible to select a valuation method in excess of the actual costs incurred by forestry companies in improving their Crown land when the commercial value of those improvements — which are necessary instruments in Teal Cedar’s complex and profitable timber operations — presumably exceeds the initial costs required to install the improvements in the first place. Indeed, one could argue that the notional cost of constructing the improvements attached to certain licences was built in to the cost of procuring the licence, hence justifying compensation when access to those improvements was restricted.
27. As such, the desire to limit Teal Cedar’s compensation to its actual loss or damage or to what it lost through BC’s takebacks is more complex than one might think, further justifying deference to the arbitrator’s view of the abundant expert evidence before him. For example, my colleagues hold that the compensation should reflect how Teal Cedar only lost its right to use the improvements, not the improvements themselves (para. 123). But the arbitrator was clearly alive to this concern when he noted that the amount of compensation he ultimately determined was lower than Teal Cedar’s actual historical costs expended on improvements (para. 140), and when he deducted from his final compensation figure spur roads which, as a matter of fact, are useless after their initial use (para. 166). Similarly, my colleagues state that Teal Cedar was already compensated “for future construction costs through deductions from stumpage fees” (para. 126). But, as the arbitrator explained with reference to the record before him, stumpage (1) ultimately affects the value of the harvesting rights, compensation for which the parties settled on (para. 127); (2) was not even considered in the recognized valuation methodology he ultimately adopted (para. 127); and (3) cannot negate Improvements Compensation since the compensation provision presupposes compensation not captured by other avenues, such as reduced stumpage fees (para. 156).
28. In reality, BC’s “windfall” complaint is not that Teal Cedar received more compensation than the *Revitalization Act* requires in law, but rather, that Teal Cedar received more compensation than it allegedly deserved in fact. But the arbitrator’s role in interpreting the *Revitalization Act* is not to assess the amount of compensation morally owed to Teal Cedar; it is to assess the amount of compensation prescribed by the *Revitalization Act*.
29. BC’s third argument is based on discussion of the *Revitalization Act* in Hansard, where the former Minister of Forests described how the compensation provision intended to compensate forestry companies for the fact that they had actual financial costs associated with their improvements: “They have built roads; they have built bridges. They deserve to be compensated for those costs if they are precluded from utilizing that infrastructure to harvest areas that are going to be redistributed elsewhere” (British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, vol. 13, No. 6, 4th Sess., 37th Parl., March 27, 2003, at p. 5682 (Hon. M. de Jong)). But Hansard only goes so far. The words of a statute carry paramount importance in its interpretation. And the final wording of the compensation provision specifies that “compensation” will equal the “value of improvements made to Crown land”. If the legislative intent was to capture actual costs, the compensation provision could have stated that “compensation” will be equal to, for example, the “expenses incurred by licensees to improve Crown land during their licence” or to the “actual costs paid by licensees to improve Crown land during their licence”. Indeed, assuming that the legislative intent is actually to compensate companies for the full value of improvements on the Crown land to which their licences relate, I am hard-pressed to think of clearer phrasing to convey that intent than the current language of the compensation provision.
30. BC’s final argument addresses the nature of Teal Cedar’s interest in the Crown land on which the improvements are located. BC argues that, by paying Teal Cedar for the full value of the improvements, the arbitrator presumed that Teal Cedar owned the assets and lost them under the *Revitalization Act*, whereas Teal Cedar lost only its right to use the assets. This argument ultimately fails to show the unreasonableness of the arbitrator’s analysis for the same reason as the other attacks discussed above. Simply put, Teal Cedar was paid “an amount equal to the value of improvements” because that is what the compensation provision instructs. When the *Revitalization Act* was enacted, BC was no doubt well aware of the nature of forestry companies’ interests in the improvements. Still, BC chose the language of the compensation provision, making no express link between those interests and the amount of compensation owed. As Bauman C.J. observed, Teal Cedar’s interest in the improvements is “wholly irrelevant” because its compensation, and the amount thereof, is a statutory creation under the compensation provision (para. 52). In the end, the legislature is entitled to provide forestry companies with statutory compensation that is not quantified on the basis of the nature of their interests in the Crown land at issue. Put differently, it is hardly indefensible to rely on the plain language of the *Revitalization Act* for purposes of quantifying compensation, even if extra-statutory references to the nature of Teal Cedar’s interest may not align with the quantum of compensation flowing from that plain language.
31. In short, BC’s attacks on the arbitrator’s reasoning are collateral attacks on the correctness of the arbitrator’s reasonable plain language and contextual interpretation of the compensation provision. The decisions of the majority of the Court of Appeal and of the Court of Appeal on remand similarly focused on assessing correctness rather than reasonableness. My colleagues’ emphasis on Teal Cedar’s “limited interest” in the improvements is also more akin to “disguised correctness” review (*Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 S.C.R. 770, at para. 27, citing D. Mullan, “Unresolved Issues on Standard of Review in Canadian Judicial Review of Administrative Action — The Top Fifteen!” (2013), 42 *Adv. Q.* 1, at pp. 76-81) than the reasonableness review required. In the end, these approaches fail to show how the arbitrator’s decision is unjustifiable, non-transparent, unintelligible, or indefensible. In my assessment, the arbitrator’s decision cannot be overturned on a reasonableness review.
32. Conclusion
33. To sum up, I would allow the appeal in part, with costs throughout to Teal Cedar, who was substantially successful on appeal.
34. As Bauman C.J. (at para. 57) and Finch C.J., dissenting (at paras. 141-43), rightly held, the arbitrator reasonably relied on the Depreciation Replacement Cost Method of valuation. I would therefore overturn the Court of Appeal’s holding to the contrary on remand (para. 38) and restore the arbitrator’s initial valuation, as subsequently amended, predicated on that methodology.
35. Further, Bauman C.J. (at para. 81) and Finch C.J., dissenting (at paras. 144-45), correctly ruled that the British Columbia Supreme Court lacked jurisdiction to review the arbitrator’s resolution of the Interest Issue. Consequently, I would also overturn the Court of Appeal’s holding to the contrary on remand (para. 58) and restore the arbitrator’s initial ruling that BC must pay interest on top of the Improvements Compensation it owes to Teal Cedar.
36. However, Bauman C.J. improperly remitted the Lillooet Issue to the arbitrator for reconsideration (para. 88), since the British Columbia Supreme Court lacked jurisdiction over this issue. Accordingly, albeit for different reasons than the Court of Appeal, I would restore the arbitrator’s initial ruling denying compensation to Teal Cedar for improvements losses pertaining to the Lillooet Licence.

The reasons of Moldaver, Côté, Brown and Rowe JJ. were delivered by

Moldaver and Côté JJ. (dissenting in part) —

1. Introduction
2. This appeal concerns the compensation payable to a private forestry company, Teal Cedar Products Ltd. (“Teal”), for reductions made by British Columbia (“Province”) to three of its forest tenures. Two questions are at issue in this case: one relates to the contractual interpretation of an amended settlement agreement made between the Province and Teal, and the other regards the statutory interpretation of s. 6(4) of the *Forestry Revitalization Act*, S.B.C. 2003, c. 17 (“*FRA*”).
3. We agree with our colleague Gascon J. that the question of contractual interpretation is not reviewable under s. 31 of the *Arbitration Act*, R.S.B.C. 1996, c. 55. We would allow the appeal on this issue.
4. Where we disagree, however, is with respect to the question of statutory interpretation. In our view, regardless of the applicable standard of review, the arbitrator’s interpretation of s. 6(4) of the *FRA* cannot stand. As we will explain, the only interpretation of s. 6(4) that withstands scrutiny on either standard of review is that Teal, as a licence holder, was entitled to receive compensation only for its limited interest in the improvements. In valuing the improvements under s. 6(4), the arbitrator was required to take into account that Teal, as a licence holder, did not own the improvements, which belonged to the Crown. The arbitrator did not do that. Rather, he selected a valuation method — the cost savings approach — which failed to consider that Teal had only a limited interest in the improvements as a licence holder and was therefore not entitled to compensation on that basis under s. 6(4).
5. We would therefore dismiss the appeal in part on the statutory interpretation issue and remit to the arbitrator the matter of compensation for the improvements relating to the three licences held by Teal.
6. Standard of Review
7. We find it unnecessary to decide whether the standard of review applicable to the arbitrator’s interpretation of s. 6(4) of the *FRA* is correctness or reasonableness. As we will explain, on either standard, the arbitrator’s interpretation cannot stand.
8. Analysis
   * 1. Section 6 of the *FRA*
9. The Minister of Forests grants permission to private forestry companies like Teal to harvest timber on Crown land by issuing licences under the *Forest Act*, R.S.B.C. 1996, c. 157. Under these licences, private forestry companies have rights to harvest timber in certain areas and use the improvements in those areas. Three such licences are at issue in this appeal: Tree Farm Licence 46, the Fraser Licence and the Lillooet Licence. Following the enactment of the *FRA*, the Province was permitted to reduce the land base and allowable annual cut of timber under these licences. As a result of the Province’s takebacks, Teal’s rights to harvest timber and use the improvements were reduced.
10. Section 6 of the *FRA* provides for compensation to licence holders for these reductions. Section 6(3) entitles the licence holder to compensation “in an amount equal to the value . . . of the harvesting rights taken by means of the reduction”. The licence holder is also entitled to receive compensation for the “value of improvements made to Crown land” under s. 6(4). This provision reads as follows:

(4) In addition to the compensation to which the holder of an ungrouped licence, a timber licence or a licence in a group of licences is entitled under subsection (1), (2) or (3), the holder is entitled to compensation from the government in an amount equal to the value of improvements made to Crown land that

(a) are, or have been, authorized by the government,

(b) are not improvements to which section 174 of the Forest Practices Code of British Columbia Act applies, and

(c) are not, or have not been, paid for by the government under the Forest Act or the former Act as defined in the Forest Act.

1. The modern principle of statutory interpretation is well-established:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

(E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87)

1. This principle requires that statutes “be read to give the words their most obvious ordinary meaning which accords with the context and purpose of the enactment in which they occur”: *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743, at para. 14; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at paras. 21-22. The plain and ordinary meaning of a statutory provision is the “natural meaning which appears when the provision is simply read through”: *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn.*, [1993] 3 S.C.R. 724, at p. 735. In our view, the plain and ordinary meaning of s. 6(4) of the *FRA*, which accords with the purpose and context of the Act, is this: the licence holder is entitled to receive compensation for the improvements on a basis that reflects its limited interest in the improvements as a licence holder.
   * 1. The Plain and Ordinary Meaning of Section 6(4) of the *FRA*
2. The meaning of “compensation” is understood to be a payment that makes a person whole for a loss. Compensation is defined by the *Shorter* *Oxford English Dictionary* (6th ed. 2007) as “amends, recompense; *spec.* money given to compensate loss or injury” (p. 470). Under s. 6(4) of the *FRA*, Teal is entitled to receive compensation *equal to* the value of improvements made to Crown land. If the compensation is to make Teal whole, the value of the improvements must reflect Teal’s actual loss.
3. The provision further specifies that Teal, as a “holder of . . . a licence”, is compensated for the “value of improvements made to Crown land”. This language makes plain that the improvements do not belong to Teal. As a licence holder, Teal merely acquires limited rights to *use* the improvements. The ownership rights over the improvements remain vested in the Crown.
4. On a plain reading, the provision at issue entitles Teal to compensation for the value of the improvements *to Teal* as a licence holder. If the valuation of the improvements does not take into account the fact that Teal has a limited interest in the improvements — as opposed to an ownership interest — then Teal will not receive “compensation” under s. 6(4); rather, it will receive overcompensation.
   * 1. The Purpose and Context of the *FRA*
5. The plain and ordinary meaning of s. 6(4) is that Teal is entitled to be compensated on a basis that reflects its limited interest in the improvements as a licence holder. This plain meaning of s. 6(4) is consistent with the purpose of the *FRA* and its expropriation context. The *FRA*’s purpose is to reduce the rights of licence holders — specifically, their rights to harvest timber and use the improvements — and to provide licence holders with compensation for these reductions. As a result of the takebacks at issue, reductions were made to Teal’s rights to use the improvements — not ownership rights over such improvements. It runs counter to the purpose of the *FRA* to award Teal compensation that exceeds the value of what it lost due to the takebacks.
6. As the arbitrator pointed out, the *FRA* is a “species of expropriation legislation” (Arbitration Award, April 27, 2011, at para. 8). A presumption in favour of a payment of full compensation therefore applies to its interpretation: *British Columbia (Forests) v. Teal Cedar Products Ltd.*, 2013 SCC 51, [2013] 3 S.C.R. 301, at para. 37; E. C. E. Todd, *The* *Law of Expropriation and Compensation in Canada* (2nd ed. 1992), at p. 35. This presumption, however, does not mean that the owner of an expropriated property interest is awarded compensation in excess of the value of this interest. Rather, full compensation makes the owner “economically whole” for the loss of this interest (*Smith v. Alliance Pipeline Ltd.*,2011 SCC 7, [2011] 1 S.C.R. 160, at paras. 55-56, citing *Diggon-Hibben, Ltd. v. The King*, [1949] S.C.R. 712).
7. When the ordinary meaning of s. 6(4) is read together with the object of the *FRA* and its expropriation context, we are satisfied that its meaning is clear and straightforward: an award of compensation under s. 6(4) must not exceed the value of Teal’s limited interest in the improvements as a licence holder.
   * 1. The Arbitrator’s Valuation Method
        1. The Cost Savings Approach
8. The arbitrator applied a valuation methodology that he referred to as the “cost savings approach” to assess the compensation owed to Teal under s. 6(4). This approach, which was developed as a valuation method for “private timberlands”, values compensation for Teal as if Teal was a private owner of the improvements. As such, it fails to take into account the fact that Teal did not own the improvements but had only a limited interest in them as a licence holder.
9. The cost savings method is based on the depreciated replacement cost of the improvements (Arbitration Award, at para. 75), which is the cost of replacing “the entire useful road and improvement network for the take back areas”, namely, “all roads and associated improvements that would access harvestable timber within the taking areas” in their current depreciated condition (para. 81). According to the cost savings methodology, Teal is entitled to compensation for this depreciated replacement cost (para. 75). This is because before the reductions, there was an existing network of improvements and Teal did not have to pay to construct improvements to access timber for harvesting (para. 93). After the Province’s reductions to Teal’s land base, Teal would have to expend money to replace the improvements and therefore should be compensated for this cost (para. 93).
   * + 1. The Arbitrator Applied the Cost Savings Approach in Valuing the Improvements in the Lillooet Licence
10. As noted by our colleague Gascon J., the arbitrator also applied the cost savings method to value the improvements associated with the Lillooet Licence. The arbitrator awarded no compensation for these improvements, which is in fact consistent with the cost savings approach (para. 170).
11. Unlike the other two licences, the Province did not take back any operating areas from the Lillooet Licence (Arbitration Award, at para. 168). The reduction made to the Lillooet Licence by the Province was limited to reducing the allowable harvest cut by 54.3% (para. 168). Therefore, as the arbitrator found, Teal did not lose any opportunity to use the roads (para. 169) and accordingly did not need to expend money to replace the improvements. As a consequence, under the cost savings approach, Teal was not entitled to receive the depreciated replacement cost of the improvements associated with the Lillooet Licence.
    * 1. The Cost Savings Approach Adopted by the Arbitrator Fails to Account for the Fact That the Improvements Are Not Owned by Teal
12. In applying the cost savings valuation method to value the improvements associated with all three licences held by Teal, the arbitrator failed to consider that Teal, as a licence holder, had only a limited interest in the improvements. The cost savings approach may be an appropriate methodology in the context of privately owned land. But the roads and bridges at issue in this case belonged to the Crown. Given that Teal did not own the improvements and had only a limited interest in the improvements as a licence holder, it cannot be said that it lost the replacement cost of the improvements when the Province made reductions to the land base under its licences. As stated by the majority of the Court of Appeal in its first decision, “Teal had the right to use the improvements. It therefore lost only the use of the assets, not the assets themselves”: 2013 BCCA 326, 46 B.C.L.R. (5th) 272, at para. 73 (emphasis added).
13. The arbitrator reasoned that the cost savings approach was applicable to the improvements because it accurately determined the “value to the owner”, which is one method of assessing “full compensation”: Todd, at pp. 110-11. The “value to the owner” approach assesses compensation on the basis of what a prudent owner would pay for its property interest rather than be divested of it (*MacMillan Bloedel Ltd. v. British Columbia* (1995), 12 B.C.L.R. (3d) 134 (C.A.), at paras. 29-32). The application judge, who agreed that the “value to the owner” approach applied by the arbitrator was consistent with “full compensation” likewise found that Teal was entitled to what a prudent owner “would have been willing to give for the improvements rather than be dispossessed of those improvements”: 2012 BCSC 543, at para. 67 (CanLII).
14. We do not agree that the “value to the owner” approach may serve as a basis for entitling Teal to the depreciated replacement cost of the improvements under s. 6(4) of the *FRA*. The “value to the owner” method awards compensation on the basis of the value to Teal of its *interest* in the improvements. Given that Teal did not own the improvements and had only a limited interest in them, Teal would not pay the full cost to replace the network of improvements at issue.
15. It is also significant that as a licence holder with only limited rights to the improvements, Teal would be compensated by the government for future construction costs through deductions from stumpage fees. As noted by the majority of the Court of Appeal in its first decision, if Teal chose to rebuild the improvements taken under the *FRA*, it would receive compensation for its construction costs through those deductions (para. 74). In assessing what Teal would pay to avoid being divested of its interest in the improvements under the “value to the owner” method, the fact that Teal is reimbursed for future construction costs through deductions from stumpage fees is a relevant consideration. This reimbursement would logically affect the amount Teal was willing to pay to avoid being dispossessed of its interest in the improvements. Furthermore, Teal’s rights to use the improvements were conditional on Teal paying to maintain the roads under permit and deactivating them when they were no longer in use (s. 79(2) of the *Forest Planning and Practices Regulation*, B.C. Reg. 14/2004). Given that Teal had only this limited interest in the improvements, it would not pay for the full cost of replacing the improvements at issue to avoid being divested of them.
    * 1. The Market Value Approach
         1. The Arbitrator Erred in Narrowly Construing the Scope of Section 6(4) of the FRA to Exclude the Market Value Approach
16. In our view, it was not open to the arbitrator to adopt the cost savings approach under s. 6(4) of the *FRA*. In our view, there was, however, an option before the arbitrator that is consistent with this provision.
17. As our colleague Gascon J. notes, there were three valuation methodologies put before the arbitrator: (1) market value; (2) income and; (3) depreciated replacement cost, which includes the cost savings approach. The arbitrator rejected the first two methodologies on the basis that they could not serve to value the improvements independently from the harvesting rights. He noted that the *FRA* draws a distinction between the value of harvesting rights and the value of improvements. In his view,

[t]o give this distinction meaning, the value of improvements must be determined independent of the considerations that would be at issue in the context of determining either the value (market or value to owner) of the tenure as a whole, or the harvesting rights as an independent matter. [para. 110]

1. The arbitrator interpreted s. 6(4) of the *FRA* to mean that the value of the improvements had to be calculated separately and independently from the harvesting rights, without reference to the value of the licence or tenure as a whole. The arbitrator found that the market value approach could not value the improvements in this manner. Since there is no market for the sale of improvements, the market value of the improvements must be determined by first considering the market value of the licence or tenure as a whole. The arbitrator accepted that the cost savings approach was the only valuation methodology that could value the improvements separate and apart from the tenure as a whole (para. 94).
2. In our view, the arbitrator construed s. 6(4) of the *FRA* too narrowly in concluding that the distinction drawn by this provision between the value of the improvements and the value of the harvesting rights means that the market value of the tenure as a whole cannot be considered when determining the value of the improvements. With respect, there is nothing in the language or context of the Act to support this unduly restrictive reading of s. 6(4). On the contrary, it was open to the arbitrator to select *any* valuation method that could evaluate the value of the improvements to Teal as a licence holder, as long as the approach valued the improvements as separate and distinct from the harvesting rights.
   * + 1. The Market Value Approach Is Consistent With Section 6(4) of the FRA
3. Although the market value approach does consider the value of the licence or the tenure as a whole, it can ultimately serve to value the improvements separately and independently from the harvesting rights. The Province’s expert witness, Eleanor Joy, explained this methodology as follows:

. . . it is important to understand that what I was doing was a market value approach. So I looked historically at what people were willing to pay for timber tenures, and then I looked at whatever evidence I could find that would give me some indication of what people believed the roads were as a percentage of that overall amount they were willing to pay for timber tenures.

(A.R., vol. II, at p. 100)

1. As the arbitrator observed, Ms. Joy drew on market data of sales of licences “to derive an approximate cost per cubic meter for tenures” and then allocated “a percentage of that value to the improvements at issue here” (para. 121). To determine what percentage of the value of the tenure as a whole should be allocated to the improvements, Ms. Joy consulted financial statements of forestry companies which apportioned certain values to the improvements, as well as press releases issued by forestry companies regarding settlements reached with respect to their compensation claims under the *FRA* (Arbitration Award, at para. 122). Ms. Joy therefore calculated the value of improvements on the basis of what forestry companies were willing to pay for tenures and the percentage of that value the companies allocated to the improvements.
2. The market value approach therefore not only values the improvements separately and independently from the harvesting rights; it also ensures that Teal in this case does not receive more compensation than the value of its interest in the improvements. Forestry companies such as Teal that purchase timber licences do not value improvements as if they were acquiring exclusive ownership of them. Rather, what they are willing to pay for the improvements is based on their projected use of the improvements, as well as on other related considerations, such as the government’s reimbursement of construction costs for licence holders. Accordingly, the improvements are worth a fraction of the total value of the licence or tenure. As Ms. Joy explains,

A. . . . I think my argument would be, if somebody was willing to give up their timber tenures for $5.1 million, the roads have to be a fraction of that amount.

Q. Why do they have to be a fraction of that amount?

A. Well, for all sorts of different reasons that we’ve already covered. When they’re going to be used, whether stumpage reimburses, so if people are indifferent between building or using existing roads, the quality of the roads, the type of roads. All of those factors feed into it.

(A.R., vol. II, at p. 107)

1. In summary, the market value approach put forward by Ms. Joy takes into account that Teal has a limited interest in the improvements. This valuation method was available to the arbitrator under s. 6(4) of the *FRA*, and yet the arbitrator chose to apply a method that was inconsistent with this provision. This resulted in a substantial windfall for Teal: Ms. Joy estimated that the value of the improvements under the market value approach was about $1.5 million, whereas the arbitrator estimated that the value was $9.5 million when applying the cost savings approach (Arbitration Award, at para. 194).
2. To be clear, it was open to the arbitrator to select any valuation method that was consistent with the only reasonable interpretation of s. 6(4) of the *FRA*: namely, that compensation must be awarded to Teal on the basis of its limited interest in the improvements. Contrary to the assertion of our colleague, we are of the view that the market value approach is merely one method that the arbitrator could have applied under s. 6(4) of the *FRA*.
   * 1. Conclusion
3. In the end, the complexity of the valuation evidence seems to have had the unfortunate effect of masking the forest for the trees. The only interpretation of s. 6(4) of the *FRA* that withstands scrutiny on either standard of review is that Teal is entitled to compensation for its interest as a licence holder in the improvements. If the compensation awarded to Teal under s. 6(4) does not reflect its limited interest in the improvements, Teal does not receive compensation; rather, it receives gross overcompensation — and at the taxpayer’s expense. As the Court of Appeal stated on remand, “[i]t cannot be . . . that a statute that provides for compensation be interpreted to mean it provides for a substantial publicly financed windfall, which would serve no purpose”: 2015 BCCA 263, 386 D.L.R. (4th) 40, at para. 38. Indeed, the arbitrator’s interpretation leads to the absurd result of having the British Columbia public compensate Teal for a private ownership right to the improvements — even though no such right or interest exists and the improvements at issue are owned by the Crown.
4. As we have explained, there was a valuation method before the arbitrator that was consistent with s. 6(4) of the *FRA*, yet the arbitrator rejected it based on an interpretation of the provision that does not withstand scrutiny on either standard of review. With respect, we see no defensible basis for this interpretation.
5. Disposition
6. We agree with our colleague Gascon J. that the appeal should be allowed on the contractual interpretation question.
7. For the reasons stated, we would dismiss the appeal in part on the statutory interpretation issue. We would not, however, restore the arbitrator’s decision to award no compensation for the improvements associated with the Lillooet Licence. Although the majority of the Court of Appeal agreed with the arbitrator’s valuation of the improvements associated with the Lillooet Licence, we have found that the arbitrator applied an improper interpretation of s. 6(4) of the *FRA* when valuing these improvements. Accordingly, we would remit to the arbitrator the matter of compensation for the improvements relating to all three licences at issue, namely Tree Farm Licence 46, the Fraser Licence and the Lillooet Licence.

*Appeal allowed in part with costs throughout,* Moldaver*,* Côté*,* Brown *and* Rowe JJ*. dissenting in part.*

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