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Ledcor: Taming *Sattva's* Wild Horse of Contractual Interpretation for Standard Form Contracts



By [Ryan Krushelnitzky](#) and [Sandra Corbett QC](#)

The Supreme Court of Canada's unanimous decision of *Sattva v. Capital Corp. v. Creston Moly Corp.*, [2014 SCC 53](#) opened the barn door and let loose a wild horse in terms of the scope and the availability of the use of the surrounding circumstances in contract interpretation. According to *Sattva*, contractual interpretation was no longer a question of law, but one of mixed fact and law, dependent upon the specific circumstances existing at the time of contract creation. The Court defined the surrounding circumstances very broadly as being "*absolutely anything* which would have affected the way in which the language of the document would have been understood by a reasonable [person]."

The newly rendered *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, [2016 SCC 37](#) decision appears to be attempt to tame that wild horse—at least where standard form contracts are in play. Prior to *Ledcor*, appellate and trial courts struggled with the question of how standard form contracts- with their typical lack of any meaningful surrounding circumstances- ought to be interpreted, and whether a correctness standard of review was more appropriate.

Ledcor has resolved this struggle and provides further guidance as to how standard form contracts should be interpreted, and what standard of appellate review applies. This decision will be of particular importance to those parties who make use of standard for contracts on a daily basis, such as in the insurance, banking, and construction industries.

Ledcor dealt with the interpretation and appellate review of a standard form builders' risk insurance policy. A subcontractor window cleaner on a high rise construction project scratched the high rise's windows during cleaning. A dispute arose as to whether the replacement cost of the windows was excluded by the faulty workmanship exclusion, or captured by the

resulting damage exception in a standard form builders' risk insurance policy.

Wagner J., writing for the majority of the Court in *Ledcor*, held that the interpretation of standard form contracts should be recognized as an exception to *Sattva*, meaning that a standard of review of correctness ought to apply. Two main reasons were put forward for this exception. First, the majority observed that the surrounding circumstances for standard form contracts will often carry less weight, given the lack of negotiation, and will usually be the same for everyone who may be a party to the typical standard form. Second, given that any given court's interpretation of a standard form contract may be applied to similarly worded agreements, the majority held that the interpretation also has precedential value. As such, the Court held that a correctness standard was more appropriate for the interpretation of standard form contracts.

That said, the majority did recognize that "depending on the circumstances" the interpretation of a standard form contract might be a question of mixed fact and law. If, for example, the standard form agreement was negotiated or modified, or if a factual matrix exists that is "specific for the particular parties" so as to assist in the interpretation, then the interpretation will not be on a correctness standard. The majority explained that this line between a correctness and mixed fact and law standard "is not always easily drawn," and will depend on whether any given dispute involves a general proposition, or a very particular set of circumstances that will not be of much precedential value in the future.

In sum, *Ledcor* has added a measure of clarity to the law of contractual interpretation. The interpretation of standard form contracts, such as the typical contract of insurance, will in most cases be a question of law, to be reviewed on a standard of correctness. For those types of contracts, the surrounding circumstances that do exist will carry less weight. The surrounding circumstances which do exist, such as the purpose of the contract, the nature of the relationship it creates, and the market or industry the contract operates within, will still be a factor of interpretation, but will usually be the same for everyone who may be a party to that typical standard form. As such, *Ledcor* provides important guidance to parties and courts as to how to interpret standard form agreements, and how interpretation of those agreements should be reviewed by appellate courts.

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