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Backgrounder

LRC 55—Report on Arbitration

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Arbitration is a form of dispute resolution. People may agree or legislation may provide that certain types of disputes will be settled by a private decision maker, who is not a court of competent jurisdiction. The decision—which is called an "award"—is binding on the parties. Arbitration has a number of advantages. A speedier hearing is possible. The parties are able to select their arbitrator or arbitrators. Hearings may be held in private. Arbitration awards can only be challenged in the courts on very limited grounds, so they may have greater finality than court decisions. Finally, there is a general sense that arbitration is a less adversarial way of resolving disputes than litigation. But arbitration also has disadvantages. It is often no less expensive than litigation. When difficult questions of law are at issue, one of the parties may ultimately seek judicial review of the award. Arbitration clause in contracts of adhesion raise special problems related to one party imposing its will on the other. Arbitration awards are not made public, a fact which may benefit the parties but can cause some greater harm by slowing the development of jurisprudence on key issues.

This report is aimed at recommending reforms that enhance the advantages of arbitration and limit its disadvantages. The report has 11 chapters. Chapter one is a brief introduction, which defines the concept of arbitration and reviews its advantages and disadvantages. Chapter two briefly reviews the history of arbitration and the development of legislation governing arbitration. Chapter three reviews arbitration agreements in general. Chapter four focuses on a specific issue arising from the legislation, which deems a submission to arbitration to have the same effect as an order of the court.

The report moves from brief consideration of introductory issues into the main body of its analysis in chapter five. That chapter focuses on arbitrators and umpires. This chapter addresses in detail topics such as the appointment and removal of an arbitrator and the payment of fees and expenses. The chapter contains recommendations to abolish the arbitrator's lien for fees and to replace it with a system similar to the taxation of a lawyer's bill.

Chapter six examines the conduct of an arbitration, focussing on the powers of an arbitrator. The chapter makes recommendations in connection with calling witnesses and awarding costs. Chapter seven discusses the relationship between arbitration and litigation. It

makes recommendations on topics such as stays of court proceedings during ongoing arbitrations, the revocation of the authority of the arbitrator, arbitration as a condition to commencing proceedings, and time limits.

Chapter eight examines in detail the form and enforcement of an arbitration award. The chapter includes recommendations on the binding effect of arbitration awards, interim awards, and enforcement of the award both in British Columbia and elsewhere. Chapter nine considers the judicial supervision of arbitration, focussing on the setting aside of awards by the court. Chapter ten contains recommendations for reform of the law in connection with the judicial supervision of awards.

Further Developments

The reports recommendations have been implemented in part in the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55 and the *Foreign Arbitral Awards Act*, R.S.B.C. 1996, c. 154.