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MEDIATION, ARBITRATION & CONFLICT MANAGEMENT

One more reason to arbitrate: BC's new *Arbitration Act*

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Arbitration has become an increasingly popular method for resolving legal disputes traditionally dealt with through the court system. Arbitration is known to be far more efficient and capable of delivering final results to litigants.

Aspects of BC's new *Arbitration Act,* S.B.C. 2020, c. 2 (the "New Act") enhance those features and increase the attractiveness of arbitration for many disputes. The New Act is designed to bring BC's arbitral processes in line with the 116 jurisdictions worldwide adopting the United Nations' UNCITRAL Model Law. That approach provides considerable clarification for parties choosing to proceed with arbitration.

The advantages that arbitration can offer over the formal court process are largely in efficiency and finality. Like a court, an arbitrator's decisions are binding, but the process in reaching that decision is typically far faster and far less complex. Hearings come on more quickly and take fewer days to complete. The process is more flexible because it is designed and shaped by the parties rather than tradition. Adjournments are less common and evidence can be put before the arbitrator more easily. Unlike court, the process is also private, which is advantageous to parties concerned about publicly disclosing private commercial or personal information.

These advantages of arbitration are set out more clearly than before in the new legislation. It expressly prohibits the disclosure of confidential information and mandates that hearings be held in private. With respect to timeliness, the New Act directs arbitrators and the parties themselves to resolve cases in a "just, speedy and economical" manner. Indeed, recognizing that some legal strategies will involve delay, the New Act prohibits parties from willfully doing anything to delay the arbitration's resolution.

A number of other provisions are included in the New Act which will help ensure disputes are resolved in an efficient and common sense manner, including:

- Reduced appeal timelines, with appeals typically going straight to the BC Court of Appeal rather than a lower court first.
- A clear procedure for hearing and deciding issues in advance of arbitration, such as the preservation of assets or the scope of document production.
- A clear procedure for dealing with parties "in default" by refusing to participate in the process.
- Clarification that arbitrators can issue subpoenas forcing individuals to testify or produce documents in the proceeding.
- Arbitrators are allowed to encourage parties to settle the dispute and can use alternative procedures as a means of doing so.

In adopting the New Act, BC has made arbitration even more attractive to parties looking for a fast, simple means of resolving disputes. That advantage cannot be overstated in an age of courtrooms overwhelmed by delay and increasing numbers of self-represented litigants. More than ever, arbitration offers an alternative means of bypassing that system entirely with a procedure suitable to any given party.

If you would like more information regarding arbitration and dispute resolution, please reach out to **Michael Hewitt** or **Drummond Lambert** using the contact information below.

Michael is a commercial litigation lawyer with 27 years' experience as counsel in complex litigation within British Columbia and elsewhere in Canada. He regularly appears as counsel for parties in arbitral proceedings and is a qualified arbitrator.

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