September 6, 2012

Discuss: Stay and Appeal Issues in the Alberta Arbitration Act

By Jonnette Watson Hamilton

Report commented on:
Arbitration Act: Stay and Appeal Issues (Report for Discussion 24)

The Alberta Law Reform Institute (ALRI) has just published Arbitration Act: Stay and Appeal Issues (Report for Discussion 24). In this 44-page Report, ALRI explores procedural issues arising out of the *Arbitration Act*, RSA 2000, c A-43, concerning partial stays of court proceedings under section 7(5) and appeals to the Queen's Bench under section 44, and very important questions about the role of arbitral appeals more generally. The Report explains the issues, describes their context and asks for input about how best to fix the difficulties identified.

The two procedural issues have been the topic of *ABlawg* posts. I commented on partial stays in "Staying Arbitration Proceedings under Section 7(5) of the Arbitration Act". That was a post about *Lamb v AlanRidge Homes Ltd*., 2009 ABCA 343, a case in which the Alberta Court of Appeal called upon the Alberta legislature to review and amend section 7 of the *Arbitration Act*, a section the court criticized (at para 16) as "far from a model of clarity." I also discussed the controversy over the public interest requirement in appeals to the Court of Queen's Bench in "Leave to Appeal an Arbitration Award: Is There a Public Interest Requirement?" and 'Leave to Appeal Arbitration Awards and the Addition of the Public Interest." In the former post I had suggested that the question of whether the courts can or should interpret section 44(2) of the *Arbitration Act* to include a requirement that leave to appeal must be in the public interest was a question that could usefully be reconsidered by ALRI.

ALRI's more general third issue — the role of arbitral appeals — is an especially important one. The Report sets out very concisely the tension in the policies that underlie different approaches to the role of appeals to the courts. Arbitration is just one aspect, albeit an important aspect, of a more general trend toward privatizing the Canadian civil justice system. Limits on appeals from arbitral awards obviously play a role in publicizing or privatizing the disputes heard by arbitrators and the awards they make. While there are some benefits to these privatizing initiatives, there are costs as well. Professor Trevor C. W. Farrow of Osgoode Hall Law School has written about these costs and benefits in an easily accessible article, "Privatizing Our Public Civil Justice System" (2006) 9 News & Views on Civil Justice Reform 16, available online:

> Without public scrutiny — through open court processes, the publication of precedents and the application of case law to the facts to be adjudicated — there is a real danger that parties, particularly those with power, will increasingly use this privatizing system in order to circumvent public policies, accountability and notions of basic procedural fairness.

ALRI is seeking input, opinions and comments on the reform issues detailed in the Report and readers are encouraged to provide their input. The Report states that any comments sent to them will be considered when the ALRI Board makes its reform recommendations to the Alberta Government. The deadline for submitting comments to ALRI is November 30, 2012. ALRI may be contacted for a hard copy of the report (downloadable here) and/or to provide input at:

Alberta Law Reform Institute
402 Law Centre
University of Alberta
Edmonton, AB
T6G 2H5

Phone: 1-780-492-5291
E-mail: reform@alri.ualberta.ca
Fax: 1-780-492-1790