

APPENDIX I

UNIFORM ARBITRATION ACT (AMENDMENT)

Peter Lown, Alberta

UNIFORM ARBITRATION ACT (AMENDMENT)

Section 7 is repealed and the following is substituted:

Stay

7(1) If a party to an arbitration agreement commences a proceeding in respect of a matter that another party to the arbitration agreement is entitled to submit to arbitration under the agreement, the court in which the proceeding is commenced shall, on the motion of the other party, stay the proceeding.

(2) Despite subsection (1), the court may refuse to stay the proceeding in any of the following cases:

- (a) a party entered into the arbitration agreement while under a legal incapacity;
- (b) the arbitration agreement is invalid;
- (c) the subject-matter of the dispute is not capable of being the subject of arbitration under *[enacting jurisdiction]* law;
- (d) the motion was brought with undue delay;
- (e) the matter in dispute is a proper one for default or summary judgment.

(3) Despite subsection (1), where an arbitration agreement deals with one or more but not all of the matters in dispute in respect of which the proceeding was commenced, the court may

- (a) refuse to stay the proceeding, or
- (b) stay the proceeding with respect to the matters in dispute dealt with in the arbitration agreement and allow the proceeding to continue with respect to the other matters in dispute.

(4) In making a decision under subsection (3), the court shall have regard to

- (a) the importance of enforcing arbitration agreements, and
- (b) whether it is reasonable to separate the matters in dispute dealt with in the arbitration agreement from the other matters in dispute.

(5) An arbitration of the dispute may be commenced and continued while the motion under subsection (1) is before the court.

(6) If the court refuses to stay the proceeding in respect of all or some of the matters in dispute, then, for those matters in dispute with respect to which the proceeding is allowed to continue,

- (a) no arbitration of the dispute shall be commenced, and
- (b) an arbitration that has been commenced shall not be continued, and anything done in connection with the arbitration before the court made its decision is without effect.

(7) There is no appeal from the court's decision under this section.

COMMENTARY

Subsection (1) confirms party autonomy – if the parties have chosen to submit a dispute to arbitration, they should adhere to this agreement and the court should stay any court proceedings which would contravene this agreement.

However, there are circumstances in which the agreement is invalid, or ineffective, or the remedy has not been requested on time. Subsection (2) sets out the exceptions to party autonomy.

Subsections (3) to (6) deal with proceedings which involve an awkward mixture of disputes, some of which are entitled to be submitted to arbitration and some are not.

Two principles apply to such proceedings. One is that the courts cannot force into arbitration disputes that the parties have not agreed should be so submitted. The second is that the courts should not set aside an arbitration agreement lightly. Where there is such a mixture, the court has a discretion either to separate the disputes into an arbitration and a lawsuit or to roll them all into litigation. In exercising its discretion, the court must consider the factors in subsection (4). Once a decision is made not to stay proceedings with respect to one of the disputes then an arbitration of that dispute cannot be commenced or continued.

