

THE LAW AND PRACTICE OF COMMERCIAL ARBITRATION. By Richard H. McLaren and Earl Edward Palmer. Carswell, 1982. Pp. xlii, 422. (No price given)

Arbitration is one of the alternatives to the resolution of disputes by traditional legal processes. As a means of settlement of commercial disputes, arbitration is fairly frequently resorted to in Europe. Some of the most prominent court decisions of recent years originated in arbitration.¹ The advantages of arbitration are self-evident: speed, low cost, privacy, expertise of arbitrators and degree of finality. In the United States and particularly in Canada, the use of commercial arbitration, as distinct from labour arbitration, is not widespread. In Canada, judging from the reported cases, the use of commercial arbitration declined during the first half of this century and it has been only during the last two decades that a modest revival has taken place. However, Canada still does not appear to be very interested in commercial arbitration. Canada failed to become a signatory to either the *New York Convention of 1958*² or the *Geneva Convention of 1961*³ which deal with the international enforcement of arbitral awards. The *Canadian-American Commercial Arbitration Commission* has never operated because of the lack of interest on Canada's part. Canadian literature dealing with commercial arbitration is certainly not copious. There are a few isolated articles in legal periodicals⁴ and a review by the British Columbia Law Reform Commission⁵ but no systematic treatment has been undertaken. In contrast, labour arbitration has been thoroughly researched in the last ten years.

It is against this background that the recently published treatise on commercial arbitration by Professors McLaren and Palmer of the University of Western Ontario Law School must be reviewed. It fills a vacuum in Canadian legal literature as it is the first domestic book on the subject. Until now, those involved in commercial arbitration had to rely on the standard English text *Russell on Arbitration*⁶ and supplement it with a time-consuming search for Canadian precedents.

The slender volume is, according to its authors, "[i]ntended as a reference for lawyers and laypersons alike, whether considering the

¹ *E.g.*, *Bunge Corp. v. Tradax SA*, [1981] 2 All E.R. 513 (H.L.); *L. Schuler AG v. Wickman Machine Tool Sales Ltd.*, [1973] 2 All E.R. 39 (H.L.); *Cehave NV v. Bremer Handelsgesellschaft mbH*, [1975] 3 All E.R. 739 (C.A.).

² (1959) 330 U.N.T.S. No. 4739.

³ (1963-64) 484 U.N.T.S. No. 349.

⁴ *See, e.g.*, Guthrie, *Arbitration in Commercial Disputes*, 41 *ADVOCATE* 511 (1983); Rose, *Commercial Arbitrations: Some Practical Considerations*, 2 *ADVOCATES' SOC. J.* 9 (1983).

⁵ LAW REFORM COMMISSION OF BRITISH COLUMBIA, *REPORT ON ARBITRATION* (Report no. 55 1982).

⁶ *RUSSELL ON THE LAW OF ARBITRATION* (20th ed. A. Walton & M. Vitoria 1982).

inclusion of an arbitration clause at the time of concluding an agreement or subsequently deciding to utilize arbitration to resolve a dispute".⁷ The book will serve these objectives well. The text is national in scope and covers both the statutes and the case law of all of the Provinces. It is easily readable and can be understood by non-lawyers without difficulty as it successfully avoids "legalese" and is not cluttered with lengthy footnotes. It deals with the entire arbitration process in a logical sequence, beginning with an examination of the nature and purpose of arbitration. The text then discusses the relationship between the courts and arbitration, the mechanism of the appointment of arbitrators, the hearing and the award. The text briefly deals with conflict of laws and then concludes with a very concise chapter on international commercial arbitration.

As this text is the first Canadian book on commercial arbitration and is intended as "[a] reference for lawyers and laypersons alike",⁸ the somewhat general and sketchy treatment and the lack of thorough analysis of the principles and cases is explicable. The usefulness of the book lies in the clear restatement of the basic principles of commercial arbitration and in the exhaustive collection, for the first time, of Canadian case law. The book also describes the arbitration process in detail from the choice of arbitration to the enforcement (and possible setting aside) of the award, thus providing a useful guide to commercial arbitration. One cannot really expect more from a pioneering reference book. Although the authors state in the Preface that the book is "also intended to serve as a practical manual on procedure",⁹ relatively little attention is paid to actual procedure and practice. A more comprehensive exposition with the inclusion of more than two pages of skeletal forms¹⁰ would have been useful.

The book incorporates over 250 pages of appendices with the text itself consisting of only 150 pages. While this may be considered "padding", their inclusion in a reference book intended also for laymen may possibly be justified as they contain some materials that are not readily accessible.¹¹ The appendices are comprised of provincial arbitration acts, reciprocal enforcement of judgment acts and various international arbitration rules. It is rather puzzling that Appendix D includes three conventions¹² that are not referred to in the text.

⁷ P. iii.

⁸ *Id.*

⁹ *Id.*

¹⁰ Pp. 407-08.

¹¹ For example, Appendix D contains the rules of various private arbitration bodies.

¹² Pp. 373-406.

The Law and Practice of Commercial Arbitration is a useful addition to this neglected field and it ably fulfills its role as a starting point for easy reference to the Canadian law and practice of commercial arbitration. It may stimulate interest and become a forerunner of more definitive works on Canadian jurisprudence in this area.

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