

LEGAL EYE

by Michael Bergman

In recent years, litigants have been seeking a more efficient less costly way of litigating disputes than is afforded by the courts. The court process is long, sometimes cumbersome, complicated and costly.

Even when the trial is over and the judgement rendered, the parties could face interminable appeals and further delays. In the intervening years the financial abilities of parties could turn for the worse — affecting the winner's ability to collect — and in some cases, important business decisions can be delayed pending the outcome of the determination of the parties' rights.

As an alternative to the use of the courts for dispute resolution, arbitration has grown increasingly popular. Arbitration is conducted by an independent arbitrator selected by the parties or through some mechanism that they have contractually put in place. The arbitrator hears the dispute often in an informal setting and follows a much more summary procedure than the courts. While the arbitrator does hear legal counsel and witnesses, the amount of written pleadings

are significantly reduced and the arbitrator is often not hamstrung by certain technical points of evidence and procedure. Furthermore the arbitration hearing and the decision that is subsequently rendered are usually subject to time delays in order to assure the speediness of the process. The costs of the arbitrator are generally shared by the parties.

One of the great advantages of arbitration is that although the arbitrator is independent he is often selected for his particular knowledge of the industry concerned. Although judges in court are well versed in law, it is only natural that they do not understand the commercial aspects of every industry and therefore considerable time may be spent examining witnesses to establish the parameters within which a certain industry operates and the normal practices and customs of that industry.

Commercial arbitration has been around for quite some time and indeed it is not unusual to find arbitration clauses in contracts from partnership agreements to supply, service and building contracts. Dispute resolution between manage-

ment and unions and their members is affected by arbitration as provided for in the collective agreement or in the Labour Relations Act concerned.

In fact most jurisdictions presently have arbitration

legislation on the books which provide the rules for arbitration in the absence of contractual provisions. Nevertheless with the exception of labour relations matters and certain other special statutes, no one can be forced to submit to arbitration

in lieu of the courts unless he has contractually bound himself to do so. Although there may be certain instances in which parties who have contracted to submit themselves to arbitration may avoid the pro-

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cess and go directly to court, in most cases these parties would be precluded from recourse to the courts without recourse to the arbitration first. Arbitration awards can be enforced by the court. In most instances legislation provides

that an arbitration award can be registered with the court and thereon become automatically enforceable through the usual means of seizures, etc. The arbitration process is usually designed to be more or less final. Nevertheless it is not possible to prevent some recourse to the courts in the event that one

of the parties to an arbitration is unsatisfied. This recourse is usually not in the form of a formal appeal but rather an attack on some irregularity in the arbitration process. One problem that existed until recently with arbitration awards was that arbitration awards rendered in one coun-

try were usually unenforceable in another. As many commercial dealings are international in nature, this tended to diminish the portability of the arbitration process. Gradually there grew up certain centers such as London or New York where most significant commercial arbitrations were held.

These jurisdictions had developed special rules to encourage commercial arbitration. The United Nations has addressed this problem and has promulgated a uniform arbitration code which it has encouraged its member countries to adopt. Canada has adopted legislation to implement this code on a federal basis. However, since much of the arbitration process is within provincial jurisdiction, further enabling legislation in the provinces was necessary. Happily many provinces such as Quebec, Ontario, Alberta and British Columbia have recognized the usefulness of adopting the United Nations code and have passed legislation to do so. It is therefore now currently possible to hold arbitration proceedings in the United States or in most centers in Canada and have the arbitration award recognized and enforced by the courts of other provinces or states.

Arbitration provisions are a common feature of many contracts used in the film industry, from distribution agreements to joint ventures. In fact the industry in the United States has, through several industry associations, encouraged the use of arbitration as a dispute settlement mechanism between producers. The American Film Marketing Association has set up such a program for this purpose and maintains a list of arbitrators to act on arbitration panels.

Michael N. Bergman • Barrister and Solicitor of the Provinces of Quebec, Ontario and Alberta with offices in Montreal and Toronto.

Bobet's script, Lord's direction

MONTREAL — Jean-Claude Lord is directing the sixth feature film in Rock Demers' *Tales For All* series.

The *Frog and the Whale* will feature Fanny Lauzier in her film debut. Shooting began in Quebec's Iles Mingan in late July followed by two weeks in Métis, Florida and the Virgin Islands.

This family-oriented feature about a young girl who has a special relationship with whales and a dolphin, was written by veteran director/producer Jacques Bobet and André Melançon, director of *The Dog Who Stopped the War* and *Bach and Broccoli*. The inspiration for the story came, says Bobet, while working with Jacques Cousteau in the St. Lawrence River. Participation includes Telefilm Canada, la Société générale du cinéma du Québec, Culinart Inc. and First Choice/Superchannel and private investors.

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