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AN ECONOMIC STUDY OF THE SIZE OF THE ARBITRATION SECTOR IN TORONTO

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In recent years, a small number of cities around the globe have become known as venues for commercial arbitrations. These cities – which include New York, Paris, London, Geneva, Hong Kong, Singapore, and Sydney – host resources and assets valued by parties contemplating international or domestic arbitrations, including appropriate hearing facilities, availability of qualified arbitrators, neutrality, supportive courts, geographical convenience, and amenities for visitors. Arbitration activity also tends to

benefit from a positive feedback effect – experienced arbitration practitioners and supporting professionals are more likely to gather and locate around cities that host arbitrations while companies are more likely to choose cities that have access to such arbitration practitioners and supporting professionals as arbitration venues.

Arbitrations generate a variety of accompanying economic activity to the city. Proceedings may use local counsel, experts, and arbitrators, bringing

benefits to that professional services community. Additionally, proceedings use nearby legal support services and venues. Counsel and arbitrators from outside the area are likely to visit for international arbitrations, bringing benefits to the hotel and hospitality industry. In total, the potential impact on the economy of the selected city can be significant; moreover, it does not necessarily accrue only to businesses and individuals in the legal industry.

While the factors enabling some cities to become centres of arbitration activity and the types of benefits associated with such activity are reasonably well understood, the magnitude of the economic impact of arbitration in particular cities has received little systematic study. This is surprising since an understanding of the extent of local economic activity associated with arbitration would seem to be important information underpinning potential private or public efforts to increase arbitration activity in a given city. Moreover, policymakers and stakeholders will naturally be interested in the potential benefits stemming from initiatives to promote growth in international arbitration activity, which brings visitors to the city and attracts spending from the rest of the world. An estimate of the potential economic impact and the framework for estimating the impact of incremental growth informs this discussion.

On behalf of Arbitration Place, a new full-service venue in Toronto Canada providing hearing rooms and resident arbitrators, we undertook a systematic study of the economic magnitude of arbitration

activity in the city of Toronto and a forecast of its future significance to the economy. To our knowledge, this is the first study that attempts to quantify the economic impact of a city's arbitration activity. Our analysis involved a survey of Toronto-area counsel active in arbitrations to gain insight into the volume of arbitration activity and associated expenditures. Using the results of this survey, we estimated the number of commercial arbitrations occurring annually in the Toronto area and the expenditures associated with these arbitrations.

As Canada's financial and commercial centre, Toronto is a natural hub for the country's domestic arbitration activity. Toronto also has some inherent advantages as a venue for international arbitrations. For US companies, Toronto is geographically convenient, shares a similar legal system of common law origin, and uses English as a predominant legal language. Further, Toronto provides a neutral non-US jurisdiction that may appeal to international non-US companies. While our results are specific to Toronto, we believe our methods could be extended to study arbitration activity in other cities.

Economic contributions of arbitration activity

As an example of the potential expenditures associated with arbitration, consider an arbitrated dispute between two commercial entities in Canada. Counsel for these parties bill their services to the client and may employ experts and other services in

the course of their work. These are direct expenses incurred in relation to the arbitration, and the dollars flow to the location of those individuals. For example, dollars flow to Toronto for counsel based there and to Vancouver for counsel based there.

Expenses related to the hearing accrue directly to the location of the arbitration hearing. Legal counsel and arbitrators will travel to the location, and spending on hotel accommodations, food, and local transportation accrues to the local hospitality industry. Additionally, retail and tourist spending by visitors also accrues to the city and local economy. This discussion suggests a useful distinction between local and international arbitrations. The former are more likely to use local counsel and experts while the latter are more likely to use some or all counsel and experts from other countries, attracting new spending on hotel accommodations, food, transportation, and tourist spending to the area. Additionally, international arbitrations are more likely to require more specialised services, including translation and interpretation services.

Thus, an accounting of the expenditures associated with arbitration would include: number of counsel, experts, and arbitrators (and hourly rates); amount of additional support services (e.g., reporters, document management personnel, tribunal secretaries) and associated costs; hearing facilities costs; transportation expenses; and accommodation and restaurant expenses.

Survey of counsel

Our primary source of data to address these questions was a survey of counsel active in arbitration in Toronto. This survey provided insight into the volume of arbitration activity and associated expenditures in Toronto. As primary stakeholders, counsel involved in arbitrations are well-positioned to make informed statements on local arbitration activity, report recent growth, and provide their opinions on future growth. In

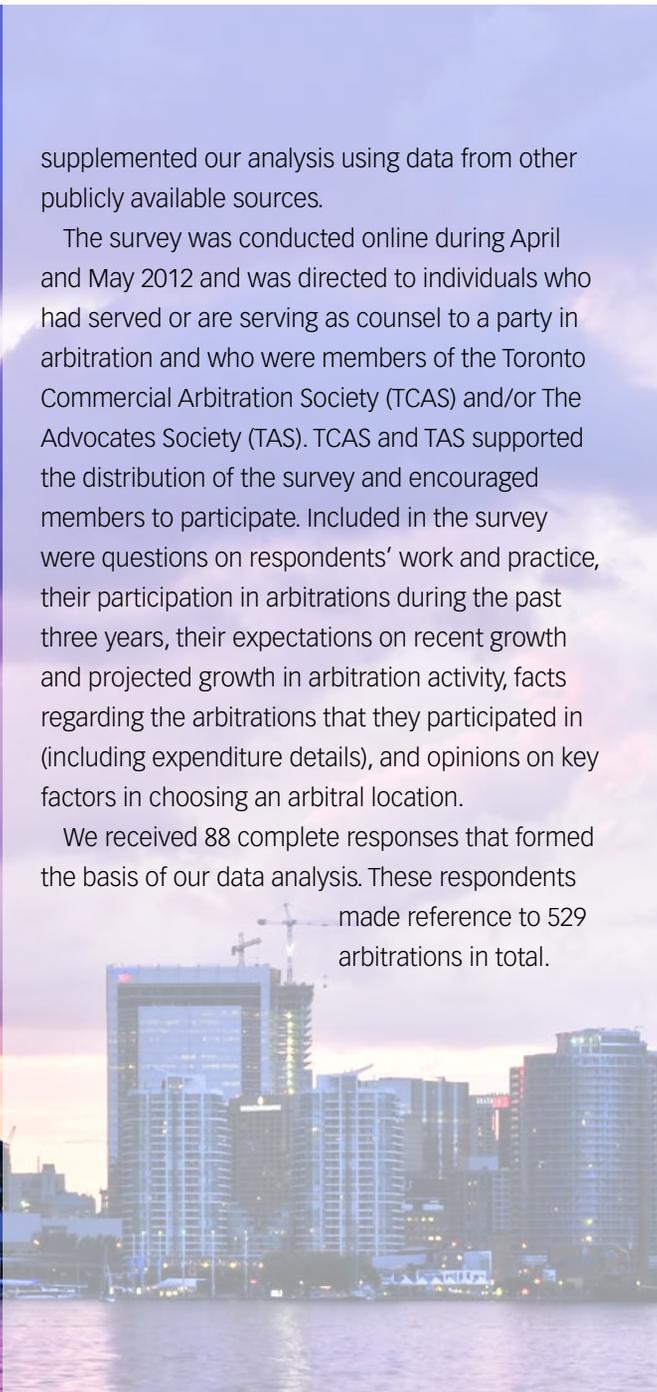
addition to gathering information directly about Toronto arbitrations, we



supplemented our analysis using data from other publicly available sources.

The survey was conducted online during April and May 2012 and was directed to individuals who had served or are serving as counsel to a party in arbitration and who were members of the Toronto Commercial Arbitration Society (TCAS) and/or The Advocates Society (TAS). TCAS and TAS supported the distribution of the survey and encouraged members to participate. Included in the survey were questions on respondents' work and practice, their participation in arbitrations during the past three years, their expectations on recent growth and projected growth in arbitration activity, facts regarding the arbitrations that they participated in (including expenditure details), and opinions on key factors in choosing an arbitral location.

We received 88 complete responses that formed the basis of our data analysis. These respondents made reference to 529 arbitrations in total.



Salient facts regarding our sample include the following: (i) during the past three years, respondents participated in an average of six arbitrations each; (ii) eighty-six percent of arbitrations referenced were domestic (i.e., involved only Canadian companies), with the remainder involving at least one non-Canadian company; (iii) single party total costs, including legal and expert fees, arbitrator expenses, hearing costs, and food and accommodation, were below CA\$250,000 in 62 percent of cases, while in 17 percent of cases single party costs exceeded \$500,000; (iv) the majority of arbitrations (nearly 70 percent) lasted less than two years and only 8 percent lasted three or more years; (v) dispute values were highly skewed – less than \$1m in about half of the cases and exceeding \$50m in 11 percent of cases; and (vi) on average, respondents perceived growth in the number of arbitrations during the past three years, and they expected average growth of 7 percent for 2013.

As factors contributing to growth in the number of arbitrations during the past three years, respondents cited the growing acceptance of arbitration as a dispute resolution mechanism in commercial contracts; delays inherent in traditional litigation, giving arbitration a perceived advantage in speed, efficiency, and costs; and advantages stemming from the ability to select arbitrators, often with specialised skills, to adjudicate often technical disputes.

Methodology and results

To estimate the economic activity associated with arbitrations in Toronto, we first estimate the number of arbitrations taking place in Toronto and then apply the average expenditure level associated with these arbitrations. Both of these measures are derived from our survey evidence.

Respondents provided estimates of the number of arbitrations in which they were involved personally and in which their firm was involved. We corrected the reported estimates to account for the possibility that lawyers working on the same case, either on the same side or on opposing sides, reported the same arbitration in our survey responses. The total number of arbitrations was computed as the sum of all arbitrations estimated by respondents for their entire firm, with duplicate reports from the same firm eliminated on the basis of reported firm size (respondent identities, including firm affiliations, were anonymous). The resulting total number of arbitrations potentially included representatives from both sides. In the absence of specific information on whether our data captured both or only one side of a given dispute, we assumed that the disputes referenced in our data were split evenly between those for which we have data for both sides and those for which we have data for only one side. The result was an estimate of 737 arbitrations annually. Because our data indicated an average of 58 percent of reported arbitrations occurred in Toronto, we arrived at an estimate of 426 Toronto-based

arbitrations annually. Based on survey responses, this number is expected to grow by 7 percent in 2013.

Our primary approach to determine expenditures per arbitration involved reliance on the estimates reported by survey respondents. Our results indicate that the median arbitration is associated with estimated total expenditures of \$250,000, the 75th percentile arbitration is associated with estimated total costs of \$750,000, and estimated total costs for an arbitration in the 95th percentile are \$2m. The average arbitration cost based on this distribution is approximately \$600,000. Applying this to the estimated number of arbitrations occurring in Toronto in 2012, we obtain an estimate of the total expenditures associated with arbitration of \$256m. Based on expected growth in the number of arbitrations, total expenditures are expected to grow to \$273m in 2013.

We supplement our primary approach to estimating expenditures per arbitration with a secondary, 'bottom-up' approach. To construct this estimate, we itemise and calculate arbitration expenses, calculating average numbers of legal counsel, arbitrators, and accommodation and other expenses based on information from a combination of different data sources, all of which were public. For this secondary, bottom-up approach, we use a

database of investment treaty arbitration awards and a database of financial services arbitration awards to determine the number of counsel on each side in international and domestic matters, respectively. Based on public information, we also determine estimates of the average number of billed hours and rates for counsel and experts, average arbitrator

“Based on expected growth in the number of arbitrations, total expenditures are expected to grow to \$273m in 2013.”

costs, and accommodation and transportation expenses.

With this secondary, bottom-up approach, we also calculate the indirect multiplier effect of certain classes of expenditures related to domestic and international arbitrations. These classes of expenditure include accommodation, food and beverage, and local transportation, as appropriate. Our calculation of the multiplier effect is done using an economic model maintained by the Province of Ontario's Ministry of Tourism, Culture and Sport. This

model produces estimates of the direct, indirect, and induced impacts of tourism-related activities on GDP, labour income, employment, and tax revenues for the local geographical area and captures the multiplier effect as it pertains to the greater Toronto area.

This secondary methodology yields an estimate of direct expenditures of approximately \$370,000 per domestic arbitration and approximately \$1.7m per international arbitration. Multiplied by the estimated number of arbitrations of each type, we derive an estimate of total economic activity directly relating to arbitration of \$238m in 2012 and \$253m in 2013. Additional, multiplier-induced benefits to the broader economy amounted to approximately \$3.1m in 2012 and \$3.3m in 2013. In total, our secondary approach yields estimates of economic activity in Toronto of \$241m in 2012 and \$257m in 2013.

Conclusion

In sum, our secondary approach provided validation for our primary, survey-based approach. We conclude that the total impact of arbitration on the economy of the city of Toronto is \$256m in

2012, growing to \$273m in 2013. Arbitration activity is clearly an important element in the commercial life of the city of Toronto and one that is expected to grow as the city enhances its stature as venue for arbitrations. 

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