

This Act is Current to August 27, 2014

This Act has "Not in Force" sections. *See the [Table of Legislative Changes](#).*

## **ARBITRATION ACT**

### **[RSBC 1996] CHAPTER 55**

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## Definitions

### 1 In this Act:

**"arbitral error"** means an error that is made by an arbitrator in the course of an arbitration and that consists of one or more of the following:

- (a) corrupt or fraudulent conduct;
- (b) bias;
- (c) exceeding the arbitrator's powers;
- (d) failure to observe the rules of natural justice;

**"arbitration"** means a reference before an arbitrator to resolve a dispute under this Act or an arbitration agreement;

**"arbitrator"** means a person who, under this Act or an arbitration agreement, resolves a dispute that has been referred to the person, and includes an umpire;

**"arbitration agreement"** means a written or oral term of an agreement between 2 or more persons to submit present or future disputes between them to arbitration, whether or not an arbitrator is named, but does not include an agreement to which the *International Commercial Arbitration Act* applies;

**"award"** means the decision of an arbitrator on the dispute that was submitted to the arbitrator and includes

- (a) an interim award,
- (b) the reasons for the decision, and
- (c) any amendments made to the award under this Act;

**"commercial agreement"** means an agreement arising out of a commercial relationship and includes, but is not limited to, agreements respecting the following kinds of transactions:

- (a) a trade transaction for the supply or exchange of goods or services;

- (b) a distribution agreement;
- (c) a commercial representation or agency;
- (d) factoring;
- (e) leasing;
- (f) construction of works;
- (g) consulting;
- (h) engineering;
- (i) licensing;
- (j) financing;
- (k) banking;
- (l) insurance;
- (m) an exploitation agreement or concession;
- (n) joint venture and other related forms of industrial or business cooperation;
- (o) carriage of goods or passengers by air, sea, rail or road;
- (p) investing;

**"court"** means the Supreme Court;

**"dispute"** includes a family law dispute;

**"family law dispute"** has the same meaning as in the [Family Law Act](#).

## **Application of Act**

2 (1) Subject to subsection (4), this Act applies to the following:

- (a) an arbitration agreement in a commercial agreement;
- (b) an arbitration under an enactment that refers to this Act, except insofar as this Act is inconsistent with the enactment regulating the arbitration, or with any rules or procedure authorized or recognized by that enactment;
- (c) any other arbitration agreement.

(2) A provision of an arbitration agreement that removes the jurisdiction of a court under the *Divorce Act* (Canada) or the [Family Law Act](#) has no effect.

(2.1) In relation to an arbitration respecting a family law dispute,

- (a) in the event of a conflict between the [Family Law Act](#) and this Act, the [Family Law Act](#) prevails, and

(b) an arbitrator, in making an award that deals with a matter referred to in

- (i) any of Divisions 1 to 5 of Part 4 of the *Family Law Act*, must consider the best interests of the child, as set out in section 37 of that Act only, and
- (ii) Division 6 of Part 4 of the *Family Law Act*, must consider, in addition to section 37 of that Act, the factors set out in section 69 (4) (a) of that Act.

(3) If an arbitration agreement contains a reference to the *Arbitration Act*, R.S.B.C. 1979, c. 18, or the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55, that reference is deemed to be a reference to this Act.

(4) This Act does not apply to the following:

- (a) the Agreement on Internal Trade entered into by the governments of Canada, the provinces, Yukon and the Northwest Territories, or to amendments to that agreement;
- (b) the New West Partnership Trade Agreement entered into by the governments of British Columbia, Alberta and Saskatchewan on April 30, 2010, or to amendments to that agreement, except as provided in Article 31 of that agreement;
- (c) the Trade, Investment and Labour Mobility Agreement entered into by the governments of British Columbia and Alberta on April 28, 2006, or to amendments to that agreement, except as provided in Article 31 of that agreement.

### **Arbitration agreement respecting family law dispute**

**2.1** (1) Subject to subsection (2),

- (a) an arbitration agreement respecting a family law dispute may be made only after the dispute to be arbitrated has arisen, and
- (b) if the requirement under paragraph (a) is not met, the arbitration agreement and any arbitration award arising from it are not enforceable.

(2) Subsection (1) does not apply in relation to

- (a) an agreement described in section 6 (1) (b) of the *Family Law Act*,
- (b) an order under the *Family Law Act*, or
- (c) an award under this Act

that provides for arbitration of a future dispute respecting a matter provided for in the agreement, order or award.

(3) An arbitration agreement respecting a family law dispute, and an award arising from a family law dispute, may be set aside or replaced by the court under the *Family Law Act* if the court is satisfied that one or more of the following circumstances existed when the parties entered into the agreement:

(a) a party took improper advantage of the other party's vulnerability, including the other party's ignorance, need or distress;

(b) a party did not understand the nature or consequences of the agreement;

(c) other circumstances that would, under the common law, cause all or part of a contract to be voidable.

(4) A court may decline to act under subsection (3) if, on consideration of all of the evidence, the court would not replace the arbitration agreement with an order that is substantially different from the terms set out in the arbitration agreement.

### **Death of a party**

- 3** (1) If a party to an arbitration agreement dies, the personal representatives of the deceased party are bound by, and are not by the death precluded from enforcing, the terms of the arbitration agreement.
- (2) The authority of an arbitrator to hear and decide on the arbitration is not revoked by the death of the party who appointed the arbitrator.
- (3) Subsections (1) and (2) are subject to an agreement by the parties to an arbitration agreement.
- (4) This section does not affect a rule of law or an enactment under which the death of a person extinguishes a right of action.

### **Appointment of arbitrators**

- 4** (1) If an arbitration agreement does not provide for the appointment of an arbitrator, an arbitration under that agreement is before a single arbitrator.
- (2) If an arbitration agreement provides for the appointment of an even number of arbitrators, the arbitrators may appoint an additional person to act as an umpire.
- (3) If arbitrators who have appointed an umpire cannot reach a majority decision on any matter before them, the umpire must decide the matter, and the umpire's decision is for all purposes the decision of the arbitrators.

**Advance production of documents**

- 5 (1) Before an arbitration hearing commences, the arbitrator may, on the application of a party, order another party to produce any documents that the arbitrator considers are relevant to the arbitration.
- (2) A party who has been ordered to produce documents under subsection (1) must permit the party in whose favour the order was made to inspect those documents and take copies of them.

**Examination and production of records and evidence**

- 6 (1) All parties to an arbitration and any person claiming through them must
- (a) submit to being examined by the arbitrator under oath, when ordered by the arbitrator, and
  - (b) produce all records that the arbitrator may require.
- (2) In an arbitration, the arbitrator
- (a) must admit all evidence that would be admissible in a court,
  - (b) may admit in addition other evidence that the arbitrator considers relevant to the issues in dispute, and
  - (c) may determine, subject to the rules of natural justice, how evidence is to be admitted.

**Subpoena to witness**

- 7 (1) A party to an arbitration or to a reference from the court may issue a subpoena to a witness.
- (2) No subpoena may be issued under subsection (1) for a document unless the witness could be compelled to produce the document in an action.
- (3) The court may order that a subpoena be issued to compel a witness to attend an arbitration.

**Oath**

- 8 (1) An arbitrator may order that a witness at an arbitration testify under oath.
- (2) If an arbitrator requires the testimony of a witness or a party to an arbitration to be given under oath, the arbitrator may administer the oath.

**Interim award**

- 9 During an arbitration, an arbitrator may make an interim award respecting any matter on which the arbitrator may make a final award.

### **Specific performance**

- 10 An arbitrator has the same power as the court to make an order for specific performance of an agreement between the parties for the sale of goods.

### **Costs**

- 11 (1) The costs of an arbitration are in the discretion of the arbitrator who, in making an order for costs, may specify any or all of the following:
- (a) the persons entitled to costs;
  - (b) the persons who must pay the costs;
  - (c) the amount of the costs or how that amount is to be determined;
  - (d) how all or part of the costs must be paid.
- (2) In specifying the amount of costs under subsection (1) (c), the arbitrator may specify that the costs include
- (a) actual reasonable legal fees, and
  - (b) disbursements, including the arbitrator's fees, expert witness fees and the expenses incurred for holding the hearing.
- (3) In specifying how costs are to be determined, the arbitrator may refer the matter to a registrar of the Supreme Court for assessment.
- (4) The registrar is not to assess the costs referred under subsection (3) as though they were costs in a proceeding in the Supreme Court but must assess them in the manner specified by the arbitrator.
- (5) If in an award the arbitrator makes no order as to costs, a party may apply to the arbitrator, within 30 days of being notified of the award, for an order respecting costs.
- (6) If no application is made under subsection (5) or if, following an application under subsection (5), the arbitrator makes no order as to costs, the parties to the arbitration bear their own costs, and the fees and expenses referred to in section 26 (1) are to be borne equally among each of the parties to the arbitration.

### **Majority decision**

- 12 (1) If there are more than 2 arbitrators in an arbitration, the award may be made by a majority of arbitrators.

(2) If there is no majority decision on any matter to be decided in an arbitration, the decision of the chair is the decision on that matter.

### **Time for arbitrator's decision**

**13** (1) If the parties have agreed to a time limit for the making of an award, the arbitrator or the court may extend the time limit, whether or not the time has expired and despite the agreement.

(2) Subsection (1) does not affect the power of the court to make an order under section 18 (1) (b).

### **Award binding**

**14** The award of the arbitrator is final and binding on all parties to the award.

### **Stay of proceedings**

**15** (1) If a party to an arbitration agreement commences legal proceedings in a court against another party to the agreement in respect of a matter agreed to be submitted to arbitration, a party to the legal proceedings may apply, before filing a response to civil claim or a response to family claim or taking any other step in the proceedings, to that court to stay the legal proceedings.

(2) In an application under subsection (1), the court must make an order staying the legal proceedings unless it determines that the arbitration agreement is void, inoperative or incapable of being performed.

(3) An arbitration may be commenced or continued and an arbitral award made even though an application has been brought under subsection (1) and the issue is pending before the court.

(4) It is not incompatible with an arbitration agreement for a party to request from the Supreme Court, before or during arbitral proceedings, an interim measure of protection and for the court to grant that measure.

### **Revocation of arbitrator's authority**

**16** (1) Subject to an agreement referred to in section 3 (3), the parties may not revoke the authority of an arbitrator, except by leave of the court under subsection (2).

(2) A party to an arbitration may apply to the court for an order revoking the authority of an arbitrator.

(3) In considering whether to revoke the authority of an arbitrator, the court must consider the factors referred to in section 15 (3) (a) to (c), (i) and (j).

(4) If, after a dispute arises under an arbitration agreement that names a person as an arbitrator, a party to that agreement applies to the court

- (a) for an order revoking the authority of the arbitrator, or
- (b) for an order in any other proceeding whether the party seeks on grounds of apprehended bias, to revoke the arbitrator's authority or restrain the arbitration from proceeding,

the court must not refuse the order on the ground that the applicant knew or ought to have known that the arbitrator may not be capable of acting impartially because of the arbitrator's relationship to

- (c) another party to the arbitration agreement, or
- (d) the subject matter of the dispute.

### **Appointment of arbitrator by court**

**17** (1) If an arbitration agreement provides for

- (a) the appointment of a single arbitrator, and the parties, after a dispute has arisen, cannot concur in the appointment of the arbitrator, or
- (b) an arbitrator or another person to appoint an arbitrator, and the arbitrator or that person neglects or refuses to make the appointment,

a party may serve written notice on the other party, the arbitrator or the other person, as the case may be, to concur in the appointment of a single arbitrator or to appoint an arbitrator.

(2) If the appointment is not made within 7 days after the notice is served under subsection (1), the court must appoint an arbitrator, on application of the party who served the notice.

(3) On the application of any party the court may appoint an arbitrator if

- (a) an arbitrator refuses to act, is incapable of acting or dies, and
- (b) the arbitration agreement
  - (i) does not provide a means of filling the vacancy that has occurred, or
  - (ii) provides a means of filling the vacancy, but a qualified person has not filled the vacancy within the time provided for in the agreement, or if no time has been provided for, within a reasonable time.

(4) An arbitrator appointed by the court under this section has the same powers and duties as though the arbitrator were appointed under the arbitration agreement.

## Removal of arbitrator

- 18** (1) On the application of a party to an arbitration, the court may remove an arbitrator who
- (a) commits an arbitral error, or
  - (b) unduly delays in proceeding with the arbitration or in making an award.
- (2) The court may order that an arbitrator who is removed under subsection (1) on the grounds of corrupt or fraudulent conduct or undue delay in proceeding with the arbitration or in making an award
- (a) receive no remuneration for the arbitrator's services, and
  - (b) pay all or part of the costs, as determined by the court, that the parties to the arbitration have incurred up to the date that the order removing the arbitrator was made.
- (3) Subject to subsection (5), if the court removes an arbitrator under subsection (1), it may appoint another arbitrator to replace the one who was removed, unless the parties have agreed in the appointment of a replacement.
- (4) An arbitrator appointed under subsection (3) has the same powers and duties as though the arbitrator were appointed under the arbitration agreement.
- (5) An arbitration proceeding is stayed if
- (a) the arbitration agreement includes a provision that names the arbitrator,
  - (b) that arbitrator is removed under subsection (1), and
  - (c) the parties to the arbitration agreement do not agree, within 30 days after the removal, on another arbitrator to replace the arbitrator.
- (6) If an arbitration proceeding is stayed under subsection (5), the parties may take any other proceedings to resolve the dispute that they could have taken but for the arbitration agreement.

## Scott vs. Avery clauses

- 19** (1) A term of an agreement providing that
- (a) an action may not be commenced, or
  - (b) a defence to an action may not be raised or pleaded
- until the matter that is the subject of the cause of action or defence has been adjudicated by arbitration under that, or some other, agreement has no effect except as provided in subsection (2).

(2) A term of an agreement referred to in subsection (1) (a) or (b) is deemed to be an arbitration agreement.

### **Extension of time limit**

**20** If the terms of an arbitration agreement provide that a claim to which the agreement applies is barred unless

- (a) notice to appoint an arbitrator is given,
- (b) an arbitrator is appointed, or
- (c) some other step to commence the arbitration proceedings is taken,

within the time limited by the arbitration agreement, the court may, if it considers that undue hardship would otherwise result, extend the time on terms, if any, as the justice of the case requires.

### **Consolidation of arbitrations**

**21** Disputes that have arisen under 2 or more arbitration agreements may be heard in one arbitration if

- (a) the disputes are similar, and
- (b) all parties to those agreements agree on the appointment of the arbitrator and the steps to be taken to consolidate the disputes into the one arbitration.

### **International Commercial Arbitration Centre rules**

**22** (1) Unless the parties to an arbitration otherwise agree, the rules of the British Columbia International Commercial Arbitration Centre for the conduct of domestic commercial arbitrations apply to that arbitration.

(2) If the rules referred to in subsection (1) are inconsistent with or contrary to the provisions in an enactment governing an arbitration to which this Act applies, the provisions of that enactment prevail.

(3) If the rules referred to in subsection (1) are inconsistent with or contrary to this Act, this Act prevails.

### **Legal principles apply unless excluded**

**23** (1) An arbitrator must adjudicate the matter before the arbitrator by reference to law unless the parties, as a term of an agreement referred to in section 35, agree that the matter in dispute may be decided on equitable grounds, grounds of conscience or some other basis.

(2) Despite any agreement of the parties to a family law dispute, a provision of an award that is inconsistent with the *Family Law Act* is not enforceable.

**Arbitrator may call own witness**

- 24** (1) An arbitrator may call a witness on the arbitrator's own motion.
- (2) A witness called by the arbitrator under subsection (1) may be cross-examined by all parties to the arbitration, and all parties may call evidence in rebuttal.

**Arbitrator's decision**

- 25** An award must be in writing and must be signed by the arbitrator.

**Arbitrator's fees**

- 26** (1) The fees and expenses of an arbitrator or of a clerk, secretary or reporter assisting in the arbitration must not exceed the fair value of the services performed together with necessary and reasonable expenses incurred.
- (2) If an arbitrator has delivered the arbitrator's account for fees and expenses, any party to the arbitration or the arbitrator may apply to the district registrar or other reviewing officer of the court for an appointment to review the account.
- (3) The applicant for the review must deliver a copy of the appointment to the arbitrator or the parties, as the case may be.
- (4) A party may review an arbitrator's account even though the account has been paid.
- (5) Section 70 of the *Legal Profession Act* applies to the procedure at a review under subsection (2).
- (6) A term of an arbitration agreement prohibiting the review of an arbitrator's fees and expenses has no effect.
- (7) A party to a review under subsection (2) may appeal the review to the court within
- (a) 14 days of after the date of the reviewing officer's certificate,
  - (b) a period allowed by the court, or
  - (c) a period specified by the reviewing officer in the certificate.
- (8) The court may make any order it considers just in the appeal, including an order that the reviewing officer amend the certificate.
- (9) If an account has been reviewed under subsection (2), the certificate of the reviewing officer or district registrar may be filed in the registry of the court and, on the expiry of the time specified in subsection (7), the certificate may be enforced as though it were a judgment of the court.

### **Amendments to the award**

**27** (1) On the application of a party or on the arbitrator's own initiative, an arbitrator may amend an award to correct

- (a) a clerical or typographical error,
- (b) an accidental error, slip, omission or other similar mistake, or
- (c) an arithmetical error made in a computation.

(2) An application by a party under subsection (1) must be made within 15 days after the party is notified of the award.

(3) An amendment under subsection (1) must not, without the consent of all parties, be made more than 30 days after all parties have been notified of the award.

(4) Within 15 days after being notified of the award, a party may apply to the arbitrator for clarification of the award.

(5) On an application under subsection (4), the arbitrator may amend the award if the arbitrator considers that the amendment will clarify it.

(6) Within 30 days after receiving the award, a party may apply to the arbitrator to make an additional award with respect to claims presented in the proceedings but omitted from the award, unless otherwise agreed by the parties.

### **Interest**

**28** For the purposes of the *Court Order Interest Act* and the *Interest Act* (Canada), a sum directed to be paid by an award is a pecuniary judgment of the court.

### **Enforcement of an award**

**29** (1) With leave of the court, an award may be enforced in the same manner as a judgment or order of the court to the same effect, and judgment may be entered in the terms of the award.

(2) Despite subsection (1), leave of the court is not required if the award is in respect of a family law dispute.

### **Court may set aside award**

**30** (1) If an award has been improperly procured or an arbitrator has committed an arbitral error, the court may

- (a) set aside the award, or
- (b) remit the award to the arbitrator for reconsideration.

(2) The court may refuse to set aside an award on the grounds of arbitral error if

(a) the error consists of a defect in form or a technical irregularity, and

(b) the refusal would not constitute a substantial wrong or miscarriage of justice.

(3) Except as provided in section 31, the court must not set aside or remit an award on the grounds of an error of fact or law on the face of the award.

(4) Nothing in this section restricts or prevents a court from changing, suspending or terminating all or part of an award, in respect of a family law dispute, for any reason for which an order could be changed, suspended or terminated under the *Family Law Act*.

### **Appeal to the court**

**31** (1) A party to an arbitration, other than an arbitration in respect of a family law dispute, may appeal to the court on any question of law arising out of the award if

(a) all of the parties to the arbitration consent, or

(b) the court grants leave to appeal.

(2) In an application for leave under subsection (1) (b), the court may grant leave if it determines that

(a) the importance of the result of the arbitration to the parties justifies the intervention of the court and the determination of the point of law may prevent a miscarriage of justice,

(b) the point of law is of importance to some class or body of persons of which the applicant is a member, or

(c) the point of law is of general or public importance.

(3) If the court grants leave to appeal under subsection (2), it may attach conditions to the order granting leave that it considers just.

(3.1) A party to an arbitration in respect of a family law dispute may appeal to the court on any question of law, or on any question of mixed law and fact, arising out of the award.

(4) On an appeal to the court, the court may

(a) confirm, amend or set aside the award, or

(b) remit the award to the arbitrator together with the court's opinion on the question of law that was the subject of the appeal.

### **Extent of judicial intervention**

**32** Arbitral proceedings of an arbitrator and any order, ruling or arbitral award made by an arbitrator must not be questioned, reviewed or restrained by a proceeding under the *Judicial Review Procedure Act* or otherwise except to the extent provided in this Act.

### **Application for reasoned award**

**33** (1) A party to an arbitration may apply to the court for an order that the arbitrator give more detailed reasons for an award.

(2) On an application under subsection (1), the court may order that the arbitrator state the reasons for the award in detail that is sufficient to consider any question of law that arises out of the award, were an appeal to be brought under section 31.

(3) The court must not make an order under this section unless written notice is given to the arbitrator before the award is made that a reasoned award would be required or a good reason is shown why no such written notice was given.

### **Application to court to determine question of law**

**34** (1) On the application of a party, the court may determine any question of law that arises during the course of an arbitration if that party obtains the consent of either the arbitrator or of the other parties to the arbitration.

(2) The court must not make a determination on the question submitted unless it is satisfied that substantial savings in costs of the arbitration would result.

(3) A determination made under this section may be appealed to the Court of Appeal.

### **Exclusion agreements**

**35** (1) If, after an arbitration has commenced, the parties to it agree in writing to exclude the jurisdiction of the court under sections 31, 33 and 34, the court has no jurisdiction to make an order under those sections except in accordance with the agreement, but otherwise an agreement to exclude the jurisdiction of the court under those sections has no effect.

(2) Despite subsection (1), an agreement to exclude the jurisdiction of the court under section 31, 33 or 34 by the parties to an arbitration in respect of a family law dispute has no effect.

### **Reference by court order**

**36** The court may order at any time that the whole matter, or a question of fact arising in a proceeding, other than a criminal proceeding, be tried before an arbitrator agreed on by the parties if

(a) all parties interested, and not under disability, consent,

(b) the proceeding requires a prolonged examination of documents, or a scientific or local investigation that cannot, in the opinion of the court, conveniently be made before a jury or conducted by the court through its other ordinary officers, or

(c) the question in dispute consists wholly or partly of matters of account.

### **Powers on reference**

**37** (1) In a reference by the court to an arbitrator, the arbitrator is an officer of the court and has the authority and must conduct the reference in the manner prescribed by rules of court and as the court may direct.

(2) Unless set aside by the court, the report or award of an arbitrator on a reference is equivalent to the verdict of a jury.

### **Remuneration**

**38** The court may determine the remuneration to be paid to an arbitrator on a reference by the court.

### **Court powers**

**39** The court and the Court of Appeal have, for references, the powers that are conferred on the court in references out of court.

### **Attendance of prisoner**

**40** The court may order the attendance of a prisoner for examination before an arbitrator.

### **Costs**

**41** An order under this Act may be made on terms, as to costs or otherwise, that the authority making the order thinks just.

### **Applications to the court**

**42** (1) Applications to the court under this Act must be made by a petition proceeding or, if Rule 17-1 of the Supreme Court Civil Rules applies, a requisition proceeding.

(2) An application under section 30 or 31 must be made within 60 days after the parties have been notified of the award and its terms.

**Extension of time limit**

**43** The court may extend any time limit provided for in this Act even if the application for the extension or the order granting the extension is made after time has expired.

**Application of provisions**

**44** Sections 4 to 6, 8 to 12, 14, 25 and 26 (1) apply to every arbitration agreement except in so far as the parties have agreed otherwise.

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