



Arbitration Act

CHAPTER 19

OF THE

REVISED STATUTES, 1989

amended 1999, c. 5, s. 61

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An Act for Amending and Consolidating the Acts Relating to Arbitration

Short title

1 This Act may be cited as the *Arbitration Act*. R.S., c. 19, s. 1.

INTERPRETATION

Interpretation

2 In this Act,

- (a) "court" means the Supreme Court of Nova Scotia;
- (b) "judge" means a judge of the Supreme Court of Nova Scotia;
- (c) "rules of court" means the rules of the Supreme Court;
- (d) "submission" means a written agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not. R.S., c. 19, s. 2.

Application of Act to Crown

3 This Act shall apply to every arbitration to which Her Majesty is a party, as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the enactment regulating

the arbitration or with any rules or procedure authorized or recognized by the enactment. R.S., c. 19, s. 3.

Commercial Arbitration Act

3A Notwithstanding anything contained in this Act, this Act does not apply to an arbitration commenced pursuant to the *Commercial Arbitration Act*. 1999, c. 5, s. 61.

ARBITRATION UNDER SUBMISSION

Effect of submission

4 A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court or a judge, and shall have the same effect in all respects as if it had been made an order of the court. R.S., c. 19, s. 4.

Submission deemed to include

5 A submission, unless a contrary intention is expressed therein, shall be deemed to include, so far as they are applicable to the reference under the submission, the following provisions, that is to say:

- (a) if no other mode of reference is provided, the reference shall be to a single arbitrator;
- (b) if the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award;
- (c) the arbitrators shall make their award in writing, within three months after entering on the reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, from time to time, by any writing signed by them, enlarge the time for making the award;
- (d) if the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators;
- (e) the umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later date to which the umpire, from time to time, by any writing signed by him, enlarges the time for making his award;
- (f) the parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively, which are required or called for, and do all other things which, during the proceedings on the reference, are required by the arbitrators or umpire;
- (g) the witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation;
- (h) the award to be made by the arbitrators or umpire shall be final and binding on the parties and persons claiming under them respectively;
- (i) the costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to, and by whom, and in what manner, such costs, or any part thereof, shall be paid and

may tax or settle the amount of costs to be so paid, or any part thereof, and may award costs to be paid as between solicitor and client. R.S., c. 19, s. 5.

Official referee

6 Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made, shall, subject to any order of the court, or a judge, hear and determine the matters agreed to be referred. R.S., c. 19, s. 6.

Stay of proceedings

7 If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect to any matter agreed to be referred, any party to such legal proceedings may, at any time after appearance, and before delivering any pleadings, or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court, or a judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings. R.S., c. 19, s. 7.

Notice to appoint

8 (1) Where

(a) a submission provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;

(b) an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy;

(c) the parties, or two arbitrators, are at liberty to appoint an umpire, or third arbitrator, and do not appoint him;

(d) an appointed umpire, or third arbitrator, refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy;

(e) a submission provides that a reference shall be to two arbitrators, one to be appointed by each party (whether or not the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator) and either party does not, after differences have arisen, appoint an arbitrator,

any party may serve the other parties, or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire or third arbitrator.

Failure to appoint

(2) If the appointment is not made within seven clear days after the service of the notice, the court or a judge may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator, who shall have the like powers to act in the reference, and make an award, as if he had been appointed by consent of all parties. R.S., c. 19, s. 8.

Reference to two arbitrators

9 Where a submission provides that the references shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention,

(a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;

(b) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent,

provided that the court or a judge may set aside any appointment made in pursuance of this Section. R.S., c. 19, s. 9.

Powers of arbitrator or umpire

10 The arbitrators, or umpire, acting under a submission shall, unless the submission expresses a contrary intention, have power to

(a) administer oaths to, or to take the affirmation of, the parties and witnesses appearing; and

(b) state an award as to the whole or part thereof in the form of a special case for the opinion of the court; and

(c) correct in an award any clerical mistake or error arising from an accidental slip or omission. R.S., c. 19, s. 10.

Subpoena

11 Any party to a submission may sue out of the Supreme Court a subpoena *ad testificandum*, or a subpoena *duces tecum*, but no person shall be compelled, under any such subpoena, to produce any document which he could not be compelled to produce on the trial of an action. R.S., c. 19, s. 11.

Disobedience of subpoena

12 Any person on whom such subpoena has been served, and who has been paid or tendered the fees for travel and attendance prescribed for witnesses in the Supreme Court, shall be liable, in case of disobedience of such subpoena, to the same punishment and liabilities as if the same had been issued in an action in the Supreme Court for the attendance of witnesses at the trial. R.S., c. 19, s. 12.

Extension of time for award

13 The time for making an award may from time to time be enlarged by order of the court or a judge, whether the time for making the award has expired or not. R.S., c. 19, s. 13.

Reference remitted

14 (1) In all cases of reference to arbitration whether under a submission or under a statute or otherwise howsoever, the court or a judge may from time to time remit the matters referred or any of them to the reconsideration of the arbitrators or umpire.

Award remitted

(2) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order. R.S., c. 19, s. 14.

Removal of arbitrator or umpire

15 (1) Where an arbitrator or umpire has misconducted himself the court may remove him.

Setting aside an arbitration

(2) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the court may set aside the award. R.S., c. 19, s. 15.

Issue and service of originating notice for Section 15

16 (1) In an application to a court or a judge respecting the matters referred to in Section 15, the originating notice shall be issued and served within a reasonable time.

Interpretation of Section

(2) In this Section, "within a reasonable time" means within sixty days after service of a copy of the award of the arbitrator has been made upon the party issuing the originating notice or such longer time as a court or a judge may determine. R.S., c. 19, s. 16.

Enforcement of award

17 An award on a submission may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect. R.S., c. 19, s. 17.

REFERENCES UNDER ORDER OF COURT

Official or special referee

18 (1) Subject to rules of court, and to any right to have particular cases tried by a jury, the court, or a judge, may refer any question arising in any cause or matter for inquiry or report to any official or special referee.

Report of official or special referee

(2) The report of an official or special referee may be adopted wholly or partially by the court or a judge, and if so adopted may be enforced as a judgment or order to the same effect. R.S., c. 19, s. 18.

Trial ordered

19 In any cause or matter, other than a criminal proceeding by the Crown,

(a) if all the parties interested who are not under disability consent;

(b) if cause or matter requires any prolonged examination of documents, or any scientific or local investigation which cannot, in the opinion of the court or judge, conveniently be made before a jury, or conducted by the court through its other ordinary officers; or

(c) if the question in dispute consists wholly or in part of matters of account,

the court or a judge may, at any time, order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the court. R.S., c. 19, s. 19.

Power of referee or arbitrator

20 (1) In all cases of reference to an official or special referee or arbitrator under an order of the court or a judge in any cause or matter, the official or special referee or arbitrator shall be deemed to be an officer of the court, and shall have such authority, and shall conduct the reference in such manner, as is prescribed by rules of court, and subject thereto, as the court or a judge directs.

Report equivalent to jury verdict

(2) The report or award of any official or special referee or arbitrator, or any such reference, shall, unless set aside by the court or a judge, be equivalent to the verdict of a jury.

Remuneration

(3) The remuneration to be paid to any official referee, special referee, or arbitrator, to whom any matter is referred under order of the court or a judge, shall be determined by the court or a judge. R.S., c. 19, s. 20.

Power of court or judge

21 The court or a judge shall, as to references under order of the court or a judge, have all the powers which are by this Act conferred on the court or a judge as to references by consent out of court. R.S., c. 19, s. 21.

GENERAL PROVISIONS

Habeas corpus

22 The court or a judge may order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an official or special referee or before any arbitrator or umpire. R.S., c. 19, s. 22.

Stated case

23 Any referee, arbitrator or umpire may, at any stage of the proceedings under a reference, and shall, if so directed by the court or a judge, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference. R.S., c. 19, s. 23.

Costs

24 Any order made under this Act may be made on such terms as to costs or otherwise as the authority making the order thinks just. R.S., c. 19, s. 24.

Conferring of jurisdiction

25 Provision may from time to time be made by rules of court for conferring on a judge of a county court, or any local judge or other officer of the Supreme Court, all or any of the jurisdiction conferred by this Act on the court or a judge. R.S., c. 19, s. 25.



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