

1980

c 25 Arbitrations Act

Ontario

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CHAPTER 25

Arbitrations Act

1. In this Act,

Interpretation

(a) "court" means the Supreme Court;

(b) "judge" means a judge of the Supreme Court;

(c) "prescribed" means prescribed by the regulations made under this Act;

(d) "rules of court" means the rules of the Supreme Court made under the *Judicature Act*;

R.S.O. 1980, c. 223

(e) "submission" means a written agreement to submit present or future differences to arbitration, whether or not an arbitrator is named therein. R.S.O. 1970, c. 25, s. 1; 1973, c. 28, s. 1.

2. This Act applies to an arbitration to which Her Majesty is a party. R.S.O. 1970, c. 25, s. 2.

Crown

3. This Act applies to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorized or recognized by that Act. R.S.O. 1970, c. 25, s. 3.

References under statutory powers

4. A submission, unless a contrary intention is expressed therein, is irrevocable, except by leave of the court, and has the same effect as if it had been made an order of the court. R.S.O. 1970, c. 25, s. 4.

Irrevocability of submission

5. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the Schedule hereto, so far as they are applicable to the reference. R.S.O. 1970, c. 25, s. 5.

What submission to include

6. Where a submission provides that the reference is to an official referee, any official referee to whom application is made shall hear and determine the matters agreed to be referred. R.S.O. 1970, c. 25, s. 6.

Official referee to act

Staying legal proceedings taken after submission

7. If a party to a submission, or a person claiming through or under him, commences any legal proceeding in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceeding may at any time after appearance and before delivering any pleading or taking any other step in the proceeding apply to that court to stay the proceeding and a judge of that court, 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 proceeding was 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 proceeding. R.S.O. 1970, c. 25, s. 7.

Appointment by court

8.—(1) In any of the following cases,

- (a) where a submission provides that the reference is to a single arbitrator and the persons whose concurrence is necessary do not, after differences have arisen, concur in the appointment of an arbitrator; or
- (b) where an arbitrator, an umpire or a third arbitrator is to be appointed by a person and such person does not make the appointment; or
- (c) unless the submission otherwise provides, where an arbitrator, an umpire or a third arbitrator refuses to act or is incapable of acting or dies and the vacancy is not supplied by the person having the right to fill the vacancy,

a party may serve the other party or the arbitrators, or the person who has the right to make the appointment, as the case may be, with a written notice to concur in the appointment of a single arbitrator or to appoint an arbitrator, umpire or third arbitrator.

When court may appoint

(2) If the appointment is not made within seven clear days after the service of the notice, 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.O. 1970, c. 25, s. 8.

Powers of arbitrators

9. An arbitrator or umpire acting under a submission has, unless the submission expresses a contrary intention, power,

- (a) to administer oaths to the parties and witnesses;

(b) to 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) to correct in an award any clerical mistake or error arising from any accidental slip or omission. R.S.O. 1970, c. 25, s. 9.

10. The time for making an award may from time to time be enlarged by a judge whether or not the time for making the award has expired. R.S.O. 1970, c. 25, s. 10. Enlarging time for making award

11.—(1) The court may remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire. Remitting for reconsideration

(2) The arbitrators or umpire shall, unless the order otherwise directs, make the award within three months after the date of the order. R.S.O. 1970, c. 25, s. 11. When award to be made

12.—(1) Where an arbitrator or umpire has misconducted himself, the court may remove him. Removal of arbitrator

(2) Where an arbitrator or umpire has misconducted himself or an arbitration or award has been improperly procured, the court may set the award aside. R.S.O. 1970, c. 25, s. 12. Setting aside award

13. An award may, by leave of a judge, be enforced in the same manner as a judgment or order to the same effect. R.S.O. 1970, c. 25, s. 13. Enforcing award

14. A party to a submission may sue out of the court a writ of subpoena *ad testificandum* or a writ of subpoena *duces tecum*, but no person shall be compelled under any such writ to produce any document that he would not be compellable to produce on the trial of an action. R.S.O. 1970, c. 25, s. 14. Subpoenaing witnesses

15.—(1) Where a party to a submission desires to procure for use upon the reference the evidence of a person to be taken *de bene esse* or to be taken out of Ontario, an order may be made for the examination of such person or for the issue of a commission in the like circumstances and with the like effect as a similar order may be made in an action. Commission to examine witnesses

(2) The *Judicature Act* and the rules of court apply to such order or commission and to the proceedings thereon and the evidence taken thereunder. R.S.O. 1970, c. 25, s. 15. Application of R.S.O. 1980, c. 223 and rules

16.—(1) Where it is agreed by the terms of the submission that there may be an appeal from the award, an appeal lies to the Divisional Court. Where submission provides for appeal

Procedure
by party
taking up
award

(2) Where by the agreement of the parties or by the provisions of any statute there is an appeal from an award, the party taking up the award shall file it with the registrar of the court and shall serve a copy of it and a notice of its filing upon the opposite party.

Notice of
appeal

(3) Notice of appeal may be served within fourteen days returnable within thirty days after service of the copy of the award and notice of filing.

Taking
evidence in
writing

(4) In all cases in which there is a right of appeal, the evidence of the witnesses shall be taken down in longhand and be signed by the witnesses, or be taken in shorthand.

Evidence
to be
transcribed
only on
an appeal

(5) It is not necessary that evidence taken in shorthand be transcribed unless an appeal is taken.

Exhibits,
transmission
to registrar

(6) Upon the request of the party appealing, the exhibits shall be transmitted by the arbitrator to the office of the registrar of the court for the purpose of the appeal.

Oath of
stenographer

(7) A stenographer employed to take evidence in shorthand shall be sworn to take down and transcribe the evidence faithfully and shall certify to the accuracy of all copies supplied.

Statement of
proceeding
on view or
special
knowledge

(8) Where the arbitrators proceed wholly or partly on a view or any knowledge or skill possessed by themselves or any of them, they shall also put in writing a statement thereof sufficiently full to enable a judgment to be formed of the weight that should be attached thereto.

Requiring
further
report from
arbitrator

(9) The Divisional Court may require explanations or reasons from the arbitrator and may remit the matter or any part thereof to him for further consideration.

Powers of
court as to
extension
of time

(10) The Divisional Court may extend the time limited by this section either before or after its expiry or may dispense with compliance with the requirements of this section. R.S.O. 1970, c. 25, s. 16.

Interpre-
tation

17. In sections 18 to 24,

- (a) "arbitrator" and "arbitrators" include an umpire and a referee in the nature of an arbitrator;
- (b) "award" includes umpirage and a certificate in the nature of an award. R.S.O. 1970, c. 25, s. 17.

18. The parties to a submission may agree, by writing signed by them or by making such agreement a part of the submission, to pay to the arbitrator or to the arbitrators, if more than one, such fees for each day's attendance, or such gross sum for taking upon themselves the burden of the reference and making the award, as the parties see fit, and no arbitrator shall take or receive from either party to a submission any greater fee than that agreed upon, or in default of agreement than the maximum prescribed therefor, and the receipt of any greater fee may be regarded as misconduct justifying the setting aside of the award. R.S.O. 1970, c. 25, s. 18; 1973, c. 28, s. 2; 1976, c. 5, s. 1.

Agreement
as to fees to
be paid to
arbitrators

19. No greater fees shall be taxed to a person called as a witness before an arbitrator than would be taxed to him in an action in the court. R.S.O. 1970, c. 25, s. 19.

Fees to
witnesses

20. Where at a meeting of arbitrators of which due notice has been given no proceedings are taken in consequence of the absence of a party, or of a postponement at the request of a party, the arbitrators shall make up an account of the costs of the meeting, including the proper charges for their own attendance and that of any witnesses and of the counsel or solicitor of the party present and not desiring the postponement, and, unless under the special circumstances of the case they think that it would be unjust so to do, they shall charge the amount thereof, or of the disbursements, against the party in default or at whose request the postponement is made, and the last mentioned party shall pay the same to the other party, whatever may be the event of the reference, and the arbitrators shall, in the award, make any direction necessary for that purpose, and the amount so charged may be set off against, and deducted from, any amount awarded in his favour. R.S.O. 1970, c. 25, s. 20.

Costs of
meeting
where no
proceedings

21.—(1) A party to an arbitration is entitled to have the costs thereof, including the fees of the arbitrators, or such fees alone, taxed by one of the taxing officers of the court at Toronto upon an appointment that may be given by the taxing officer for that purpose on the filing of an affidavit setting forth the facts.

Taxation, at
instance
of parties

(2) A taxation of the fees of the arbitrators may be had upon an appointment given at the instance of the arbitrators or any of them upon a like affidavit. R.S.O. 1970, c. 25, s. 21.

at instance
of
arbitrators

22.—(1) The taxing officer shall in no case, except as provided in section 18, tax higher fees than are prescribed to the arbitrators but, upon reasonable grounds, he may reduce the fees to any amount below the maximum prescribed, but

Discretion
of taxing
officer

not below the minimum, having regard always to the length of the arbitration, the value of the matter in dispute, and the difficulty of the questions to be decided, and the fees to be allowed to solicitors and counsel shall be as nearly as may be similar to the fees allowed upon a reference in the court or the county court, the scale to be determined by the taxing officer having regard to the value of the matter in dispute, but he shall not tax more than one counsel fee to either party. R.S.O. 1970, c. 25, s. 22 (1); 1973, c. 28, s. 3.

Costs of
award

(2) The taxing officer may tax a reasonable sum for preparing the award.

Appeal from
taxation

(3) An appeal may be had from such taxation in the same manner as from a taxing officer's certificate of taxation in an action.

Power to
reduce fees

(4) The taxing officer and the judge upon appeal from taxation have the power to reduce fees payable to the arbitrator and to counsel and solicitors where the arbitration has been unduly prolonged. R.S.O. 1970, c. 25, s. 22 (2-4).

Penalty for
arbitrator
attempting
to exact
excessive
fees

23. An arbitrator who, after having entered upon the reference, refuses or delays after the expiration of one month from the publication of the award to deliver it until a larger sum is paid to him for his fees than is permitted by this Act, or who receives for his award or for his fees as arbitrator any such larger sum, shall forfeit and pay to the party who has demanded delivery of the award or who has paid to the arbitrator such larger sum in order to obtain, or as a consideration for having obtained it, treble the excess so demanded or received by the arbitrator contrary to this Act, to be recovered by action in a court of competent jurisdiction. R.S.O. 1970, c. 25, s. 23.

Arbitrator
to have
action
for fees

24. Where an award has been made, the arbitrator may maintain an action for his fees after they have been taxed, and in the absence of an express agreement to the contrary, he may maintain such action against all the parties to the reference, jointly or severally. R.S.O. 1970, c. 25, s. 24.

Order to
sheriff to
produce
prisoner as
witness

25. A judge may order the sheriff, jailer or other officer having the custody of a prisoner to produce him for examination before an arbitrator or an umpire. R.S.O. 1970, c. 25, s. 25.

Case stated
for opinion of
Divisional
Court

26. An arbitrator or an umpire may at any stage of the proceedings and shall, if so directed by the Divisional Court, state in the form of a special case for the opinion of the Divisional Court any question of law arising in the course of the reference, and an arbitrator or umpire appointed under the authority of a statute or

by a court shall, when so directed by the Divisional Court, state the reasons for his decision and his findings of fact and of law. R.S.O. 1970, c. 25, s. 26.

27. An 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.O. 1970, c. 25, s. 27. Costs in discretion of court

28. An arbitrator or an umpire, where no special reason appears to him to exist for filing an original book, paper or document as an exhibit, as hereinbefore provided, may allow a copy thereof or of such part thereof as he considers material to be substituted as an exhibit in the place of the original book, paper or document. R.S.O. 1970, c. 25, s. 28. Dispensing with filing original exhibits

29. Upon an appeal from or motion to set aside an award, any party may by notice require any other party to produce, and the party so required shall produce upon the hearing of the appeal or motion, any original book, paper or document in his possession that has been used as an exhibit or given in evidence upon the reference and that has not been filed with the depositions. R.S.O. 1970, c. 25, s. 29. Production of exhibits on appeal or motion to set aside award

30.—(1) Except by leave of the court, an application to set aside an award, otherwise than by way of appeal, shall not be made after six weeks from the publication of the award. Time for moving to set aside

(2) Such leave may be granted before or after the expiration of the six weeks. Time within which leave may be granted

(3) In the computation of time for appealing against, or applying to set aside, an award, the vacations shall not be reckoned. Vacations not reckoned

(4) When an award is set aside, the court setting it aside may give directions as to the costs of the reference and award. R.S.O. 1970, c. 25, s. 30. Costs of reference and award when award set aside

31.—(1) Subject to the approval of the Lieutenant Governor in Council, rules of court for the better carrying out of the purposes of this Act and regulating the practice thereunder may be made by the Rules Committee. R.S.O. 1970, c. 25, s. 31. Power to make rules

(2) The Lieutenant Governor in Council may make regulations prescribing the maximum and minimum fees chargeable by arbitrators under this Act in default of agreement. 1973, c. 28, s. 4; 1976, c. 5, s. 2. Fees

Appoint-
ment of
valuator, etc.

32.—(1) A judge has power to appoint a valuator, valuer or appraiser in cases in which it is provided by a written agreement that a valuation or appraisal shall be made by a valuator, valuer or appraiser.

Exercise
of power

(2) The power may be exercised in the like cases and the proceedings shall be the same as provided by section 8, except that the court does not have power, without the consent of the parties, to appoint a valuator, valuer or appraiser in the place of the one who is named in the agreement and who refuses to act, is incapable of acting or dies. R.S.O. 1970, c. 25, s. 32.

SCHEDULE

(Section 5)

PROVISIONS TO BE IMPLIED IN SUBMISSIONS

1. If no other mode of reference is provided, the reference is to a single arbitrator.

2. 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.

3. If an arbitrator or umpire or third arbitrator refuses to act or is incapable of acting or dies, the party or parties, or the arbitrators by whom he was appointed, may appoint an arbitrator, umpire or third arbitrator, as the case may be, in his stead, and this power may be exercised from time to time as vacancies occur.

4. The submission is not revoked by the death of the parties or either of them.

5. The award shall be delivered to any of the parties requiring it, and the personal representatives of a party deceased may require delivery of the award.

6. 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 date to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

7. 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.

8. 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 day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

9. 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 in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings, documents and things within their possession or power respectively that may be required or called for, and do all other things during the proceedings on the reference that the arbitrators or umpire require.

10. The witnesses on the reference shall be examined on oath.

11. The award to be made by the arbitrators or by a majority of them or by the umpire is final and binding on all the parties and the persons claiming under them respectively.

12. The costs of the reference and award are in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid.

