

1937

c 280 Municipal Arbitrations Act

Ontario

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CHAPTER 280.

The Municipal Arbitrations Act.

1.—(1) All claims against the corporation of a city having a population of not less than 100,000, and all claims made jointly against such corporation and the corporation of an adjoining municipality for compensation or damages for land expropriated or injuriously affected under *The Municipal Act*, and all other claims and questions arising under any lease or other contract to which the corporation is a party, and which by law or by the terms of the lease or contract are to be determined by arbitration, shall be heard and determined by an official referee appointed by the Lieutenant-Governor in Council and who shall be called the "Official Arbitrator." R.S.O. 1927, c. 242, s. 1 (1).

(2) The Official Arbitrator shall,—

- (a) be a judge of a county court or a barrister of at least ten years' standing at the Bar of Ontario; Powers, etc.
of Official
Arbitrator.
Qualification.
- (b) have all the powers of an official referee under *The Judicature Act* and of an arbitrator under *The Municipal Act* or under *The Arbitration Act*; Powers.
Rev. Stat.,
cc. 100, 266,
109.
- (c) be an officer of the Supreme Court; Status.
- (d) not act as solicitor or counsel for or against the corporation or for any other municipal corporation; Disability.
- (e) have all the powers of a judge of the Supreme Court including those relating to the production of books and papers, the amendment of notices for compensation or damage and of all other notices and proceedings, the rectification of errors or omissions, the time and place of taking examinations and views, the assistance of valuers, appraisers, engineers, surveyors or other experts, and as respects all matters incident to the hearing and determination of matters before him or proper for doing complete justice therein between the parties, including the power of awarding costs. R.S.O. 1927, c. 242, s. 1 (2); 1928, c. 40, s. 1; 1935, c. 44, s. 2. Other
powers.

Vacancy.

2.—(1) The death of the Official Arbitrator or his ceasing to hold office from any cause pending a reference before him, before his award is made, shall not abate the proceedings, but such reference shall be continued and all proceedings therein already taken shall be adopted, and an award made therein by his successor in office.

Deputy
Official
Arbitrator.

(2) The Lieutenant-Governor in Council may appoint a Deputy Official Arbitrator and, in case of the illness or absence or inability to act of the Official Arbitrator and during a vacancy in the office, the Deputy Official Arbitrator shall have all the powers and perform all the duties of the Official Arbitrator.

Death of
claimant.

(3) The death of the claimant pending a reference before the Official Arbitrator shall not abate or determine the proceedings already taken before him, but such proceedings already taken may be continued by or against the legal representatives of the deceased, or by or against the person or persons upon whom the estate or interests of the deceased devolves. R.S.O. 1927, c. 242, s. 2.

Commence-
ment of pro-
ceedings.

3. If any person interested in any such claim or question desires that the same should be determined by the Official Arbitrator, he shall give to the clerk of the municipality and to every other person interested seven clear days' notice that the same is so referred, specifying therein the nature of the claim or question to be determined, and the amount in controversy, and upon such notice, with proof of the service of it, being filed with him, the Official Arbitrator may proceed to hear and determine the matters so referred to him. R.S.O. 1927, c. 242, s. 3.

When
Official
Arbitrator
to state
reasons in
writing.

4. Where the Official Arbitrator proceeds partly on view or upon any special knowledge or skill possessed by himself he shall put in writing as part of his reasons a statement of such matter sufficiently full to allow the Court of Appeal to determine the weight which should be attached to it. R.S.O. 1927, c. 242, s. 4.

Filing
award.

5. The award of the Official Arbitrator and exhibits and the reasons of his decision, shall be filed in the office of the registrar of the Court of Appeal, and notice of the filing shall forthwith be given by the Official Arbitrator to the parties who appeared or were represented upon the reference or to their solicitors, and upon the request of any of the parties interested in the inquiry, the notes taken by the shorthand writer, if any, shall be extended by him and, upon payment of his proper fees

therefor, shall be filed with the registrar. R.S.O. 1927, c. 242, s. 5; 1928, c. 40, s. 2. Extending notes of evidence.

6. The award when so filed shall not be made public until all the fees payable to the Official Arbitrator have been paid to him. R.S.O. 1927, c. 242, s. 6. Fees to be paid before award made public.

7. The award may be appealed against to the Court of Appeal in the same manner as the decision of a judge of the Supreme Court sitting in Court is appealed from, and subject to section 357 of *The Municipal Act*, shall be binding and conclusive upon all parties to the reference unless appealed from within six weeks after notice that it has been filed. R.S.O. 1927, c. 242, s. 7. Appeal to Court of Appeal. Rev. Stat., c. 266.

8. The time of any vacation of the Supreme Court shall not be reckoned in the computation of the time for doing any act or taking any proceeding in relation to the appeal. R.S.O. 1927, c. 242, s. 8. Vacation.

9. Where no appeal is taken within the prescribed time, or when an appeal has been disposed of, the exhibits may be delivered out to the parties entitled to them. R.S.O. 1927, c. 242, s. 9. Giving out exhibits when no appeal.

10. Where an action has been brought or is pending, the court or a judge thereof, if of opinion that the relief sought is properly the subject of a proceeding under this Act, on the application of either party, or otherwise, may at any stage of the action order it to be transferred to the Official Arbitrator on such terms as to costs and otherwise as may be deemed proper, and the Official Arbitrator shall thereupon give such directions as to the prosecution of the claim before him as he may deem just and convenient, and subject to the provisions, if any, in respect thereto in the order of transfer, the costs of the action shall be in his discretion. R.S.O. 1927, c. 242, s. 10. Transferring actions to Arbitrator.

11. Costs awarded by the Official Arbitrator shall be taxed by one of the taxing officers of the Supreme Court, and shall be taxed upon such scale and be payable to such parties as may be determined by the Official Arbitrator. R.S.O. 1927, c. 242, s. 11. How costs to be taxed.

12.—(1) The Official Arbitrator shall be entitled to be paid for his services while sitting upon any arbitration at the rate of \$30 per day, or a proportionate part thereof where a sittings upon any one day occupies less than a whole day, Fees.

and for a meeting, at which the reference is not proceeded with but a postponement is made at the request of any party, \$10. R.S.O. 1927, c. 242, s. 12 (1); 1928, c. 40, s. 3.

By whom payable.

(2) One-half of such fees shall be payable by each of the parties to the reference if only two parties are interested, and proportionately by all parties interested if a larger number than two are so interested; but the Official Arbitrator shall have power to award that any sum so paid or payable may be recoverable by any one or more of the parties from any other or others of them, and such fees shall be recoverable as any other costs of the arbitration.

Recovery of fees.

(3) If the award is not taken up within thirty days after service upon the parties of the notice of filing thereof, the fees and expenses of the Official Arbitrator shall be recoverable by action from any one or more of the parties to the arbitration.

Idem.

(4) Nothing herein shall prejudicially affect the right of the Official Arbitrator to recover his fees or expenses in any way in which they may now be recovered. R.S.O. 1927, c. 242, s. 12 (2-4).

Appointment of assessor.

13.—(1) The Lieutenant-Governor in Council may appoint for such municipality an assessor of sound judgment, experience and knowledge in and as to matters relating to real property within the municipality to sit with the Official Arbitrator,—

In what cases to be called in.

(2) The assessor shall be called upon by the Official Arbitrator,—

- (a) upon the request of all the parties to an arbitration, and at any stage of the proceedings; or
- (b) where the Official Arbitrator desires his advice and assistance, and no party to the proceedings objects thereto, at the time he is so called upon.

Function of assessor.

(3) The assessor shall not make or join in the award, but shall otherwise give the Official Arbitrator such assistance as he may require.

Assessor's fee.

(4) The assessor shall be entitled for his services while sitting on an arbitration to be paid at the rate of \$10 per day, or a proportionate part thereof where a sitting on any one day occupies less than a whole day, and for a meeting where the reference is not proceeded with but a postponement is made at the request of any party, \$2.

How payable.

(5) The fees of the assessor shall be payable by the same parties and in the same proportion and manner and shall be recoverable in the same way as those of the arbitrator, and

shall be treated in all respects in the same manner as the fees of the arbitrator as to the ultimate payment thereof and as to the manner of such payment. R.S.O. 1927, c. 242, s. 13.

14. The judges of the Supreme Court shall have the same power to make rules with respect to matters and proceedings under this Act and tariffs of fees as they have in respect to proceedings under *The Judicature Act*. R.S.O. 1927, c. 242, s. 14. Power to make rules and tariff. Rev. Stat., c. 100.

15.—(1) This Act shall extend and apply to the County of York and to the Township of York, and to any municipality the council of which by by-law declares that it is desirable that the municipality shall be brought within the provisions of this Act, and in such case this Act shall be read as though it had been expressly applied to such municipality by the terms thereof. Application of Act.

(2) Where the council of any such municipality has by by-law so declared, or shall hereafter so declare, an official arbitrator may be appointed for such municipality by the Lieutenant-Governor in Council, and he shall have and may exercise within such municipality all the powers conferred upon the Official Arbitrator by this Act. Appointment in such cases.

(3) The council of a municipality which has passed a by-law under subsection 1 may repeal it at any time after the expiration of six months from the passing of the by-law, and upon such repeal this Act shall cease to apply or be in force in such municipality. R.S.O. 1927, c. 242, s. 15. Repeal of by-law bringing Act into force.