

ACERIS LAW LLC

International Arbitration Laws in New Brunswick, Canada

1. International Commercial Arbitration Act, RSNB 2011, c 176 p. 2
2. Arbitration Act, RSNB 2014, c 100 p. 21

International Commercial Arbitration Act, RSNB 2011, c 176

This statute replaces SNB 1986, c I-12.2.

Current version: in force since 2023-06-16

Link to the latest version ⓘ: <https://canlii.ca/t/8pwd>

Stable link to this version ⓘ: <https://canlii.ca/t/5644j>

Citation to this version: International Commercial Arbitration Act, RSNB 2011, c 176, <<https://canlii.ca/t/5644j>> retrieved on 2025-07-03

Currency: This statute is current to 2024-01-01 according to the [New Brunswick Acts and Regulations Web site](#)

2011, c.176

International Commercial Arbitration Act

Deposited May 13, 2011

Definitions

1 The following definitions apply in this Act.

“Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration in New York on June 10, 1958, as set out in Schedule A. (*Convention*)

“International Law” means the Model Law On International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on June 21, 1985, as set out in Schedule B. (*Loi internationale*)

1986, c.I-12.2, s.1(1)

Corresponding words and expressions in the Convention and International Law

2 Words and expressions used in this Act have the same meaning as the corresponding words and expressions in the Convention and the International Law, as the case may be.

1986, c.I-12.2, s.1(2)

FOREIGN ARBITRAL AWARDS

Application of Convention

3(1) Subject to this Act, the Convention applies in New Brunswick.

3(2) The Convention applies to arbitral awards and arbitration agreements, whether made before or after the coming into force of this Part, but applies only in respect of differences arising out of commercial legal relationships, whether contractual or not.

1986, c.I-12.2, s.2

Court to which application is made for recognition

4 For the purpose of seeking recognition of an arbitral award under the Convention, application shall be made to The Court of King's Bench of New Brunswick.

1986, c.I-12.2, s.3; [2023, c.17, s.121](#)

2

INTERNATIONAL COMMERCIAL ARBITRATION

Application of International Law

5(1) Subject to this Act, the International Law applies in New Brunswick.

5(2) The International Law applies to international commercial arbitration agreements and awards, whether made before or after the coming into force of this Part.

1986, c.I-12.2, s.4

Employment of mediation, conciliation or other procedures

6 For the purpose of encouraging settlement of a dispute, an arbitral tribunal, with the agreement of the parties, may employ mediation, conciliation or other procedures at any time during the arbitration proceedings and, with the agreement of the parties, the members of the arbitral tribunal are not disqualified from resuming their roles as arbitrators by reason of the mediation, conciliation or other procedure.

1986, c.I-12.2, s.5

Replacement or removal of arbitrator

7(1) Unless the parties otherwise agree, if an arbitrator is replaced or removed in accordance with the International Law, a hearing held before the replacement or removal shall be repeated.

7(2) With respect to [article 15](#) of the International Law, the parties may remove an arbitrator at any time before the final award, regardless of how the arbitrator was appointed.

1986, c.I-12.2, s.6

Applicable rules of law

8 Despite article 28(2) of the International Law, if the parties fail to make a designation under article 28(1) of the International Law, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances respecting the dispute.

1986, c.I-12.2, s.7

Consolidation or stay of proceedings

9(1) On application of the parties to two or more arbitration proceedings, The Court of King's Bench of New Brunswick may order

- (a) the arbitration proceedings to be consolidated on terms it considers just;

(b) the arbitration proceedings to be heard at the same time, or one immediately after another;

(c) any of the arbitration proceedings to be stayed until after the determination of any other of them.

9(2) When the Court orders arbitration proceedings to be consolidated under paragraph (1)(a) and all the parties to the consolidated arbitration proceedings are in agreement as to the choice of the arbitral tribunal for that arbitration proceeding, the arbitral tribunal shall be appointed by the Court, but if all the parties cannot agree, the Court may appoint the arbitral tribunal for that arbitration proceeding.

9(3) Nothing in this section shall be construed as preventing the parties to two or more arbitration proceedings from agreeing to consolidate those arbitration proceedings and taking the steps that are necessary to effect that consolidation.

1986, c.I-12.2, s.8; [2023, c.17, s.121](#)

Functions of The Court of King's Bench of New Brunswick

[2023, c.17, s.121](#)

10(1) The functions referred to in [article 6](#) of the International Law shall be performed by The Court of King's Bench of New Brunswick.

10(2) For the purposes of the International Law, a reference to "court" or "competent court", if in the context it means a court in New Brunswick, means The Court of King's Bench of New Brunswick except if the context otherwise requires.

1986, c.I-12.2, s.9; [2023, c.17, s.121](#)

3

GENERAL

Stay of court proceedings

11 When, under article II(3) of the Convention or [article 8](#) of the International Law, a court refers the parties to arbitration, the proceedings of the court are stayed with respect to the matters to which the arbitration relates.

1986, c.I-12.2, s.10

This Act binds the Crown

12(1) This Act binds the Crown.

12(2) An award recognized under this Act is enforceable against the Crown in the same manner and to the same extent as a judgment is enforceable against the Crown.

1986, c.I-12.2, s.11

Interpretation of Act

13(1) This Act shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Act in their context and in the light of its objects and purposes.

13(2) In applying subsection (1) to the International Law, recourse may be had to the following documents:

(a) the Report of the United Nations Commission on International Trade Law on the work of its 18th session (June 3 -21, 1985); and

(b) the International Commercial Arbitration Commentary on Draft Text of a Model Law on International Commercial Arbitration.

1986, c.I-12.2, s.12; 2023, c.17, s.121

Application of the Rules of Court

14 Except where they may be in conflict with the provisions of this Act or the regulations, the Rules of Court under the *Judicature Act* apply for the purposes of this Act.

1986, c.I-12.2, s.14

Regulations

15 The Lieutenant-Governor in Council may make regulations

(a) prescribing rules of court and forms respecting practice and procedure in relation to matters within the jurisdiction of the court under this Act;

(b) generally respecting the operation of this Act.

1986, c.I-12.2, s.13

SCHEDULE A

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term “arbitral awards” shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term “agreement in writing” shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

- a) The duly authenticated original award or a duly certified copy thereof;
- b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

- a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

- a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;
- b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;
- c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.
2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

- a) Signatures and ratifications in accordance with article VIII;
- b) Accessions in accordance with article IX;
- c) Declarations and notifications under articles I, X and XI;
- d) The date upon which this Convention enters into force in accordance with article XII;
- e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

1986, c.I-12.2, Schedule A

SCHEDULE B

UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION (As adopted by the United Nations Commission on International Trade Law on 21 June 1985)

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application

(1) This Law applies to international commercial arbitration, subject to any agreement in force between this State and any other State or States.

(2) The provisions of this Law, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(3) An arbitration is international if:

- (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
 - (b) one of the following places is situated outside the State in which the parties have their places of business:
 - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
 - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
 - (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.
- (4) For the purposes of paragraph (3) of this article:
- (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;
 - (b) if a party does not have a place of business, reference is to be made to his habitual residence.
- (5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

- (a) “arbitration” means any arbitration whether or not administered by a permanent arbitral institution;
- (b) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators;
- (c) “court” means a body or organ of the judicial system of a State;
- (d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this Law, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 3. Receipt of written communications

- (1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

Article 4. Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

Article 5. Extent of court intervention

In matters governed by this Law, no court shall intervene except where so provided in this Law.

Article 6. Court or other authority for certain functions of arbitration assistance and supervision

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by The Court of King's Bench of New Brunswick.

CHAPTER II. ARBITRATION AGREEMENT

Article 7. Definition and form of arbitration agreement

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 8. Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of arbitrators

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.
- (3) Failing such agreement,
 - (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in [article 6](#);
 - (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in [article 6](#).
- (4) Where, under an appointment procedure agreed upon by the parties,
 - (a) a party fails to act as required under such procedure, or
 - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or
 - (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in [article 6](#) to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

- (5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in [article 6](#) shall be subject to no appeal. The court or other authority,

in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. Grounds for challenge

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. Challenge procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in [article 12\(2\)](#), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in [article 6](#) to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14. Failure or impossibility to act

(1) If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in [article 6](#) to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or [article 13\(2\)](#), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or [article 12\(2\)](#).

Article 15. Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under [article 13](#) or [14](#) or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in [article 6](#) to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Article 17. Power of arbitral tribunal to order interim measures

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21. Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 23. Statements of claim and defence

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24. Hearings and written proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 25. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause,

- (a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. Expert appointed by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal

- (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
- (b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28. Rules applicable to substance of dispute

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.
- (2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 29. Decision making by panel of arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Article 30. Settlement

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31. Form and contents of award

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. Termination of proceedings

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

Article 33. Correction and interpretation of award; additional award

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in [article 6](#) only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in [article 7](#) was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in [article 7](#) or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in [article 7](#) was under some incapacity; or the said agreement is not valid under the law to which the parties have

subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

1986, c.I-12.2, Schedule B; [2023, c.17, s.121](#)

N.B. This Act was proclaimed and came into force September 1, 2011.

N.B. This Act is consolidated to June 16, 2023.

Arbitration Act, RSNB 2014, c 100

This statute replaces SNB 1992, c A-10.1.

Current version: in force since 2023-06-16

Link to the latest version ⓘ: <https://canlii.ca/t/8tnm>

Stable link to this version ⓘ: <https://canlii.ca/t/563wt>

Citation to this version: Arbitration Act, RSNB 2014, c 100, <<https://canlii.ca/t/563wt>> retrieved on 2025-07-03

Currency: This statute is current to 2024-01-01 according to the [New Brunswick Acts and Regulations Web site](#)

2014, c.100

Arbitration Act

Deposited December 30, 2014

INTRODUCTORY MATTERS

Definitions

1 The following definitions apply in this Act.

“arbitration agreement” means an agreement by which two or more persons agree to submit to arbitration a dispute that has arisen or may arise between them. (*convention d’arbitrage*)

“arbitrator” includes an umpire. (*arbitre*)

“court” , except in [sections 6](#) and [7](#), means The Court of King’s Bench of New Brunswick. (*cour*)

1992, c.A-10.1, s.1; [2023, c.17, s.8](#)

Application

2(1) This Act applies to an arbitration conducted under an arbitration agreement unless

- (a) the application of this Act is excluded by the agreement or by law, or
- (b) Part 2 of the [International Commercial Arbitration Act](#) applies to the arbitration.

2(2) This Act applies with the necessary modifications to an arbitration conducted in accordance with another Act, unless that Act provides otherwise; however, in the event of conflict between this Act and the other Act or regulations made under the other Act, the other Act or the regulations prevail.

1992, c.A-10.1, s.2

Contracting out

3 The parties to an arbitration agreement may agree, expressly or by implication, to vary or exclude any provision of this Act except the following:

- (a) subsection 5(4);
- (b) section 19;
- (c) section 39;
- (d) subsection 45(1);
- (e) section 46;
- (f) section 48; and
- (g) section 50.

1992, c.A-10.1, s.3

Waiver of right to object

4 A party who participates in an arbitration despite being aware of non-compliance with a provision of this Act, except one mentioned in section 3, or with the arbitration agreement, and does not object to the non-compliance within the time limit provided or, if none is provided, within a reasonable time, shall be deemed to have waived the right to object.

1992, c.A-10.1, s.4

Arbitration agreement

5(1) An arbitration agreement may be an independent agreement or part of another agreement.

5(2) If the parties to an arbitration agreement make a further agreement in connection with the arbitration, it shall be deemed to form part of the arbitration agreement.

5(3) An arbitration agreement need not be in writing.

5(4) An agreement requiring or having the effect of requiring that a matter be adjudicated by arbitration before it may be dealt with by a court has the same effect as an arbitration agreement.

5(5) An arbitration agreement may be revoked only in accordance with the ordinary rules of contract law.

1992, c.A-10.1, s.5

COURT INTERVENTION

Limitation on court intervention

6 No court shall intervene in matters governed by this Act, except as this Act provides.

1992, c.A-10.1, s.6

Stay of proceeding

7(1) If a party to an arbitration agreement commences a proceeding in respect of a matter to be submitted to arbitration under the agreement, the court in which the proceeding is commenced shall, on the motion of another party to the arbitration agreement, stay the proceeding.

7(2) Despite subsection (1), the court may refuse to stay the proceeding in any of the following cases:

- (a) a party entered into the arbitration agreement while under a legal incapacity;
- (b) the arbitration agreement is invalid;
- (c) the subject matter of the dispute is not capable of being the subject of arbitration under New Brunswick law;
- (d) the motion was brought with undue delay; or
- (e) the matter is a proper one for default or summary judgment.

7(3) An arbitration of the dispute may be commenced and continued while the motion is before the court.

7(4) If the court refuses to stay the proceeding

- (a) no arbitration of the dispute shall be commenced, and
- (b) an arbitration that has been commenced shall not be continued, and anything done in connection with the arbitration before the court made its decision is without effect.

7(5) The court may stay the proceeding with respect to the matters dealt with in the arbitration agreement and allow it to continue with respect to other matters if it finds that

- (a) the agreement deals with only some of the matters in respect of which the proceeding was commenced, and
- (b) it is reasonable to separate the matters dealt with in the agreement from the other matters.

7(6) There is no appeal from the court's decision.

1992, c.A-10.1, s.7

Powers of court

8(1) The court's powers with respect to the detention, preservation and inspection of property, interim injunctions and the appointment of receivers are the same in arbitrations as in court actions.

8(2) The arbitral tribunal may determine any question of law that arises during the arbitration; the court may do so on the application of the arbitral tribunal, or on a party's application if the other parties or the arbitral tribunal consent.

8(3) Despite [subsection 8\(3\)](#) of the *Judicature Act*, the court's determination of a question of law may be appealed to The Court of Appeal of New Brunswick, with leave of The Court of Appeal of New Brunswick.

8(4) On the application of all the parties to more than one arbitration the court may order, on such terms as are just,

- (a) that the arbitrations be consolidated,

- (b) that the arbitrations be conducted simultaneously or consecutively, or
- (c) that any of the arbitrations be stayed until any of the others are completed.

8(5) When the court orders that arbitrations be consolidated, it may appoint an arbitral tribunal for the consolidated arbitration; if all the parties agree as to the choice of arbitral tribunal, the court shall appoint it.

8(6) Subsection (4) does not prevent the parties to more than one arbitration from agreeing to consolidate the arbitrations and doing everything necessary to effect the consolidation.

1992, c.A-10.1, s.8

COMPOSITION OF ARBITRAL TRIBUNAL

Arbitral tribunal

9 If the arbitration agreement does not specify the number of arbitrators who are to form the arbitral tribunal, it shall be composed of one arbitrator.

1992, c.A-10.1, s.9

Appointment of arbitral tribunal

10(1) The court may appoint the arbitral tribunal, on a party's application, if

- (a) the arbitration agreement provides no procedure for appointing the arbitral tribunal, or
- (b) a person with power to appoint the arbitral tribunal has not done so after a party has given the person seven days' notice to do so.

10(2) There is no appeal from the court's appointment of the arbitral tribunal.

10(3) Subsections (1) and (2) apply with the necessary modifications to the appointment of individual members of arbitral tribunals that are composed of more than one arbitrator.

10(4) If the arbitral tribunal is composed of three or more arbitrators, they shall elect a chair from among themselves; if it is composed of two arbitrators, they may do so.

1992, c.A-10.1, s.10

Duty of arbitrator

11(1) An arbitrator shall be independent of the parties and shall act impartially.

11(2) Before accepting an appointment as arbitrator, a person shall disclose to all parties to the arbitration any circumstances of which he or she is aware that may give rise to a reasonable apprehension of bias.

11(3) An arbitrator who, during an arbitration, becomes aware of circumstances that may give rise to a reasonable apprehension of bias shall promptly disclose them to all the parties.

1992, c.A-10.1, s.11

No revocation of arbitrator

12 A party may not revoke the appointment of an arbitrator.

1992, c.A-10.1, s.12

Challenge of arbitrator

13(1) A party may challenge an arbitrator only on one of the following grounds:

- (a) circumstances exist that may give rise to a reasonable apprehension of bias; or
- (b) the arbitrator does not possess qualifications that the parties have agreed are necessary.

13(2) A party who appointed an arbitrator or participated in his or her appointment may challenge the arbitrator only for grounds of which the party was unaware at the time of the appointment.

13(3) A party who wishes to challenge an arbitrator shall send the arbitral tribunal a statement of the grounds for the challenge within 15 days after becoming aware of them.

13(4) The other parties may agree to remove the challenged arbitrator, or the arbitrator may resign.

13(5) If the challenged arbitrator is not removed by the parties and does not resign, the arbitral tribunal, including the challenged arbitrator, shall decide the issue and shall notify the parties of its decision.

13(6) Within ten days after being notified of the arbitral tribunal's decision, a party may make an application to the court to decide the issue and, in the case of the challenging party, to remove the arbitrator.

13(7) While an application is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitration and make an award, unless the court orders otherwise.

1992, c.A-10.1, s.13

Termination of arbitrator's mandate

14(1) An arbitrator's mandate terminates when

- (a) the arbitrator resigns or dies,
- (b) the parties agree to terminate it,
- (c) the arbitral tribunal upholds a challenge to the arbitrator, ten days elapse after all the parties are notified of the decision and no application is made to the court, or
- (d) the court removes the arbitrator under [subsection 15\(1\)](#).

14(2) An arbitrator's resignation or a party's agreement to terminate an arbitrator's mandate does not imply acceptance of the validity of any reason advanced for challenging or removing him or her.

1992, c.A-10.1, s.14

Removal of arbitrator by court

15(1) The court may remove an arbitrator on a party's application under [subsection 13\(6\)](#), or may do so on a party's application if the arbitrator becomes unable to perform his or her functions, commits a corrupt or fraudulent act, delays unduly in conducting the arbitration or does not conduct it in accordance with [section 19](#).

15(2) The arbitrator is entitled to be heard by the court if the application is based on an allegation that he or she committed a corrupt or fraudulent act or delayed unduly in conducting the arbitration.

15(3) When the court removes an arbitrator, it may give directions about the conduct of the arbitration.

15(4) If the court removes an arbitrator for a corrupt or fraudulent act or for undue delay, it may order that the arbitrator receive no payment for his or her services and may order that he or she compensate the parties for all or part of the costs, as determined by the court, that they incurred in connection with the arbitration before his or her removal.

15(5) Despite [subsection 8\(3\)](#) of the *Judicature Act*, the arbitrator or a party may, within 30 days after receiving the court's decision, appeal an order made under subsection (4) or the refusal to make such an order to The Court of Appeal of New Brunswick, with leave of The Court of Appeal of New Brunswick.

15(6) Except as provided in subsection (5), there is no appeal from the court's decision or from its directions.

1992, c.A-10.1, s.15

Appointment of substitute arbitrator

16(1) When an arbitrator's mandate terminates, a substitute arbitrator shall be appointed, following the procedure that was used in the appointment of the arbitrator being replaced.

16(2) When an arbitrator's mandate terminates, the court may, on a party's application, give directions about the conduct of the arbitration.

16(3) The court may appoint the substitute arbitrator on a party's application if

- (a) the arbitration agreement provides no procedure for appointing the substitute arbitrator, or
- (b) a person with power to appoint the substitute arbitrator has not done so after a party has given the person seven days' notice to do so.

16(4) There is no appeal from the court's decision or from its directions.

16(5) This section does not apply if the arbitration agreement provides that the arbitration is to be conducted only by a named arbitrator.

1992, c.A-10.1, s.16

JURISDICTION OF ARBITRAL TRIBUNAL

Objections to jurisdiction of arbitral tribunal

17(1) An arbitral tribunal may rule on its own jurisdiction to conduct the arbitration and may in that connection rule on objections with respect to the existence or validity of the arbitration agreement.

17(2) If the arbitration agreement forms part of another agreement, it shall, for the purposes of a ruling on jurisdiction, be treated as an independent agreement that may survive even if the

main agreement is found to be invalid.

17(3) A party who has an objection to the arbitral tribunal's jurisdiction to conduct the arbitration shall make the objection no later than the beginning of the hearing or, if there is no hearing, no later than the first occasion on which the party submits a statement to the tribunal.

17(4) The fact that a party has appointed or participated in the appointment of an arbitrator does not prevent the party from making an objection to jurisdiction.

17(5) A party who has an objection that the arbitral tribunal is exceeding its authority shall make the objection as soon as the matter alleged to be beyond the tribunal's authority is raised during the arbitration.

17(6) Despite [section 4](#), if the arbitral tribunal considers the delay justified, a party may make an objection after the time limit referred to in subsection (3) or (5), as the case may be, has expired.

17(7) The arbitral tribunal may rule on an objection as a preliminary question or may deal with it in an award.

17(8) If the arbitral tribunal rules on an objection as a preliminary question, a party may within 30 days after receiving notice of the ruling make an application to the court to decide the matter.

17(9) There is no appeal from the court's decision.

17(10) While an application is pending, the arbitral tribunal may continue the arbitration and make an award.

1992, c.A-10.1, s.17

Detention, preservation and inspection of property and documents

18(1) On a party's request, an arbitral tribunal may make an order for the detention, preservation or inspection of property and documents that are the subject of the arbitration or as to which a question may arise in the arbitration, and may order a party to provide security in that connection.

18(2) The court may enforce the direction of an arbitral tribunal as if it were a similar direction made by the court in an action.

1992, c.A-10.1, s.18

CONDUCT OF ARBITRATION

Equality and fairness in conduct of arbitration

19(1) In an arbitration, the parties shall be treated equally and fairly.

19(2) Each party shall be given an opportunity to present a case and to respond to the other parties' cases.

1992, c.A-10.1, s.19

Procedure of arbitration

20(1) The arbitral tribunal may determine the procedure to be followed in the arbitration, in accordance with this Act.

20(2) An arbitral tribunal that is composed of more than one arbitrator may delegate the determination of questions of procedure to the chair.

1992, c.A-10.1, s.20

Evidence in arbitration

21(1) In an arbitration, the arbitral tribunal shall admit all evidence that would be admissible in a court and may admit other evidence that it considers relevant to the issues in dispute.

21(2) The arbitral tribunal may determine the manner in which evidence is to be admitted.

1992, c.A-10.1, s.21

Time, date and place of arbitration

22(1) The arbitral tribunal shall determine the time, date and place of arbitration, taking into consideration the parties' convenience and the other circumstances of the case.

22(2) The arbitral tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or parties, or for inspecting property or documents.

1992, c.A-10.1, s.22

Commencement of arbitration

23(1) An arbitration may be commenced in any way recognized by law, including the following:

- (a) a party to an arbitration agreement serves on the other parties notice to appoint or to participate in the appointment of an arbitrator under the agreement;
- (b) if the arbitration agreement gives a person who is not a party power to appoint an arbitrator, one party serves notice to exercise that power on the person and serves a copy of the notice on the other parties; or
- (c) a party serves on the other parties a notice demanding arbitration under the agreement.

23(2) The arbitral tribunal may exercise its powers when every member has accepted appointment.

1992, c.A-10.1, s.23

Matters referred to arbitration

24 A notice that commences an arbitration without identifying the dispute shall be deemed to refer to arbitration all disputes that the arbitration agreement entitles the party giving the notice to refer.

1992, c.A-10.1, s.24

Procedural directions

25(1) An arbitral tribunal may require that the parties submit their statements within a specified period of time.

25(2) The parties' statements shall indicate the facts supporting their positions, the points at issue and the relief sought.

25(3) The parties may submit with their statements the documents they consider relevant, or may refer to the documents or other evidence they intend to submit.

25(4) The parties may amend or supplement their statements during the arbitration; however, the arbitral tribunal may disallow a change that is unduly delayed.

25(5) With the arbitral tribunal's permission, the parties may submit their statements orally.

25(6) The parties and persons claiming through or under them shall, subject to any legal objection, comply with the arbitral tribunal's directions, including directions to

- (a) submit to examination on oath or affirmation with respect to the dispute, or
- (b) produce records and documents that are in their possession or power.

25(7) The court may enforce the direction of an arbitral tribunal as if it were a similar direction made by the court in an action.

1992, c.A-10.1, s.25

Hearings and written proceedings

26(1) The arbitral tribunal may conduct the arbitration on the basis of documents or may hold hearings for the presentation of evidence and for oral argument; however, the tribunal shall hold a hearing if a party requests it.

26(2) The arbitral tribunal shall give the parties sufficient notice of hearings and of meetings of the tribunal for the purpose of inspection of property or documents.

26(3) A party who submits a statement to the arbitral tribunal or supplies the tribunal with any other information shall also communicate it to the other parties.

26(4) The arbitral tribunal shall communicate to the parties any expert reports or other documents on which it may rely in making a decision.

1992, c.A-10.1, s.26

Default

27(1) If the party who commenced the arbitration does not submit a statement within the period of time specified under [subsection 25\(1\)](#), the arbitral tribunal may, unless the party offers a satisfactory explanation, make an award dismissing the claim.

27(2) If a party other than the one who commenced the arbitration does not submit a statement within the period of time specified under [subsection 25\(1\)](#), the arbitral tribunal may, unless the party offers a satisfactory explanation, continue the arbitration, but shall not treat the failure to submit a statement as an admission of another party's allegations.

27(3) If a party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may, unless the party offers a satisfactory explanation, continue the arbitration and make an award on the evidence before it.

27(4) In the case of delay by the party who commenced the arbitration, the arbitral tribunal may make an award dismissing the claim or give directions for the speedy determination of the arbitration and may impose conditions on its decision.

27(5) If the arbitration was commenced jointly by all the parties, subsections (2) and (3) apply, with the necessary modifications, but subsections (1) and (4) do not.

1992, c.A-10.1, s.27

Appointment of expert

28(1) An arbitral tribunal may appoint an expert to report to it on specific issues.

28(2) The arbitral tribunal may require parties to give the expert any relevant information or to allow him or her to inspect property or documents.

28(3) At the request of a party or of the arbitral tribunal, the expert shall, after making the report, participate in a hearing in which the parties may question the expert and present the testimony of another expert on the subject matter of the report.

1992, c.A-10.1, s.28

Obtaining evidence

29(1) A party may serve a person with a notice requiring him or her to attend and give evidence at the arbitration at the time and place named in the notice.

29(2) The notice has the same effect as a notice in a court proceeding requiring a witness to attend at a hearing or produce documents, and shall be served in the same way.

29(3) An arbitral tribunal has power to administer an oath or affirmation and power to require a witness to testify under oath or affirmation.

29(4) On the application of a party or of the arbitral tribunal, the court may make orders and give directions with respect to the taking of evidence for an arbitration as if it were a court proceeding.

1992, c.A-10.1, s.29

Restriction

30 No person shall be compelled to produce information, property or documents or to give evidence in an arbitration that the person could not be compelled to produce or give in a court proceeding.

1992, c.A-10.1, s.30

AWARDS AND TERMINATION OF ARBITRATION

Application of law and equity

31 An arbitral tribunal shall decide a dispute in accordance with law, including equity, and may order specific performance, injunctions and other equitable remedies.

1992, c.A-10.1, s.31

Conflict of laws

32(1) In deciding a dispute, an arbitral tribunal shall apply the rules of law designated by the parties or, if none are designated, the rules of law it considers appropriate in the circumstances.

32(2) A designation by the parties of the law of a jurisdiction refers to the jurisdiction's substantive law and not to its conflict of laws rules, unless the parties expressly indicate that the

designation includes them.

1992, c.A-10.1, s.32

Application of arbitration agreement, contract and usage of trade

33 The arbitral tribunal shall decide the dispute in accordance with the arbitration agreement and the contract, if any, under which the dispute arose, and shall also take into account any applicable usages of trade.

1992, c.A-10.1, s.33

Decision of arbitral tribunal

34 If an arbitral tribunal is composed of more than one member, a decision of a majority of the members is the arbitral tribunal's decision; however, if there is no majority decision or unanimous decision, the chair's decision governs.

1992, c.A-10.1, s.34

Mediation and conciliation

35 The members of an arbitral tribunal may, if the parties consent, use mediation, conciliation and similar techniques during an arbitration to encourage settlement of the dispute and may afterwards resume their roles as arbitrators without disqualification.

1992, c.A-10.1, s.35

Settlement

36 If the parties settle the dispute during arbitration, the arbitral tribunal shall terminate the arbitration and, if a party so requests, may record the settlement in the form of an award.

1992, c.A-10.1, s.36

Binding nature of award

37 An award binds the parties, unless it is set aside or varied under [section 45](#) or [46](#).

1992, c.A-10.1, s.37

Form of award

38(1) An award shall be made in writing and, except in the case of an award made on consent, shall state the reasons on which it is based.

38(2) The award shall indicate the place where and the date on which it is made.

38(3) The award shall be dated and shall be signed by all the members of the arbitral tribunal, or by a majority of them if an explanation of the omission of the other signatures is included.

38(4) A copy of the award shall be delivered to each party.

1992, c.A-10.1, s.38

Extension of time limits

39 The court may extend the time within which the arbitral tribunal is required to make an award, even if the time has expired.

1992, c.A-10.1, s.39

Explanation

40(1) A party may, within 30 days after receiving an award, request that the arbitral tribunal explain any matter.

40(2) If the arbitral tribunal does not give an explanation within 15 days after receiving the request, the court may, on the party's application, order it to do so.

1992, c.A-10.1, s.40

Interim awards of arbitral tribunal

41 The arbitral tribunal may make one or more interim awards.

1992, c.A-10.1, s.41

Final awards of arbitral tribunal

42 The arbitral tribunal may make more than one final award, disposing of one or more matters referred to arbitration in each award.

1992, c.A-10.1, s.42

Termination of arbitration

43(1) An arbitration is terminated when

- (a) the arbitral tribunal makes a final award in accordance with this Act, disposing of all matters referred to arbitration,
- (b) the arbitral tribunal terminates the arbitration under subsection (2), (3), 27(1) or 27(4), or
- (c) an arbitrator's mandate is terminated, if the arbitration agreement provides that the arbitration shall be conducted only by that arbitrator.

43(2) An arbitral tribunal shall make an order terminating the arbitration if the claimant withdraws the claim, unless the respondent objects to the termination and the arbitral tribunal agrees that the respondent is entitled to obtain a final settlement of the dispute.

43(3) An arbitral tribunal shall make an order terminating the arbitration if

- (a) the parties agree that the arbitration should be terminated, or
- (b) the arbitral tribunal finds that continuation of the arbitration has become unnecessary or impossible.

43(4) The arbitration may be revived for the purposes of [section 44](#) or [subsection 45\(5\)](#), [46\(7\)](#), [46\(8\)](#) or [54\(4\)](#).

43(5) A party's death terminates the arbitration only with respect to claims that are extinguished as a result of the death.

1992, c.A-10.1, s.43.

Correction of award

44(1) An arbitral tribunal may, on its own initiative within 30 days after making an award or at a party's request made within 30 days after receiving the award,

- (a) correct typographical errors, errors of calculation and similar errors in the award, or

(b) amend the award so as to correct an injustice caused by an oversight on the part of the arbitral tribunal.

44(2) The arbitral tribunal may, on its own initiative at any time or at a party's request made within 30 days after receiving the award, make an additional award to deal with a claim that was presented in the arbitration but omitted from the earlier award.

44(3) The arbitral tribunal need not hold a hearing or meeting before rejecting a request made under this section.

1992, c.A-10.1, s.44

REMEDIES

Appeal of award

45(1) A party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that

(a) the importance to the parties of the matters at stake in the arbitration justifies an appeal, and

(b) determination of the question of law at issue will significantly affect the rights of the parties.

45(2) If the arbitration agreement so provides, a party may appeal an award to the court on a question of law.

45(3) If the arbitration agreement so provides, a party may appeal an award to the court on a question of fact or on a question of mixed fact and law.

45(4) The court may require the arbitral tribunal to explain any matter.

45(5) The court may confirm, vary or set aside the award or may remit the award to the arbitral tribunal, with the court's opinion on the question of law, in the case of an appeal on a question of law, and give directions about the conduct of the arbitration.

1992, c.A-10.1, s.45

Setting aside award

46(1) On a party's application, the court may set aside an award on any of the following grounds:

(a) a party entered into the arbitration agreement while under a legal incapacity;

(b) the arbitration agreement is invalid or has ceased to exist;

(c) the award deals with a dispute that the arbitration agreement does not cover or contains a decision on a matter that is beyond the scope of the agreement;

(d) the composition of the tribunal was not in accordance with the arbitration agreement or, if the agreement did not deal with that matter, was not in accordance with this Act;

(e) the subject matter of the dispute is not capable of being the subject of arbitration under New Brunswick law;

- (f) the applicant was not treated equally and fairly, was not given an opportunity to present a case or to respond to another party's case, or was not given proper notice of the arbitration or of the appointment of an arbitrator;
- (g) the procedures followed in the arbitration did not comply with this Act;
- (h) an arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias; or
- (i) the award was obtained by fraud.

46(2) If paragraph (1)(c) applies and it is reasonable to separate the decisions on matters covered by the arbitration agreement from the impugned ones, the court shall set aside the impugned decisions and allow the others to stand.

46(3) The court shall not set aside an award on grounds referred to in paragraph (1)(c) if the party has agreed to the inclusion of the dispute or matter, waived the right to object to its inclusion or agreed that the arbitral tribunal has power to decide what disputes have been referred to it.

46(4) The court shall not set aside an award on grounds referred to in paragraph (1)(h) if the party had an opportunity to challenge the arbitrator on those grounds under [section 13](#) before the award was made and did not do so, or if those grounds were the subject of an unsuccessful challenge.

46(5) The court shall not set aside an award on a ground to which the applicant is deemed under [section 4](#) to have waived the right to object.

46(6) If the ground alleged for setting aside the award could have been raised as an objection to the arbitral tribunal's jurisdiction to conduct the arbitration or as an objection that the arbitral tribunal was exceeding its authority, the court may set the award aside on that ground if it considers the applicant's failure to make an objection in accordance with [section 17](#) justified.

46(7) When the court sets aside an award, it may remove the arbitral tribunal or an arbitrator and may give directions about the conduct of the arbitration.

46(8) Instead of setting aside an award, the court may remit it to the arbitral tribunal and give directions about the conduct of the arbitration.

1992, c.A-10.1, s.46

Time limit

47(1) An appeal of an award or an application to set aside an award shall be commenced within 30 days after the appellant or applicant receives the award, correction, explanation, change or statement of reasons on which the appeal or application is based.

47(2) Subsection (1) does not apply if the appellant or applicant alleges corruption or fraud.

1992, c.A-10.1, s.47

Declaration of invalidity of arbitration

48(1) At any stage during or after an arbitration, on the application of a party who has not participated in the arbitration, the court may grant a declaration that the arbitration is invalid because

- (a) a party entered into the arbitration agreement while under a legal incapacity,
- (b) the arbitration agreement is invalid or has ceased to exist,
- (c) the subject matter of the dispute is not capable of being the subject of arbitration under New Brunswick law, or
- (d) the arbitration agreement does not apply to the dispute.

48(2) When the court grants the declaration, it may also grant an injunction against the commencement or continuation of the arbitration.

1992, c.A-10.1, s.48

Further appeal

49 Despite [subsection 8\(3\)](#) of the *Judicature Act*, an appeal from the court's decision in an appeal of an award, an application to set aside an award or an application for a declaration of invalidity may be made to The Court of Appeal of New Brunswick, with leave of The Court of Appeal of New Brunswick.

1992, c.A-10.1, s.49

Enforcement of award

50(1) A person who is entitled to enforcement of an award made in New Brunswick or elsewhere in Canada may make an application to the court to that effect.

50(2) The application shall be made on notice to the person against whom enforcement is sought, in accordance with the [Rules of Court](#), and shall be supported by the original award or a certified copy.

50(3) The court shall give a judgment enforcing an award made in New Brunswick unless

- (a) the 30-day period for commencing an appeal or an application to set the award aside has not yet elapsed,
- (b) there is a pending appeal, application to set the award aside or application for a declaration of invalidity, or
- (c) the award has been set aside or the arbitration is the subject of a declaration of invalidity.

50(4) The court shall give a judgment enforcing an award made elsewhere in Canada unless

- (a) the period for commencing an appeal or an application to set the award aside provided by the laws of the province or territory where the award was made has not yet elapsed,
- (b) there is a pending appeal, application to set the award aside or application for a declaration of invalidity in the province or territory where the award was made,
- (c) the award has been set aside in the province or territory where it was made or the arbitration is the subject of a declaration of invalidity granted there, or
- (d) the subject matter of the award is not capable of being the subject of arbitration under New Brunswick law.

50(5) If the period for commencing an appeal, application to set the award aside or application for a declaration of invalidity has not yet elapsed, or if such a proceeding is pending, the court may

(a) enforce the award, or

(b) order, on such conditions as are just, that enforcement of the award is stayed until the period has elapsed without such a proceeding being commenced, or until the pending proceeding is finally disposed of.

50(6) If the court stays the enforcement of an award made in New Brunswick until a pending proceeding is finally disposed of, it may give directions for the speedy disposition of the proceeding.

50(7) If the award gives a remedy that the court does not have jurisdiction to grant or would not grant in a proceeding based on similar circumstances, the court

(a) may grant a different remedy requested by the applicant, or

(b) in the case of an award made in New Brunswick, may remit it to the arbitral tribunal with the court's opinion, in which case the arbitral tribunal may award a different remedy.

50(8) The court has the same powers with respect to the enforcement of awards as with respect to the enforcement of its own judgments.

1992, c.A-10.1, s.50

GENERAL

This Act binds the Crown

51 This Act binds the Crown.

1992, c.A-10.1, s.51

Limitation periods

52(1) The law with respect to limitation periods applies to an arbitration as if the arbitration were a court proceeding.

52(2) If the court sets aside an award, terminates an arbitration or declares an arbitration to be invalid, it may order that the period from the commencement of the arbitration to the date of the order shall be excluded from the computation of the time within which a court proceeding may be brought in respect of a claim that was presented in the arbitration.

52(3) An application for enforcement of an award may not be made more than two years after the day on which the applicant receives the award.

1992, c.A-10.1, s.52; 2009, c.L-8.5, s.28

Service of notices and documents

53(1) The [Rules of Court](#) respecting personal service of originating process and documents apply with the necessary modifications to the service of notices and documents in respect of an arbitration under this Act unless otherwise provided in an arbitration agreement.

53(2) Despite subsection (1), a notice or other document may be served on a party by sending a facsimile of the notice or other document, as the case may be, by telephone transmission to

the number that the party gave in the arbitration agreement or the number that the party gave to the arbitral tribunal.

1992, c.A-10.1, s.53

Costs

54(1) An arbitral tribunal may award the costs of an arbitration.

54(2) The arbitral tribunal may award all or part of the costs of an arbitration on a solicitor and client basis, a party and party basis or any other basis; if it does not specify the basis, the costs shall be determined on a party and party basis.

54(3) The costs of an arbitration consist of the parties' legal expenses, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration.

54(4) If the arbitral tribunal does not deal with costs in an award, a party may, within 30 days after receiving the award, request that it make a further award dealing with costs.

54(5) In the absence of an award dealing with costs, each party is responsible for the party's own legal expenses and for an equal share of the fees and expenses of the arbitral tribunal and of any other expenses related to the arbitration.

54(6) If a party makes an offer to another party to settle the dispute or part of the dispute, the offer is not accepted and the arbitral tribunal's award is no more favourable to the second-named party than was the offer, the arbitral tribunal may take the fact into account in awarding costs in respect of the period from the making of the offer to the making of the award.

54(7) The fact that an offer to settle has been made shall not be communicated to the arbitral tribunal until it has made a final determination of all aspects of the dispute other than costs.

1992, c.A-10.1, s.54

Arbitrator's fees and expenses

55 The fees and expenses paid to an arbitrator shall not exceed the fair value of the services performed and the necessary and reasonable expenses actually incurred.

1992, c.A-10.1, s.55

Taxation of fees and expenses and assessment of costs

56(1) A person authorized under the *Law Society Act, 1996* to conduct a review of a bill for fees for legal services, costs, charges, disbursements and taxes is an arbitration reviewing officer for the purposes of this Act.

56(2) In addition to the arbitration reviewing officers under subsection (1), the Lieutenant-Governor in Council may appoint one or more persons as arbitration reviewing officers for the purposes of this Act.

56(3) A party to an arbitration may refer an arbitrator's account for fees and expenses to an arbitration reviewing officer and the account shall be reviewed in accordance with the *Law Society Act, 1996* as if the account were a bill for fees for legal services, costs, charges, disbursements and taxes and the *Law Society Act, 1996* applies with the necessary modifications in relation to a certificate of an arbitration reviewing officer and an appeal of a review of an arbitrator's account for fees and expenses.

56(4) Subsection (3) applies even if the account has been paid.

56(5) If an arbitral tribunal awards costs and directs that they be assessed, or awards costs without fixing the amount or indicating how it is to be ascertained, a party to the arbitration may have the costs assessed in accordance with the [Rules of Court](#) by an assessing officer provided for in the Rules of Court and the Rules of Court apply with the necessary modifications in relation to a Certificate of an assessing officer and an appeal of an assessment of costs.

56(6) In assessing the part of the costs represented by the fees and expenses of the arbitral tribunal, the assessing officer shall apply the same principles as in the review of an account under subsection (3).

1992, c.A-10.1, s.56

Interest

57 The arbitral tribunal when making an award under this Act has the same authority with respect to interest as a court has under [sections 45](#) and [46](#) of the *Judicature Act*.

1992, c.A-10.1, s.57

TRANSITIONAL

Transitional

58 This Act applies to an arbitration conducted under an arbitration agreement made before January 1, 1995, if the arbitration is commenced on or after January 1, 1995.

1992, c.A-10.1, ss.58(1)

N.B. This Act was proclaimed and came into force February 9, 2015.

N.B. This Act is consolidated to June 16, 2023.