

ACERIS LAW LLC

International Arbitration Laws in Ontario, Canada

1. International Commercial Arbitration Act, 2017 p.2

2. Arbitration Act, 1991 p. 18

International Commercial Arbitration Act, 2017

S.O. 2017, CHAPTER 2 SCHEDULE 5

Consolidation Period: From March 22, 2017 to the [e-Laws currency date](#).

No amendments.

CONTENTS

[PART I](#) THE CONVENTION

- [1.](#) Interpretation
- [2.](#) Application of Convention
- [3.](#) Designation of court

[PART II](#) THE MODEL LAW

- [4.](#) Interpretation
- [5.](#) Application of Model Law
- [6.](#) Interpretation of Model Law
- [7.](#) Rules applicable to substance of dispute

[PART III](#) GENERAL

- [8.](#) Enforcement of consolidation agreements
- [9.](#) Stay of proceedings
- [10.](#) Limitation period
- [11.](#) Appeals re jurisdiction
- [12.](#) Crown bound
- [Schedule 1](#) Convention on the recognition and enforcement of foreign arbitral awards
- [Schedule 2](#) UNCITRAL model law on international commercial arbitration

PART I THE CONVENTION

Interpretation

1 Except as otherwise provided in this Act, words and expressions used in this Part have the same meaning as the corresponding words and expressions in the Convention.

Application of Convention

2 (1) Subject to this Act, 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 10 June 1958 and set out in Schedule 1, has force of law in Ontario in relation to arbitral awards or arbitration agreements in respect of differences arising out of commercial legal relationships.

Same

(2) Subsection (1) applies to arbitral awards and arbitration agreements whether made before or after the coming into force of this Act.

Determining application

(3) In determining whether the Convention applies to certain types of arbitral awards,

- (a) an arbitral award made in a jurisdiction within Canada that is considered to be international in that jurisdiction is not considered to be a domestic award for the purpose of article I (1) of the Convention; and
- (b) an arbitral award made in a jurisdiction within Canada that is not considered to be international in that jurisdiction is considered to be a domestic award for the purpose of article I (1) of the Convention.

Designation of court

3 For the purpose of seeking recognition and enforcement of an arbitral award pursuant to the Convention, application shall be made to the Superior Court of Justice.

PART II THE MODEL LAW

Interpretation

4 Except as otherwise provided in this Act, words and expressions used in this Part have the same meaning as the corresponding words and expressions in the Model Law.

Application of Model Law

5 (1) Subject to this Act, the Model Law on International Commercial Arbitration, adopted by the United Nations Commission on International Trade Law on 21 June 1985, as amended by the United Nations Commission on International Trade Law on 7 July 2006, set out in Schedule 2, has force of law in Ontario.

Same

(2) With respect to article 7 of the Model Law, option I applies in Ontario; option II does not.

Same

(3) The Model Law applies to international commercial arbitration agreements and awards made in international commercial arbitrations, whether made before or after the coming into force of this Act.

Interpretation of Model Law

6 (1) For the purposes of subsection 5 (1), the words and expressions listed in Column 2 of the following table, as used in the provisions of the Model Law set out in Column 1 of the table, shall be read as the words and expressions listed in the corresponding row of Column 3 of the table.

TABLE

Column 1	Column 2	Column 3
article 1 (1)	“agreement in force between this State and any other State or States”	“an agreement that is in force in Ontario between Canada and any other country or countries”
articles 1 (2), 17 J, 27, 34 (2) (a) (i), 34 (2) (b) (ii), and 36(1) (b) (ii)	“this State”	“Ontario”
article 1 (3)	“different States” and “the State”	“different countries” and “the country”, respectively
article 1 (5)	“any other law of this State”	“any other law of Ontario or laws of Canada that are in force in Ontario”
articles 34 (2) (b) (i), and 36 (1) (b) (i)	“the law of this State”	“the law of Ontario and any laws of Canada that are in force in Ontario”
article 35 (2)	“this State”	“Canada”

Same, “court” or “competent court”

(2) “Court” or “competent court”, when used in the Model Law in reference to an Ontario court, shall be read as a reference to the Superior Court of Justice unless the context requires otherwise.

Use of extrinsic material

(3) In applying the Model Law, recourse may be had to,

- the Reports of the United Nations Commission on International Trade Law on the work of its 18th (3 – 21 June 1985) and 39th (19 June – 7 July 2006) sessions (U.N. Docs. A/40/17 and A/61/17);
- the International Commercial Arbitration Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration (U.N. Doc A/CN.9/264); and
- the Commentary of the United Nations Commission on International Trade Law concerning the UNCITRAL Model Law on International Commercial Arbitration 1985 with Amendments as Adopted in 2006 (U.N. Sales No. E.08.V.4).

Rules applicable to substance of dispute

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

PART III GENERAL

Enforcement of consolidation agreements

8 (1) If all parties to two or more arbitral proceedings have agreed to consolidate those proceedings, a party, with notice to the others, may apply to the Superior Court of Justice for an order that the proceedings be consolidated as agreed to by the parties.

Consolidation permissible without order

(2) Subsection (1) does not prohibit parties from consolidating arbitral proceedings without a court order.

Powers of court

(3) On an application under subsection (1), if all parties to the arbitral proceedings have agreed to consolidate the proceedings but have not agreed, through the adoption of procedural rules or otherwise, to the following matters, the court may, subject to subsection (4), make an order deciding either or both of those matters:

1. The designation of parties as claimants or respondents or a method for making those designations.
2. The method for determining the composition of the arbitral tribunal.

Same, limitation

(4) If the arbitral proceedings are under different arbitration agreements, no order shall be made under subsection (1) unless, by their arbitration agreements or otherwise, the parties have agreed,

- (a) to the same place of arbitration or a method for determining a single place of arbitration for the consolidated proceeding within Ontario;
- (b) to the same procedural rules or a method for determining a single set of procedural rules for the conduct of the consolidated proceedings; and
- (c) either to have the consolidated proceedings administered by the same arbitral institution or to have the consolidated proceedings not be administered by any arbitral institution.

Relevant circumstances

(5) In making an order under this section, the court may have regard to any circumstances that it considers relevant, including whether,

- (a) one or more arbitrators have been appointed in one or more of the arbitral proceedings;
- (b) the applicant delayed applying for the order; or
- (c) any material prejudice to any of the parties or any injustice may result from making an order.

Stay of proceedings

9 Where, pursuant to article II (3) of the Convention or article 8 of the Model 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.

Limitation period

10 No application under the Convention or the Model Law for recognition or enforcement (or both) of an arbitral award shall be made after the later of December 31, 2018 and the tenth anniversary of,

- (a) the date on which the award was made; or
- (b) if proceedings at the place of arbitration to set aside the award were commenced, the date on which the proceedings concluded.

Appeals re jurisdiction

11 (1) If, pursuant to article 16 (2) of the Model Law, an arbitral tribunal rules on a plea that it does not have jurisdiction, any party may apply to the Superior Court of Justice to decide the matter.

No appeal

(2) The court's decision under subsection (1) is not subject to appeal.

Effect on other matters

(3) If the arbitral tribunal rules on the plea as a preliminary question and an application is brought under this section, the proceedings of the arbitral tribunal are not stayed with respect to any other matters to which the arbitration relates and are within its jurisdiction.

Crown bound

12 (1) This Act binds the Crown.

Enforceability of awards

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

PART IV (OMITTED)

13-15 OMITTED (AMENDS, REPEALS OR REVOKES OTHER LEGISLATION).

PART V (OMITTED)

16 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT).

17 OMITTED (ENACTS SHORT TITLE OF THIS ACT).

SCHEDULE 1

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 instrument 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.

SCHEDULE 2
UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

(United Nations documents A/40/17, annex I and A/61/17, annex I)

**(As adopted by the United Nations Commission on
International Trade Law on 21 June 1985,
and as amended by the United Nations Commission
on International Trade Law on 7 July 2006)**

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, 17 H, 17 I, 17 J, 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 2 A. International origin and general principles

- (1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.
- (2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

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 Superior Court of Justice.

CHAPTER II.
ARBITRATION AGREEMENT

Option I

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.
- (3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.
- (4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; "electronic communication" means any communication that the parties make by means of data messages; "data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.
- (5) Furthermore, an arbitration agreement is in writing if it is contained 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 the other.
- (6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

Option II

Article 7. Definition of arbitration agreement

"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.

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.

CHAPTER IV A.
INTERIM MEASURES AND PRELIMINARY ORDERS

Section 1. Interim measures

Article 17. Power of arbitral tribunal to order interim measures

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

(2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:

- (a) Maintain or restore the status quo pending determination of the dispute;
- (b) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
- (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) Preserve evidence that may be relevant and material to the resolution of the dispute.

Article 17 A. Conditions for granting interim measures

(1) The party requesting an interim measure under article 17(2)(a), (b) and (c) shall satisfy the arbitral tribunal that:

- (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

- (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
- (2) With regard to a request for an interim measure under article 17(2)(d), the requirements in paragraphs (1)(a) and (b) of this article shall apply only to the extent the arbitral tribunal considers appropriate.

Section 2. Preliminary orders

Article 17 B. Applications for preliminary orders and conditions for granting preliminary orders

- (1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.
- (2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.
- (3) The conditions defined under article 17A apply to any preliminary order, provided that the harm to be assessed under article 17A(1)(a), is the harm likely to result from the order being granted or not.

Article 17 C. Specific regime for preliminary orders

- (1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.
- (2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.
- (3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.
- (4) A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.
- (5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.

Section 3. Provisions applicable to interim measures and preliminary orders

Article 17 D. Modification, suspension, termination

The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

Article 17 E. Provision of security

- (1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
- (2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

Article 17 F. Disclosure

- (1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.
- (2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, paragraph (1) of this article shall apply.

Article 17 G. Costs and damages

The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

Section 4. Recognition and enforcement of interim measures

Article 17 H. Recognition and enforcement

- (1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article 17 I.
- (2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.
- (3) The court of the State where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

Article 17 I. Grounds for refusing recognition or enforcement

- (1) Recognition or enforcement of an interim measure may be refused only:
 - (a) At the request of the party against whom it is invoked if the court is satisfied that:
 - (i) Such refusal is warranted on the grounds set forth in article 36(1)(a)(i), (ii), (iii) or (iv); or
 - (ii) The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or
 - (iii) The interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or
 - (b) If the court finds that:
 - (i) The interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or
 - (ii) Any of the grounds set forth in article 36(1)(b)(i) or (ii), apply to the recognition and enforcement of the interim measure.
- (2) Any determination made by the court on any ground in paragraph (1) of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

Section 5. Court-ordered interim measures

Article 17 J. Court-ordered interim measures

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

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 original award or a copy thereof. If the award is not made in an official language of this State, the court may request the party to supply a 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.

Français

[Back to top](#)

Arbitration Act, 1991

S.O. 1991, CHAPTER 17

Consolidation Period: From March 22, 2017 to the e-Laws currency date.

Last amendment: 2017, c. 2, Sched. 5, s. 13.

Legislative History: 2006, c. 1, s. 1; 2006, c. 19, Sched. C, s. 1 (1); 2009, c. 33, Sched. 2, s. 5; 2017, c. 2, Sched. 5, s. 13; CTS 13 JL 12 - 1; CTS 13 JL 12 - 2.

CONTENTS

INTRODUCTORY MATTERS

- [1.](#) Definitions
- [2.](#) Application of Act
- [2.1](#) Family arbitrations, agreements and awards
- [2.2](#) Other third-party decision-making processes in family matters
- [3.](#) Contracting out
- [4.](#) Waiver of right to object
- [5.](#) Arbitration agreements

COURT INTERVENTION

- [6.](#) Court intervention limited
- [7.](#) Stay
- [8.](#) Powers of court

COMPOSITION OF ARBITRAL TRIBUNAL

- [9.](#) Number of arbitrators
- [10.](#) Appointment of arbitral tribunal
- [11.](#) Duty of arbitrator
- [12.](#) No revocation
- [13.](#) Challenge
- [14.](#) Termination of arbitrator's mandate
- [15.](#) Removal of arbitrator by court
- [16.](#) Appointment of substitute arbitrator

JURISDICTION OF ARBITRAL TRIBUNAL

- [17.](#) Rulings and objections re jurisdiction
- [18.](#) Detention, preservation and inspection of property and documents

CONDUCT OF ARBITRATION

- [19.](#) Equality and fairness
- [20.](#) Procedure
- [21.](#) Evidence
- [22.](#) Time and place of arbitration
- [23.](#) Commencement of arbitration
- [24.](#) Matters referred to arbitration
- [25.](#) Procedural directions
- [26.](#) Hearings and written proceedings
- [27.](#) Party's failure to act
- [28.](#) Appointment of expert
- [29.](#) Witnesses and taking of evidence
- [30.](#) Restriction

AWARDS AND TERMINATION OF ARBITRATION

- [31.](#) Application of law and equity
- [32.](#) Conflict of laws
- [33.](#) Application of arbitration agreement, contract and usages of trade
- [34.](#) Decision of arbitral tribunal
- [35.](#) Mediation and conciliation
- [36.](#) Settlement

37.	Binding nature of award
38.	Form of award
39.	Extension of time limits
40.	Explanation
41.	Interim awards
42.	More than one final award
43.	Termination of arbitration
44.	Corrections and additional awards

[REMEDIES](#)

45.	Appeals
46.	Setting aside award
47.	Time limit
48.	Declaration of invalidity of arbitration
49.	Further appeal
50.	Enforcement of award
50.1	Family arbitration awards

[GENERAL](#)

51.	Crown bound
52.	Limitation periods
53.	Service
54.	Costs
55.	Arbitrator's fees and expenses
56.	Assessment
57.	Interest
58.	Regulations

INTRODUCTORY MATTERS

Definitions

1 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 Family Court or the Superior Court of Justice; (“tribunal judiciaire”)

“family arbitration” means an arbitration that,

- (a) deals with matters that could be dealt with in a marriage contract, separation agreement, cohabitation agreement or paternity agreement under Part IV of the *Family Law Act*, and
- (b) is conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction; (“arbitrage familial”)

“family arbitration agreement” and “family arbitration award” have meanings that correspond to the meaning of “family arbitration”. (“convention d’arbitrage familial”, “sentence d’arbitrage familial”) 1991, c. 17, s. 1; 2006, c. 1, s. 1 (1); 2006, c. 19, Sched. C, s. 1 (1); 2009, c. 33, Sched. 2, s. 5.

Section Amendments with date in force (d/m/y)

2006, c. 1, s. 1 (1) - 30/04/2007; 2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

2009, c. 33, Sched. 2, s. 5 - 15/12/2009

Application of Act

Arbitrations conducted under agreements

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

- (a) the application of this Act is excluded by law; or
- (b) the *International Commercial Arbitration Act* applies to the arbitration. 1991, c. 17, s. 2 (1).

Transition, existing agreements

(2) This Act applies to an arbitration conducted under an arbitration agreement made before the day this Act comes into force, if the arbitration is commenced after that day. 1991, c. 17, s. 2 (2).

Arbitrations conducted under statutes

(3) This Act applies, with 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. 1991, c. 17, s. 2 (3).

Transition, arbitrations already commenced

(4) Despite its repeal by section 58, the *Arbitrations Act*, as it read on the 31st day of December, 1991, continues to apply to arbitrations commenced on or before that day. 1991, c. 17, s. 2 (4).

Family arbitrations, agreements and awards

2.1 (1) Family arbitrations, family arbitration agreements and family arbitration awards are governed by this Act and by the *Family Law Act*. 2006, c. 1, s. 1 (2).

Conflict

(2) In the event of conflict between this Act and the *Family Law Act*, the *Family Law Act* prevails. 2006, c. 1, s. 1 (2).

Section Amendments with date in force (d/m/y)

2006, c. 1, s. 1 (2) - 30/04/2007

Other third-party decision-making processes in family matters

2.2 (1) When a decision about a matter described in clause (a) of the definition of “family arbitration” in section 1 is made by a third person in a process that is not conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction,

- (a) the process is not a family arbitration; and
- (b) the decision is not a family arbitration award and has no legal effect. 2006, c. 1, s. 1 (2).

Advice

(2) Nothing in this section restricts a person’s right to obtain advice from another person. 2006, c. 1, s. 1 (2).

Section Amendments with date in force (d/m/y)

2006, c. 1, s. 1 (2) - 30/04/2007

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:

1. In the case of an arbitration agreement other than a family arbitration agreement,
 - i. subsection 5 (4) (“*Scott v. Avery*” clauses),
 - ii. section 19 (equality and fairness),
 - iii. section 39 (extension of time limits),
 - iv. section 46 (setting aside award),
 - v. section 48 (declaration of invalidity of arbitration),
 - vi. section 50 (enforcement of award).
2. In the case of a family arbitration agreement,
 - i. the provisions listed in subparagraphs 1 i to vi,
 - ii. subsection 4 (2) (no deemed waiver of right to object),
 - iii. section 31 (application of law and equity),
 - iv. subsections 32 (3) and (4) (substantive law of Ontario or other Canadian jurisdiction), and

v. section 45 (appeals). 2006, c. 1, s. 1 (3).

Section Amendments with date in force (d/m/y)

2006, c. 1, s. 1 (3) - 30/04/2007

Waiver of right to object

4 (1) 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. 1991, c. 17, s. 4.

Exception, family arbitrations

(2) Subsection (1) does not apply to a family arbitration. 2006, c. 1, s. 1 (4).

Section Amendments with date in force (d/m/y)

2006, c. 1, s. 1 (4) - 30/04/2007

Arbitration agreements

5 (1) An arbitration agreement may be an independent agreement or part of another agreement. 1991, c. 17, s. 5 (1).

Further agreements

(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. 1991, c. 17, s. 5 (2).

Oral agreements

(3) An arbitration agreement need not be in writing. 1991, c. 17, s. 5 (3).

“Scott v. Avery” clauses

(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. 1991, c. 17, s. 5 (4).

Revocation

(5) An arbitration agreement may be revoked only in accordance with the ordinary rules of contract law. 1991, c. 17, s. 5 (5).

COURT INTERVENTION

Court intervention limited

6 No court shall intervene in matters governed by this Act, except for the following purposes, in accordance with this Act:

1. To assist the conducting of arbitrations.
2. To ensure that arbitrations are conducted in accordance with arbitration agreements.
3. To prevent unequal or unfair treatment of parties to arbitration agreements.
4. To enforce awards. 1991, c. 17, s. 6.

Stay

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. 1991, c. 17, s. 7 (1).

Exceptions

(2) However, the court may refuse to stay the proceeding in any of the following cases:

1. A party entered into the arbitration agreement while under a legal incapacity.
2. The arbitration agreement is invalid.
3. The subject-matter of the dispute is not capable of being the subject of arbitration under Ontario law.
4. The motion was brought with undue delay.

5. The matter is a proper one for default or summary judgment. 1991, c. 17, s. 7 (2).

Arbitration may continue

(3) An arbitration of the dispute may be commenced and continued while the motion is before the court. 1991, c. 17, s. 7 (3).

Effect of refusal to stay

(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. 1991, c. 17, s. 7 (4).

Agreement covering part of dispute

(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. 1991, c. 17, s. 7 (5).

No appeal

(6) There is no appeal from the court's decision. 1991, c. 17, s. 7 (6).

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. 1991, c. 17, s. 8 (1).

Questions of law

(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. 1991, c. 17, s. 8 (2).

Appeal

(3) The court's determination of a question of law may be appealed to the Court of Appeal, with leave. 1991, c. 17, s. 8 (3).

More than one arbitration

(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. 1991, c. 17, s. 8 (4).

Arbitral tribunal for consolidated arbitrations

(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. 1991, c. 17, s. 8 (5).

Consolidation by agreement of parties

(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. 1991, c. 17, s. 8 (6).

COMPOSITION OF ARBITRAL TRIBUNAL

Number of arbitrators

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. 1991, c. 17, 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. 1991, c. 17, s. 10 (1).

No appeal

- (2) There is no appeal from the court's appointment of the arbitral tribunal. 1991, c. 17, s. 10 (2).

More than one arbitrator

- (3) Subsections (1) and (2) apply, with necessary modifications, to the appointment of individual members of arbitral tribunals that are composed of more than one arbitrator. 1991, c. 17, s. 10 (3).

Chair

- (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. 1991, c. 17, s. 10 (4).

Duty of arbitrator

- 11 (1) An arbitrator shall be independent of the parties and shall act impartially. 1991, c. 17, s. 11 (1).

Disclosure before accepting appointment

- (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. 1991, c. 17, s. 11 (2).

Disclosure during arbitration

- (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. 1991, c. 17, s. 11 (3).

No revocation

- 12 A party may not revoke the appointment of an arbitrator. 1991, c. 17, s. 12.

Challenge

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

1. Circumstances exist that may give rise to a reasonable apprehension of bias.
2. The arbitrator does not possess qualifications that the parties have agreed are necessary. 1991, c. 17, s. 13 (1).

Idem, arbitrator appointed by party

- (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. 1991, c. 17, s. 13 (2).

Procedure for challenge

- (3) A party who wishes to challenge an arbitrator shall send the arbitral tribunal a statement of the grounds for the challenge, within fifteen days of becoming aware of them. 1991, c. 17, s. 13 (3).

Removal or resignation of challenged arbitrator

- (4) The other parties may agree to remove the challenged arbitrator, or the arbitrator may resign. 1991, c. 17, s. 13 (4).

Decision of arbitral tribunal

- (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. 1991, c. 17, s. 13 (5).

Application to court

- (6) Within ten days of 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. 1991, c. 17, s. 13 (6).

Arbitration may continue

- (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. 1991, c. 17, s. 13 (7).

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). 1991, c. 17, s. 14 (1).

Significance of resignation or agreement to terminate

(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. 1991, c. 17, s. 14 (2).

Removal of arbitrator by court

15 (1) The court may remove an arbitrator on a party's application under subsection 13 (6) (challenge), 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 (equality and fairness). 1991, c. 17, s. 15 (1).

Right of arbitrator

(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. 1991, c. 17, s. 15 (2).

Directions

(3) When the court removes an arbitrator, it may give directions about the conduct of the arbitration. 1991, c. 17, s. 15 (3).

Penalty

(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. 1991, c. 17, s. 15 (4).

Appeal re penalty

(5) The arbitrator or a party may, within thirty 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, with leave of that court. 1991, c. 17, s. 15 (5).

No other appeal

(6) Except as provided in subsection (5), there is no appeal from the court's decision or from its directions. 1991, c. 17, s. 15 (6).

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. 1991, c. 17, s. 16 (1).

Directions

(2) When the arbitrator's mandate terminates, the court may, on a party's application, give directions about the conduct of the arbitration. 1991, c. 17, s. 16 (2).

Court appointment

- (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. 1991, c. 17, s. 16 (3).

No appeal

(4) There is no appeal from the court's decision or from its directions. 1991, c. 17, s. 16 (4).

Exception

(5) This section does not apply if the arbitration agreement provides that the arbitration is to be conducted only by a named arbitrator. 1991, c. 17, s. 16 (5).

JURISDICTION OF ARBITRAL TRIBUNAL

Rulings and objections re jurisdiction

Arbitral tribunal may rule on own jurisdiction

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. 1991, c. 17, s. 17 (1).

Independent agreement

(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. 1991, c. 17, s. 17 (2).

Time for objections to jurisdiction

(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. 1991, c. 17, s. 17 (3).

Party's appointment of arbitrator no bar to objection

(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. 1991, c. 17, s. 17 (4).

Time for objections, exceeding authority

(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. 1991, c. 17, s. 17 (5).

Later objections

(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. 1991, c. 17, s. 17 (6).

Ruling

(7) The arbitral tribunal may rule on an objection as a preliminary question or may deal with it in an award. 1991, c. 17, s. 17 (7).

Review by court

(8) If the arbitral tribunal rules on an objection as a preliminary question, a party may, within thirty days after receiving notice of the ruling, make an application to the court to decide the matter. 1991, c. 17, s. 17 (8).

No appeal

(9) There is no appeal from the court's decision. 1991, c. 17, s. 17 (9).

Arbitration may continue

(10) While an application is pending, the arbitral tribunal may continue the arbitration and make an award. 1991, c. 17, s. 17 (10).

Section Amendments with date in force (d/m/y)

CTS 13 JL 12 - 1

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. 1991, c. 17, s. 18 (1).

Enforcement by court

(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. 1991, c. 17, s. 18 (2).

CONDUCT OF ARBITRATION

Equality and fairness

19 (1) In an arbitration, the parties shall be treated equally and fairly. 1991, c. 17, s. 19 (1).

Idem

(2) Each party shall be given an opportunity to present a case and to respond to the other parties' cases. 1991, c. 17, s. 19 (2).

Procedure

20 (1) The arbitral tribunal may determine the procedure to be followed in the arbitration, in accordance with this Act. 1991, c. 17, s. 20 (1).

Idem

(2) An arbitral tribunal that is composed of more than one arbitrator may delegate the determination of questions of procedure to the chair. 1991, c. 17, s. 20 (2).

Evidence

21 Sections 14, 15 and 16 (protection of witnesses, evidence at hearings, notice of facts and opinions) of the *Statutory Powers Procedure Act* apply to the arbitration, with necessary modifications. 1991, c. 17, s. 21.

Time 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. 1991, c. 17, s. 22 (1).

Meetings for special purposes

(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. 1991, c. 17, s. 22 (2).

Commencement of arbitration

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

1. 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.
2. 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.
3. A party serves on the other parties a notice demanding arbitration under the agreement. 1991, c. 17, s. 23 (1).

Exercise of arbitral tribunal's powers

(2) The arbitral tribunal may exercise its powers when every member has accepted appointment. 1991, c. 17, s. 23 (2).

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. 1991, c. 17, s. 24.

Procedural directions

25 (1) An arbitral tribunal may require that the parties submit their statements within a specified period of time. 1991, c. 17, s. 25 (1).

Contents of statements

(2) The parties' statements shall indicate the facts supporting their positions, the points at issue and the relief sought. 1991, c. 17, s. 25 (2).

Documents and other evidence

(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. 1991, c. 17, s. 25 (3).

Changes to statements

(4) The parties may amend or supplement their statements during the arbitration; however, the arbitral tribunal may disallow a change that is unduly delayed. 1991, c. 17, s. 25 (4).

Oral statements

(5) With the arbitral tribunal's permission, the parties may submit their statements orally. 1991, c. 17, s. 25 (5).

Directions of arbitral tribunal

(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;
- (b) produce records and documents that are in their possession or power. 1991, c. 17, s. 25 (6).

Enforcement by court

(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. 1991, c. 17, s. 25 (7).

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. 1991, c. 17, s. 26 (1).

Notice

(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. 1991, c. 17, s. 26 (2).

Communication to parties

(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. 1991, c. 17, s. 26 (3).

Idem

(4) The arbitral tribunal shall communicate to the parties any expert reports or other documents on which it may rely in making a decision. 1991, c. 17, s. 26 (4).

Party's failure to act**Failure to submit statement**

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. 1991, c. 17, s. 27 (1).

Idem

(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. 1991, c. 17, s. 27 (2).

Failure to appear or produce evidence

(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. 1991, c. 17, s. 27 (3).

Delay

(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. 1991, c. 17, s. 27 (4).

Jointly commenced arbitration

(5) If the arbitration was commenced jointly by all the parties, subsections (2) and (3) apply, with necessary modifications, but subsections (1) and (4) do not. 1991, c. 17, s. 27 (5).

Counterclaim

(6) This section applies in respect of a counterclaim as if the party making it were the party who commenced the arbitration. 1991, c. 17, s. 27 (6).

Appointment of expert

28 (1) An arbitral tribunal may appoint an expert to report to it on specific issues. 1991, c. 17, s. 28 (1).

Information and documents

(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. 1991, c. 17, s. 28 (2).

Hearing

(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. 1991, c. 17, s. 28 (3).

Witnesses and taking of evidence

Notice to witness

29 (1) A party may serve a person with a notice, issued by the arbitral tribunal, requiring the person to attend and give evidence at the arbitration at the time and place named in the notice. 1991, c. 17, s. 29 (1).

Service of notice

(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. 1991, c. 17, s. 29 (2).

Power of arbitral tribunal

(3) An arbitral tribunal has power to administer an oath or affirmation and power to require a witness to testify under oath or affirmation. 1991, c. 17, s. 29 (3).

Court orders and directions

(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. 1991, c. 17, s. 29 (4).

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. 1991, c. 17, 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. 1991, c. 17, 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. 1991, c. 17, s. 32 (1).

Designation by parties

(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. 1991, c. 17, s. 32 (2).

Exception, family arbitration

(3) Subsections (1) and (2) do not apply to a family arbitration. 2006, c. 1, s. 1 (5).

Same

(4) In a family arbitration, the arbitral tribunal shall apply the substantive law of Ontario, unless the parties expressly designate the substantive law of another Canadian jurisdiction, in which case that substantive law shall be applied. 2006, c. 1, s. 1 (5).

Section Amendments with date in force (d/m/y)

2006, c. 1, s. 1 (5) - 30/04/2007

Application of arbitration agreement, contract and usages 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 may also take into account any applicable usages of trade. 1991, c. 17, 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. 1991, c. 17, s. 34.

Mediation and conciliation

35 The members of an arbitral tribunal shall not conduct any part of the arbitration as a mediation or conciliation process or other similar process that might compromise or appear to compromise the arbitral tribunal's ability to decide the dispute impartially. 1991, c. 17, 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. 1991, c. 17, s. 36.

Binding nature of award

37 An award binds the parties, unless it is set aside or varied under section 45 or 46 (appeal, setting aside award). 1991, c. 17, 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. 1991, c. 17, s. 38 (1).

Idem

(2) The award shall indicate the place where and the date on which it is made. 1991, c. 17, s. 38 (2).

Formalities of execution

(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. 1991, c. 17, s. 38 (3).

Copies

(4) A copy of the award shall be delivered to each party. 1991, c. 17, s. 38 (4).

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. 1991, c. 17, s. 39.

Explanation

40 (1) A party may, within thirty days after receiving an award, request that the arbitral tribunal explain any matter. 1991, c. 17, s. 40 (1).

Court order

(2) If the arbitral tribunal does not give an explanation within fifteen days after receiving the request, the court may, on the party's application, order it to do so. 1991, c. 17, s. 40 (2).

Interim awards

41 The arbitral tribunal may make one or more interim awards. 1991, c. 17, s. 41.

More than one final award

42 The arbitral tribunal may make more than one final award, disposing of one or more matters referred to arbitration in each award. 1991, c. 17, 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) (claimant's failure to submit statement) or 27 (4) (delay); or
- (c) an arbitrator's mandate is terminated, if the arbitration agreement provides that the arbitration shall be conducted only by that arbitrator. 1991, c. 17, s. 43 (1).

Order by arbitral tribunal

(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. 1991, c. 17, s. 43 (2).

Idem

(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. 1991, c. 17, s. 43 (3).

Revival

(4) The arbitration may be revived for the purposes of section 44 (corrections) or subsection 45 (5) (appeal), 46 (7), 46 (8) (setting aside award) or 54 (3) (costs). 1991, c. 17, s. 43 (4).

Death

(5) A party's death terminates the arbitration only with respect to claims that are extinguished as a result of the death. 1991, c. 17, s. 43 (5).

Corrections and additional awards

Errors, injustices caused by oversights

44 (1) An arbitral tribunal may, on its own initiative within thirty days after making an award or at a party's request made within thirty 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. 1991, c. 17, s. 44 (1).

Additional awards

(2) The arbitral tribunal may, on its own initiative at any time or at a party's request made within thirty 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. 1991, c. 17, s. 44 (2).

No hearing necessary

(3) The arbitral tribunal need not hold a hearing or meeting before rejecting a request made under this section. 1991, c. 17, s. 44 (3).

REMEDIES

Appeals

Appeal on question of law

45 (1) If the arbitration agreement does not deal with appeals on questions of law, 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. 1991, c. 17, s. 45 (1).

Idem

(2) If the arbitration agreement so provides, a party may appeal an award to the court on a question of law. 1991, c. 17, s. 45 (2).

Appeal on question of fact or mixed fact and law

(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. 1991, c. 17, s. 45 (3).

Powers of court

(4) The court may require the arbitral tribunal to explain any matter. 1991, c. 17, s. 45 (4).

Idem

(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. 1991, c. 17, s. 45 (5).

Family arbitration award

(6) Any appeal of a family arbitration award lies to,

- (a) the Family Court, in the areas where it has jurisdiction under subsection 21.1 (4) of the *Courts of Justice Act*;
- (b) the Superior Court of Justice, in the rest of Ontario. 2006, c. 1, s. 1 (6).

Section Amendments with date in force (d/m/y)

2006, c. 1, s. 1 (6) - 30/04/2007

Setting aside award

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

- 1. A party entered into the arbitration agreement while under a legal incapacity.
- 2. The arbitration agreement is invalid or has ceased to exist.
- 3. 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.
- 4. The composition of the arbitral 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.
- 5. The subject-matter of the dispute is not capable of being the subject of arbitration under Ontario law.
- 6. 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.
- 7. The procedures followed in the arbitration did not comply with this Act.
- 8. An arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias.
- 9. The award was obtained by fraud.
- 10. The award is a family arbitration award that is not enforceable under the *Family Law Act*. 1991, c. 17, s. 46 (1); 2006, c. 1, s. 1 (7).

Severable parts of award

(2) If paragraph 3 of subsection (1) 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. 1991, c. 17, s. 46 (2).

Restriction

(3) The court shall not set aside an award on grounds referred to in paragraph 3 of subsection (1) 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. 1991, c. 17, s. 46 (3).

Idem

(4) The court shall not set aside an award on grounds referred to in paragraph 8 of subsection (1) 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. 1991, c. 17, s. 46 (4).

Deemed waiver

(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. 1991, c. 17, s. 46 (5).

Exception

(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. 1991, c. 17, s. 46 (6).

Connected matters

(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. 1991, c. 17, s. 46 (7).

Court may remit award to arbitral tribunal

(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. 1991, c. 17, s. 46 (8).

Section Amendments with date in force (d/m/y)

2006, c. 1, s. 1 (7) - 30/04/2007

CTS 13 JL 12 - 2

Time limit

47 (1) An appeal of an award or an application to set aside an award shall be commenced within thirty days after the appellant or applicant receives the award, correction, explanation, change or statement of reasons on which the appeal or application is based. 1991, c. 17, s. 47 (1).

Exception

(2) Subsection (1) does not apply if the appellant or applicant alleges corruption or fraud. 1991, c. 17, s. 47 (2).

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 Ontario law; or
- (d) the arbitration agreement does not apply to the dispute. 1991, c. 17, s. 48 (1).

Injunction

(2) When the court grants the declaration, it may also grant an injunction against the commencement or continuation of the arbitration. 1991, c. 17, s. 48 (2).

Further appeal

49 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, with leave of that court. 1991, c. 17, s. 49.

Enforcement of award

Application

50 (1) A person who is entitled to enforcement of an award made in Ontario or elsewhere in Canada may make an application to the court to that effect. 1991, c. 17, s. 50 (1).

Formalities

(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. 1991, c. 17, s. 50 (2).

Duty of court, award made in Ontario

(3) The court shall give a judgment enforcing an award made in Ontario unless,

- (a) the thirty-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;
- (c) the award has been set aside or the arbitration is the subject of a declaration of invalidity; or
- (d) the award is a family arbitration award. 1991, c. 17, s. 50 (3); 2006, c. 1, s. 1 (8).

Duty of court, award made elsewhere in Canada

- (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;
 - (d) the subject-matter of the award is not capable of being the subject of arbitration under Ontario law; or
 - (e) the award is a family arbitration award. 1991, c. 17, s. 50 (4); 2006, c. 1, s. 1 (9).

Pending proceeding

- (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. 1991, c. 17, s. 50 (5).

Speedy disposition of pending proceeding

- (6) If the court stays the enforcement of an award made in Ontario until a pending proceeding is finally disposed of, it may give directions for the speedy disposition of the proceeding. 1991, c. 17, s. 50 (6).

Unusual remedies

- (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 may,
- (a) grant a different remedy requested by the applicant; or
 - (b) in the case of an award made in Ontario, remit it to the arbitral tribunal with the court's opinion, in which case the arbitral tribunal may award a different remedy. 1991, c. 17, s. 50 (7).

Powers of court

- (8) The court has the same powers with respect to the enforcement of awards as with respect to the enforcement of its own judgments. 1991, c. 17, s. 50 (8).

Section Amendments with date in force (d/m/y)

2006, c. 1, s. 1 (8, 9) - 30/04/2007

Family arbitration awards

50.1 Family arbitration awards are enforceable only under the *Family Law Act*. 2006, c. 1, s. 1 (10).

Section Amendments with date in force (d/m/y)

2006, c. 1, s. 1 (10) - 30/04/2007

GENERAL

Crown bound

51 This Act binds the Crown. 1991, c. 17, s. 51.

Limitation periods

52 (1) The law with respect to limitation periods applies to an arbitration as if the arbitration were an action and a claim made in the arbitration were a cause of action. 1991, c. 17, s. 52 (1).

Preservation of rights

(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 an action may be brought on a cause of action that was a claim in the arbitration. 1991, c. 17, s. 52 (2).

Enforcement of award

(3) An application to enforce an award shall not be commenced after the later of December 31, 2018 and the tenth anniversary of,

- (a) the day the award was received; or
- (b) if an application to set aside the award was commenced, the date on which the application was finally determined. 2017, c. 2, Sched. 5, s. 13.

Service

Personal service of notice or document on individual

53 (1) A notice or other document may be served on an individual by leaving it with him or her. 1991, c. 17, s. 53 (1).

Personal service on corporation

(2) A notice or other document may be served on a corporation by leaving it with an officer, director or agent of the corporation, or at a place of business of the corporation with a person who appears to be in control or management of the place. 1991, c. 17, s. 53 (2).

Service by telephone transmission of facsimile

(3) A notice or other document may be served by sending it to the addressee by telephone transmission of a facsimile to the number that the addressee specified in the arbitration agreement or has furnished to the arbitral tribunal. 1991, c. 17, s. 53 (3).

Service by mail

(4) If a reasonable effort to serve a notice or other document under subsection (1) or (2) is not successful and it is not possible to serve it under subsection (3), it may be sent by prepaid registered mail to the mailing address that the addressee specified in the arbitration agreement or furnished to the arbitral tribunal or, if none was specified or furnished, to the addressee's last-known place of business or residence. 1991, c. 17, s. 53 (4).

Deemed time of receipt

(5) Unless the addressee establishes that the addressee, acting in good faith, through absence, illness or other cause beyond the addressee's control failed to receive the notice or other document until a later date, it shall be deemed to have been received,

- (a) on the day it is given or transmitted, in the case of service under subsection (1), (2) or (3);
- (b) on the fifth day after the day of mailing, in the case of service under subsection (4). 1991, c. 17, s. 53 (5).

Order for substituted service or dispensing with service

(6) The court may make an order for substituted service or an order dispensing with service, in the same manner as under the rules of court, if the court is satisfied that it is necessary to serve the notice or other document to commence an arbitration or proceed towards the appointment of an arbitral tribunal and that it is impractical for any reason to effect prompt service under subsection (1), (2), (3) or (4). 1991, c. 17, s. 53 (6).

Non-application to court proceedings

(7) This section does not apply to the service of documents in respect of court proceedings. 1991, c. 17, s. 53 (7).

Costs

Power to award costs

54 (1) An arbitral tribunal may award the costs of an arbitration. 1991, c. 17, s. 54 (1).

What constitutes costs

(2) 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. 1991, c. 17, s. 54 (2).

Request for award dealing with costs

(3) If the arbitral tribunal does not deal with costs in an award, a party may, within thirty days of receiving the award, request that it make a further award dealing with costs. 1991, c. 17, s. 54 (3).

Absence of award dealing with costs

(4) 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. 1991, c. 17, s. 54 (4).

Costs consequences of failure to accept offer to settle

(5) 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. 1991, c. 17, s. 54 (5).

Disclosure of offer to arbitral tribunal

(6) 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. 1991, c. 17, s. 54 (6).

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. 1991, c. 17, s. 55.

Assessment**Fees and expenses**

56 (1) A party to an arbitration may have an arbitrator's account for fees and expenses assessed by an assessment officer in the same manner as a solicitor's bill under the *Solicitors Act*. 1991, c. 17, s. 56 (1).

Costs

(2) 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 by an assessment officer in the same manner as costs under the rules of court. 1991, c. 17, s. 56 (2).

Idem

(3) In assessing the part of the costs represented by the fees and expenses of the arbitral tribunal, the assessment officer shall apply the same principles as in the assessment of an account under subsection (1). 1991, c. 17, s. 56 (3).

Account already paid

(4) Subsection (1) applies even if the account has been paid. 1991, c. 17, s. 56 (4).

Review by court

(5) On the application of a party to the arbitration, the court may review an assessment of costs or of an arbitrator's account for fees and expenses and may confirm the assessment, vary it, set it aside or remit it to the assessment officer with directions. 1991, c. 17, s. 56 (5).

Idem

(6) On the application of an arbitrator, the court may review an assessment of his or her account for fees and expenses and may confirm the assessment, vary it, set it aside or remit it to the assessment officer with directions. 1991, c. 17, s. 56 (6).

Time for application for review

(7) The application for review may not be made after the period specified in the assessment officer's certificate has elapsed or, if no period is specified, more than thirty days after the date of the certificate, unless the court orders otherwise. 1991, c. 17, s. 56 (7).

Enforcement

(8) When the time during which an application for review may be made has expired and no application has been made, or when the court has reviewed the assessment and made a final determination, the certificate may be filed with the court and enforced as if it were a judgment of the court. 1991, c. 17, s. 56 (8).

Interest

57 Sections 127 to 130 (prejudgment and postjudgment interest) of the *Courts of Justice Act* apply to an arbitration, with necessary modifications. 1991, c. 17, s. 57.

Regulations

58 The Lieutenant Governor in Council may make regulations,

- (a) requiring that every family arbitration agreement contain specified standard provisions;
- (b) requiring that every arbitrator who conducts a family arbitration be a member of a specified dispute resolution organization or of a specified class of members of the organization;
- (c) requiring every arbitrator who conducts a family arbitration to provide specified information about the award, not including the names of the parties or any other identifying information, to a specified person;
- (d) requiring any arbitrator who conducts a family arbitration to have received training, approved by the Attorney General, that includes training in screening parties for power imbalances and domestic violence;
- (e) requiring that every arbitrator who conducts a family arbitration shall,
 - (i) ensure that the parties are separately screened for power imbalances and domestic violence, by someone other than the arbitrator, and
 - (ii) review and consider the results of the screening before and during the family arbitration;
- (f) requiring every arbitrator who conducts a family arbitration to create a record of the arbitration containing the specified matters, to keep the record for the specified period and to protect the confidentiality of the record;
- (g) specifying standard provisions for the purpose of clause (a), dispute resolution organizations and classes for the purpose of clause (b), information for the purpose of clause (c), persons for the purpose of clause (c), matters for the purpose of clause (f) and a period for the purpose of clause (f). 2006, c. 1, s. 1 (11).

Section Amendments with date in force (d/m/y)

2006, c. 1, s. 1 (11) - 30/04/2007

59 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 1991, c. 17, s. 59.

60 OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1991, c. 17, s. 60.

Français

[Back to top](#)