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International Arbitration Laws in St. John's, Newfoundland and Labrador, Canada

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Current version: in force since 1992-06-01

Link to the latest version ⓘ: <https://canlii.ca/t/89sx>

Stable link to this version ⓘ: <https://canlii.ca/t/jz4g>

Citation to this version: International Commercial Arbitration Act, RSNL 1990, c I-15, <<https://canlii.ca/t/jz4g>> retrieved on 2025-07-03

Currency: This statute is current to 2024-01-08 according to [Statutes and Regulations Web site](#) of the House of Assembly

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RSNL1990 CHAPTER I-15

INTERNATIONAL COMMERCIAL ARBITRATION ACT

Amended:

CHAPTER I-15

**AN ACT RESPECTING THE IMPLEMENTATION IN THE PROVINCE OF THE CONVENTION ON THE
RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS AND THE MODEL LAW ON**

INTERNATIONAL COMMERCIAL ARBITRATION

Short title

1. This Act may be cited as the *International Commercial Arbitration Act* .

1986 c45 s1

Interpretation

2. (1) In this Act

- (a) "convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted by the United Nations Conference on International Commercial Arbitration in New York on June 10, 1958, as set out in Schedule A; and
- (b) "international law" means the Model Law On International Commercial Arbitration, adopted by the United Nations Commission on International Trade Law on June 21, 1985 , as set out in Schedule B.

(2) Words and expressions used in this Act have the same meaning as the corresponding words and expressions in the convention and the international law.

1986 c45 s2

PART I FOREIGN ARBITRAL AWARDS

Application of convention

3. (1) The convention applies in the province.

(2) The convention applies to arbitral awards and arbitration agreements whether made before or after February 1, 1988, but applies only in respect of differences arising out of commercial legal relationships, whether contractual or not.

1986 c45 s3

Application to court

4. For the purpose of seeking recognition of an arbitral award under the convention, application shall be made to the Trial Division.

1986 c45 s4

PART II INTERNATIONAL COMMERCIAL ARBITRATION

Application of international law

5. (1) The international law applies in the province.

(2) The international law applies to international commercial arbitration agreements and awards, whether made before or after February 1, 1988 .

1986 c45 s5

Conciliation and other proceedings

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

1986 c45 s6

Removal of arbitrator

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

(2) With respect to article 15 of the international law, the parties may remove an arbitrator at any time before the final award, regardless of how the arbitrator was appointed.

1986 c45 s7

Rules applicable to substance of dispute

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

1986 c45 s8

Consolidation of proceedings

9. (1) The Trial Division, upon application of the parties to 2 or more arbitration proceedings, may order

- (a) the arbitration proceedings to be consolidated, on terms it considers just;
- (b) the arbitration proceedings to be heard at the same time, or one immediately after another; or
- (c) any of the arbitration proceedings to be stayed until after the determination of any other of them.

(2) Where the Trial Division orders arbitration proceedings to be consolidated under paragraph (1)(a) and all the parties to the consolidation arbitration proceedings are in agreement as to the choice of the arbitral tribunal for that arbitration proceeding, the arbitral tribunal shall be appointed by the Trial Division, but where all the parties cannot agree, the court may appoint the arbitral tribunal for that arbitration proceeding.

(3) Nothing in this section shall be construed as preventing the parties to 2 or more arbitration proceedings from agreeing to consolidate those arbitration proceedings and taking the steps that are necessary to effect that consolidation.

1986 c45 s9

Court

10. (1) The functions referred to in [article 6](#) of the international law shall be performed by the Trial Division.

(2) For the purposes of the international law, a reference to "court" or "competent court", where in the context it means a court in the province, means the Trial Division, except where the context otherwise requires.

1986 c45 s10

PART III GENERAL

Stay of proceedings

11. Where, under article II(3) of the convention or [article 8](#) of the international law, a court refers the parties to arbitration, the proceedings of the court are stayed with respect to the matters to which the arbitration relates.

1986 c45 s11

Crown bound

12. This Act binds the Crown.

1986 c45 s12

Aids in interpretation

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

(2) In applying subsection (1) to the international law, recourse may be had to

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

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

as published in the *Gazette* .

1986 c45 s13

Regulations

14. The Lieutenant-Governor in Council may make regulations for the purpose of giving effect to this Act.

1986 c45 s14

Schedule A

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

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

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

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

Article II

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

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

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

Article III

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

Article IV

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

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

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these

documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

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

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

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

- (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
- (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

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

Article VII

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

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

Article VIII

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

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

Article IX

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

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

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

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

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

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

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

Article XIII

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

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

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

Article XIV

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

Article XV

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

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

Article XVI

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

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

Schedule B

UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

(As adopted by the United Nations Commission on International Trade Law on 21 June 1985)

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application

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

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

(3) An arbitration is international if:

- (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
- (b) one of the following places is situated outside the State in which the parties have their places of business:
 - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
 - (ii) any place where a substantial part of the obligation 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. Definition and rules of interpretation

For the purpose of this Law:

- (a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;
- (b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;
- (c) "court" means a body or organ of the judicial system of a State;

- (d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this Law, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 3. *Receipt of written communications*

- (1) Unless otherwise agreed by the parties:
 - (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
 - (b) the communication is deemed to have been received on the day it is so delivered.
- (2) The provisions of this article do not apply to communications in court proceedings.

Article 4. *Waiver of right to object*

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

Article 5. *Extent of court intervention*

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

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

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by the Trial Division.

CHAPTER II. ARBITRATION AGREEMENT

Article 7. *Definition and form of arbitration agreement*

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

(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the

existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 8. *Arbitration agreement and substantive claim before the court*

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

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

Article 9. *Arbitration agreement and interim measures by court*

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

**CHAPTER III.
COMPOSITION OF ARBITRAL TRIBUNAL**

Article 10. *Number of arbitrators*

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

Article 11. *Appointment of Arbitrators*

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

- (3) Failing such agreement,
 - (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in [article 6](#);
 - (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in [article 6](#).
- (4) Where, under an appointment procedure agreed upon by the parties,
 - (a) a party fails to act as required under such procedure, or
 - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

- (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

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

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in [article 6](#) shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

[Article 12.](#) *Grounds for challenge*

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

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

[Article 13.](#) *Challenge procedure*

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

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

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

[Article 14.](#) *Failure or impossibility to act*

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

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

Article 15. *Appointment of substitute arbitrator*

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

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

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

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

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

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

Article 17. *Power of arbitral tribunal to order interim measures*

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

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. *Equal treatment of parties*

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

Article 19. *Determination of rules of procedure*

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

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

Article 20. *Place of arbitration*

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

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

Article 21. Commencement of arbitral proceedings

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

Article 22. Language

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

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

Article 23. Statements of claim and defence

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

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

Article 24. Hearings and written proceedings

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

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

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

Article 25. Default of a party

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

- (a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

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

Article 26. Expert appointed by arbitral tribunal

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

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

Article 27. Court assistance in taking evidence

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

**CHAPTER VI.
MAKING OF AWARD AND TERMINATION OF
PROCEEDINGS**

Article 28. Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

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

Article 29. Decision making by panel of arbitrators

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

Article 30. Settlement

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

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

Article 31. Form and contents of award

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

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

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

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

Article 32. Termination of proceedings

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

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

- (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
- (b) the parties agree on the termination of the proceedings;
- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

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

Article 33. Correction and interpretation of award; additional award

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

- (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
- (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

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

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

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

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

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

CHAPTER VII. RECOURSE AGAINST AWARD

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

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

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

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

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

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

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

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

(b) the court finds that:

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

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

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

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

CHAPTER VIII.

RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

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

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

Article 36. Grounds for refusing recognition or enforcement

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

- (a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:
 - (i) a party to the arbitration agreement referred to in [article 7](#) was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
 - (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
 - (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
- (b) if the court finds that:
 - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
 - (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

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

1986 c45 Sch B

Arbitration Act, RSNL 1990, c A-14

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Citation to this
version: Arbitration Act, RSNL 1990, c A-14,
<<https://canlii.ca/t/jzq9>> retrieved on 2025-07-03

Currency: This statute is current to 2024-01-08 according to [Statutes
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RSNL1990 CHAPTER A-14

ARBITRATION ACT

Amended:

[1995 c13 s2](#)

CHAPTER A-14

AN ACT TO PROVIDE FOR ARBITRATIONS

Short title

1. This Act may be cited as the *Arbitration Act*.

1985 c8 s1

Interpretation

2. (1) In this Act

- (a) "arbitrator" means the person who, under this Act or in an arbitration agreement, hears and decides an arbitration;
- (b) "court" means the Trial Division or a judge of the Trial Division;
- (c) "rules" means the Rules of the Supreme Court; and
- (d) "submission" means
 - (i) a written agreement to submit present or future differences to arbitration, whether an arbitrator is named in the agreement or not,
 - (ii) a direction in an Act that a person appoint arbitrators or proceed to arbitration under this Act, or
 - (iii) an order made by the court with respect to arbitration under this Act.

- (2) This Act shall be read as one with the *Judicature Act*, and rules may be made under that Act relating to this Act.

1985 c8 s2; 1986 c42 Sch B

Submission irrevocable

3. Unless a submission expresses a contrary intention, the submission is irrevocable, except by leave of the court, and has the same effect as if it had been made an order of the court.

1985 c8 s3

Staying proceedings

4. (1) Where a party to a submission, or a person claiming through or under a party, begins legal proceedings against another party to the submission, or a person claiming through or under a party, in respect of a matter agreed to be referred, a party to the legal proceedings may, after appearance and before delivering pleadings or taking other steps in the proceedings, apply to the court for an order staying the proceedings.

- (2) The court may make an order staying the proceedings under subsection (1), upon being satisfied,
 - (a) that there is no sufficient reason why the matter should not be referred to arbitration in accordance with the submission; and
 - (b) that the applicant was, at the time the proceedings started, and still is ready and willing to do all things necessary for the proper conduct of the arbitration.

Appointment by court

5. (1) A party to a submission may serve the other parties or the arbitrators with a written notice to appoint or concur in the appointment of an arbitrator, umpire or 3rd arbitrator

- (a) where a submission provides that the reference must be to a single arbitrator and all the parties do not, after differences have arisen, concur in the appointment of the arbitrator;
- (b) where an appointed arbitrator refuses to act, is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be filled and the parties do not fill the vacancy;
- (c) where the parties or 2 arbitrators may appoint an umpire or 3rd arbitrator and do not appoint that umpire or 3rd arbitrator; or
- (d) where an appointed umpire or 3rd arbitrator refuses to act, is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be filled and the parties or arbitrators do not fill the vacancy.

(2) Where in paragraph (1)(d) an appointed umpire or 3rd arbitrator refuses to act, is incapable of acting or dies, the appointed umpire or 3rd arbitrator is considered to have vacated the post.

(3) Where the appointment of the arbitrator, 3rd arbitrator or umpire is not made within 7 clear days after the service of the notice under subsection (1), the court may, on application of the party who gave the notice, appoint the arbitrator, 3rd arbitrator or umpire.

(4) An arbitrator, 3rd arbitrator or umpire appointed under subsection (3) has the same power to act in the reference and make an award as if the arbitrator, 3rd arbitrator or umpire had been appointed by consent of all the parties to the reference.

Appointment of substitute

6. Unless a submission expresses a contrary intention, where a submission provides that a reference will be to 2 arbitrators, 1 to be appointed by either party, the party who appointed the arbitrator may appoint a new arbitrator to act in the place of the original arbitrator where the original arbitrator refuses to act, is incapable of acting, or dies.

Failure to appoint

7. Unless a submission expresses a contrary intention,

- (a) where a submission provides that a reference will be to 2 arbitrators, 1 to be appointed by either party; and
- (b) where a party fails to appoint an arbitrator either originally, or by way of substitution under [section 6](#) within 7 clear days after the other party has served the party in default with notice to make appointment,

the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator.

Award of sole arbitrator

8. A sole arbitrator appointed under [section 7](#) has the same power to act in the reference and make an award as if the sole arbitrator had been appointed by consent of all the parties to the reference and that arbitrator's award is as binding on both parties as if the sole arbitrator had been so appointed.

1985 c8 s8

Setting aside appointment

9. The court may set aside an appointment of an arbitrator made under [section 6](#) or [7](#).

1985 c8 s9

Ancillary powers

10. The arbitrators or umpire acting under a submission, unless the submission expresses a contrary intention,

- (a) may administer oaths or take the affirmations of the parties and witnesses appearing;
- (b) may state an award as to the whole or part of the submission in the form of a special case for the opinion of the court; and
- (c) may correct a clerical mistake or error in an award arising from an accidental error or omission.

1985 c8 s10

Subpoenas

11. (1) A party to a submission may take out a subpoena

- (a) requiring witnesses to attend the arbitration and give evidence; and
- (b) requiring witnesses to attend the arbitration, give evidence and also bring certain documents in their possession as specified in the subpoena.

(2) A person may not be compelled under a subpoena taken out under subsection (1) to produce a document that the person could not be compelled to produce on the trial of an action.

1985 c8 s11

Remission to arbitrator

12. (1) In all cases of reference to arbitration the court may remit all or any of the matters referred for the reconsideration of the arbitrators or umpire.

(2) When an award is remitted under subsection (1), the arbitrators or umpire shall, unless the order otherwise directs, make their award within 3 months after the date of the order.

1985 c8 s12

Removal of arbitrator

13. Where an arbitrator or umpire has misconducted himself or herself, the court may remove the arbitrator or umpire.

1985 c8 s13

Setting aside of award

14. (1) Where an arbitrator or umpire has misconducted himself or herself, or an arbitration or award has been improperly procured, the court may set the award aside.

(2) An application in respect of an arbitration or award referred to in subsection (1) may be made to the Trial Division within 60 days of the receipt of that arbitration or award by the parties to the application.

1985 c8 s14; 1995 c13 s2

Enforcement of award

15. (1) An award on a submission may, by leave of the court, be registered in the cause book of the court and enforced in the same manner as a judgment or order.

(2) Where leave of the court is given under subsection (1), the judgment or order may be entered in terms of the award.

1985 c8 s15

Definition

16. In [sections 17 to 27](#) "referee" includes a judge, a master of the court or a special referee or arbitrator agreed upon by the parties or appointed by the court.

1985 c8 s16

Reference to referee

17. The court may, with the consent of the parties, refer a question arising in a cause or matter, other than a criminal proceeding by the Crown, for inquiry or report to a referee.

1985 c8 s17

Report adopted by court

18. The report of a referee may be adopted wholly or in part by the court and where adopted may be enforced as a judgment or order.

1985 c8 s18

Reference by court

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

- (a) where all the parties who are not under a disability consent;
- (b) where the cause or matter requires a prolonged examination of documents or a scientific or local investigation that cannot, in the opinion of the court, be conveniently made before a jury or conducted

by the court through its ordinary officers; or

(c) where the matter in dispute consists wholly or in part of matters of account,

the court may order the cause or matter, or a question or issue of fact arising in the cause or matter, to be tried before an arbitrator agreed on by the parties.

1985 c8 s19

Referee officer of court

20. Where a reference is made to a referee or arbitrator under an order of the court, the referee or arbitrator is considered to be an officer of the court and has the authority and shall conduct the reference in the manner prescribed by the rules, and subject to those rules, as the court may direct.

1985 c8 s20

Effect of report

21. The report or award of a referee or arbitrator on a reference ordered by the court is equivalent to the verdict of a jury, unless set aside by the court.

1985 c8 s21

Remuneration

22. The remuneration to be paid to a referee or arbitrator to whom a matter is referred by the court may be determined by the court.

1985 c8 s22

Powers of court

23. The court has, with respect to references made under order of the court, the same powers conferred upon the court with respect to references made by consent out of court.

1985 c8 s23

Subpoenas

24. (1) The court may order that a subpoena be issued to compel the attendance of a witness and production of documents before a referee, arbitrator or umpire.

(2) The court may order that an order be issued to bring up a prisoner for examination before a referee, arbitrator or umpire.

1985 c8 s24

Special case

25. A referee, arbitrator or umpire may, at any stage of a reference, and shall, where directed by the court, state in the form of a special case for the opinion of the court a question of law arising in the course of the reference.

1985 c8 s25

Terms of order

26. An order made under this Act may be made on the terms as to costs or otherwise as the authority making the order thinks just.

1985 c8 s26

Prohibition

27. An arbitrator, umpire or referee shall not have a monetary interest in the matter upon which the arbitrator, umpire or referee is appointed to decide.

1985 c8 s27

Single arbitrator

28. Where no other method of reference is provided, the reference is to a single arbitrator.

1985 c8 s28

Appointment of umpire

29. Where a reference is to 2 arbitrators, they may appoint an umpire within the period during which they may make an award.

1985 c8 s29

Making of award

30. Arbitrators shall make an award in writing

- (a) within 3 months after entering on the reference or after having been called on to act by written notice from a party to the submission; or
- (b) on or before a later day to which the arbitrators by a writing signed by them may enlarge the time for making the award.

1985 c8 s30

Enlargement of time

31. The time for making an award may be extended by order of the court, whether or not the time for making the award has expired.

1985 c8 s31

Umpire may act

32. Where the arbitrators

- (a) have allowed their time or extended time to expire without making an award; or
- (b) have delivered to a party to the submission or to the umpire a written notice stating that they cannot agree,

the umpire may immediately enter on the reference instead of the arbitrators.

Award of umpire

33. An umpire shall make an award

- (a) within 1 month after the original or extended time for making the award by the arbitrators has expired;
or
- (b) on or before a later day to which the umpire by a writing signed by the umpire enlarges the time for making the award.

Examination of parties

34. The parties to the reference and parties claiming through them

- (a) shall, subject to a legal objection, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in dispute;
- (b) shall, subject to a legal objection, produce before the arbitrators or umpire books, deeds, papers, accounts, writings and documents within their power or possession that may be required or called for; and
- (c) shall do those other things that during the proceedings on the reference the arbitrators or umpire may require.

Examination under oath or affirmation

35. The witnesses on a reference may be examined on oath or affirmation.

Award final

36. The award made by arbitrators or an umpire is final and binding on the parties and persons claiming under them.

Costs

37. (1) The costs of the reference and award are in the discretion of the arbitrators or umpire who

- (a) may direct to, by whom and in what manner the costs or a part of them shall be paid;
- (b) may tax or settle the amount of costs to be paid; and
- (c) may award costs to be paid as between solicitor and client.

(2) Until rules are made under the *Judicature Act*, for the purpose of this Act, the prevailing cost structure of the court applies with the necessary changes.

