

Commercial Arbitration Act

CHAPTER 5 OF THE ACTS OF 1999



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CHAPTER 5 OF THE ACTS OF 1999

**An Act to Reform the Law Respecting
Domestic Commercial Arbitration and to
Promote and Encourage the Use of Arbitration
as a Means of Alternative Dispute Resolution**

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Short title

1 This Act may be cited as the *Commercial Arbitration Act*. 1999, c. 5, s. 1.

Purpose of Act

2 The purpose of this Act is to revise and update the law respecting commercial arbitration and thereby encourage and promote the use of arbitration as an alternative to court proceedings in resolving disputes between parties to a contract. 1999, c. 5, s. 2.

Interpretation

- 3** (1) In this Act,
- (a) “arbitration agreement” means, subject to subsections (2) and (3), an agreement or part of an agreement by which two or more persons agree to submit a matter in dispute to arbitration;

- (b) “arbitrator” includes an umpire;
- (c) “award” means an award made by an arbitral tribunal pursuant to this Act;
- (d) “court” means,
 - (i) in Sections 8 and 9, the Supreme Court of Nova Scotia and the Provincial Court of Nova Scotia, and
 - (ii) in all other Sections, the Supreme Court of Nova Scotia;
- (e) “party” means a party to an arbitration agreement.

(2) Where the parties to an arbitration agreement make a further agreement in connection with the arbitration, that further agreement forms part of the arbitration agreement.

(3) Where a matter is authorized or required pursuant to an enactment to be submitted to arbitration, a reference in this Act to an arbitration agreement is a reference to the enactment, unless the context otherwise requires. 1999, c. 5, s. 3.

Application of Act

4 (1) This Act applies to an arbitration conducted under an arbitration agreement or authorized or required pursuant to an enactment unless

- (a) the application of this Act is excluded by an agreement of the parties or by law; or
- (b) Part II of the *International Commercial Arbitration Act* applies to the arbitration.

(2) Where there is a conflict between this Act and another enactment that authorizes or requires the arbitration, the other enactment prevails.

(3) This Act does not apply to an arbitration authorized or required pursuant to any of the following:

- (a) the *Trade Union Act*;
- (b) a collective agreement under the *Trade Union Act*;
- (c) any enactment set out in the regulations.

(4) This Act binds His Majesty in right of the Province. 1999, c. 5, s. 4.

Variation or exclusion of provision of Act

5 The parties to an arbitration agreement may agree to vary or exclude any provision of this Act, except subsection 7(2), Sections 22 and 43, subsection 48(2) and Sections 49, 51 and 53. 1999, c. 5, s. 5.

Deemed waiver

6 A party to an arbitration who is aware of a non-compliance with this Act, except with a provision referred to in Section 5, or non-compliance with the

arbitration agreement and who does not object to the non-compliance within the time limit provided or, where none is provided, within a reasonable time, not to exceed thirty days, is deemed to have waived the right to object. 1999, c. 5, s. 6.

Arbitration agreement

7 (1) An arbitration agreement is not required to be in writing.

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

(3) An arbitration agreement may only be rescinded in accordance with the law of contract. 1999, c. 5, s. 7.

COURT INTERVENTION

Restriction on power of court to intervene

8 No court may intervene in matters governed by this Act, except for the following purposes as provided by this Act:

- (a) to assist the arbitration process;
- (b) to ensure that an arbitration is carried out in accordance with the arbitration agreement;
- (c) to prevent manifestly unfair or unequal treatment of a party to an arbitration agreement;
- (d) to enforce awards. 1999, c. 5, s. 8.

Stay

9 (1) Where a party to an arbitration agreement commences a proceeding in a court in respect of a matter in dispute to be submitted to arbitration under the agreement, the court shall, on the motion of another party to the arbitration agreement, stay the proceeding.

(2) The court may refuse to stay the proceeding pursuant to subsection (1) only in the following cases:

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

(3) An arbitration of the matter in dispute may be commenced or continued while the motion pursuant to subsection (1) is before the court.

- (4) Where the court refuses to stay the proceeding,
- (a) no arbitration of the matter in 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 refusal of the court, is without effect.

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

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

(6) There is no appeal from the decision of the court pursuant to this Section. 1999, c. 5, s. 9.

Powers of court

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

(2) On the application of an arbitral tribunal, or on the application of a party with the consent of the other parties or the arbitral tribunal, the court may determine any question of law that arises during the arbitration.

(3) The determination of the court of a question of law may be appealed to the Nova Scotia Court of Appeal with leave of that Court.

(4) On the application of all the parties to more than one arbitration, the court may order, on terms that the court considers 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.

(5) When the court orders, pursuant to subsection (4), that arbitrations be consolidated, the court may appoint an arbitral tribunal for the consolidated arbitration and, where all the parties agree as to the choice of the arbitral tribunal, the court shall appoint that arbitral tribunal.

(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. 1999, c. 5, s. 10.

ARBITRAL TRIBUNAL

Composition

11 Where an arbitration agreement does not specify the number of arbitrators who are to form the arbitral tribunal, the tribunal shall be composed of one arbitrator. 1999, c. 5, s. 11.

Court-appointed member and chair

12 (1) The court may appoint the arbitral tribunal, on the application of a party, if

(a) the arbitration agreement provides no procedure for appointment of the arbitral tribunal; or

(b) the person with power to appoint the arbitral tribunal has not done so within the time provided in the agreement or after a party has given the person seven days' notice to do so, whichever is later.

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

(3) Subsections (1) and (2) apply to the appointment of individual members of arbitral tribunals.

(4) An arbitral tribunal composed of three or more arbitrators shall, and an arbitral tribunal composed of two arbitrators may, elect a chair from among the arbitrators. 1999, c. 5, s. 12.

Duties of arbitrator

13 (1) An arbitrator shall be independent of the parties and impartial as between the parties.

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

(3) An arbitrator who, during an arbitration, becomes aware of circumstances that may give rise to a reasonable apprehension of bias shall promptly disclose the circumstances to all the parties. 1999, c. 5, s. 13.

No right to revoke appointment

14 A party cannot revoke the appointment of an arbitrator. 1999, c. 5, s. 14.

Challenge and removal

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

(a) circumstances exist that may give rise to a reasonable apprehension of bias;

(b) the arbitrator does not possess qualifications that the parties have agreed are necessary.

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

(3) A party shall not challenge an arbitrator pursuant to clause 1(b) after the commencement of the arbitration hearing.

(4) 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 the grounds for challenge.

(5) The other parties may agree to remove the arbitrator who is being challenged or the arbitrator may resign.

(6) Where the arbitrator is not removed by the parties or does not resign, the arbitral tribunal, including the arbitrator who is being challenged, shall decide the issue within seven days and shall immediately notify the parties of the decision of the arbitral tribunal.

(7) Within ten days after being notified of the decision of the arbitral tribunal pursuant to subsection (6), a party may make an application to the court to decide the issue.

(8) While an application is pending pursuant to subsection (7), the arbitral tribunal, including the arbitrator who is being challenged, may continue the arbitration and make an award, unless the court otherwise orders. 1999, c. 5, s. 15.

Termination of arbitrator's mandate

16 (1) The mandate of an arbitrator terminates when

- (a) the arbitrator resigns or dies;
- (b) the parties agree to remove the arbitrator;
- (c) ten days elapse after all the parties are notified of the decision of the arbitral tribunal to uphold a challenge of the arbitrator and remove the arbitrator, and no application is made to the court pursuant to subsection 15(7); or
- (d) the court removes the arbitrator pursuant to subsection 17(1).

(2) The resignation of an arbitrator or an agreement of a party to terminate the mandate of an arbitrator does not imply acceptance of the validity of any reason advanced for challenging or removing the arbitrator. 1999, c. 5, s. 16.

Removal by court

17 (1) The court may remove an arbitrator on the application of a party pursuant to subsection 15(7), or may do so on the application of a party, if the arbitrator becomes unable to perform the functions of an arbitrator, commits a corrupt or fraudulent act, delays unduly in conducting the arbitration or does not conduct the arbitration in accordance with Section 21.

(2) The arbitrator is entitled to be heard by the court on an application pursuant to subsection (1).

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

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

(5) The arbitrator or a party may, within thirty days after receiving the decision of the court, appeal an order made pursuant to subsection (4) or the refusal to make such an order to the Nova Scotia Court of Appeal with leave of that Court.

(6) Except as provided in subsection (5), there is no appeal from the decision of the court or from directions given by the court pursuant to this Section. 1999, c. 5, s. 17.

Consequences of termination of mandate

18 (1) When the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed, following the procedures that were used in the appointment of the arbitrator being replaced.

(2) When the mandate of an arbitrator terminates, the court may, on the application of any party, give directions concerning the conduct of the arbitration.

(3) The court may appoint the substitute arbitrator on the application of a party 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 within the time provided in the agreement or after a party has given the person seven days' notice to do so, whichever is later.

(4) There is no appeal from the decision of the court or from directions given by the court pursuant to this Section.

(5) Where the arbitration is to be conducted only by a named arbitrator, the parties to the arbitration agreement may provide in the agreement that this Section does not apply. 1999, c. 5, s. 18.

JURISDICTION OF ARBITRAL TRIBUNAL

Powers of tribunal

19 (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.

(2) The arbitral tribunal may determine any question of law that arises during the arbitration.

(3) Where the arbitration agreement forms part of another agreement, the arbitration agreement shall, for the purpose of a ruling on jurisdiction, be treated as an independent agreement that may survive even if the other agreement is found to be invalid.

(4) A party who objects to the jurisdiction of an arbitral tribunal to conduct an arbitration shall object no later than the beginning of the hearing or, where there is no hearing, no later than the first occasion on which the party submits to the tribunal a statement referred to in Section 27.

(5) A party who has appointed or who has participated in the appointment of an arbitrator is not prevented from objecting to the jurisdiction of the arbitral tribunal to conduct the arbitration.

(6) A party who objects on the grounds that the arbitral tribunal is exceeding its jurisdiction shall object as soon as the matter alleged to be beyond the jurisdiction of the tribunal is raised during the arbitration.

(7) Notwithstanding Section 6, where the arbitral tribunal considers the delay justified, a party may object after the time referred to in subsection (4) or (6), as the case may be, has passed.

(8) The arbitral tribunal may rule on an objection when the objection is raised or may deal with the objection in an award.

(9) Where 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 and the court, when deciding the matter, shall apply the principles set out in Section 8.

(10) There is no appeal from the decision of the court on an application pursuant to subsection (9).

(11) While an application is pending pursuant to subsection (9), the arbitral tribunal may continue the arbitration and make an award. 1999, c. 5, s. 19.

Further powers of tribunal

20 (1) On the request of a party, 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.

(2) The court may enforce the order of an arbitral tribunal made pursuant to subsection (1) as if the order were a similar order made by the court in an action. 1999, c. 5, s. 20.

CONDUCT OF ARBITRATION

Rights of parties

21 (1) An arbitral tribunal shall treat the parties equally and fairly.

(2) Each party shall be given an opportunity to present a case and to respond to the case presented by the other parties. 1999, c. 5, s. 21.

Procedure

22 (1) An arbitral tribunal may determine the procedure to be followed in the arbitration.

(2) An arbitral tribunal that is composed of more than one arbitrator may delegate the determination of questions of procedure to the chair of the arbitral tribunal. 1999, c. 5, s. 22.

Evidence

23 (1) An arbitral tribunal is not bound by the rules of evidence or any other law applicable to judicial proceedings and has power to determine the admissibility, relevance and weight of any evidence.

(2) An arbitral tribunal may determine the manner in which evidence is to be admitted. 1999, c. 5, s. 23.

Time and place of arbitration

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

(2) An arbitral tribunal may meet at any place the tribunal considers appropriate for consultation among the members of the tribunal, for hearing witnesses, experts or parties or for inspecting property or documents. 1999, c. 5, s. 24.

Commencement of arbitration

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

(a) a party to an arbitration agreement serves on the other parties notice to appoint or to participate in the appointment of an arbitrator under the agreement;

(b) where the arbitration agreement gives a person who is not a party power to appoint an arbitrator, a party serves notice to exercise that power on the person and serves a copy of the notice on the other parties;

(c) a party serves on the other parties a notice demanding arbitration under the arbitration agreement.

(2) An arbitral tribunal may exercise the powers of the tribunal when every member of the tribunal has accepted appointment. 1999, c. 5, s. 25.

Deemed reference

26 An arbitration commenced without identifying the matters in dispute is deemed to refer to arbitration all matters in dispute that the arbitration agreement entitles the party commencing the arbitration to refer to arbitration. 1999, c. 5, s. 26.

Statements of parties

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

(2) The statements of the parties referred to in subsection (1) shall indicate the facts supporting the position of the parties, the points at issue and the relief sought by the parties.

(3) The parties may submit, with the statements referred to in subsection (1), the documents the parties consider relevant or may refer to the documents or other evidence the parties intend to submit.

(4) The parties may amend or supplement the statements referred to in subsection (1) during the arbitration, but the arbitral tribunal may disallow a change that is unduly delayed.

(5) The parties may submit the statements referred to in subsection (1) orally with the permission of the arbitral tribunal.

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

(a) submit to examination on oath or affirmation with respect to the matters in dispute; or

(b) produce records and documents that are in the possession or under the control of the parties or the persons claiming through or under the parties.

(7) The court may enforce a direction of the arbitral tribunal pursuant to this Section as if the direction were a direction made by the court in an action. 1999, c. 5, s. 27.

Property and documents

28 (1) An arbitral tribunal may conduct the arbitration on the basis of documents or may hold hearings for the presentation of evidence and for oral argument, but the tribunal shall hold a hearing if a party requests a hearing.

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

(3) A party shall

(a) provide to the other parties a copy of any statement submitted to the arbitral tribunal; and

(b) make available to the other parties any other information supplied to the arbitral tribunal.

(4) An arbitral tribunal shall not rely on an expert report or other document of which the parties have not been informed. 1999, c. 5, s. 28.

Effect of certain defaults of party

29 (1) Where the party commencing an arbitration does not submit a statement within the period of time specified pursuant to subsection 27(1), the arbitral tribunal may dismiss the claim by making an award terminating the arbitration, unless the party offers a satisfactory explanation.

(2) Where a party other than the one who commenced the arbitration does not submit a statement within the period of time specified pursuant to subsection 27(1), the arbitral tribunal may continue the arbitration unless that party offers a satisfactory explanation, but the tribunal shall not treat the failure of that party to submit a statement as an admission of an allegation of any other party.

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

(4) In the case of an unreasonable delay by the party who commenced the arbitration, the arbitral tribunal may

- (a) make an award terminating the arbitration; or
- (b) give directions for the speedy determination of the arbitration,

and may impose conditions on its decision. 1999, c. 5, s. 29.

Experts

30 (1) An arbitral tribunal may appoint an expert to report to the tribunal on specific issues concerning the arbitration.

(2) The expert referred to in subsection (1) shall be a person agreed on by the parties and, failing an agreement, shall be determined by the arbitral tribunal.

(3) The remuneration to be paid to the expert shall be paid by the parties in equal portions, subject to the direction of the arbitral tribunal.

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

(5) At the request of a party or of the arbitral tribunal, the expert, after making a report, shall 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. 1999, c. 5, s. 30.

Notices and oaths

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

(3) An arbitral tribunal may administer oaths, affirmations and declarations.

(4) An arbitral tribunal shall require witnesses to testify under oath, affirmation or declaration.

(5) 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 the arbitration were a court proceeding. 1999, c. 5, s. 31.

Exemption

32 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. 1999, c. 5, s. 32.

Procedure

33 (1) Notwithstanding anything contained in Sections 21 to 32, unless the parties otherwise agree, an arbitration pursuant to this Act shall be conducted following the procedure set out in Schedule A to this Act.

(2) Notwithstanding subsection (1) but subject to subsection (3), the parties may agree to have the arbitration conducted following the expedited procedure set out in Schedule B to this Act.

(3) The expedited procedure referred to in subsection (2) may be utilized by the parties within five days of the dispute arising provided that the dispute has not already been referred to arbitration or that the time for referring the dispute to arbitration has not expired.

(4) The procedure set out in Schedule A to this Act applies to the expedited procedure set out in Schedule B to this Act, but where there is a conflict between Schedule A and Schedule B, Schedule B prevails. 1999, c. 5, s. 33.

AWARD AND TERMINATION OF ARBITRATION

Duties and powers on making award

34 An arbitral tribunal shall decide a matter in dispute in accordance with the law, including equity, and may order specific performance, injunctions and other equitable remedies. 1999, c. 5, s. 34.

Applicable law

35 (1) In deciding a matter in dispute, an arbitral tribunal shall apply the law of a jurisdiction designated by the parties or, where none is designated, the law of the jurisdiction the arbitral tribunal considers appropriate in the circumstances.

(2) A designation by the parties of the law of the jurisdiction refers to the substantive law of that jurisdiction and not to the conflict of laws rules of that jurisdiction, unless the parties expressly indicate that the designation includes those conflict of laws rules. 1999, c. 5, s. 35.

Manner of decision

36 An arbitral tribunal shall decide the matters in dispute in accordance with the arbitration agreement and the contract, if any, under which the matters arose and shall also take into consideration any applicable usages of trade. 1999, c. 5, s. 36.

Composition required for decision

37 Where an arbitral tribunal is composed of more than one member, a decision of a majority of the members is a decision of the arbitral tribunal but, where there is no majority decision or unanimous decision, the decision of the chair governs. 1999, c. 5, s. 37.

Permitted techniques

38 (1) The members of an arbitral tribunal may, where the parties consent, use mediation, conciliation or similar techniques during the arbitration to encourage settlement of the matters in dispute.

(2) After the members of an arbitral tribunal use a technique referred to in subsection (1), the members of the arbitral tribunal may resume their roles as arbitrators without disqualification. 1999, c. 5, s. 38.

Mediation

39 (1) During any arbitration under this Act, the parties may agree to adjourn the arbitration and refer any or all matters in dispute to mediation.

(2) Where a matter is referred to mediation pursuant to subsection (1), unless otherwise agreed by the parties, the procedure for conducting the mediation shall be as set out in Schedule C to this Act.

(3) Where the mediation is unsuccessful, or where either party withdraws from the mediation, the arbitration shall re-commence at a time to be set by the arbitral tribunal.

(4) Where an arbitration is re-commenced pursuant to subsection (3), the members of the arbitral tribunal may resume their roles as arbitrators without disqualification.

(5) A mediator shall not act as a representative or counsel of a party in proceedings in respect of a dispute that is the subject-matter of the mediation and the mediator shall not be subpoenaed to give evidence as a witness in any such proceedings nor shall the mediator voluntarily offer to give such evidence.

(6) The parties shall not rely on or introduce as evidence in any proceedings, whether or not such proceedings relate to the subject-matter of the mediation,

- (a) any views expressed, or suggestions made, by the other party in respect of a possible settlement of the dispute;
- (b) any admissions made by the other party in the course of mediation;
- (c) any proposals or recommendations made by the mediator; or
- (d) the fact that the other party has indicated willingness to accept a proposal or recommendation for settlement made by the mediator. 1999, c. 5, s. 39.

Effect of settlement

40 Where the parties settle the matters in dispute during arbitration, the arbitral tribunal shall terminate the arbitration and shall record the settlement in the form of a consent award. 1999, c. 5, s. 40.

Effect of award

41 An award made by an arbitral tribunal binds the parties unless the award is set aside or varied pursuant to Section 48 or 49. 1999, c. 5, s. 41.

Required contents of award

42 (1) An award made by an arbitral tribunal shall be made in writing and, except in the case of an award pursuant to Section 40, shall, unless the parties otherwise agree, state the reasons on which the award is based.

(2) An award shall indicate the place where and the date on which the award was made.

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

(4) A copy of an award shall be sent to each party. 1999, c. 5, s. 42.

Power to extend time for award

43 The court may extend the time in which an arbitral tribunal is required to make an award, even if the time has expired. 1999, c. 5, s. 43.

Explanation of award

44 (1) A party may, within fifteen days after receiving a copy of the award of the arbitral tribunal, request, in writing, that the arbitral tribunal provide a further explanation of the reasons on which the award is based.

(2) Where the arbitral tribunal does not give a sufficient explanation within fifteen days after receiving a request pursuant to subsection (1), the court, on the application of the party, may order the tribunal to give an explanation.

(3) An application pursuant to subsection (2) shall be made within forty-five days after the party receives a copy of the award. 1999, c. 5, s. 44.

Interim and final awards

45 (1) The arbitral tribunal may make interim awards.

(2) The arbitral tribunal may make more than one final award, disposing of one or more matters in dispute referred to arbitration in each award. 1999, c. 5, s. 45.

Termination of arbitration

46 (1) An arbitration is terminated when

(a) the arbitral tribunal makes a final award or awards in accordance with this Act, disposing of all matters in dispute referred to arbitration;

(b) the arbitral tribunal terminates the arbitration pursuant to subsection (2) or subsections 29(1) or (4); or

(c) the mandate of the arbitrator is terminated pursuant to Section 16, if the arbitration agreement provides that the arbitration is to be conducted only by that arbitrator.

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

(a) the party that commenced the arbitration withdraws the matters in dispute, unless the other party objects to the termination and the arbitral tribunal agrees that the other party is entitled to obtain a final settlement of the matters in dispute;

(b) the parties agree that the arbitration should be terminated; or

(c) the arbitral tribunal finds that the continuation of the arbitration has become unnecessary or impossible.

(3) An arbitration that is terminated may only be revived for the purpose of Section 47, subsections 49(7) and (8) or subsection 56(4).

(4) The death of a party to an arbitration does not terminate an arbitral tribunal.

(5) Subsection (4) does not affect a rule of law or an enactment under which the death of a person extinguishes a cause of action. 1999, c. 5, s. 46.

Power to make corrections

47 (1) An arbitral tribunal may, on its own initiative within thirty days after making an award or at the request of a party made within thirty days after receiving the award,

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

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

- (2) The arbitral tribunal may
- (a) on its own initiative within thirty days after making an award or such longer time as approved by the parties; or
 - (b) at the request of a party within thirty days after receipt of the award by that party,

make an additional award to deal with a matter in dispute that was presented in the arbitration but omitted from the earlier award.

- (3) The arbitral tribunal is not required to hold a hearing or meeting before rejecting a request made pursuant to this Section. 1999, c. 5, s. 47.

APPEALS AND SETTING ASIDE

Prerequisite to right to appeal

48 (1) Unless the parties otherwise agree, there is no appeal of an award.

(2) Where an arbitration agreement so provides, a party may appeal an award to the court on a question of law, on a question of fact or on a question of mixed law and fact. 1999, c. 5, s. 48.

Setting aside by court

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

- (a) a party entered into the arbitration agreement while under a legal incapacity;
- (b) the arbitration agreement is invalid or has ceased to exist;
- (c) the award deals with a matter in dispute that the arbitration agreement does not cover or contains a decision on a matter in dispute that is beyond the scope of the agreement;
- (d) the composition of the arbitral tribunal was not in accordance with the arbitration agreement or, where the agreement did not deal with the matter, was not in accordance with this Act;
- (e) the subject-matter of the arbitration is not capable of being the subject of arbitration pursuant to the law of the Province;
- (f) the applicant was treated manifestly unfairly and unequally, was not given an opportunity to present a case or to respond to the case of another party or was not given proper notice of the arbitration or of the appointment of an arbitrator;
- (g) the procedures followed in the arbitration did not comply with this Act or the arbitration agreement;
- (h) an arbitrator committed a corrupt or fraudulent act or there is a reasonable apprehension of bias;
- (i) the award was obtained by fraud.

(2) Where clause (1)(c) applies and it is reasonable to separate the decisions on matters covered by the arbitration agreement from the impugned decisions, the court shall set aside the impugned decisions and allow the other decisions to stand.

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

(4) The court shall not set aside an award of grounds referred to in clause (1)(h) if the applicant had an opportunity to challenge the arbitrator on those grounds pursuant to Section 15 before the award was made and did not do so or if those grounds were the subject of an unsuccessful challenge.

(5) The court shall not set aside an award on a ground to which the applicant is deemed, pursuant to Section 6, to have waived the right to object.

(6) Where the ground alleged for setting aside the award could have been raised as an objection to the jurisdiction of the arbitral tribunal to conduct the arbitration, the court may set the award aside on that ground if the court considers the failure of the applicant to make an objection in accordance with Section 19 justified.

(7) When the court sets aside an award pursuant to this Section, the court may remove an arbitrator or the arbitral tribunal and may give directions concerning the conduct of the arbitration.

(8) Instead of setting aside an award pursuant to this Section, the court may remit the award to the arbitral tribunal and give directions concerning the conduct of the arbitration. 1999, c. 5, s. 49.

Limitation periods

50 (1) The following actions shall be commenced within thirty days after an appellant or applicant receives the award, correction, explanation, change or statements of reasons on which the appeal or application is based:

- (a) an appeal pursuant to subsection 48(2);
- (b) an application to set aside an award pursuant to Section 49.

(2) An application to set aside an award on the grounds that an arbitrator has committed a corrupt or fraudulent act or that the award was obtained by fraud shall be commenced

- (a) within the period referred to in subsection (1); or
- (b) within thirty days after the applicant discovers or ought to have discovered the fraud or corrupt act,

whichever is later. 1999, c. 5, s. 50.

Declaration of invalidity

51 (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 is invalid or has ceased to exist;
- (c) the subject-matter of the arbitration is not capable of being the subject of arbitration pursuant to the law of the Province; or
- (d) the arbitration agreement does not apply to the matter in dispute.

(2) When the court grants a declaration pursuant to subsection (1), the court may also grant an injunction prohibiting the commencement or continuation of the arbitration. 1999, c. 5, s. 51.

Appeal to Nova Scotia Court of Appeal

52 An appeal from the decision of the court in

- (a) an appeal of an award;
- (b) an application to set aside an award; or
- (c) an application for a declaration of invalidity,

may be made to the Nova Scotia Court of Appeal with leave of that Court. 1999, c. 5, s. 52.

ENFORCEMENT

Procedure for making award a judgment

53 (1) A party who is entitled to enforce an award may file the award with the prothonotary of the court.

(2) Upon filing with the court pursuant to subsection (1), the award is a judgment of the court and may be enforced as any other judgment of the court. 1999, c. 5, s. 53.

GENERAL

Applicable law and limitation periods

54 (1) The law with respect to limitation periods applies to an arbitration as if the arbitration were an action and a matter in dispute in the arbitration were a cause of action.

(2) Where the court sets aside an award, terminates an arbitration or declares an arbitration to be invalid, the court 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 matter in dispute in the arbitration.

- (3) An application for the enforcement of an award may not be made more than
- (a) two years after the day on which the applicant receives the award; or
 - (b) two years after all appeal periods have expired,
- whichever is later. 1999, c. 5, s. 54.

Service of documents

55 (1) A notice or other document may be served on an individual by leaving the notice or document with that individual.

(2) A notice or other document may be served on a corporation, partnership, association, society or other entity by leaving the notice or document with an officer, director or agent of the corporation, partnership, association, society or other entity, or at a place of business of the corporation, partnership, association, society or other entity with a person who appears to be in control or management of the place.

(3) A notice or other document may be served by sending the notice or document to the addressee by telephone transmission of a facsimile to the number that the addressee specified in the arbitration agreement or furnished to the arbitral tribunal.

(4) Where a reasonable effort to serve a notice or other document pursuant to subsection (1) or (2) is not successful and it is not possible to serve the notice or document pursuant to subsection (3), the notice or document 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, where no mailing address was specified or furnished, to the addressee's last known place of business or residence.

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

- (a) on the day it is given or transmitted, in the case of service pursuant to subsection (1), (2) or (3); or
- (b) on the fifth day after the day of mailing, in the case of service pursuant to subsection (4).

(6) The court may make an order for substituted service or an order dispensing with service in the same manner as under the *Civil Procedure Rules* 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 unpractical for any reason to effect prompt service pursuant to subsection (1), (2), (3) or (4).

(7) This Section does not apply to the service of documents in respect of court proceedings. 1999, c. 5, s. 55.

Costs of an arbitration

- 56** (1) An arbitral tribunal may award the costs of an arbitration.
- (2) The arbitral tribunal may award all or part of the costs of an arbitration on a solicitor-client basis, a party-and-party basis or any other basis.
- (3) The costs of an arbitration consist of the legal expenses of the parties, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration.
- (4) Where the arbitral tribunal does not deal with costs in an award, a party may, within thirty days after receiving an award, request that the arbitral tribunal make a further award dealing with costs.
- (5) In the absence of an award dealing with costs, each party is responsible for that 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.
- (6) Where a party makes an offer, in writing, to another party to settle the matter in dispute or part of the matter, the offer is not accepted and the award of the arbitral tribunal is no more favourable to the party to which the offer was made than was the offer, the arbitral tribunal may take that fact into account in awarding costs in respect of the period from the making of the offer to the making of the award.
- (7) The fact that an offer to settle has been made shall not be communicated to the arbitral tribunal until the tribunal has made a final determination of all aspects of the matters in dispute other than costs.
- (8) In this Section, "party-and-party costs" means party-and-party costs as set out in the *Civil Procedure Rules*. 1999, c. 5, s. 56.

Interest

- 57** (1) An arbitral tribunal has the same power with respect to interest as the court has under the *Interest on Judgments Act*, but the provision for payment into court does not apply.
- (2) An award is a judgment of the court for the purpose of the *Interest Act (Canada)*. 1999, c. 5, s. 57.

Fees and expenses of tribunal

- 58** (1) The fees and expenses of the arbitrator shall be those set out in an agreement between the parties and, where there is no agreement between the parties with respect to the costs and expenses of the arbitrator, the fees and expenses paid to an arbitrator shall not exceed the fair and reasonable value of the services performed and the necessary and reasonable expenses actually incurred.
- (2) A party to an arbitration may apply to the clerk of the court to have the account for fees and expenses of an arbitrator taxed by a taxing officer in the same manner as a charge for services as a barrister and solicitor pursuant to the *Civil Procedure Rules*.

(3) Where the arbitral tribunal awards costs and directs that the costs be taxed, or awards costs without fixing the amount or indicating how the amount is to be ascertained, a party to the arbitration may have the costs taxed by a taxing officer in a similar manner as costs pursuant to the *Civil Procedure Rules*, having regard to the special characteristics of arbitrations.

(4) In taxing the part of the costs represented by the fees and expenses of the arbitral tribunal, the taxing officer shall apply the same principles as in the taxation of an account pursuant to subsection (1).

(5) Subsection (2) applies even if the account has been paid. 1999, c. 5, s. 58.

Applicable law

59 (1) Subject to Section 4 and clause 60(1)(a), this Act applies to an arbitration conducted under an arbitration agreement entered into before the coming into force of this Act if the arbitration is commenced on or after the coming into force of this Act.

(2) The *Arbitration Act* applies to arbitrations commenced before the coming into force of this Act. 1999, c. 5, s. 59.

Regulations

- 60 (1) The Governor in Council may make regulations
- (a) prescribing enactments to which this Act does not apply;
 - (b) amending the Schedules to this Act;
 - (c) defining any word or expression used but not defined in this Act;
 - (d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1999, c. 5, s. 60.

Arbitration Act amended

61 *amendment*

Condominium Act amended

62 *amendment*

Proclamation

63 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 1999, c. 5, s. 63.

Proclaimed - December 3, 1999
In force - December 3, 1999

SCHEDULE A

ARBITRATION PROCEDURE - CONDUCT OF ARBITRATION

Representation

1 The parties to an arbitration may be represented or assisted by any person during an arbitration.

2 Where a party intends to be represented or assisted by a lawyer, that party shall, in writing, advise the other party of the lawyer's name and the capacity in which the lawyer is acting at least five days before any scheduled hearing or meeting.

Place of Arbitration

3 Unless otherwise agreed, the arbitration shall be held in Halifax, but the arbitrator may meet in any other place that the arbitrator considers necessary for consultation, to hear witnesses, experts or other parties or for the inspection of documents, goods or other property.

Pre-arbitration Meeting

4 The parties shall meet with the arbitrator within seven days of the date of the arbitrator's appointment for a pre-arbitration meeting to

- (a) identify the issues in dispute;
- (b) discuss the procedure to be followed in the arbitration;
- (c) establish time periods for taking certain steps, including the dates, time and location of the arbitration; and
- (d) deal with any other matter that will assist the parties to settle their differences and assist the arbitration to proceed in an efficient and expeditious manner.

5 The pre-arbitration meeting may take place by conference telephone call.

6 The arbitrator shall record any agreements or consensus reached at the pre-arbitration meeting and shall, within three days of that meeting, send a copy of that document to each of the parties or their representatives.

Conduct of the Arbitration

7 Subject to the rules in this Schedule, the arbitrator may conduct the arbitration in the manner the arbitrator considers appropriate, but each party shall be treated fairly and shall be given full opportunity to present a case.

8 Under this Schedule, the power of the arbitrator includes, but is not limited to,

- (a) ordering the arbitration to be conducted by documents only or with limited oral hearings;
- (b) controlling or refusing discovery examinations;
- (c) determining in what order issues will be dealt with;
- (d) limiting or extending the extent of document disclosure;
- (e) requiring further particulars of the claim and the issues advanced;
- (f) requiring earlier disclosure of intended witnesses and documents;
- (g) limiting the number of experts or refusing to allow expert evidence;

- (h) requiring the use of a single independent expert to deal with a particular issue or any number of issues;
- (i) requiring experts to file written reports in place of giving oral testimony;
- (j) requiring expert reports earlier in the process than required under this Schedule;
- (k) determining when and in what order experts will be heard;
- (l) setting the dates, times and location for the arbitration;
- (m) ordering pre-arbitration meetings as required; and
- (n) fixing and awarding costs, including solicitor/client costs and the costs of the arbitration proceeding.

Exchange of Documents

9 Within fifteen days of the pre-arbitration meeting, or where the parties agree that no pre-arbitration meetings will be held, within fifteen days after the arbitrator has been appointed, the claimant shall send a written statement to the respondent and the arbitrator outlining the facts supporting the claim of the claimant, the points at issue and the relief or remedy sought.

10 Within fifteen days after the respondent receives the claimant's statement, the respondent shall send a written statement to the claimant and the arbitrator outlining the respondent's defence, the particulars requested in the statement of claim and a written statement of the respondent's counterclaim, if any.

11 The claimant, when responding to a counterclaim, shall send a written statement to the respondent and the arbitrator outlining the claimant's defence to the counterclaim within fifteen days after the claimant receives the counterclaim.

12 Each party shall submit with the party's statement a list of the documents upon which the party intends to rely and the list of documents shall describe each document by specifying its document type, date, author, recipient and subject-matter.

Amendment of or Supplemental Claim

13 The arbitrator may allow a party to amend or supplement the party's claim or counterclaim or defence during the course of the arbitration unless the arbitrator considers the delay in amending or supplementing the claim to be prejudicial to the other party or unless the arbitrator considers that the amendment or supplement goes beyond the terms of the arbitration agreement or the submission to arbitrate.

Production of Documents

14 The arbitrator may, on application of a party or on the arbitrator's own motion, order a party to produce any documents the arbitrator considers relevant to the arbitration within a time the arbitrator specifies and, where such an order is made, the other party may inspect those documents and make copies of them.

15 Each party shall make available to the other for inspection and copying any documents upon which the party intends to rely.

Agreed Statement of Facts

16 The parties shall, within a period of time specified by the arbitrator, identify those facts, if any, that are not in dispute and submit to the arbitrator an agreed statement of facts.

Arbitration Hearings

17 The arbitrator shall set the dates for any oral hearings or meetings and shall give at least seven days written notice of such hearings or meetings to the parties.

18 All oral hearings and meetings shall be held in private and all written documentation shall be kept confidential by the arbitrator and the parties and not disclosed to any other person, except by the consent of all parties.

Evidence

19 Each party shall prove the facts relied upon to support the party's claim or defence.

20 Where a party is presenting evidence through a witness, the party shall, no later than seven days before the commencement of the oral hearing, advise the arbitrator and the other party of the name and address of the witness and provide a brief summary of the evidence to be given by the witness.

21 The written statement of an expert shall be given to the other party and the arbitrator at least fourteen days before the commencement of the oral hearing.

22 The arbitrator shall be the judge of the relevance and materiality of the evidence offered and the arbitrator is not required to apply the legal rules of evidence.

23 All oral evidence shall be taken in the presence of the arbitrator and all the parties, except where any of the parties is absent, in default or has waived the right to be present.

24 The parties shall prepare books containing all of the documents to be introduced at the oral hearing and shall submit those books to the other party and to the arbitrator no later than fourteen days before the commencement of the oral hearing.

25 The parties are deemed to have consented to the authenticity of all documents contained in the document books, unless the party gives notice of objection within seven days of the oral hearing to the other party and the arbitrator.

26 The arbitrator may allow a party to introduce into evidence at the oral hearing a document that was not disclosed or submitted at least fourteen days before the commencement of the hearing, but the arbitrator may take that failure into account at the time the arbitrator fixes any costs.

Examination of Parties

27 At an oral hearing an arbitrator may order a party, or a person claiming through a party, to submit to being examined by the arbitrator under oath and to submit all the documents that the arbitrator requires.

Witnesses

28 The arbitrator may determine the manner in which witnesses are to be examined and may require a witness, other than a party or the party's representative, to leave the oral hearing during the testimony of another witness.

29 Where an arbitrator allows the evidence of a witness to be presented by a written statement, the other party may require that the witness be present at an oral hearing for cross-examination.

30 The arbitrator may call a witness on the motion of the arbitrator, but where a witness is called by the arbitrator, the parties have the right to cross-examine that witness and call evidence in rebuttal.

Experts

31 The arbitrator may appoint one or more experts to report on specific issues to be determined by the arbitrator and 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 inspection by the expert.

32 The arbitrator shall communicate the expert's terms of reference to the parties.

33 Any dispute between a party and an expert as to the relevance of the required information or the production of the information shall be referred to the arbitrator for decision.

34 Upon receipt of the expert's report, the arbitrator shall inform the parties of the contents of the report and the parties shall be given an opportunity to express, in writing, their opinion on the report.

35 The expert shall, at the request of a party, make available to that party for inspection all documents, goods or other property in the expert's possession which the expert was provided with in order to prepare the expert's report and the expert shall provide that party with a list of all documents, goods or other property not in the expert's possession but with which the expert was provided in order to prepare the expert's report and a description and location of those documents, goods or other property.

36 Where the party so requests or if the arbitrator considers it necessary, the expert shall, after delivery of the expert's written or oral report, be present at an oral hearing where the parties have the opportunity to cross-examine the expert and call evidence in rebuttal.

Default of Party

37 Where a claimant, without sufficient cause and after five days notice from the arbitrator, fails to communicate the claimant's statement of claim within the required time, the arbitrator may terminate the arbitration with respect to that claim.

38 Where the respondent, without sufficient cause and after five days notice from the arbitrator, fails to communicate the respondent's statement of defence within the required time, the arbitrator shall continue the arbitration and an award shall not be made solely on the default of the respondent and the arbitrator shall require the claimant to submit such evidence as the arbitrator may require for the making of the award.

39 Where a party, without sufficient cause, fails to appear at an oral hearing or fails to produce documentary evidence, the arbitrator may continue the arbitration and the arbitrator shall make an award based upon the evidence before the arbitrator.

40 Where a party, without sufficient cause, fails to comply with any order or direction of the arbitrator or any requirement under the Act or this Schedule, the arbitrator may grant such relief as the arbitrator deems appropriate, including costs.

General Powers of Arbitrator

- 41 The arbitrator may
- (a) order an adjournment of the proceedings from time to time;
 - (b) make an interim order on any matter with respect to which the arbitrator may make a final order, including an interim order for the preservation of property which is the subject matter of the dispute;
 - (c) order “on-site” inspection of documents, exhibits or other property;
 - (d) order the taking down and recording of a transcription of any oral hearing;
 - (e) at any time extend or abridge a period of time required in this Schedule or fixed or determined by the arbitrator where the arbitrator considers it just and appropriate in the circumstances.

1999, c. 5, Sch. A.

SCHEDULE B**EXPEDITED ARBITRATION PROCEDURE****Representation**

1 The parties may be represented or assisted by any person during an arbitration.

2 Where a party intends to be represented or assisted by a lawyer, the party shall, in writing, advise the other party of the lawyer’s name and the capacity in which the lawyer is acting at least five days before any scheduled meeting or hearing.

Appointment of Arbitrator

3 The parties shall appoint a sole arbitrator within five days of the commencement of the expedited arbitration procedure.

Time and Place of Arbitration

4 Unless otherwise agreed, the arbitration shall be held at a place determined by the arbitrator.

5 A hearing shall be commenced within fifteen days of the appointment of the arbitrator.

Conduct of Expedited Arbitration Process

6 Subject to the rules in this Schedule, the arbitrator may conduct the arbitration in the manner the arbitrator considers appropriate, but each party shall be treated fairly and shall be given full opportunity to present the party’s case.

Exchange of Documents

7 Within five days of the appointment of the arbitrator, the claimant shall send a written statement to the respondent and the arbitrator outlining the facts supporting the claimant’s claim, the points at issue and the relief or remedy sought.

8 Within five days after the respondent receives the claimant’s statement, the respondent shall send a written statement to the claimant and the arbitrator outlining the respondent’s defence, the particulars requested in the statement of claim and a written statement of the respondent’s counterclaim, if any.

9 The claimant, when responding to a counterclaim, shall send a written statement to the respondent and the arbitrator outlining the claimant's defence to the counterclaim within five days after the claimant receives the counterclaim.

10 Each party shall submit with the party's statement a list of the documents upon which the party intends to rely and the list of documents shall describe each document by specifying its document type, date, author, recipient and subject-matter.

Production of Documents

11 The arbitrator may, on the application of a party or on the arbitrator's own motion, order a party to produce any documents the arbitrator considers relevant to the arbitration within a time the arbitrator specifies and, where such an order is made, the other party may inspect those documents and make copies of them.

12 Each party shall make available to the other for inspection and the making of copies, any documents upon which the former party intends to rely.

Confidentiality

13 All oral hearings and meetings shall be held in private and all written documents shall be kept confidential by the arbitrator and the parties and shall not be disclosed to any other person, except with the consent of all parties.

Evidence

14 Each party shall provide the facts relied upon to support the party's claim or defence.

15 The arbitrator is the judge of relevancy and materiality of the evidence offered and is not required to apply the legal rules of evidence.

Examination of Parties

16 In an oral hearing, an arbitrator may order a party, or a person claiming through a party, to submit to being examined by the arbitrator under oath and to submit all documents that the arbitrator requires.

Decision of the Arbitrator

17 The sole arbitrator shall render a decision within ten days after completion of the arbitration.

Time for Completion of Arbitration

18 The arbitration shall be completed within thirty days of the appointment of the arbitrator.

1999, c. 5, Sch. B.

SCHEDULE C

MEDIATION PROCEDURE

Appointment of Mediator

1 The appointed mediator shall sign a statement verifying that the mediator has no interest in the case nor is the mediator aware of any circumstances that could raise the likelihood of a claim of bias.

Time and Place of Mediation

2 Unless otherwise agreed, the mediation shall commence no later than four days after the appointment of the mediator at a place determined by the mediator.

Pre-conference Preparation

3 Each party shall prepare a brief summary, not to exceed three pages, of the issues in dispute with the party's position with respect to those issues.

4 The summaries shall be delivered to the mediator at least two days before the first mediation conference.

Process

5 At the mediation conference, each party should be prepared to make a brief oral statement explaining the party's position.

6 Each party is expected to participate in structured negotiations with the active assistance of the mediator.

7 Each party should bring any documents the party needs in order to effectively negotiate.

8 The documents referred to above will be used by the mediator to understand the position of the party but may be kept confidential on request and, where confidentiality is requested, the documents shall not be revealed to the other party.

9 The mediator may caucus privately with any party during the mediation conference if the mediator considers that it will assist the process.

10 Any party may request a private caucus with the mediator at any time.

11 Each party shall co-operate in good faith with the mediator.

12 Each party shall make every effort to attend a scheduled conference and shall co-operate to avoid any unnecessary delays.

Necessary Parties

13 All parties necessary to the reaching of a final settlement should be present at the mediation conference.

14 The goal of the mediation is to reach an agreed upon settlement and, therefore, all individuals with the appropriate authority to agree to the settlement terms and conditions should be present at the mediation conference.

Presentation

15 Although oral evidence, other than that of the parties to the dispute, is not encouraged at a mediation conference, the mediator may allow persons other than parties to make presentations.

Representation

16 A party may be represented at a mediation conference by counsel or another representative and, where so represented, may request the opportunity to meet privately with counsel or that representative at any time during the mediation conference.

Resort to Other Proceedings

17 Unless it is necessary for a party to initiate or continue arbitral or judicial proceedings to preserve the party's rights, no party shall initiate or continue any arbitral or judicial proceeding in respect of any of the matters in the dispute that is the subject-matter of the mediation, during the mediation process.

Record

18 No transcript shall be kept of the mediation conference.

Confidentiality

19 The mediator, the parties and their counsel or representatives shall keep confidential all matters relating to the mediation, except where disclosure of a settlement agreement is necessary to implement or enforce that agreement.

Adjournment

20 The mediator may adjourn or cancel a mediation conference at any time.

Withdrawal

21 Either party may withdraw from the mediation at any time.

Settlement Agreement

22 When the parties reach a settlement, the parties shall reduce the agreement to writing.

23 Where the parties are unrepresented, the mediator may suggest the parties seek independent legal advice before a settlement agreement is signed.

“Without Prejudice” Proceeding

24 In all respects, the mediation conference is deemed to be a “without prejudice” proceeding.

1999, c. 5, Sch. C.
