

Règles pour les procédure de conciliation

Son altesse royale le Prince Aga Khan Shia Imami Ismaili pour le Canada

1. DISTINCTION BETWEEN CONCILIATION AND ARBITRATION

1.1 "Conciliation" is a process of mediation in which a neutral person assists the parties to a dispute in reaching their own settlement. The neutral person does not have authority to make a binding decision on the parties. As the process is entirely voluntary, the parties may withdraw from the process at any time.

1.2 By contrast, "arbitration" is a process in which each party presents its case at a hearing before a panel of one or more persons who make a final and binding decision which is subject, under certain very limited circumstances to review by the courts of law.

2. MANDATE OF THE BOARD

2.1 The Board's role as conciliator is defined in article 13.1 (a) of the Ismaili constitution as follows:

"to assist in the conciliation process between parties in differences or disputes arising from commercial, business and other civil liability matters, domestic and family matters, including those relating to matrimony, children of a marriage, matrimonial property , and testate and intestate succession".

2.2 It is the Board's duty to handle all disputes confidentially, expeditiously and with the minimum of expense.

3. PRE-INTERVIEW

3.1 All cases shall in the first instance, be referred to the Regional Board, together with the following basic particulars:

- (a) Names, addresses and telephone numbers of the parties; and
- (b) the general nature of the dispute

3.2 The Chairman of the Regional Board, after being satisfied that the dispute falls within article 13.1 (a) of the Ismaili constitution and that the case is not one for referral to some other body (see Rules 3.3 and 3.4 below), shall assign a member of the Regional Board to conduct a preliminary interview.

3.3 Where a party is resident outside the territorial jurisdiction of the Regional Board, the Regional Board shall inform the National Board and consult with the National Board as to the most appropriate manner of settling the case. Where a party is resident outside (country), The National Board shall for the purpose of conciliation co-ordinate with the National Board having responsibility for the

country of residence of the other party, whilst keeping the International Board informed at all times and dealing generally with the matter in accordance with any advice which may be received from the International Board.

3.4 In order to reserve to the Board the task of assisting primarily in the resolution of the more serious disputes (so as not to burden the Board's limited resources by relatively minor disputes) and also to prevent the Board from turning into a "counselling clinic" or "crisis centre", cases shall, where they fall appropriately within the responsibility of other jamati institutions, such as the Council's Social and Welfare or marriage committees, be referred to those institutions.

4. PRELIMINARY INTERVIEW

4.1 The interviewer shall promptly contact the parties and obtain from them the relevant particulars on a form such as the one described in the Schedule hereto.

4.2 The interviewer shall request each party to sign a submission form containing the following particulars:

(a) a brief statement of the issues to be resolved, and the acknowledgment that the dispute is submitted to the Board for conciliation;

(b) where applicable and if possible, an undertaking that any legal proceedings will be stayed while the dispute is under conciliation, but without restricting the right of a party to take such steps as may be necessary to prevent an action being time barred under any law governing limitations;

(c) an acknowledgment that any statements made by the parties shall be on a "without prejudice" basis and for the purposes of settlement only,

(d) a waiver by the parties of any possible claim they may have against the conciliator concerning recommendations that may be made or opinions offered in the course of the conciliation; and

(e) an acknowledgment that the parties have voluntarily submitted to the jurisdiction of the Board.

4.3 Where a dispute is submitted to the jurisdiction of the Board by only one party to the dispute, the interviewer shall contact the other party by letter or in person, to invite that other party to use the services offered by the Board; but such contact shall not be in a manner likely to be perceived as partisan and shall emphasize only the advantages to both parties and participating in the conciliation process (i.e. an expeditious and inexpensive resolution of the dispute; handled confidentially).

4.4 Upon completion of the interview, the interviewer shall report to the Chairman who shall assign the case for conciliation, after being satisfied:

(a) that the dispute falls within Article 13.1 (a) of the Ismaili Constitution

(b) that the case is not appropriate for referral to some other body; and

(c) that the parties have executed the submission, form referred to in Rule 4.2 above.

5. CONCILIATION

5.1 The Chairman shall select conciliators in accordance with the following criteria:

(a) the conciliator shall enjoy the respect of the parties, be able to exert moral persuasion and, where technical expertise or other special skills are required in a case, should possess such expertise or skills;

(b) the conciliator should have no interest in the outcome of the case nor be aware of any circumstances which could raise a likelihood of perceived bias;

(c) layman should normally be preferred over lawyers (firstly, so as to leave the lawyers available to handle the dispute should it proceed to arbitration and secondly, in order to avoid the potential problem of a recommendation for settlement by a lawyer-conciliator being construed as a legal opinion);

(d) Members of the National and Regional Boards should be preferred over other members of the jamati

(e) in order to ensure the proper accountability of the conciliator to the Board, where a non-Board member is asked to act as conciliator, that individual shall be assigned to the case jointly with a Board member, whose duty it shall be to monitor the case and report on its progress to the Board periodically pursuant to Rule 10 below; and

(f) in complex disputes a team of two or more conciliators may be preferred so that each can consult with the other on ways in which to resolve the case.

5.2 Notwithstanding the relative informality of the conciliation process (as compared to the formal hearings involved in arbitration), all conciliation shall be conducted in a dignified setting, wherever such are available.

5.3 The conciliator shall conduct the conciliation in a fair, ethical, orderly and dignified manner, and in accordance with the following guidelines:

(a) the purpose of the conciliation should be to persuade the parties to a meeting of minds, to resolve their differences amicably, and accordingly the role of the conciliator shall be merely to persuade and under no circumstances to coerce.

(b) the conciliator shall not offer to the parties any legal or technical advice, nor any valuation or opinion, and as far as may be practicable shall invite the parties to rely on their own judgment in considering any offers to settle;

(c) none of the parties shall be represented by a legal practitioner. However, if the parties wish they may with the consent of the conciliator, seek the assistance of a close friend or family member at the conciliation;

(d) the conciliator shall not participate in or encourage any unethical or illegal settlement

(e) the conciliator shall reserve the right to withdraw from the case if the parties conduct themselves in a disorderly or improper manner, or if the parties breach any undertaking to the Board;

(f) essential facts of the case shall be recorded and retained, along with supporting documentation, in the conciliator's files, which shall be submitted to the Board's custody at the conclusion of the conciliation;

(g) at all times, the conciliator shall respect the confidence of the parties and shall not, without the leave of all concerned parties, discuss or report (save as contemplated in Rule 10 below) any aspect of the dispute in a manner that might prejudice the parties; and

(h) the conciliation shall be commenced without undue delay and shall be conducted and concluded expeditiously.

5.4 If the parties have not, within such time as is reasonable having regard to the complexities and exigencies of the case, been able to reach a settlement, the conciliator shall report to the Board and recommend either termination of the conciliation or referral of the case pursuant to Rule 7 below.

6. SETTLEMENT

6.1 Where the parties have agreed to settle their differences, the conciliator shall prepare Minutes of Settlement recording all the essential terms of the settlement and shall have the parties sign the Minutes after obtaining Independent Legal Advice to signify their acceptance of the settlement.

6.2 The conciliator, where the complexities of the case warrant it, may request the assistance of lawyers to prepare the Minutes of Settlement -but the drafters of such document shall be mindful not to introduce into it materially new terms that might frustrate the discussed agreement.

7. FURTHER CONCILIA TION

If at the conclusion of the conciliation the conciliator recommends further attempts at mediation, or if the parties request it, the Regional Board may refer the case to the National Board for further mediation.

8. CONFIDENTIALITY

All cases shall be treated confidentially.

9. CONFLICTS OF INTEREST

9.1 Given that all Board Members are entrusted to act responsibly, the Board shall not entertain any dispute in which a party insists that the party's submission of its dispute to the Board is conditional on the Board keeping the facts of the dispute confidential from one of its members.

9.2 When a case is referred to the Board, upon learning of the names of the parties and, where necessary, the general nature of the dispute, members of the Board are expected to declare forthwith if they have or may probably have:

- (a) any conflict of interest; or
- (b) any perceptible bias that could compromise the Board in its handling of the case.

9.3 Where a Board member has a conflict of interest or where, in the opinion of the Board as a whole, there is a serious likelihood of perceived bias that could compromise the Board in its handling of the case, the Board member involved will be expected to abstain from any dealings in the case and from accessing the case file.

10. REPORTING

10.1 The Board member assigned to conduct an interview shall, promptly after conducting the interview, report on its outcome to the Board.

10.2 Upon being assigned to mediate a dispute, the conciliator shall promptly make an assessment of the complexities of the case and flexibility of the parties, and shall thereupon give to the Board, or the Chairman, an estimate of the anticipated time required to mediate the dispute. In addition, the conciliator shall, at least at each meeting, or more frequently as the circumstances may reasonably require, provide to the Board or Chairman a progress report of the case. The purpose of the progress report to the Board, or the Chairman, shall be to enable the Board, or the Chairman, to ensure that the case is being handled expeditiously and to apprise the Board of, and consult with its members on, any complications in the conciliation process.

11. DO'S AND DON'TS OF CONCILIATION

11.1 The conciliator shall not undertake mediation with any persons whom he has previously represented or to whom he has given any prior advice relating to the dispute. If there has been any previous contact with either one or both of the parties on an unrelated matter this should be disclosed to both the parties and the conciliator should proceed only on the written consent of both the parties.

11.2 The conciliator should inform the parties before the mediation commences that he will be functioning as a conciliator and not as an adviser for either or both the parties.

11.3 In order to maintain neutrality, the conciliator should avoid giving specific legal advice and should dispense only general legal information in the presence of both parties during the proceedings.

11.4 The conciliator should stay within his or her own area of competence and should not attempt to mediate highly contentious disputes without proper knowledge.

11.5 The conciliator should terminate mediation if at any time he believes that the condition for mediation have been breached or if in his opinion anyone of the participants is being harmed or seriously prejudiced by the process.

11.6 The Minutes of Settlement should be executed in the presence of the Chairman of the Board, if possible, after obtaining, independent legal advice to avoid any appearance of coercion on the part of conciliator.

11.7 The conciliator should decline to advise either of the parties in subsequent legal proceedings related to the dispute.