



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

ARBITRATION ACT

PLEASE NOTE

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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ARBITRATION ACT

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ARBITRATION ACT

CHAPTER A-16

1. Definitions

In this Act

- (a) repealed by 2008, c.20, s.72(4);
- (b) “**judge**” means a judge of the Supreme Court;
- (c) repealed by 2008, c.20, s.72(4);
- (d) “**submission**” means a written agreement to submit present or future differences to arbitration, whether or not an arbitrator is named therein. *R.S.P.E.I. 1974, Cap. A-14, s.1; 2008, c.20, s.72(4).*

2. Application of Act to Crown

This Act applies to any arbitration to which Her Majesty is a party, but nothing herein empowers the court or a judge to order any proceeding to which Her Majesty is a party, or any question or issue in any such proceeding, to be tried before any referee, arbitrator or officer without the consent of Her Majesty, or shall affect the law as to costs payable by the Crown. *R.S.P.E.I. 1974, Cap. A-14, s.2.*

3. Application of Act to other Acts

This Act applies to every arbitration under any Act whenever passed as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorized or recognized by that Act. *R.S.P.E.I. 1974, Cap. A-14, s.3.*

4. Submission irrevocable

A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court or a judge, and shall have the same effect as if it had been made an order of the court. *R.S.P.E.I. 1974, Cap. A-14, s.4.*

5. Submission, provisions included

A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the Schedule, so far as they are applicable to the reference. *R.S.P.E.I. 1974, Cap. A-14, s.5.*

6. Application to stay legal proceedings

If any party to a submission or any person claiming through or under him, commences legal proceedings in any court against any other party to the submission or any person claiming

through or under him, in respect of a matter agreed to be referred, any party to the proceedings may after appearance but before delivering a pleading or taking any other step in the proceedings apply to that court to stay the proceedings. *R.S.P.E.I. 1974, Cap. A-14, s.6.*

7. Order to stay legal proceedings

The court or judge, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was, at the time when the proceedings were commenced, and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings. *R.S.P.E.I. 1974, Cap. A-14, s.7.*

8. Appointment of arbitrator or umpire by court

(1) In any of the following cases

- (a) where a submission provides that the reference shall be to a single arbitrator and the persons whose concurrence is necessary do not, after differences have arisen, concur in the appointment of an arbitrator;
- (b) where an arbitrator, an umpire or a third arbitrator is to be appointed by any person, and such person does not make the appointment;
- (c) unless the submission otherwise provides, where an arbitrator, an umpire or a third arbitrator refuses to act or is incapable of acting or dies, and the vacancy is not supplied by the person having the right to fill the vacancy,

any party may serve the other party or the arbitrators, or the person who has the right to make the appointment, as the case may be, with a written notice to concur in the appointment of a single arbitrator or to appoint an arbitrator, umpire or third arbitrator.

Powers of appointed umpire or arbitrator

(2) If the appointment is not made within seven clear days after service of the notice, the court or a judge may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator, who shall have the similar powers to act in the reference and make an award as if he had been appointed by consent of all parties. *R.S.P.E.I. 1974, Cap. A-14, s.8.*

9. Powers of arbitrators or umpires

The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power

- (a) to administer oaths to the parties and witnesses;
- (b) to state an award as to the whole or part thereof in the form of a special case for the opinion of the court; and
- (c) to correct in an award any clerical mistake or error arising from an accidental slip or omission. *R.S.P.E.I. 1974, Cap. A-14, s.9.*

10. Time for award, enlargement

The time for making an award may be enlarged by the court or a judge, whether or not the time for making the award has expired. *R.S.P.E.I. 1974, Cap. A-14, s.10.*



11. Court referral to arbitrator or umpire

- (1) In all cases of reference to arbitration the court or a judge may remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

Time for award

- (2) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order. *R.S.P.E.I. 1974, Cap. A-14, s.11.*

12. Removal of arbitrator

- (1) Where an arbitrator or umpire has misconducted himself, the court may remove him.

Award set aside

- (2) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the court may set the award aside. *R.S.P.E.I. 1974, Cap. A-14, s.12.*

13. Enforcement of award

An award or a submission may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect. *R.S.P.E.I. 1974, Cap. A-14, s.13.*

14. Court referral of questions to special referee

- (1) Subject to rules of court and to any right to have particular cases tried by a jury, the court or a judge may refer any question arising in any cause or matter, other than a criminal proceeding by the Crown, to an official or special referee for inquiry or report.

Report of special referee

- (2) The report of an official or special referee may be adopted wholly or partially by the court or a judge, and if so adopted may be enforced as a judgment or order to the same effect. *R.S.P.E.I. 1974, Cap. A-14, s.14.*

15. Trial before a special referee

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

- (a) if all the parties interested who are not under disability consent;
- (b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the court or a judge conveniently be made before a jury or conducted by the court through its other ordinary officers; or
- (c) if the question in dispute consists wholly or in part of matters of account,

the court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the court. *R.S.P.E.I. 1974, Cap. A-14, s.15.*

16. Jurisdiction of special referee

- (1) In all cases of reference to an official or special referee or arbitrator under an order of the court or a judge in any cause or matter, the official or special referee or arbitrator is deemed to be an officer of the court, and subject to rules of court shall have such authority, and conduct the reference in such manner, as the court or a judge may direct.

Award of special referee, status

- (2) The report or award of an official or special referee or arbitrator on any such reference shall, unless set aside by the court or a judge, be equivalent to the verdict of a jury.

Remuneration of special referee

- (3) The remuneration of any official or special referee or arbitrator to whom any matter is referred under an order of the court or a judge shall be fixed by the court or a judge. *R.S.P.E.I. 1974, Cap. A-14, s.16.*

17. Jurisdiction of court or judge in references

The court or a judge shall, in relation to references under an order of the court or a judge, have all such powers as are conferred by this Act on the court or a judge in relation to references by consent out of court. *R.S.P.E.I. 1974, Cap. A-14, s.17.*

18. Issuance of writs

- (1) Any party to a submission or to a reference may sue out of the court a writ of subpoena to give testimony or a writ of subpoena to bring certain documents, but no person shall be compelled, under any such writ, to produce any document which he could not be compelled to produce on the trial of an action.

Penalties for disobedience of writs

- (2) Any person on whom a subpoena has been served, and to whom has been paid or tendered the fees for travel and attendance prescribed under the *Court Fees Act R.S.P.E.I. 1988, Cap. C-27.001* for witnesses in the Supreme Court, is liable in case of disobedience of the subpoena, to the same punishment and liabilities as if the subpoena had been issued in an action in the court.

Custodian to present prisoner for examination

- (3) The court or a judge may also order the sheriff, jailer or other officer who has the custody of a prisoner to produce him for examination before an arbitrator or umpire or before an official or special referee.

Commission to take evidence

- (4) The court or a judge may also order that a commission may issue to take the evidence of any witness for what it may be worth or outside the province, in the like circumstances and with the similar effect as a similar order may be made in an action in the Supreme Court, and the *Judicature Act R.S.P.E.I. 1988, Cap. J-2.1* and rules of court shall apply to the order or commission and to the proceedings thereon and the evidence taken thereunder. *R.S.P.E.I. 1974, Cap. A-14, s.18; 1988,c.35,s.14; 2008,c.20,s.72(4); 2012,c.10,s.5.*

19. Special case on questions of law

Any referee, arbitrator or umpire may, at any stage of the proceedings under a reference, and shall, if so directed by the court or a judge, state in the form of a special case for the opinion of the court, any question of law arising in the course of the reference. *R.S.P.E.I. 1974, Cap. A-14, s.19.*



20. Costs

Any order made under this Act may be made on such terms as to costs or otherwise as the authority making the order thinks just. *R.S.P.E.I. 1974, Cap. A-14, s.20.*

21. Appeal from award of referee

- (1) In all cases of reference under an order of the court any party to such reference may appeal to the Court of Appeal from the award or decision of the referee or arbitrator.

Appeal to Appeal Division, where agreed

- (2) Where it is agreed by the terms of a submission that there may be an appeal from the award, an appeal shall lie to the Appeal Division.

Appeal, rules to which subject

- (3) The appeal shall be made in the same manner and subject to the same rules as an appeal in an action in the Appeal Division.

Jurisdiction of court upon the appeal

- (4) Under the appeal the court may reverse, alter or vary the award or finding and any direction as to costs made therein or supplementary thereto, in any manner that seems just and the costs of any such appeal shall be at the discretion of the court. *R.S.P.E.I. 1974, Cap. A-14, s.21; 2008, c.20, s.72(4).*

SCHEDULE

PROVISIONS TO BE IMPLIED IN SUBMISSIONS

1. If no other mode of reference is provided the reference shall be to a single arbitrator.
2. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.
3. If any arbitrator or umpire or third arbitrator refuses to act, or is incapable of acting or dies, the party or parties, or the arbitrators by whom he was appointed, may appoint an arbitrator, umpire or third arbitrator, as the case may be, in his stead, and this power may be exercised as vacancies occur.
4. The submission shall not be revoked by the death of the parties or either of them.
5. The award shall be delivered to any of the parties requiring the same; and the personal representatives of any party deceased may require delivery of the award.
6. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission or on or before any later day to which the arbitrators, by any writing signed by them, may enlarge the time for making the award.
7. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire, a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.
8. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may enlarge the time for making his award.
9. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, an oath in relation to the matters in dispute, and shall subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writing, documents and things within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.
10. The witnesses on the reference shall be examined on oath.
11. The award to be made by the arbitrators or by a majority of them or by the umpire shall be final and binding on all the parties and persons claiming under them respectively.
12. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct, to and by whom, and in what manner, such costs, or any part thereof, shall be paid and may tax or settle the amount of costs to be so paid, or any part thereof, and may award costs to be paid as between solicitor and client. *R.S.P.E.I. 1974, Cap. A-14, Schedule.*

*[Note: The Schedule is prescribed by section 5 of the Act.]