

## Attorney General

Arbitration Act (S.N.B. 1992, c. A-10.1)

Act current to March 7, 2012

### CHAPTER A-10.1

### Arbitration Act

*Assented to April 9, 1992*

Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

#### INTRODUCTORY MATTERS

**1** In this Act

“arbitration agreement” means an agreement by which two or more persons agree to submit to arbitration a dispute that has arisen or may arise between them; (*convention d'arbitrage*)

“arbitrator” includes an umpire; (*arbitre*)

“court”, except in sections 6 and 7, means The Court of Queen's Bench of New Brunswick. (*cour*)

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

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

**2(2)** This Act applies with the necessary modifications to an arbitration conducted in accordance with another Act, unless that Act provides otherwise; however, in the event of conflict between this Act and the other Act or regulations made under the other Act, the other Act or the regulations prevail.

**3** The parties to an arbitration agreement may agree, expressly or by implication, to vary or exclude any provision of this Act except the following:

- (a) subsection 5(4);
- (b) section 19;
- (c) section 39;
- (d) subsection 45(1);
- (e) section 46;
- (f) section 48; and
- (g) section 50.

**4** A party who participates in an arbitration despite being aware of non-compliance with a provision of this Act, except one mentioned in section 3, or with the arbitration agreement, and does not object to the non-compliance within the time limit provided or, if none is provided, within a reasonable time, shall be deemed to have waived the right to object.

**5(1)** An arbitration agreement may be an independent agreement or part of another agreement.

**5(2)** If the parties to an arbitration agreement make a further agreement in connection with the arbitration, it shall be deemed to form part of the arbitration agreement.

- 5(3) An arbitration agreement need not be in writing.
- 5(4) An agreement requiring or having the effect of requiring that a matter be adjudicated by arbitration before it may be dealt with by a court has the same effect as an arbitration agreement.
- 5(5) An arbitration agreement may be revoked only in accordance with the ordinary rules of contract law.

#### COURT INTERVENTION

- 6 No court shall intervene in matters governed by this Act, except as this Act provides.
- 7(1) If a party to an arbitration agreement commences a proceeding in respect of a matter to be submitted to arbitration under the agreement, the court in which the proceeding is commenced shall, on the motion of another party to the arbitration agreement, stay the proceeding.
- 7(2) However, the court may refuse to stay the proceeding in any of 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 under New Brunswick law;
  - (d) the motion was brought with undue delay; or
  - (e) the matter is a proper one for default or summary judgment.
- 7(3) An arbitration of the dispute may be commenced and continued while the motion is before the court.
- 7(4) If the court refuses to stay the proceeding
- (a) no arbitration of the dispute shall be commenced, and
  - (b) an arbitration that has been commenced shall not be continued, and anything done in connection with the arbitration before the court made its decision is without effect.
- 7(5) The court may stay the proceeding with respect to the matters dealt with in the arbitration agreement and allow it to continue with respect to other matters if it finds that
- (a) the agreement deals with only some of the matters in respect of which the proceeding was commenced, and
  - (b) it is reasonable to separate the matters dealt with in the agreement from the other matters.
- 7(6) There is no appeal from the court's decision.
- 8(1) The court's powers with respect to the detention, preservation and inspection of property, interim injunctions and the appointment of receivers are the same in arbitrations as in court actions.
- 8(2) The arbitral tribunal may determine any question of law that arises during the arbitration; the court may do so on the application of the arbitral tribunal, or on a party's application if the other parties or the arbitral tribunal consent.
- 8(3) Notwithstanding subsection 8(3) of the *Judicature Act*, the court's determination of a question of law may be appealed to The Court of Appeal of New Brunswick, with leave of The Court of Appeal of New Brunswick.
- 8(4) On the application of all the parties to more than one arbitration the court may order, on such terms as are just,

- (a) that the arbitrations be consolidated,
- (b) that the arbitrations be conducted simultaneously or consecutively, or
- (c) that any of the arbitrations be stayed until any of the others are completed.

**8(5)** When the court orders that arbitrations be consolidated, it may appoint an arbitral tribunal for the consolidated arbitration; if all the parties agree as to the choice of arbitral tribunal, the court shall appoint it.

**8(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.

#### **COMPOSITION OF ARBITRAL TRIBUNAL**

**9** If the arbitration agreement does not specify the number of arbitrators who are to form the arbitral tribunal, it shall be composed of one arbitrator.

**10(1)** The court may appoint the arbitral tribunal, on a party's application, if

- (a) the arbitration agreement provides no procedure for appointing the arbitral tribunal, or
- (b) a person with power to appoint the arbitral tribunal has not done so after a party has given the person seven days notice to do so.

**10(2)** There is no appeal from the court's appointment of the arbitral tribunal.

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

**10(4)** If the arbitral tribunal is composed of three or more arbitrators, they shall elect a chair from among themselves; if it is composed of two arbitrators, they may do so.

**11(1)** An arbitrator shall be independent of the parties and shall act impartially.

**11(2)** Before accepting an appointment as arbitrator, a person shall disclose to all parties to the arbitration any circumstances of which he or she is aware that may give rise to a reasonable apprehension of bias.

**11(3)** An arbitrator who, during an arbitration, becomes aware of circumstances that may give rise to a reasonable apprehension of bias shall promptly disclose them to all the parties.

**12** A party may not revoke the appointment of an arbitrator.

**13(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; or
- (b) the arbitrator does not possess qualifications that the parties have agreed are necessary.

**13(2)** A party who appointed an arbitrator or participated in his or her appointment may challenge the arbitrator only for grounds of which the party was unaware at the time of the appointment.

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

**13(4)** The other parties may agree to remove the challenged arbitrator, or the arbitrator may resign.

**13(5)** If the challenged arbitrator is not removed by the parties and does not resign, the arbitral tribunal, including the challenged arbitrator, shall decide the issue and shall notify the parties of its decision.

**13(6)** Within ten days of being notified of the arbitral tribunal's decision, a party may make an application to the court to decide the issue and, in the case of the challenging party, to remove the arbitrator.

**13(7)** While an application is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitration and make an award, unless the court orders otherwise.

**14(1)** An arbitrator's mandate terminates when

- (a) the arbitrator resigns or dies,
- (b) the parties agree to terminate it,
- (c) the arbitral tribunal upholds a challenge to the arbitrator, ten days elapse after all the parties are notified of the decision and no application is made to the court, or
- (d) the court removes the arbitrator under subsection 15(1).

**14(2)** An arbitrator's resignation or a party's agreement to terminate an arbitrator's mandate does not imply acceptance of the validity of any reason advanced for challenging or removing him or her.

**15(1)** The court may remove an arbitrator on a party's application under subsection 13(6), or may do so on a party's application if the arbitrator becomes unable to perform his or her functions, commits a corrupt or fraudulent act, delays unduly in conducting the arbitration or does not conduct it in accordance with section 19.

**15(2)** The arbitrator is entitled to be heard by the court if the application is based on an allegation that he or she committed a corrupt or fraudulent act or delayed unduly in conducting the arbitration.

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

**15(4)** If the court removes an arbitrator for a corrupt or fraudulent act or for undue delay, it may order that the arbitrator receive no payment for his or her services and may order that he or she compensate the parties for all or part of the costs, as determined by the court, that they incurred in connection with the arbitration before his or her removal.

**15(5)** Notwithstanding subsection 8(3) of the *Judicature Act*, the arbitrator or a party may, within thirty days after receiving the court's decision, appeal an order made under subsection (4) or the refusal to make such an order to The Court of Appeal of New Brunswick, with leave of The Court of Appeal of New Brunswick.

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

**16(1)** When an arbitrator's mandate terminates, a substitute arbitrator shall be appointed, following the procedure that was used in the appointment of the arbitrator being replaced.

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

**16(3)** The court may appoint the substitute arbitrator on a party's application, if

- (a) the arbitration agreement provides no procedure for appointing the substitute arbitrator, or
- (b) a person with power to appoint the substitute arbitrator has not done so after a party has given the person seven days notice to do so.

**16(4)** There is no appeal from the court's decision or from its directions.

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

#### **JURISDICTION OF ARBITRAL TRIBUNAL**

**17(1)** An arbitral tribunal may rule on its own jurisdiction to conduct the arbitration and may in that connection rule on objections with respect to the existence or validity of the arbitration agreement.

**17(2)** If the arbitration agreement forms part of another agreement, it shall, for the purposes of a ruling on jurisdiction, be treated as an independent agreement that may survive even if the main agreement is found to be invalid.

**17(3)** A party who has an objection to the arbitral tribunal's jurisdiction to conduct the arbitration shall make the objection no later than the beginning of the hearing or, if there is no hearing, no later than the first occasion on which the party submits a statement to the tribunal.

**17(4)** The fact that a party has appointed or participated in the appointment of an arbitrator does not prevent the party from making an objection to jurisdiction.

**17(5)** A party who has an objection that the arbitral tribunal is exceeding its authority shall make the objection as soon as the matter alleged to be beyond the tribunal's authority is raised during the arbitration.

**17(6)** Despite section 4, if the arbitral tribunal considers the delay justified, a party may make an objection after the time limit referred to in subsection (3) or (5), as the case may be, has expired.

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

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

**17(9)** There is no appeal from the court's decision.

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

**18(1)** On a party's request, an arbitral tribunal may make an order for the detention, preservation or inspection of property and documents that are the subject of the arbitration or as to which a question may arise in the arbitration, and may order a party to provide security in that connection.

**18(2)** The court may enforce the direction of an arbitral tribunal as if it were a similar direction made by the court in an action.

#### **CONDUCT OF ARBITRATION**

**19(1)** In an arbitration, the parties shall be treated equally and fairly.

**19(2)** Each party shall be given an opportunity to present a case and to respond to the other parties' cases.

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

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

**21(1)** In an arbitration, the arbitral tribunal shall admit all evidence that would be admissible in a court and may admit other evidence that it considers relevant to the issues in dispute.

- 21(2)** The arbitral tribunal may determine the manner in which evidence is to be admitted.
- 22(1)** The arbitral tribunal shall determine the time, date and place of arbitration, taking into consideration the parties' convenience and the other circumstances of the case.
- 22(2)** The arbitral tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or parties, or for inspecting property or documents.
- 23(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) if the arbitration agreement gives a person who is not a party power to appoint an arbitrator, one party serves notice to exercise that power on the person and serves a copy of the notice on the other parties; or
  - (c) a party serves on the other parties a notice demanding arbitration under the agreement.
- 23(2)** The arbitral tribunal may exercise its powers when every member has accepted appointment.
- 24** A notice that commences an arbitration without identifying the dispute shall be deemed to refer to arbitration all disputes that the arbitration agreement entitles the party giving the notice to refer.
- 25(1)** An arbitral tribunal may require that the parties submit their statements within a specified period of time.
- 25(2)** The parties' statements shall indicate the facts supporting their positions, the points at issue and the relief sought.
- 25(3)** The parties may submit with their statements the documents they consider relevant, or may refer to the documents or other evidence they intend to submit.
- 25(4)** The parties may amend or supplement their statements during the arbitration; however, the arbitral tribunal may disallow a change that is unduly delayed.
- 25(5)** With the arbitral tribunal's permission, the parties may submit their statements orally.
- 25(6)** The parties and persons claiming through or under them shall, subject to any legal objection, comply with the arbitral tribunal's directions, including directions to
- (a) submit to examination on oath or affirmation with respect to the dispute, or
  - (b) produce records and documents that are in their possession or power.
- 25(7)** The court may enforce the direction of an arbitral tribunal as if it were a similar direction made by the court in an action.
- 26(1)** The arbitral tribunal may conduct the arbitration on the basis of documents or may hold hearings for the presentation of evidence and for oral argument; however, the tribunal shall hold a hearing if a party requests it.
- 26(2)** The arbitral tribunal shall give the parties sufficient notice of hearings and of meetings of the tribunal for the purpose of inspection of property or documents.
- 26(3)** A party who submits a statement to the arbitral tribunal or supplies the tribunal with any other information shall also communicate it to the other parties.
- 26(4)** The arbitral tribunal shall communicate to the parties any expert reports or other documents on which it may rely in making a decision.

**27(1)** If the party who commenced the arbitration does not submit a statement within the period of time specified under subsection 25(1), the arbitral tribunal may, unless the party offers a satisfactory explanation, make an award dismissing the claim.

**27(2)** If a party other than the one who commenced the arbitration does not submit a statement within the period of time specified under subsection 25(1), the arbitral tribunal may, unless the party offers a satisfactory explanation, continue the arbitration, but shall not treat the failure to submit a statement as an admission of another party's allegations.

**27(3)** If a party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may, unless the party offers a satisfactory explanation, continue the arbitration and make an award on the evidence before it.

**27(4)** In the case of delay by the party who commenced the arbitration, the arbitral tribunal may make an award dismissing the claim or give directions for the speedy determination of the arbitration and may impose conditions on its decision.

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

**28(1)** An arbitral tribunal may appoint an expert to report to it on specific issues.

**28(2)** The arbitral tribunal may require parties to give the expert any relevant information or to allow him or her to inspect property or documents.

**28(3)** At the request of a party or of the arbitral tribunal, the expert shall, after making the report, participate in a hearing in which the parties may question the expert and present the testimony of another expert on the subject-matter of the report.

**29(1)** A party may serve a person with a notice requiring him or her to attend and give evidence at the arbitration at the time and place named in the notice.

**29(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.

**29(3)** An arbitral tribunal has power to administer an oath or affirmation and power to require a witness to testify under oath or affirmation.

**29(4)** On the application of a party or of the arbitral tribunal, the court may make orders and give directions with respect to the taking of evidence for an arbitration as if it were a court proceeding.

**30** No person shall be compelled to produce information, property or documents or to give evidence in an arbitration that the person could not be compelled to produce or give in a court proceeding.

#### **AWARDS AND TERMINATION OF ARBITRATION**

**31** An arbitral tribunal shall decide a dispute in accordance with law, including equity, and may order specific performance, injunctions and other equitable remedies.

**32(1)** In deciding a dispute, an arbitral tribunal shall apply the rules of law designated by the parties or, if none are designated, the rules of law it considers appropriate in the circumstances.

**32(2)** A designation by the parties of the law of a jurisdiction refers to the jurisdiction's substantive law and not to its conflict of laws rules, unless the parties expressly indicate that the designation includes them.

**33** The arbitral tribunal shall decide the dispute in accordance with the arbitration agreement and the contract, if any, under which the dispute arose, and shall also take into account any applicable usages of trade.

**34** If an arbitral tribunal is composed of more than one member, a decision of a majority of the members is the arbitral tribunal's decision; however, if there is no majority decision or unanimous decision, the chair's decision governs.

**35** The members of an arbitral tribunal may, if the parties consent, use mediation, conciliation and similar techniques during an arbitration to encourage settlement of the dispute and may afterwards resume their roles as arbitrators without disqualification.

**36** If the parties settle the dispute during arbitration, the arbitral tribunal shall terminate the arbitration and, if a party so requests, may record the settlement in the form of an award.

**37** An award binds the parties, unless it is set aside or varied under section 45 or 46.

**38(1)** An award shall be made in writing and, except in the case of an award made on consent, shall state the reasons on which it is based.

**38(2)** The award shall indicate the place where and the date on which it is made.

**38(3)** The award shall be dated and shall be signed by all the members of the arbitral tribunal, or by a majority of them if an explanation of the omission of the other signatures is included.

**38(4)** A copy of the award shall be delivered to each party.

**39** The court may extend the time within which the arbitral tribunal is required to make an award, even if the time has expired.

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

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

**41** The arbitral tribunal may make one or more interim awards.

**42** The arbitral tribunal may make more than one final award, disposing of one or more matters referred to arbitration in each award.

**43(1)** An arbitration is terminated when

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

(b) the arbitral tribunal terminates the arbitration under subsection (2), (3), 27(1) or 27(4), or

(c) an arbitrator's mandate is terminated, if the arbitration agreement provides that the arbitration shall be conducted only by that arbitrator.

**43(2)** An arbitral tribunal shall make an order terminating the arbitration if the claimant withdraws the claim, unless the respondent objects to the termination and the arbitral tribunal agrees that the respondent is entitled to obtain a final settlement of the dispute.

**43(3)** An arbitral tribunal shall make an order terminating the arbitration if

(a) the parties agree that the arbitration should be terminated, or

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



**43(4)** The arbitration may be revived for the purposes of section 44 or subsection 45(5), 46(7), 46(8) or 54(3).

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

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

- (a) correct typographical errors, errors of calculation and similar errors in the award, or
- (b) amend the award so as to correct an injustice caused by an oversight on the part of the arbitral tribunal.

**44(2)** The arbitral tribunal may, on its own initiative at any time or at a party's request made within thirty days after receiving the award, make an additional award to deal with a claim that was presented in the arbitration but omitted from the earlier award.

**44(3)** The arbitral tribunal need not hold a hearing or meeting before rejecting a request made under this section.

#### REMEDIES

**45(1)** A party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that

- (a) the importance to the parties of the matters at stake in the arbitration justifies an appeal, and
- (b) determination of the question of law at issue will significantly affect the rights of the parties.

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

**45(3)** If the arbitration agreement so provides, a party may appeal an award to the court on a question of fact or on a question of mixed fact and law.

**45(4)** The court may require the arbitral tribunal to explain any matter.

**45(5)** The court may confirm, vary or set aside the award or may remit the award to the arbitral tribunal, with the court's opinion on the question of law, in the case of an appeal on a question of law, and give directions about the conduct of the arbitration.

**46(1)** On a party's application, 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 dispute that the arbitration agreement does not cover or contains a decision on a matter that is beyond the scope of the agreement;
- (d) the composition of the tribunal was not in accordance with the arbitration agreement or, if the agreement did not deal with that matter, was not in accordance with this Act;
- (e) the subject-matter of the dispute is not capable of being the subject of arbitration under New Brunswick law;
- (f) the applicant was not treated equally and fairly, was not given an opportunity to present a case or to respond to another party's case, or was not given proper notice of the arbitration or of the appointment of an arbitrator;
- (g) the procedures followed in the arbitration did not comply with this Act;

(h) an arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias; or

(i) the award was obtained by fraud.

**46(2)** If paragraph (1)(c) applies and it is reasonable to separate the decisions on matters covered by the arbitration agreement from the impugned ones, the court shall set aside the impugned decisions and allow the others to stand.

**46(3)** The court shall not set aside an award on grounds referred to in paragraph (1)(c) if the party has agreed to the inclusion of the dispute or matter, waived the right to object to its inclusion or agreed that the arbitral tribunal has power to decide what disputes have been referred to it.

**46(4)** The court shall not set aside an award on grounds referred to in paragraph (1)(h) if the party had an opportunity to challenge the arbitrator on those grounds under section 13 before the award was made and did not do so, or if those grounds were the subject of an unsuccessful challenge.

**46(5)** The court shall not set aside an award on a ground to which the applicant is deemed under section 4 to have waived the right to object.

**46(6)** If the ground alleged for setting aside the award could have been raised as an objection to the arbitral tribunal's jurisdiction to conduct the arbitration or as an objection that the arbitral tribunal was exceeding its authority, the court may set the award aside on that ground if it considers the applicant's failure to make an objection in accordance with section 17 justified.

**46(7)** When the court sets aside an award, it may remove the arbitral tribunal or an arbitrator and may give directions about the conduct of the arbitration.

**46(8)** Instead of setting aside an award, the court may remit it to the arbitral tribunal and give directions about the conduct of the arbitration.

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

**47(2)** Subsection (1) does not apply if the appellant or applicant alleges corruption or fraud.

**48(1)** At any stage during or after an arbitration, on the application of a party who has not participated in the arbitration, the court may grant a declaration that the arbitration is invalid because

(a) a party entered into the arbitration agreement while under a legal incapacity,

(b) the arbitration agreement is invalid or has ceased to exist,

(c) the subject-matter of the dispute is not capable of being the subject of arbitration under New Brunswick law, or

(d) the arbitration agreement does not apply to the dispute.

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

**49** Notwithstanding subsection 8(3) of the *Judicature Act*, an appeal from the court's decision in an appeal of an award, an application to set aside an award or an application for a declaration of invalidity may be made to The Court of Appeal of New Brunswick, with leave of The Court of Appeal of New Brunswick.

**50(1)** A person who is entitled to enforcement of an award made in New Brunswick or elsewhere in Canada may make an application to the court to that effect.

**50(2)** The application shall be made on notice to the person against whom enforcement is sought, in accordance with the Rules of Court, and shall be supported by the original award or a certified copy.

**50(3)** The court shall give a judgment enforcing an award made in New Brunswick unless

- (a) the thirty-day period for commencing an appeal or an application to set the award aside has not yet elapsed,
- (b) there is a pending appeal, application to set the award aside or application for a declaration of invalidity, or
- (c) the award has been set aside or the arbitration is the subject of a declaration of invalidity.

**50(4)** The court shall give a judgment enforcing an award made elsewhere in Canada unless

- (a) the period for commencing an appeal or an application to set the award aside provided by the laws of the province or territory where the award was made has not yet elapsed,
- (b) there is a pending appeal, application to set the award aside or application for a declaration of invalidity in the province or territory where the award was made,
- (c) the award has been set aside in the province or territory where it was made or the arbitration is the subject of a declaration of invalidity granted there, or
- (d) the subject-matter of the award is not capable of being the subject of arbitration under New Brunswick law.

**50(5)** If the period for commencing an appeal, application to set the award aside or application for a declaration of invalidity has not yet elapsed, or if such a proceeding is pending, the court may

- (a) enforce the award, or
- (b) order, on such conditions as are just, that enforcement of the award is stayed until the period has elapsed without such a proceeding being commenced, or until the pending proceeding is finally disposed of.

**50(6)** If the court stays the enforcement of an award made in New Brunswick until a pending proceeding is finally disposed of, it may give directions for the speedy disposition of the proceeding.

**50(7)** If the award gives a remedy that the court does not have jurisdiction to grant or would not grant in a proceeding based on similar circumstances, the court

- (a) may grant a different remedy requested by the applicant, or
- (b) in the case of an award made in New Brunswick, may remit it to the arbitral tribunal with the court's opinion, in which case the arbitral tribunal may award a different remedy.

**50(8)** The court has the same powers with respect to the enforcement of awards as with respect to the enforcement of its own judgments.

#### GENERAL

**51** This Act binds the Crown.

**52(1)** The law with respect to limitation periods applies to an arbitration as if the arbitration were a court proceeding.

**52(2)** If the court sets aside an award, terminates an arbitration or declares an arbitration to be invalid, it may order that the period from the commencement of the arbitration to the date of the order shall be excluded from the computation of the time within which a court proceeding may be brought in respect of a claim that was presented in the arbitration.

**52(3)** An application for enforcement of an award may not be made more than two years after the day on which the applicant receives the award.

2009, c.L-8.5, s.28

**53(1)** The Rules of Court respecting personal service of originating process and documents apply with the necessary modifications to the service of notices and documents in respect of an arbitration under this Act unless otherwise provided in an arbitration agreement.

**53(2)** Notwithstanding subsection (1), a notice or other document may be served on a party by sending a facsimile of the notice or other document, as the case may be, by telephone transmission to the number that the party gave in the arbitration agreement or the number that the party gave to the arbitral tribunal.

**54(1)** An arbitral tribunal may award the costs of an arbitration.

**54(2)** The arbitral tribunal may award all or part of the costs of an arbitration on a solicitor and client basis, a party and party basis or any other basis; if it does not specify the basis, the costs shall be determined on a party and party basis.

**54(3)** The costs of an arbitration consist of the parties' legal expenses, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration.

**54(4)** If the arbitral tribunal does not deal with costs in an award, a party may, within thirty days of receiving the award, request that it make a further award dealing with costs.

**54(5)** In the absence of an award dealing with costs, each party is responsible for the party's own legal expenses and for an equal share of the fees and expenses of the arbitral tribunal and of any other expenses related to the arbitration.

**54(6)** If a party makes an offer to another party to settle the dispute or part of the dispute, the offer is not accepted and the arbitral tribunal's award is no more favorable to the second-named party than was the offer, the arbitral tribunal may take the fact into account in awarding costs in respect of the period from the making of the offer to the making of the award.

**54(7)** The fact that an offer to settle has been made shall not be communicated to the arbitral tribunal until it has made a final determination of all aspects of the dispute other than costs.

**55** The fees and expenses paid to an arbitrator shall not exceed the fair value of the services performed and the necessary and reasonable expenses actually incurred.

**56(1)** A person authorized under the *Law Society Act* to conduct a taxation of a solicitor's bill for fees, costs, charges or disbursements is an arbitration taxing officer for the purposes of this Act.

**56(2)** In addition to the arbitration taxing officers under subsection (1), the Lieutenant-Governor in Council may appoint one or more persons as arbitration taxing officers for the purposes of this Act.

**56(3)** A party to an arbitration may refer an arbitrator's account for fees and expenses to an arbitration taxing officer and the account shall be taxed in accordance with the *Law Society Act* as if the account were a solicitor's bill for fees, costs, charges or disbursements and the *Law Society Act* applies with the necessary modifications in relation to a certificate of an arbitration taxing officer and an appeal of a taxation of an arbitrator's account for fees and expenses.

**56(4)** Subsection (3) applies even if the account has been paid.

**56(5)** If an arbitral tribunal awards costs and directs that they be assessed, or awards costs without fixing the amount or indicating how it is to be ascertained, a party to the arbitration may have the costs assessed in accordance with the Rules of Court by an assessing officer provided for in the Rules of Court and the Rules of Court apply with the necessary modifications in relation to a Certificate of an assessing officer and an appeal of an assessment of costs.

**56(6)** In assessing the part of the costs represented by the fees and expenses of the arbitral tribunal, the assessing officer shall apply the same principles as in the taxation of an account under subsection (3).

**57** The arbitral tribunal when making an award under this Act has the same authority with respect to interest as a court has under sections 45 and 46 of the *Judicature Act*.

#### TRANSITION

**58(1)** This Act applies to an arbitration conducted under an arbitration agreement made before the commencement of this Act if the arbitration is commenced after the commencement of this Act.

**58(2)** If an arbitration is commenced and not completed before the commencement of this Act, the arbitration shall be completed as if this Act had not come into force unless the parties agree that this Act applies.

#### CONSEQUENTIAL AMENDMENT

**59(1)** *Subsection 1(1) of the Reciprocal Enforcement of Judgments Act, chapter R-3 of the Revised Statutes, 1973, is amended by repealing the definition "judgment" and substituting the following:*

"judgment" means a judgment or order given or made by a court in a civil proceeding, whether before or after the commencement of this Act, whereby a sum of money is made payable;

**59(2)** *The Act is amended by adding after subsection 2(1) the following:*

**2(1.1)** *An application made before the commencement of this subsection to have an award in proceedings on an arbitration registered under this Act may be dealt with in accordance with this Act.*

#### REPEAL

**60** *The Arbitration Act, chapter A-10 of the Revised Statutes, 1973, is repealed.*

#### COMMENCEMENT

**61** *This Act or any provision of it comes into force on a day or days to be fixed by proclamation.*

**N.B.** This Act was proclaimed and came into force January 1, 1995.

**N.B.** This Act is consolidated to May 1, 2010.