



HOUSE USE ONLY

CHAIR:

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Province of Prince Edward Island
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(Bill No. 9)

Arbitration Act

Hon. Bloyce Thompson
Minister of Justice and Public Safety and Attorney General

GOVERNMENT BILL

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Acting King's Printer
Charlottetown, Prince Edward Island



ARBITRATION ACT

BILL NO. 9

2023

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

PART 1 - INTERPRETATION AND APPLICATION

1. Definitions

In this Act,

- (a) **“arbitral tribunal”** means a sole arbitrator or a panel of arbitrators, and includes an arbitrator or panel appointed for the purposes of an agreed appeal or review process;
- (b) **“award”** means a final decision of an arbitral tribunal concerning all or part of a dispute, including a final decision concerning jurisdiction or costs, but does not include a procedural order or decision;
- (c) **“court”** means the Supreme Court, unless the context requires otherwise;
- (d) **“give”**, in relation to a record, includes to deliver or serve;
- (e) **“international arbitration”** means
 - (i) an arbitration to which the *International Commercial Arbitration Act* R.S.P.E.I. 1988, Cap. I-5, applies, or
 - (ii) if the place of arbitration is another province or territory in Canada, an arbitration considered to be an international arbitration under the laws of that province or territory;
- (f) **“mandatory provision”** means a provision of this Act referred to in clauses 3(2)(a) through (o);
- (g) **“party”**, except in section 6, means a person who is a party to an arbitration agreement or arbitral proceeding.

2. Application to international arbitration

- (1) This Act does not apply to an international arbitration, unless the parties to the international arbitration agree in writing to the application of this Act.

Application outside province

- (2) This Act, other than sections 4 and 6, subsection 37(7) and sections 49, 50, 51, 68 and 69, does not apply to an arbitration unless the place of arbitration is within Prince Edward Island.

Place of arbitration determined

- (3) The place of arbitration is within Prince Edward Island where the arbitration agreement
- (a) names Prince Edward Island or a place within Prince Edward Island as the place or seat of arbitration;
 - (b) does not name a place or seat of arbitration, but provides that the laws of Prince Edward Island are applicable to the dispute;
 - (c) does not name a place or seat of arbitration, or specify the jurisdiction whose arbitration laws are applicable to the dispute, but provides that the laws of Prince Edward Island are applicable to the substance of the dispute; or
 - (d) empowers a person or body to name the place of arbitration, and the person or body names Prince Edward Island as the place of arbitration.

Application to other enactment

- (4) Where another enactment authorizes or requires arbitration, this Act applies with any modifications necessary to give effect to the other enactment unless a contrary intention appears in the other enactment.

3. Application pursuant to agreement

- (1) Subject to subsection (2), the parties to an arbitration agreement may agree that a provision of this Act does not apply or applies as modified by the agreement, to a dispute arising under the arbitration agreement.

Mandatory provisions of Act

- (2) An arbitration agreement may not modify or provide that the following provisions of this Act do not apply:
- (a) section 2;
 - (b) section 3;
 - (c) section 5;
 - (d) section 6;
 - (e) section 11;
 - (f) subsection 19(1);
 - (g) clauses 22(1)(a), (e) and (f);
 - (h) section 27;
 - (i) subsection 37(4);
 - (j) section 58;
 - (k) section 63;
 - (l) section 64;
 - (m) section 65;
 - (n) section 68;
 - (o) sections 72 and 73.

Mandatory provision prevails

- (3) In the event of a conflict between a mandatory provision of this Act and an arbitration agreement, the mandatory provision prevails.

Agreement may be express or implied

- (4) For greater certainty, an agreement under subsection (1) may be express or may arise by implication.

4. Deemed waiver of right to object

A party who proceeds with an arbitral proceeding knowing that a non-mandatory provision of this Act or a requirement under an arbitration agreement has not been complied with is deemed to have waived the right to object, unless the party states an objection to the non-compliance without undue delay or, if a time limit applies for stating the objection, within the time limit.

PART 2 - COURT INTERVENTION**5. Court intervention limited**

No court may intervene in matters governed by this Act, except as expressly provided by this Act.

6. Stay of proceedings related to arbitration agreement

- (1) A party to a court proceeding may apply for a stay of the court proceeding, in whole or in part, on the grounds that the court proceeding is in respect of a matter that is the subject of an arbitration agreement.

Timing of application for stay

- (2) An application under subsection (1) shall be made before the applicant has taken any other steps in the court proceeding, unless the court determines that there was a reasonable justification for the delay and that any prejudice can be addressed through an award of costs.

Grounds for refusal

- (3) On an application under subsection (1), the court shall stay the court proceeding unless the court finds that
- (a) the court proceeding is not in respect of any matter that is the subject of an arbitration agreement;
 - (b) a person against whom the arbitration agreement is sought to be enforced entered into the arbitration agreement while under a legal incapacity;
 - (c) the alleged arbitration agreement does not exist, or is void or unenforceable; or
 - (d) the dispute is not capable of being the subject of arbitration under the laws of Prince Edward Island.

Arbitral proceeding may continue

- (4) Unless otherwise ordered by the court, a person may commence or continue an arbitral proceeding in relation to the dispute while an application under subsection (1) is before the court.

Arbitral tribunal may make determination

- (5) Where the court stays the court proceeding in whole or in part without making a finding concerning the existence of circumstances described in subsection (3), an arbitral tribunal is not precluded from determining whether the circumstances exist.

Effect of finding of court

- (6) Where the court finds that one or more of the circumstances described in subsection (3) exists in respect of all or some of the matters in the court proceeding, then, in respect of those matters,
- (a) the court proceeding continues;
 - (b) no person may commence an arbitral proceeding in relation to the dispute; and
 - (c) where a person has brought an arbitral proceeding in relation to the dispute, the arbitral proceeding is terminated and anything done in the arbitral proceeding is without effect.

Decision may be appealed

- (7) A party may appeal a decision of the court under this section.

PART 3 - ARBITRATION AGREEMENTS

7. Arbitration agreement

- (1) Two or more persons may make an arbitration agreement to resolve, by arbitration, a matter that
- (a) is the subject of a dispute; or
 - (b) may be the subject of a dispute in the future.

Nature of arbitration agreement

- (2) For greater certainty, an arbitration agreement
- (a) need not be in writing;
 - (b) need not relate to the interpretation, application or performance of a contract; and
 - (c) may, but need not, be part of another agreement.

8. Modification of arbitration agreement

Where the parties to an arbitration agreement make a subsequent agreement regarding how disputes or prospective disputes to which the arbitration agreement applies shall or may be arbitrated, the subsequent agreement is deemed to be a modification of the original arbitration agreement.

9. Separability of arbitration agreement

An arbitration agreement which forms or was intended to form part of another agreement shall not be regarded as non-existent, void or unenforceable solely because that other agreement is non-existent, void or unenforceable, and it shall in those circumstances be deemed to be a distinct agreement.

10. Incorporation of arbitration agreement

For greater certainty, where an agreement incorporates a record that includes an arbitration agreement, then the arbitration agreement also is incorporated.

11. Agreement to arbitrate prior to litigation

An agreement which provides that a matter may be adjudicated by arbitration before it may be the subject of a court proceeding is an arbitration agreement in respect of the matter.

12. Incorporation of rules by reference

Where an arbitration agreement incorporates arbitration rules by reference, those rules form part of the arbitration agreement.

13. Agreements to consolidate

- (1) Where all parties to two or more arbitral proceedings have agreed to consolidate those proceedings, and a dispute arises in relation to the consolidation, a party may apply to the court for an order that the proceedings be consolidated as agreed to by the parties, unless
- (a) the party has not yet exhausted an agreed procedure regarding disputes in relation to consolidation of arbitral proceedings; or
 - (b) an application is prohibited by an agreed consolidation procedure.

Parties may consolidate proceedings

- (2) For greater certainty, subsection (1) does not prohibit parties from consolidating arbitral proceedings without a court order.

Court order to assist consolidation

- (3) On an application under subsection (1), where all parties to the arbitral proceedings have agreed to consolidate the proceedings but have not agreed, by adopting procedural rules or otherwise,
- (a) to the designation of parties as claimants or respondents or a method for making those designations; or
 - (b) to the method for determining the composition of the arbitral tribunal,
- the court may, subject to subsection (4), make an order deciding either or both of these matters.

Limitation on consolidation

- (4) Where the arbitral proceedings are under different arbitration agreements, no order shall be made for their consolidation on an application under subsection (1) unless, by their arbitration agreements or otherwise, the parties have agreed
- (a) to the same place of arbitration or a method for determining a single place of arbitration for the consolidated proceeding within Prince Edward Island;
 - (b) to the same procedural rules or a method for determining a single set of procedural rules for the conduct of the consolidated proceedings; and
 - (c) either to have the consolidated proceedings administered by the same arbitral tribunal or to have the consolidated proceedings not be administered by an arbitral tribunal.

Factors to be considered by court

- (5) In making an order for consolidation under this section, the court may have regard to any circumstances that it considers relevant, including
- (a) whether one or more arbitrators have been appointed in one or more of the arbitral proceedings;
 - (b) whether the applicant delayed applying for the order;
 - (c) whether any material prejudice to any of the parties or any injustice may result from making an order.

Court's decision final

- (6) The decision of the court under this section may not be appealed.

PART 4 - COMMENCEMENT OF ARBITRAL PROCEEDINGS

14. Proceedings in accordance with agreement

- (1) Where the parties have agreed how arbitral proceedings are to be commenced, then arbitral proceeding shall be commenced in accordance with that agreement.

Commencement without agreement

- (2) Where the parties have not agreed how arbitral proceedings are to be commenced, a party may commence arbitral proceedings by
- (a) giving to the other party or parties to the arbitration agreement a notice appointing an arbitrator or requesting the other party or parties to the arbitration agreement to participate in the appointment of an arbitral tribunal;
 - (b) where the arbitration agreement gives a person who is not a party to the arbitration agreement the power to appoint an arbitrator or arbitral tribunal, giving to that person a notice requesting the person to exercise the power of appointment and giving a copy of the notice to any other party; or
 - (c) giving to the other party or parties to the arbitration agreement a notice demanding arbitration.

Request for description of matter in dispute

- (3) A person receiving a notice under subsection (2) may give the party who commenced the arbitral proceeding a written request for a concise description of the matter in dispute, unless such a description is already included with the notice.

Party must comply with request

- (4) A party receiving a request under subsection (3) shall comply with the request no more than 10 days after receipt.

Extension of time by arbitral tribunal

- (5) An arbitral tribunal may extend the time in subsection (4) before or after it expires.

Effect of failure to comply

- (6) A failure to comply with subsection (4) does not render a notice given under subsection (2) ineffective, but an arbitral tribunal may stay the arbitral proceeding until subsection (4) is complied with.

15. Limitation periods apply

- (1) The law with respect to limitation periods applies to commencing an arbitral proceeding as if it were a court proceeding.

Determination by arbitral tribunal

- (2) Where a party alleges that a claim to which an arbitration agreement applies is barred for failure to commence arbitration proceedings within the time provided by the arbitration agreement or the applicable limitation period, the arbitral proceeding shall continue and the arbitral tribunal shall determine whether the claim is barred.

16. Limitation period suspended - court as wrong forum

- (1) Where a court stays a court proceeding under section 6 and the claim that was the subject of the court proceeding is made in an arbitral proceeding no more than 30 days after the stay, the

limitation period applicable to the claim is suspended from the date the claim was made in the court proceeding to the date the claim is made in the arbitral proceeding.

Limitation period suspended - arbitral proceeding as wrong forum

- (2) Where an arbitral proceeding is commenced and
- (a) a claim made in the arbitral proceeding is dismissed or the arbitral proceeding is suspended or terminated in respect of a claim because the arbitral tribunal or a court determines in accordance with this Act that the claim may not be made in an arbitral proceeding; or
 - (b) an award made in respect of a claim is set aside by a court of competent jurisdiction, because it determines that the claim may not be made in arbitral proceedings; or
 - (c) a court of competent jurisdiction refuses to enforce the award because it determines that the claim may not be made in arbitral proceedings,
- and the claim is made in court proceedings no more than 30 days after the determination of the court or arbitral tribunal, any limitation period applicable to that claim under the *Statute of Limitations* R.S.P.E.I. 1988, Cap. S-7, is suspended from the date that the claim was made in the arbitral proceeding to the date the claim is made in the court proceeding.

PART 5 - CONSTITUTING ARBITRAL TRIBUNALS

17. Number of arbitrators

Where the parties have not agreed on the number of arbitrators, an arbitral tribunal is composed of one arbitrator.

18. Appointment of arbitral tribunal

- (1) Unless the parties have agreed on a process for the appointment of the arbitral tribunal or, where required, for the selection of a chair,
- (a) where the arbitral tribunal is composed of one arbitrator and the parties are unable to agree on the arbitrator, a party may apply to the court for the appointment of the arbitrator;
 - (b) where there are two parties and the arbitral tribunal is composed of three arbitrators,
 - (i) each party may appoint one arbitrator, and the party-appointed arbitrators may agree on the third arbitrator, but
 - (ii) if a party fails to appoint an arbitrator within 30 days of receipt of a request to do so from the other party or if the two party-appointed arbitrators fail to agree on the third arbitrator within 30 days of the appointment of the later-appointed arbitrator, a party may apply to the court for the appointment of any unappointed arbitrator, and
 - (iii) the third arbitrator shall serve as chair; and
 - (c) where the parties cannot agree in any other case, a party may apply to the court for an order appointing any unappointed arbitrator.

Application to court for directions, appointment

- (2) Where the parties have agreed to an appointment procedure, and
- (a) a party fails to act as required under the procedure;

- (b) the parties or arbitrators are unable to reach an agreement required under the procedure; or
- (c) a person, other than a party, fails to perform a function required under the procedure, a party may apply to the court for directions or for an order appointing any unappointed arbitrator.

Factors for court's consideration

- (3) When appointing an arbitrator or an arbitral tribunal the court shall consider
 - (a) the nature of the dispute;
 - (b) any qualifications required by the agreement of the parties; and
 - (c) what will most likely result in the appointment of an independent and impartial arbitral tribunal.

Court's decision final

- (4) The decision of the court under this section may not be appealed.

19. Impartiality of arbitrator

- (1) An arbitrator shall be impartial and shall act impartially.

Independence of arbitrator

- (2) An arbitrator shall be independent of the parties.

Prior disclosure required

- (3) Before accepting an appointment as arbitrator, a person shall disclose to all parties any circumstances of which the person is aware that might give rise to justifiable doubts as to the person's impartiality or independence.

Disclosure as soon as practicable

- (4) An arbitrator who becomes aware of circumstances that might give rise to justifiable doubts as to the arbitrator's impartiality or independence shall as soon as practicable disclose the circumstances to all the parties.

20. Protection from liability

No action may be brought against a person for anything done or omitted to be done in the person's capacity as an arbitrator, unless the act or omission is in bad faith or the person has engaged in intentional wrongdoing.

PART 6 - REMOVAL AND REPLACEMENT OF ARBITRATORS

21. Revocation requires unanimous consent

Subject to this Part, a party to an arbitral proceeding may not revoke the appointment of an arbitrator unless all other parties consent.

22. Application for removal of arbitrator

- (1) A party to an arbitral proceeding may apply to the court for removal of an arbitrator only on the grounds that

- (a) the arbitrator is not impartial or there are circumstances that give rise to justifiable doubts as to the arbitrator's impartiality;
- (b) the arbitrator is not independent or there are circumstances that give rise to justifiable doubts as to the arbitrator's independence;
- (c) the arbitrator does not possess the qualifications required under the arbitration agreement;
- (d) the arbitrator is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to the arbitrator's physical or mental capacity;
- (e) the arbitrator has committed a corrupt or fraudulent act; or
- (f) the arbitrator has delayed unduly in conducting the arbitration and as a result substantial injustice has been or will be caused to the party.

Grounds for removal

- (2) On an application under subsection (1) the court shall order the removal of the arbitrator if the court finds
 - (a) that one or more of the circumstances described in clauses (1)(a) to (f) exists; and
 - (b) in the case of an application under either of clauses (1)(b) and (c), that the applicant has not waived the requirement on which the applicant relies.

Agreed process applies

- (3) A party may not apply under subsection (1) unless the party has exhausted all recourse under any agreed process for removal of an arbitrator.

Conditions in absence of agreed process

- (4) Where there is no agreed process for removal of an arbitrator, a party may not apply to the court for the removal of an arbitrator on the grounds described in clauses (1)(a), (b) or (c) unless
 - (a) within 15 days after the earlier of
 - (i) the date on which the intended applicant became aware of the circumstance relied upon, and
 - (ii) the date on which the intended applicant ought to have known of those circumstances if the intended applicant had made reasonable inquiries,the party gives to the arbitral tribunal and the other parties a written statement requesting the arbitral tribunal to remove the arbitrator and setting out the circumstances and reasons for the request;
 - (b) the arbitral tribunal refuses to remove the arbitrator; and
 - (c) the application to the court is made within 15 days after the arbitral tribunal's refusal to remove the arbitrator.

Expeditious response by arbitral tribunal

- (5) An arbitral tribunal that receives a request for the removal of an arbitrator shall expeditiously decide the issue and communicate its decision to the parties.

Deemed refusal

- (6) An arbitral tribunal is conclusively deemed to have refused to remove an arbitrator if it does not decide a request for removal within 15 days after receiving a written statement under clause (4)(a).

Continuation while application pending

- (7) For certainty, while an application under subsection (1) is pending, the arbitral tribunal, including the challenged arbitrator, may continue an arbitral proceeding, unless the court orders otherwise.

Court's decision final

- (8) The decision of the court under this section may not be appealed.

23. Termination of arbitrator's mandate

- (1) An arbitrator's mandate terminates if
- (a) the arbitrator resigns or dies;
 - (b) all parties agree to terminate the arbitrator's appointment;
 - (c) the arbitrator is removed under section 22 or by another process agreed to by the parties; or
 - (d) the arbitral proceeding terminates.

Effect of resignation, etc.

- (2) For certainty, 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 the arbitrator.

24. Appointment of substitute arbitrator

- (1) Where an arbitrator's mandate terminates under clause 23(1)(a), (b) or (c), the arbitral tribunal shall be reconstituted by appointing a substitute arbitrator under the process used to appoint the arbitrator whose mandate terminated.

Determination by reconstituted arbitral tribunal

- (2) The reconstituted arbitral tribunal may determine whether steps taken before the reconstitution of the arbitral tribunal should be repeated.

PART 7 - JURISDICTION OF ARBITRAL TRIBUNALS

25. Arbitral tribunal may determine own jurisdiction

- (1) An arbitral tribunal may rule on its own jurisdiction to conduct the arbitration, including whether
- (a) the arbitral proceeding is in whole or in part in respect of a matter that is not the subject of the arbitration agreement;
 - (b) a person against whom the arbitration agreement is sought to be enforced entered into the arbitration agreement while under a legal incapacity;
 - (c) the arbitration agreement does not exist or is void or unenforceable; or
 - (d) the dispute is not capable of being the subject of arbitration under Prince Edward Island law.

Time for objecting

- (2) A party who has an objection to the arbitral tribunal's jurisdiction shall state the objection as soon as practicable after the matter alleged to be beyond the arbitral tribunal's jurisdiction arises during the arbitration.

Decision respecting objection

- (3) An arbitral tribunal may decide an objection to jurisdiction
- (a) in a partial award issued before deciding other matters in dispute; or
 - (b) as part of the final award.

26. Application to court

- (1) A party may apply to the court to set aside a partial award issued under clause 25(3)(a).

Time of application

- (2) An application under subsection (1) may not be made more than 30 days after the applicant receives the partial award.

Appeal from court's determination

- (3) Where the court determines that the arbitral tribunal's decision with respect to jurisdiction was not correct, the court's determination may be further appealed to the Court of Appeal with leave of that court.

Arbitral proceeding not stayed

- (4) An application under subsection (1) or an appeal under subsection (3) does not act as a stay of the arbitral proceeding.

Effect of final decision

- (5) A final decision under subsections (1) and (3) is, unless it states otherwise, final and binding for all purposes, including for the purposes of an application for leave to appeal an award under section 64, an application to set aside an award under section 65 or an application to enforce an award under section 68.

Objection may be raised at later stage

- (6) For certainty, where
- (a) a party objects to the jurisdiction of an arbitral tribunal under subsection 25(2);
 - (b) the arbitral tribunal decides against the objection by a partial award under clause 25(3)(a); and
 - (c) the objecting party does not apply to court under this section,
- the party may rely on the same objection in an application under section 64, 65 or 68.

PART 8 - POWERS AND DUTIES OF ARBITRAL TRIBUNAL AND PARTIES**27. General duties of arbitral tribunal**

An arbitral tribunal shall give each party a reasonable opportunity to present its case and to answer any case presented against it.

28. General duties of parties

A party shall participate in an arbitral proceeding efficiently and in good faith, in accordance with the agreement of the parties and the orders and directions of the arbitral tribunal.

29. Legal or other representation

A party may appear or act in person or, subject to the *Legal Profession Act*, may be represented by another person.

30. Applicable law

(1) The law applicable to the substance of a dispute is the law designated by the parties.

Law chosen by arbitral tribunal

(2) Where the parties have not designated the law applicable to the substance of a dispute, the arbitral tribunal may choose the applicable law.

Decision in accordance with applicable law

(3) An arbitral tribunal shall decide the substance of a dispute in accordance with the applicable law, including any equitable rights or defences arising under that law.

Authority to grant relief

(4) An arbitral tribunal may grant the same relief or remedies as a court of competent jurisdiction under the applicable law, including orders of specific performance, injunctions, declarations or other equitable remedies.

31. Conflict of laws

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 state that the designation includes the conflict-of-laws rules.

32. Application of specific agreed standards

Despite section 30, where all parties agree, an arbitral tribunal may resolve a dispute according to what is fair and just in the circumstances or by applying some other standard.

33. Hearing location

(1) Except as provided in this section, any in-person hearing to receive oral evidence or oral submissions shall take place at

- (a) a location agreed by the parties; or
- (b) if the parties have not agreed on a location, at a location determined by the arbitral tribunal.

Use of electronic means permitted

(2) An arbitral tribunal may receive oral evidence or oral submissions at any location by telephone, video-conference or other electronic means.

Meeting for consultation

- (3) An arbitral tribunal may meet
 - (a) in person wherever it considers appropriate for consultation among its members; and

- (b) where in-person meetings are not possible for any reason, by telephone, video conferencing or other electronic means that it considers appropriate.

Inspections, etc.

- (4) An arbitral tribunal may conduct an inspection of goods, other property or records or receive evidence of a witness at any location.

34. Evidence

An arbitral tribunal need not apply legal rules of evidence, other than rules concerning privilege.

35. Procedural matters

- (1) Subject to this Act and any agreement of the parties, an arbitral tribunal may establish procedures and make procedural orders for the conduct of an arbitral proceeding.

Procedural orders

- (2) For certainty, and without limiting subsection (1), an arbitral tribunal may make the following orders:
 - (a) concerning statements of position or pleadings, including when they should be given, their form and content, and whether amendments are allowed;
 - (b) requiring security for the arbitral tribunal's fees and expenses;
 - (c) requiring a party to provide security for costs that may be incurred by another party;
 - (d) concerning the determination of some matters in dispute before other matters in dispute;
 - (e) giving directions for the preservation of evidence;
 - (f) subject to privilege, requiring a party to produce records or information;
 - (g) establishing protocols for searching for and producing electronically-stored records, and allocating the costs of implementing the protocols;
 - (h) giving directions in relation to any property which is the subject of the arbitral proceeding or as to which any question arises in the proceeding, and which is owned by or in the possession of a party
 - (i) for the inspection, photographing, preservation, custody or detention of the property by the arbitral tribunal, an expert or a party, or
 - (ii) for taking samples from, or making observation of any test or experiment conducted upon, the property;
 - (i) concerning the form in which evidence and argument is presented;
 - (j) regarding the confidentiality of the arbitral proceedings, including pleadings, evidence, transcripts, orders, awards, and the fact of the arbitration, and providing for sanctions against parties for failure to observe confidentiality requirements;
 - (k) allowing the use of video or telephone-conferencing or other technology permitting the examination of witnesses who are not physically present at an evidentiary hearing;
 - (l) allocating hearing time between the parties;
 - (m) excluding witnesses or potential witnesses from attending any part of an oral evidentiary hearing;
 - (n) concerning the language or languages to be used in the proceedings, whether translations of any records are to be supplied and allocating the costs of interpreting or translating evidence;

- (o) varying a procedural order, including by shortening or extending a time limit established by the order, before or after the time limit has expired.

36. Definitions

(1) In this section,

- (a) “**claim**” means
 - (i) with respect to a party who commenced the arbitral proceeding, the matters put in dispute by that party, and
 - (ii) with respect to a party who brings a counterclaim in arbitral proceedings, the matters put in dispute by the counterclaim;
- (b) “**procedural time limit**” means a time limit set by enactment, agreement of the parties or order of the arbitral tribunal for taking a procedural step.

Default by party - termination, suspension

- (2) Where a party who commenced arbitral proceedings or brought a counterclaim fails to comply with a procedural time limit, the arbitral tribunal may
 - (a) terminate the arbitral proceeding in relation to the party’s claim; or
 - (b) suspend the arbitral proceeding in relation to the party’s claim, pending fulfilment of conditions.

Default by party - continuation and order

- (3) Where a party fails to comply with a procedural time limit, the arbitral tribunal may continue the arbitral proceeding and make an order it considers appropriate, including an order
 - (a) that the party is precluded from taking a procedural step; or
 - (b) drawing inferences of fact against the party.

Default by party - continuation and award

- (4) Where a party fails to produce evidence as required or otherwise fails to participate in an arbitral proceeding, the arbitral tribunal may continue the proceeding and make an award based on the evidence presented to it.

Costs may be awarded

- (5) Where an arbitral proceeding is terminated under subsection (2) the arbitral tribunal may award costs as it considers appropriate.

Award remains valid

- (6) Unless the arbitral tribunal determines otherwise at the time of termination, an award made before termination or suspension of an arbitral proceeding under this section remains valid and enforceable.

37. Evidence, production from non-parties

- (1) Where an arbitral tribunal determines that a person, other than a party, should give evidence or produce records, the arbitral tribunal may
 - (a) issue a subpoena to a person in the province requiring the person to give evidence or produce for inspection records in the person’s possession or control; or
 - (b) request a court of competent jurisdiction to assist the arbitral tribunal by requiring a person in or outside the province to give evidence or produce for inspection records in the person’s possession or control.

Contents of subpoena, request

- (2) A subpoena under subsection (1) shall set out and a request under subsection (1)(b) shall propose the following, as applicable:
- (a) the time, place and manner in which the person is to give evidence;
 - (b) the records the person is to produce;
 - (c) the time, place and manner of production and copying;
 - (d) conditions for the payment of the expenses of the person named in the request.

Effect of subpoena

- (3) A subpoena issued under clause (1)(a) has the same effect as if it were issued in a court proceeding.

Application respecting subpoena

- (4) A subpoena issued under clause (1)(a) may be set aside on application by the person named in the subpoena to the arbitral tribunal or the court.

Application for order

- (5) A party may apply to the court for an order providing the assistance described in a request issued under clause (1)(b).

Authority of court

- (6) Where an application is brought to the court under subsection (5), the court, after requiring notice to the person named in the request that the court considers appropriate, and where satisfied that the conditions proposed are reasonable, shall
- (a) where the person named in the request is within the province, make an order that the person attend to give evidence or produce records as described in the request; or
 - (b) where the person named in the request is not within the province, issue a request for assistance to another court of competent jurisdiction.

Application to court

- (7) A party to an arbitral proceeding in which
- (a) the place of arbitration is within another province or territory;
 - (b) the arbitration is not considered to be an international arbitration under the laws of the place of arbitration; and
 - (c) the arbitral tribunal has issued a request substantially conforming to the requirements of a request under clause (1)(b)

may apply to the court for an order providing the assistance described in the request and the request shall be enforced in the manner and to the extent provided under the *Interprovincial Subpoena Act* R.S.P.E.I. 1988, Cap. I-9, as if it were a subpoena issued by a court of the place of arbitration.

Court's decision final

- (8) The decision of the court under this section may not be appealed.

38. Non-compellability

Despite section 37, a person may not be compelled to produce information, property or records or to give evidence in an arbitral proceeding that the person may not be compelled to produce or give in a court proceeding.

39. Tribunal-appointed expert

- (1) An arbitral tribunal may, after consultation with the parties, appoint an expert to report to the arbitral tribunal and the parties on an issue.

Information, etc., to be provided

- (2) The arbitral tribunal may order a party to give the expert relevant information or to produce, or to provide access to, relevant records, goods or other property for inspection.

Participation in hearing

- (3) The arbitral tribunal may order the expert, after giving the expert's report, to participate in a hearing at which the parties may question the expert on the report and present evidence on issues arising from the report.

Costs

- (4) The costs of an expert appointed under this section shall be borne by the parties as directed by the arbitral tribunal.

40. Impartiality, independence of expert

- (1) An expert appointed by a party to give evidence in an arbitral proceeding or appointed under section 39 shall sign a written statement stating that the expert is
- (a) impartial; and
 - (b) except as disclosed in the statement, independent of the parties.

Statement to be provided

- (2) The expert shall give the statement to the arbitral tribunal and to the parties.

41. Mediation, conciliation may be used

- (1) Where the parties and the arbitral tribunal agree, the arbitral tribunal may use mediation, conciliation or another technique to assist the parties to settle a matter in dispute.

Not grounds for challenge or removal

- (2) An arbitrator may not be challenged or removed because the arbitral tribunal participated in a process under subsection (1).

Application of subsection

- (3) For certainty, subsection (2) applies whether the arbitration process continues after or concurrently with a process under subsection (1).

PART 9 - INTERIM MEASURES

42. Power to grant interim measures

- (1) An arbitral tribunal may, on application by a party, grant interim measures before the issuance of an award.

Interim measure clarified

- (2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, the arbitral tribunal orders a party to

- (a) maintain or restore the status quo pending determination of the dispute;
- (b) take action that would prevent, or refrain from taking action that is likely to cause, harm to the arbitral process;
- (c) preserve assets that are the subject matter of the dispute or out of which a subsequent award may be satisfied; or
- (d) preserve evidence.

43. Application for interim measure, preliminary order

- (1) A party may, without notice to any other party, apply for
 - (a) an interim measure; and
 - (b) a preliminary order directing a party to the arbitration agreement not to frustrate the purpose of the interim measure.

Grounds for granting preliminary order

- (2) The arbitral tribunal may grant the preliminary order if notice of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the interim measure.

44. Notice to parties

- (1) After an arbitral tribunal makes a determination in respect of an application under section 43, the arbitral tribunal shall, as soon as practicable, give notice to all parties of
 - (a) the application for an interim measure;
 - (b) the application for a preliminary order;
 - (c) the preliminary order, if any; and
 - (d) all other communications, including by indicating the content of any oral communication, between a party and the arbitral tribunal in relation to the applications.

Opportunity to present case

- (2) The arbitral tribunal shall as soon as practicable give a party against whom a preliminary order is directed an opportunity to present its case.

Decision on objection

- (3) The arbitral tribunal shall decide as soon as practicable on any objection to the preliminary order.

Expiry of preliminary order

- (4) A preliminary order expires 21 days after the date on which it is issued.

Interim measure may adopt preliminary order

- (5) An arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

Preliminary order not subject to enforcement

- (6) A preliminary order is not subject to enforcement by the court.

45. Application to modify, suspend, terminate

- (1) On application by a party, an arbitral tribunal may modify, suspend or terminate an interim measure or preliminary order.

Order by arbitral tribunal

- (2) An arbitral tribunal may make an order modifying, suspending or terminating an interim measure or preliminary order on its own initiative where
- (a) the arbitral tribunal first notifies all the parties; and
 - (b) extraordinary circumstances justify the arbitral tribunal acting on its own initiative.

46. Security as condition - interim measure

- (1) An arbitral tribunal may require a party requesting an interim measure to provide security as a condition of granting the interim measure.

Security required - preliminary order

- (2) Unless an arbitral tribunal is satisfied that security is inappropriate or unnecessary, the arbitral tribunal shall require a party applying for a preliminary order to provide security as a condition of granting the preliminary order.

47. Disclosure

Until the party against whom a preliminary order has been requested has had an opportunity to present its case in relation to the preliminary order,

- (a) the arbitral tribunal may require a party to disclose a material change in the circumstances on the basis of which the measure was granted; and
- (b) the party that applied for the preliminary order shall disclose to the arbitral tribunal all circumstances that might be relevant to the arbitral tribunal's determination whether to grant or maintain the order.

48. Costs and damages - interim measure

- (1) Where an arbitral tribunal determines that an interim measure should not have been granted, the party that applied for the measure is liable for costs and damages caused by the interim measure.

Costs and damages - preliminary order

- (2) Where an arbitral tribunal determines that a preliminary order should not have been granted, the party that applied for the order is liable for costs and damages caused by the preliminary order.

Award at any time

- (3) An arbitral tribunal may make an award under this section at any point during an arbitral proceeding.

49. Enforcement of interim measure

- (1) Unless otherwise provided by the arbitral tribunal, a party may apply to the court to enforce an interim measure.

Duty of applicant

- (2) The applicant shall inform the court of any termination, suspension or modification of the measure, or of any application to terminate, suspend or modify the measure.

Security may be ordered

- (3) The court may order the applicant to provide security where
- (a) the arbitral tribunal has not already made a determination with respect to security; or
 - (b) security is necessary to protect the rights of persons other than the parties.

Decision may be appealed

- (4) A party may appeal a decision of the court under this section.

50. Grounds for refusal

The court may refuse to enforce an interim measure if

- (a) any of the circumstances set forth in subsection 65(2) apply;
- (b) the party seeking the enforcement of the measure has not complied with a condition imposed by the arbitral tribunal; or
- (c) an application is pending before the arbitral tribunal to terminate, suspend or modify the interim measure.

51. Authority of court - interim measures

- (1) The court has the same powers with respect to the detention, preservation and inspection of property, interim injunctions, the appointment of receivers and other interim measures in relation to an arbitral proceeding as it has in a court proceeding.

Application not waiver

- (2) For certainty, an application by a party to a court under this section is not a waiver of an arbitration agreement.

Application to vary, set aside order

- (3) A party affected by an order of a court under section 49 or subsection (1) may apply to the court to vary or set aside the order if there is a material change in the circumstances that were the basis of the order.

PART 10 - AWARDS AND TERMINATION OF ARBITRAL PROCEEDINGS

52. Majority decision

- (1) Where an arbitral tribunal is composed of more than one arbitrator, the award of a majority of the arbitrators is the award of the arbitral tribunal.

Time limit for award

- (2) Where the parties have agreed on a time limit within which the arbitral tribunal shall make an award, the arbitral tribunal shall comply with it, subject to the requirements of this Part.

53. Form of award

- (1) An award shall be in writing.

Reasons required

- (2) An arbitral tribunal shall give reasons for an award, unless the award is consented to by all parties.

Statement of place, date

- (3) An award shall state the place of arbitration and the date on which it is made.

Clerical mistake

- (4) A failure to comply with subsection (3) is a clerical mistake which may be corrected under section 56.

Signatures required

- (5) All arbitrators in the arbitral tribunal shall sign an award.

Exception

- (6) Despite subsection (5), a majority of the arbitrators may sign an award if the award includes an explanation for the omission of the signatures of the other arbitrators.

54. Delivery to parties

- (1) The arbitral tribunal shall give an originally signed or certified true copy of the award to each party.

Award may be withheld

- (2) Despite subsection (1), unless the court orders otherwise, an arbitral tribunal may withhold an award from the parties if it has not received full payment of its fees and expenses.

Time limit extended

- (3) A time limit for giving the award is extended until security is provided for an amount claimed under subsection (2).

Application to court

- (4) Where the arbitral tribunal refuses or fails to give an award, a party may, upon notice to the other parties and the arbitral tribunal, apply to the court for one or more of the following orders:
- (a) an order that the arbitral tribunal give the award on the payment into court of all or part of the fees and expenses demanded;
 - (b) a summary determination of the amount of the fees and expenses properly payable to the arbitral tribunal under subsection 60(2);
 - (c) an order that the fees and expenses as determined be paid out of the money paid into court;
 - (d) directions as to how the balance of the money paid into court shall be paid out.

Court's decision final

- (5) The decision of the court under subsection (4) may not be appealed.

55. Application for extension of time

- (1) An arbitral tribunal or a party may apply to the court for an order extending the time within which the arbitral tribunal is required to make an award.

Authority of court

- (2) The court shall make the order if satisfied that a substantial injustice would otherwise be done.

Court's order may not be appealed

- (3) An order of the court under this section may not be appealed.

Time for order

- (4) An order under subsection (2) may be made before or after the expiry of the time within which the arbitral tribunal is required to make the award.

56. Corrections

- (1) The arbitral tribunal may
- (a) on its own initiative, no more than 30 days after giving the award; or
 - (b) on the application of a party made no more than 30 days after the receipt of the award, correct an award to remove a typographical error, clerical mistake, error of calculation or error arising from an accidental slip or omission.

Clarification or interpretation

- (2) A party may, no more than 30 days after the receipt of the award, request the arbitral tribunal to clarify or interpret a specific passage, statement or part of the award.

Time for correction, etc.

- (3) Where the arbitral tribunal considers that an application or request made under clause (1)(b) or subsection (2) is justified, it shall make the correction or give the clarification or interpretation no more than 30 days after the application or request.

Status of correction, etc.

- (4) A correction, clarification or interpretation under subsection (3) is part of the award.

Additional award

- (5) No more than 30 days after the receipt of an award, a party may apply to the arbitral tribunal to make an additional award in respect of a claim, including a claim for interest or costs, which was presented to the arbitral tribunal for decision, but
- (a) was not dealt with in the award; and
 - (b) concerning which the arbitral tribunal did not expressly reserve its jurisdiction.

Time for additional award

- (6) Where the arbitral tribunal considers an application under subsection (5) to be justified, it shall make the additional award no more than 60 days after the application.

57. Partial award

The arbitral tribunal may make an award finally deciding a matter in dispute, while retaining jurisdiction to decide another matter in dispute.

58. Binding nature of award

Unless it is set aside or varied under this Act, an award binds the parties.

59. Award respecting costs

- (1) The arbitral tribunal may make an award requiring a party to pay another party all or part of the other party's costs of the arbitral proceeding.

Costs include fees, expenses, taxes

- (2) A party's costs include all amounts the party has paid or incurred in connection with the arbitral proceeding for
- (a) actual reasonable legal fees, including disbursements;
 - (b) reasonable expert witness fees, including disbursements;
 - (c) the fees and expenses of the arbitral tribunal;
 - (d) reasonable expenses for hearing facilities, translation or transcription of evidence or other similar expenses; and
 - (e) applicable taxes.

Summary determination of costs

- (3) Where the arbitral tribunal makes an award under subsection (1), the arbitral tribunal shall summarily determine the amount of costs.

Award respecting unnecessary costs

- (4) Where the arbitral tribunal finds that the conduct of a party unnecessarily increased another party's costs of the arbitration, the arbitral tribunal may make an award of costs requiring the party to pay to the other party an amount the arbitral tribunal considers to be a reasonable estimate of the increased costs.

Time of award

- (5) An award of costs under subsection (4) may be made at any time during the arbitral proceeding and may be made payable at any time.

Refusal to settle may be considered

- (6) Where a party makes an offer to another party to settle the dispute or part of the dispute and the offer is not accepted, the arbitral tribunal may take that fact into account when awarding costs of the arbitration.

Content of offer confidential

- (7) The content of an offer to settle shall not be communicated to the arbitral tribunal unless the arbitral tribunal has issued a final award determining all aspects of the dispute other than costs.

60. Arbitrator's fees, expenses

- (1) Except as otherwise agreed, the fees and expenses payable to an arbitrator shall be set at the sum of
- (a) the fair value of the services performed; and
 - (b) the necessary and reasonable expenses actually incurred by the arbitrator.

Application for determination of fees, expenses

- (2) A party or an arbitrator may apply to the court for a summary determination of the fees and expenses payable where
- (a) the party alleges the fees and expenses paid to or demanded by the arbitrator exceed the amount owing; or
 - (b) the arbitrator alleges the party has failed to pay fees and expenses owed.

Time of application

- (3) An application under subsection (2) shall be made no later than 60 days after the earlier of the following, if applicable:
- (a) the date on which payment was demanded;
 - (b) the date on which payment was made.

Failure to pay or reimburse

- (4) Where a party fails to pay fees or expenses found to be payable under subsection (2) or where an arbitrator fails to reimburse fees or expenses in excess of the amount found to be payable within 14 days of the finding, the court may enter judgment for the unpaid amount.

Court's decision final

- (5) A decision of the court under subsections (2) and (4) may not be appealed.

61. Termination of proceeding

- (1) An arbitral proceeding terminates when
- (a) the arbitral tribunal makes an award in accordance with this Act, determining the matters in dispute that were referred to arbitration, and
 - (i) no proceedings under sections 56, 64 and 65 are taken and the time for taking them has elapsed, or
 - (ii) all proceedings under sections 56, 64 or 65 have been completed and no court has referred a matter to the arbitral tribunal for decision;
 - (b) the arbitral tribunal declares the arbitral proceeding is terminated; or
 - (c) the parties agree that the arbitral proceeding is terminated.

Order of arbitral tribunal

- (2) The arbitral tribunal may issue an order declaring an arbitral proceeding to be terminated if
- (a) all claims in the arbitral proceeding are withdrawn or abandoned, unless a party objects to the proposed order for termination and the arbitral tribunal is satisfied that the objecting party has a legitimate interest in continuing the proceedings; or
 - (b) the continuation of the proceeding is unnecessary or impossible.

Costs on request of party

- (3) Where an arbitral proceeding is terminated under subsection (2) the arbitral tribunal may, if requested to do so by a party, award costs.

Mandate ends

- (4) The mandate of an arbitral tribunal terminates with the termination of the arbitral proceeding.

62. Pre-award interest

- (1) An arbitral tribunal shall order pre-award interest in the same manner as the court orders pre-judgment interest under the *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1.

Post-award interest

- (2) Post-award interest is calculated in the same manner as post-judgment interest under the *Judicature Act*.

PART 11 - RECOURSE AGAINST AND ENFORCEMENT OF AWARDS

63. Court intervention limited

No decision, order or award of an arbitral tribunal may be appealed to or be reviewed or set aside by a court, except as provided in this Act.

64. Appeal on question of law

- (1) Where an arbitration agreement provides that an appeal to a court may be brought on a question of law, an appeal may be brought to the Court of Appeal on a question of law arising out of an award, with leave of that court.

Deemed appeal to Court of Appeal

- (2) A provision of an arbitration agreement purporting to allow
- (a) an appeal on a question of law to a court other than the Court of Appeal; or
 - (b) an appeal to a court on a question of mixed fact and law,
- is an agreement providing that an appeal may be brought to the Court of Appeal on a question of law.

Decision by Court of Appeal

- (3) The Court of Appeal may decide whether an arbitration agreement provides that an appeal may be brought on a question of law.

No appeal on question of fact

- (4) A provision of an arbitration agreement purporting to allow an appeal to a court on a question of fact has no effect.

Granting leave to appeal

- (5) On an application for leave under subsection (1), the Court of Appeal may grant leave where
- (a) the question of law significantly affects the rights of a party;
 - (b) granting leave may prevent a miscarriage of justice;
 - (c) the question of law is of importance to a class or body of persons of which the applicant is a member; or
 - (d) the question of law is of general or public importance.

Conditions may be attached

- (6) The Court of Appeal may attach conditions to an order granting leave.

Authority of Court of Appeal

- (7) On an appeal, the Court of Appeal may
- (a) confirm, vary or set aside the award; or
 - (b) remit the award to the arbitral tribunal with directions.

65. Setting aside award

- (1) A party may apply to the court to set aside an award.

Grounds

- (2) The court may set aside an award only on the following grounds:
- (a) a person entered into the arbitration agreement while under a legal incapacity;
 - (b) the arbitration agreement does not exist, is void or is unenforceable;
 - (c) the award deals with a dispute not falling within the terms of the arbitration agreement or contains a decision on a matter that is beyond the scope of the arbitration agreement;
 - (d) the composition of the arbitral tribunal was not in accordance with the arbitration agreement or this Act;
 - (e) the dispute is not capable of being the subject of arbitration under Prince Edward Island law;
 - (f) the applicant was not given proper notice of the arbitration or of the appointment of an arbitrator;
 - (g) there is a justifiable doubt as to the independence or impartiality of the arbitral tribunal;
 - (h) the applicant was not given a reasonable opportunity to present its case or to answer the case presented against it;
 - (i) the award was the result of fraud or corruption by a member of the arbitral tribunal or was obtained by fraudulent behaviour by a party or its representative in connection with the conduct of the arbitral proceeding;
 - (j) where the award is made in respect of a dispute between the parties in respect of a matter under Parts I, II or III of the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1,
 - (i) one party took advantage of the other party's vulnerability, including the other party's ignorance, need or distress,
 - (ii) a party did not understand the nature of consequences of the arbitration agreement,
 - (iii) there were other circumstances that would, under the common law, cause all or part of the arbitration agreement to be voidable.

Setting aside in part

- (3) Where the court finds that the grounds described in clauses (2)(c) or (e) apply in respect of only part of the subject-matter of the award, the court may set aside the award in part.

Exception

- (4) The court may not set aside an award on grounds referred to in clause (2)(g) where, before the award was made,
- (a) the applicant failed to follow the applicable procedure required by the arbitration agreement or this Act for seeking the removal of the arbitrator based on the circumstances it relies upon to seek to set aside the award, or
 - (b) the court has previously determined that substantially the same circumstances as are relied upon to set aside the award were not sufficient to justify the removal of the arbitrator.

Limitation

- (5) The court may not set aside an award if the applicant is deemed under section 4 to have waived the right to object on the grounds on which the applicant relies.

Decision may be appealed

- (6) A party may appeal a court decision under this section.

66. Time limit for appeal, application

- (1) Subject to subsection (2), an appeal under section 64 or an application to set aside an award under section 65 shall be commenced no more than 30 days after the appellant or applicant receives the award, correction, clarification or additional award on which the appeal or application is based.

Time limit - corruption or fraud

- (2) Where the applicant alleges corruption or fraud, an application to set aside the award under section 65 shall be commenced within 30 days after the date on which the applicant first knew or reasonably ought to have known of the circumstances relied upon to set aside the award.

67. Appeal with leave

Where this Act states that a party may appeal from the court, the appeal may be made to the Court of Appeal with leave of that court.

68. Application for enforcement of award

- (1) A party may apply to the court to enforce an award made in an arbitral proceeding with a place of arbitration in Canada.

Notice required

- (2) An application to enforce an award shall be made on notice to the person against whom enforcement is sought.

Requirements

- (3) An application to enforce an award shall be accompanied by an original or certified copy of the award and evidence as to whether
- (a) the time limited for commencing an appeal or an application to set aside the award at the place of arbitration has elapsed;
 - (b) there is a pending appeal or application to set aside the award;
 - (c) a stay of enforcement of the award has been issued; or
 - (d) the award has been set aside.

Grounds for refusal to enforce award

- (4) The court shall enforce the award, unless
- (a) the award has been set aside by a court of competent jurisdiction;
 - (b) the dispute is not capable of being the subject of arbitration under Prince Edward Island law;
 - (c) the court does not have the jurisdiction to grant the relief sought;
 - (d) the time limited for commencing an appeal or an application to set aside the award under the laws of the place of arbitration has not yet elapsed; or
 - (e) there is a pending appeal or application to set aside the award, or a stay of enforcement of the award has been issued, at the place of arbitration.

Stay of enforcement

- (5) Where clause (4)(d) or (e) applies, the court may order that enforcement of the award is stayed for a time and on conditions, including conditions as to the deposit of security.

Effect of decision to enforce award

- (6) Unless the court otherwise orders, a court's decision to enforce an award has the same effect as a judgment of a court granting the remedy described in the award.

Decision may be appealed

- (7) A party may appeal a decision of the court under this section.

69. Limitation period for enforcement proceedings

- (1) No application for enforcement of an arbitral award may be brought more than 10 years after the following, as applicable:
- (a) where no appeal or application to set aside the award is brought, the date on which the time limit for appealing or setting aside the award expires;
 - (b) where an appeal or application to set aside the award is brought, the date on which proceedings at the place of arbitration to appeal or set aside the award conclude.

Section prevails

- (2) This section applies despite the *Statute of Limitations* R.S.P.E.I. 1988, Cap. S-7.

PART 12 - ADDITIONAL PROVISIONS**70. Confidentiality**

All proceedings, evidence and information in connection with an arbitral proceeding are confidential, except to the extent that disclosure is

- (a) required by law;
- (b) authorized by agreement of the parties;
- (c) authorized by a court of competent jurisdiction; or
- (d) necessary for the purposes of preparing and presenting a claim or defence in the arbitral proceeding or enforcing a right under this Act and not prohibited by an agreement of the parties.

71. Delivery in accordance with agreement

- (1) Where the parties have agreed on a method for giving a record, then a record shall be given in accordance with the agreement.

Where agreement is silent - delivery to individual

- (2) Where the parties have not agreed on a method for giving a record, a record may be given to an individual by
- (a) leaving it with the individual;
 - (b) leaving it at the individual's last-known place of business, habitual residence or mailing address;
 - (c) sending it electronically to an address or number specified by the individual for the purpose;

- (d) by sending it to the individual's last-known place of business, habitual residence or mailing address by registered letter or another means which provides a record of receipt; or
- (e) after the arbitral tribunal has been constituted, in such other manner as the arbitral tribunal directs.

Where agreement is silent - delivery to corporation

- (3) Where the parties have not agreed on a method for giving a record, a record may be given to a corporation
 - (a) by leaving it with an officer, director or agent of the corporation;
 - (b) by leaving it at a place of business of the corporation with a person who appears to be in control or management of the place;
 - (c) by sending it electronically to an address or number specified by the corporation for the purpose;
 - (d) by any other means provided by applicable law; or
 - (e) after the arbitral tribunal has been constituted, in a manner the arbitral tribunal directs.

Time of receipt

- (4) Where the parties have not agreed on a date on which receipt of a record is deemed to occur, unless the addressee establishes that the addressee, acting in good faith, did not actually receive it until a later date,
 - (a) a record given under any of clauses (2)(a), (b) and (c) or subsection (3) is deemed to have been received on the date it is given;
 - (b) a record given under clause (2)(d) is deemed to have been received five days after it is sent.

Application for alternative method

- (5) Where a party is satisfied that it is impractical or impossible to give a record in the manner described in subsections (1), (2) or (3), the party may apply to the court for an order authorizing an alternative method of giving the record.

Court determines time of receipt

- (6) In an order under subsection (5), the court shall state the date on which receipt of the record is deemed to occur.

Section does not apply to court proceedings

- (7) This section does not apply to the service or delivery of records in respect of court proceedings.

PART 13 - TRANSITION

72. Application to existing arbitration agreements

- (1) Subject to this section, this Act applies to an arbitral proceeding commenced on or after the date this section comes into force, whenever the arbitration agreement under which the arbitral proceeding is commenced was made.

Deemed application of former Act

- (2) An arbitration agreement made before this section comes into force is, for the purposes of section 12, deemed to include the provisions set out in the Schedule to the former Act, as provided by section 5 of the former Act.

Application to arbitral proceedings

- (3) This Act applies to an arbitral proceeding authorized by an enactment if the arbitral proceeding is commenced after the date this section comes into force.

Reference to former Act

- (4) For the purposes of an arbitral proceeding to which this Act applies, a reference in an arbitration agreement to the former Act is deemed to be a reference to this Act.

Definition “former Act”

- (5) For the purposes of this section, “**former Act**” means the *Arbitration Act* R.S.P.E.I. 1988, Cap. A-16.

73. Limitation period

Despite section 69, where an arbitral award is made before the coming into force of this section, but no application for enforcement of that award is brought before that day, a party may not bring an application for enforcement of the award after the earlier of

- (a) the date determined under section 69; or
(b) the date on which the limitation period that applied in respect of the recognition or enforcement of the arbitral award before the coming into force of this Act would have expired.

PART 14 - CONSEQUENTIAL AMENDMENTS, REPEALS, COMMENCEMENT

74. Condominium Act

- (1) **The *Condominium Act* R.S.P.E.I. 1988, Cap. C-16, is amended as provided by this section.**
- (2) **Subsection 17(5) of the Act is amended by the deletion of the words “*Arbitration Act* R.S.P.E.I. 1988, Cap. A-16” and the substitution of the words “*Arbitration Act* R.S.P.E.I. 1988, Cap. A-16.1”.**

75. Education Act

- (1) **The *Education Act* R.S.P.E.I. 1988, Cap. E-.02, is amended as provided by this section.**
- (2) **Section 78 of the Act is amended by the deletion of the words “*Arbitration Act* R.S.P.E.I. 1988, Cap.A-16” and the substitution of the words “*Arbitration Act* R.S.P.E.I. 1988, Cap. A-16.1”.**

76. Expropriation Act

- (1) **The *Expropriation Act* R.S.P.E.I. 1988, Cap. E-13, is amended as provided by this section.**

- (2) **Section 18 of the Act is amended by the deletion of the words “*Arbitration Act R.S.P.E.I. 1988, Cap. A-16*” and the substitution of the words “*Arbitration Act R.S.P.E.I. 1988, Cap. A-16.1*”.**

77. Human Rights Act

- (1) **The *Human Rights Act R.S.P.E.I. 1988, Cap. H-12*, is amended as provided by this section.**
- (2) **Subsection 7(5) of the Act is amended by the deletion of the words “*Arbitration Act R.S.P.E.I. 1988, Cap. A-16*” and the substitution of the words “*Arbitration Act R.S.P.E.I. 1988, Cap. A-16.1*”.**

78. Labour Act

- (1) **The *Labour Act R.S.P.E.I. 1988, Cap. L-1*, is amended as provided by this section.**
- (2) **Subsection 37(11) of the Act is amended by the deletion of the words “*Arbitration Act R.S.P.E.I. 1988, Cap. A-16*” and the substitution of the words “*Arbitration Act R.S.P.E.I. 1988, Cap. A-16.1*”.**

79. Payday Loans Act

- (1) **The *Payday Loans Act R.S.P.E.I. 1988, Cap. P-2.1*, is amended as provided by this section.**
- (2) **Subsection 37(5) of the Act is amended by the deletion of the words “Section 6 of the *Arbitration Act R.S.P.E.I. 1988, Cap. A-16*” and the substitution of the words “Section 6 of the *Arbitration Act R.S.P.E.I. 1988, Cap. A-16.1*”.**

80. Recreation Development Act

- (1) **The *Recreation Development Act R.S.P.E.I. 1988, Cap. R-8*, is amended as provided by this section.**
- (2) **Subsection 8(8) of the Act is amended by the deletion of the words “*Arbitration Act R.S.P.E.I. 1988, Cap. A-16*” and the substitution of the words “*Arbitration Act R.S.P.E.I. 1988, Cap. A-16.1*”.**

81. Repeal

- (1) The *Arbitration Act R.S.P.E.I. 1988, Cap. A-16*, is repealed.

Repeal

- (2) The *Arbitration Act S.P.E.I. 1996, c.4* is repealed.

82. Repeal

An Act to Amend the Family Law Act S.P.E.I. 2017, c.64, is repealed.

83. Commencement

This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

(Bill No. 9)

Arbitration Act

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	May 16, 2023
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

SIGNATURES:

Honourable Antoinette Perry, Lieutenant Governor

Honourable Darlene Compton, Speaker

Joseph Jeffrey, Clerk

Hon. Bloyce Thompson
Minister of Justice and Public Safety and Attorney General

GOVERNMENT BILL

2023
1st SESSION, 67th GENERAL ASSEMBLY