

1992

## CHAPTER A-24.1

### An Act respecting Arbitration

(Assented to August 28, 1992)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

#### INTRODUCTORY MATTERS

##### Short title

1 This Act may be cited as *The Arbitration Act, 1992*.

##### Interpretation

2 In this Act:

- (a) **"arbitration agreement"** means an agreement by which two or more persons agree to submit a matter in dispute to arbitration;
- (b) **"arbitrator"** includes an umpire;
- (c) **"court"**, except in section 7, means Her Majesty's Court of Queen's Bench for Saskatchewan.

##### Application of Act

- 3(1) This Act applies to an arbitration conducted pursuant to an arbitration agreement unless:
- (a) the application of this Act is excluded by law; or
  - (b) *The International Commercial Arbitration Act* applies to the arbitration.
- (2) This Act applies, with any necessary modification, to an arbitration conducted in accordance with another Act, unless that Act provides otherwise.
- (3) Where there is a conflict between this Act and:
- (a) another Act that requires or authorizes an arbitration; or
  - (b) regulations made pursuant to an Act mentioned in clause (a);
- the other Act or the regulations prevail.

##### Contracting out

- 4 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 6(4);
  - (b) section 20;
  - (c) section 40;
  - (d) section 46;
  - (e) section 48;
  - (f) section 50.

##### Waiver of right to object

- 5 A party to an arbitration is deemed to have waived the right to object where that party:
- (a) is aware of a non-compliance with a provision of this Act, except with a provision referred to in section 4, or with the arbitration agreement; and
  - (b) does not object to the non-compliance within the time limit provided or, if none is provided, within a reasonable time.

##### Arbitration agreements

- 6(1) An arbitration agreement may be an independent agreement or part of another agreement.
- (2) If the parties to an arbitration agreement make a further agreement in connection with the arbitration, it is deemed to form part of the arbitration agreement.
- (3) An arbitration agreement need not be in writing.
- (4) An agreement that requires or has 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) An arbitration agreement may be rescinded only in accordance with the law of contract.

#### COURT INTERVENTION

##### Court intervention limited

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

- (a) to assist the conducting of arbitrations;
- (b) to ensure that arbitrations are conducted in accordance with arbitration agreements;
- (c) to prevent unequal or unfair treatment of parties to arbitration agreements;
- (d) to enforce awards.

##### Stay

8(1) Subject to subsection (2), if a party to an arbitration agreement commences a proceeding with respect to 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.

(2) 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 pursuant to Saskatchewan law;
- (d) the motion was brought with undue delay;
- (e) the matter is a proper one for default or summary judgment.

(3) An arbitration of the dispute may be commenced and continued while the motion is before the court.

(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's refusal is without effect.

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

(6) There is no appeal from the court's decision pursuant to this section.

##### Powers of court

9(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.

(2) The court may determine any question of law that arises during the arbitration on the application of the arbitral tribunal, or on a party's application if the other parties consent or the arbitral tribunal consents.

(3) The court's determination of a question of law may be appealed to the Court of Appeal, with leave of that court or a judge of that court.

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

- (a) that the arbitrations be consolidated;
  - (b) that the arbitrations be conducted simultaneously or consecutively; or
  - (c) that any of the arbitrations be stayed until any of the others are completed.
- (5) Where the court orders that arbitrations be consolidated, it may appoint an arbitral tribunal for the consolidated arbitration, and if all the parties agree as to the choice of arbitral tribunal, the court shall appoint that arbitral tribunal.
- (6) Subsection (4) does not prevent the parties to more than one arbitration from agreeing to consolidate the arbitrations and doing everything necessary to effect the consolidation.

### ARBITRAL TRIBUNAL

#### Number of arbitrators

10 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.

#### Appointment of arbitral tribunal

- 11(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 within the time provided in the agreement or after a party has given the person seven days' notice to do so, whichever is later.
- (2) There is no appeal from the court's appointment of the arbitral tribunal.
- (3) Subsections (1) and (2) apply, with any necessary modification, to the appointment of individual members of arbitral tribunals that are composed of more than one arbitrator.
- (4) An arbitral tribunal composed of three or more arbitrators shall, and an arbitral tribunal composed of two arbitrators may, elect a chairperson from among themselves.

#### Independence and impartiality of arbitrators

- 12(1) An arbitrator shall be independent of the parties and shall act impartially.
- (2) Before accepting an appointment as arbitrator, a person shall disclose to all parties to the arbitration any circumstances of which that person is aware that may give rise to a reasonable apprehension of bias.
- (3) An arbitrator who, during an arbitration, becomes aware of circumstances that may give rise to a reasonable apprehension of bias shall promptly disclose the circumstances to all the parties.

#### No revocation

13 A party may not revoke the appointment of an arbitrator.

#### Challenge

- 14(1) A party may challenge an arbitrator only on one of the following grounds:
- (a) circumstances exist that may give rise to a reasonable apprehension of bias;
  - (b) the arbitrator does not possess qualifications that the parties have agreed are necessary.
- (2) A party who appointed an arbitrator or participated in the arbitrator's appointment may challenge the arbitrator only on grounds of which the party was unaware at the time of the appointment.
- (3) A party who wishes to challenge an arbitrator shall send the arbitral tribunal a statement of the grounds for the challenge within 15 days of becoming aware of them.
- (4) The other parties may agree to remove the arbitrator who is being challenged, or the arbitrator may resign.
- (5) If the arbitrator is not removed by the parties and does not resign, the arbitral tribunal, including the arbitrator who is being challenged, shall decide the issue and shall notify the parties of its decision.
- (6) Within 10 days after 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.

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

#### Termination of arbitrator's mandate

15(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, 10 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 pursuant to subsection 16(1).
- (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 the arbitrator.

#### Removal of arbitrator by court

16(1) The court may remove an arbitrator on a party's application pursuant to subsection 14(6), or may do so on a party's application if the arbitrator becomes unable to perform the functions of an arbitrator, commits a corrupt or fraudulent act, delays unduly in conducting the arbitration or does not conduct the arbitration in accordance with section 20.

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

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

(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 services and may order that the arbitrator compensate the parties for all or part of the costs, as determined by the court, that they incurred in connection with the arbitration before the arbitrator's removal.

(5) The arbitrator or a party may, within 30 days after receiving the court's decision, appeal an order made pursuant to subsection (4) or the refusal to make such an order to the Court of Appeal, with leave of that court or a judge of that court.

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

#### Appointment of substitute arbitrator

17(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.

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

(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 within the time provided in the agreement or after a party has given the person seven days' notice to do so, whichever is later.

(4) There is no appeal from the court's decision or from its directions pursuant to this section.

(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

#### Jurisdiction, objections

18(1) An arbitral tribunal may rule on its own jurisdiction to conduct the arbitration and may in that connection rule on objections with respect to the existence or validity of the arbitration agreement.

- (2) The arbitral tribunal may determine any question of law that arises during the arbitration.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) Notwithstanding section 5, if the arbitral tribunal considers the delay justified, a party may make an objection after the time limit mentioned in subsection (4) or (6), as the case may be, has expired.
- (8) The arbitral tribunal may rule on an objection as a preliminary question or may deal with it in an award.
- (9) If the arbitral tribunal rules on an objection as a preliminary question, a party may, within 30 days after receiving notice of the ruling, make an application to the court to decide the matter.
- (10) There is no appeal from the court's decision on an application pursuant to subsection (9).
- (11) While an application is pending, the arbitral tribunal may continue the arbitration and make an award.

#### Detention, preservation and inspection of property and documents

- 19(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.
- (2) The court may enforce the order of an arbitral tribunal as if it were a similar order made by the court in an action.

### CONDUCT OF ARBITRATION

#### Equality and fairness

- 20(1) An arbitral tribunal shall treat the parties equally and fairly.
- (2) Each party shall be given an opportunity to present a case and to respond to the other parties' cases.

#### Procedure

- 21(1) Subject to this Act, the arbitral tribunal may determine the procedure to be followed in the arbitration.
- (2) An arbitral tribunal that is composed of more than one arbitrator may delegate the determination of questions of procedure to the chairperson.

#### Evidence

- 22(1) The arbitral tribunal is not bound by the rules of evidence and has power to determine the admissibility, relevance and weight of any evidence.
- (2) The tribunal may determine the manner in which evidence is to be admitted.

#### Time and place of arbitration

- 23(1) The arbitral tribunal shall determine the time, day and place of arbitration, taking into consideration the parties' convenience and the other circumstances of the case.
- (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.

#### Commencement of arbitration

- 24(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 pursuant to 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;
  - (c) a party serves on the other parties a notice demanding arbitration pursuant to the arbitration agreement.
- (2) The arbitral tribunal may exercise its powers when every member has accepted appointment.

#### Matters referred to arbitration

25 A notice that commences an arbitration without identifying the dispute is deemed to refer to arbitration all disputes that the arbitration agreement entitles the party giving the notice to refer.

#### Procedural directions

- 26(1) An arbitral tribunal may require that the parties submit their statements within a specified period of time.
- (2) The parties' statements shall indicate the facts supporting their positions, the points at issue and the relief sought.
- (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.
- (4) The parties may amend or supplement their statements during the arbitration, but the arbitral tribunal may disallow a change that is unduly delayed.
- (5) The parties may submit their statements orally with the permission of the arbitral tribunal.
- (6) The parties and persons claiming through or under them shall, subject to section 31, comply with directions of the arbitral tribunal, 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.
- (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.

#### Hearings and written proceedings

- 27(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, but the tribunal shall hold a hearing if a party requests it.
- (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.
- (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.
- (4) The arbitral tribunal shall communicate to the parties any expert reports or other documents on which it intends to rely in making a decision.

#### Failure to submit statement

- 28(1) If the party who commences an arbitration does not submit a statement within the period of time specified pursuant to subsection 26(1), the arbitral tribunal may make an award dismissing the claim unless the party offers a satisfactory explanation.
- (2) If a party other than the one who commenced the arbitration does not submit a statement within the period of time specified pursuant to subsection 26(1), the arbitral tribunal may continue the arbitration, unless the party offers a satisfactory explanation, but the tribunal shall not treat the failure to submit a statement as an admission of another party's allegations.
- (3) If a party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the arbitration in a manner that it considers appropriate and make an award on the

evidence before it, unless the party offers a satisfactory explanation.

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

(a) make an award terminating the arbitration; or

(b) give directions for the speedy determination of the arbitration;

and may impose conditions on its decision.

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

(6) This section applies with respect to a counterclaim as if the party making it were the party who commenced the arbitration.

#### Appointment of expert

29(1) An arbitral tribunal may appoint an expert to report to it on specific issues.

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

(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.

#### Obtaining evidence

30(1) A party may serve a person with a notice, issued by the arbitral tribunal, requiring the person to attend, give evidence and produce documents at the arbitration at the time and place named in the notice.

(2) The notice has the same effect as a notice or subpoena in a court proceeding requiring a witness to attend at a hearing or produce documents, and shall be served in the same way.

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

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

#### Restriction

31 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

#### Application of law and equity

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

#### Conflict of laws

33(1) In deciding a dispute, an arbitral tribunal shall apply the law of a jurisdiction designated by the parties or, if none is designated, the law of a jurisdiction it considers appropriate in the circumstances.

(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.

#### Application of arbitration agreement, contract and usages of trade

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

#### Decision of arbitral tribunal

35 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, but if there is no majority decision or unanimous decision, the decision of the chairperson governs.

#### Mediation and conciliation

36(1) The members of an arbitral tribunal may, if the parties consent, use mediation, conciliation or similar techniques during the arbitration to encourage settlement of the matters in dispute.

(2) After the members of an arbitral tribunal use a technique mentioned in subsection (1), they may resume their roles as arbitrators without disqualification.

#### Settlement

37 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.

#### Binding nature of award

38 An award binds the parties unless it is set aside or varied pursuant to section 45 or 46.

#### Form of award

39(1) An award is to be made in writing and, except in the case of an award made on consent, is to state the reasons on which it is based.

(2) The award is to indicate the place where and the day on which it is made.

(3) The award is to 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.

(4) A copy of the award is to be delivered by the arbitration tribunal to each party.

#### Extension of time limits

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

#### Explanation

41(1) A party may, within 30 days after receiving an award, request that the arbitral tribunal explain any matter.

(2) If the arbitral tribunal does not give an explanation within 15 days after receiving the request, the court may, on the party's application, order the tribunal to do so.

#### Interim and final awards

42(1) The arbitral tribunal may make one or more interim awards.

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

#### Termination of arbitration

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 pursuant to subsection (2), 28(1) or 28(4);  
or

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

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

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

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

- (c) the arbitral tribunal finds that the continuation of the arbitration has become unnecessary or impossible.
- (3) An arbitration that is terminated may be revived for the purposes of section 44 or subsection 45(6), 46(7), 46(8), 50(7) or 54(3).
- (4) A party's death terminates the arbitration only with respect to claims that are extinguished as a result of the death.

#### Correction of errors

- 44(1) An arbitral tribunal may, on its own initiative within 30 days after making an award or at a party's request made within 30 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.
- (2) The arbitral tribunal may, on its own initiative at any time or at a party's request made within 30 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.
- (3) The arbitral tribunal need not hold a hearing or meeting before rejecting a request made pursuant to this section.

### REMEDIES

#### Appeal of award

- 45(1) If the arbitration agreement so provides, a party may appeal an award to the court on a question of law, on a question of fact or on a question of mixed law and fact by notice of motion that briefly states the grounds of the appeal.
- (2) If the arbitration agreement does not provide that the parties may appeal an award to the court on a question of law, 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.
- (3) On being served with a notice of motion, the arbitral tribunal shall transmit a copy of the award, the evidence received and the record of the arbitration proceedings forming the subject matter of the appeal:
- (a) to the local registrar of the judicial centre that is closest to the place where the arbitration was conducted; or
  - (b) where the arbitration was conducted at more than one place, to the local registrar of the judicial centre that is closest to the place where the greatest part of the arbitration was conducted.
- (4) The court may require the arbitral tribunal to explain any matter.
- (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.

#### Setting aside award

- 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 matter in dispute that the arbitration agreement does not cover or contains a decision on a matter in dispute that is beyond the scope of the agreement;
  - (d) the composition of the arbitral tribunal was not in accordance with the arbitration agreement or, if the agreement did not deal with the matter, was not in accordance with this Act;

- (e) the subject-matter of the arbitration is not capable of being the subject of arbitration under Saskatchewan 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 or the arbitration agreement;
  - (h) an arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias;
  - (i) the award was obtained by fraud.
- (2) If clause (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.
- (3) The court shall not set aside an award on grounds mentioned in clause (1)(c) if the applicant has agreed to the inclusion of the matter in dispute, waived the right to object to its inclusion or agreed that the arbitral tribunal has power to decide what matters in dispute have been referred to it.
- (4) The court shall not set aside an award on grounds mentioned in clause (1)(h) if the applicant had an opportunity to challenge the arbitrator on those grounds pursuant to section 14 before the award was made and did not do so or if those grounds were the subject of an unsuccessful challenge.
- (5) The court shall not set aside an award on a ground to which the applicant is deemed pursuant to section 5 to have waived the right to object.
- (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 18 justified.
- (7) When the court sets aside an award, it may remove an arbitrator or the arbitral tribunal and may give directions about the conduct of the arbitration.
- (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.

#### Time limit

- 47(1) The following appeals and applications must be commenced within 30 days after the appellant or applicant receives the award, correction, explanation, change or statement of reasons on which the appeal or application is based:
- (a) an appeal pursuant to subsection 45(1);
  - (b) an application for leave to appeal pursuant to subsection 45(2);
  - (c) subject to subsection (2), an application to set aside an award pursuant to section 46.
- (2) An application to set aside an award on the ground that an arbitrator has committed a corrupt or fraudulent act or that the award was obtained by fraud must be commenced within the later of:
- (a) the period mentioned in subsection (1); and
  - (b) 30 days after the applicant discovers the corrupt act or the fraud.

#### Declaration of invalidity of arbitration

- 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 Saskatchewan law; or
  - (d) the arbitration agreement does not apply to the matter in dispute.
- (2) When the court grants the declaration, it may also grant an injunction against the commencement or continuation of the arbitration.

#### Further appeal

49 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, with leave of that court or a judge of that court.

#### Enforcement of award

- 50(1) A person who is entitled to enforce an award made in Saskatchewan or elsewhere in Canada may make an application to the court to that effect.
- (2) The application shall be made on notice to the person against whom enforcement is sought, in accordance with The Queen's Bench Rules, and shall be supported by the original award or a copy of it.
- (3) The court shall give a judgment enforcing an award made in Saskatchewan unless:
- (a) the 30-day period for commencing an appeal or an application to set the award aside has not yet elapsed;
  - (b) an appeal, an application to set the award aside or an application for a declaration of invalidity is pending; or
  - (c) the award has been set aside or the arbitration is the subject of a declaration of invalidity.
- (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) an appeal, an application to set the award aside or an application for a declaration of invalidity in the province or territory where the award was made is pending;
  - (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 Saskatchewan law.
- (5) If the period for commencing an appeal, an application to set the award aside or an 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 any conditions that the court considers 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.
- (6) If the court stays the enforcement of an award made in Saskatchewan until a pending proceeding is finally disposed of, it may give directions for the speedy disposition of the proceeding.
- (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 may:
- (a) grant a different remedy requested by the applicant; or
  - (b) in the case of an award made in Saskatchewan, remit it to the arbitral tribunal with the court's opinion, in which case the arbitral tribunal may award a different remedy.
- (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

##### Crown bound

51 This Act binds the Crown.

##### Limitation periods

- 52(1) The law with respect to limitation periods applies to an arbitration as if the arbitration were an action and a matter in dispute in the arbitration were a cause of action.
- (2) 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 an action may be brought on

a cause of action that was a matter in dispute in the arbitration.

- (3) An application for enforcement of an award may not be made more than the later of:
- (a) two years after the day on which the applicant receives the award; and
  - (b) two years after the day on which the last appeal period expires.

#### Service of documents

53(1) A notice or other document may be served on an individual by leaving it with the individual.

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

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

(4) A notice or other document may be served by prepaid registered mail to the mailing address that the addressee specified in the arbitration agreement or furnished to the arbitral tribunal or, if none was specified or furnished, to the addressee's last known place of business or residence.

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

(a) on the day on which it is given or transmitted, in the case of service pursuant to subsection (1), (2) or (3); or

(b) on the fifth day after the day of mailing, in the case of service pursuant to subsection (4).

(6) The court may make an order for substituted service or an order dispensing with service pursuant to The Queen's Bench Rules if the court is satisfied that it is necessary to serve the notice or other document to commence an arbitration or proceed towards the appointment of an arbitral tribunal.

(7) This section does not apply to the service of documents with respect to court proceedings.

#### Costs

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

(2) 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.

(3) If the arbitral tribunal does not deal with costs in an award, a party may, within 30 days of receiving the award, request that it make a further award dealing with costs.

(4) 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.

(5) If a party makes an offer, in writing, to another party to settle the matter in dispute or part of it, the offer is not accepted and the arbitral tribunal's award is no more favourable to the party to which the offer was made than was the offer, the arbitral tribunal may take that fact into account in awarding costs with respect to the period from the making of the offer to the making of the award.

(6) 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 matters in dispute other than costs.

#### Arbitrator's fees and expenses

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.

#### Taxation of costs

56(1) A party to an arbitration may have an arbitrator's account for fees and expenses taxed by a taxing officer in the same manner as a solicitor's bill pursuant to *The Legal Profession Act, 1990*.

(2) If an arbitral tribunal awards costs and directs that they be taxed, or awards costs without fixing the amount or indicating how it is to be ascertained, a party to the arbitration may have the costs

taxed by a taxing officer in the same manner as costs pursuant to The Queen's Bench Rules.

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

(4) Subsection (1) applies even if the account has been paid.

(5) On the application of a party to the arbitration, the court may review a taxation of costs or of an arbitrator's account for fees and expenses and may confirm the taxation, vary it, set it aside or remit it to the taxing officer with directions.

(6) On the application of an arbitrator, the court may review a taxation of the arbitrator's account for fees and expenses and may confirm the taxation, vary it, set it aside or remit it to the taxing officer with directions.

(7) An application for review may not be made after the period specified in the taxing officer's certificate has elapsed or, if no period is specified, more than 30 days after the date of the certificate, unless the court orders otherwise.

(8) When the time during which an application for review may be made has expired and no application has been made, or when the court has reviewed the taxation and made a final determination, the taxing officer's certificate may be filed with the court and enforced as if it were a judgment of the court.

#### Interest

57(1) An arbitral tribunal has the same power with respect to interest as the court has under *The Pre-judgment Interest Act*, but the provision for payment into court does not apply.

(2) An award is a judgment of the court for the purposes of section 30 of *The Executions Act*.

#### Rules of Court apply

58 Except as otherwise provided in this Act, The Queen's Bench Rules and the Rules of the Court of Appeal apply, with any necessary modification, to proceedings taken in the courts pursuant to this Act.

#### R.S.S. 1978, c.A-24 repealed

59 ***The Arbitration Act is repealed.***

#### Transitional

60(1) This Act applies to arbitrations conducted pursuant to agreements made before the day on which this Act comes into force if the arbitration is commenced on or after that day.

(2) Notwithstanding its repeal, *The Arbitration Act* continues to apply to arbitrations commenced before the day on which this Act comes into force.

#### Consequential amendments

61(1) **The Acts listed in column 1 of the Schedule are amended in the provisions listed in column 2 by striking out "*The Arbitration Act*" and in each case substituting "*The Arbitration Act, 1992*".**

(2) **Subsection 18(7) of *The Ambulance Act* is amended by striking out "a submission for the purposes of *The Arbitration Act*" and substituting "an arbitration agreement for the purposes of *The Arbitration Act, 1992*".**

(3) **Subsection 193.1(2) of *The Land Titles Act* is amended by striking out "a submission pursuant to *The Arbitration Act*" and substituting "an arbitration agreement pursuant to *The Arbitration Act, 1992*".**

(4) **Subsection 3(5) of *The Line Fence Act* is amended by striking out "a submission under *The Arbitration Act*" and substituting "an arbitration agreement pursuant to *The Arbitration Act, 1992*".**

(5) **Clause 40(c) of *The Meewasin Valley Authority Act* is amended:**

- (a) **by striking out** “a submission within the meaning of *The Arbitration Act*” **and substituting** “an arbitration agreement within the meaning of *The Arbitration Act, 1992*”;  
**and**  
(b) **by striking out** “submission to arbitration” **and substituting** “arbitration agreement”.
- (6) **Clause 42(c) of *The Wakamow Valley Authority Act* is amended:**  
(a) **by striking out** “a submission within the meaning of *The Arbitration Act*” **and substituting** “an arbitration agreement within the meaning of *The Arbitration Act, 1992*”;  
**and**  
(b) **by striking out** “submission to arbitration” **and substituting** “arbitration agreement”.
- (7) **Clause 37(c) of *The Wascana Centre Act* is amended:**  
(a) **by striking out** “a dispute in submission within the meaning of *The Arbitration Act*” **and substituting** “an arbitration agreement within the meaning of *The Arbitration Act, 1992*”;  
**and**  
(b) **by striking out** “submission to arbitration” **and substituting** “arbitration agreement”.

Coming into force

62 This Act or any provision of this Act comes into force on a day or days to be fixed by proclamation of the Lieutenant Governor.

**Schedule**  
[Section 61]

| <u>Column 1 (Act)</u>   | <u>Column 2 (provision amended)</u> |
|---|-------------------------------------|
| <i>The Ambulance Act</i> , S.S. 1986, c.A-18.1 18(6)              |                                     |
| <i>The Companies Act</i> , R.S.S. 1978, c.C-23 234(1)             | 234(3)                              |
| <i>The Conservation and Development Act</i> , R.S.S. 1978, c.C-27 | 32(4)                               |
| <i>The Consumer Products Warranties Act</i> , R.S.S. 1978, c.C-30 | 31                                  |
| <i>The Education Act</i> , S.S. 1978, c.E-0.1 113(12)             | 226<br>259<br>348(5)                |
| <i>The Emergency Planning Act</i> , S.S. 1989-90, c.E-8.1         | 24                                  |
| <i>The Highways and Transportation Act</i> , R.S.S. 1978, c.H-3   | 52(2)                               |
| <i>The Irrigation Districts Act</i> , R.S.S. 1978, c.I-15         | 86(2)<br>189(7)                     |
| <i>The Land Surveys Act</i> , R.S.S. 1978, c.L-4 23(5)            |                                     |
| <i>The Land Titles Act</i> , R.S.S. 1978, c.L-5                   | 193.1(3)(a)<br>193.1(3)(b)          |
| <i>The Mental Health Services Act</i> , S.S. 1984-85-86, c.M-13.1 | 34(12)                              |
| <i>The Mentally Disordered Persons Act</i> , R.S.S. 1978, c.M-14  | 38.7(12)                            |
| <i>The Municipal Expropriation Act</i> , R.S.S. 1978, c.M-27      | 8(4)                                |
| <i>The Northern Municipalities Act</i> , S.S. 1983, c.N-5.1       | 58(14)                              |
| <i>The Potash Development Act</i> , R.S.S. 1978, c.P-18           | 69(1)                               |
| <i>The Power Corporation Act</i> , R.S.S. 1978, c.P-19            | 18(3)                               |
| <i>The Provincial Lands Act</i> , R.S.S. 1978, c.P-31             | 74(5.1)                             |
| <i>The Public Health Act</i> , R.S.S. 1978, c.P-37                | 41(2)<br>41(3)                      |
| <i>The Public Utilities Easements Act</i> , R.S.S. 1978, c.P-45   | 8(1)                                |
| <i>The Rural Municipality Act</i> , 1989, S.S. 1989-90, c.R-26.1  | 59(4)                               |

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| <i>The Rural Telephone Act</i> , R.S.S. 1978, c.R-27                 | 25(3)   |
| <i>The Saskatchewan Telecommunications Act</i> , R.S.S. 1978, c.S-34 | 16(3)   |
| <i>The Trade Union Act</i> , R.S.S. 1978, c.T-1725(4)                |         |
| <i>The Water Corporation Act</i> , S.S. 1983-84, c.W-4.1             | 42(4)   |
| <i>The Watershed Associations Act</i> , R.S.S. 1978, c.W-11          | 23.2(4) |