

ARBITRATION RULES - TRADITIONAL
(Being the Schedule "A" to the Commercial Arbitration Act)

Representation

- 1 The parties to an arbitration may be represented or assisted by any person during an arbitration.
- 2 Where a party intends to be represented or assisted by a lawyer, that party shall, in writing, advise the other party of the lawyer's name and the capacity in which the lawyer is acting at least five days before any scheduled hearing or meeting.

Place of Arbitration

- 3 Unless otherwise agreed, the arbitration shall be held in Halifax, but the arbitrator may meet in any other place that the arbitrator considers necessary for consultation, to hear witnesses, experts or other parties or for the inspection of documents, goods or other property.

Pre-arbitration Meeting

- 4 The parties shall meet with the arbitrator within seven days of the date of the arbitrator's appointment for a pre-arbitration meeting to
 - (a) identify the issues in dispute;
 - (b) discuss the procedure to be followed in the arbitration;
 - (c) establish time periods for taking certain steps, including the dates, time and location of the arbitration; and
 - (d) deal with any other matter that will assist the parties to settle their differences and assist the arbitration to proceed in an efficient and expeditious manner.

- 5 The pre-arbitration meeting may take place by conference telephone call.

- 6 The arbitrator shall record any agreements or consensus reached at the pre-arbitration meeting and shall, within three days of that meeting, send a copy of that document to each of the parties or their representatives.

Conduct of the Arbitration

- 7 Subject to the rules in this Schedule, the arbitrator may conduct the arbitration in the manner the arbitrator considers appropriate, but each party shall be treated fairly and shall be given full opportunity to present a case.
- 8 Under this Schedule, the power of the arbitrator includes, but is not limited to,
 - (a) ordering the arbitration to be conducted by documents only or with limited oral hearings;

- (b) controlling or refusing discovery examinations;
- (c) determining in what order issues will be dealt with;
- (d) limiting or extending the extent of document disclosure;
- (e) requiring further particulars of the claim and the issues advanced;
- (f) requiring earlier disclosure of intended witnesses and documents;
- (g) limiting the number of experts or refusing to allow expert evidence;
- (h) requiring the use of a single independent expert to deal with a particular issue or any number of issues;
- (i) requiring experts to file written reports in place of giving oral testimony;
- (j) requiring expert reports earlier in the process than required under this Schedule;
- (k) determining when and in what order experts will be heard;
- (l) setting the dates, times and location for the arbitration;
- (m) ordering pre-arbitration meetings as required; and
- (n) fixing and awarding costs, including solicitor/client costs and the costs of the arbitration proceeding.

Exchange of Documents

9 Within fifteen days of the pre-arbitration meeting, or where the parties agree that no pre-arbitration meetings will be held, within fifteen days after the arbitrator has been appointed, the claimant shall send a written statement to the respondent and the arbitrator outlining the facts supporting the claim of the claimant, the points at issue and the relief or remedy sought.

10 Within fifteen days after the respondent receives the claimant's statement, the respondent shall send a written statement to the claimant and the arbitrator outlining the respondent's defence, the particulars requested in the statement of claim and a written statement of the respondent's counterclaim, if any.

11 The claimant, when responding to a counterclaim, shall send a written statement to the respondent and the arbitrator outlining the claimant's defence to the counterclaim within fifteen days after the claimant receives the counterclaim.

12 Each party shall submit with the party's statement a list of the documents upon which the party intends to rely and the list of documents shall describe each document by specifying its document type, date, author, recipient and subject-matter.

Amendment of or Supplemental Claim

13 The arbitrator may allow a party to amend or supplement the party's claim or counterclaim or defence during the course of the arbitration unless the arbitrator considers the delay in amending or supplementing the claim to be prejudicial to the other party or unless the arbitrator considers that the amendment or supplement goes beyond the terms of the arbitration agreement or the submission to arbitrate.

Production of Documents

14 The arbitrator may, on application of a party or on the arbitrator's own motion, order a party to produce any documents the arbitrator considers relevant to the arbitration within a time the arbitrator specifies and, where such an order is made, the other party may inspect those documents and make copies of them.

15 Each party shall make available to the other for inspection and copying any documents upon which the party intends to rely.

Agreed Statement of Facts

16 The parties shall, within a period of time specified by the arbitrator, identify those facts, if any, that are not in dispute and submit to the arbitrator an agreed statement of facts.

Arbitration Hearings

17 The arbitrator shall set the dates for any oral hearings or meetings and shall give at least seven days written notice of such hearings or meetings to the parties.

18 All oral hearings and meetings shall be held in private and all written documentation shall be kept confidential by the arbitrator and the parties and not disclosed to any other person, except by the consent of all parties.

Evidence

19 Each party shall prove the facts relied upon to support the party's claim or defence.

20 Where a party is presenting evidence through a witness, the party shall, no later than seven days before the commencement of the oral hearing, advise the arbitrator and the other party of the name and address of the witness and provide a brief summary of the evidence to be given by the witness.

21 The written statement of an expert shall be given to the other party and the arbitrator at least fourteen days before the commencement of the oral hearing.

22 The arbitrator shall be the judge of the relevance and materiality of the evidence offered and the arbitrator is not required to apply the legal rules of evidence.

23 All oral evidence shall be taken in the presence of the arbitrator and all the parties, except where any of the parties is absent, in default or has waived the right to be present.

24 The parties shall prepare books containing all of the documents to be introduced at the oral hearing and shall submit those books to the other party and to the arbitrator no later than fourteen days before the commencement of the oral hearing.

25 The parties are deemed to have consented to the authenticity of all documents contained in the document books, unless the party gives notice of objection within seven days of the oral hearing to the other party and the arbitrator.

26 The arbitrator may allow a party to introduce into evidence at the oral hearing a document that was not disclosed or submitted at least fourteen days before the commencement of the hearing, but the arbitrator may take that failure into account at the time the arbitrator fixes any costs.

Examination of Parties

27 At an oral hearing an arbitrator may order a party, or a person claiming through a party, to submit to being examined by the arbitrator under oath and to submit all the documents that the arbitrator requires.

Witnesses

28 The arbitrator may determine the manner in which witnesses are to be examined and may require a witness, other than a party or the party's representative, to leave the oral hearing during the testimony of another witness.

29 Where an arbitrator allows the evidence of a witness to be presented by a written statement, the other party may require that the witness be present at an oral hearing for cross-examination.

30 The arbitrator may call a witness on the motion of the arbitrator, but where a witness is called by the arbitrator, the parties have the right to cross-examine that witness and call evidence in rebuttal.

Experts

31 The arbitrator may appoint one or more experts to report on specific issues to be determined by the arbitrator and may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for inspection by the expert.

32 The arbitrator shall communicate the experts terms of reference to the parties.

33 Any dispute between a party and an expert as to the relevance of the required information or the production of the information shall be referred to the arbitrator for decision.

34 Upon receipt of the experts report, the arbitrator shall inform the parties of the contents of the report and the parties shall be given an opportunity to express, in writing, their opinion on the report.

35 The expert shall, at the request of a party, make available to that party for inspection all documents, goods or other property in the experts possession which the expert was provided with in order to prepare the experts report and the expert shall provide that party with a list of all documents, goods or other property not in the experts possession but with which the expert was provided in order to prepare the experts report and a description and

location of those documents, goods or other property.

36 Where the party so requests or if the arbitrator considers it necessary, the expert shall, after delivery of the experts written or oral report, be present at an oral hearing where the parties have the opportunity to cross-examine the expert and call evidence in rebuttal.

Default of Party

37 Where a claimant, without sufficient cause and after five days notice from the arbitrator, fails to communicate the claimants statement of claim within the required time, the arbitrator may terminate the arbitration with respect to that claim.

38 Where the respondent, without sufficient cause and after five days notice from the arbitrator, fails to communicate the respondents statement of defence within the required time, the arbitrator shall continue the arbitration and an award shall not be made solely on the default of the respondent and the arbitrator shall require the claimant to submit such evidence as the arbitrator may require for the making of the award.

39 Where a party, without sufficient cause, fails to appear at an oral hearing or fails to produce documentary evidence, the arbitrator may continue the arbitration and the arbitrator shall make an award based upon the evidence before the arbitrator.

40 Where a party, without sufficient cause, fails to comply with any order or direction of the arbitrator or any requirement under the Act or this Schedule, the arbitrator may grant such relief as the arbitrator deems appropriate, including costs.

General Powers of Arbitrator

41 The arbitrator may:

- (a) order an adjournment of the proceedings from time to time;
- (b) make an interim order on any matter with respect to which the arbitrator may make a final order, including an interim order for the preservation of property which is the subject matter of the dispute;
- (c) order "on-site" inspection of documents, exhibits or other property;
- (d) order the taking down and recording of a transcription of any oral hearing;
- (e) at any time extend or abridge a period of time required in this Schedule or fixed or determined by the arbitrator where the arbitrator considers it just and appropriate in the circumstances.