

UNEDITED

# *The Arbitration Act*

*being*

Chapter 99 of *The Revised Statutes of Saskatchewan, 1953*  
(effective February 1, 1954).

FOR HISTORICAL REFERENCE ONLY

## **NOTE:**

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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## CHAPTER 99

### An Act respecting Arbitration and Reference

#### SHORT TITLE

##### Short title

- 1 This Act may be cited as *The Arbitration Act*.

R.S.S. 1953, c.99, s.1.

#### INTERPRETATION

##### Interpretation

- 2 In this Act:

##### “court”

- 1 “**court**” means the Court of Queen’s Bench;

##### “judge”

- 2 “**judge**” means a judge of the Court of Queen’s Bench;

##### “rules of court”

- 3 “**rules of court**” means rules of the Court of Queen’s Bench;

##### “submission”

- 4 “**submission**” means a written agreement to submit present or future differences to arbitration, whether or not an arbitrator is named therein.

R.S.S. 1940, c.89, s.2; R.S.S. 1953, c.99, s.2.

#### APPLICATION OF ACT

##### Application

- 3 This Act applies to an arbitration to which Her Majesty is a party.

R.S.S. 1940, c.89, s.3; R.S.S. 1953, c.99, s.3.

##### Retrospective

- 4 This Act applies to every arbitration under any Act of the Legislature whenever passed as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with rules or procedure authorized or recognized by that Act.

R.S.S. 1940, c.89, s.4; R.S.S. 1953, c.99, s.4.

#### REFERENCES BY SUBMISSION

##### Submission irrevocable

- 5 A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court, and shall have the same effect as if it had been made an order of court.

R.S.S. 1940, c.89, s.5; R.S.S. 1953, c.99, s.5.

**Includes schedule A**

**6** A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in schedule A, so far as they are applicable to the reference.

R.S.S. 1940, c.89, s.6; R.S.S. 1953, c.99, s.6.

**Stay of proceedings**

**7** If a party to a submission or a person claiming through or under him, commences legal proceedings against any other party to the submission or any person claiming through or under him, in respect of a matter agreed to be referred, any party to the proceedings may after appearance but before delivering a pleading or taking any other step in the proceedings apply to the court for a stay; and the court, or a judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was at the time when the proceeding was commenced and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying proceedings.

R.S.S. 1940, c.89, s.7; R.S.S. 1953, c.99, s.7.

## APPOINTMENT OF ARBITRATOR OR UMPIRE BY COURT

**Appointment by court**

**8(1)** In any of the following cases:

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

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

**(2)** If the appointment is not made within seven clear days after service of the notice, the court or a judge may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

R.S.S. 1940, c.89, s.8; R.S.S. 1953, c.99, s.8.

## POWERS OF ARBITRATORS

**Powers**

**9** An arbitrator or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power:

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- (a) to administer oaths to the parties and witnesses;
- (b) to state an award as to the whole or part thereof in the form of a special case for the opinion of the court; and
- (c) to correct in an award any clerical mistake or error arising from an accidental slip or omission.

R.S.S. 1940, c.89, s.9; R.S.S. 1953, c.99, s.9.

**Enlargement of time**

**10** The time for making an award may from time to time be enlarged by the court or a judge whether or not the time for making the award has expired.

R.S.S. 1940, c.89, s.10; R.S.S. 1953, c.99, s.10.

**Remitting the award**

**11(1)** The court may remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

(2) In such case the arbitrators or umpire shall, unless the order otherwise directs, make the award within three months after the date of the order.

R.S.S. 1940, c.89, s.11; R.S.S. 1953, c.99, s.11.

**Removal of arbitrator**

**12(1)** Where an arbitrator or umpire has misconducted himself the court may remove him.

(2) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the court may set the award aside.

R.S.S. 1940, c.89, s.12; R.S.S. 1953, c.99, s.12.

**Enforcement of award**

**13** An award may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect.

R.S.S. 1940, c.89, s.13; R.S.S. 1953, c.99, s.13.

## WITNESSES AND EVIDENCE

**Subpoena**

**14(1)** Any party to a submission may sue out of the court a writ of *subpoena ad testificandum*, or a writ of *subpoena duces tecum*, but no person shall be compelled to produce any document which he would not be compellable to produce on the trial of an action.

(2) Such writs may be obtained from any local registrar on payment of the fees prescribed by rules of court.

R.S.S. 1940, c.89, s.14; R.S.S. 1953, c.99, s.14.

**Evidence *de bene esse***

**15(1)** Where a party to a submission desires to procure for use upon the reference the evidence of any person to be taken *de bene esse* or to be taken outside Saskatchewan, an order may be made for the examination of such person or for the issue of a commission in the like circumstances and with the like effect as a similar order may be made in an action.

(2) The provisions of *The Queen's Bench Act* and rules of court apply to such order or commission and to the proceedings thereon and the evidence taken thereunder.

R.S.S. 1940, c.89, s.15; R.S.S. 1953, c.99, s.15.

**APPEAL FROM AWARD****Appeal to a judge**

**16(1)** Where it is agreed by the terms of the submission that there may be an appeal from the award, the reference shall be conducted, and an appeal shall lie to a judge of the Court of Queen's Bench, in the same manner and subject to the same restrictions as in the case of a reference under an order of the court.

(2) The evidence of the witnesses examined upon the reference shall, subject to subsection (3), be taken down in writing and shall, at the request of either party, be transmitted by the arbitrator or umpire, as the case may be, together with the exhibits, to the registrar of the court at Regina.

(3) The arbitrator or arbitrators may cause the evidence to be taken in shorthand by a stenographer who shall before acting make oath that he will truly and faithfully report the same.

(4) A transcript of the evidence so taken or of any part thereof, certified by the reporter to be correct, shall be of the same legal force and validity as a similar transcript by an official court stenographer in an action.

(5) Where the arbitrators proceed wholly or partly on a view or any knowledge or skill possessed by themselves or any of them, they shall put in writing a statement thereof sufficiently full to enable a judgment to be formed of the weight which should be attached thereto.

R.S.S. 1940, c.89, s.16; R.S.S. 1953, c.99, s.16.

**Definitions**

**17** In sections 18 to 26:

1 "arbitrator" and "arbitrators" include an umpire and a referee in the nature of an arbitrator; and

2 "award" includes umpirage and a certificate in the nature of an award.

R.S.S. 1940, c.89, s.17; R.S.S. 1953, c.99, s.17.

**Non-professional arbitrators**

**18** An arbitrator, who is not by profession a barrister, solicitor, engineer, architect, chartered accountant, or Dominion or Saskatchewan land surveyor, shall not be entitled to demand or take for his attendance and services as an arbitrator any greater fees than those mentioned in schedule C, except as provided in section 20.

R.S.S. 1940, c.89, s.18; R.S.S. 1953, c.99, s.18.

**Professional arbitrators**

**19** An arbitrator, who is by profession a barrister, solicitor, engineer, architect, chartered accountant, or Dominion or Saskatchewan land surveyor, shall not be entitled to demand or take for his attendance and services as an arbitrator any greater fees than those mentioned in schedule C, except as provided in section 20.

R.S.S. 1940, c.89, s.19; R.S.S. 1953, c.99, s.19.

**Fees fixed by agreement**

**20** The parties to a submission may agree, by writing signed by them or by making such agreement a part of the submission, to pay to the arbitrator or to the arbitrators, if more than one, such fees for each day's attendance, or such gross sum for taking upon themselves the burden of the reference and making the award, as the parties see fit, and in every such case the fees or sum so agreed upon shall be substituted for those mentioned in schedules B and C, and shall be taxed by the taxing officer accordingly.

R.S.S. 1940, c.89, s.20; R.S.S. 1953, c.99, s.20.

**Limit of witness fees**

**21** No greater fees shall be taxed to a person called as a witness before an arbitrator than would be taxed to him in an action in the Court of Queen's Bench.

R.S.S. 1940, c.89, s.21; R.S.S. 1953, c.99, s.21.

**Where no business done at meeting**

**22** Where, at a meeting of arbitrators of which due notice has been given, no proceedings are taken in consequence of the absence of any party, or in consequence of a postponement at the request of any party, the arbitrators shall make up an account of the costs of the meeting, including the proper charges for their own attendance and that of any witnesses and of the counsel or solicitor of the party present and not desiring the postponement; and, unless under the special circumstances of the case they think that it would be unjust to do so, they shall charge the amount thereof, or of the disbursements, or both, against the party in default or at whose request the postponement is made, and he shall pay the same to the other party, whatever may be the event of the reference, and the arbitrators shall, in the award, make any direction necessary for that purpose, and the amount so charged may be set off against, and deducted from any amount awarded in his favour.

R.S.S. 1940, c.89, s.22; R.S.S. 1953, c.99, s.22.

**Taxation of costs**

**23(1)** Any party to an arbitration shall be entitled to have the costs thereof, including the fees of the arbitrators, or such fees alone, taxed by the taxing officer of the Court of Queen's Bench at Regina upon an appointment which may be given by the taxing officer for that purpose on the filing of an affidavit setting forth the facts.

**(2)** A taxation of the fees of the arbitrators may be had upon an appointment given at the instance of the arbitrators or any of them upon a like affidavit.

R.S.S. 1940, c.89, s.23; R.S.S. 1953, c.99, s.23.

**Limitation of fees**

**24(1)** The taxing officer shall in no case, except as provided in section 20, tax higher fees than are mentioned in schedules B and C, but, upon reasonable grounds he may reduce the maximum mentioned in the schedules, but not below the minimum, having always regard to the length of the arbitration, the value of the matter in dispute, and the difficulty of the questions to be decided, but he shall not tax more than one counsel fee to either party for any meeting of the arbitrators.

(2) The taxing officer may tax a reasonable sum for preparing the award.

(3) An appeal may be had from such taxation in the same manner as from a taxing officer's certificate of taxation in an action.

R.S.S. 1940, c.89, s.24; R.S.S. 1953, c.99, s.24.

**Penalty for excessive fees**

**25** An arbitrator who, having entered upon the reference, refuses or delays after the expiration of one month from the publication of the award to deliver the same until a larger sum is paid to him for his fees than is by this Act permitted, or who receives for his award or for his fees as arbitrator any such larger sum, shall forfeit and pay to the party who has demanded delivery of the award or who has paid to the arbitrator such larger sum in order to obtain or as a consideration for having obtained it, treble the excess so demanded or received by the arbitrator contrary to the provisions of this Act, to be recovered by action in a court of competent jurisdiction.

R.S.S. 1940, c.89, s.25; R.S.S. 1953, c.99, s.25.

**Action for fees**

**26** Where an award has been made the arbitrator may maintain an action for his fees after the same have been taxed; and, in the absence of an express agreement to the contrary, he may maintain such action against all the parties to the reference, jointly or severally.

R.S.S. 1940, c.89, s.26; R.S.S. 1953, c.99, s.26.

**GENERAL PROVISIONS****Production of prisoner**

**27** A judge may order the sheriff, jailer or other officer having the custody of a prisoner to produce him for examination before an arbitrator or an umpire.

R.S.S. 1940, c.89, s.27; R.S.S. 1953, c.99, s.27.

**Special case**

**28** An arbitrator or an umpire may at any stage of the proceedings and shall, if so directed by the court, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference.

R.S.S. 1940, c.89, s.28; R.S.S. 1953, c.99, s.28.

**Order for costs**

**29** An order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

R.S.S. 1940, c.89, s.29; R.S.S. 1953, c.99, s.29.



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**Copies as exhibits**

**30** An arbitrator or an umpire, where no special reason appears to him to exist for filing an original book, paper or document as an exhibit, as hereinbefore provided, may allow a copy thereof or of such portion thereof as he may deem material to be substituted as an exhibit in the place of the original book, paper or document.

R.S.S. 1940, c.89, s.30; R.S.S. 1953, c.99, s.30.

**Production on appeal**

**31** Upon an appeal from a motion to set aside an award any party may by notice require any other party to produce, and the party so required shall produce, upon the hearing of the appeal or motion, any original book, paper or document in his possession which has been used as an exhibit or given in evidence upon the reference, and which has not been filed with the deposition.

R.S.S. 1940, c.89, s.31; R.S.S. 1953, c.99, s.31.

**Application to set aside**

**32(1)** Unless by leave of the court or a judge, an application to set aside an award, otherwise than by way of appeal, shall not be made after six weeks from the publication of the award.

(2) Such leave may be granted before or after the expiration of the six weeks.

(3) In the computation of time for appealing against, or applying to set aside an award, the vacations shall not be reckoned.

(4) When an award is set aside the court or a judge setting aside the same may give directions as to the costs of the reference and award.

R.S.S. 1940, c.89, s.32; R.S.S. 1953, c.99, s.32.

**Rules of court**

**33** Rules of court may be made for better carrying out the purposes of this Act and regulating the practice here under.

R.S.S. 1940, c.89, s.33; R.S.S. 1953, c.99, s.33.

## VALUATORS

**Appointment**

**34(1)** The court or a judge shall have power to appoint a valuator or appraiser, where it is provided by a written agreement that a valuation or appraisal shall be made by a valuator or appraiser.

(2) The power may be exercised in the like cases and the proceedings shall be the same as provided by section 8.

R.S.S. 1940, c.89, s.31; R.S.S. 1953, c.99, s.34.

## SCHEDULE A

*(Section 6)*

Provisions to be implied in submissions:

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

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## SCHEDULE B

*(Sections 18, 20 and 24)*

Fees chargeable by non-professional arbitrators:

For every meeting where the reference is not proceeded with, but a postponement is made at the request of any party, not less than.....	\$ 2.00
Nor more than.....	4.00
For every day's sittings, to consist of not less than six hours,	
Not less than.....	6.00
Nor more than.....	12.00
Where a day's sittings consists of more than six hours:	
For each additional hour, not less than.....	1.00
Nor more than.....	2.00
For every sittings not extending to six hours (fractional parts of hours being excluded) where the reference is actually proceeded with, for each hour occupied:	
Not less than.....	1.00
Nor more than.....	2.00

## SCHEDULE C

*(Sections 19, 20 and 24)*

Fees chargeable by professional arbitrators:

For every meeting where the reference is not proceeded with, but a postponement is made at the request of any party:	
Not less than\$.....	4.00
Nor more than.....	8.00
For every day's sittings, to consist of not less than six hours:	
Not less than.....	15.00
Nor more than.....	30.00
Where a day's sittings consist of more than six hours:	
For each additional hour, not less than.....	2.50
Nor more than.....	5.00
For every sittings not extending to six hours (fractional parts of hours being excluded) where the reference is actually proceeded with, for each hour occupied:	
Not less than.....	2.50
Nor more than.....	5.00

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