



Arbitration and Mediation
Institute of Canada Inc.

Institut d'Arbitrage et de
Médiation du Canada Inc.

Rules of Procedure for Commercial Arbitration

May 1996

**PRINTED BY THE ARBITRATION AND
MEDIATION INSTITUTE OF CANADA INC.**

Arbitration and Mediation Institute of Canada, Inc.

RULES FOR THE CONDUCT OF COMMERCIAL ARBITRATIONS

PART I - PRELIMINARY MATTERS

Definitions and Interpretation

1. In these Rules, unless the context otherwise requires:
 - (a) "applicant" means the person who initiates an arbitration;
 - (b) "arbitration" means a reference to an arbitrator to resolve a dispute in accordance with an arbitration agreement;
 - (c) "arbitration agreement" means a written agreement between the Parties, or a clause or provision in a written agreement between the Parties, which requires the submission of present or future disputes between them to arbitration, whether or not an arbitrator is named;
 - (d) "arbitrator" means a sole arbitrator, or an arbitral tribunal composed of more than one person, who or which, pursuant to applicable legislation or an arbitration agreement, hears and decides an arbitration;
 - (e) "day" means a full calendar day but does not include a Saturday, Sunday or a holiday as defined in the Interpretation Act (Canada);
 - (f) "Institute" means the Arbitration and Mediation Institute of Canada, Inc.;
and
 - (g) "Rules" means these Rules of the Institute for the Conduct of Commercial Arbitrations and includes the Forms and Schedules relating thereto in use by the Institute at the time an application for arbitration is initiated.
2. A reference to these Rules in a contract or otherwise is deemed to be a reference to all Parts of the Rules unless the reference is specifically to one or more designated Parts.
3. Where appropriate in these Rules words importing the singular shall include the plural and

words importing the masculine gender shall include the feminine.

Application

4. These Rules, and any amendments thereto in effect at the date of commencement of an arbitration, shall apply to all arbitrations held by an arbitrator appointed by the Institute and shall be deemed to have been made a part of the arbitration agreement when the parties have provided for arbitration under these Rules.

5. Where any rule herein is in conflict with any provision of law applicable to the arbitration from which the Parties cannot derogate, that provision of law shall prevail.

6. Where the Parties have agreed in writing to vary these Rules and such variation(s) are not in conflict with any provision of law applicable to the arbitration from which the Parties cannot derogate, these Rules as so varied shall govern. Any agreement in writing to vary these Rules shall be filed with the arbitrator at, or prior to, the preliminary meeting.

7. Any agreement to arbitrate in accordance with these Rules shall include, or be deemed to include, a clause giving the arbitrator jurisdiction and the power conferred by these Rules.

PART II - THE ARBITRATOR

Appointment

8. The parties may appoint an arbitrator or may specify the method of appointing an arbitrator to act in accordance with these Rules.

9. The parties may request the Institute to propose a list of arbitrators in accordance with Article 10 hereof from which they may select an arbitrator.

10. Upon receipt of a request for a list of arbitrators the Institute shall send to each party an identical list of the names of Institute members chosen from the Institute's Commercial Panel. Each party shall have ten days from the date of such delivery date in which to strike out any names objected to, number the remaining names in order of preference, and return the list to the Institute. If a party does not return the list within the time specified all persons named therein all be deemed acceptable. From among the candidates whose names have not been struck from the list by any party, and in accordance with the designated order of preference the Institute shall invite an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable candidates are unable to act, or if for any other reason the appointment cannot be made from the submitted list, the Institute shall have the

power to make an appointment from among other members of the Commercial Panel without the submission of additional lists.

11. When the parties have determined that the dispute will be heard and decided by an arbitral tribunal composed of more than one person, each party shall appoint an arbitrator ("party-appointed arbitrator") and such party-appointed arbitrators shall be authorized to appoint a neutral arbitrator within a specified period of time to chair the tribunal. If no appointment is made within the specified period of time the Institute shall appoint such neutral arbitrator. If no period of time is specified for appoint of the neutral arbitrator and an appointment is not made by the party-appointed arbitrators within ten days from the date of the appointment of the last party-appointed arbitrator, the Institute shall appoint the neutral arbitrator. If the parties have agreed that the party-appointed arbitrators shall appoint the neutral arbitrator from the Institute's Commercial Panel, the Institute shall furnish the party-appointed arbitrators a list of members as prescribed in Article 10 and the appointment of the neutral arbitrator shall be made in accordance with that Article.

Number of Arbitrators

12. Where the parties have not agreed on the number of arbitrators the dispute shall be heard and determined by a single arbitrator. The Institute may, in its discretion, recommend that more than one arbitrator be appointed in which case the Institute shall also recommend a procedure for the appointment of the arbitrators.

Impartiality

13. Unless the parties agree otherwise, arbitrators acting under these Rules shall be impartial and independent. Prior to accepting appointment, each prospective arbitrator shall disclose to the Institute any circumstances likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence. Once appointed, an arbitrator shall disclose any additional such information to the parties and to the Institute. Upon receipt of such information from an arbitrator or a party, the Institute shall communicate it to the parties and to the arbitrator.

Notice of Appointment

14. Where an arbitrator has been selected under Article 10 or 11 hereof, the Institute shall inform the arbitrator of such appointment and the arbitrator's signed acceptance of the appointment shall be filed with the Institute prior to the opening of the first hearing. The Institute shall also send the arbitrator a copy of these Rules.

Challenge Procedure

15. A party may challenge the right of any arbitrator to hear and determine a dispute whenever circumstances exist that give rise to justifiable doubt as to the arbitrator's impartiality or independence. A party wishing to challenge an arbitrator shall send notice of the challenge to the Institute within fifteen days after being notified of the appointment of the arbitrator, or within fifteen days after the circumstances giving rise to the challenge became known to that party. The challenge shall give reasons in writing.

16. Upon receipt of a challenge, the Institute shall notify the other parties and the arbitrator of the challenge. When an arbitrator has been challenged by one party, the other parties may agree to the acceptance of the challenge and, if there is agreement, the arbitrator shall withdraw. The challenged arbitrator may also withdraw in the absence of such agreement. In neither case does this imply acceptance of the validity of the grounds for the challenge.

17. If the parties do not agree to the challenge or the challenged arbitrator does not withdraw, the Institute, in its sole discretion, will decide upon the challenge.

Replacement of Arbitrator

18. If an arbitrator should withdraw or is disqualified by the Institute, or if an arbitrator dies or is otherwise unable to carry out his/her responsibilities, a substitute arbitrator shall be appointed in accordance with these Rules and the matter shall be reheard unless the parties otherwise agree.

PART III - GENERAL PROCEDURE

Commencing the Arbitration

19. A party wishing to initiate arbitration under the arbitration provisions of an existing contract shall give written notice to the other party or parties ("respondent(s)") of its intention to arbitrate and shall file a copy of such notice with the Institute. The notice shall include:

- (a) the names and addresses of the parties, including the address for service of the applicant;
- (b) a copy of the agreement pursuant to which the arbitration is being initiated;
- (c) a copy of any contract or agreement in connection with which the dispute has arisen;
- (d) a brief description of the claim, the facts supporting it, the relief sought and the amount of the claim.

20. The Institute shall give notice of such filing to the respondent(s) who may file an answering

statement in duplicate with the Institute within ten days of the delivery of the notice from the Institute. The respondent(s) shall simultaneously send a copy of the answering statement to the claimant and all other parties. If a counterclaim is asserted it shall contain a statement setting forth the nature of the counterclaim, the amount involved and the remedy requested.

21. Parties to a dispute not covered by the arbitration provisions of a contract may commence arbitration under these Rules by filing a written and signed agreement to arbitrate hereunder with the Institute. Such filing must contain the information required under Article 19 (a), (c) and (d) above and a description and the amount of any counterclaim and must be signed by all of the parties to the dispute.

Amendment to Claim

22. Any party desiring to amend its claim or counterclaim shall do so in writing, file a copy with the Institute and deliver copies to the other party(ies) who shall have ten days from the date of such delivery within which to file an answer with the Institute and deliver copies thereof to all other parties.

Filing Fees

23. The appropriate fee, as set out in the Fee Schedule, shall be forwarded to the Institute with each claim, counterclaim, amendment and answer filed with the Institute.

Fast Track Procedures

24. Unless the Institute in its discretion determines otherwise, all arbitrations involving claims or counterclaims by any one party which do not exceed \$10,000, exclusive of interest and arbitration costs, shall be subject to the Fast Track Procedures outlined in Part V hereof. All other claims shall be heard in accordance with the General Procedure Rules hereof.

Communications

25. Except for purely administrative matters, there shall be no communications between a party and the arbitrator in the absence of the other party(ies). A written communication to the arbitrator shall be sent simultaneously to all other parties and the arbitrator shall be so informed. A written communication by the arbitrator to one party shall be copied simultaneously to all other parties.

Notices

26. All notices or other communications may be served on a party by prepaid mail or courier addressed to the party or its representative at its last known address or by personal service. Facsimile

transmission, telex, telegram or other forms of electronic communication may also be used. Delivery of a notice or communication sent by mail shall be deemed to have taken place seven days after its having been posted. Delivery of an electronic communication shall be deemed to have taken place on the day following its transmission.

Preliminary Meeting and Engagement Agreement

27. Unless the parties to the arbitration and the arbitrator otherwise agree, the parties shall meet with the arbitrator before the formal hearing for the purposes listed hereunder. The meeting may take place by telephone conference call.

- (a) To determine the issues in dispute.
- (b) To determine the matters, if any, on which they are in agreement.
- (c) To determine what documents, correspondence, books or records shall be produced, when and by whom, and whether experts are to be called.
- (d) To determine the law which will govern the procedures and the substance of the arbitration, unless such law has already been specified in the arbitration agreement.
- (e) To consider whether "on site" inspections shall be part of the proceedings.
- (f) To decide upon the powers of the arbitrator with respect to remedies, including interim relief and conservatory measures.
- (g) To indicate the number of witnesses likely to be produced.
- (h) To estimate the length of time the hearing might take.
- (i) To determine whether a stenographic record or other type of recording of the proceedings should be kept or if any particular services, such as interpreters, translations or security measures should be provided.
- (j) To determine the manner in which the arbitrator's fee and the expenses of the arbitration will be calculated, secured and paid, including any deposits to be advanced.
- (k) To fix the date, time and place of the hearing.
- (l) To make such other determinations as may be necessary before the hearing.
- (m) To decide which of the points referred to in (a) to (l) above are to be covered by an engagement agreement and to complete and sign such agreement either at the meeting or prior to the formal hearing.

28. At the preliminary meeting the arbitrator shall disclose any personal interest in the matters in dispute and any previous relationship with any of the parties to determine if there is any objection to his/her continuing to act.

Jurisdiction

29. The arbitrator shall have the power to rule on all questions of jurisdiction, including any objections with respect to the arbitration agreement.

Conduct of the Arbitration

30. The arbitration shall be conducted in accordance with applicable law, with these Rules and with any decisions reached at the preliminary meeting.

31. The arbitrator shall have authority to give such directions as to procedural matters as may be fair, just and convenient, including directions with respect to adjournments, exclusion of witnesses, disclosure of documents, amendments to claims and defences, and admissibility of evidence.

32. The arbitrator may receive and consider evidence submitted by affidavit but shall give it only such weight as the arbitrator deems appropriate after consideration of any objections.

Inspection or Investigation

33. All parties are entitled to be present at any inspection or investigation conducted in connection with the arbitration. If a party cannot be present, the arbitrator shall make a written or verbal report of the inspection and allow the parties to comment thereon.

Evidence under Oath

34. All witnesses shall testify under oath or affirmation unless the parties agree otherwise and it is not required by law.

Stenographic Record or Interpreter

35. A party requiring a stenographic record of the proceedings, or the services of an interpreter, shall make all necessary arrangements therefor and shall be responsible for the cost. Should the parties agree to the need for the services of a stenographer or an interpreter or should the arbitrator call for any such service, the costs thereof may be shared as agreed or may be handled as costs in the arbitration.

Interim Measures of Protection

36. The arbitrator may issue such orders as may be deemed necessary to protect the property which is the subject of the dispute without prejudice to the rights of the parties or to the final determination of the matter.

Ex-Parte Procedure

37. If a party fails to attend or be represented at any meeting or hearing of which due notice has been given the arbitrator may proceed in the absence of such party. Alternatively, the arbitrator may, on such conditions as the arbitrator deems appropriate, adjourn the said meeting or hearing to a later date. Written notice of the revised date and of the arbitrator's intention to proceed ex-parte if necessary, shall be sent to all parties by the arbitrator. Under no circumstance shall the arbitrator make an award without having heard evidence from the attending party(s) sufficient to support an award.

Order of Proceedings

38. A hearing shall be opened by the filing of the oath of the arbitrator, where required, and by recording the time, date and place of the hearing, the presence of the arbitrator, the parties and their representatives, if any, and by the receipt or acknowledgement of receipt by the arbitrator of the statement of claim and any answering statements. The arbitrator may ask for statements further clarifying the issues in dispute.

39. The claimant shall then present its argument and evidence, followed by the responding part(ies). Witnesses for each party shall submit to cross-examination. The arbitrator may vary this procedure but shall afford all parties full and equal opportunity to present evidence and argument.

40. Prior to closing the hearing the arbitrator shall require each party to state that they have concluded and have no further evidence to offer. The arbitrator shall then close the hearing and record a minute to that effect. Time limits shall begin to run from that point. If written arguments are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of such written arguments at which point the time limits shall begin to run.

Reopening the Hearing

41. The hearing may be reopened before the time limit for making the award expires and before the award is made upon the application of the parties or where the arbitrator deems it necessary. If reopening the hearing would prevent the making of the award within the time limits established, the parties must consent to an extension of such time limit. The time limit will then run from the date of the closing of the reopened hearing.

PART IV - THE AWARD

Form

42. The award shall be in writing and shall be final and binding on the parties. If the arbitration has been heard by an arbitral tribunal the decision of a majority of the members shall govern. If there is no majority decision or unanimous decision, the Chair's decision shall govern. The award shall be signed and dated.

Scope

43. The arbitrator may grant any remedy or relief which he/she deems in accordance with law, including equity, and within the scope of the agreement of the parties. The arbitrator may order specific performance, injunctions and other equitable remedies. The arbitrator shall assess the costs of the arbitration, including the parties' legal expenses, the fees and expenses of the arbitrator and any other expenses related to the arbitration. Such assessment may be in favour of any party, and in favour of the Institute if fees or expenses are due to the Institute.

Timing and Delivery of Award

44. The arbitrator shall render a final award no later than thirty days following the closing of the hearing, unless the parties have agreed to an extension. Parties shall accept as legal delivery of the award the placing of the award, or a true copy thereof, in the mail, addressed to such party or its representative at its last known address, or by personal service of the award, or by the filing of the award in any other manner permitted by applicable law.

Release of Documents for Judicial Proceedings

45. The Institute shall, upon the written request of a party, furnish to that party at its expense, certified copies of any papers in the Institute's possession that may be required in judicial proceedings relating to the arbitration.

Applications to Court

46. No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

47. Neither the Institute nor any arbitrator in a proceeding under these Rules is a necessary party in judicial proceedings relating to the arbitration.

48. Parties to an arbitration conducted under these Rules shall be deemed to have consented that judgement upon the arbitration award may be entered in any court having jurisdiction thereof.

Exclusion of Liability

49. Neither the Institute nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules.

Costs and Expenses

50. The expenses of witnesses called by any party shall be paid by the party calling such witnesses. The parties shall be jointly and severally liable for all other expenses of the arbitration, including the fees and expenses of the arbitrator, the expenses of any witnesses or the cost of any proof produced at the request of the arbitrator, and the fees and expenses of the Institute, unless they agree otherwise or the arbitrator in the award apportions such costs or expenses differently.

51. The Institute may require the parties to deposit in advance such amounts as it considers necessary to defray the costs of the arbitration. Upon completion of the arbitration and delivery of the award the Institute shall provide an accounting to the parties of the deposits received and shall return any unexpended balances to the parties.

Confidentiality

52. Unless otherwise agreed by the parties, or required by applicable law, all information disclosed during the arbitration by or on behalf of the parties and all matters relating to the arbitration and the award shall be kept confidential.

Interpretation of Rules

53. The arbitrator shall interpret and apply these Rules insofar as they relate to the arbitrator's powers and duties.

PART V - FAST TRACK PROCEDURES

Notice by Telephone

54. The parties shall accept all notices from the Institute by telephone. Such notices shall subsequently be confirmed in writing. Failure to confirm in writing shall not invalidate the proceeding if notice has, in fact, been given by telephone.

Appointment of Arbitrator

55. The Institute shall submit to each party an identical list of five proposed arbitrators drawn from its Commercial Panel from which one arbitrator shall be appointed. Each party shall have the right to strike two names from the list on a peremptory basis. The list is returnable to the Institute within ten days from the date of mailing. If for any reason the appointment cannot be made from the list, the Institute may make an appointment from among other members on its Commercial Panel without the submission of further lists. The parties will be given notice by telephone of the appointment of the arbitrator, who shall be subject to challenge pursuant to the procedure outlined in Articles 15 to 17 hereof except that any challenge shall be made to the Institute, by telephone, within a delay of seven days. Any challenge shall be confirmed in writing to the Institute with copies to the other parties.