

# **Quick Guide to Arbitration Canada**

- ❖ Arbitration is a legal method for resolving disputes between two or more parties without going to court.
- ❖ A neutral, independent arbitrator makes the final decision on how to solve the dispute.
- ❖ Arbitration in Canada is legally binding through the Arbitration Act. It may be imposed on disputing parties as mandatory arbitration or adopted voluntarily in preference to court action.

## **Attending Arbitration**

- ❖ All parties involved in the dispute must physically attend the arbitration session.
- ❖ One or more arbitrators will also be present.
- ❖ Each side may also bring along their lawyer if they wish but this is not mandatory.
- ❖ Witnesses may be called to give evidence, but they will be asked to leave once they have done so.

## **Benefits of Arbitration**

- ❖ Arbitration is a faster and more informal way of resolving disputes than going to court.
- ❖ The process is confidential, whereas topics discussed in court can be heard by the general public. The contract between the arbitrator and disputing parties often contains a confidentiality clause.
- ❖ Arbitration is also much more cost effective than going to court because arbitration does not involve filling out extensive court documents or paying court fees.
- ❖ Arbitration also helps to preserve existing relationships between the disputants – a point particularly important where family and business relationships are concerned.
- ❖ Arbitrators specialize in various fields of arbitration and it is possible to engage the arbitration services of an arbitrator in a particular field like family law or business law. A judge on the other hand does not specialize and is not always equipped to understand all aspects of the dispute under review.
- ❖ If the dispute involves international arbitration, any awards made are easier than court judgments to enforce in other countries.

## Family Arbitration

- ❖ Arbitrators are sometimes called upon by family members or by the courts to settle family law disputes, like child custody, division of assets, access issues (both to children and property) and child support.
- ❖ Awards from family arbitration can only be enforced in court when the arbitration process has been performed in line with Canadian law.
- ❖ The Canada Family Law Act dictates that all parties using arbitration to resolve a family law dispute must take independent legal advice at their own expense beforehand if the arbitration award is to be recognized in a court of law.
- ❖ Ontario courts impose mandatory arbitration on certain family cases instead of bringing them to trial.
- ❖ All arbitration cases involving children have to be made in the child's best interest.
- ❖ Ontario courts along with the Canadian government also ensure that vulnerable parties choosing arbitration are better protected during arbitration cases. This is reflected when dealing with disputes over domestic violence.
- ❖ If the arbitrator thinks that person is being bullied into arbitration or is not completely sure of his or her rights, the arbitrator can terminate the arbitration tribunal.
- ❖ If an arbitrator suspects that domestic violence involving a child has taken place, the arbitrator is legally bound to notify the police and or the child welfare agency.
- ❖ You can use your own religious leaders for family arbitration but any arbitral awards made through them are only enforceable in court if they are made according to Canada law rather than religious values by someone who is qualified to arbitrate.
- ❖ It should be noted that arbitrators do not have the power to change a family's official status e.g. an arbitrator cannot annul a marriage or provide a divorce or decide the parentage of a child – all of these instances are matters for the court

## Commercial Arbitration

- ❖ Arbitration is a popular method of resolving business disputes between Canadian companies as well as between Canadian companies and international businesses.
- ❖ Sometimes the use of arbitration should a dispute arise is written into a commercial contract.
- ❖ Some companies choose arbitration as a preferred method of dispute resolution rather than going to court.

- ❖ Canada recognizes and is a signatory to the International Commercial Arbitration Act. This means that international disputes between one or more companies based outside of Canada can be solved through commercial arbitration and the solutions imposed by the arbitrators, known as the arbitral awards, will be recognized and upheld in court.

### **Arbitration Timings**

- ❖ Arbitration is a much faster solution to solving disputes than taking legal action; disputes may be resolved in a matter of hours.
- ❖ Arbitration can be sought immediately rather than relying on the courts to process paperwork and set dates.
- ❖ Solutions are also far faster to reach when all parties sit present their case and the arbitrator makes his / her award.
- ❖ The length of an arbitration session depends on a variety of factors, including the complexity of the case, how well the parties have prepared for arbitration.

### **Arbitration Location**

- ❖ Arbitration tribunals may take place at a mutually convenient location agreed by all of the parties involved.
- ❖ In cases of mandatory arbitration, disputants may choose to use a room at the courthouse.
- ❖ A neutral meeting place is more likely to foster a better arbitration tribunal than meeting on another party's territory.
- ❖ When choosing the arbitration location, you should also try to meet any special needs of the other participants and provide access to food and drinks as well as comfortable seating.

### **Finding an Arbitrator**

- ❖ Both parties should agree on an arbitrator unless one is appointed by the court as part of mandatory arbitration.
- ❖ Select an arbitrator with experience in the area of the dispute.
- ❖ Arbitrators should be qualified to arbitrate and should conform to Canada laws on arbitration.
- ❖ In Ontario family law cases, any arbitrator involved in family law arbitration must have been trained in Ontario family law and in screening each party for power imbalances and domestic violence.

- ❖ The arbitrator is not allowed to make a decision, which the disputants could not have decided for themselves
- ❖ Arbitrators can only arbitrate over issues defined in the Arbitration Agreement.
- ❖ Arbitrators cannot ask or permit any of the parties to break the law.
- ❖ The arbitrator must be unbiased, neutral and independent and must have established the trust of all parties involved in the dispute.
- ❖ The arbitrator may not work solely as an arbitrator; they may be a lawyer or businessperson trained in arbitration techniques.
- ❖ There are procedures in place to complain or sue the arbitrator if you believe the arbitration was not conducted fairly or according to the law.
- ❖ A list of arbitrators can be found on our website [www.legalcommunitycanada.com](http://www.legalcommunitycanada.com)

### **Arbitration Fees**

- ❖ Arbitration is cheaper than going to court because the process is so much faster and you do not have to have a lawyer present.
- ❖ Find out the costs of your appointed arbitrator before agreeing to use him / her.
- ❖ Arbitrators work in the private sector and set their own rates.
- ❖ The cost of engaging an arbitrator is sometimes divided equally among the disputants or the parties may agree to let the arbitrator award costs as part of the resolution.
- ❖ Other costs may also be incurred such as the cost of a room where the arbitration is to be held.
- ❖ Parties may agree to split the common costs, or to let the arbitrator allocate costs as part of the award.
- ❖ It is worth noting that if the arbitration is disputed the case may go to court and further costs will be incurred.

### **Arbitration Preparation**

- ❖ Prior to the arbitration tribunal, all parties involved should draw up an Arbitration Agreement, which clearly states what issues the arbitrator is to decide.
- ❖ Issues not included in the agreement cannot be discussed at the arbitration session and the arbitrator cannot make decisions over them.
- ❖ The Arbitration Agreement must be in writing and signed by the arbitrator, all of the parties concerned and independent witnesses.

- ❖ It should also state that the arbitration will be governed solely by Canadian law.

## **The Arbitration Tribunal**

- ❖ At the arbitration tribunal, both sides present their arguments using witnesses and / or evidence to support their case.
- ❖ All parties must disclose all information relevant to the dispute; in family arbitration, this may involve disclosing finances.
- ❖ At the end of the arbitration each side states their desired outcome to the arbitrator.
- ❖ The arbitrator makes a legally binding award enforceable in court.
- ❖ The arbitrator produces a written agreement, which clarifies the arbitral award and the reasons for making it.

## **Enforcing Arbitration Awards**

- ❖ If the disputants do not comply with the arbitral award the other party must go to court to enforce the award.
- ❖ The law relating to arbitration in Canada is governed by the Arbitration Act.
- ❖ If the award involves financial payments, it can be enforced in court as a money judgment.
- ❖ If the award applies to an unusual case and it is not enforced, the court may refer the case back to the arbitrator.