



# **FACULTY OF JURIDICAL SCIENCES**

**COURSE: B.A.LL.B.**

**Semester: VIII**

**SUBJECT: Alternative Dispute**

**Resolution**

**SUBJECT CODE: BAL803**

**NAME OF FACULTY: Mohammad Aqib**

# Lecture-7



## LECTURE 7: Rules for Arbitration

### SECTION-7 ARBITRATION AGREEMENT

The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

**SECTION-45** Power of judicial authority to refer parties to arbitration. —Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

#### Rules to the Contrary

1. These rules are rules to the contrary and supersede the applicable rules of Arbitration or Reference in the province or territory where the Arbitration or Reference is being conducted.
2. **Arbitrator/Referee**-A Reference or Arbitration will be heard by one Arbitrator or Referee appointed from the roster of Arbitrators and Referees, as established by the Court having jurisdiction in the Class Action in which the claimant is a Class Member.
3. **Nature of Review**-An Arbitration or Reference shall be a review of the Administrator's decision utilizing the simplest, least expensive and most expeditious procedure for the Arbitration or Reference.
4. In meeting this objective, the Arbitrator/Referee may conduct the Arbitration or Reference in whatever manner he or she considers appropriate, provided that the parties are treated with equality and each party is given a fair opportunity to present his, her or its case.
5. **Representation**-The Claimant may act in person on an Arbitration/Reference or through a representative; in which case, the representative shall notify the Administrator and Arbitrator/Referee in writing providing the written consent of the Claimant.
6. **Commencement**- In order to commence an Arbitration or Reference, the Claimant shall file a Request for Review by an Arbitrator/Referee in the prescribed form.
7. The Administrator shall forward to a Referee or Arbitrator, as the case may be, in the Province or Territory where the claimant resides or is deemed to reside, to the Claimant and to the Fund Counsel the following:
  - a. a copy of the Claim and the Request for Review by an Arbitrator/Referee;
  - b. a copy of all the written submissions and material in support of the submissions and other evidence pertaining to the Claim in the possession of the Administrator;

- c. a copy of the Administrator's decision; and
  - d. such other information or material as the Referee, Arbitrator or Fund Counsel may request.
8. The Administrator shall forward the Claimant's file to the Claimant, Fund Counsel and the Chair and/or Vice-Chair of the Roster of Arbitrators/Referees within ten (10) days of receipt of the Request for Review by an Arbitrator/Referee.
  9. The Claimant shall have fifteen (15) days upon receipt of the Claimant's file to forward any supplementary submissions to the Chair and/or Vice-Chair of the Roster of Arbitrators/Referees and Administrator.
  10. The Fund Counsel shall have fifteen (15) days from the date of the Administrator's receipt of the Claimant's submissions to forward any submissions in reply to the Chair and/or Vice-Chair of the Roster of Arbitrators/Referees and Administrator.
  11. The Chair and/or Vice-Chair of the Roster of Arbitrators/Referees shall appoint an Arbitrator or Referee to take carriage of the matter.

#### Mediations

12. The Arbitrator has jurisdiction to request that the parties enter into mediation. The Referee has discretion to attempt to mediate the dispute at any time in the process.
13. **Mode of Hearing**-Within five (5) days of the receipt of the Request for Review by an Arbitrator/Referee, any supplementary submissions by the Claimant and the Claimant's file from the Administrator or reply submissions from Fund Counsel, the Arbitrator/Referee shall verify with the parties if:
  - a. an oral hearing is necessary; or
  - b. further written submissions are necessary.
14. Notwithstanding the Arbitrator/Referee's discretion in paragraph 13, an oral hearing will be required where the Claimant or Fund Counsel wishes to adduce oral evidence.
15. If no further written submissions are provided and no oral hearing is required, the Arbitrator/Referee shall notify the parties that he/she will proceed on the basis of the Request for Review by an Arbitrator/Referee, the Claimant's file, the Claimant's supplementary submissions, if any, and any reply submissions.
16. Within thirty (30) days following notification by the parties that no further written submissions or oral hearings will be necessary, the Arbitrator/Referee shall release his/her Reasons for Decision.
17. **Further Written Submissions**-If further written submissions are required, the Arbitrator/Referee shall notify the Claimant and Fund Counsel of the issues to be addressed in the written submissions and the time limits for the receipt of such submissions, including

any submissions in reply.

18. Within thirty (30) days following the receipt of the final submissions, the Arbitrator/Referee shall release his/her Reasons for Decision.
19. **Oral Hearing**-If an oral hearing is requested by one or more of the parties because the requesting party wishes to adduce oral evidence, the Arbitrator/Referee shall:
  - a. determine the time, date and location of the hearing and give all parties fifteen (15) days prior written notice of such time, date and location;
  - b. give directions as to the issues to be addressed at the oral hearing;
  - c. if necessary, give directions as to the issues which require oral evidence; and
  - d. provide any other directions, as the Arbitrator/Referee deems appropriate.
20. If an oral hearing with evidence is requested by one or more of the parties because the requesting party wishes to lead oral evidence, the Arbitrator/Referee orders an oral hearing with evidence, the following rules will apply, unless the Arbitrator/Referee makes an order to the contrary:
  - a. any documentation, including medical records, medical reports and/or loss of income documentation, intended to be relied upon by the Claimant shall be produced to the Administrator and Arbitrator/Referee at least fifteen (15) days prior to the Arbitration or Reference;
  - b. the Arbitrator/Referee, upon his/her own Notice or upon written request by the Administrator, has the jurisdiction to order an independent medical examination of the Claimant;
  - c. subject to issues of privilege, an Arbitrator/Referee may accept all oral or written evidence as the Arbitrator/Referee, in his or her discretion, considers proper, whether admissible in a Court of law or not; and
  - d. if an oral hearing with evidence is required, the Arbitrator/Referee may require production of documents and examination for discovery, if necessary.
21. Within thirty (30) days following the completion of the oral hearing, the Arbitrator/Referee shall release his/her Reasons for Decision.
22. **Process Confidential**-The Arbitration/Reference process is private and all information and evidence utilized in the Arbitration/Reference process is confidential.
23. **Reasons for Decision**-Any Reasons for Decisions by an Arbitrator/Referee shall state the facts and conclusions without identifying the Claimant by name or location. The Arbitrators and Referees may rely upon earlier decisions of other Arbitrators or Referees to arrive at their Reasons for Decisions.
24. The Arbitrator/Referee may extend the time for the release of the Reasons for Decision if

he/she considers such an extension is justified.