

**Draft**  
**Family Law Arbitration Rules of Procedure**  
**for Alberta and British Columbia**

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**Acknowledgments**

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## PART I: INTRODUCTORY AND GENERAL RULES

### 1. Definitions

- (1) In these Rules, unless the context requires a different meaning,
- (a) “address for delivery” means the email address provided by a party or the arbitrator for the delivery of notices, communications and documents related to the arbitration proceeding under Rule 7;
  - (b) “applicant” means a party who has delivered an application under Rule 23;
  - (c) “application” means an application in Form 7;
  - (d) “application respondent” means a party who has delivered a response to application under Rule 23;
  - (e) “application response” means an application response in Form 8;
  - (f) “arbitration agreement” means the written agreement of the parties to submit specified legal issues in a family law dispute to arbitration;
  - (g) “arbitrator” means the legal professional appointed to conduct the arbitration proceeding and determine the legal issues identified in the arbitration agreement;
  - (h) “award” means the arbitrator’s written determination of the legal issues identified in the arbitration agreement, on a temporary or final basis, and includes:
    - (i) interim awards and final awards, and
    - (ii) awards on collateral issues that must be determined to resolve the legal issues identified in the arbitration agreement;
  - (i) “book of authority” means an electronic binder or other electronic document containing complete copies of any case law and excerpts of any statute law on which a party intends to rely in written or oral argument;
  - (j) “business day” means a day on which court registries are open for business in Alberta or British Columbia;
  - (k) “claim” means a claim in Form 3 and is a statement of a party under section 25 of the *Alberta Arbitration Act*;
  - (l) “claimant” means the party who has delivered a claim under Rule 15;

- (m) “deliver,” unless a Rule requires a different interpretation, means to send a document to the arbitrator’s address for delivery and to the address for delivery of all other parties to the arbitration proceeding;
- (n) “expert” means an independent, impartial person with special knowledge of or skill in a subject and includes psychiatrists, psychologists, counsellors, therapists, social workers, valuers, appraisers, actuaries, accountants and assessors;
- (o) “family law dispute” means a dispute between two or more persons about legal issues arising from the breakdown of a family relationship and includes the parenting of a child, parenting time and contact with a child, the payment of child support and children’s expenses, the payment of spousal support, the use of, interests in or the division of property, and responsibility for debt;
- (p) “minimum disclosure documents” means the documents described in Rule 17(2);
- (q) “oral evidence” means the answers given by a witness, on the witness’ promise to tell the truth, in response to questions asked in the direct examination or cross-examination of the witness;
- (r) “order” means a direction given by the arbitrator about the conduct of the arbitration proceeding;
- (s) “party” means a person who has signed an arbitration agreement concerning a family law dispute;
- (t) “reply to response to claim” means a reply to response to claim in Form 5 and is a statement of a party under section 25 of the *Alberta Arbitration Act*;
- (u) “respondent” means a party who has delivered a response to claim under Rule 15;
- (v) “response to claim” means a response to claim in Form 4 and is a statement of a party under section 25 of the *Alberta Arbitration Act*;
- (w) “Rules” means these Family Law Arbitration Rules of Procedure;
- (x) “site” means the province in which an arbitration proceeding occurs;
- (y) “witness” means a person, including a party, who provides oral evidence or a written statement in an arbitration proceeding;
- (z) “writing” includes information communicated through text in emails, computer files and other electronic documents; and,

(aa) “written statement” means evidence provided by a witness, on the witness’ promise to tell the truth, that is in writing and is physically or electronically signed by the witness.

(2) In these Rules,

(a) for arbitration proceedings sited in Alberta, words and phrases not defined in this Rule have the same meanings as in the Alberta *Family Law Act*, the *Matrimonial Property Act* and the *Adult Interdependent Relationships Act*, or in the Alberta *Interpretation Act* if the word or phrase is not defined in the *Family Law Act*, the *Matrimonial Property Act* or the *Adult Interdependent Relationships Act*;

(b) for arbitration proceedings sited in British Columbia, words and phrases not defined in this Rule have the same meanings as in the British Columbia *Family Law Act*, or in the British Columbia *Interpretation Act* if the word or phrase is not defined in the *Family Law Act*;

(c) “arbitrator” includes an arbitration tribunal under the *Arbitration Act* of Alberta or the *Arbitration Act* of British Columbia;

(d) words in the singular include the plural and words in the plural include the singular; and,

(e) words signifying a person of a particular gender include persons of all genders.

(3) References to the law of Alberta apply to arbitration proceedings sited in Alberta, and references to the law of British Columbia apply to arbitration proceedings sited in British Columbia.

## **2. Application of Rules**

(1) These Rules apply to the arbitration of family law disputes in Alberta and British Columbia where the parties to a dispute have agreed or are required to arbitrate the dispute.

(2) These Rules do not apply to:

(a) arbitration proceedings under commercial agreements;

(b) arbitration proceedings under the *International Commercial Arbitration Act* of Alberta or the *International Commercial Arbitration Act* of British Columbia; and,

(c) arbitration proceedings under the statutes, treaties and agreements listed at section 2(3) of the *Arbitration Act* of Alberta and section 2(4) of the *Arbitration Act* of British Columbia.

### **3. Forms and purpose of Rules**

- (1) The purpose of these Rules is to:
  - (a) help the parties to a family law dispute resolve the legal issues identified in their arbitration agreement fairly and in a way that:
    - (i) takes into account the impact that their dispute and the manner of its resolution may have on any children, and
    - (ii) minimizes conflict and promotes cooperation between the parties;
  - (b) secure the fair, speedy and cost-effective determination of a family law dispute on its merits; and,
  - (c) encourage the parties to communicate honestly and in a timely way.
- (2) Securing the fair, speedy and cost-effective determination of a family law dispute on its merits includes managing the arbitration proceeding, to the extent possible, in ways that are proportionate to:
  - (a) the wellbeing and interests of any children, and the future functioning of the family as a whole;
  - (b) the importance and complexity of the issues in dispute; and,
  - (c) the financial value of any support obligations, and of any property or debt in dispute.
- (3) The forms provided in Part VII of the Rules may be changed or adapted as necessary in the circumstances of a family law dispute, providing the changes or adaptations do not mislead, confuse or alter the purpose of the form.

### **4. Deadlines and counting time**

- (1) In counting time under these Rules, the first day of a time period is excluded and the last is included.
- (2) Where the time for doing something under these Rules falls or ends on a day that is not a business day, the time for doing of that thing is extended to the next business day.

## **5. Breach of Rules and waiver of breach**

- (1) A party who is aware of a failure to comply with these Rules and continues with the arbitration proceeding without promptly delivering notice of the party's objection to the failure is deemed to have waived the right to object to the failure.
- (2) The arbitrator will determine whether a party has waived the right to object to a failure to comply with the Rules.

## **6. Changes to Rules**

- (1) These Rules may be changed by:
  - (a) an agreement of the parties reached before the arbitration proceeding has started;
  - (b) the determination of the arbitrator, in consultation with the parties, before the arbitration proceeding has started; or,
  - (c) an agreement of the parties reached, in consultation with the arbitrator, at the start of or during the arbitration proceeding.
- (2) Where an agreement to change these Rules has been reached before the arbitration has started, the parties will notify the arbitrator of the agreed changes in writing before or at the start of the arbitration proceeding.

## **7. Communication and address for delivery**

- (1) Each party and the arbitrator must maintain a working, accessible email address as an address for delivery until the arbitration proceeding is terminated.
- (2) A party may change the party's address for delivery at any time by delivering notice of the party's new address for delivery.
- (3) Any communications, notices or documents required or permitted under these Rules may be delivered by sending the communication, notice or document by email to all other parties and to the arbitrator, at the same time, at their addresses for delivery.
- (4) The parties should only communicate with the arbitrator about the arbitration proceeding and the facts and the legal issues in dispute in the proceeding:
  - (a) in the presence of the other party, whether present in person, by teleconference, by videoconference or by other means; or,

(b) in writing, copying the communication to all other parties at the same, as provided in these Rules or as previously agreed to by the parties.

## **8. The role of the arbitrator**

- (1) The arbitrator will conduct the arbitration proceeding in the manner the arbitrator considers appropriate but will, throughout the arbitration proceeding:
  - (a) be independent and impartial in all contacts with the parties and their lawyers;
  - (b) treat each party fairly and equally; and,
  - (c) not advance the interests of one party over those of another party.
- (2) The arbitrator will, throughout the arbitration proceeding, prioritize the interests and wellbeing of any children and the resolution of major procedural and legal issues over the resolution of minor procedural and legal issues.
- (3) The arbitrator will strive to achieve a fair, speedy and cost-effective determination of the arbitration proceeding on its merits.
- (4) In accordance with article 12 of the *UN Convention on the Rights of the Child*, the arbitrator will assure to the child who is capable of forming a considered opinion the right to express those views freely in all matters affecting the child, and will give weight to the views of the child in accordance with the age and maturity of the child. For this purpose, the child will in particular be provided the opportunity to be heard, including through a representative, in a manner consistent with these Rules.
- (5) The arbitrator will make awards about the guardianship of a child, decision-making in respect of a child, and parenting time and contact with a child considering only the best interests of the child, as defined at section 18 of the *Family Law Act* of Alberta, in arbitration proceedings sited in Alberta, or at section 37 of the *Family Law Act* of British Columbia, in arbitration proceedings sited in British Columbia.

## **9. The role of the parties**

- (1) The parties to an arbitration must:
  - (a) make their best efforts to comply with these Rules, respond promptly to communications and observe deadlines agreed to or prescribed by these Rules;
  - (b) act in good faith throughout the arbitration proceeding and treat each other with courtesy, civility and respect;

- (c) make their best efforts at all times to place the wellbeing and interests of any children, and the future functioning of the family as a whole, ahead of their personal interests;
  - (d) provide to all other parties the minimum disclosure documents as required by these Rules, as well as such other documents and information that may be ordered by the arbitrator or be reasonably requested by another party, providing the documents and information are relevant to the facts and legal issues in the dispute;
  - (e) prioritize the resolution of major procedural and legal issues over the resolution of minor procedural and legal issues and any grievances which may arise during the arbitration proceeding; and,
  - (f) carefully consider the possibility of settlement at each step in the arbitration proceeding.
- (3) If, during the arbitration proceeding, a party discovers that the party cannot comply with an obligation, an agreed deadline, a deadline prescribed by these Rules, an interim award or an order made by the arbitrator, the party will immediately notify the other parties and the arbitrator.
- (4) If, during the arbitration proceeding, a party discovers:
- (a) new documents or information that are relevant to the facts and legal issues in the dispute; or,
  - (b) that documents or information previously provided are no longer accurate,
- the party will immediately notify the other parties and the arbitrator.

## **10. Jurisdiction**

- (1) The arbitrator may rule on the arbitrator's jurisdiction, including on any objections with respect to the existence or validity of the arbitration agreement.
- (2) Any objection to the jurisdiction of the arbitrator to consider a legal issue must be raised in a response to claim or a reply to response to claim. The arbitrator may consider an objection made after the delivery of the response to claim or reply to response to claim if the arbitrator considers the delay to be justified.
- (3) A party may raise an objection to the jurisdiction of the arbitrator despite appointing or participating in the appointment of the arbitrator.

## **11. Confidentiality**

- (1) Unless otherwise agreed by the parties or required by law, all communications, notices, documents and information provided in an arbitration proceeding are private and confidential as between the parties, their lawyers and the arbitrator.
- (2) Unless otherwise agreed by the parties, all meetings, conferences and hearings in the arbitration proceeding will be held in private.

## **PART II: BEGINNING THE ARBITRATION PROCEEDING**

### **12. Initial steps**

- (1) The parties to a family law dispute may submit the legal issues involved in the dispute to arbitration if:
  - (a) the dispute is subject to an arbitration clause in an agreement or a court order; or,
  - (b) the parties agree in writing that the dispute should be resolved by arbitration.
- (2) The parties will appoint a single legal professional to act as arbitrator, and the person appointed will be:
  - (a) the legal professional agreed to by the parties;
  - (b) failing the parties' agreement, the legal professional named by a family law arbitrators' association to arbitrate the dispute or, if no such organization exists or the organization will not name a professional, then the legal professional named by a civil law arbitrators' association; or,
  - (c) the legal professional named by an order of the court to arbitrate the dispute.
- (3) An arbitration proceeding starts when:
  - (a) either
    - (i) a party provides a notice of arbitration to the arbitrator in Form 1 together with a copy of the agreement or order authorizing or requiring the resolution of the family law dispute through arbitration, and serves a copy of the notice of arbitration to all other parties, or

- (ii) the parties provide a joint notice of arbitration to the arbitrator in Form 2 together with a copy of any agreement or order authorizing or requiring the resolution of the dispute through an arbitration proceeding;
- (b) the arbitrator accepts the appointment as arbitrator;
- (c) the parties and their lawyers, if any, have signed the arbitration agreement provided by the arbitrator; and,
- (d) the parties have paid any commencement fees, retainer fees or other fees that may be required by the arbitrator.

### **13. Conference**

- (1) The arbitrator will convene a conference of the parties and their lawyers within 21 days of the start of the arbitration proceeding.
- (2) The agenda for the conference may include:
  - (a) clarifying the legal issues to be addressed in the arbitration proceeding and identifying any of the legal issues that have been resolved;
  - (b) determining the procedure to be followed in the arbitration proceeding;
  - (c) determining any changes that will be made to these Rules;
  - (d) identifying a party as the claimant for the purposes of the arbitration proceeding under Rule 14;
  - (e) identifying any documents to be exchanged between the parties and produced prior to the arbitration hearing in addition to the minimum disclosure documents;
  - (f) establishing a timetable for any steps to be taken prior to the arbitration hearing;
  - (g) where the legal issues include claims about children and parenting,
    - (i) determining whether an independent lawyer will be appointed to represent any or all of the children,
    - (ii) determining how information about the children's views and preferences will be obtained and presented in the arbitration hearing, and
    - (iii) determining whether and how the results of the arbitration proceeding will be communicated to the children;

- (h) subject to Rule 25, canvassing whether any additional changes to the usual rules for the admissibility of evidence in court proceedings will be adopted at the arbitration hearing;
  - (i) where an oral arbitration hearing will be held, determining any physical arrangements that are necessary for the attendance of the parties and witnesses at the arbitration hearing; and,
  - (j) determining whether expert evidence is required to determine the legal issues, the questions the expert or experts will be required to address and the timetable for the production of the report of the expert or experts.
- (3) The conference may be held in person, by teleconference, by videoconference or by other means.
  - (4) The arbitrator will record any agreements and orders made at the conference in writing, and will deliver a copy of the record to all parties within 7 days of the conference.

#### **14. Identifying the claimant and the respondents**

- (1) In the case of an arbitration proceeding commenced by a notice of arbitration in Form 1, the party providing the notice will be the claimant for the purposes of the arbitration proceeding and the other parties will be respondents.
- (2) In the case of an arbitration proceeding commenced by a joint notice of arbitration in Form 2, the arbitrator will determine which parties will be the claimant and which will be the respondents at the conference held under Rule 13.

#### **15. Claim, response to claim and financial statements**

- (1) Within 14 days of the conclusion of the conference held under Rule 13, the claimant will deliver a claim in Form 3.
- (2) Within 14 days of delivery of the claim, each respondent will deliver a response to claim in Form 4.
- (3) The claimant may, within 7 days of delivery of the response to claim, deliver a reply to response to claim in Form 5.
- (4) Except as these Rules otherwise provide, or the parties, in consultation with the arbitrator, otherwise agree, where the legal issues in the family law dispute include claims respecting:
  - (a) the payment of child support and/or children's special or extraordinary expenses;
  - (b) the payment of spousal support;

- (c) interests in or the division of property; or,
- (d) the allocation of responsibility for debt,

the claimant will deliver a financial statement in Form 6 and the minimum disclosure documents with the claim, and the respondents will deliver financial statements in Form 6 and the minimum disclosure documents with their responses to claim.

#### **16. Amendment of claim and response to claim**

- (1) The arbitrator may allow a party to change or supplement a claim, response to claim or reply to response to claim during the arbitration proceeding unless the arbitrator considers the proposed change or supplement to be unfair to another party.
- (2) The arbitrator will not allow a change or supplement to a claim or response to claim that raises legal issues exceeding the scope of the legal issues identified in the arbitration agreement.

### **PART III: EXCHANGING DOCUMENTS AND INFORMATION**

#### **17. Disclosure of documents and information**

- (1) Each party must, throughout the arbitration proceeding, provide the arbitrator and all other parties with complete, accurate and up to date documents and information for the purpose of resolving the legal issues;
- (2) Subject to the discretion of the arbitrator, the minimum disclosure documents that must be provided by each party are:
  - (a) where the legal issues include claims respecting the payment of child support, the payment of children's special or extraordinary expenses, and/or the payment of spousal support
    - (i) the party's personal income tax returns, including all slips, schedules and attachments, for each of the three most recent tax years,
    - (ii) every notice of assessment and notice of reassessment received by the party for each of the three most recent tax years,
    - (iii) if the party is an employee, the party's most recent statement of earnings showing the party's total earnings in the year to date, including overtime, or a letter from the party's employer setting out this information as well as the party's salary or pay rate;

- (iv) if the party is receiving benefits, the party's most recent Employment Insurance, Workers' Compensation, disability or social assistance benefits statement indicating the party's total income from benefits in the year to date, or a letter from the appropriate authority setting out this information,
  - (v) if the party is receiving pension or dividend income, the party's most recent statement indicating the party's total pension or dividend income in the year to date, or a letter from the appropriate authority setting out this information,
  - (vi) if the party is self-employed in an unincorporated business, the financial statements of the business for each of the three most recent tax years, and a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the party does not deal at arm's length for the three most recent tax years,
  - (vii) if the party is self-employed in an incorporated business, the financial statements of the business or professional practice, a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the party does not deal at arm's length for the three most recent tax years, and a statement showing the party's shareholder's loans transactions for the last 12 months,
  - (viii) if the party is a partner in a partnership, confirmation of the party's income and draw from, and capital in, the partnership for its three most recent taxation years, and
  - (ix) if the party controls a corporation, the financial statements of the corporation and its subsidiaries, and a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation and every related corporation does not deal at arm's length for its three most recent fiscal years;
- (b) where the legal issues include claims respecting the division of property
- (i) the most recent property tax assessment issued in respect of any real property which is owned by the party or in which the party has an interest,
  - (ii) if the party is self-employed and the business or professional practice is at issue, the financial statements of the business or professional practice for the three most recent tax years,
  - (iii) if the party controls a corporation and the corporation is at issue, the financial statements of the corporation and its subsidiaries for the three most recent fiscal years,

- (iv) if the party is a beneficiary under a trust and the trust is at issue, the trust settlement agreement and the trust's three most recent financial statements,
- (v) all statements and cancelled cheques for all bank accounts held solely or jointly in the party's name for the last six months, and
- (vi) the most recent statements for all RRSP accounts, pensions and pensionable savings accounts, term deposit certificates, guaranteed investment certificates, stock accounts and other investments in the party's name or in which the party has an interest;

and,

- (c) where the legal issues include claims respecting the allocation of responsibility for debt
  - (i) all loan, credit card and mortgage agreements, and any other agreements respecting the debt, and
  - (ii) all statements for all loan, credit card, mortgage and other accounts in respect of the debt for the last six months.

(3) The arbitrator may order a party to provide other documents relevant to the legal issues in addition to the minimum disclosure documents.

### **18. List of documents**

- (1) A party may, at the discretion of the arbitrator, require another party to provide a list of documents describing all documents currently in the party's possession or control that relate to any material facts in dispute or to the legal issues in the family law dispute. The arbitrator may order that the list of documents be made on the oath or affirmation of the party providing the list that the list is complete.
- (2) A party who is required to provide a list of documents must provide the list to the requesting party within 14 days of notice of the requirement.
- (3) A party may not require another party to provide a list of documents less than 28 days before the start of the arbitration hearing.

### **19. Production of documents**

- (1) The arbitrator may order a party to produce any particular document or class of documents within a specified time period.

- (2) A party subject to an order to produce documents must make those documents available for all other parties to inspect and copy.

## **20. Written questioning**

- (1) A party may compel another party to answer written questions about material facts relating to the legal issues in the arbitration proceeding by delivering a numbered list of questions about those facts to that party no later than 28 days before the start of the arbitration hearing.
- (2) A party who has been delivered with questions:
  - (a) must provide a response to each question to the delivering party by written statement within 7 days of delivery of the questions; and,
  - (b) may object to answering some or all of the questions on grounds of privilege or because a question does not concern material facts relating to the legal issues, and may do so in the party's written statement in response to the questions.
- (3) A party's written statement in response to questions may be admitted into evidence at the arbitration hearing by the party delivering the questions.

## **21. Oral questioning**

- (1) A party may compel another party to answer oral questions about material facts relating to the legal issues in the arbitration proceeding by delivering a notice of examination to that party no later than 35 days before the start of the arbitration hearing.
- (2) The notice of examination must state the time and date proposed for the examination of the party, and whether the examination is proposed to be conducted in person, by videoconference or by other means. The time, date and means of examination may be changed to accommodate the calendar and other reasonable needs of the party to be examined, but the examination must in all cases be completed no later than 21 days before the start of the hearing.
- (3) A party who has been delivered with a notice of examination:
  - (a) must attend at the time and date set for the examination;
  - (b) must bring or have immediate access to the documents in the possession or control of that party relating to any material facts in dispute and/or to the legal issues;
  - (c) must answer the questions asked by the party delivering the notice on the party's promise to tell the truth; and,

(d) may object to answering some or all of the questions asked on grounds of privilege or because a question does not concern material facts relating to the legal issues.

- (4) The party delivering the notice may arrange for a court reporter to attend the examination and make a complete, word for word transcript of the questions asked and answers given at the examination, and will be responsible for the fees and disbursements of the court reporter, subject to the arbitrator's discretion on costs.
- (5) All or some of a party's oral answers to questions may be admitted into evidence at the arbitration hearing by the party delivering the notice where a transcript of the questions asked and answers given at the examination of the has been made.

## **22. Statement of agreed facts**

- (1) Subject to the discretion of the arbitrator, the parties must prepare a statement of those facts which are not in dispute and deliver the statement to the arbitrator at least 7 days before the start of the arbitration hearing.
- (2) In preparing the statement of agreed facts, the parties must make their best efforts to work together in good faith and to reduce the number of facts in dispute to the extent possible.

## **PART IV: APPLICATION PROCEDURE**

### **23. Application procedure and evidence**

- (1) Subject to the discretion of the arbitrator, all evidence at an application hearing will be given by written statement.
- (2) A party seeking an interim award or order may apply for the award or order by delivering an application in Form 7, together with any written statements on which the party intends to rely at the application hearing.
- (3) A party may oppose, agree or conditionally agree to the award or order sought by the applicant by delivering a response to application in Form 8, together with any written statements on which the party intends to rely at the application hearing, no more than 7 days after delivery of the application.
- (4) The applicant may deliver one written statement in reply to the written statements delivered by the application respondent, no more than 7 days after delivery of the application response, which may address:
  - (a) facts stated in the written statements delivered by the application respondent; and,

(b) facts arising since the delivery of the application,

but, subject to the discretion of the arbitrator, must not state facts relevant to the legal issues in the application that could have been stated in the written statements delivered with the application.

- (5) Upon receipt of an application, the arbitrator, in consultation with the applicant and any application respondents, will:
- (a) determine whether the application can be resolved through written argument or if an oral hearing is necessary;
  - (b) if an oral hearing is not necessary, set the date for the delivery of written argument by the applicant and application respondents; and,
  - (c) if an oral hearing is necessary,
    - (i) set the date, time and place for the application hearing, and
    - (ii) notify all parties of the date, time and place of the application hearing.
- (6) If a party fails to attend the application hearing, despite having been notified of the hearing, the arbitrator may proceed with the hearing and make an interim award or order addressing some or all of the claims made in the application.

#### **24. Powers of the arbitrator**

- (1) Unless the parties agree otherwise, the arbitrator may:
- (a) order that an application hearing be adjourned;
  - (b) make some or all of the interim awards and orders sought in the application, including on terms and conditions;
  - (c) make none of the interim award or orders sought and dismiss the application;
  - (d) order that a person making a written statement for the purposes of the application attend the application hearing for cross-examination on the person's written statement;
  - (e) where the application seeks interim awards about the parenting of a child, parenting time or contact, determine how information about the children's views and preferences will be obtained and presented at the application hearing;

- (f) make an order shortening or lengthening the period of time for doing something or taking a step in the application under these Rules or under a previous order made by the arbitrator; and,
  - (g) make an interim award requiring one or parties or, without the consent of a party, one or more children to attend and participate in counselling, services or programs, and allocating responsibility for the fees of the counselling, services or programs among the parties, subject to the arbitrator's discretion on costs.
- (2) The arbitrator may make interim awards, including interim injunctions and other equitable remedies and relief, for the protection of persons or for the protection and preservation of property that is the subject of a claim in the arbitration proceeding.
  - (3) The arbitrator may conclude that a party who has been delivered with an application but has not delivered a response to application consents to or does not oppose the making of the interim awards or order sought in the application.

## **PART V: HEARING PROCEDURES**

### **DIVISION 1: GENERAL RULES**

#### **25. General hearing procedure and evidence**

- (1) The arbitrator will set the dates and places for arbitration hearings in consultation with the parties and their lawyers.
- (2) Each party must prove the facts on which the party relies.
- (3) A witness must attend the arbitration hearing if requested to do so no less than 7 days before the hearing.
- (4) A party seeking to introduce the oral evidence of a witness in direct examination must deliver a will-say statement summarizing the expected evidence of that witness at least 7 days before the hearing.
- (5) Written statements delivered by the claimant in reply to written statements delivered by a respondent may address:
  - (a) facts stated in the written statements delivered by the application respondent; and,
  - (b) facts arising since the delivery of the claimant's previous written statements,

but, subject to the discretion of the arbitrator, must not state facts relevant to the legal issues in the arbitration proceeding that could have been stated in the written statements previously delivered by the claimant.

- (6) In determining the relevance and materiality of evidence, the arbitrator is not required to apply the rules of evidence.
- (7) The arbitrator will direct the hearing and may:
  - (a) divide the hearing into stages;
  - (b) exclude repetitive or irrelevant evidence;
  - (c) limit or refuse to receive the evidence of a witness as to fact or opinion; or,
  - (d) direct the parties to address specific matters where the determination of those matters may help to resolve all or some of the legal issues in the family law dispute.
- (8) The arbitrator may, on such terms that are necessary to prevent prejudice to the other parties, allow a party to introduce:
  - (a) documents into evidence that have not been disclosed under Rules 17 and 18,
  - (b) written statements into evidence that have not been disclosed or delivered under these Rules; and,
  - (c) the oral evidence of a witness not disclosed or identified under these Rules.
- (9) If a party fails to attend a hearing despite having been notified of the hearing, the arbitrator may proceed with the hearing and make a final award determining some or all of the legal issues.
- (10) In the event that the procedure to be followed in the arbitration hearing is not determined at the conference held under Rule 13, the procedure to be followed will be the procedure described in Division 4 of this Part.

## **26. Powers of the arbitrator**

- (1) Unless the parties agree otherwise, the arbitrator may:
  - (a) order that an arbitration hearing be adjourned to the date and time specified by the arbitrator;
  - (b) make an award on some or all of the legal issues in the arbitration proceeding;

- (c) make an interim award on any legal issue on which the arbitrator may make a final award;
  - (d) order that documents, exhibits, personal property and real property be inspected;
  - (e) order that oral evidence or a written statement be provided on the oath or affirmation of the witness providing the oral evidence or written statement;
  - (f) administer an oath or affirmation to a witness providing oral evidence;
  - (g) make an order shortening or lengthening the period of time for doing something or taking a step in the arbitration proceeding under these Rules or under an order made by the arbitrator;
  - (h) order a party to provide security for the legal or other costs of another party, including the costs of the arbitration proceeding;
  - (i) order a party to provide security for all or part of any amount in dispute in the arbitration proceeding;
  - (j) determine the qualifications of an individual to provide evidence as an expert in the arbitration proceeding;
  - (k) make an award requiring one or parties or, without the consent of a party, one or more children to attend and participate in counselling, services or programs, and allocating responsibility for the fees of the counselling, services or programs among the parties, subject to the arbitrator's discretion on costs; and,
  - (l) make an award for specific performance, rectification, injunctions and other equitable remedies and relief.
- (2) The arbitrator may make interim awards during the arbitration hearing, including interim injunctions and other equitable remedies and relief, for the protection of persons or for the protection and preservation of property that is the subject of a claim in the arbitration proceeding.

## **27. Children's lawyer**

- (1) The arbitrator may or the parties may agree to appoint a lawyer to represent the interests of a child in an arbitration proceeding if necessary to promote or protect the wellbeing and best interests of the child.
- (2) A lawyer appointed to represent a child will act on the instructions of the child to the extent possible considering the age and maturity of the child.

- (3) If the arbitrator appoints a lawyer for a child, the arbitrator will make an order allocating the lawyer's fees and disbursements among the parties, subject to the arbitrator's discretion as to costs.

## **28. Children's views and preferences**

- (1) Evidence and information about the views and preferences of any children may be presented by one or more of the following means:
- (a) a parenting assessment prepared by a mental health professional, providing the assessment as an expert;
  - (b) the oral evidence of a mental health professional, providing the evidence as an expert;
  - (c) the oral evidence of the child, where the child is capable of forming a considered opinion;
  - (d) information provided by the child in writing or by audio or video recording, where the child is capable of forming a considered opinion;
  - (e) an evaluative views of the child report prepared by a mental health professional, providing the report as an expert;
  - (f) a non-evaluative views of the child report prepared by a mental health professional, lawyer or other person experienced in interviewing and obtaining the views and preferences of children, where the child is capable of forming a considered opinion; and,
  - (g) an interview between the child and the arbitrator, at the discretion of the arbitrator, where the child is capable of forming a considered opinion.
- (2) Where the arbitrator interviews a child, the arbitrator will convene a conference of the parties and their lawyers and:
- (a) the agenda of the conference may include determining
    - (i) when and where the arbitrator will interview the child, including whether the arbitrator should conduct more than one interview with the child,
    - (ii) whether anyone other than the arbitrator and the child will be present during the arbitrator's interview, and
    - (iii) how the child's views and preferences will be communicated to the parties;
- and,

- (b) the conference may be held in person, by teleconference, by videoconference or by other means.

## **29. Expert evidence**

- (1) An expert's report will include, in addition to the expert's opinion, summary statements of:
  - (a) the questions the expert was asked to address;
  - (b) the facts on which the expert's opinion is based; and,
  - (c) the expert's qualifications.
- (2) Subject to the discretion of the arbitrator, an expert appointed by the arbitrator must:
  - (a) deliver a copy of the expert's report at least 21 days before the start of the arbitration hearing; and,
  - (b) include in the expert's report a statement confirming that the expert's duty is to assist the arbitrator and not to be an advocate for any party.
- (3) A party intending to rely on the report of an expert other than an expert appointed by the arbitrator must deliver a copy of the expert's report at least 14 days before the start of the arbitration hearing.
- (4) An expert providing a report in the arbitration proceeding must make available for the examination of the parties all documents, working papers and property used by the expert in the preparation of the expert's report.
- (5) A party wishing to cross-examine an expert appointed by the arbitrator must serve the expert with notice that the expert must attend the arbitration hearing at least 7 days before the arbitration hearing, and the party cross-examining the expert will be responsible for the expert's fees and disbursements associated with attending the hearing, subject to the arbitrator's discretion as to costs.
- (6) A party wishing to cross-examine an expert other than an expert appointed by the arbitrator must serve the expert with notice that the expert must attend the arbitration hearing at least 7 days before the arbitration hearing, and the party relying on the report of the expert will be responsible for the expert's fees and disbursements associated with attending the hearing, subject to the arbitrator's discretion as to costs

### **30. Settlement offers**

- (1) A party may deliver an offer to settle the legal issues in the family law dispute to one or more other parties at any time in the arbitration proceeding before the close of the arbitration hearing.
- (2) Subject to the discretion of the arbitrator, an offer to settle must not be delivered or provided, and the terms of the offer must not be communicated, to the arbitrator until the arbitration hearing has closed and the arbitrator has made final awards on all of the legal issues other than costs.
- (3) The arbitrator will consider the terms of any written offers to settle in determining the costs of the arbitration proceeding.

## **DIVISION 2: DECISION ON A LEGAL ISSUE**

### **31. Choice of procedure**

- (1) The legal issues in the family law dispute may be determined using the arbitration hearing procedure described in this Division if:
  - (a) the family law dispute primarily concerns a question of law and the parties agree on the material facts relevant to the legal issue or issues; and,
  - (b) the parties agree or the arbitrator orders that the procedure described in this Division will be adopted for the arbitration hearing.
- (2) The arbitrator may, in consultation with the parties, change, abridge or adapt any part of the procedure described in this Division as may be necessary to achieve a fair, speedy and cost-effective determination of the arbitration proceeding on its merits.

### **32. Evidence and application of other Rules**

- (1) Notwithstanding the provisions of any other Rule, in arbitration hearings under this Division:
  - (a) the parties will not provide the minimum disclosure documents under Rule 17;
  - (b) no party may require another party to provide a list of documents under Rule 18; and,
  - (c) no party may compel another party to answer written or oral questions under Rules 20 and 21.

- (2) Notwithstanding the provisions of any other Rule, in arbitration hearings under this Division:
- (a) a lawyer for a child will not be appointed under Rule 27;
  - (b) evidence and information about the views and preferences of a child will not be presented under Rule 28; and,
  - (c) no party may rely on the report of an expert other than an expert appointed by the arbitrator under Rule 29.

### **33. Hearing procedure**

- (1) The arbitrator will determine, in consultation with the parties, whether an oral arbitration hearing is necessary. If no party requests an oral hearing, the arbitrator will determine that an oral hearing is not necessary.
- (2) If an oral hearing is not necessary:
- (a) the claimant will deliver written argument and the claimant's book of authority at least 21 days before the date set for the arbitration hearing;
  - (b) the respondents will deliver written arguments and the respondents' books of authority at least 14 days before the date set for the arbitration hearing;
  - (c) the claimant will deliver any reply to the written arguments of the respondents and any new authorities at least 7 days before the date set for the arbitration hearing;
  - (d) the parties will prepare a statement of agreed facts under Rule 22; and,
  - (e) the arbitrator will review the documents submitted by the parties beginning on the date set for the arbitration hearing.
- (3) If an oral hearing is necessary:
- (a) the parties will deliver their books of authority at least 7 days before the date set for the arbitration hearing;
  - (b) the parties will prepare a statement of agreed facts under Rule 22; and,
  - (c) the parties will present their oral arguments on the date set for the arbitration hearing.

## **DIVISION 3: DECISION ON WRITTEN EVIDENCE**

### **34. Choice of procedure**

- (1) The legal issues in the family law dispute may be determined using the arbitration hearing procedure described in this Division if:
  - (a) the parties agree on most of the material facts relevant to the legal issues and the arbitrator is able to reach a fair determination of the legal issues on written statements and without the direct examination or cross-examination of witnesses; and,
  - (b) the parties agree or the arbitrator orders that the procedure described in this Division will be adopted for the arbitration hearing.
- (2) The arbitrator may, in consultation with the parties, change, abridge or adapt any part of the procedure described in this Division as may be necessary to achieve a fair, speedy and cost-effective determination of the arbitration proceeding on its merits.

### **35. Evidence and application of other Rules**

- (1) Notwithstanding the provisions of any other Rule, in arbitration hearings under this Division:
  - (a) the parties will not provide the minimum disclosure documents under Rule 17;
  - (b) no party may require another party to provide a list of documents under Rule 18; and,
  - (c) subject to the discretion of the arbitrator, a party may compel another party to answer written or oral questions under Rules 20 and 21.
- (2) Notwithstanding the provisions of any other Rule, in arbitration hearings under this Division:
  - (a) a lawyer for a child will not be appointed under Rule 27;
  - (b) evidence and information about the views and preferences of a child may be presented under Rule 28 if the legal issues concern the parenting of a child, parenting time or contact;
  - (c) no party may rely on the report of an expert other than an expert appointed by the arbitrator under Rule 29;
  - (d) any evidence of opinion will be given through the reports of experts appointed by the arbitrator; and,

- (e) any evidence of fact will be given through
  - (i) written statements,
  - (ii) written statements in response to questions asked under Rule 20, and
  - (iii) transcripts of the questions asked and answers given at an examination under Rule 21.

### **36. Hearing procedure**

- (1) The arbitrator will determine, in consultation with the parties, whether an oral arbitration hearing is necessary. If no party requests an oral hearing, the arbitrator will determine that an oral hearing is not necessary.
- (2) If an oral hearing is not necessary:
  - (a) the claimant will deliver written argument, any written statements on which the claimant intends to rely and the claimant's book of authority at least 21 days before the date set for the arbitration hearing;
  - (b) the respondents will deliver written arguments, any written statements on which the respondents intend to rely and the respondents' books of authority at least 14 days before the date set for the arbitration hearing;
  - (c) the claimant will deliver any reply to the written argument of the respondents, any written statements addressing the respondents' written statements and any new authorities at least 7 days before the date set for the arbitration hearing;
  - (d) a party will deliver any
    - (i) questions and written statements in response to questions, and
    - (ii) transcripts of the questions asked and answers given at an examination  
  
on which the party intends to rely at least 7 days before the date set for the arbitration hearing;
  - (e) the parties will prepare a statement of agreed facts under Rule 22; and,
  - (f) the arbitrator will review the documents submitted by the parties beginning on the date set for the arbitration hearing.
- (3) If an oral hearing is necessary:

- (a) the claimant will deliver any written statements on which the claimant intends to rely at least 21 days before the date set for the arbitration hearing;
- (b) the respondents will deliver any written statements on which the respondents intend to rely at least 14 days before the date set for the arbitration hearing;
- (c) the claimant will deliver any written statements addressing the respondents' written statements at least 7 days before the date set for the arbitration hearing;
- (d) the parties will prepare a statement of agreed facts under Rule 22;
- (e) the parties will deliver their books of authority at least 7 days before the date set for the arbitration hearing;
- (f) a party will deliver any
  - (i) questions and written statements in response to questions, and
  - (ii) transcripts of the questions asked and answers given at an examinationon which the party intends to rely at least 7 days before the date set for the arbitration hearing; and,
- (g) the parties will present their written arguments and/or oral arguments on the date set for the arbitration hearing.

#### **DIVISION 4: DECISION ON WRITTEN AND LIMITED ORAL EVIDENCE**

##### **37. Choice of procedure**

- (1) The legal issues in the family law dispute may be determined using the arbitration hearing procedure described in this Division if:
  - (a) the parties agree on some of the material facts relevant to the legal issues and the cross-examination of a limited number of witnesses will allow the arbitrator to reach a fair determination of the facts and the legal issues; and,
  - (b) the parties agree or the arbitrator orders that the procedure described in this Division will be adopted for the arbitration hearing.
- (2) The arbitrator, may in consultation with the parties, change, abridge or adapt any part of the procedure described in this Division as may be necessary to achieve a fair, speedy and cost-effective determination of the arbitration proceeding on its merits.

### **38. Evidence and application of other Rules**

- (1) Notwithstanding the provisions of any other Rule, in arbitration hearings under this Division:
  - (a) subject to the discretion of the arbitrator, a party may require another party to provide a list of documents under Rule 18; and,
  - (b) subject to the discretion of the arbitrator, a party may compel another party to answer written or oral questions under Rules 20 and 21.
  
- (2) Notwithstanding the provisions of any other Rule, in arbitration hearings under this Division:
  - (a) a lawyer for a child will not be appointed under Rule 27;
  - (b) evidence and information about the views and preferences of a child must be presented under Rule 28 if the legal issues concern the parenting of a child, parenting time or contact;
  - (c) no party may rely on the report of an expert other than an expert appointed by the arbitrator under Rule 29;
  - (d) any evidence of opinion will be given through the reports of experts appointed by the arbitrator; and,
  - (e) any evidence of fact will be given through
    - (i) written statements,
    - (ii) written statements in response to questions asked under Rule 20,
    - (iii) the cross-examination of each party, by all or some of the parties opposed in interest to the party, on the evidence given in the written statements made by that party,
    - (iv) the cross-examination of such other witnesses making written statements in the arbitration proceeding, by all or some of the parties opposed in interest to the parties delivering the written statements, as may be identified by the arbitrator in consultation with the parties, and
    - (v) transcripts of the questions asked and answers given at an examination under Rule 21.

- (3) The arbitrator will, in consultation with the parties, set time limits for the cross-examination of the parties and the identified witnesses.

### **39. Hearing procedure**

- (1) The arbitration hearing will be conducted orally, and:

- (a) the claimant will deliver any written statements on which the claimant intends to rely at least 21 days before the date set for the arbitration hearing;
- (b) the respondents will deliver any written statements on which the respondents intend to rely at least 14 days before the date set for the arbitration hearing;
- (c) the claimant will deliver any written statements addressing the respondents' written statements at least 7 days before the date set for the arbitration hearing;
- (d) the parties will prepare a statement of agreed facts under Rule 22;
- (e) the parties will deliver their books of authority at least 7 days before the date set for the arbitration hearing; and,
- (f) a party will deliver any
  - (i) questions and written statements in response to questions, and
  - (ii) transcripts of the questions asked and answers given at an examinationon which the party intends to rely at least 7 days before the date set for the arbitration hearing.

- (2) On the day of the arbitration hearing:

- (a) the claimant will present an opening argument and cross-examine the respondents and the identified witnesses on their written statements;
- (b) the respondents will, in turn, present their opening arguments and cross-examine the claimant, any respondents opposed in interest and the identified witnesses on their written statements; and,
- (c) the parties will, in turn, present their written arguments and/or closing oral arguments.

## **DIVISION 5: DECISION ON LIMITED ORAL EVIDENCE**

### **40. Choice of procedure**

- (1) The legal issues in the family law dispute may be determined using the arbitration hearing procedure described in this Division if:
  - (a) the parties agree on few of the material facts relevant to the legal issues and the direct examination and cross-examination of a limited number of witnesses will allow the arbitrator to reach a fair determination of the facts and the legal issues; and,
  - (b) the parties agree or the arbitrator orders that the procedure described in this Division will be adopted for the arbitration hearing.
- (2) The arbitrator, may in consultation with the parties, change, abridge or adapt any part of the procedure described in this Division as may be necessary to achieve a fair, speedy and cost-effective determination of the arbitration proceeding on its merits.

### **41. Evidence and application of other Rules**

- (1) Notwithstanding the provisions of any other Rule, in arbitration hearings under this Division:
  - (a) evidence and information about the views and preferences of a child must be presented under Rule 28 if the legal issues concern the parenting of a child, parenting time or contact;
  - (b) no party may rely on the report of an expert other than an expert appointed by the arbitrator under Rule 29;
  - (c) any evidence of opinion will be given through the reports of experts appointed by the arbitrator; and,
  - (d) any evidence of fact will be given through
    - (i) written statements,
    - (ii) written statements in response to questions asked under Rule 20,
    - (iii) the direct examination and cross-examination of witnesses identified by the arbitrator in consultation with the parties, and
    - (iv) transcripts of the questions asked and answers given at an examination under Rule 21.

- (2) Experts appointed by the arbitrator may be cross-examined by all parties.
- (3) The arbitrator will, in consultation with the parties, set time limits for the direct examination and cross-examination of all or some of the parties and the identified witnesses.

#### **42. Hearing procedure**

- (1) The arbitration hearing will be conducted orally, and:
  - (a) the claimant will deliver any written statements on which the claimant intends to rely at least 21 days before the date set for the arbitration hearing;
  - (b) the respondents will deliver any written statements on which the respondents intend to rely at least 14 days before the date set for the arbitration hearing;
  - (c) the claimant will deliver any written statements addressing the respondents' written statements at least 7 days before the date set for the arbitration hearing;
  - (d) each party will deliver will-say statements for the identified witnesses giving evidence on their behalf at least 7 days before the date set for the arbitration hearing;
  - (e) the parties will prepare a statement of agreed facts under Rule 22;
  - (f) the parties will deliver their books of authority at least 7 days before the date set for the arbitration hearing; and,
  - (g) a party will deliver any
    - (i) any questions and written statements in response to questions, and
    - (ii) any transcripts of the questions asked and answers given at an examinationon which the party intends to rely at least 7 days before the date set for the arbitration hearing.
- (2) On the day of the arbitration hearing:
  - (a) the claimant will present an opening statement,
  - (b) the respondents will, in turn, present their opening statement;

- (c) the claimant will examine in direct the other parties and each of the identified witnesses giving evidence on behalf of the claimant, and each witness may be cross-examined by the respondents;
- (d) the respondents will, in turn, examine in direct the other parties and each of the identified witnesses giving evidence on behalf of a respondent, and each witness may be cross-examined by the claimant and by any respondents opposed in interest; and,
- (e) the parties will, in turn, present their written arguments and/or closing oral arguments.

## **DIVISION 6: DECISION ON ORAL EVIDENCE**

### **43. Choice of procedure**

- (1) The legal issues in the family law dispute may be determined using the arbitration hearing procedure described in this Division if:
  - (a) the parties agree on none or few of the material facts relevant to the legal issues and the direct examination and cross-examination of a limited number of witnesses is necessary to allow the arbitrator to reach a fair determination of the facts and the legal issues; and,
  - (b) the parties agree or the arbitrator orders that the procedure described in this Division will be adopted for the arbitration hearing.
- (2) The arbitrator, may in consultation with the parties, change, abridge or adapt any part of the procedure described in this Division as may be necessary to achieve a fair, speedy and cost-effective determination of the arbitration proceeding on its merits.

### **44. Evidence**

- (1) Evidence and information about the views and preferences of a child must be presented under Rule 28 if the legal issues concern the parenting of a child, parenting time or contact.
- (2) Any evidence of opinion will be given through the reports of experts.
- (3) Evidence of fact may be presented by the parties through any means provided in these Rules.
- (4) Experts appointed by the arbitrator may be cross-examined by all parties.
- (5) If a party is relying on the report of an expert other than an expert appointed by the arbitrator, the expert may not be examined in direct and may be cross-examined by parties opposed in interest to the party relying on the report.

- (6) The arbitrator may, in consultation with the parties, set time limits for the direct examination and cross-examination of all or some witnesses.

#### **45. Hearing procedure**

- (1) The arbitration hearing will be conducted orally, and:
- (a) the claimant will deliver any written statements on which the claimant intends to rely at least 21 days before the date set for the arbitration hearing;
  - (b) the respondents will deliver any written statements on which the respondents intend to rely at least 14 days before the date set for the arbitration hearing;
  - (c) the claimant will deliver any written statements addressing the respondents' written statements at least 7 days before the date set for the arbitration hearing;
  - (d) each party will, except for experts other than experts appointed by the arbitrator, deliver will-say statements for the witnesses giving evidence on their behalf, at least 7 days before the date set for the arbitration hearing;
  - (e) if a party is intending to rely on the report of an expert other than an expert appointed by the arbitrator, a party opposed in interest wishing to cross-examine the expert must give notice to the party relying on the report that the expert must attend the arbitration at least 7 days before the date set for the hearing;
  - (f) the parties will prepare a statement of agreed facts under Rule 22;
  - (g) the parties will deliver their books of authority at least 7 days before the date set for the arbitration hearing; and,
  - (h) a party will deliver any
    - (i) any questions and written statements in response to questions, and
    - (ii) any transcripts of the questions asked and answers given at an examinationon which the party intends to rely at least 7 days before the date set for the arbitration hearing.
- (2) On the day of the arbitration hearing:
- (a) the claimant will present an opening statement,
  - (b) the respondents will, in turn, present their opening statements;

- (c) the claimant will examine in direct each of the witnesses giving evidence on behalf of the claimant, and each witness may be cross-examined by the respondents;
- (d) the respondents will, in turn, examine in direct each of the witnesses giving evidence on behalf of the respondent, and each witness may be cross-examined by the claimant and by any respondents opposed in interest; and,
- (e) the parties will, in turn, present their written arguments and/or closing oral arguments.

## **DIVISION 7: DECISION ON LIMITED ORAL EVIDENCE FROM INQUISITION**

### **46. Choice of procedure**

- (1) The legal issues in the family law dispute may be determined using the arbitration hearing procedure described in this Division if the parties agree that the procedure described in this Division will be adopted for the arbitration hearing.
- (2) The arbitrator, may in consultation with the parties, change, abridge or adapt any part of the procedure described in this Division as may be necessary to achieve a fair, speedy and cost-effective determination of the arbitration proceeding on its merits.

### **47. Evidence and application of other Rules**

- (1) Notwithstanding the provisions of any other Rule, in arbitration hearings under this Division:
  - (a) no party may require another party to provide a list of documents under Rule 18; and,
  - (b) no party may compel another party to answer oral questions under Rule 21.
- (2) Notwithstanding the provisions of any other Rule, in arbitration hearings under this Division:
  - (a) evidence and information about the views and preferences of a child must be presented under Rule 28 if the legal issues concern the parenting of a child, parenting time or contact;
  - (b) no party may rely on the report of an expert other than an expert appointed by the arbitrator under Rule 29;
  - (c) any evidence of opinion will be given through the reports of experts appointed by the arbitrator;
  - (d) any evidence of fact will be given through

(i) questions asked by the arbitrator and the parties of the parties and witnesses identified by the arbitrator in consultation with the parties, and

(ii) written statements in response to questions asked under Rule 20;

and,

(e) The arbitrator may, in consultation with the parties, set time limits for the questioning of all or some of the parties and the identified witnesses.

#### **48. Hearing procedure**

(1) The arbitration hearing will be conducted orally, and:

(a) the parties will prepare a statement of agreed facts under Rule 22;

(b) the parties will deliver their books of authority at least 7 days before the date set for the arbitration hearing; and,

(c) a party will deliver any questions and written statements in response to questions on which the party intends to rely at least 7 days before the date set for the arbitration hearing.

(2) On the day of the arbitration hearing:

(a) the parties will, in turn, present any opening statements they wish to make;

(b) the parties and the identified witnesses will, in the order determined by the arbitrator, be questioned first by the arbitrator and then by each of the parties in turn; and,

(c) the parties will, in turn, present their closing oral arguments.

### **PART VI: FINAL AWARDS AND TERMINATING THE PROCEEDING**

#### **49. Closure of arbitration hearing**

(1) An arbitration hearing without an oral hearing is closed when the parties have submitted their documents for the review of the arbitrator.

(2) The arbitrator will close an oral arbitration hearing when:

(a) the parties have presented their evidence and their closing arguments;

(b) all of the legal issues are withdrawn or resolved by the agreement of the parties during the arbitration hearing; or,

(c) the arbitrator determines that continuing the hearing is unnecessary or inappropriate.

(3) The arbitrator may, in exceptional circumstances, reopen an arbitration hearing at any time before a final award is made.

## **50. Legal principles**

(1) The arbitrator will determine the legal issues in the arbitration proceeding in accordance with the law and, to the extent they may be relevant to the legal issues, in consideration of:

(a) for arbitration proceedings sited in Alberta, the federal *Divorce Act* and the Alberta *Family Law Act*, the *Matrimonial Property Act* and the *Adult Interdependent Relationships Act*; and,

(b) for arbitration proceedings sited in British Columbia, the federal *Divorce Act* and the British Columbia *Family Law Act*.

(2) The arbitrator may determine claims in equity, including unjust enrichment, and may award equitable remedies, including injunctions.

## **51. Final awards**

(1) The arbitrator will make one or more final awards determining the legal issues submitted for arbitration in the arbitration agreement within 70 days of the closure of the arbitration hearing. The arbitrator will deliver the final awards to all parties.

(2) The final awards will be in writing and state the summary reasons for the arbitrator's determination. The arbitrator will provide full reasons at the request of a party.

## **52. Amendment and correction of final awards**

(1) A party may request the arbitrator to, or the arbitrator on the arbitrator's own initiative may, amend a final award to correct:

(a) clerical or typographic errors;

(b) accidental errors, slips or omissions; and,

(c) arithmetical errors in calculations.

- (2) A party may request the arbitrator to amend a final award to address a legal issue submitted for arbitration in the arbitration agreement but omitted from the award.
- (3) A request by a party to amend a final award must be delivered within 14 days of delivery of the award.
- (4) The arbitrator will complete any amendment of a final award within 28 days of delivery of the original award.

### **53. Clarification of final awards**

- (1) A party may request the arbitrator to clarify a final award, and the arbitrator may amend the award if the arbitrator considers that the amendment will clarify the award.
- (2) A request by a party to clarify a final award must be delivered within 14 days of delivery of the award.
- (3) The arbitrator will complete any amendment of a final award to clarify the award within 28 days of delivery of the original award.

### **54. Costs**

- (1) The arbitrator may determine liability for costs on the basis of the evidence presented and any offers to settle, and may:
  - (a) apportion costs between some or all of the parties, equally or unequally; or,
  - (b) order that each party bear the party's own costs.
- (2) In making a costs award, the arbitrator may take into account:
  - (a) the length of time required to conclude the arbitration proceeding;
  - (b) the importance and complexity of the issues in dispute;
  - (c) the financial value of any support obligations in dispute, and of any property or debt in dispute;
  - (d) the conduct of the parties during the arbitration proceeding; and,
  - (e) the failure of a party to comply with these Rules or with an interim award or order of the arbitrator.
- (3) Costs may include:

- (a) the fees and expenses incurred by the arbitrator;
  - (b) the fees and expenses of any experts appointed by the arbitrator;
  - (c) the fees and expenses of any experts other than experts appointed by the arbitrator;  
and,
  - (d) the legal fees and expenses incurred by a party in relation to the arbitration proceeding.
- (4) If the arbitrator makes an award of costs, the arbitrator will provide summary reasons for the award.
- (5) If the arbitrator does not make an award of costs, each party will bear the party's own costs.

**55. Termination of arbitration proceeding**

- (1) An arbitration proceeding terminates when:
- (a) the arbitrator has made final awards that together address all of the legal issues submitted for arbitration in the arbitration agreement; or,
  - (b) the parties withdraw all of the legal issues submitted for determination in the arbitration agreement.
- (2) The arbitrator may terminate the arbitration proceeding if the arbitrator concludes that the continuation of the arbitration proceeding has become unnecessary or impossible.