

# BILL

No. 97

## An Act to amend *The Arbitration Act, 1992*

(Assented to )

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

### Short title

1 This Act may be cited as *The Arbitration (Family Dispute Resolution) Amendment Act, 2017*.

### SS 1992, c A-24.1 amended

2 *The Arbitration Act, 1992* is amended in the manner set forth in this Act.

### New section 2

3 **Section 2 is repealed and the following substituted:**

#### “Definitions

2 In this Act:

‘**arbitration agreement**’ means an agreement by which two or more persons agree to submit a matter in dispute to arbitration;

‘**arbitrator**’ includes:

- (a) an umpire;
- (b) a family arbitrator;

‘**court**’, except in section 7, means the Court of Queen’s Bench;

‘**family arbitrator**’ means a person who is recognized by the minister as meeting the requirements prescribed in the regulations for family arbitrators;

‘**family dispute**’ means a dispute between the parties respecting a matter to which one of the following applies:

- (a) Part II or IV of *The Children’s Law Act, 1997*, other than a hearing pursuant to section 12 of that Act;
- (b) *The Family Maintenance Act, 1997*;
- (c) *The Family Property Act*;
- (d) the *Divorce Act* (Canada);

‘**minister**’ means the member of the Executive Council to whom for the time being the administration of this Act is assigned”.

**Section 3 amended**

**4 The following subsection is added after subsection 3(3):**

“(4) In relation to an arbitration respecting a family dispute, the family arbitrator, in making an award that deals with a matter mentioned in Part II or IV of *The Children’s Law Act, 1997*, must consider the best interests of the child”.

**New sections 4 and 5**

**5 Sections 4 and 5 are repealed and the following substituted:**

**“Contracting out**

**4** The parties to an arbitration agreement may agree, expressly or by implication, to vary or exclude any provision of this Act except the following provisions:

- (a) subsection 3(4);
- (b) subsection 6(4);
- (c) section 6.1;
- (d) section 20;
- (e) subsection 32(2);
- (f) section 40;
- (g) section 46;
- (h) section 48;
- (i) section 50.

**“Waiver of right to object**

**5(1)** Subject to subsection (2), a party to an arbitration is deemed to have waived the right to object if that party:

- (a) is aware of a non-compliance with a provision of this Act, except with a provision referred to in section 4, or with the arbitration agreement; and
- (b) does not object to the non-compliance within the time limit provided or, if none is provided, within a reasonable time.

(2) Subsection (1) does not apply to the parties to an arbitration of a family dispute”.

**New section 6.1**

**6 The following section is added after section 6:**

**“Arbitration agreement respecting family dispute**

**6.1(1)** Subject to subsection (2):

- (a) an arbitration agreement respecting a family dispute may be made only after the dispute to be arbitrated has arisen; and
- (b) if the requirement set out in clause (a) is not met, the arbitration agreement and any award arising from it are not enforceable.

(2) Subsection (1) does not apply in relation to the arbitration of a future family dispute respecting a matter provided for in:

- (a) an agreement as defined in *The Children's Law Act, 1997*, *The Family Maintenance Act, 1997* or *The Family Property Act*;
- (b) an order made pursuant to *The Children's Law Act, 1997*, *The Family Maintenance Act, 1997* or *The Family Property Act*; or
- (c) an award made pursuant to this Act.

(3) Notwithstanding any other provision of this Act, an arbitration agreement respecting a family dispute, and an arbitration award arising from a family dispute, may be set aside or replaced by the court if the court is satisfied that one or more of the following circumstances existed when the parties entered into the agreement:

- (a) a party took improper advantage of the other party's vulnerability, including the other party's ignorance, need or distress;
- (b) a party did not understand the nature or consequences of the agreement;
- (c) other circumstances that would, under the common law, cause all or part of a contract to be voidable;
- (d) the arbitration of the family dispute was not conducted by a family arbitrator.

(4) The court may decline to act pursuant to subsection (3) if, on consideration of all of the evidence, the court would not replace the arbitration agreement with an order that is substantially different from the terms set out in the arbitration agreement”.

#### **Section 7 amended**

**7 Section 7 is amended in the portion preceding clause (a) by striking out “No court” and substituting “Subject to subsection 6.1(3), no court”.**

#### **Section 32 amended**

**8 Section 32 is amended:**

- (a) by renumbering it as subsection 32(1); and**
- (b) by adding the following subsection after subsection (1):**

“(2) Notwithstanding any agreement of the parties to a family dispute, a provision of an arbitration award that is inconsistent with *The Children's Law Act, 1997*, *The Family Maintenance Act, 1997*, *The Family Property Act* or *The Queen's Bench Act, 1998* is not enforceable”.

#### **Section 45 amended**

**9 The following subsection is added after subsection 45(4):**

“(4.1) Notwithstanding subsection (2), a party to an arbitration respecting a family dispute may appeal an award to the court:

- (a) on a question of law; or
- (b) on a question of mixed law and fact”.

**Section 46 amended**

**10 The following subsection is added after subsection 46(8):**

“(9) Nothing in this section restricts or prevents the court from changing, suspending or terminating all or part of an award respecting a family dispute for any reason for which an order could be changed, suspended or terminated pursuant to *The Children’s Law Act, 1997*, *The Family Maintenance Act, 1997*, *The Family Property Act* or the *Divorce Act* (Canada)”.

**New section 58.1**

**11 The following section is added after section 58:**

**“Regulations**

**58.1** The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) with respect to family arbitrators, prescribing the training, experience and other qualifications a person must have, and the requirements a person must meet, to be qualified as a family arbitrator;
- (c) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (d) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act”.

**Coming into force**

**12** This Act comes into force on the day on which section 1 of *The Miscellaneous Statutes (Family Dispute Resolution) Amendment Act, 2017* comes into force.



SECOND SESSION

**Twenty-eighth Legislature**

SASKATCHEWAN

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**B I L L**

No. 97

An Act to amend *The Arbitration Act, 1992*

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Received and read the

First time

Second time

Third time

And passed

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Honourable Don Morgan

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