



Ministry of  
Forests

# **Timber Harvesting Contract and Subcontract Regulation Summary**

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Forest Tenures Branch

May 25, 2022

Version 1.1

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### Document Change Control

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1.1	May 25, 2022	Revised to reflect Ministry of Forests document

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# 1 Introduction

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## What is the Purpose of this document?

This document provides a simplified overview of the **main components** of the Timber Harvesting Contract and Subcontract Regulation (THCSR). The THCSR is a complicated regulation and this guide is not intended to provide all the details of its requirements. Users of this document are strongly encouraged to refer to the *Forest Act* and THCSR for details and to obtain legal advice from their own sources.

The THCSR is often called “Bill 13”. This colloquial term refers to the Bill enacted in 1991 that created extensive new Regulation making powers in the *Forest Act*, which were then relied upon by Cabinet to implement the THCSR.

This THCSR overview document should be used in conjunction with the document titled [Timber harvesting contracts, a guide to replacing, implementing and monitoring](#), which provides best practices to be used by licence holders and their contractors in implementing contracts for timber harvesting and related works. The document can be found on the British Columbia Government’s Forest Tenures Branch website. In addition, various law firms and forestry associations in British Columbia have information on the THCSR.

## What is the Regulation for?

The *Forest Act* and THCSR regulate the contractual relationships between those licence holders and contractors and subcontractors that fall within the definition of “contractor” and “subcontractor” as defined in the THCSR. The *Forest Act* requires that some forest tenure holders in British Columbia complete a certain amount of timber harvesting activities through (replaceable) contracts and subcontracts.

The THCSR was intended to create a level playing field between licence holders and contractors, and contractors and subcontractors when negotiating contracts. There was a perceived inequality of bargaining power between the parties, with many contractors thinking that licence holders controlled the process. As protection for contractors and subcontractors, the THCSR introduced requirements that logging contracts be in writing, that some contracts be replaceable, that replaceable contracts be assignable, and that all disputes between contractors and licence holders be submitted to a dispute resolution process of mediation and arbitration. The THCSR also provided for an amount of work entitlement under replaceable contracts, an amount of work dispute process, and a process for the resolutions of disputes on logging rates.

## What is the History?

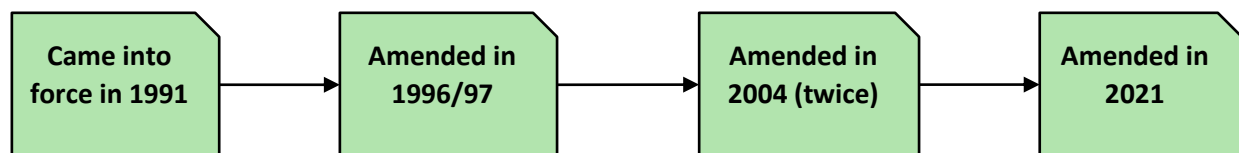
Government first became involved in requiring certain timber harvesting activities to be done under contract in the late 1940s and 1950s, when Tree Farm Licences (then called Forest Management Licences) came into existence. There was a concern that these large tenures would displace small

market loggers. To protect these small businesses, the *Forest Act* was amended to require Tree Farm Licence holders to contract a portion of their harvest and road construction work to independent contractors (called Contractor Clause requirements). The fraction was initially 30% and was later increased to 50%. In Forest Licences the actual requirement is generally included in the licence itself and may vary depending upon the policy in place when the licence was issued.

## Evolution of the THCSR

Most of the more recent amendments to the THCSR have been related to how contract rates are set and how rate disputes are settled. In essence, the amendments adjusted the power balance between licence holders and contractors in setting contract rates with the ultimate goal of having **successful - profitable, sustainable, efficient and competitive licence holders and contractors**.

The THCSR continues to dictate much of the form and content of replaceable contracts between licence



holders and their contractors and between those contractors and their subcontractors.

## 2 Who does the Regulation apply to?

The THCSR applies to the provision of certain forestry services under contract or subcontract to the holder of certain agreements (forest tenures or licences) under the *Forest Act*. Requirements for the THCSR to apply include:

- The contract work must be carried out under a replaceable Tree Farm Licence, replaceable Forest Licence, non-replaceable Forest Licence with an annual allowable cut of more than 10,000 m<sup>3</sup>/year on average, or a Timber Licence with more than 30,000 m<sup>3</sup> of total net volume of merchantable timber remaining.
- The contract or subcontract must be for a term of at least six months (see the THCSR for details on how this is calculated).
- The work being contracted must be for one or more 'phases' of a timber harvesting operation as defined in the THCSR (see section 3 of this document and the THCSR).

Determining the contracts and subcontracts that are subject to the provisions of the THCSR can be complex. If you are contractor or subcontractor and are uncertain it is best to consult the THCSR and if necessary, obtain legal advice.

## 3 Types of contracts

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### Contracts and Subcontracts

The THCSR can apply to both contracts and subcontracts as defined in the THCSR.

### Replaceable and Non-Replaceable Contracts

Contracts to carry out one or more phases of a timber harvesting operations can either be replaceable or non-replaceable. Section 157.1 of the *Forest Act* details how replaceable contracts can become non-replaceable contracts.

In certain circumstances, the licence holder must hire each contractor under a “replaceable contract” as defined in the *Forest Act* and the THCSR. Replaceable subcontracts with replaceable contractors works in substantially the same way. If you have a subcontract that falls within the definition of “subcontract” in the THCSR and that subcontract pertains to timber harvested under a replaceable contract, then you have a replaceable subcontract.

The defining characteristic of a replaceable contract is that subject to satisfactory performance by the contractors, the licence holder is obliged to offer the contractor a replacement contract on substantially the same terms and conditions, three months prior to the expiry of the existing term. The obligation to offer the “same terms” includes the term respecting renewal, such that the obligation to renew continues indefinitely. Provided a licence holder maintains the licence, it must continue to offer work to each replaceable contractor hired to work on that licence. The rights for a subcontractor work the same way; provided a contractor maintains the contract, it must continue to offer the work to each replaceable subcontractor.

### Types of Contracts

As stated previously, for the THCSR to apply the forestry services being provided under contract or subcontract must be for a “phase” of timber harvesting operations. “Phase” when used in relation to a timber harvesting operation, means felling, bucking, yarding, skidding, processing, decking, loading, hauling, unloading, non-mill or non-custom dryland sorting or booming, logging road construction, logging road maintenance including temporary road deactivation, logging access road construction and any other phases or combinations or components of them. There are some exclusions as outlined in Part 1 (Interpretations, Applications and Notice) of the THCSR.

Contracts can generally be categorized into the following, and are defined in the THCSR as follows:

- **Dedicated phase contracts** where a contractor performs all or part of one or more phases of a timber harvesting operation for the coastal area.
- **Volume independent contract** that is not a dedicated phase contract and that provides work for one or more phases in the coastal area where the amount of work does not depend on a volume of timber harvested.



- Other – that do not meet the definitions above. This can include **Full phase contracts** and **Volume dependent contracts**.

## 4 Contract Content

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### The Requirement for Written Contracts

Section 3 of the THCSR requires that all contracts and subcontracts must be **in writing** (unless relieved by the minister). This was a significant requirement in 1991 as many logging contractors still operated based on verbal agreements.

### Required and Standard Provisions

The THCSR requires that replaceable contracts include:

- The length of the term of the contract;
- Replacement of the contract upon its expiry;
- The amount of work that the contractor is entitled to have specified in the replaceable contract;
- Adjustments that may be made by a license holder to the amount of work actually provided to a contractor in any given year;
- A process for settling disputes with respect to logging rates and establishing provisional rates that will apply in the interim;
- A process for adjusting the amount of work in response to reductions in the allowable annual cut of the license to which the contract pertains; and
- The contractor's right to assign the contract.

Similar requirements apply to replaceable subcontracts.

A replaceable contract must contain either the standard provisions set out in the schedules in the THCSR or a different provision agreed to by the parties that is consistent in all material ways with the standard provision. The THCSR (Section 52) also allows the parties to a replaceable contract to agree to waive or amend certain standard provisions.

These provisions provide the parties with flexibility to develop contract language that is acceptable to both parties, and the certainty that the standard provisions in the THCSR will apply when agreement cannot be reached.

The standard provisions for contracts, as set out in the Schedules to the THCSR, cover the following subject areas. (Note - the use of the provisions will depend on the nature of the contract or subcontract being negotiated).

- |   |                          |                             |
|---|--------------------------|-----------------------------|
| • Assignability of Replaceable Contracts    | • Resolution of Disputes | • Amount of Work            |
| • Assignability of Replaceable Subcontracts | • Replacement Contract   | • Volume Dependent Contract |
|   | • Changes                | • Dedicated Phase Contract  |
|   | • Termination            |                             |

- Volume Independent Contract
- Experiments
- AAC Reduction Proposals
- Termination Due to Work Reduction
- Termination of Replacement Subcontract due to Insufficient Work
- Differing Amount of Work
- Events Beyond Control
- Rate Dispute
- Replacement Subcontract
- Replacement of Subcontract on Licence Transfer, Subdivision or Consolidation
- Licence Transfer
- Licence Consolidation
- Insufficient Work
- Licence Subdivision
- Replacement of Subcontract on Assignment of Contract

## Amount of Work

Standard provisions under the THCSR address the amount of work that the contractor is to perform, reductions of the amount of work and how the amount of work is to be expressed.

**Contractors and licence holders should be fully aware and understand the flexibility the THCSR provides regarding the Amount of Work that is allocated to contracts and subcontractors.**

There are detailed provisions to determine the amount of work for Interior and Coast contractors in sections 18 and 19 of the THCSR, and to measure compliance over a number of years in sections 40 and 41. Licensees, contractors and subcontractors should refer to the detailed calculations in the THCSR.

In many cases, the amount of work is specified as a percentage of the total amount of timber harvested under the licence in a given year (full phase), or for

the amount of work for a specific type of work of the contract (phase contract). The amount of work can also be specified as a volume of wood to be harvested (m<sup>3</sup>). In addition, one or more contracts can be grouped and be applicable to one or more licences in what is referred to as a “fibre basket” approach.

Given the complex and cyclical nature of the forest products industry, the THCSR provides the licence holder some flexibility to comply with the amount of work requirement over time. The licence holder can provide an amount of work in a particular year that is different from the specified amount of work if the reason for doing so is for bona fide business and operational reasons. However, the licence holder must provide at least 95% of the total amount of work over an “amount of work compliance period”, which is usually the 5-year cut control period for the licence (see the definitions in the THCSR for details).

Section 20 of the THCSR must provide that the licence holder has the ability to provide an amount of work that is less than the amount of work specified in a replaceable contract to 1) enable the licence holder to experiment with timber harvesting methods, technology or silviculture systems different from those historically used by the licence holder, and 2) for bona fide business and operating reasons, to allocate to a replaceable contract work that pertains to timber that the licence holder is entitled to harvest outside the licence to which the contract pertains.

## 5 Negotiating Contract Rates

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The process involves two steps:

### 1) Work Specifications and 2) Rate Proposals

The contractor and licence holder must share information on the work to be done and enter into good faith negotiations to establish contract rates that provide for the success of both parties.

### Work Specifications

Section 19.1 of the THCSR requires that before the licence holder begins rate negotiations they provide the contractor with the **work specifications**. This includes:

- The **replaceable contract** to which the information pertains;
- The **services** the licence holder requires the contractor to perform under the replaceable contract;
- The estimated **quantity of work** the licence holder requires the contractor to perform;
- The **location** of the cutblock or road, or both, where the services are to be provided;
- The proposed **start date and completion date** for the services;
- **Any other information** that is not otherwise available to the contractor, that is in the possession of the licence holder and that is reasonably necessary for the contractor in order to estimate the productivity and operating costs of the work to be performed under the contract, and assess the rate to be proposed for the services to be provided under the contract.

The contractor may request that the licence holder prove any clarification of the information noted above that the contractor reasonably requires to negotiate the rate to be period for the services and the licence holder must provide the information.

Section 19.2 states that once a contract is signed or executed, a contractor is deemed to have knowledge of all matters related to the work to be performed under the contract that could affect the productivity or operating costs of the work, if those matters can reasonably be known on a diligent review of the location where the work is to be performed and the work specifications provided by the licence holder.

### Rate Proposals

This is basically the contract rate (\$ per unit of work) to complete the work. The THCSR in section 25 requires the following:

**Step #1** - Once a contractor receives the final/amended work specifications or any requested clarification, whichever is later, they have 15 days to deliver a rate proposal in writing to the licence holder.

**Step #2** - The licence holder then has 15 days to accept the proposal in writing or reject the proposal and offer an alternate rate in writing. The alternate rate provided by the licence holder must be a rate they believe meets the rate test detailed in section 26.01 of the THCSR.

- A licence holder who fails to deliver a notice under **step #2** is deemed to have accepted the rate proposed in the rate proposal.
- If a contractor does not accept the rate offered by a licence holder in **step #2** within 7 days of receiving the notice, a **rate dispute** is deemed to exist.

**In negotiating contract rates it is important for both the licence holder and the contractor or subcontractor to understand the factors that are used to settle rate disputes. These same factors should be considered by both parties when rates are set.**

If a rate has been accepted, the licence holder must make the work described in the rate proposal available to the contractor to perform and the contractor must perform that work at the rate that was accepted.

## 6 Disputes

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The THCSR establishes dispute resolution rules and mediation and arbitration proceeding steps that apply to most disputes between licence holders and contractors and subcontractors. In addition, the THCSR establishes some unique procedures and provisions that only apply to the certain types of disputes (see the main disputes below).

The THCSR requires that a contract or subcontract contain either the standard dispute provisions set out in the THCSR or, if agreed to by the parties, a dispute provision that is consistent with the *Arbitration Act* that provides for the use of both mediation and arbitration, and that provides for the appointment of a mediator and, if necessary, an arbitrator. Section 52 of the THCSR also provides other provisions that may be agreed to by the parties.

The THCSR establishes three main types of disputes:

- Settling of Contract Rates Disputes
- Amount of Work Disputes
- Allowable Annual Cut Reduction Proposal Disputes

Disputes can also occur for other reasons such as:

- The interpretation of a contract or subcontract;
- Whether or not the THCSR applies to a contract or subcontract; or
- Whether or not one of the parties to a contract or subcontract has breached that contract or subcontract.

Appendix A outlines the generic dispute resolution process and Appendix B contains a flow chart of the rate dispute mediation and arbitration process. The following section will outline the process and rules in the THCSR that are unique to contract rate, amount of work and AAC reduction proposal disputes. Refer to the THCSR for the details on the rules and processes that apply.

## Mediation and Arbitration

Section 5 requires that every contract or subcontract provide that all disputes that have arisen or may arise between the parties to the contract or subcontract under or in connection with the contract or subcontract will be referred to mediation and, if not resolved by the parties through mediation, will be referred to arbitration.

The THCSR is a unique and complex regulation. As a contractor or licence holder it is important to understand your rights under the THCSR mediation and arbitration process.

The THCSR requires in section 7 that government to maintain a register of mediators and arbitrators qualified to assist in resolution of disputes and a registry of arbitration awards made in relation to such disputes. The latter is an important resource with respect to the interpretation of the THCSR.

**The mediation and arbitration process applies to all contracts and subcontracts that are subject to the THCSR and to all applicable Agreements except to non-replaceable Tree Farm Licences and those non-replaceable Forest Licences and Timber Licences referred to in section 2 of this document.**

The THCSR contains a detailed mediation and arbitration process that parties in dispute can follow, however the THCSR provides flexibility to the parties to appoint as a mediator or arbitrator any person mutually acceptable to them, and to agree upon the rules for the mediation and arbitration. When parties cannot agree the THCSR contains provisions to appoint a mediator or arbitrator and procedures for the mediation and arbitration.

## Mediation and Arbitration Costs

The THCSR details who pays for mediation and arbitrations, as follows:

**The costs of the mediator or arbitrator**, and if necessary a clerk, secretary or reporter that are assisting, must be shared equally between the parties to the dispute, whether or not the mediation leads, without arbitration, to a settlement of the dispute.

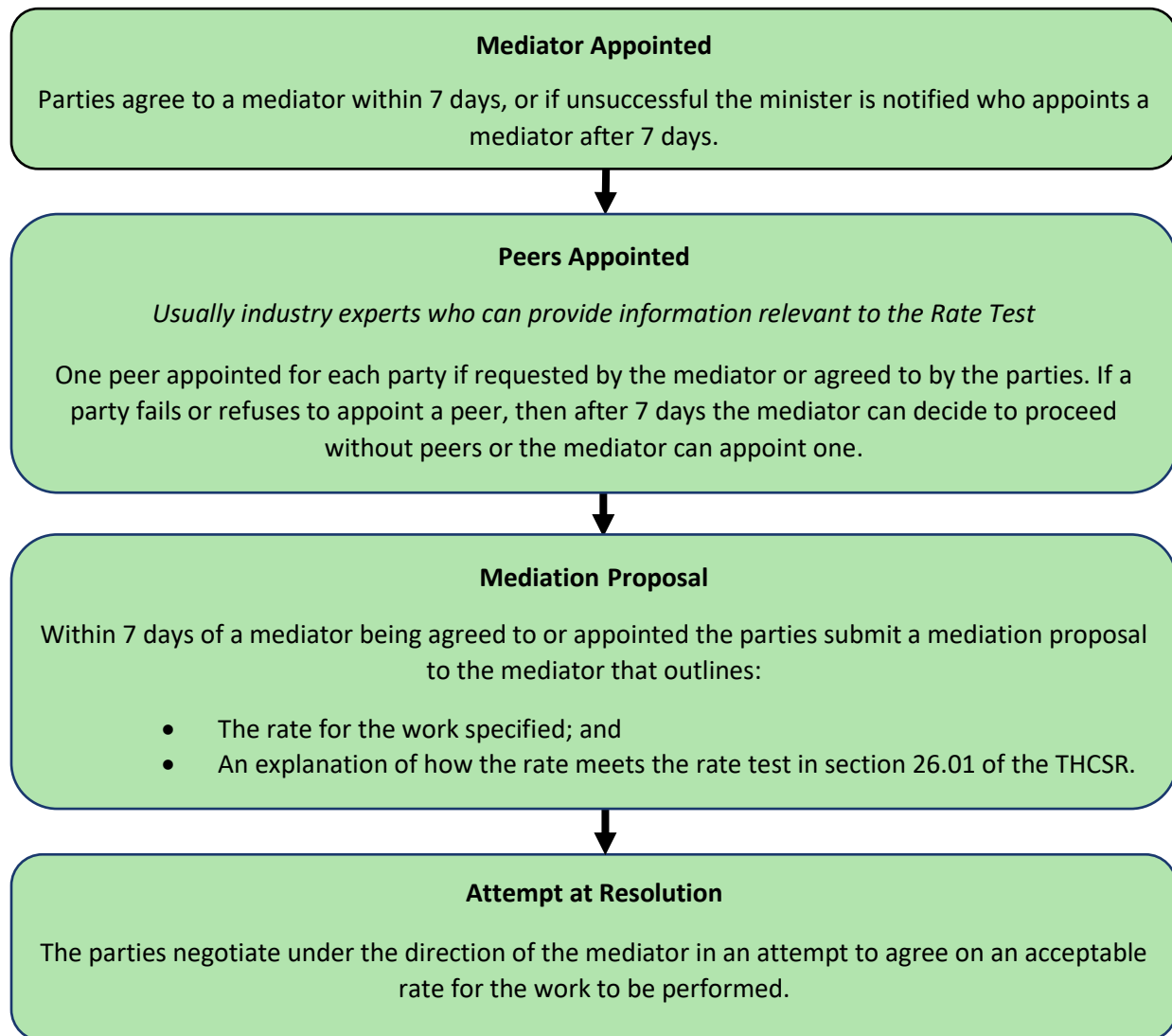
**The costs of the actual mediation and arbitration** process must be borne by each party to the dispute.

Some exceptions to the above rules apply such as the mediator or arbitrator finding that a party failed to supply timely information or took a position that was unreasonable. See sections 9 and 10 of the THCSR for details.

## Rate Disputes

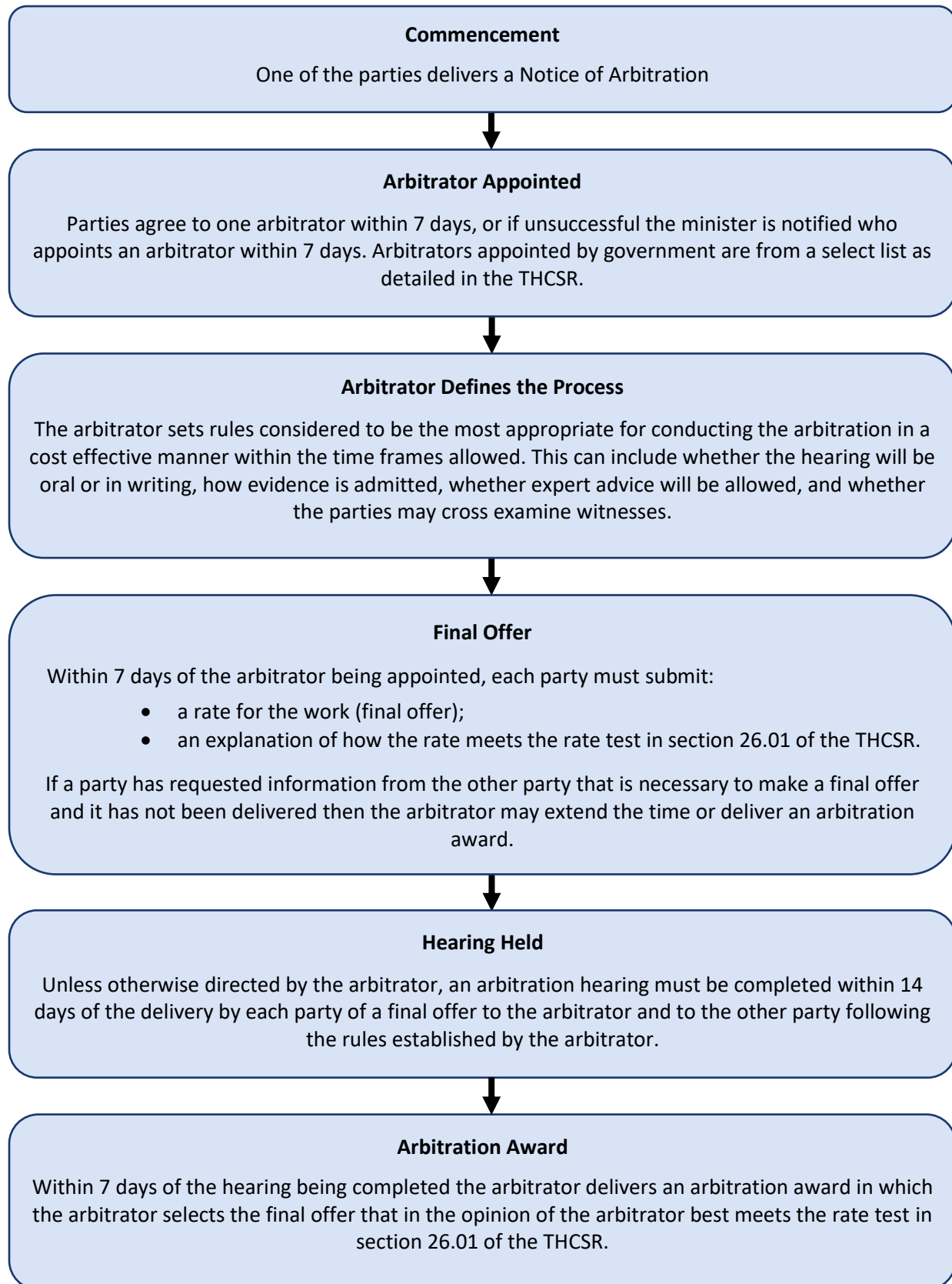
**Mediation** is the first step in resolving a rate dispute. It is an opportunity for the parties to share information and listen to experts under the direction of a mediator in an attempt to mutually agree to an acceptable contract rate. Mediation is intended to be a quick process that can quickly lead to a resolution of disputes.

The general process is as follows once a rate dispute is deemed to exist:



If a rate dispute is not resolved within 14 days of a mediator being agreed upon by the parties or appointed, a party may commence arbitration proceedings by delivering a notice of arbitration to the other party and to the mediator. See Appendix A for further details on the mediation process and rules.

Arbitration is the final step in resolving a rate dispute, illustrated as follows:



See Appendix A and B for further details on the arbitration process and rules.

## Provisional rates

When a rate dispute arises under a replaceable contract:

- The parties must continue to observe their respective rights and obligations under the contract.
- The contractor must be paid a provisional rate equal to the rate in effect for prior timber harvesting services provided by the contractor immediately before the rate dispute. A party may apply to an arbitrator to increase or decrease this provisional rate to reflect any significant change in operating conditions, operating costs or market rates relative to those encountered for prior timber harvesting services.
- The rate determined by an arbitrator in a rate dispute is retroactive to the beginning of the commencement of the work in respect of which the rate dispute arose, and the award by the arbitrator must provide for repayment of any difference between the rate awarded and the provisional rate agreed to by the parties.

## The Rate Test

The rate test is a fundamental component of the THCSR. It is the mechanism that guides how contract and subcontract rates are set and adjudicated when there are disputes. The rate test is as follows:

*26.01 - The rate for the timber harvesting services to be provided by the contractor must be a rate that a willing licence holder and a willing contractor acting reasonably and at arm 's length from each other in similar circumstances would agree*

*(a) is competitive by industry standards, and*

*(b) would permit a contractor operating in a manner that is reasonably efficient in the circumstances, in terms of costs and productivity, to earn a reasonable profit.*

### Rate test considerations

The THSCR requires the arbitrator to consider actual costs and use comparisons of rates for similar work done by the contractor and other contractors taking into account material differences in the work. Key questions that must be considered by parties to a dispute include:

- What are the standard industry rates for comparable work?
- What similarities or differences in operating conditions and costs support your analysis?
- How might the anticipated costs to perform the work differ from the expected costs of the other parties?

**Details on the items an arbitrator may consider are listed in section 26.02(1) of the THCSR and include the following:**

- a. The fixed and variable costs of the contractor, including (i) equipment costs, (ii) labour costs, (iii) costs of extras, and (iv) administrative and overhead costs. **These costs are defined in detail in section 24.01 of the THSCR.**



- b. Any rates agreed upon by the licence holder and the contractor for prior timber harvesting services.
- c. The costs incurred by and the productivity of the contractor in providing prior timber harvesting services.
- d. The costs and productivity of other persons in the forest industry in each phase or component of similar timber harvesting services.
- e. The rates agreed upon by other persons in the forest industry for similar timber harvesting services.
- f. If necessary to make meaningful **comparisons** with any of the rates, costs or productivity described above, the differences between the timber harvesting services that pertain to the rate in dispute and the timber harvesting services that pertain to the rates above:
  - differences in operating conditions including differences in terrain, yarding, distances, hauling distances and volume of timber per hectare;
  - differences in the total amount of timber processed;
  - differences in the required equipment configuration;
  - differences in required phases;
  - differences in operating specifications;
  - differences in law;
  - differences in contractual obligations;
  - differences in the underlying costs of timber harvesting services in the forest industry generally, which would affect rates, including changes in the cost of labour, fuel, parts and supplies; and
  - differences in the cost of moving to a new operating area, if any.
- g. Any other similar data or criteria that the arbitrator considers relevant.

In applying the rate test the arbitrator must not consider rates that do not allow for meaningful comparisons. This could include rates where there is insufficient information, outlier rates, rates established by arbitration, and rates that were not on Crown land. See section 26.02(2) of the THCSR for all the situations.

## Amount of Work Disputes

A replaceable contract must specify the amount of work to be completed under contract. Section 23 of the THCSR contains a process for when the amount of work cannot be agreed to by a licence holder and the contractor. The process is summarized in the following 4 steps:

Step 1 - **Information sharing** - the licence holder and contractor share information on the amount of work that each party believes should be specified in the contract.

Step 2 - **Notice of dispute** - if the licence holder and contractor cannot agree to the amount of work a dispute is deemed to exist and must be resolved by mediation, and, if necessary arbitration.

Step 3 - **Mediation and Arbitration** - The mediation and arbitration process is similar to the process outlined under a rate dispute (**see Appendix A for the standard mediation and arbitration process**). This involves each party making an **amount of work proposal**. The process can involve a union as an intervenor under some circumstances.

Step 4 - **Decision** - if the dispute proceeds to arbitration the arbitrator must express the amount of work to be specified in the contract in a manner consistent with section 18 of the THCSR requirements.

## Allowable Annual Cut Reduction Proposal Disputes

A replaceable contract must provide that if the AAC of a replaceable licence is reduced, or if a licence to which a fibre basket agreement applies is cancelled, expires or is surrendered, the licence holder may make an **AAC reduction proposal. This is outlined in Division 5 of the THCSR** and applies to any or all of the replaceable contracts entered into by the licence holder with respect to timber harvesting operations carried out under that licence or fibre basket agreement, to reduce the amount of work specified in, or to terminate, one or more of those replaceable contracts.

**"fibre basket agreement" means an agreement entered into by a licence holder and one or more contractors under Section 16 of the THCSR. It allows a licence holder to group licences held by the licence holder to meet their contract obligations with multiple contractors.**

The "AAC reduction proposal" must consider the following "AAC reduction criteria" as defined in section 1 of the THCSR:

1. Achieving a contractor configuration that **optimizes the effective utilization of capital** within all timber harvesting operations carried out under all licences included by a licence holder in an AAC reduction proposal;
2. Achieving a contractor configuration that **optimizes the efficiency of all timber harvesting operations** carried out under all licences included in an AAC reduction proposal or a forestry revitalization proposal by a licence holder;
3. The demonstrated historical operational effectiveness, ability to carry out timber harvesting operations and compliance with safety, environmental and other applicable laws of each contractor with a replaceable contract pertaining to any licences held by a licence holder;
4. **Minimizing the overall need for geographic relocation** by contractors and company operations to operating areas different than those they have traditionally operated in.

The THCSR contains a process to dispute an AAC reduction proposal made by a licence holder. The entire process is quite detailed (refer to the Division 5 of Part 5 of the THCSR) and is summarized in the following 3 steps:

Step 1 - **Notice of Rejection** - the contractor provides a notice of rejection to the licence holder under section 29 within 30 days regarding the AAC reduction proposal. The licence holder may withdraw the AAC reduction proposal, or refer the AAC reduction proposal to mediation and arbitration under section 31.

Note - if a contractor does give a notice of rejection the AAC reduction proposal is deemed to be accepted under section 30.

Step 2 - **Mediation and Arbitration** - within 14 days of receiving the notice of rejection the licence holder refers the dispute to mediation and arbitration under section 32 (i.e. notice of dispute). The mediation and arbitration process is similar to the process outlined under a rate dispute **(see Appendix A for the standard mediation and arbitration process)**.

- a union that is entitled to receive notice and may take part in the mediation or arbitration as an intervenor;
- **must be conducted by a sole arbitrator;**
- each contractor that is a party to a mediation or an arbitration regarding the dispute may make an AAC reduction proposal that the contractor believes fairly takes into account each of the AAC reduction criteria;

Step 3 - **Decision** - if the dispute proceeds to arbitration an arbitrator must resolve the dispute in the manner that the arbitrator believes most fairly takes into account each of the AAC reduction criteria. An arbitrator is not restricted to choosing between any of the various AAC reduction proposals made by the parties to the arbitration, and may make an award that includes the termination of one or more of the replaceable contracts, or reduces the amount of work available to any contractor or company operation in a manner that is not proportionate to the reduction in AAC.

Under section 33, a replaceable contractor must provide that a contractor may elect to terminate their contract without incurring any liability to the licence holder if the amount of work available under the contract is reduced as a result of a reduction in the AAC of a licence.

## 7 Flexibility to Address Change – “Change Circumstance”

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Section 14 of the THCSR requires that a replaceable contract provide that a licence holder may, for bona fide business and operational reasons, make changes to the information provided under work specifications by requiring that the contractor use different timber harvesting methods, technology or silvicultural systems, move into a new operating area, comply with different specifications or undertake any other operating change necessary to comply with a direction made by a government agency or lawful obligation imposed by any federal, provincial or municipal government.

Despite the ability of the licence holder to make changes to the work specifications, a replaceable contract must provide that if

- a change that results in a material change in the timber harvesting services to be provided by the contractor, **or**
- after the start of timber harvesting operations, either party discovers and advises the other party of a material error or omission in the information provided in the work specification which could not have reasonably been discovered,

then either party may, by written notice to the other party within 30 days of the event occurring, request a review of the rate to be paid for the timber harvesting services.

- the contractor discovers that the licence holder failed to provide to the contractor information required under the “work specifications”,

then the contractor may, by written notice provided to the licence holder within 15 days of the event occurring, elect not to perform the work specified without incurring any liability to the licence holder.

- a change in law, natural disaster, interference by a person who is not a party to the contract or any other substantial event beyond the reasonable control of a contractor has a material effect on the productivity or operating costs of the contractor,

then either party may, by written notice to the other party within 30 days of the event occurring, request a review of the rate to be paid for the timber harvesting services. In addition, the contractor may, within 15 days of the event occurring, elect not to perform the work without incurring liability to the licence holder.

If a review of the contract rate is requested as outlined above, and the parties are unable to agree on a revised rate for the timber harvesting services, a rate dispute is deemed to exist.

## 8 Contractor Clause Compliance

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Section 39 of the THCSR requires that compliance with the contractor clause be assessed annually. The THCSR specifies in detail how compliance is measured for the Coast and Interior licence holders, and for Full and Phase contracts.

**A contractor clause is a provision in a replaceable Tree Farm Licence that requires timber to be harvested by a person under contract with the holder of the licence, or in a replaceable Forest Licence under which the Minister has required that a portion of the timber harvested under the licence be harvested by contractors.**

If disputes arise between licence holders and a contractor/subcontractor regarding compliance with the contractor clause requirements then the mediation and arbitration process can be initiated.

## 9 Other

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### Reporting

Section 16.1 requires that a licence holder report to the minister in the form and at times required by the minister:

- the number of replaceable contracts the licence holder is a party to;
- the parties to each contract;
- the amount of work specified in each contract; and

- the scope of each contract.

## The Assignability of Contracts

The right to perform work under a replaceable contract represents a significant business asset for logging contractors. Small owner/operators depend on these contracts for their livelihood, while for larger contractors a replaceable contract often provides the security necessary to sustain the large capital investment required for a stump to dump logging operation.

**Assignability applies only to replaceable contracts and subcontracts**

In either case, section 4 states that a contract must provide that an assignment requires the consent of the licence holder, which cannot be unreasonably denied. If, 31 or more days after receiving a notice from a contractor requesting consent to the assignment of a contract or subcontract, the licence holder or contractor has not notified the contractor or subcontractor of the reasons for withholding that consent, the licence holder or contractor is deemed to have consented to the assignment.

Assignment provisions enable a contractor to recover the asset value of the replaceable contract in circumstances of a transfer or sale of their business.

## Termination

The THCSR requires in sections 15 and 33 that replaceable contracts contain provisions for termination of contracts. Some example situations include

- Upon the cancellation, expiry or surrender of a licence under which the timber harvesting services are provided by the contractor, the contract terminates.
- If the amount of work available under the contract is reduced as a result of a reduction in the AAC of a licence or the cancellation, expiry, or surrender of a licence to which a fibre basket agreement applies, the contractor may terminate the contract with 90 days written notice to the licence holder.

## Refusal of Work

The THCSR also contains provisions in section 14 that require that a replaceable contract provide for contractors to elect not to perform the work detailed in a **work specification** if

- the licence holder advises that there has been a material change in timber harvesting services to be provided by the contractor.
- after the start of timber harvesting operations, the licence holder discovers and advises the contractor of a material omission in the information provided in the work specification.
- after the start of timber harvesting operations, the contractor discovers and advises the licence holder of a material error or omission in the work specification.
- a change in law, natural disaster, interference by a person who is not a party to the contract or any other event beyond the reasonable control of a contractor has a material effect on the productivity or operating costs of the contractor.

## Delegation

A list of those provisions of the *Forest Act* and the THCSR that have been delegated can be found here:

[HTTPS://WWW2.GOV.BC.CA/ASSETS/GOV/ENVIRONMENT/NATURAL-RESOURCE-POLICY-LEGISLATION/TRANSFER-OF-AUTHORITY-MATRICES/FA\\_DELEGATION\\_MATRIX.PDF](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-policy-legislation/transfer-of-authority-matrices/fa_delegation_matrix.pdf)

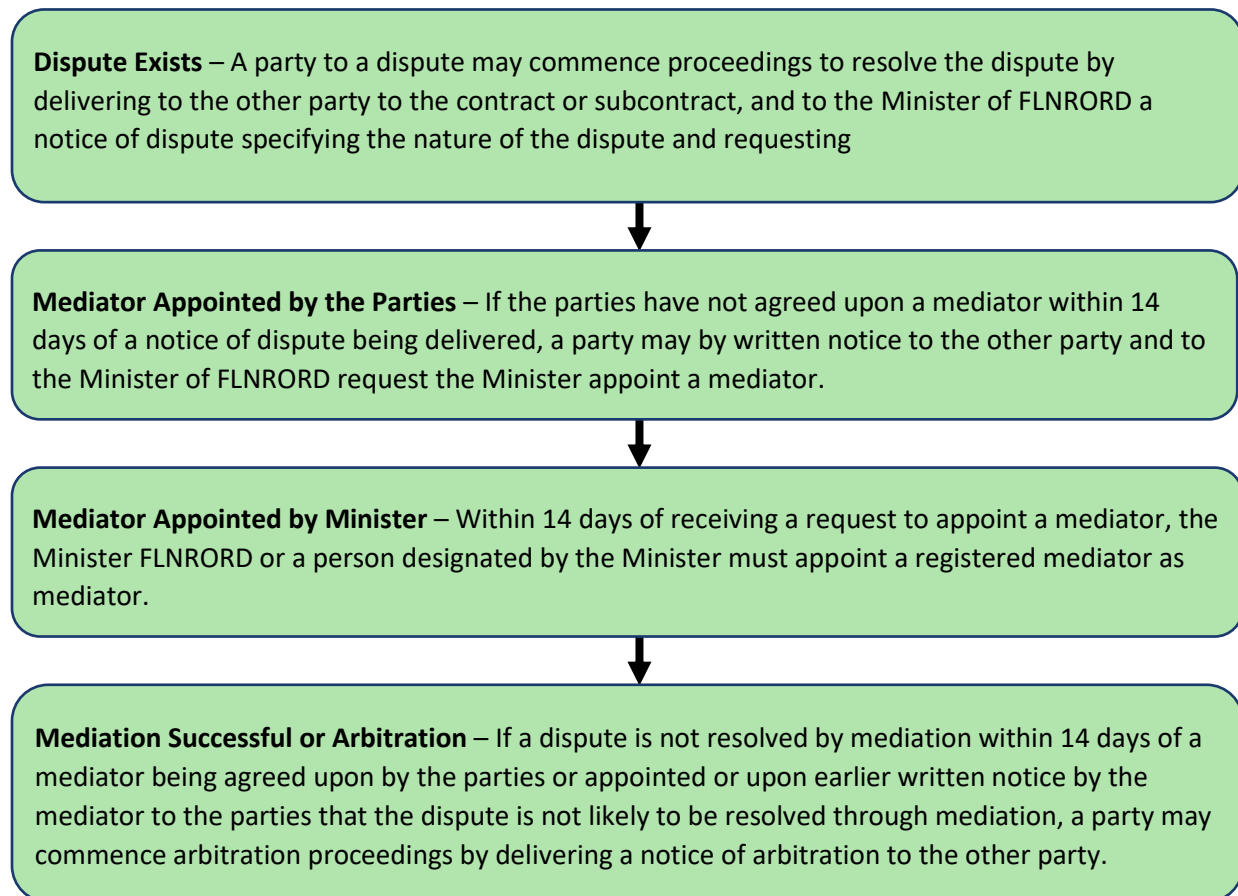
Many decisions have been delegated to the Director, Forest Tenures Branch.

## Appendix A – Standard Mediation and Arbitration Rules

The THCSR details a standard mediation and arbitration process with specific rules. In some cases the THCSR specifies processes and rules that are different than the standard process, such as for rate disputes. Details follow.

### Standard Mediation Process and Rules

Note these rules and timelines do not apply to Rate Disputes (see section 6 of this document and section 8 of the THCSR).



Any recommendation made by a mediator is not binding on the parties.

## Standard Arbitration Process and Rules

Note:

- Some types of arbitration can occur through a 3 person panel with a nominated chairperson.
- Many of these rules and timelines do not apply to Rate Disputes (see section 6 of this document).
- Arbitration to settle Amount of Work and AAC Reduction Proposal disputes must be conducted by a sole arbitrator.

**Notice of Arbitration** – A party may commence arbitration proceedings by delivering a notice of arbitration to the other party.



**Arbitrator Appointed by the Parties or by the Minister** – The Minister of Forests may appoint a sole arbitrator within 14 days of a notice of arbitration if:

- The parties have not agreed on a sole arbitrator; or
- If the arbitration is to be held by a 3 person party that one or more parties have failed to appoint a nominee to the arbitration panel.



**Request for the Minister to Appoint a Chairperson to a 3 Person Panel** – Within 28 days of the notice of arbitration being delivered if the nominees of each party to a 3 person panel have not selected a chairperson of the panel within 28 days of the notice of arbitration being delivered, a party may request the Minister of Forests to appoint a chairperson.



**Appointed by the Minister of a Sole Arbitrator or Chairperson to a 3 Person Panel** – Within 14 days of the being requested the Minister of Forests must appoint a registered arbitrator as the sole arbitrator or appoint a chairperson.



**Arbitration and Arbitrators Decision** – See the THCSR and section 6 of this document to see the arbitrator's rules for settling AAC Reduction Proposal Disputes and Amount of Work Disputes.



### **Important points about arbitration that apply to all disputes:**

- Arbitration proceedings must be administered by the arbitrator or a clerk appointed by the arbitrator, unless the parties to the arbitration otherwise agree (section 8(12)).
- Except where inconsistent with any rules established by an arbitrator, arbitration must be conducted in accordance with the *Arbitration Act* for the conduct of domestic commercial arbitration, unless the parties to the arbitration agree otherwise.
- No party may call the mediator as a witness, no party may introduce evidence regarding any discussions that took place as part of the mediation between the parties, or between one or more parties and the mediator, or any recommendation for settling the dispute made by the mediator or any party as part of the mediation, any document prepared as part of the mediation by the mediator or any party to the mediation, and no document that is privileged ceases to be privileged solely as a result of being disclosed to the mediator or to another party during the mediation. One or more of the above provisions may be waived any time after the mediation by agreement of all the parties to the mediation (section 8(10)).
- A person who has acted as a mediator in a dispute may only act as an arbitrator in subsequent arbitration proceedings with respect to that dispute if, after the conclusion of the mediation, all parties agree (section 8(14)).

## Appendix B – Rate Dispute Resolution Process

