

## 23. Amending an Application for Arbitration

Jan-04

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*This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.*

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### **Applications for Arbitration: Naming Parties**

Parties who are named as applicant(s) and respondent(s) on an application for arbitration must be correctly named. If they are not correctly named, the application may be dismissed, or any orders made by the arbitrator may not be enforceable. This Policy Guideline addresses a number of issues arising out of the naming of parties in applications for arbitration.

#### **Parties Not Served**

Where one or more parties on an application for arbitration has not been served, the arbitrator's decision and/or order will indicate this and will dismiss or dismiss with leave to reapply the application involving the party not served. Attendance at the hearing by a party may constitute an admission of service.

#### **Errors in Naming a Party**

Where both parties are present at the hearing, the arbitrator may amend the application to show the correct name. Where a party is not present, the arbitrator may decline to amend the application, and may decline to issue a decision or order involving the incorrectly named party.

#### **Adding or Removing a Party**

Where both parties are present at the hearing and both parties consent, the arbitrator may add another party or remove a party from the application so long as the party added has consented to be added. If the party removed is an applicant, that party must consent to be removed.

The arbitrator may, at the request of the applicant, dismiss the application with leave to reapply in order to allow the applicant to add or remove a party.

An arbitrator will not add a person, business, or limited company as a party without that party's consent if that party is not named on the application for arbitration and is not properly served.

If a landlord is entitled to claim compensation from an overholding tenant under the Act, and the new tenant brings proceedings against the landlord to enforce his or her right to possess or occupy the rental unit that is occupied by the overholding tenant, the landlord may apply to add the overholding tenant as a party to the proceedings.

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### **Businesses as Parties**

Where an application for arbitration names a business as a party, the correct name of the business must be used to ensure that the Order is enforceable. If the party is a limited company, then the full legal name of the company must be used, and include the designations such as Inc., Incorporated, Ltd., Limited, or Corporation (and/or the French language equivalents).

If the party is doing business as a particular named entity, the application should read as follows: *John Smith dba (or doing business as) Garden Apartments*, or *John Smith carrying on business as Garden Apartments*.

If the party is a partnership, every partner is an agent of the firm and the other partners for the purpose of the business of the partnership. Every partner in a firm is liable jointly with the other partners for the obligations of the firm incurred while he is a partner. An application that names the partnership will be enforceable against the partnership. If an applicant seeks to enforce an Order against the individual partners on the basis of the Partnership Act, the individual partners should be named and each served with a copy of the application.

It is up to the applicant to ensure that a party is properly named, so as to result in an enforceable order. Where the business is not properly named, for example *Garden Apartments* (only), the arbitrator may dismiss the application with leave to reapply unless the other party is present and consents to an amendment, or the arbitrator may issue the order using the name set out in the application.

### **Naming an Estate of a Person Who Has Died**

Where a party makes an application for arbitration and the respondent has died, or where a party representing a person who has died (the "decedent") makes an application, the name used must be that of the personal representative of the decedent's estate (collectively, the "estate"). The personal representative may be either the person who has been named as executor in the decedent's will, or the person who has been appointed to administer the estate of a decedent who has not left a will, or a person named in an Order of Probate.

The proper manner of naming the estate is as follows: *John Smith, Executor (or Administrator) of the Estate of Mary Jones, Deceased*.

Where the applicant names the decedent, the application must be served on the personal representative of the decedent, and at the hearing the application may be amended to properly name the estate. Formal consent to the amendment may not be required if evidence of the correct naming of the estate is provided.

The same principles would apply where an estate is the applicant.

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**Amending the Application Particulars**

An application must contain sufficient details and where it does not, the arbitrator may dismiss the application with leave to reapply or allow the application to be amended to get further particulars. Where an applicant requests an amendment of the application to give further and/or better details, the arbitrator may allow the amendment, or may refuse it. Similarly, where an applicant requests an amendment to increase the amount being claimed, the arbitrator may allow the amendment, or may refuse it. The application will not be amended where it would result in prejudice to the other party. If the amendment is allowed, the arbitrator may adjourn the hearing to allow the respondent time to respond to the amended application.