

Chapter 21: Dispute Resolution

Part 21.1 Definitions

21.1.1 In this chapter:

"Disputants" means:

- (a) Parties who have agreed to resolve a Dispute in accordance with this chapter;
- (b) Persons who are required by the Agreement to resolve a Dispute under this chapter; or
- (c) Persons having a right under the Agreement to seek the resolution of a Dispute under this chapter; and

"Member" means a member of the Dispute Resolution Board.

Part 21.2 General

21.2.1 Disputants shall make good faith efforts to resolve Disputes promptly through discussion or negotiation before seeking recourse to the processes set out in this chapter.

21.2.2 No Arbitration Panel may rule on the validity of the Agreement or alter, amend, delete or substitute any provision of the Agreement in any manner.

Part 21.3 Dispute Resolution Board

21.3.1 A dispute resolution board shall be established as soon as practicable after the Effective Date and shall comprise five individuals appointed by consensus of the Parties, or in accordance with section 21.3.2.

21.3.2 If a consensus is not reached under section 21.3.1 within one year from the Effective Date, then within 60 clear days thereafter, each Party shall appoint one Member and within 30 clear days from their appointment, such Members shall submit a consensus list of no fewer than five and no more than seven nominees to the Chief Justice who shall appoint two Members from that list.

21.3.3 The term of office of a Member is six years during good behaviour and a Member may be re-appointed for a further term or terms in accordance with the process set out in section 21.3.4.

21.3.4 Upon the expiration of a Member's term of office or if a Member does not complete a full term, within 60 clear days from the date on which the vacancy

occurs a replacement shall be appointed by consensus of the Parties. If no consensus is reached:

- (a) if the Member whose position is vacant was appointed by consensus of the Parties or by the Chief Justice, the replacement shall be appointed by the Chief Justice from a list of no fewer than five and no more than seven nominees prepared by consensus of the Parties; or
- (b) within the following 30 clear days, if the Member whose position is vacant was appointed by a Party, the replacement shall be appointed by that Party.

21.3.5 The remuneration of Members shall be on an hourly or *per diem* basis for time worked.

21.3.6 The chairperson shall be appointed by the Members from among their number but if a chairperson has not been selected within 90 clear days from the establishment of the Dispute Resolution Board, the Chief Justice, upon application by any Party, shall appoint one of the Members to be the chairperson.

21.3.7 Upon the expiration of the chairperson's term of office or if the chairperson does not complete a full term, the Members shall, within 60 clear days from the date on which a replacement is appointed under section 21.3.4, appoint a new chairperson from among their number. If a new chairperson has not been appointed within that time, the Chief Justice, upon application by any Party, shall appoint one of the Members to be the chairperson.

Part 21.4 Powers of the Dispute Resolution Board

21.4.1 In addition to the powers of the Dispute Resolution Board set out elsewhere in the Agreement, and in accordance with this chapter, the Dispute Resolution Board has the following powers:

- (a) to sit as an Arbitration Panel;
- (b) to establish a roster of mediators and to appoint mediators from the roster;
- (c) to establish rules and procedures for mediation and arbitration consistent with this chapter;
- (d) to establish rules and procedures for the Dispute Resolution Board's internal administration; and
- (e) to maintain a record of Arbitration Decisions.

Part 21.5 Mediation

- 21.5.1 Mediation of a Dispute shall not be initiated without the agreement of the Disputants and shall be conducted in accordance with this part.
- 21.5.2 Where mediation of a Dispute is requested by the Disputants, the Dispute Resolution Board shall:
- (a) satisfy itself that the Disputants have complied with section 21.2.1; and
 - (b) if so satisfied, within seven clear days from the receipt of the request, appoint a mediator from the roster referred to in subsection 21.4.1(b).
- 21.5.3 The Disputants shall provide full and timely disclosure of all relevant facts, information and documents to each other and to the mediator so as to facilitate the mediation.
- 21.5.4 Confidential information disclosed under section 21.5.3 shall be kept confidential by the Disputants, the mediator and third parties to the mediation.
- 21.5.5 The mediation shall be concluded within a maximum period of 21 clear days from the date of appointment of the mediator under subsection 21.5.2(b) unless the Disputants and the mediator agree to an extension.
- 21.5.6 The Disputants shall each bear their own costs of participation in a mediation and pay equally all other costs of mediating the Dispute, including the remuneration of the mediator.
- 21.5.7 The mediator shall submit a mediation report to the Disputants upon conclusion of the mediation, and shall give written notice to the Dispute Resolution Board that mediation has been concluded.
- 21.5.8 The mediation, including the mediation report, shall be confidential and without prejudice to the rights and claims of the Disputants.
- 21.5.9 A Disputant shall not, in any Legal Proceeding relating to a Dispute that has been the subject of mediation:
- (a) call the mediator as a witness;
 - (b) seek access to any records or notes of the mediator; or
 - (c) introduce the mediation report as evidence.
- 21.5.10 If the mediation report referred to in section 21.5.7 is accepted by the Disputants, or other settlement of the Dispute is reached, the Disputants shall carry out the terms of settlement as soon as possible.

21.5.11 If the Disputants have requested mediation, an Arbitration Panel shall not arbitrate the Dispute until the mediation has been concluded.

Part 21.6 Arbitration

21.6.1 An Arbitration Panel shall not arbitrate a Dispute unless it is satisfied that:

- (a) the Disputants have complied with section 21.2.1; or
- (b) the bad faith of one of the Disputants renders compliance with section 21.2.1 unreasonable.

21.6.2 An arbitration shall be initiated by a written submission to the Dispute Resolution Board by a Disputant or the Disputants.

21.6.3 Except in the case of a joint submission under subsection 21.6.4(c), the Disputant initiating a submission shall immediately serve the submission referred to in section 21.6.2 on all other Disputants.

21.6.4 The Dispute Resolution Board shall:

- (a) accept a request for arbitration from one of the Disputants where the Dispute is between Persons who are required by the Agreement to resolve the Dispute under this chapter or who have a right under the Agreement to seek the resolution of the Dispute under this chapter;
- (b) accept a request for arbitration from one of the Disputants where the Dispute is between Parties who are required by an ancillary or supplemental agreement to resolve the Dispute under this chapter or who have a right under the ancillary or supplemental agreement to seek the resolution of the Dispute under this chapter; and
- (c) where each Disputant is a Party, proceed with arbitration upon a joint submission of the Disputants.

21.6.5 The submission to the Dispute Resolution Board referred to in section 21.6.2 shall set out the following:

- (a) the Disputants;
- (b) the nature of the Dispute;
- (c) a summary of the facts;
- (d) the issue or issues requiring resolution;
- (e) the relief being sought; and

- (f) in the case of a joint submission, any matter agreed upon by the Disputants.
- 21.6.6 Nothing shall prevent a Disputant from making an offer of settlement relating to a Dispute during the course of arbitration, but the offer shall be excluded from consideration in the arbitration except for purposes of an award of costs under section 21.7.7.
- 21.6.7 Subject to section 21.2.2, an Arbitration Panel has the powers and is subject to the duties of an arbitrator under the *Arbitration Act* and has the jurisdiction to arbitrate all matters related to a Dispute, including the jurisdiction to:
- (a) determine any question of Law;
 - (b) determine any question of fact;
 - (c) order a Disputant to furnish further details, whether factual or legal;
 - (d) determine any question as to the Arbitration Panel's jurisdiction under the Agreement;
 - (e) make one or more interim awards, including stop orders and orders in the nature of an injunction;
 - (f) proceed, despite a failure by a Disputant to comply with the Dispute Resolution Board's rules or an order or direction of the Arbitration Panel, after giving written notice of intention to do so;
 - (g) order the production of documents;
 - (h) receive and take into account such written or oral evidence tendered by the Disputants as the Arbitration Panel determines is relevant, whether or not that evidence is admissible in Law;
 - (i) subject to part 21.8 and any agreement of the Disputants with respect to the language of the arbitration, determine the language or languages to be used in the arbitration and make any order with respect to the translation of evidence, documents or submissions;
 - (j) refer any question of Law to the Supreme Court; and
 - (k) award any remedy in Law, subject to the provisions of the Agreement and any terms of a joint submission to arbitration by the Disputants.
- 21.6.8 The Dispute Resolution Board may, upon application by a party to two or more Disputes, order that:
- (a) Disputes be consolidated on any terms it considers just;

- (b) a number of Disputes be heard at the same time or in a specified sequence; or
 - (c) a Dispute be stayed until after the determination of another Dispute.
- 21.6.9 The arbitration of a Dispute shall be by the Dispute Resolution Board acting as an arbitration panel unless the Disputants agree to arbitration:
 - (a) by naming a single Member to act as the arbitration panel; or
 - (b) by naming three Members to act as the arbitration panel.
- 21.6.10 When three Members are named as an Arbitration Panel, the Dispute Resolution Board shall appoint one of them as chairperson of the Arbitration Panel unless:
 - (a) one of them is the chairperson of the Dispute Resolution Board, in which case the chairperson of the Dispute Resolution Board shall be the chairperson of the Arbitration Panel; or
 - (b) none of them is the chairperson of the Dispute Resolution Board and the Disputants have agreed that one of the named Members will be chairperson of the Arbitration Panel.
- 21.6.11 Where so required by a provision of the Agreement, the Arbitration Panel shall appoint a specialist to assist it in determining the matter.
- 21.6.12 The Dispute Resolution Board may, at the request of a Disputant, at its own initiative or at the request of an Arbitration Panel, arrange for experts to be present at an arbitration to provide technical advice to the Arbitration Panel.
- 21.6.13 The Dispute Resolution Board shall give written notice of an arbitration to any Party that is not a Disputant.
- 21.6.14 A Party has the right to participate in an arbitration, whether or not that Party is a Disputant, in accordance with the rules established under subsection 21.4.1(c), but a Party that is not a Disputant and is exercising its right to participate in an arbitration under this section shall not participate in the selection of the Arbitration Panel.
- 21.6.15 If an arbitration involves a Disputant other than a Party, all proceedings shall be in private and the Disputants shall ensure that the arbitration and the terms of the award are, subject to registration of the award in the Supreme Court, kept confidential unless the Disputants otherwise agree. The obligation to maintain confidentiality under this section shall not affect judicial review under section 21.7.5 or prevent any Party from complying with the Agreement.
- 21.6.16 If an arbitration involves only Parties, the Dispute Resolution Board, at the request of all participating Parties, shall:

- (a) hold the arbitration in private; and
- (b) hold as privileged and confidential any document or record produced in the course of the arbitration.

Part 21.7 Arbitration Decisions

- 21.7.1 An Arbitration Decision must be in writing and contain a recital of the facts upon which the Arbitration Decision is based and the reasons for the Arbitration Decision.
- 21.7.2 An Arbitration Decision must be made by either the sole arbitrator or by a majority of the Arbitration Panel, as the case may be.
- 21.7.3 An Arbitration Decision is binding on the Disputants and on any Party that received notice of the arbitration under section 21.6.13.
- 21.7.4 Subject to section 21.7.5, an Arbitration Decision is final and there is no right of appeal therefrom whatsoever to any court.
- 21.7.5 An Arbitration Decision may be reviewed by the Supreme Court on the grounds that the Arbitration Panel:
- (a) acted without jurisdiction, acted beyond its jurisdiction or failed to act where it has a duty to act;
 - (b) failed to act in a manner consistent with the principles of natural justice;
 - (c) based an Arbitration Decision on an error in Law or on an erroneous finding of fact; or
 - (d) acted in any other way contrary to Law.
- 21.7.6 Unless otherwise determined by an Arbitration Panel, the Disputants shall each bear their own costs and pay equally all other costs of the arbitration.
- 21.7.7 An Arbitration Panel may invite submissions as to costs and may consider, among other things, an offer of settlement made by a Disputant to any other Disputant prior to or during the course of an arbitration.
- 21.7.8 Upon application to the Supreme Court, an Arbitration Decision may be registered and enforced in the same manner as a judgment or order of the Supreme Court.

Part 21.8 Language

- 21.8.1 Inuktitut and Canada's official languages may be used in mediation or arbitration proceedings under this chapter.

21.8.2 Interpretation and translation services for Inuktitut and Canada's official languages shall be made available by the Dispute Resolution Board at the request of a Disputant, and any evidence, whether written or oral, must be translated into Inuktitut and Canada's official languages at the request of a Disputant.

21.8.3 Arbitration Decisions and mediation reports must be in Inuktitut unless the Nunatsiavut Government otherwise agrees and in English and, where required by Law, in French.

Part 21.9 Litigation

21.9.1 A Person shall not litigate a Dispute if the Dispute is one that must be referred to dispute resolution under a provision of the Agreement.

21.9.2 No Disputant may apply to a court to enjoin, prohibit, attempt to delay or otherwise interfere with a mediation or arbitration that has been commenced under this chapter but nothing in this section:

- (a) affects the ability of a Disputant or Party to prevent or remedy a breach of section 21.2.2;
- (b) affects the jurisdiction of an Arbitration Panel under subsection 21.6.7(j);
or
- (c) prevents judicial review of an interim or interlocutory Arbitration Decision under section 21.7.5.

Part 21.10 Transitional

21.10.1 Until the Dispute Resolution Board is established, the *Arbitration Act* applies to any arbitration conducted under the Agreement.

21.10.2 Until the Dispute Resolution Board has established rules and procedures for arbitration under subsection 21.4.1(c), the *Arbitration Act* shall apply to any arbitration conducted by an Arbitration Panel.