



Memorandum of Understanding

Between

The Honourable Richard Neufeld
Minister of Energy, Mines and Petroleum
Resources

And

Mr. Paul Love
Chair, Mediation and Arbitration Board

September, 2005

Contents

Contents	i
Part 1 – Introduction	1
Preamble	1
Definitions and Acronyms	2
Statutory Authority and Mandate.....	2
Effective Date and Duration	3
Review and Amendment.....	3
Part 2 – Roles and Responsibilities.....	3
Minister.....	4
Chair.....	5
Part 3 – Reporting	7
Part 4 – Administrative Agreements.....	7
Financial Administration, Contract Management, Asset and Risk Management.....	7
Contract Management (other than legal services)	8
Asset Management.....	9
Risk Management	9
Human Resources Management: Board Staff.....	9
Human Resources Management: Members (Adjudicators).....	11
Public Complaints.....	12
Information Technology	12
Records Management.....	13
Freedom of Information.....	13

M e m o r a n d u m o f U n d e r s t a n d i n g
Minister of Energy, Mines and Petroleum Resources / Chair, Mediation and Arbitration Board

Facilities.....	14
Policy, Research and Legislation.....	15
Communications and Consultation.....	15
Legal Services.....	16
Part 5 – Signatures	16

Part 1 – Introduction

Preamble

This Memorandum of Understanding (MOU) recognizes the principle that decisions of the Mediation and Arbitration Board (the Board) must be made and must be seen by its parties and the public to be made, impartially and independently. The principles of impartiality and independence exist within a broader framework of public accountability. In entering into this MOU, the Minister of Energy, Mines and Petroleum Resources (the Minister), on behalf of the government of British Columbia acknowledges the Board's requirements for impartiality and independence and recognizes the authority of the Chair of the Board (the Chair) to manage the Board and carry out its statutory mandate. The Chair, in turn, agrees to account to the Minister for the Board's administration, operations and use of public resources and to report to the Minister on the Board's compliance with the legislation and policies which govern its operations and decisions rendered by the Board.

“Impartiality” refers to the state of mind or attitude of the Board in relation to the issues and the parties in a particular case. It connotes the absence of bias, actual or perceived. The principle of impartiality is supported through the appointment of Members who have the specialized knowledge and expertise to adjudicate, without prejudice or self-interest, the matters that come before them.

“Independence” refers not only to a state of mind or attitude in the exercise of adjudicative functions but also to the structure of the Board and to the relationship between its Members and other branches of the government of British Columbia including the executive council. The principle of independence is supported through institutional arrangements like this MOU that protect the Board and its Members from pressures, real or perceived, to make adjudicative decisions in accordance with anything other than merit and the law.

This MOU contains the arrangements and commitments that have been concluded in good faith between the Minister and the Chair. The Minister and the Chair each accept their respective obligations as outlined in this MOU or as mandated by legislation. The Minister also acknowledges that the Board should be provided with the human and financial resources necessary to carry out its mandate; and that the Chair be provided with an appropriate opportunity to be consulted on policy and legislation that may directly affect the Board's mandate and activities.

It is understood that the Minister may from time to time designate the Deputy Minister or other Ministry staff to undertake the Minister's responsibilities under this MOU as appropriate.

Definitions and Acronyms

“**Administrative Justice Office**” means the Administrative Justice Office of the Ministry of Attorney General

"ATA" means the *Administrative Tribunals Act*

"BCPSA" means the British Columbia Public Service Agency

“**Board**” means the Mediation and Arbitration Board

"BRDO" means the Board Resourcing and Development Office

“**Chair**” means the chair of the Mediation and Arbitration Board

"CPPM" means the Corporate Policy and Procedures Manual of the *Financial Administration Act*

"DDA" means the *Document Disposal Act*

“**Government**” means the Government of the Province of British Columbia

“**Member**” means a member of the Mediation and Arbitration Board

“**Minister**” means the Minister responsible for the Mediation and Arbitration Board, currently the Minister of Energy, Mines and Petroleum Resources

“**Ministry**” means the Ministry of Energy, Mines and Petroleum Resources

“**MOU**” means this Memorandum of Understanding entered into between the Minister of Energy, Mines and Petroleum Resources and the Chair of the Mediation and Arbitration Board.

“**Parties**” means the Chair of the Mediation and Arbitration Board and the Minister of Energy, Mines and Petroleum Resources

"PSA" means the *Public Service Act*

"P&NG Act" means the *Petroleum and Natural Gas Act*

Statutory Authority and Mandate

The Board is created under the authority of section 13 of the *Petroleum and Natural Gas Act (P&NG Act)*, and has authority under the *Geothermal Resources Act*, the *Mineral Tenure Act*, the *Mining Right of Way Act*, and the *Coal Act*. The Board is an independent, quasi-judicial body resolving conflicts between land owners (holders of surface rights) and companies or individuals (holders of subsurface rights) seeking access

to land to explore for, and develop, subsurface resources including oil and natural gas, minerals, coal and geothermal resources. Board authority and jurisdiction extends to all areas of the province, although the majority of conflicts occur in the Peace River area in association with oil and gas development.

The Chair, Vice-Chair and Members are appointed by Order in Council and serve on an as-needed basis. The Board may have up to nine Members, consisting of a Chair, Vice-Chair and no more than seven Members. Remuneration is *per diem* as set by the Minister, in accordance with Treasury Board directives. Members conduct their activities within the Government's conflict of interest guidelines, the *Administrative Tribunals Act (ATA)*, the principles of administrative law and natural justice and the Board's Code of Conduct, if established. The Ministry of Attorney General acts as legal counsel for the Board.

Effective Date and Duration

This MOU and any amendments are effective on the date they are signed by the Parties and remain in effect until a replacement MOU is signed between the Minister and the Chair, or until the Minister and the Chair agree this MOU is no longer in effect.

Review and Amendment

The Parties agree to review the terms of the MOU on the first anniversary of the date of signing and following that, every two years thereafter. Additionally, the Parties may agree, in writing, to amend the terms of the MOU at any time to accommodate any changes or circumstances that affect the operations of the Board. Amendments to the MOU are to be dated, signed by both parties, and attached to, and will form part of this MOU.

Both Parties may agree at any time to review the terms of this MOU and either of the Parties may request a review of the MOU if one or both of the Parties is no longer the same individual or individuals.

Part 2 – Roles and Responsibilities

The Minister and the Chair agree that the roles and responsibilities set out in this Part will not be interpreted or exercised in a manner that would impinge, or could reasonably be seen to impinge, upon the Board's impartiality or independence in the exercise of its adjudicative functions.

Minister

The Minister's responsibilities include:

- Reporting to the Legislature and to the Lieutenant Governor in Council on the affairs of the Board, including its compliance with relevant legislation and government policy relating to its administration, operations, and use of public resources;
- Meeting with the Chair annually, or more frequently as needed, to discuss and resolve issues relating to the management and operations of the Board including resource allocation and the availability of support services from the Ministry, and other general issues of joint concern;
- Recommending to the Lieutenant Governor in Council the appointment and reappointment of the Chair to the Board in accordance with legislation and the processes, procedures and criteria set out by the BRDO.
- Recommending to the Lieutenant Governor in Council the appointment and reappointment of Members to the Board after consultation with the Chair and in accordance with legislation and the processes, procedures and criteria set out by the BRDO;
- Ensuring the requirements necessary to discharge the Board's mandate are understood and reflected, as appropriate, in the Ministry's Service Plan;
- Ensuring the Chair is provided with the Ministry's goals, priorities and other relevant planning documents and reports;
- Ensuring the Ministry's administrative and support services are responsive to and supportive of the Board's needs;
- Ensuring the Chair has established criteria and implemented a process to monitor and report on the Board's performance;
- Where appropriate, ensuring the Chair is advised of, or consulted on, proposed amendments to legislation, regulations, or government's policies relevant to the Board's mandate or operations;
- Where required, supporting the Board's role, impartiality and adjudicative independence in public statements and reports;
- Where appropriate, consulting with the Chair with respect to relevant Ministry communications, stakeholder consultations and media releases that pertain to the Board; and,

- Providing support to the Chair, as required, to work with the Administrative Justice Office to develop, review and implement practices, procedures and rules to promote the just and timely resolution of matters before the Board.

Chair

The Chair is accountable to the Minister for the effective management and operation of the Board, including the organization and allocation of work among the Board's Members and the supervision and management of the administrative functions of the Board. In this respect the Chair's responsibilities include:

- Implementing and administering the Board's statutory and procedural mandate;
- Establishing, in accordance with the Ministry's goals and priorities, the Board's work plans and performance objectives;
- Providing the Minister with the Board's work plans and performance objectives and reporting annually to the Minister with respect to their implementation and achievement;
- Developing criteria and guidelines for performance and conduct of the Members for review and comment by the Minister;
- Monitoring and assessing the performance and conduct of the Members and staff against the established criteria and guidelines;
- Maintaining a process for responding to public complaints with respect to the Board's operations or the conduct of individual Members or staff;
- Ensuring Members and staff are provided with, and participate in, appropriate training relevant to their respective roles and responsibilities;
- Meeting with the Minister annually, or more frequently as needed, to discuss and resolve issues relating to the management and operation of the Board, including resource allocation, availability of Ministry support services and other general issues of joint concern;
- Recommending to the Minister the appointment and reappointment of Members to the Board in accordance with legislation and the processes, procedures and criteria set out by the BRDO;
- Informing the Minister in a timely manner about critical issues relating to the Board's operations which in the public interest should be brought to the Minister's attention;
- Providing to the Minister, on a quarterly basis, a statistical summary of issue type, board activities and resolution time for applications made to the Board including

M e m o r a n d u m o f U n d e r s t a n d i n g
Minister of Energy, Mines and Petroleum Resources / Chair, Mediation and Arbitration Board

caseload, number and status of files received, number of hearings, type of hearings, location and average length of hearings which Members adjudicated, time taken to resolve files, and outcomes;

- Responding, where requested by the Minister, to proposed changes to legislation, regulations or government policy that affect the Board's mandate or operations;
- Advising the Minister in a timely way on issues arising related to government policy or legislation, the Board's mandate, operations and budget and the adequacy of the provision of Ministry support services of which the Minister should reasonably be aware;
- Developing and implementing a process to make rules, practice directions and decisions of the Board accessible to the public;
- Ensuring any stakeholder requesting information from or appearing before the Board is treated in a courteous and respectful manner;
- Consulting and liaising, as necessary, with the Board's stakeholders;
- Acting as public and media spokesperson on behalf of the Board; and
- Working with the Administrative Justice Office to develop, review and implement practices, procedures and rules to promote the just and timely resolution of matters before the Board.

Part 3 – Reporting

The Chair will prepare an Annual Report for the previous fiscal year to the Minister addressing the activities undertaken and the standards implemented to ensure effective and timely adjudication, Board staff performance and productivity. The report will be submitted annually by May 31, two months after the fiscal year end, and will include:

- A statement of the mandate and operations of the Board;
- A list of the Board's Members, per diem rates and their appointment expiration dates;
- A summary of relevant statistical aspects of the Board's caseloads for the previous year including number and status of files received, number of hearings, type of hearings, location and average length of hearings which Members adjudicated, time taken to resolve files, outcomes;
- An overview of the Board's budget allocation and its expenditures for the fiscal year; and
- After the Minister has approved the scope and form of the report, the Chair will publish the report on the Board's website.

Part 4 – Administrative Agreements

The respective responsibilities of the Parties are as listed below by subject matter.

Financial Administration, Contract Management, Asset and Risk Management

Minister

- Identifying and designating a single point of contact for the following areas: financial systems and management (including payroll), resource planning and analysis, facilities and administration;
- Providing financial services including accounts payable, revenue accounting and financial accounting and reporting, at standards agreed to between the Parties and in compliance with the Corporate Policy and Procedures Manual (CPPM), *Financial Administration Act* and Treasury Board directives;

- Providing other enumerated services in accordance with established service standards; and
- Informing the Board of the annual budget submission and preparation timelines and procedures, obtaining the Board's submission for consideration and approval, and if approved, amalgamating it into the Ministry's overall submission for Treasury Board approval.

Chair

- Ensuring the Board's financial administration activities conform to provisions of the CPPM, *Financial Administration Act*, Treasury Board directives made pursuant to that Act and any other relevant statutes, regulations, policies and procedures set by Government;
- Preparing the Board's annual budget submission within timelines provided by the Ministry;
- Ensuring all pay and leave management forms are accurate, properly authorized and forwarded to Solutions B.C. Payroll promptly and in compliance with Government policy regarding the timing of payments;
- Ensuring all invoices, travel claims and journal vouchers are accurate, properly authorized and forwarded to the Ministry promptly and in compliance with Government policy regarding the timing of payments;
- Ensuring complete and timely information on all relevant financial matters is provided to the Ministry; and
- Ensuring the Board conforms to the Ministry's requirements and delegated authority, if any, for the pre-approval of designated expenditures.

Contract Management (other than legal services)

Minister

- Ensuring the Board is provided with accurate information on current Government contract management practices in accordance with the CPPM.

Chair

- Following accepted Government contract management practices when contracting for any service.

Asset Management

Minister

- Maintaining a current record of all Board assets.

Chair

- Ensuring proper custody, management and safekeeping of all assets; and
- Establishing, maintaining and submitting an inventory of all assets annually or as otherwise required.

Risk Management

Minister

- Ensuring the indemnification of all appointees in accordance with the current Government Agencies, Boards and Commissions' Appointee Indemnity Agreement; and
- Providing assistance, as needed, in determining and implementing risk control measures appropriate to the needs of the Board.

Chair

- Developing and maintaining a Business Continuity Plan in accordance with the requirements of the *Financial Administration Act*; and
- Taking all reasonable precautions to prevent and reduce losses associated with property, personnel, revenue, liability and delivery of services due to exposure to risk.

Human Resources Management: Board Staff

Appointments and Employment

Board employees are appointed under the *Public Service Act (PSA)*. They are eligible for all of the rights and benefits accorded to them under the *PSA* and under the personnel management directives and policies of the Treasury Board and B.C. Public Service Agency (BCPSA). Members of the B.C. Government and Service Employees' Union are also entitled to the rights and benefits accorded to them under their collective agreement.

Minister

- Providing advice and assistance as requested or required in any Board reorganization and on any issues that affect human resources;
- Assisting the Board in communicating service requirements to the BCPSA with respect to:
 - Recruitment and selection;
 - Classification;
 - Labour relations;
 - Staff training and development;
 - Employee performance planning;
 - Employment equity;
 - Occupational health and safety; and
- Monitoring the Board's compliance with the personnel management directives and policies of Treasury Board and BCPSA and, where applicable, the collective agreement.

Chair

- Exercising personnel management functions and responsibilities within the guidelines set out in the *PSA*;
- Complying with the personnel management directives and policies of Treasury Board, BCPSA, where applicable, the collective agreement, and any Human Resources Service Level Agreement as it may apply to agencies, boards and commissions of the Ministry; and
- Determining whether and when to delegate personnel management, including supervisory, performance management and disciplinary functions or responsibilities to the Vice-Chair of the Board within the delegation guidelines set out in the *PSA* and the Government's personnel management policies and procedures.

Human Resources Management: Members (Adjudicators)

Appointees

Appointments to the Board are made following a merit based process in accordance with sections 2 through 7 of the *ATA*. The Chair holds an appointment as a Member and Chair by Order in Council pursuant to section 13(1) of the *P&NG Act*. Other Members are appointed by Order in Council pursuant to section 13(1) of the *P&NG Act*.

Under section 4 of the *ATA*, the Chair or the Lieutenant Governor in Council may designate the Vice-Chair, or if there is no Vice-Chair one of the other Members, as acting Chair if the Chair expects to be or is absent. Further, if there is no Vice Chair, or the Vice Chair is unwilling or unable to act, the Lieutenant Governor in Council may appoint an individual otherwise qualified to be a Member to act as Chair.

Members appointed by Order in Council are subject to Treasury Board directives (remuneration) and the policies of BCPSA (terms and conditions of appointment, benefits and other entitlements).

Minister

- As supporting agency, co-operating with the Chair in initiating, implementing and managing a merit based process for the selection and appointment of Members in accordance with the Appointment Guidelines for Administrative Boards issued by the BRDO;
- Assisting the Chair in advance in determining the composition and make-up of selection panels and any additional qualifications desirable for appointment to the Board;
- Consulting with the Chair prior to making any recommendations to Cabinet for the appointment or reappointment of Members; and
- Monitoring the Board's compliance with human resources directives and policies of Treasury Board and BCPSA.

Chair

- As lead agency, initiating, implementing and managing a merit based process for the recruitment and selection of Members in accordance with the Appointment Guidelines for Administrative Boards issued by the BRDO,
- Determining, in advance and in consultation with the Minister, the composition and make-up of selection panels and any additional qualifications desirable for appointment to the Board;

- Making recommendations to the Minister on the reappointment of Members, taking into account the performance of those Members measured against established objectives for monitoring their performance; and
- Complying with human resources directives and policies of Treasury Board and BCPSA.

Public Complaints

Minister

- Ensuring the Chair is advised of any complaint raised by a member of the public to the Minister or the Ministry with respect to the operation of the Board or the conduct of individual Members or staff and copied on all correspondence prepared in response to such complaint;

Chair

- Designing and implementing a process to respond to complaints raised by members of the public with respect to the operation of the Board or the conduct of individual Members or staff, such process to be guided by the principles of respect, clarity, consistency and timeliness;
- Through the Board website, providing information to the public on the complaint process and other mechanisms of appeal available to the public in regards to Board operations and decisions.

Information Technology

Minister

- Providing advice and business analyst services to assist the Chair in defining the Board's information technology system requirements;
- Ensuring the Chair is advised of any applicable Government and Ministry policies, e.g. Electronic Access Policy; and
- Assisting the Chair in communicating the Board's hardware and software requirements to the Central Information Technology Services (CITS) group.

Chair

- Keeping the Minister apprised of the Board's information technology systems requirements; and
- Complying with applicable government and Ministry policies.

Records Management

The retention and disposal of government documents is regulated in accordance with the *Document Disposal Act (DDA)*. Whether or not the *DDA* applies to the Board, the parties agree to comply with the spirit and intent of the *DDA* with respect to the retention and disposal of documents of the Board.

Minister

- Ensuring the Chair is provided with the Government Administrative Records Classification System (ARCS) and the Operational Records Classification System (ORCS);
- Providing any required ARCS/ORCS training;
- Ensuring the Chair is advised of any changes to the Government Administrative Records Classification System (ARCS) and the Operational Records Classification System (ORCS) that affect the Board; and
- As needed, providing advice to the Chair on initial set-up of their ARCS/ORCS filing system and providing assistance in ongoing file management.

Chair

- Maintaining any and all records relating to the Board's work including legal, financial, administrative, contractual and general operational responsibilities;
- Ensuring records are dealt with as required in the Government's Administrative Records Classification System (ARCS) and the Operational Records Classification System (ORCS); and
- Advising the Minister of the Board's records requirements.

Freedom of Information

The *Freedom of Information and Protection of Privacy Act (FOIPPA)* establishes information and privacy rights for British Columbians. *FOIPPA* sets out a process by

which citizens can access government records and establishes guidelines for the protection of personal information held by the Government.

In general, *FOIPPA* applies to ministries of the provincial government and their associated agencies, Crown Corporations, local governments and self-governing professions. Specific bodies covered by *FOIPPA* are set out in Schedule II to the Act, which forms part of the legislation. Except for the exclusion of certain records in accordance with s. 61(2) of *ATA*, the Board is governed by *FOIPPA*.

Minister

- Supporting the Chair in understanding the Board's obligations under *FOIPPA*; and
- At the Chair's request, providing assistance to the Board in responding to requests for information.

Chair

- Subject to section 61 of the *ATA*, collecting, using, disclosing and disposing of records in accordance with the provisions of *FOIPPA*; and
- Responding, as required and subject to section 61 of the *ATA*, to requests for information under *FOIPPA*.

Facilities

Minister

- Assisting the Chair in determining the Board's requirements for facilities;
- Maintaining appropriate links with British Columbia Buildings Corporation (BCBC) regarding the facilities requirements of the Board; and
- Providing assistance to the Chair to ensure that Board's facilities needs are met in a cost-effective, timely and efficient manner.

Chair

- Apprising the Minister and the BCBC of the Board's requirements for facilities in a timely manner.

Policy, Research and Legislation

Minister

- Ensuring, subject to Cabinet direction and where appropriate, the Chair is advised of and has an opportunity to comment on proposed amendments to legislation, regulations or government policy relevant to the Board, prior to the changes being introduced or adopted.

Chair

- Informing the Minister about issues involving the Board that may affect the government's policy or strategic direction;
- Communicating with the Minister about the Board's needs for Ministry support of research, consultation and policy analysis; and
- Ensuring the Board's views about proposed changes to relevant legislation, regulations or government policy are communicated to the Minister in a timely manner.

Communications and Consultation

Minister

- Gathering input from the Chair concerning the Board's communications requirements; and
- As needed or requested, providing advice to the Chair on communications activities.

Chair

- Providing the Minister with the Board's public communications plans;
- Advising the Minister, in advance, of planned communications activities including press releases, press conferences, publications and special events, other than those related to the release of a decision of the Board; and
- Providing the Minister with advance copies of Board publications including annual and special reports, other than decisions of the Board.

Legal Services

The Ministry of Attorney General acts as legal counsel for the Board. Should any additional services be required, the following responsibilities apply:

Minister

- Providing the Chair with copies of the current Legal Services Branch tariff of fees and billing guide.

Chair

- Ensuring any legal fees paid by the Board are paid in accordance with the most current tariff of fees for legal services established by the Legal Services Branch, Ministry of Attorney General, unless the Chair is authorized, in advance in writing, to enter into a different agreement by the Minister or a person designated by the Minister.

Part 5 – Signatures

SIGNED AT _____, BRITISH COLUMBIA,

THIS _____ DAY OF SEPTEMBER, 2005

Honourable Richard Neufeld
Minister of Energy, Mines and
Petroleum Resources

Mr. Paul Love
Chair, Mediation and Arbitration
Board