

Government of Newfoundland and Labrador

Municipal Infrastructure

Dispute Resolution Terms of Reference

A joint committee between:

Department of Transportation and Infrastructure

Association of Consulting Engineering Companies – Newfoundland and Labrador

Heavy Civil Association of Newfoundland and Labrador

Version 2.0

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1 Introduction & Objectives

This dispute resolution process is available to either party of a contract funded by Provincial Government Municipal Infrastructure Programs. The objectives of the dispute resolution process are:

- i. to avoid unnecessary confrontation and minimize legal / judicial proceedings,
- ii. to promote cooperation and teamwork amongst project participants,
- iii. to facilitate the completion of projects on time and within budget,
- iv. to provide a format to resolve disputes in a professional manner based on the specifications and drawings forming part of the contract, this involves all tender documents, tender amendments, and contract change orders,
- v. to settle disputes based on peer judgement; and
- vi. To settle disputes in a timely manner.

2 Eligibility

1. To avail of this Dispute Resolution Process, the parties of the contract must:
 - a. be a member of the supporting associations, namely the Association of Consulting Engineering Companies – Newfoundland and Labrador (ACEC-NL) or the Heavy Civil Association if Newfoundland and Labrador (HCANL)
 - b. not have already initiated legal proceedings pertaining to the contract.
2. The project must be funded, or cost shared, by the Government of Newfoundland and Labrador.

3 Limitations

1. A valid dispute may involve interpretation of the contract documents but cannot involve a legal matter.
2. Claims must be presented for the Dispute Resolution process not later than three (3) months after Substantial completion.
3. All parties must be willing to participate in the process.

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4 Fees

1. An application fee, payable by the claimant must accompany the claim submission.
2. The fee amount is divided equally between the four (4) board members from ACEC-NL and HCANL. The fee will be reviewed on an annual basis and is subject to change.
3. Contact the ACEC-NL and HCANL for the current fee schedule.

5 Dispute Resolution Committee Members

5.1 Chairperson

1. Appointed by the Municipal Infrastructure Division, and is normally the director of the Division unless there is a real or perceived conflict.
2. Reviews all submissions for consideration and rejects those that fall beyond the scope of the Dispute Resolution Committee.
3. Ensures that all parties involved in the dispute receive the information submitted pertaining to their dispute.
4. Chairs all meetings.
5. Prepares written decisions in conjunction with other members.
6. Renders a decision on the dispute in the event that a consensus cannot be reached by the voting committee members.
7. Ensures all decisions are sent to all parties concerned.

5.2 Consultant Representatives

1. Two (2), shall be appointed by ACEC-NL.
2. Shall be professional engineer (P. Eng.), currently registered with the Professional Engineers and Geoscientists of Newfoundland and Labrador and practicing in the discipline of the dispute.
3. Shall disclose any potential or perceived conflict of interest.
4. Shall have no current contractual arrangement with either party of the dispute.
5. Assists in the appointment of alternates in conjunction with ACEC-NL where there exists a geographical, business or personal conflict.
6. Reviews all submissions for consideration.

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7. Attends all meetings.
8. Registers a vote on the dispute presented.
9. Assists chairperson with written decision in conjunction with other members.

5.3 Contractor Representatives

1. Two (2), shall be appointed by HCANL
2. Shall disclose any potential or perceived conflict of interest.
3. Shall have no current contractual arrangement with either party of the dispute.
4. Assists in the appointment of alternates in conjunction with HCANL where there exists a geographical, business or personal conflict.
5. Reviews all submissions for consideration.
6. Attends all meetings.
7. Registers a vote on the dispute presented.
8. Assists chairperson with written decision in conjunction with other members.

5.4 Secretary

1. One (1), in all cases the secretary will be the Regional Engineer of the Municipal Infrastructure Division for the area where the work is occurring, or occurred, or as appointed by the Chairperson.
2. The secretary does not have a vote.
3. The secretary shall be permitted to answer questions from the committee and provide clarification when requested, but is otherwise not permitted to discuss items not presented by either party.
4. Can request clarifying information or documentation of either party prior to the dispute resolution meeting. This information will then be shared with all parties and committee members.
5. Notifies all parties involved of meeting times.
6. Attends all meetings.
7. Distributes information as necessary and records and distributes meeting summary including any decision(s) reached.
8. Assists chairperson with written decision in conjunction with other members.

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6 Dispute Resolution Process

6.1 Submission of Dispute Claim by the Claimant

1. A Claimant may submit a Dispute Claim to their respective association.
2. All submissions by a contractor must be sent through HCANL:

Manager
Heavy Civil Association of Newfoundland and Labrador
P. O. Box 23038
St. John's, NF A1B 419

3. All submissions by a consultant must be sent through ACEC-NL:

President
Association of Consulting Engineering Companies - Newfoundland and Labrador
P. O. Box 13172
St. John's, NF A1B 4A4

4. All submissions must be in writing, and contain seven (7) printed copies and one PDF.
5. Claim submissions must be contained in a binder organized (labeled, tabbed) in a manner to ease the review by all committee members.
6. The claim submission must give the arguments in detail and provide all necessary back up documentation to support the claim. Supporting documentation may include, but is not limited to, photos, letters, emails, or references to contractual terms or drawings.
7. Claims made without supporting documentation will be rejected.

6.2 Determination of Validity of Claim

1. The Chairperson will review the dispute claim submission. The claimant will be notified of the validity or rejection of the claim within fifteen (15) business days.

6.3 Formation of the Dispute Resolution Committee

1. If the claim is considered to be valid, the Dispute Resolution Committee will be formed within five (5) business days after determination of the claims validity.
2. A request will be made to both ACEC-NL and HCANL for the appointment of their representatives.

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6.4 Distribution of Dispute Claim Documents

1. Within five (5) business days of the Committee's formation, copies of the Dispute Claim submission will be provided to the committee members and to the respondent by the Secretary.

6.5 Response to the Dispute Claim

1. A copy of the Dispute Claim will be provided to the Respondent for a written response to the Chairperson within fifteen (15) business days from date of issue.
2. All submissions must be in writing, and contain seven (7) printed copies and one PDF.
3. The Respondent may be the contract owner or their representative.
4. Response submissions must be contained in a binder organized (labeled, tabbed) in a manner to ease the review by all committee members.
5. The Response submission must provide all necessary back up documentation to support the response. Supporting documentation may include, but is not limited to, photos, letters, emails, or references to contractual terms or drawings.
6. The response submission must be provided to the secretary of the committee for distribution.

6.6 Distribution of Dispute Claim Response

1. Within five (5) business days of receiving the Dispute Response submission, copies will be distributed to the committee members and the Claimant by the Secretary.

6.7 Dispute Resolution Meeting

1. A dispute resolution committee meeting will be held within fifteen (15) business days of receipt of the Dispute Claim Response documents.
2. Once the meeting date has been set, no further documentation or changes will be accepted unless requested by the committee.
3. At the meeting the parties affected will be given an opportunity to provide a presentation of not more than forty-five (45) minutes. The presentation is to supplement the written submission. This will be done in the absence of the opposing party.
4. Neither party is permitted to present new information or documentation at the meeting.
5. Distribution of documents during the meeting will not be accepted.

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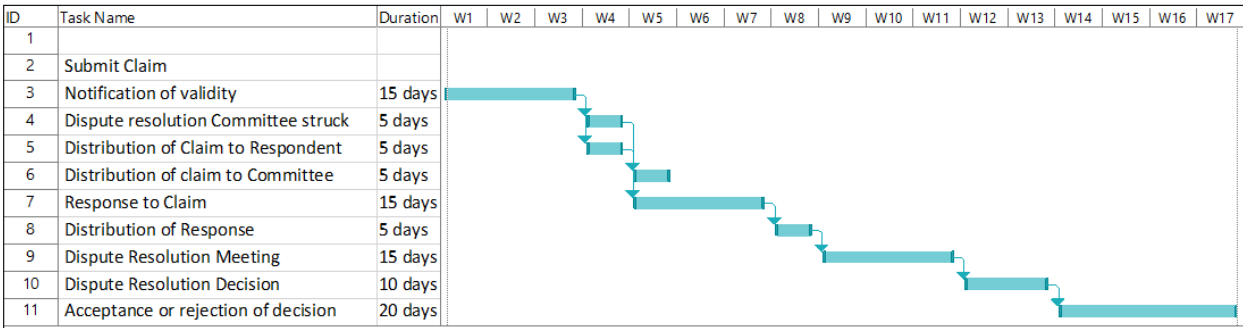
6. The Dispute Resolution Committee members may ask any clarifying questions for response by the presenter.
7. Only parties affected by the decision can attend to present their case, limited of 2 representatives.
8. It is intended that this Committee meet without the presence of legal advisors or outside "experts".
9. The Committee reserves the right to interview specialists if requested by one of the parties and, if it is decided by the Committee to be necessary to make an informed decision.

6.8 Decision

1. All decisions will be arrived at by majority vote. In the event that a tie in the vote occurs, the Chairperson shall issue the deciding vote.
2. Claimants and Respondents will be notified of the decision(s) by the Chairperson within ten (10) business days of the meeting, or as soon as possible thereafter if unforeseen circumstances do not permit this.
3. Any and all decisions are non-binding, non-precedent setting, and without prejudice.
4. The decisions or outcomes of Dispute Resolution will be provided to ACEC-NL and HCANL for distribution as they deem appropriate.
5. Parties to the dispute are expected to accept or reject the Committee’s decision(s) within twenty (20) business days of the decision notification unless mutually agreed between the parties.

7 Schedule

1. This schedule reflects the timelines in this document. Specific claims may progress at a different schedule depending on complexity, availability of committee members, or extenuating circumstances.



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1. All parties understand that any submission made to, or in response to, a dispute claim is done so under the terms of the Access to Information and Protection of Privacy Act. SNL2015 CHAPTER A-1.2 - ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT, 2015 (assembly.nl.ca).