

PRACTICE DIRECTION

COPY

NORTHERN FLOOD AGREEMENT

The following were determined at a meeting of counsel for all parties with the Arbitrator in Chambers on October 24, 1983.

1. The ordinary practice should in the future be that notice of any application to the Arbitrator shall be given in writing to counsel for each party involved not less than ten days in advance of the date upon which the application is to be heard. However, an application may be made to the Arbitrator on short notice where appropriate in all of the circumstances. Where dates have been set in advance for arbitration purposes, all counsel will be expected to reserve those dates until the period for regular notice in respect of each date has expired without notice being received.

2. Any party may apply to the Arbitrator for direction concerning the holding of a pre-trial conference or other proceedings for the purpose of facilitating the disposition of any claim or matter.

3. It is necessary to expedite the filing of Points of Defence, the provision of particulars and the production of documents. The provisions of Rule III(1) in respect of Points of Defence are drawn to the attention of counsel. No time is limited by the Rules for the provision of particulars or production of documents. Where these are not provided within a reasonable time, application may be made to the Arbitrator for such order as may be deemed appropriate in the circumstances.

OCT 27 1983

FOR DISCUSSION PURPOSES

N.F.A. MEDIATION: PRINCIPLES AND PROCEDURE

Principles:

- A. It is desirable that claims and matters in dispute relating to, or arising out of, the Northern Flood Agreement ("disputes") should be settled in a timely fashion on the basis of mutual acceptability through a process of negotiation ("implementation negotiations") so as to make unnecessary their adjudication through a process of formal proceedings before the Arbitrator.
- B. To the extent that the Arbitrator, with the consent of the parties, is prepared to participate in a mediation role, his participation as a mediator in the process of negotiation should be utilized to assist the parties in achieving and expediting the settlement of disputes.
- C. Any party may request the Arbitrator to mediate a dispute ("request to mediate") and if all parties consent to such a request to mediate, the Arbitrator may so act.

Procedure:

- (1) The Arbitrator, in his absolute discretion, may accept or decline a request to mediate.
- (2) Implementation negotiations involving the participation of the Arbitrator as a mediator shall be on a "without prejudice" basis.
- (3) Any party, by written notice to the Arbitrator and the other parties, may, at any time and for any reason, withdraw its consent to the participation of the Arbitrator as a mediator in the negotiation of any dispute. The mediation by the Arbitrator in that negotiation shall terminate immediately upon receiving such notice.
- (4) As long as he has the consent of all parties, the Arbitrator shall attempt to mediate a settlement in respect of disputes for which he has received a request to mediate. If he considers that his participation as a mediator is not helpful in assisting the parties in reaching a settlement in respect of any dispute, or that any dispute is not amenable to a negotiated settlement, he shall notify the parties to this effect and withdraw from further mediation in respect of that dispute. The withdrawal of the Arbitrator is not to be construed as preventing the parties from continuing to negotiate in respect of that dispute.
- (5) Participation in the mediation process by the parties shall be on the basis that nothing said or done by the Arbitrator, or said or done in his presence, in the course of his participation as a mediator, may be raised or relied upon by any of the parties before the Arbitrator, or in any Court, as relevant in any subsequent proceeding, or as grounds for disqualifying the Arbitrator from hearing and deciding disputes in respect of which he has participated as a mediator or from hearing and deciding any other claims or matters in dispute referred to him as the Arbitrator.