

# Arbitration group - Just Decision

## ARBITRATION CODE

### Section 1 - Request for arbitration

**Article 1** Any dispute relating to a decision of the administrator concerning a claim or the refusal or cancellation of the membership of a contractor falls under the exclusive jurisdiction of the arbitrator designated under the Regulations.

May request arbitration, any interested party:

- 1 - *for a complaint*: the beneficiary or the contractor;
- 2 - *for a membership*: the contractor.

The request for arbitration concerning the cancellation of a contractor's membership does not suspend the execution of the administrator's decision unless the arbitrator decides otherwise.

**Article 2** The request for arbitration must be sent to GAJD within 30 days of receipt by registered post of the decision of the administrator or, where applicable, of the opinion of the mediator establishing the total or partial failure of mediation.

**Article 3** Upon receipt of a request for arbitration, the GAJD notifies the other interested parties and the administrator.

Upon receipt of this notice, the administrator transmits the file relating to the decision which is the subject of the arbitration to GAJD.

The GAJD transmits to the arbitrator the administrator's file relating to the decision which is the subject of the arbitration and the documents produced by the interested parties so that the arbitrator has the most complete file possible.

### Section 2 - Appointment of the arbitrator

**Article 4** The GAJD sees to the appointment of the arbitrator from a list of people previously drawn up by it and sent to the Régie du bâtiment du Québec. This list is made up of natural persons with experience in guarantee plans or professional training in matters relating to the questions raised by the arbitration, in particular in finance, accounting, construction technology or law. The arbitrators registered on this list are bound to respect the GAJD code of ethics.

**Article 5** Upon appointment of the arbitrator, the GAJD gives the interested parties a non-technical document on the arbitration procedure which will be followed during the hearing of the dispute.

### Section 3 - Recusal and removal of the arbitrator

**Article 6** The arbitrator who knows a valid cause for recusal in their person is bound, without waiting for it to be proposed, to declare it in writing.

**Article 7** An interested party, who has grounds for recusal against the arbitrator, must immediately declare it in writing by contacting the GAJD. The GAJD, after having informed in writing any other interested party and the arbitrator whose recusal is requested, decides on the request, unless the arbitrator concerned has consented to recuse themselves in writing. The GAJD's decision on the recusal is final and cannot be appealed.

**Article 8** If the arbitrator is unable to fulfil their task or does not perform their duties within the time limits set, an interested party or the administrator may contact the GAJD to obtain the revocation of the mandate of this arbitrator. The GAJD's decision on the dismissal of the designated arbitrator is final and cannot be appealed.

**Article 9** In the event of the recusal, revocation, death or incapacity of an arbitrator, the GAJD replaces them with a new arbitrator who decides to resume or continue the hearing. The new arbitrator must act within the time limits prescribed in the Regulations.

## **Section 4 - Hearing**

**Article 10** The hearing of the request for arbitration must begin within 30 days or 15 days of its reception, depending on whether the request relates to a claim by an interested party or the membership of a contractor.

**Article 11** The arbitrator shall give the interested parties and the administrator or their representatives at least 5 days written notice of the date, time and place of the hearing and, where applicable, notice of the date where they will inspect the goods or visit the premises.

## **Section 5 - Procedure for Arbitration**

**Article 12** Before the hearing begins, the arbitrator may hold a pre-hearing telephone conference during which each of the parties makes a summary of the facts and gives their views on their claims and those of the other party. On this occasion, each party informs the arbitrator of the names of the ordinary witnesses or expert witnesses whom they wish to call to testify to declare what they know, to produce a document or for the two (2) objects at the same time.

**Article 13** At the request of a party, the arbitrator shall summon a witness, unless they are of the opinion that the request for summons is blatantly futile.

**Article 14** At the pre-hearing conference, the arbitrator shall inform the parties of the procedure and the method of proof which they consider appropriate in light of the dispute submitted to them, as well as the hearing time available to each party.

**Article 15** At the hearing, each party calls its witnesses, files the documents that are relevant and presents its arguments within the time allotted to it.

However, the following questions are referred to the ordinary courts:

- imposition of a precautionary measure against a third party;
- issue of a warrant against a witness who is compelled to testify and who refuses to appear at the hearing;
- recalcitrant witness;
- homologation of the arbitrator's award.

**Article 16** In the exercise of their functions, the arbitrator may conduct the interrogation themselves and attempt to reconcile the interests of the parties.

Before or during the hearing, an interested party or the administrator may request the measures necessary to ensure the conservation of the building.

## **Section 6 - Arbitrator's decision**

**Article 17** The arbitrator rules in accordance with the rules of law; they also appeal to fairness when the circumstances justify it.

**Article 18** The arbitrator's decision is written and reasoned; it is sent to the interested parties and to the administrator within 30 or 15 days of the date of the end of the hearing, depending on whether the decision concerns a claim by a party or the membership of a contractor. Copy of the award is sent to GAJD.

**Article 19** Interested parties may, by consent, agree with the arbitrator on an additional deadline for rendering the decision.

**Article 20** If the arbitrator is informed before the hearing or before their decision is rendered of the total or partial settlement or of the withdrawal of a request before them, they shall note this in an arbitral decision which they will send to the interested parties and to the administrator, as well as a copy to GAJD.

**Article 21** The arbitral decision is final and cannot be appealed.

**Article 22** The arbitral decision, as soon as it is rendered, binds the interested parties and the administrator.

**Article 23** The arbitral decision may only be enforced after having been approved in accordance with the procedure provided for in articles 946 to 946.6 of the Code of Civil Procedure (LRQ, c. C-25).

**Article 24** The GAJD keeps the arbitration files for two (2) years from the filing of the arbitral decision or, in the case of a judicial review of this decision, until the final judgment of a court of justice by disposing of it.

**Article 25** The GAJD annually publishes a collection of arbitral decisions rendered in accordance with the Regulations.

## **Section 7 - Arbitration costs**

**Article 26** The costs of arbitration are shared equally between the administrator and the contractor when the latter is the claimant.

When the claimant is the beneficiary, these costs are borne by the administrator unless the beneficiary succeeds in none of the aspects of their claim, in which case the arbitrator separates these costs.

**Article 27** The arbitrator must decide, if necessary, as to the quantum of the reasonable costs of the relevant expert opinions which the administrator must reimburse to the claimant when the latter wins the case in whole or in part.

However, this article does not apply to a dispute concerning the membership of a contractor.

**Article 28** The expenses incurred by the interested parties and the administrator for the holding of the arbitration shall be borne by each of them.

**Article 29** Once the arbitral award has been rendered, the GAJD draws up an account of the costs of the arbitration for payment. This account includes:

- GAJD fees according to the pricing grid appearing in the appendix;

- the fees of the arbitrator fixed by the GAJD according to the pricing grid appearing in the appendix;
- travel and subsistence expenses of the arbitrator, if applicable;
- room rental fees and other related costs;
- costs of summoning witnesses;
- other costs approved by the parties. These costs should only be due on an exceptional basis and notice should be given at the time of the appointment of the arbitrator.

**Article 30** The GAJD transmits the account of the costs of the arbitration to each party which is responsible for discharging part or all of the said account.

## APPENDIX 1

### **The rate structure for arbitration under the Regulation respecting the guarantee plan for new residential buildings was adopted by the Régie du bâtiment du Québec on 1st March 2006.**

*It is compulsory for all authorized arbitration bodies.*

*Reminder of Article 123 of the Regulation:*

"The costs of the arbitration are shared equally between the administrator and the contractor when the latter is the claimant".

"When the claimant is the beneficiary, these costs are borne by the administrator unless the beneficiary wins on any aspect of their claim, in which case the arbitrator separates these costs".

#### **1. FEES OF THE ARBITRATION BODY**

A fee of \$450.00 is claimed from the administrator for the management of each file. The disbursements and concomitant costs are in addition (e.g. room rental, photocopies, messaging, faxes). In the event of withdrawal of the request for arbitration, if the withdrawal, at the request of the parties, is not recorded in an arbitral award, the costs are limited to \$150.00.

#### **2. ARBITRATOR FEES**

2.1 Hourly rate: \$140.00

2.2 Calculation of fees

Subject to the maximum amounts provided for in article 2.3:

2.2.1 The arbitrator is entitled to fees at the rate fixed in article 2.1 for each actual hour worked for the preparation, the pre-hearing conference with the parties, the hearing, the deliberation and the drafting of a decision;

2.2.2 For each day of hearing held, the arbitrator is entitled to a minimum remuneration equivalent to three (3) hours of fees at the rate fixed by article 2.1;

2.2.3 As compensation in the event of withdrawal of the request for arbitration (with or without a settlement) or postponement of the date of the hearing at the request of a party, less than 30 days before the date of the hearing, the arbitrator is entitled to 3 hours of fees at the rate fixed by article 2.1.

2.3 The maximum of the fees allowed under articles 2.1 and 2.2 is the lesser of the following three (3) amounts:

- Fees, at the hourly rate fixed in article 2.1, according to the actual hours worked for the preparation, the hearing, the deliberation and the drafting of a decision;

- Maximum fees authorized according to the estimated value of the claim, according to the following categories:

<b>Estimated value of the claim</b>	<b>Maximum authorized fees for the arbitrator</b>
\$1 to \$7000	\$2200
\$7001 to \$15,000	\$3300
\$15,001 to \$30,000	\$5500
\$30,001 to \$60,000	\$6600
\$60,000 and more	No Maximum
Contractor's membership file	No Maximum

- Fees, at the hourly rate fixed in article 2.1, according to the actual hours worked for the preparation, the hearing, the deliberation and the drafting of a decision;

### **3. OTHER ELIGIBLE FEES**

The arbitrator is entitled to reimbursement of the actual room rental costs incurred for a hearing and the actual concomitant costs (e.g.: photocopies, messaging, faxes, etc.)

### **4. TRAVEL AND SUBSISTENCE**

- No allowance or travel or subsistence costs for distances less than 80 km from the home base;
- Travel and subsistence: Treasury Board standards applicable for travel and subsistence costs (T.B. 194603 of March 30 2000 and its modifications related to the travel costs of persons hired for fees by the Government of Quebec);
- Allowance: For distances greater than a radius of more than 80 km from the home base, travel time is remunerated at the rate of \$90.00 per hour for the arbitrators.

### **5. CASE OF RECUSAL**

No fees or costs are claimed for cases where the arbitrator is recused. However, in the case of a well-known and late reason for recusal, the fees and costs incurred are shared by the arbitrator.

When there is no recusal of the arbitrator, the costs and fees incurred by examining the recusal request follow the merits and are shared upon the decision rendered on the merits.

### **6. NOTIFICATION OF INTERESTED PARTIES**

At the time of the request for arbitration, interested parties are duly informed of all costs, fees and allowances relating to the request (including, among others, those for travel, stay, provisions if necessary, withdrawal of the appeal and the request for recusal), as well as the provisions of the regulations as regards cost sharing.

## **7. PROVISION FOR COSTS**

The following minimum rules apply when the arbitration company requests a provision for payment of its costs or of the arbitrator's fees:

- The provision may not exceed the maximums provided in this pricing grid.
- If the applicant is the contractor: the provision is payable in equal parts by the contractor and by the administrator.
- The sums are kept in a trust account.
- Following the decision, the sums overpaid are reimbursed.
- In no case may the body retain the decision.

## **8. GAJD NOTE**

- If the claimant is the contractor: they transmit to the Centre, together with their request for arbitration, the estimated value of their claim.