

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES  
WASHINGTON, D.C.**

IN THE ARBITRATION PROCEEDING  
UNDER CHAPTER ELEVEN OF THE NAFTA  
AND THE ICSID ARBITRATION (ADDITIONAL FACILITY) RULES  
BETWEEN:

**MOBIL INVESTMENTS CANADA INC. AND MURPHY OIL CORPORATION  
(CLAIMANTS)**

AND

**CANADA  
(RESPONDENT)**

**(ICSID CASE NO. ARB(AF)/07/4)**

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MINUTES OF THE FIRST SESSION OF THE ARBITRAL TRIBUNAL WITH THE PARTIES

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Date: May 6, 2009  
Venue: Debevoise & Plimpton LLP,  
919 Third Avenue, New York, NY

The first session of the Arbitral Tribunal was held on May 6, 2008, at offices of Claimants' counsel, Debevoise & Plimpton LLP, at 919 Third Avenue, New York, New York 10022, starting at 1:05 p.m. Present at the session were:

Members of the Tribunal

1. Professor Hans van Houtte, *President*
2. Professor Merit E. Janow, *Arbitrator*
3. Professor Philippe Sands QC, *Arbitrator*

ICSID Secretariat

4. Mr. Marat Umerov, *Secretary of the Tribunal*

Attending on behalf of the Claimants

5. Mr. David W. Rivkin, *Partner, Debevoise & Plimpton LLP*
6. Ms. Shubhra Shivpuri, *Associate, Debevoise & Plimpton LLP*
7. Ms. Toni Hennike, *Coordinator – International Investments and Arbitration, Law Department, Exxon Mobil Corporation*
8. Ms. Anna Taylor Knull, *Attorney – International Investments and Arbitration, Law Department, Exxon Mobil Corporation*
9. Mr. Johannes Fraende, *International intern, Debevoise & Plimpton LLP*

Attending on behalf of the Respondent

10. Ms. Sylvie Tabet, *Deputy Director, Trade Law Bureau*
11. Mr. Nick Gallus, *Counsel, Trade Law Bureau*
12. Ms. Carolyn Elliott-Magwood, *Counsel, Trade Law Bureau*
13. Ms. Melissa Perrault, *Paralegal, Trade Law Bureau*
14. Mr. Mark Luz, *Trade Law Bureau*

The session considered matters listed in the Provisional Agenda circulated by the Secretariat prior to the meeting (attached to these Minutes as Annex 1). The session also considered matters addressed in the draft joint procedural order filed by the parties on April 29, 2009 (attached to these Minutes as Annex 2), as well as in the draft joint Confidentiality Order filed by the parties also on April 29, 2009 (the Confidentiality Order adopted at the session is attached to these Minutes as Annex 3). The Agenda and the draft orders, formed the basis of discussions at the session.

## **I. Procedural Matters**

### **Opening of the Session**

The President of the Tribunal (the President) opened the session by asking the parties to introduce the persons attending the session. Mr. Rivkin introduced the persons attending on behalf of the Claimants, as listed above, and Ms. Tabet introduced the persons attending on behalf of the Respondent, as listed above. Mr. Rivkin conveyed apologies from Mr. Barton Legum, counsel for the Claimants, and Mr. Walter Compton, representative of Murphy Oil Corporation, for not being able to attend the session.

The President then inquired whether either party wished to add any item to the provisional Agenda previously circulated by the Secretary. Upon both Parties' confirming that they had no items to add, the Agenda was adopted.

The President conducted the session by going through the Agenda and except as otherwise indicated, adopting the agreements of the parties on the various items, as recorded in their draft joint procedural order. In the event of any inconsistency between these minutes and the parties' draft joint procedural order, the minutes will prevail.

#### **1. Constitution of the Tribunal and the Tribunal Members' Declarations** (NAFTA Articles 1123 and 1125; Arbitration (Additional Facility) Rules, Article 13)

The President noted that the Tribunal had been constituted on March 9, 2009, and that it had been properly constituted in accordance with Chapter 11 of the NAFTA and the applicable ICSID Arbitration (Additional Facility) Rules. Copies of the declarations signed by the three arbitrators pursuant to Article 13 of the Rules had been provided to the parties in advance of the meeting by the Centre. Additional copies were provided to the parties at the session.

The following agreements of the parties, set out in their April 29, 2009 draft joint procedural order, page 2, were noted:

2. The disputing parties agree and confirm that the Arbitral Tribunal has been duly constituted in accordance with Article 1123 of the NAFTA.
3. Declarations of the Members of the Tribunal as to their independence have been provided to the disputing parties in the form required by Article 13 of the ICSID Arbitration (Additional Facility) Rules.
4. The disputing parties confirm that they waive any possible objection to the constitution of the Arbitral Tribunal and to the appointment of the Arbitrators on the grounds of conflict of interest and/or lack of independence or impartiality in respect of matters known to them at the date of signature of this Procedural Order.

#### **2. Representation of the Parties** (Arbitration (Additional Facility) Rules, Article 26)

The following information provided by the parties in their April 29, 2009 draft joint procedural order, pages 3–5, was noted:

6. The Claimants are represented by:

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7. The Respondent is represented by:

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3. **Applicable Arbitration Rules** (Arbitration (Additional Facility) Rules, Articles 1, 28(2) and 35; NAFTA Article 1120)

The following agreement of the parties, set out in their April 29, 2009 draft joint procedural order, page 5, was noted:

11. The applicable arbitration rules are the ICSID Arbitration (Additional Facility) Rules, as amended April 2006 (ICSID/11 April 2006), except to the extent that they are modified by Section B of NAFTA Chapter 11.

4. **Fees and Expenses of the Tribunal Members** (Administrative and Financial Regulations, Regulation 14; ICSID Schedule of Fees; Memorandum on the Fees and Expenses of ICSID Arbitrators)

It was confirmed that the Members of the Tribunal shall be entitled to receive the fees, per diem subsistence allowances, travel and other expense reimbursements referred to in Administrative and Financial Regulation 14(1). Each Member of the Tribunal shall receive:

- (a) a fee of US\$3,000 (three thousand US dollars) for each day of meetings or each eight hours of other work performed in connection with the proceeding or *pro rata*; and
- (b) subsistence allowances and reimbursement of travel and other expenses within limits set forth in ICSID Administrative and Financial Regulation 14.

5. **Advance Payments to the Centre** (Administrative and Financial Regulation 14)

It was noted that the Centre had, under cover of a letter of March 10, 2009, requested that each party pay a sum of US\$100,000 (one hundred thousand United States dollars) to defray the costs of the proceeding during its first three to six months.

The President noted that the payments were received from the Claimants and from the Respondent.

6. **Apportionment of Costs** (Arbitration (Additional Facility) Rule 58; Administrative and Financial Regulation 14)

The following agreement of the parties, set out in their April 29, 2009 draft joint procedural order, page 9, was noted:

- 23. Without prejudice to the final decision of the Arbitral Tribunal regarding costs, the Claimant and the Respondent agree to share equally advance payments for the Arbitral Tribunal.

7. **Records of Hearings** (Arbitration (Additional Facility) Rules, Article 28(1)(g))

The following agreements of the parties, set out in their April 29, 2009 draft joint procedural order, pages 9–10, were noted:

- 24. Oral hearings before the Arbitral Tribunal shall be transcribed. Procedural or organizational meetings with the Arbitral Tribunal may be transcribed or recorded.
- 25. Live Note transcription software, or comparable software, shall be used to make the hearing transcripts instantaneously available to the disputing parties and Members of the Arbitral Tribunal in the hearing room. The disputing parties further agree that transcripts of proceedings should be made available on a same

day service basis, except for one-day or procedural hearings, which may have a slower transcription.

26. The Arbitral Tribunal shall establish, as necessary, procedures and schedules for the correction of transcripts. In the event of disagreement between the disputing parties on corrections to transcripts, the Arbitral Tribunal shall determine whether or not any such corrections are to be adopted.

It was further agreed that the Secretary shall keep summary minutes of all sessions.

8. **Means of Communication** (Administrative and Financial Regulations, Regulation 24) and
9. **Copies of Instruments** (Arbitration (Additional Facility) Rules, Articles 31, 32 and 28(1)(d))

The President reminded the parties of Regulation 24 of the ICSID Administrative and Financial Regulations, according to which the Centre is the channel for written communications between the parties and the Tribunal.

The parties proposed that they send all the communications meant for the Tribunal directly to its Members, in the same way as each of the parties has done in certain other arbitration proceedings.

Upon further consultation with the parties and having deliberated, the Tribunal confirmed that for all communications with the Tribunal, the only channel shall be the Centre. Without prejudice to this rule, it was agreed that 1) the parties may exchange communications and written submissions directly with each other, 2) they will send *hard copies* of the memorials and pleadings directly to each member of the Tribunal at the addresses specified below, and 3) in exceptional instances, the parties may communicate directly with the Tribunal, by email, at [hans.vanhoutte@law.kuleuven.be](mailto:hans.vanhoutte@law.kuleuven.be), [mj60@columbia.edu](mailto:mj60@columbia.edu), [philippesands@matrixlaw.co.uk](mailto:philippesands@matrixlaw.co.uk), [mumerov@worldbank.org](mailto:mumerov@worldbank.org). A hard copy of any such exceptional direct communication shall also be promptly provided to the Secretary.

#### ***Electronic copies***

Brief administrative or procedural correspondence shall be transmitted to the Secretary by email only.

It was agreed that the parties shall send directly to each other all correspondence and submissions, including memorials and pleadings (with indexes of exhibits or attachments), by email simultaneously to opposing counsel to the email addresses below and to the Secretary at the email address indicated below, on the date the submission is due.

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***Hard copies***

In accordance with the Tribunal's request, hard copies of the memorials and pleadings shall be double-sided on A5-size paper, bound between soft covers with spiral / wire binding.

Together with the hard copies of the memorials or pleadings, each party shall also provide digital copies thereof, including witness statements, expert reports, documentary exhibits and legal authorities, on a CD-Rom or an USB drive.

One hard copy of memorials and pleadings shall be sent by overnight delivery service to the address noted above to David Rivkin for the Claimants, Nick Gallus for the Respondent.

One hard copy of memorials and pleadings shall be sent by courier service directly to each of the Members of the Tribunal at the addresses specified below and two hard copies shall be sent by courier service to the Secretary at the address specified below.

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The date of receipt of an official submission or of a communication shall be the date of the receipt of the electronic version by the Secretary of the Tribunal, provided that where memorials or pleadings are filed, the parties shall dispatch a complete written submission, including documentary evidence, no later than the date following the filing of the electronic version.

It was agreed that after the filing of the last memorial or pleading the parties shall provide to the Tribunal and the Secretary electronic core bundle of all the documents submitted in the course of the proceeding.

10. **Presence and Quorum** (Arbitration (Additional Facility) Rules, Articles 22(2) and 28(1)(a))

The following agreement of the parties, set out in their April 29, 2009 draft joint procedural order, page 6, was noted:

16. The presence of all three members of the Arbitral Tribunal shall constitute a quorum, unless otherwise agreed by the parties.

11. **Procedural Languages** (Arbitration (Additional Facility) Rules, Articles 30 and 28(1)(b))

The following agreements of the parties, set out in their April 29, 2009 draft joint procedural order, pages 5–6, were noted:

12. The arbitration shall be conducted in English.

13. All documentary evidence in a language other than English shall be translated to English by the disputing party submitting that evidence. Witness testimony in a language other than English shall be translated concurrently to English.

The parties further stated that they expected that all the documents and testimonies will be in English.

12. **Place of Arbitration** (Arbitration (Additional Facility) Rules, Articles 19 and 20; NAFTA Article 1130)

On April 29, 2009, the parties had advised the Tribunal of their disagreement on the place of arbitration. The Claimants proposed Washington, D.C. and the Respondent proposed St. John's, Newfoundland and Labrador or Ottawa, Ontario.

It was however noted that the parties made the following agreements, set out in their April 29, 2009 draft joint procedural order, pages 5, 6:

9. The Arbitral Tribunal shall conduct its hearings in Washington, D.C.

10. Without prejudice to paragraph 9, meetings and hearings may be held at other locations if so ordered by the Arbitral Tribunal, after consultation with the disputing parties.

[ . . . ]

18. All awards and decisions shall be deemed to be made at the place of arbitration, regardless of where the award or decision is signed.

On May 1, 2009, the parties filed submissions supporting their respective proposals for place of arbitration. Having considered the submissions, by letter of May 4, 2009, the Tribunal advised the parties that at the session it would allow each side 15 minutes for its oral submissions on this issue and another five minutes for rebuttal. At the session, the parties presented oral arguments. Hard copies of the parties' submissions of May 1, 2009, were distributed before the start of the first session. The Claimants circulated a one-page written submission during their oral argument.

Having heard the parties' oral arguments, having posed questions to the parties, and having received oral answers to the questions, the Tribunal requested the parties to file further concise written submissions, accompanied by authorities, by Monday, May 11, 2009, and concise observations on each other's submissions by Friday, May 15, 2009. The Tribunal advised the parties that upon consideration of all of the above submissions on this issue, and upon deliberation, it would in due course issue a decision on the place of arbitration.

13. **Delegation of Power to President to Fix Time Limits** (Arbitration (Additional Facility) Rules, Article 33) and **Decisions of the Tribunal** (Arbitration (Additional Facility) Rules, Article 24)

The following agreements of the parties, set out in their April 29, 2009 draft joint procedural order, page 6, were noted:

17. In cases of urgency, the Presiding Arbitrator may decide procedural matters alone, upon reasonable consultation with the remaining members of the Arbitral Tribunal.

[ . . . ]

19. The Arbitral Tribunal shall, in consultation with the disputing parties, fix the time limits in respect of all documents to be filed. In case of urgency, the Presiding Arbitrator may fix a time limit or amend an existing limit.

14. **Written and Oral Procedures** (Arbitration (Additional Facility) Rules, Articles 36, 38-39 and 28(1)(e))

It was agreed that Pursuant to Article 36 of the Arbitration (Additional Facility) Rules, the proceedings will consist of a written phase, followed by an oral one.

The following agreements of the parties, set out in their April 29, 2009 draft joint procedural order, pages 10–11, were noted:

27. The schedule of proceedings agreed by the disputing parties shall be as follows:

<b>Date</b>	<b>Action</b>
May 1, 2009	Parties to file submissions supporting their choice of seat.
May 6, 2009	Organizational meeting with the Arbitral Tribunal in New York, NY.
[dates to be determined, if applicable]	Mobil & Murphy – Potential limited request to produce documents. [addressed below]
August 3, 2009	Mobil & Murphy – Memorial with Witness Statement(s), Expert Report(s), Exhibits and Legal Authorities.
August 24, 2009	Canada – Requests to Produce Documents.
September 15, 2009	Mobil & Murphy – Production of Documents and Objections to Requests to Produce, if any.
September 29, 2009	Canada – Responses to Objections to Requests to Produce, if any.
Within three weeks after Tribunal’s ruling	Mobil & Murphy – Production Pursuant to Tribunal’s Ruling on Requests to Produce (if necessary).
December 1, 2009	Canada – Counter-Memorial with Witness Statement(s), Expert Report(s), Exhibits and Legal Authorities.
December 15, 2009	Mobil & Murphy – Requests to Produce Documents.
January 22, 2010	Canada – Production of Documents and Objections to Requests to Produce, if any.
February 5, 2010	Mobil & Murphy – Responses to Objections to Requests to Produce, if any.
Within three weeks after Tribunal’s ruling	Canada – Production Pursuant to Tribunal’s Ruling on Requests to Produce (if necessary).
April 8, 2010	Mobil & Murphy – Reply Memorial with Witness Statement(s), Expert Reply Report(s), Exhibits and Legal Authorities.
April 19, 2010	Canada – Limited Requests to Produce Documents in response only to new points raised in Claimants’ Reply.
May 3, 2010	Mobil & Murphy – Production of Documents and Objections to Requests to Produce (if necessary).
May 10, 2010	Canada – Responses to Objections to Produce, if any.

Within ten days of Tribunal's Ruling	Mobil & Murphy – Production Pursuant to Tribunal's Ruling on Requests to Produce (if necessary)
June 8, 2010	Canada – Rejoinder Memorial with Witness Statement(s), Expert Reply Report(s), Exhibits and Legal Authorities.
July 8, 2010	Applications for Leave to File a Non-disputing party Submission and NAFTA Article 1128 Submissions.
September 1, 2010	Claimants' and Respondent's Submissions, if any, on Non-disputing party Submissions and NAFTA Article 1128 Submissions.
September or October 2010	Oral Hearing

28. Expert reports, witness statements and other evidence on which a disputing party intends to rely are to be included with the Memorial and Counter-Memorial. The Reply and Rejoinder may only contain evidence that is responsive to the other disputing party's last preceding submission or that relates to a production of documents received since the party's prior submission.

With respect to the dates of potential limited requests to produce documents - third line in the table above - the parties advised the Tribunal that on the day of the first session, May 6, 2009, the Claimants had made a limited request to the Respondent to produce documents. The parties further stated that neither of them anticipated making further requests to produce documents before the filing of the Claimants' Memorial.

With respect to the scheduling of an oral hearing, referred to in the last line of the table above, at the session, the parties suggested a five-day long hearing. It was agreed that the Members of the Tribunal, upon consulting their calendars, will revert to the parties in with a proposal for fixing the dates of the hearing.

15. **Objections to Jurisdiction** (Arbitration (Additional Facility) Rules, Article 45)

The President noted that there is currently no indication that an objection to the competence of the Tribunal will be filed.

The Respondent confirmed that it did not have any objections to jurisdiction as of the day of the first session and that it would file such an objection as soon as it becomes aware of an objection. The Respondent further stated that it did not anticipate asking the Tribunal to deal with any jurisdictional objections separately from the merits.

16. **Pleadings: Number, Sequence, Time Limits** (Arbitration (Additional Facility) Rules, Articles 45, 38 and 28(1)(c))

This has been addressed in items 14 and 15, above.

17. **Subsequent Sessions** (Arbitration (Additional Facility) Rules, Article 21(2))

This has been addressed in item 14, above.

18. **Production of Evidence** (Arbitration Rules, Articles 39, 40 and 41)

The Tribunal noted the parties' joint proposal set out in their April 29, 2009 draft joint procedural order, paragraph 31, pages 11–12, that

The International Bar Association Rules on the Taking of Evidence (“IBA Rules”) shall be followed as guidelines on:

- a) the exchange of documents (Article 3 of the IBA Rules, excepting Article 3.12, concerning confidentiality, which shall be governed by the Confidentiality Order);
- b) the presentation of evidence by fact and expert witnesses (Articles 4-6 of the IBA Rules);
- c) on site inspection (Article 7 of the IBA Rules);
- d) the conduct of the evidentiary hearing (Article 8 of the IBA Rules); and
- e) the admissibility and assessment of evidence (Article 9 of the IBA Rules).

The Tribunal confirmed that the ICSID Arbitration (Additional Facility) Rules and the NAFTA shall be followed. With regard to the IBA Rules, the Tribunal proposed that they may be taken into account to the extent that this may be useful, but they would not be followed as guidelines. This was agreed.

Without prejudice to the above agreement, the following agreements of the parties, set out in their April 29, 2009 draft joint procedural order, pages 12–13, were noted:

**B. Document Production**

32. The disputing parties shall file their document requests in the form of a Redfern Schedule comprising four columns:

- (1) identification of the documents or category of documents that have been requested;
- (2) rationale for each request;
- (3) summary of objections by disputing party to the production of the requested document(s);
- (4) decision of the Arbitral Tribunal.

**C. Fact Witnesses**  
(Article 4 of the IBA Rules)

33. In addition to the guidance provided by the IBA Rules, the following procedures shall be followed:

34. For each witness, a sworn or affirmed witness statement shall be submitted to the Arbitral Tribunal in accordance with the schedule set out above, unless the disputing parties cannot obtain such a statement from a witness for a legitimate reason which such party shall explain to the Arbitral Tribunal. Each witness statement shall state the witness's name, birth date, present address and involvement in, or relation to, the case, and include a photograph of the witness.

35. Each disputing party shall be responsible for calling its own witnesses to an oral hearing, except when the other disputing party has waived cross-examination of a witness or expert and the Arbitral Tribunal does not direct his or her appearance.

36. Each disputing party shall advance the costs of appearance of its own witnesses. The Arbitral Tribunal will decide upon the appropriate allocation of such costs in its final award.

37. At the request of a disputing party, the Arbitral Tribunal may call a witness to appear.

38. If a witness fails to appear when first called to an evidentiary hearing, the Arbitral Tribunal may call the witness to appear a second time if it is satisfied that there was a valid reason for the first failure to appear and that the testimony of the witness is relevant and material to the outcome of the case.

39. The Arbitral Tribunal may consider the witness statement of a witness who provides a valid reason for failing to appear when called to an evidentiary hearing or whose cross examination has been waived, having regard to all the surrounding circumstances.

40. At oral hearings, the examination of each witness shall proceed as follows:

- a) the disputing party summoning the witness may briefly examine the witness;
- b) the disputing party adverse in interest to the witness may then cross-examine the witness;
- c) the disputing party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination, with re-cross examination to be granted only with leave from the Arbitral Tribunal; and
- d) the Arbitral Tribunal may examine the witness at any time, either before, during or after examination by one of the disputing parties.

41. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations.

**D. Expert Witnesses**  
(Article 5 of the IBA Rules)

42. In addition to the guidance provided by the IBA Rules, the following procedures shall be followed:

43. Each party may retain and submit the opinions of one or more experts to the Arbitral Tribunal. The procedural rules set out above shall apply to the opinions of experts.

**19. Decisions of the Tribunal (Arbitration Rules, Article 24)**

This has been addressed in item 13, above.



## II. Other Matters

### 20. **Confidentiality** (Article 39(2) of the ICSID Arbitration (Additional Facility) Rules); of NAFTA Free Trade Commission, Joint Statement of July 16, 2004)

The President noted that the parties proposed to adopt a Confidentiality Order. The Tribunal adopted the draft joint Confidentiality Order, with the addition that “information and materials containing confidential information may be . . . disclosed . . . to and among . . . the Centre’s Secretariat and persons employed by the Centre’s Secretariat, including counsel, secretaries, paralegals, transcribers, translators, and any clerical or administrative personnel . . . .”

The Tribunal members signed the Confidentiality Order, and issued the Order at the session. It was agreed that the signing of the Confidentiality Order by all the three Members of the Tribunal is without prejudice to the signing of any future procedural orders in this proceeding by the President alone.

The following agreements of the parties, set out in their April 29, 2009 draft joint procedural order, page 6, were noted:

14. The Arbitral Tribunal’s Confidentiality Order, dated May 6, 2009, applies to these proceedings.

15. Section I (Access to Documents) of the Notes of Interpretation of the NAFTA Free Trade Commission, issued July 31, 2001, applies to the treatment of documents in these arbitral proceedings.

It was noted that the Joint Statement of the NAFTA Free Trade Commission of July 16, 2004, supported holding open hearings for investor-state disputes.

It was also noted that the draft Confidentiality Order (page 4), proposed jointly by the parties states as follows:

12. All hearings shall be public. At the request of one of the parties, the Arbitral Tribunal shall hold *in camera* sessions to protect confidential information as defined in this Order.

13. Where sessions are held *in camera*, the Arbitral Tribunal shall make appropriate orders respecting witness exclusion from the hearings.

### 21. **Conservation of the Record** (Administrative and Financial Regulations, Regulation 28)

The following agreement of the parties, set out in their April 29, 2009 draft joint procedural order, page 11, was noted:

29. Mobil Investments Canada Inc., Murphy Oil Corporation, the Government of Canada and the Government of Newfoundland and Labrador may each retain a complete copy of the record, including confidential information. All other confidential documentation relating to this procedure must be returned to the respective party or otherwise destroyed, within two weeks following the conclusion

of any set aside proceedings or after the time to request set aside proceedings under Article 1136 of the NAFTA has expired.

The President drew attention of the parties to Centre's depository functions set forth in Regulation 28 of the Administrative and Financial Regulations. Accordingly, it was clarified that the Centre is not bound by the obligation of destroying or returning to the producing party any confidential documentation produced in these proceedings. This was agreed. It was also agreed that the Tribunal Members would not need to return any confidential documentation to the producing party but would destroy such documentation on their own.

22. **Non-Disputing Party Participation** (Arbitration (Additional Facility) Rules, Article 41(3)); Statement of the Free Trade Commission on non-disputing party participation, October 7, 2003)

The following agreement of the parties, set out in their April 29, 2009 draft joint procedural order, page 11, was noted:

30. The disputing parties agree that the Arbitral Tribunal consider non-disputing party submissions in a manner consistent with the recommendations of the North American Free Trade Commission on non-disputing party participation, issued on October 7, 2003.

The President noted that the Statement of the Free Trade Commission, does not limit the Tribunal's discretion to render a decision on whether to grant leave to a non-disputing party to file a written submission. Accordingly, it was agreed at the session that any non-disputing party, other than a NAFTA Party referred to in Article 1128 of the NAFTA, that wishes to file a written statement with the Tribunal will apply for leave from the Tribunal to file such a submission, in accordance with procedures in section B of the Statement of the Free Trade Commission.

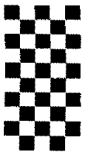
23. **Tribunal's Use of Assistants**

The Respondent inquired whether the Tribunal intended to hire an assistant. The Tribunal stated that it presently did not intend to hire an assistant. The parties confirmed that they would not object to the Tribunal's use of assistants for clerical support.

Both Parties confirmed that they had no other procedural matter to discuss with the Tribunal.

Thereafter, the Tribunal heard parties' respective brief presentations on the substance of the case.

After a short break, the parties presented their respective oral arguments and rebuttals on the issue of Place of Arbitration and answered questions from the Tribunal.



**Closing of the Session**

There being no further business, the President thanked the parties for their cooperation and adjourned the meeting at 3:38 p.m.

Sound recordings were made of the session and deposited in the archives of the Centre. Copies of the recordings will be sent to the parties and each Member of the Tribunal in due course.

*H. Houtte*

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Professor Hans van Houtte  
*President of the Tribunal*

*Marat Umerov*

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Mr. Marat Umerov  
*Secretary of the Tribunal*

Date: *July 29, 2009*

**Annex 1**  
**(Agenda)**

**Mobil Investments Canada Inc. and Murphy Oil Corporation**

v.

**Canada**

(ICSID Case No. ARB(AF)/07/4)

**First Session of the Tribunal and Preliminary Procedural Consultation with the Parties**

New York, May 6, 2009, starting at 13.00 hrs

**Provisional Agenda**

I. Procedural Matters

1. Constitution of the Tribunal and Tribunal Members' Declarations (Arbitration Rules, Article 13; NAFTA Articles 1123 and 1125).
2. Representation of the Parties (Arbitration Rules, Article 26).
3. Applicable Arbitration Rules (Arbitration Rules, Articles 1, 28(2) and 35; NAFTA Article 1120(2)).
4. Fees and Expenses of the Tribunal Members (Administrative and Financial Regulations, Regulation 14; ICSID Schedule of Fees; Memorandum on the Fees and Expenses of ICSID Arbitrators).
5. Advance Payments to the Centre (Administrative and Financial Regulations, Regulation 14).
6. Apportionment of Costs (Administrative and Financial Regulations, Regulation 14; Arbitration Rules, Articles 28(1)(f) and 58).
7. Records of Hearings (Arbitration Rules, Article 28(1)(g)).
8. Means of Communication (Administrative and Financial Regulations, Regulation 24).
9. Copies of Instruments (Arbitration Rules, Articles 31, 32 and 28(1)(d)).
10. Quorum (Arbitration Rules, Articles 22(2) and 28(1)(a)).

11. Procedural Languages (Arbitration Rules, Articles 30 and 28(1)(b)).
12. Place of Arbitration (Arbitration Rules, Articles 19 and 20; NAFTA Article 1130).
13. Delegation of Power to President to Fix Time Limits.
14. Written and Oral Procedures (Arbitration Rules, Articles 36 and 28(1)(e)).
15. Objections to jurisdiction (Arbitration Rules, Article 45)
16. Pleadings: Number, Sequence, Time Limits (Arbitration Rules, Articles 45, 38 and 28(1)(c)).
17. Subsequent Sessions (Arbitration Rules, Article 21(2)) and timetable for the arbitration proceeding.
18. Production of evidence (Arbitration Rules, Articles 39, 40 and 41)
19. Decisions of the Tribunal (Arbitration Rules, Article 24)
20. Other Matters.

**Annex 2**

**(Draft Procedural Order, Proposed by the Parties on April 29, 2009)**

**IN THE ARBITRATION  
UNDER CHAPTER ELEVEN OF THE NAFTA  
AND THE ICSID ARBITRATION (ADDITIONAL FACILITY) RULES**

**BETWEEN:**

**MOBIL INVESTMENTS CANADA INC. & MURPHY OIL CORPORATION**

**Claimants**

AND

**GOVERNMENT OF CANADA**

**Respondent**

**ICSID Case No. ARB(AF)/07/4**

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**PROCEDURAL ORDER NO. 1**

**May 6, 2009**

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**ARBITRAL TRIBUNAL:**

**Professor Hans van Houtte, President  
Professor Merit Janow  
Professor Philippe Sands**



## **THE ARBITRAL TRIBUNAL AND THE DISPUTING PARTIES**

1. This first procedural order sets out the procedural rules to which the Claimants and the Respondent (the “disputing parties”) have agreed, and the Arbitral Tribunal has determined, shall govern this arbitration.

### **A. Constitution of the Arbitral Tribunal**

(Article 1123 of the NAFTA, Article 13 of the ICSID Arbitration (Additional Facility) Rules)

2. The disputing parties agree and confirm that the Arbitral Tribunal has been duly constituted in accordance with Article 1123 of the NAFTA.

3. Declarations of the Members of the Tribunal as to their independence have been provided to the disputing parties in the form required by Article 13 of the ICSID Arbitration (Additional Facility) Rules.

4. The disputing parties confirm that they waive any possible objection to the constitution of the Arbitral Tribunal and to the appointment of the Arbitrators on the grounds of conflict of interest and/or lack of independence or impartiality in respect of matters known to them at the date of signature of this Procedural Order.

### **B. Contact Details of Arbitral Tribunal**

5. Contact details of each Member of the Arbitral Tribunal are as follows:

Professor Merit E. Janow  
Professor in the Practice of International Economic Law and International Affairs  
School of International and Public Affairs  
Columbia University  
420 West 118<sup>th</sup> Street, Room 927  
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United States of America  
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Fax: +1 212 749 1497  
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Professor Hans van Houtte  
Institute for International Trade Law  
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3000 Leuven  
Belgium  
Tel: +32 16 48 94 64  
Fax: +32 16 48 94 34  
Email: hans.vanhoutte@law.kuleven.be

**C. Representation of the Disputing Parties**  
(Article 26 of the ICSID Arbitration (Additional Facility) Rules)

6. The Claimants are represented by:

David W. Rivkin  
Debevoise & Plimpton LLP  
919 Third Avenue  
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Fax: +33 1 42 68 71 55  
Email: blegum@salans.com

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7. The Respondent is represented by:

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Carolyn Elliott-Magwood  
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Tel: +1 613 944 5244  
Fax: +1 613 944 0027  
Email: carolyn.elliott-magwood@international.gc.ca

**PLACE OF ARBITRATION AND LOCATION OF HEARINGS**

(Article 1130 of NAFTA; Articles 19-20 of the ICSID Arbitration (Additional Facility) Rules)

8. The place of arbitration is [**Mobil and Murphy**: Washington D.C.][CAN: St. Johns, Newfoundland and Labrador or Ottawa, Ontario].
9. The Arbitral Tribunal shall conduct its hearings in Washington, D.C.
10. Without prejudice to paragraph 9, meetings and hearings may be held at other locations if so ordered by the Arbitral Tribunal, after consultation with the disputing parties.

**APPLICABLE LAW AND ARBITRATION RULES**

(Article 1120 of the NAFTA; Article 1 of the ICSID Arbitration (Additional Facility) Rules)

11. The applicable arbitration rules are the ICSID Arbitration (Additional Facility) Rules, as amended April 2006 (ICSID/11 April 2006), except to the extent that they are modified by Section B of NAFTA Chapter 11.

**PROCEDURAL LANGUAGE AND TRANSLATION**

(Article 30 of the ICSID Arbitration (Additional Facility) Rules)

12. The arbitration shall be conducted in English.

13. All documentary evidence in a language other than English shall be translated to English by the disputing party submitting that evidence. Witness testimony in a language other than English shall be translated concurrently to English.

**CONFIDENTIALITY**

(Article 39(2) of the ICSID Arbitration (Additional Facility) Rules)

14. The Arbitral Tribunal's Confidentiality Order, dated May 6, 2009, applies to these proceedings.

15. Section I (Access to Documents) of the Notes of Interpretation of the NAFTA Free Trade Commission, issued July 31, 2001, applies to the treatment of documents in these arbitral proceedings.

**DECISIONS OF THE ARBITRAL TRIBUNAL**

**A. Quorum and Replacement of Arbitrators**

(Article 28(1)(a) of the ICSID Arbitration (Additional Facility) Rules)

16. The presence of all three members of the Arbitral Tribunal shall constitute a quorum, unless otherwise agreed by the parties. In the event of the death or incapacity of a member of the Arbitral Tribunal, the proceedings shall be, or remain, suspended until the vacancy has been filled.

17. In cases of urgency, the Presiding Arbitrator may decide procedural matters alone, upon reasonable consultation with the remaining members of the Arbitral Tribunal.

**B. Decisions of the Arbitral Tribunal**

(Article 52 of the ICSID Arbitration (Additional Facility) Rules)

18. All awards and decisions shall be deemed to be made at the place of arbitration, regardless of where the award or decision is signed.

**C. Delegation of Power to Fix Time Limits**

(Article 33 of the ICSID Arbitration (Additional Facility) Rules)

19. The Arbitral Tribunal shall, in consultation with the disputing parties, fix the time limits in respect of all documents to be filed. In case of urgency, the Presiding Arbitrator may fix a time limit or amend an existing limit.

**D. Motions Procedure**

20. Any applications to the Arbitral Tribunal for procedural directions or other motions shall be made in writing and one copy shall be sent to the address noted in paragraph 21 to David Rivkin for the Claimants, Nick Gallus for the Respondent, to the Centre and to each member of the Arbitral Tribunal by email. The Arbitral Tribunal will

give directions as soon as possible thereafter for the submission of a reply and (if necessary) rejoinders.

**SERVICE, COSTS AND RECORD OF HEARINGS**

**A. Service of Documents and Copies of Instruments**

(Articles 31-32 of the ICSID Arbitration (Additional Facility) Rules)

21. Unless otherwise noted, the Arbitral Tribunal and the disputing parties shall send all correspondence and submissions, including pleadings and memorials (with indexes of exhibits or attachments), by email simultaneously to opposing counsel to the email addresses below and to the Centre at the email address indicated below, on the date the submission in question is due.

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Ucheora Onwuamaegbu  
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United States of America  
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Fax: +1 202 522 2615  
Email: uonwuamaegbu@worldbank.org

22. In addition, unless otherwise directed by the Arbitral Tribunal or agreed by the disputing parties, the disputing parties agree to send hard copies of documents by overnight delivery service to the address noted above to David Rivkin for the Claimants, Nick Gallus for the Respondent, and to the Centre. The disputing parties shall provide one hard copy of such documents to opposing counsel and five hard copies thereof to the Centre. Each disputing party shall also provide digital copies of the submissions, including witness statements, expert reports, documentary exhibits and legal authorities. The date of receipt of an official submission or of a communication shall be the date of the receipt of the electronic version by the Secretary of the Tribunal, provided that the disputing parties shall dispatch a complete written submission, including documentary evidence, no later than the date following the filing of the electronic version.

**B. Apportionment of Costs and Advance Payments**  
(Article 58 of the ICSID Arbitration (Additional Facility) Rules)

23. Without prejudice to the final decision of the Arbitral Tribunal regarding costs, the Claimant and the Respondent agree to share equally advance payments for the Arbitral Tribunal.

**C. Record of Hearings**  
(Article 28(g) of the ICSID Arbitration (Additional Facility) Rules)

24. Oral hearings before the Arbitral Tribunal shall be transcribed. Procedural or organizational meetings with the Arbitral Tribunal may be transcribed or recorded.



25. Live Note transcription software, or comparable software, shall be used to make the hearing transcripts instantaneously available to the disputing parties and Members of the Arbitral Tribunal in the hearing room. The disputing parties further agree that transcripts of proceedings should be made available on a same day service basis, except for one-day or procedural hearings, which may have a slower transcription.

26. The Arbitral Tribunal shall establish, as necessary, procedures and schedules for the correction of transcripts. In the event of disagreement between the disputing parties on corrections to transcripts, the Arbitral Tribunal shall determine whether or not any such corrections are to be adopted.

### **SUBMISSIONS AND SCHEDULE OF HEARINGS**

**A. Written and Oral Procedures – Pleadings: Number, Sequence, Time Limits**  
(Articles 33 and 36-39 of the ICSID Arbitration (Additional Facility) Rules; IBA Rules)

27. The schedule of proceedings agreed by the disputing parties shall be as follows:

<b>Date</b>	<b>Action</b>
May 1, 2009	Parties to file submissions supporting their choice of seat.
May 6, 2009	Organizational meeting with the Arbitral Tribunal in New York, NY.
[dates to be determined, if applicable]	Mobil & Murphy – Potential limited request to produce documents. <b>[Discussed but not yet agreed]</b>
August 3, 2009	Mobil & Murphy – Memorial with Witness Statement(s), Expert Report(s), Exhibits and Legal Authorities.
August 24, 2009	Canada – Requests to Produce Documents.
September 15, 2009	Mobil & Murphy – Production of Documents and Objections to Requests to Produce, if any.
September 29, 2009	Canada – Responses to Objections to Requests to Produce, if any.
Within three weeks after Tribunal’s ruling	Mobil & Murphy – Production Pursuant to Tribunal’s Ruling on Requests to Produce (if necessary).
December 1, 2009	Canada – Counter-Memorial with Witness Statement(s), Expert Report(s), Exhibits and Legal Authorities.
December 15, 2009	Mobil & Murphy – Requests to Produce Documents.
January 22, 2010	Canada – Production of Documents and Objections to Requests to Produce, if any.
February 5, 2010	Mobil & Murphy – Responses to Objections to Requests to Produce, if any.
Within three weeks after Tribunal’s ruling	Canada – Production Pursuant to Tribunal’s Ruling on Requests to Produce (if necessary).
April 8, 2010	Mobil & Murphy – Reply Memorial with Witness Statement(s), Expert Reply Report(s), Exhibits and Legal Authorities.

April 19, 2010	Canada – Limited Requests to Produce Documents in response only to new points raised in Claimants’ Reply.
May 3, 2010	Mobil & Murphy – Production of Documents and Objections to Requests to Produce (if necessary).
May 10, 2010	Canada – Responses to Objections to Produce, if any.
Within ten days of Tribunal’s Ruling	Mobil & Murphy – Production Pursuant to Tribunal’s Ruling on Requests to Produce (if necessary)
June 8, 2010	Canada – Rejoinder Memorial with Witness Statement(s), Expert Reply Report(s), Exhibits and Legal Authorities.
July 8, 2010	Applications for Leave to File a Non-disputing party Submission and NAFTA Article 1128 Submissions.
September 1, 2010	Claimants’ and Respondent’s Submissions, if any, on Non-disputing party Submissions and NAFTA Article 1128 Submissions.
September or October 2010	Oral Hearing.

28. Expert reports, witness statements and other evidence on which a disputing party intends to rely are to be included with the Memorial and Counter-Memorial. The Reply and Rejoinder may only contain evidence that is responsive to the other disputing party’s last preceding submission or that relates to a production of documents received since the party’s prior submission.

**B. Conservation of the Record**

29. Mobil Investments Canada Inc., Murphy Oil Corporation, the Government of Canada and the Government of Newfoundland and Labrador may each retain a complete copy of the record, including confidential information. All other confidential documentation relating to this procedure must be returned to the respective party or otherwise destroyed, within two weeks following the conclusion of any set aside proceedings or after the time to request set aside proceedings under Article 1136 of the NAFTA has expired.

**C. Non-Disputing Party Participation**  
(Article 41(3) of the ICSID Arbitration (Additional Facility) Rules)

30. The disputing parties agree that the Arbitral Tribunal consider non-disputing party submissions in a manner consistent with the recommendations of the North American Free Trade Commission on non-disputing party participation, issued on October 7, 2003.

**EVIDENTIARY ISSUES**

**A. IBA Rules as Guidelines**

31. The International Bar Association Rules on the Taking of Evidence (“IBA Rules”) shall be followed as guidelines on:

- a) the exchange of documents (Article 3 of the IBA Rules, excepting Article 3.12, concerning confidentiality, which shall be governed by the Confidentiality Order);
- b) the presentation of evidence by fact and expert witnesses (Articles 4-6 of the IBA Rules);
- c) on site inspection (Article 7 of the IBA Rules);
- d) the conduct of the evidentiary hearing (Article 8 of the IBA Rules); and
- e) the admissibility and assessment of evidence (Article 9 of the IBA Rules).

**B. Document Production**

32. The disputing parties shall file their document requests in the form of a Redfern Schedule comprising four columns:

- (1) identification of the documents or category of documents that have been requested;
- (2) rationale for each request;
- (3) summary of objections by disputing party to the production of the requested document(s);
- (4) decision of the Arbitral Tribunal.

**C. Fact Witnesses**

(Article 4 of the IBA Rules)

33. In addition to the guidance provided by the IBA Rules, the following procedures shall be followed:

34. For each witness, a sworn or affirmed witness statement shall be submitted to the Arbitral Tribunal in accordance with the schedule set out above, unless the disputing parties cannot obtain such a statement from a witness for a legitimate reason which such party shall explain to the Arbitral Tribunal. Each witness statement shall state the witness's name, birth date, present address and involvement in, or relation to, the case, and include a photograph of the witness.

35. Each disputing party shall be responsible for calling its own witnesses to an oral hearing, except when the other disputing party has waived cross-examination of a witness or expert and the Arbitral Tribunal does not direct his or her appearance.

36. Each disputing party shall advance the costs of appearance of its own witnesses. The Arbitral Tribunal will decide upon the appropriate allocation of such costs in its final award.

37. At the request of a disputing party, the Arbitral Tribunal may call a witness to appear.

38. If a witness fails to appear when first called to an evidentiary hearing, the Arbitral Tribunal may call the witness to appear a second time if it is satisfied that there was a valid reason for the first failure to appear and that the testimony of the witness is relevant and material to the outcome of the case.

39. The Arbitral Tribunal may consider the witness statement of a witness who provides a valid reason for failing to appear when called to an evidentiary hearing or whose cross examination has been waived, having regard to all the surrounding circumstances.

40. At oral hearings, the examination of each witness shall proceed as follows:

- a) the disputing party summoning the witness may briefly examine the witness;
- b) the disputing party adverse in interest to the witness may then cross-examine the witness;
- c) the disputing party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination, with re-cross examination to be granted only with leave from the Arbitral Tribunal; and
- d) the Arbitral Tribunal may examine the witness at any time, either before, during or after examination by one of the disputing parties.

41. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations.

**D. Expert Witnesses**  
(Article 5 of the IBA Rules)

42. In addition to the guidance provided by the IBA Rules, the following procedures shall be followed:

43. Each party may retain and submit the opinions of one or more experts to the Arbitral Tribunal. The procedural rules set out above shall apply to the opinions of experts.

\* \* \*

44. This Procedural Order is issued in the Place of Arbitration, this May 6, 2009. Upon consultation with the disputing parties and for good cause, the Arbitral Tribunal may at any time amend this Procedural Order.

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Professor Hans van Houtte

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Professor Merit Janow

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Professor Philippe Sands

**Annex 3**  
**(Confidentiality Order, dated May 6, 2009)**

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES  
WASHINGTON, D.C.**

**IN THE ARBITRATION PROCEEDING  
UNDER CHAPTER ELEVEN OF THE NAFTA  
AND THE ICSID ARBITRATION (ADDITIONAL FACILITY) RULES  
BETWEEN:**

**MOBIL INVESTMENTS CANADA INC. AND MURPHY OIL CORPORATION  
(CLAIMANTS)**

**AND**

**CANADA  
(RESPONDENT)**

**(ICSID CASE NO. ARB(AF)/07/4)**

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**CONFIDENTIALITY ORDER**

**May 6, 2009**

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*Members of the Tribunal:*

Professor Hans van Houtte, *President*  
Professor Merit E. Janow, *Arbitrator*  
Professor Philippe Sands QC, *Arbitrator*

1. For the purposes of this Confidentiality Order (“Order”):
  - (a) “disputing party” means, in the case of the Claimants, Mobil Investments Canada Inc., Murphy Oil Corporation, ExxonMobil Canada Properties, ExxonMobil Canada Hibernia Company Ltd., Murphy Oil Company Ltd. and Murphy Atlantic Offshore Oil Company Ltd., and their heirs, successors, and assigns, and in the case of the Respondent, the Government of Canada;
  - (b) “Centre” means the International Centre for the Settlement of Investment Disputes;
  - (c) “confidential information” means any information designated by a disputing party as confidential. A disputing party may designate as confidential, and protect from disclosure, any information that may otherwise be released under the terms of this Order, on any of the following grounds:
    - (i) business confidentiality relating to the Claimants;
    - (ii) business confidentiality relating to a third party; and
    - (iii) information that could otherwise be protected from disclosure by legislation, including, as amended, the *Access to Information Act*, R.S. 1985, c. A-1, the *Canada Evidence Act*, R.S., 1985, c. C-5, the *Privacy Act*, R.S. 1985, c. P-21, and the Newfoundland and Labrador *Access to Information and Protection of Privacy Act*;
  - (d) the designation of information on the grounds of “business confidentiality” in subparagraph (c) includes information that:
    - (i) describes trade secrets, or financial, commercial, scientific or technical information that is confidential business information and is treated consistently in a confidential manner by the party to which it relates, including pricing and costing information, marketing and strategic planning documents, market share data, or accounting or financial records not otherwise disclosed in the public domain; and
    - (ii) if disclosed, could result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, the disputing party to which it relates, or could interfere with contractual or other negotiations of the disputing party to which it relates.
2. A disputing party may designate information as confidential by clearly identifying on each page of the document containing such information the notation “Confidential Information, Unauthorized Disclosure Prohibited” or some variation thereof, and shall take equivalent measures with respect to information contained in material produced in electronic and similar media.



3. A disputing party shall notify the other disputing party of its intention to disclose, pursuant to this order, any material filed in the course of this proceeding. If any of that material contains confidential information, the other disputing party shall provide the notifying disputing party and the Arbitral Tribunal with a redacted copy of that material within thirty (30) days of receipt of the notice. Unless otherwise agreed, a disputing party may not disclose any material filed in the course of this proceeding until the notice period has passed.
4. Confidential information shall not be disclosed to any person, except in accordance with this Order or with the prior written consent of the disputing party that claimed confidentiality with respect to the information and, in the case of materials from third parties, the owner of such confidential information.
5. Except as otherwise provided in this Order, information and materials containing confidential information may be used only in these proceedings and may be disclosed only for such purposes to and among:
  - (a) Members of the Tribunal and their assistants, if any, to whom disclosure is reasonably considered by one or more Members of the Tribunal to be necessary;
  - (b) the Centre's Secretariat and persons employed by the Centre's Secretariat, including counsel, secretaries, paralegals, transcribers, translators, and any clerical or administrative personnel;
  - (c) counsel to a disputing party whose involvement in the preparation or conduct of these proceedings is reasonably considered by the disputing party to be necessary;
  - (d) officials or employees of the disputing parties and the Province of Newfoundland and Labrador, including any officials elected or appointed to public office, to whom disclosure is reasonably considered by a disputing party to be necessary;
  - (e) independent experts or consultants retained or consulted by the disputing parties in connection with these proceedings; or
  - (f) witnesses who in good faith are reasonably expected by a disputing party to offer evidence in these proceedings and only to the extent that the information is relevant to their expected testimony.
6. All persons receiving material in this proceeding containing confidential information shall be bound by this Order. Each disputing party shall have the obligation of notifying all persons receiving such material of the obligations under this Order.
7. It shall be the responsibility of the disputing party wishing to disclose material containing confidential information to any person pursuant to paragraphs 5(d), (e) or (f) to ensure that such person executes a Confidentiality Agreement in the form attached as Appendix "A" before

gaining access to any such material. Each disputing party shall maintain copies of such Confidentiality Agreements and shall make such copies available to the other disputing party upon order of the Arbitral Tribunal or upon the termination of this arbitration.

8. A disputing party may submit to the Arbitral Tribunal its objections relating to the designation of information as confidential information and/or redaction of information asserted to be confidential pursuant to paragraph 3 of this Order. The Arbitral Tribunal will rule on such objections after receiving submissions from the disputing parties and in accordance with the terms of this Order.
9. Any request to the Government of Canada or the Government of Newfoundland and Labrador for documents, or the production of documents in other proceedings, under the *Access to Information Act*, the *Privacy Act*, the Newfoundland and Labrador *Access to Information and Protection of Privacy Act* or any other applicable federal or provincial legislation, including documents produced to Canada in these proceedings, shall be wholly governed by the relevant legislation.
10. Nothing in this Order shall be construed to abrogate or support a claim or entitlement with respect to a refusal to disclose any information on the basis of a privilege, ground for exemption or non-disclosure or public interest immunity arising at common law, or Act of the Parliament of Canada or the Legislature of Newfoundland and Labrador.
11. No party shall file any confidential material covered by the terms of this Order in any Court without first bringing this Order to the attention of the Court and seeking directions concerning the filing of such material in a manner that protects its confidentiality.
12. All hearings shall be public. At the request of one of the parties, the Arbitral Tribunal shall hold *in camera* sessions to protect confidential information as defined in this Order.
13. Where sessions are held *in camera*, the Arbitral Tribunal shall make appropriate orders respecting witness exclusion from the hearings.
14. Either disputing party may disclose to the public, including by posting on the internet, the following materials, provided that the disputing party gives the other disputing party thirty (30) days notice of its intent to disclose such material publicly:

all pleadings and submissions, together with their appendices and attached exhibits, correspondence to or from the Arbitral Tribunal, transcripts of hearings, and any awards, including procedural orders, rulings, preliminary and final awards, and other materials generated in this arbitration.

Neither party shall disclose any document until the other party has had the opportunity to identify and redact confidential information from such material, in accordance with paragraph 3 of this Order.

15. In the event that a decision of the Tribunal contains or refers to information designated as

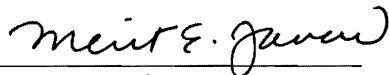
confidential in accordance with this Order, the Tribunal shall prepare, or direct the disputing party or parties who designated the information in question as confidential to prepare for its approval upon consultation with the other parties, if any, a redacted copy of the decision. Unless otherwise directed by the Tribunal, such redacted version shall be furnished to the Tribunal for approval within thirty (30) days.

16. The obligations created by this Order shall survive the termination of these proceedings and shall be enforceable in a court of competent jurisdiction.
17. Upon consultation with the parties and for good cause, the Arbitral Tribunal may at any time amend this Confidentiality Order.



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Professor Hans van Houtte



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Professor Merit E. Janow



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Professor Philippe Sands QC

**APPENDIX “A”**

**CONFIDENTIALITY AGREEMENT**

1. IN CONSIDERATION of being provided with materials in connection with the arbitration between Mobil Investments Canada Inc. and Murphy Oil Corporation and the Government of Canada over which claims for confidentiality have been advanced (“confidential information”), I hereby agree to maintain the confidentiality of such material. It shall not be copied or disclosed to any other person nor shall the material so obtained be used by me for any purposes other than in connection with this proceeding.
2. I acknowledge that I am aware of the Confidentiality Order that has been agreed to by the disputing parties, a copy of which is attached to this Agreement, and agree to be bound by it.

EXECUTED before a witness this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
*(Print Name)*

\_\_\_\_\_  
*(Print Witness Name)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Witness Signature)*