**AN ARBITRATION INVOLVING**

**THE ASSOCIATION OF SEAFOOD PRODUCERS INC.**
**(THE "EMPLOYER")**

**AND**

**FISH, FOOD AND ALLIED WORKERS UNION**
**(FFAW/UNIFOR)**
**("UNION")**

# AWARD

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|---|---|
| **For the Employer:** | **G. John Samms & Jayna Green** |
| **For the Union:** | **Kyle Rees & Duncan Wallace** |
| **Grievance:** | **Grievance 03785 dated November 21, 2025 (2025 Settlement Price)** |
| **Arbitrator:** | **Christopher Peddigrew, KC** |
| **Date of Hearing:** | **February 4, 2026** |
| **Date of Decision Without Reasons:** | **February 12, 2026** |
| **Date of Award with Written Reasons:** | **March 23, 2026** |

## Overview

1. The parties to this matter are the Association of Seafood Producers ("ASP") and the Fish, Food and Allied Workers (FFAW/Unifor) ("Union" or "FFAW"). ASP is the organization representing seafood processors in Newfoundland and Labrador. FFAW represents fish harvesters in Newfoundland and Labrador.

2. The issue in dispute between the parties arises from the 2025 decision of the Standing Fish Price Setting Panel (the "2025 Panel Decision"), in relation to the raw material price to be paid by processors to harvesters for snow crab for the 2025 crab fishing season. In particular, the issue is whether the final payment (or end-of-season settlement price) to harvesters for the 2025 fishing season was to be based only on the sales of 5-8 oz sections of snow crab in wholesale 30-lb cases, or whether it was to be based on all sales of 5-8 oz sections of snow crab, regardless of packaging format.

3. ASP's position is that the reference to 5-8 oz sections in the 2025 Panel Decision was to be based only on wholesale 30-lb standard cases of 5-8 oz sections. FFAW disagrees.

4. FFAW's position is that the reference to 5-8 oz sections was intended to includes all packaging forms sold commercially, whether bulk or finished product, versus just those 5-8 oz crab packaged in wholesale 30-lb cases. ASP disagrees.

5. The arbitration hearing was held in St. John's on February 4, 2026. At the commencement of the hearing, the parties agreed: (i) to my appointment as arbitrator; (ii) that I have jurisdiction to deal with the issues arising with respect to the Grievance; (iii) that all prior steps in the grievance procedure have been followed or are waived; (iv) that witnesses would not be excluded prior to giving evidence; (v) that an agreed statement of facts, a supplemental agreed statement of facts, my notes of witness testimony, and the exhibits submitted into evidence, would constitute the record of the proceedings; (vi) that there were no interested parties who had not been notified of the hearing; (vii) that I would remain seized with jurisdiction for a period of 60 days following receipt of these Written Reasons by the parties to deal with matters of interpretation, application or compensation, provided that written notice is given by one party to the other within 60 days of receipt of these Written Reasons; and (viii) there were no other preliminary issues to be addressed.

## The Legislation

6. The *Fishing Industry Collective Bargaining Act*, RSNL 1990, c. F-18 (the "FICBA") states in part as follows:

> **Minister to set date**
>
> 19.01(1) The minister responsible for fisheries and aquaculture shall set the date by which the price and conditions of sale for a fish species shall be set in a year.
>
> (2) Notwithstanding subsection (1), the minister may, upon the joint request of the parties to collective bargaining, vary the date set under that subsection.
>
> **Appointment of panel**
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> 19.1 (1) The Standing Fish Price-Setting Panel is continued and shall consist of 3 members appointed as follows:
>
> (a) a chairperson appointed by the Lieutenant-Governor in Council on the recommendation of the minister in accordance with subsection (2);
>
> (b) one member representing the certified bargaining agent appointed by the Lieutenant-Governor in Council on the recommendation of the certified bargaining agent; and
>
> (c) one member representing the processors' organization appointed by the Lieutenant-Governor in Council on the recommendation of the processors' organization.
>
> . . .
>
> **Duties of the panel**
>
> 19.2 The duties of the panel are
>
> (a) to facilitate access by parties to collective bargaining to market information relating to the sale of fish;
>
> (b) to establish criteria that are not inconsistent with this Act relating to collective bargaining under this Act;
>
> (c) to provide assistance to parties engaged in collective bargaining under this Act;
>
> (d) to set prices and conditions of sale for a fish species where parties have engaged in collective bargaining and have been unable to agree or where parties have refused to engage in collective bargaining;

. . .

**Panel to establish agreement**

19.9 (1) Where a bargaining agent and a processor or processors' organization have failed to conclude a collective agreement in relation to a fish species that is binding on all processors in the province that process that fish species by the date set for it by the panel under subsection 19.8(1), all the matters in dispute between them relating to price and conditions of sale for a fish species shall be considered to have been referred to the panel for decision.

(2) The panel shall hold a hearing in relation to the matters considered to have been referred to it under subsection (1) at which the bargaining agent and processor or processors' organization may make submissions.

(2.1) Notwithstanding subsection (2), a party who has engaged in collective bargaining may not make a submission under that subsection unless that party has submitted an offer respecting price and conditions of sale to the other party not less than 48 hours before the scheduled commencement of the hearing referred to in subsection (2).

(3) Immediately after the conclusion of the hearing referred to in subsection (2), but in any event not later than 3 days before the date set by the minister responsible for fisheries and aquaculture under section 19.01, the panel shall decide on the matters in dispute between the parties relating to price and conditions of sale for the fish species and the decision of the panel is final and binding on the parties and on all other processors in the province that process that species of fish to which the panel's decision relates and constitutes a collective agreement or part of a collective agreement between them.

. . .

**Settlement of dispute by panel**

19.11 (1) Notwithstanding subsection 19.9(3), where the parties to collective bargaining are a certified bargaining agent and an accredited processors' organization or a processors' organization that represents processors in the province that process the majority percentage of a fish species and those parties appear before the panel under subsection 19.9(2), the panel shall hear and consider their positions on price and conditions of sale and shall, in accordance with the regulations, make a decision with respect to the matters in dispute between the parties relating to price and conditions of sale.

(2) The panel shall notify the parties of its decision not later than 3 days before the date set by the minister responsible for fisheries and aquaculture under section 19.01 and the decision of the panel is final and binding on the parties and on all other processors in the province that process that species of fish to which the panel's decision relates and constitutes a collective agreement or part of a collective agreement between them.

(3) The minister may make regulations

(a) establishing the method that the panel shall apply in making a decision under subsection (1) or delegating to the panel the authority to establish its own method; and

(b) generally respecting the powers and duties of the panel in making a decision under this section.

. . .

7. The *Fishing Industry Collective Bargaining Regulations, 2022* under the FICBA (the "FICBA Regulations"), state in part as follows:

**Decision of panel**

**4.** (1) For the purpose of subsection 19.11(1) of the Act, the decision of the panel shall be in accordance with one of the positions on price and conditions of sale submitted to the panel by the parties at the hearing.

(2) Final offer selection, the process referred to in subsection (1), shall be the form of arbitration used by the parties referred to in subsection (1) unless those parties agree that another form of arbitration is acceptable to them.

(3) Notwithstanding subsection (1), the panel may, before making a decision under subsection 19.11(1) of the Act, require the parties to continue bargaining for a period of time determined by the panel and return to the panel with their positions on price and conditions of sale.

(4) Notwithstanding subsections (1) and (2), for the purpose of subsection 19.11(1) of the Act, in making a decision

(a) on the price for crab, each party shall submit a proposed formula to be used to determine the price for crab and the panel shall select one party's proposal; and

(b) on the conditions of sale for crab, the panel shall proceed by way of arbitration.

## The Grievance

8. The subject "Grievance" is dated November 21, 2025 and was filed by FFAW against "ASP & all companies listed in Schedule A" (of the Grievance). It states as follows:

> NATURE OF THE GRIEVANCE: Violation of the MCA & crab schedule which incorporated the 2025 FFAW snow crab proposal & any other related articles. ASP has indicated they will not be paying the year-end settlement receipts for all sales of 5-8 oz sections & will only pay the year-end settlement based on sales of 30 lb boxes of 5-8 oz sections. This is contrary to the decision of the Panel which selected the FFAW submission which was then incorporated into the Schedule & the MCA.
>
> REQUIRED ADJUSTMENT: To be made whole/full redress, including the year-end settlement calculated by Deloitte based on sales of all 5-8 oz sections & judgment interest for any delay in year-end settlement payment caused by the refusal.

**The Evidence**

9. Substantial materials were exchanged by the parties in advance of the hearing, including an Agreed Statement of Facts with 67 exhibits appended thereto, as well as a Supplemental Agreed Statement of Facts. In addition, each party submitted additional evidence by way of affidavits. FFAW submitted affidavit evidence from Sherry Glynn and Greg Pretty. ASP submitted affidavit evidence from Renae Butler and Darrell Roche. ASP cross-examined Ms. Glynn on her affidavit. Mr. Pretty was not cross-examined. Renae Butler gave additional evidence (*viva voce*) at the hearing. Darrell Roche was not cross-examined.

10. Since its inception in 1971, the FICBA has governed the relationship between harvesters (represented by FFAW) and seafood processors (represented by ASP).

11. The FICBA establishes a process for concluding collective agreements, including the price to be paid by processors to harvesters and the conditions of sale for specific fish species in time for the start of the fishery each season. The Master Collective Agreement ("MCA") dated September 17, 2020, governs the relationship between FFAW/harvesters and ASP/seafood producers with respect to various species of fish.

12. In February 2006, the Standing Fish Price-Setting Panel (the "Panel") was established under the FICBA. Essentially, the Panel was established to determine price when the parties are unable to agree to a price prior to the start of the season. The Panel may also be tasked with determining other conditions of sale.

13. Practically, the price-setting process is as follows:

a) Each year, the Minister of Fisheries and Aquaculture establishes the dates by which prices and conditions of sale of all fish species must be set for that year;
b) If the parties cannot reach an agreement for a species by the date set by the Minister, the matter shall be referred to the Panel for a decision;
c) The parties present final offers to the Panel and make submissions before the Panel. Section 4 of the FICBA Regulations under the FICBA requires "final offer selection", which means that the Panel must select one of the positions put forward by one of the parties;
d) The decision of the Panel is final and binding on the parties, subject to limited "reconsideration" requests;
e) The raw material minimum price and other conditions of sale as determined by the Panel form part of the collective agreement for the season, as if agreed to by the parties; and
f) The parties may subsequently negotiate a new agreement which will replace the Panel's decision.

***Distinction Between Raw Material Price and Market Price***

14. The price set by the Panel is the minimum "raw material price". The raw material price ("RMP") is the minimum price paid for live crab landed at the wharf. The RMP is the minimum price processors are required to pay harvesters based on weight of crab landed. It reflects the value of the crab before processing.

15. Unless a party requests a reconsideration, the minimum RMP does not change during a season as the market fluctuates. Due to the timing of negotiations and/or the imposition of a minimum price by the Panel, there can be a lag or disconnect between the initially negotiated/imposed RMP and real-time market conditions, which change during the course of a season.

16. "Market price" is the price at which a processed product is sold into the marketplace by a processor. For snow crab, this is the price of frozen clusters at the first point of sale to distributors or retailers, following processing. The most common unit for the sale of processed snow crab is a 30-lb case. In 2025, the parties' third-party auditor, Deloitte, confirmed that approximately 46.2M of the 50.1M (or 92%) of the total volume of snow crab

covered by the sales data provided to Deloitte by processors were sold as 5-8 oz sections packaged in 30-lb cases.

17. "Market price" differs from the "RMP" because market price reflects downstream costs and risks, including but not limited to processing labour, plant operations, packaging, cold storage, freight, inventory holding, exchange rates, market demand, buyer risk, and where available, profit. Market price fluctuates based on global market conditions.

18. In advance of negotiations each season, the parties are provided with market information from the Provincial fisheries department. Prior to each season, during price negotiations, ASP and FFAW exchange offers based upon their respective views of the appropriate RMP. Typically, they do not come to an agreement with respect to snow crab, and so the Panel is tasked with choosing one of their offers through the statutory final offer selection process.

***Overview of Crab Packaging and the "Urner Barry" Price Index***

19. Snow crab in Newfoundland and Labrador is marketed and sold in different package sizes and through different market streams. The majority of snow crab is sold into export markets, particularly the United States, where demand is driven by food service and retail. The crab is typically marketed based on size and shell condition. Pricing is influenced by global supply and demand, exchange rates and inventory levels, and market access principles.

20. Urner Barry Comtell, or Expana, is a proprietary market intelligence and pricing service used in the seafood, meat, and poultry industries to track wholesale prices, market trends, and trading activity. Operated by Urner Barry, Comtell provides subscribers with near-real-time price quotes, historical price data, market commentary, and supply-and-demand insights based on reported transactions and industry sourcing. It is a useful tool in observing market changes in the price of crab for the season, but it is not definitive, nor is it the only tool used.

21. Urner Barry is commonly referenced by snow crab processors, buyers, sellers, and industry analysts as a benchmark for wholesale market prices in major markets, especially the United States, as it reports caseload pricing. While it does not represent a regulated or mandatory price, Urner Barry data is widely used to inform negotiations, contract discussions, and market assessments because of its consistency, industry acceptance, and long-term historical data series.

22. Urner Barry quotations use the 30-lb pack for all sizes of snow crab out of Canada as its yardstick for price analysis and predictions.

23. Through the Deloitte audit of 2025 sales of 5-8 oz sections (up to October 31, 2025), the sales data provided to Deloitte showed that 92% of 5-8 oz sections from Newfoundland and Labrador processors was sold in 30-lb boxes.

24. Some processors also sell crab in differently weighted boxes aside from the 30-lb case. These include consumer packs that are produced and marketed to buyers separately and apart from the 30-lb case. There are material differences between a 30-lb case of 5-8 oz sections of crab and these consumer packs, including that:

    a. a 30-lb case's value is derived from the raw material inside, whereas a consumer pack's value is derived from a smaller amount of raw material, but also from the value of the packaging and practicality for the end-consumer;
    b. consumer packs are sold to retailers or directly to consumers;
    c. consumer packs are sold at a premium price;
    d. consumer packs cost more to produce, primarily because of packaging, labour and marketing costs;
    e. consumer packs cost more to ship, primarily because processors can fit more crab in 30-lb cases in a shipping container (i.e. more raw material, less packaging) than consumer packs (i.e. a 2-lb box in more packaging); and
    f. a consumer pack holds less crab per pound than a 30-lb wholesale case unit.

25. Since at least 2006, ASP and FFAW have referenced Urner Barry 5-8s (UB Crab, Snow, Cluster, Newfoundland, 5-8 oz, Ex-Warehouse EC EBP) as an index or proxy during crab negotiations and to ground their submissions to the Panel for final offer selection. Over the years, in their submissions to the Panel, the parties have consistently referenced the Urner Barry index as the pricing proxy to set the minimum price. The Urner Barry seafood pricing index is the closest thing the snow crab industry has to a shared, third-party benchmark for market value in an export-driven fishery that is highly dependent on the US market.

***Overview of Submissions on the Raw Material Price (RMP) for the Years 2016-2023***

26. A review of the price-setting process from the years 2016 to 2023 illustrates that the parties were unable to agree on price and therefore required the Panel process for determining price. The history also shows that the unsuccessful party before the Panel has generally been dissatisfied with the outcome, often seeking reconsideration at some point during the season following the Panel's initial price determination. During this 2016-2023 time period, ASP consistently advocated for the usefulness and reliability of the Urner Barry 5-8 oz sections as a pricing proxy. While FFAW generally utilized the Urner Barry pricing during this same time period, at times it questioned its usefulness and reliability as a pricing proxy for a number of reasons, including the increasing amounts of value-added product being produced by processors. Over the years, FFAW has taken issue with the fact that the minimum price being paid to harvesters has not included this additional value. In some years, it has argued that the added value in the market from these products should be shared with harvesters. In several of its written submissions to the Panel during the 2016-2023 time period, FFAW has been explicit in its request to have value-added products included in the price determination.

27. In 2017, the Panel acknowledged FFAW's submission that there were increasing amounts of value-added product being produced and that the additional value was not being reflected in the minimum price paid to harvesters. The Panel ultimately chose FFAW's offer in 2017, but it did not include the price of what FFAW defined as "value added products" in the RMP.

28. In 2018, FFAW again lobbied the Panel to account for value-added products in its decision-making process. In its Panel submission, the FFAW defined "value-added products" as "claws (cap on and cap off), cooked parts, raw legs, other raw parts, and consumer pack sections". The FFAW argued, based on exports of value-added products, that there were significant returns to sellers in value-added products that were often not taken into account but would be useful to consider. The Panel did not accept FFAW's offer and did not address FFAW's argument to have value-added products included in the price determination.

29. In its 2019 submission to the Panel, FFAW argued that it was no longer appropriate to use pricing for 5-8 oz sections as a proxy for the entire snow crab fishery given that processors were also exporting millions of pounds of 8-oz and 10-oz crab, which had in recent years deviated from historical pricing patterns and were now akin to premium products. FFAW

noted that the Urner Barry pricing data it included showed a distinct change in the market in favour of 8-oz and 10-oz sections and a significant price gap between those larger sections and the 5-8 oz sections. FFAW then went on to rely on Urner Barry prices to apply the price to market formula for 2019 prices and inform their offer to the Panel.

30. In its 2019 decision, the Panel noted that there was a growing price appreciation for 8-oz and 10-oz crab sections and a significant price spread relative to the 5-8 oz products that year. Considering the overall positive outlook for crab markets at that time, the favourable exchange rate, and the increasing prices for raw crab and the larger sized products, the Panel accepted FFAW's offer in 2019.

31. Following the Panel's initial price determination in 2019, ASP requested a reconsideration. In its reconsideration submission to the Panel, the FFAW noted that ASP had brought its application based on a decline in the Urner Barry price index for 5-8 oz sections, and pointed out that the FFAW's initial submission on price had been based on a variety of products that more accurately reflected what was landed and produced, which included premium products. In its first reconsideration decision for the 2019 season, the Panel agreed with ASP that uncertainty in the market warranted reconsideration of its decision, and it set a lower minimum price.

32. Following the Panel's first reconsideration decision in 2019 (which was in favour of ASP), FFAW sought a reconsideration of the Panel's first reconsideration decision. In its third submission to the Panel in 2019, FFAW noted that the market had begun to trend upward again. FFAW continued to emphasize the importance of considering premium products in relation to 5-8 oz sections reasoning that premium products fetch a price "above what is paid on the premium price index we use." FFAW reiterated that Urner Barry did not provide market information for 8-10 oz sections, and that the gap between 5-8 oz sections and these products was beneficial to processors. The Panel accepted FFAW's offer, stating that it was cognizant that in addition to 5-8 oz sections, there were several important product segments making up the total snow crab market, including sections of sizes greater than 8 oz, and Japanese brine and raw products. The Panel noted that recent Urner Barry pricing indicated that since its May decision, the prices for the 8+ oz sections remained essentially the same at very high prices. Given that there was less uncertainty in the market and an improved outlook for the remainder of the 2019 year, the Panel accepted FFAW's offer.

33. In 2020, ASP's Panel submission noted that the prior price to market formula had been based on careful analysis by market analysist, John Sackton, and that it was not just a plug-in based on the Urner Barry index. FFAW's submission focused heavily on the fact that utilizing 5-8 oz sections alone as representative of the entire crab fishery was inappropriate given that the 5-8 oz section product made up less than half of all production and value. FFAW stated that the reason it was advocating for a 90% harvester share was grounded in the fact that focusing on the price of 5-8 oz sections – one of the lowest valued products produced – made it very difficult to arrive at a fair share of the value of crab. FFAW noted that the 90% it was seeking had to encompass the harvester share for all the premium and higher value products produced.

34. In its 2020 decision, the Panel noted that FFAW – like it did in its 2019 submissions – was pointing out that the premium for larger-sized sections of crab had increased in recent years and that there was an increasing percentage of Newfoundland crab going into those products. In accepting the ASP's offer in 2020, the Panel noted that the onset of Covid-19 meant that these were unprecedented times for the fishery and that a significant economic downturn in the US and Japanese markets would have an impact on the buying of high-end products like crab.

35. In its request for reconsideration in 2020, FFAW criticized the Panel's initial decision for not linking ASP's proposed price to a particular market, stating that the process needed a market price upon which the price to harvesters could be justified. FFAW noted that premium or higher valued products made up 40% of all crab production in the Province and that the 5-8 oz Urner Barry index could only be the starting point upon which a higher price had to be determined.

36. In its 2020 reconsideration submission, in response to FFAW's position that including premium products when determining price was necessary, ASP argued that including premium products would not reflect market reality because of other products – including smaller sized, broken and dark crab – still had to be processed. ASP noted that there was higher labour and investment cost associated with raw products. As a result, ASP reiterated that the 5-8 oz section remained the best and most appropriate pricing reference. It argued that to do otherwise would tip the balance in favour of one party versus the other without due consideration to all factors materially affecting returns.

37. In its 2020 reconsideration decision, the Panel noted that market changes that had occurred after its initial decision warranted reconsideration of the price. Given the resiliency demonstrated in the market since that time, the Panel chose FFAW's reconsideration offer.

38. In 2021, FFAW's submission to the Panel noted that while the Urner Barry index was a useful pricing tool, harvesters were not getting that price. FFAW also argued that consumer packs, despite not being captured in the included chart of premium products they provided, had added value to the market. FFAW noted that consumer packs of all sizes up to 10 lbs had increased in production. The market report prepared by John Sackton in 2021 also acknowledged that retail sales had increased in 2020 due to a confluence of positive factors related to the Covid-19 pandemic.

39. ASP's 2021 submission to the Panel addressed FFAW's position on premium products. ASP explained that if FFAW was going to suggest inclusion of premium and raw frozen products in the minimum RMP, then the logical response would be to have a proxy in every regard for pricing crab raw material, and that every pound of crab should be bought for a minimum price. ASP noted that they used the 5-8 oz sections market proxy, which did not include market prices for broken crab, or prices for 3-8 oz sections, overpack or dark shelled crab. ASP argued that FFAW had never asked for the lowest value products to be included. ASP also noted that the current RMP covered all raw material, including smaller and inferior crab, and that harvesters received a 20% tolerance for inferior crab, meaning producers were paying full price for smaller and poor-quality crab until the tolerance of 20% was reached.

40. The Panel selected FFAW's offer in 2021. In its decision, the Panel acknowledged that FFAW (like in its previous submissions), emphasized the increased share of Newfoundland product that had been directed to premium market packs (i.e., raw and larger sizes), which resulted in increased average pricing and an increased price spread. Despite acknowledging this submission, this FFAW argument was not enumerated in the list of major factors considered by the Panel in its 2021 decision. Rather, the Panel's list focused on the strong economic growth forecasted for the US market, and that food service and retail demand was poised to remain strong. The Panel also noted that Urner Barry pricing was at a record high for the index.

41. In its reconsideration submission to the Panel in 2021, ASP continued to highlight that Urner Barry was the index typically used by the parties as a market reference for 5-8 oz sections, and that this was the predominant product in this province. In its 2021 reconsideration decision, the Panel noted that available market reports indicated that the market was exceptionally strong and continuing an upward trend. The Panel picked FFAW's offer, but it did not engage with any arguments about whether to include premium products in the RMP.

42. In 2022, both parties continued to reference the Urner Barry index with respect to their positions. In its 2022 submissions to the Panel, FFAW did not argue that premium products had to be reflected in the RMP. ASP continued to note that processors did not attain the price quoted in the Urner Barry index, and that there was a discrepancy between the price crab was sold for and Urner Barry prices. The Panel accepted ASP's offer in 2022. In its 2022 reconsideration submission, FFAW relied on the Urner Barry index noting that it was "an unbiased source that accurately portrays crab pricing" and depicted the retail price of snow crab in US markets.

43. In 2023, FFAW's submission noted again that Newfoundland companies were not just selling 5-8 oz sections. It provided data for additional products beyond the typical 5-8 oz sections, including claws, raw product and consumer packs. It noted that in years prior, the parties only used the Urner Barry 5-8 oz section price to develop price offers, but since processors in this province produced other products and since those prices and the percentages of production were unknown, the weighted average price comparison deserved an analysis. FFAW argued that since more than just 5-8 oz sections were being sold, it was important to capture those other section sizes and that using only 5-8 oz section prices was a poorer reflection of actual exports and sales. By contrast, ASP's submission highlighted issues with quality of crab and emphasized that quality variations had to be recognized in the minimum price. ASP again noted that incidence of lower quality product supported a minimum price. The Panel chose ASP's offer in 2023.

44. It is worth noting that 2023 was a particularly contentious season for the Newfoundland crab fishery. Harvesters who were upset with the Panel decision on price refused to fish. The resulting 'tie-up' (later determined to be an illegal cessation of business dealings by Arbitrator David Orsborne) created a crisis whereby the season opened, but no crab was

landed. After weeks of contentious negotiations, there was a mediation session between ASP's Jeff Loder and FFAW's Greg Pretty, mediated by then-Premier Andrew Furey. It resulted in an agreement between the parties that replaced the Panel's award on minimum price. The replacement terms included a moving scale of fish prices, such that when the Urner Barry index price increased to certain defined thresholds, the RMP paid to harvesters also increased. This moving scale ensured that the price paid to harvesters was responsive to improvements in the Urner Barry market price.

45. In the several years prior to 2024, the parties had taken a step back from the price-to-market formula and submitted offers based on a fixed price, linked to market.

46. In September 2023 – as a result of the contentious 2023 snow crab fishery and the ensuing mediation with Premier Furey – the Fish Price Setting Strategic Review Team (the "Review Team") was appointed by the Provincial Government to assist with the development of a *formula*-based framework for fish price-setting, and other potential mechanisms, to address ongoing issues in the price-setting process in the fishery.

47. On October 31, 2023, the "Blackwood Report" was released by the Review Team. It concluded, *inter alia*, that:

> …the current fish price setting process is flawed and in its current form requires that the Standing Fish Price Setting Panel (Panel) establish fixed seasonal prices that account for a multitude of dynamic market factors that are beyond any reasonable measure to predict with accuracy. The Review Team has concluded it is an impossible task…
>
> The Review Team found that there is a willingness and need within the industry to adopt a new framework for formula driven market based price-setting…

48. The Blackwood Report confirmed that the crab industry is highly dependent on the retail segment of the US market. A comprehensive analysis of the Urner Barry market price for 5-8 oz crab sections in this province indicated that there was a strong correlation between that market index and the price paid for Newfoundland and Labrador crab over a period of approximately 15 years from 2006-2019 and 2023.

49. The Blackwood Report proposed a formula using the market price of 5-8 oz crab sections, that was the Urner Barry price, based in Canadian dollars.

***Legislative Changes Following the Blackwood Report***

50. In 2024, the FICBA Regulations were amended to require each party to propose a *formula* (instead of a fixed price) to be used to determine the price of crab each season. The FICBA Regulations require the Panel to select one party's formula proposal. Specifically, section 4 of the FICBA Regulations states:

> 4.(1) For the purpose of subsection 19.11(1) of the Act, the decision of the panel shall be in accordance with one of the positions on price and conditions of sale submitted to the panel by the parties at the hearing.
> …
>
> (4) Notwithstanding subsections (1) and (2), for the purpose of subsection 19.11(1) of the Act, in making a decision
>
> (a) on the price for crab, each party shall submit a proposed formula to be used to determine the price for crab and the panel shall select one party's proposal;
>
> (b) …

51. In 2024, following the Blackwood Report recommendations and the change to the FICBA Regulations, ASP's submission to the Panel was based on a pricing formula. ASP continued to note that the Urner Barry index was the only appropriate proxy. It explained that, although the Urner Barry index at times overstates the price because it reports on caseload or less-than-load sales in comparison to truckload pricing, the 5-8 oz sections were still the appropriate and reliable price proxy for all crab products. In its 2024 submissions to the Panel, the FFAW also noted that there was no better proxy to estimate the value of NL snow crab than the Urner Barry price for 5-8 oz sections, but it argued that there was no legitimate reason why the final settlement price should be based on only 5-8 oz sections because this was not the only product produced. In the FFAW's offer, it noted that the price should be based on a representative sample of "all 2024 snow crab products" from the start of the fishing season through September 30, 2024, noting that in the years 2006 - 2023, 5-8 oz sections only accounted for an average of 34% of total production.

52. In its 2024 decision, the Panel observed that if it followed the FFAW's proposed formula and added a factor based on Canadian export data of "all crab products" post processing, the value added to the crab between harvest and export would be applied in the calculation of settlement to harvesters at the end of the season. The Panel rejected use of the post-processing export price stating:

> 46. During the 2023 Panel hearing on Crab, the Panel heard considerable debate as to the Canadian export data on the export of final crab products to market in relation to how that data related to actual crab landed at the wharf in this province. The Panel continues to express concern that the debate remains as to the reliability of export data as a representation of the actual crab landed at the wharf in the province: it is all crab exported after processing period the Blackwood formula was rooted in the UB 5-8 oz price. FFAW Roots its formula in the UB 5-8 oz price, but proposes to add a factor based on Canadian export data of <u>all</u> crab products, post processing.
>
> 47. The Panel observes that if it were to follow this proposed formula in its entirety, the value added to the crab between harvest and export would then be applied in the calculation of the settlement to the harvesters at the end of the season. While UB 5-8 oz section data were used as the proxy for the purpose of developing the Blackwood formula, and while UB 5-8 section data prices throughout the season would form the basis of the input into the FFAW's proposed formula for calculating the price of crab each week, FFAW's proposal is that the export data of all crab product then be applied as a form of settlement to harvesters at the end of the season. For the majority of the panel, this was not acceptable.
>
> 48. The price paid to harvesters has always been the raw material price, not the post-processing export price of all crab products. FFAW argued that the export data would be used to account for larger crab such as 8-10 oz sections, which are generally more lucrative. While those sections might be more profitable, and they are not reflected in the development of the Blackwood formula or the FFAW formula, (both being based on 5-8 oz) the export data the FFAW proposes to use is "actual sales of **<u>all 2024 snow crab products.</u>**" There is no reliable weighing of the various products at actual sale prices. The panel was not permitted to adjust the formula as presented.
>
> 49. It was for these primary reasons that the panel could not accept the FFAW's proposed formula for the 2024 season.

53. The Panel ultimately determined that the RMP paid to harvesters in 2024 should be based on ASP's proposed offer.

54. In 2024, ASP and FFAW agreed to a set price throughout the season, with the year-end settlement price based on actual sales of 5-8 oz crab sections, “FOB Boston”. FOB is an acronym for “Freight on Board”, which is an internationally used legal term requiring a seller to deliver goods on board a shipping vessel and making the seller responsible for obligations relating to those goods up to the point of delivery to the shipping vessel, including the cost to ship the goods. There are many ways to calculate FOB to take different costs into account. The reference to “Boston” meant that the market price would be determined by the value of snow crab sold in Boston.

55. The language of the 2024 Crab Schedule stated:

> The settlement price will be determined by the actual FOB Boston sales of 2024 5-8 oz sections from the start of the fishery through three weeks after the fishery ends, based on a statistically significant representative sample of the actual sales of 5-8 oz sections, FOB Boston, determined by an independent third party.

***Bargaining for 2025 Crab Fishery & Overview of “FOB Boston” versus “FOB Plant”***

56. In early 2025, the parties met to negotiate the price of crab for the 2025 season. They exchanged one formal offer per side during these 2025 negotiations. Notably, these proposals were based on use of “FOB Plant” as opposed to “FOB Boston”, which had been used in 2024. After this exchange of proposals, the parties could not reach agreement on price through bargaining and proceeded to a Panel hearing. On April 6, 2025, the parties provided final offer written submissions to the Panel.

57. The FFAW’s 2025 submission to the Panel noted that the FFAW had learned that use of FOB Boston in 2024 limited the receipts available to the third-party auditor (Deloitte) to those sales that were delivered to Boston only. The FFAW stated that such a limitation excluded a significant number of receipts from other destinations. To correct that, they proposed using “all receipts for 5-8 oz sections, net FOB Plant.” They explained that net FOB Plant would exclude the cost of freight and duties, as compared to FOB Boston, which included those costs:

> To start, we learned that FOB Boston limited the receipts available to the third-party auditor to those sales that were delivered to Boston. That limitation excluded a significant number of receipts from the assessment. To correct that, we propose using all receipts for 5-8oz sections, net FOB

> plant. From the definition provided by ASP during negotiations, we understand that net FOB plant excludes the cost of freight and duties, as compared to FOB Boston (or delivered Boston) which includes these costs.

58. ASP's definition of "FOB Plant", which was contained in its written submissions to the Panel, was as follows:

> 25 The challenge with FOB Boston pricing is that it only captures product sold direct to that market and does not capture sales direct to other geographic market segments in the US. The snow crab market is geographically disbursed throughout the US and therefore pricing tied to one segment of the market is limiting.
>
> 26 The best and only actual market-based pricing will be based off Net FOB plant, or equivalent pricing. ASP's settlement structure uses actual sales based on Net FOB Plant, or equivalent. Net FOB Plant, or equivalent, means that any tariffs and freight costs are deducted from the price received by the processor.

59. The parties' 2025 written submissions to the Panel were filed simultaneously, so neither party's written submission directly responded to the written materials filed by the other party. Each party did, however, have the opportunity to give oral submissions in response to the other party's written submissions.

60. FFAW's 2025 offer to the Panel also relied on the Urner Barry index as it proposed a "fair floor price based on the most recent available Urner Barry information." FFAW's 2025 submission noted, as it had in years prior, that while the 5-8 oz section was a proxy for all crab caught in NL, it was not the entire story in terms of product sold. It noted that landings of 8+ oz sections were common, though not the majority, and that by using the 5-8 oz figure as a basis for calculating floor price, the crab caught by harvesters was being undervalued. However, FFAW's submission went on to state: "Nonetheless, as a conservative measure to attempt to capture the preponderance of all Newfoundland and Labrador crab, it is acceptable for our purposes."

61. FFAW's proposal for establishing the 2025 price (including the initial weekly minimum price and the formula for establishing the final settlement price) is set out in section 3.0 of its 2025 written submissions to the Panel (pages 12-16) under the heading "Proposed Fair Pricing Model". It reads as follows:

*The proposed system consists of four components: 1) a fair floor price based on the most recent available Urner Barry information; 2) a year-end settlement mechanism that provides for proportionate increases to the share allocated to harvesters; 3) a contingent price on tariffs; and 4) a force majeure clause which requires reconsideration should the market drop below the price used in setting the floor price.*

***Initial Start Price**: Currently, the UB index indicates that the start price of crab is between $9.25 and $9.75 USD. Projections from UB indicate that the price should not drop below USD $8.50 once NL crab starts coming to market and is expected to stay between $8.75 and $9.00 in the early part of the season.5 As we have historically done throughout the season, we propose to use the current conversion rate for the week prior: 1.42. At 8.75 USD, this would be $4.97 CAD as a floor price.*

*…*

***Year-End Settlement Mechanism** (**Market-Based Adjustment**): We propose determining the final settlement price at year-end based on a three-tier price scale as depicted in the table below.*

*Tier 1: final percentage market share to harvesters will be between 40% to 45% when average crab prices are between $6.00 and $8.50, using the formula Y = 0.02X2 + 0.28X.*

*Tier 2: final percentage market share to harvesters will be between 45 and 48% when average crab prices are between $8.51 and $10.60 using formula Y = 0.0143X2 + 0.3284X.*

*Tier 3: final percentage market share to harvesters will be fixed at 48% when average crab prices exceed $10.60 (CAD).*

62. In the Panel's 2025 decision, after setting out that it was selecting FFAW's proposal, and then setting out the FFAW's "Initial Start Price Formula" and its Year-End Settlement Mechanism", the Panel stated, "All other details are articulated in the FFAW brief from pages 14-16."

63. Unlike prior years – particularly 2018 – FFAW's 2025 Panel submission did not seek a separate price for consumer packs, or any other packaging form, to form part of the price calculation for raw material.

64. ASP's 2025 proposal for establishing the price (including the initial weekly minimum price and the formula for establishing the final settlement price) is set out in paragraphs 9 – 16 of its 2025 written submissions to the Panel. It reads as follows:

*The price to be paid for snow crab from the start of the fishery until Urner Barry quotes new 2025 supply in the US market is:*

| | Raw Material Price |
|---|---|
| 4in Carapace and Greater (>4") | $4.50 |
| Less than 4inch Carapace (<4") | $4.20 |

*This start minimum price will be in place until adequate supply and trade allows UB to commence quoting 5-8 oz snow crab pricing from NL producers and from there, an established process to set the weekly minimum price will be used.*

*The $4.50 starting minimum price is based on approximately 90% advance of an UB price of $USD8.94 at 1.40 US/CAD exchange rate. This starting market price would yield a final settlement price of $5.00 to harvesters for the season if the seasonal price remained unchanged and prevailed at that average for the entire season. This start price is intended only to set a fair starting point and reflect the extraordinary risk that currently prevails generally in the US economy.*

*For the remainder of the season, once UB commences quoting pricing for NL snow crab in 2025, the minimum weekly raw material price will increase to 95% of the average UB Crab, Snow, Newfoundland, Cluster, 5-8oz, low of the Tuesday and Thursday quotation, and then converted at the average weekly exchange rate to $CAD equivalent, as per the following sample minimum price table. The entire minimum weekly pricing system can be found in Appendix A.*

| UB 5-8oz low $USD | UB 5-8oz low $CAD (Fx 1.40) | Weekly in-season minimum price |
|---|---|---|
| $ 6.04 | $ 8.46 | $ 2.97 |
| $ 6.54 | $ 9.16 | $ 3.44 |
| $ 7.04 | $ 9.86 | $ 3.71 |
| $ 7.54 | $ 10.56 | $ 3.99 |
| $ 8.04 | $ 11.26 | $ 4.27 |
| $ 8.54 | $ 11.96 | $ 4.54 |
| $ 9.04 | $ 12.66 | $ 4.82 |
| $ 9.54 | $ 13.36 | $ 5.10 |
| $ 10.01 | $ 14.01 | $ 5.35 |

…

A final season reconciliation price will be determined on a scale of 60% to 64% harvester share (taking into account a production yield factor of 65%) of the market value, determined by an independent third party, of actual sales of 2025, 5-8oz sections (wholesale product, packed 30 lbs net weight), net FOB plant or equivalent, from the start of the fishery through three weeks after the fishery ends. The settlement will be paid to harvesters by October 31, 2025.

The formula-based settlement pricing is as follows:

x = (y-3.5939) / (1.4104)

*where x is the raw material price, and y is the net FOB plant value*.

65. In its 2025 submissions to the Panel, ASP accepted that FOB Boston pricing had an inherent limitation that would be removed by a change to FOB Plant pricing. ASP's final offer specifically referenced that the end-of-season settlement price would be based on actual 2025 sales of 5-8 oz sections. Its submission specifically referenced "(wholesale product, packed 30 lbs net weight), net FOB Plant or equivalent".

66. At paragraphs 27 of its submission, ASP stated that all processors could meet the criteria for FOB Plant, but not all processors could meet the criteria for FOB Boston. As such, use of FOB Plant would allow for a greater level of transparency. Then, in paragraph 28, ASP again referred to "FOB Plant" being based on 5-8 oz section in the 30-lb case product form:

> 28 Using Net FOB Plant, or equivalent to, all crab processors will be required to submit their sales invoices for 5-8 oz clusters, in the product form 30 lbs, regardless of destination, for the settlement process, with the cost of freight deducted. Tariffs, if any, would also be deducted.

67. At paragraphs 31 – 35 of its 2025 decision, the Panel indicated that the parties had reached agreement about certain defined terms that grounded each of their submissions to the Panel:

> 31. Before delving into the proposals, it is important to note some defined terms about which the parties have agreed.
>
> 32. The parties refer to "FOB Boston" and "FOB Plant" in their proposals. "FOB" is "Freight on Board" a legal term used internationally. It requires a seller to deliver goods on board a shipping vessel. The seller is responsible for meeting the obligations relating to the goods to the point of the vessel. These include the costs associated with shipping the goods from the seller's warehouse to the buyer's store. There are many ways to calculate FOB to take different costs into account.
>
> 33. In 2024, FFAW and ASP agreed to use "FOB Boston" meaning the market-based price of crab reflected the value of snow crab at a common point of sale in the US market. The location chosen was FOB Boston, and according to the parties, this was done to capture the actual returns by NL processors from the US market for the 5-8 oz section product.
>
> 34. It was determined that FOB Boston pricing only captures product sold directly to the Boston market and not other geographic market segments in the US. Both ASP and FFAW have, for 2025, have each proposed to use net FOB plant, or equivalent, meaning that any freight costs are deducted from the price received by the processor.
>
> 35. Using FOB plant or equivalent to, ASP argued that all processors will be required to submit their sales invoices for 5-8 oz clusters, in the product form 30 lbs., regardless of destination, for the settlement purposes with the cost of freight deducted.
>
> […]

68. In paragraphs 50-69 of the Panel's 2025 decision, it summarizes ASP's proposal. In particular, in paragraphs 51 and 57 it states:

> 51. The second part of the proposal is the final season reconciliation price, which ASP argues is to be determined on a scale of 60%-64% harvester share (taking into account a production yield factor of 65%) of the market value, determined by an independent third party, of actual sales of 2025,

> 5-8 oz sections (wholesale product, packed 30 lbs. net weight), net FOB plant or equivalent, from the start of the fishery through three weeks after the fishery ends. The settlement will be paid to harvesters by October 31, 2025.
>
> […]
>
> 57. Both ASP and FFAW based their prices on FOB plant, as opposed to FOB Boston, in recognition of the fact that not all processors from Newfoundland deliver to Boston.

69. In rendering its decision, the Panel selected the FFAW's position, which included an initial price based on Urner Barry 5-8 oz sections, and a year-end settlement price based on actual sales of 5-8oz crab sections, FOB Plant. Harvesters started fishing crab for the 2025 season on April 7, 2025, at the initial price of $4.97/lb and fished throughout the season, landing 98% of the quota.

70. Several months later, when the parties began to discuss the terms of reference for the third-party auditor (Deloitte) to determine the end of season payment/settlement price, they realized that there was a disagreement with the interpretation of the Panel's decision.

71. FFAW contends that reference to "all receipts" in its written submissions to the Panel meant that the RMP was supposed to be based on all sections of 5-8 oz crab sold in the province, regardless of packaging form, including those sections sold as consumer packs or in packs of weights over or under 30lbs. ASP holds the opposing view and maintains that the RMP price was supposed to be based on 5-8 oz sections sold in wholesale 30-lb cases only.

72. On cross-examination, Sherry Glynn (Inshore Director with FFAW) testified that reference to "all receipts" in FFAW's written submissions to the Panel was intended to "encompass all of it", and that it made no sense to specify "30-lb or 25-lb or crab delivered on horseback because we did not want to list out certain things and then realize later that we didn't include certain types of boxes…we said "all" so as not to limit ourselves. We'd not put ourselves or our members in that position. We'd not have risked our members getting exposed like that."

73. When asked about her concerns with respect to market subversion arising from processor packaging choice and why this issue was not specifically mentioned in an April 2025 FFAW press release, Ms. Glynn testified, "We said "all". We went into negotiations to win the goddamn thing. Fuck it all we're going to win it. We felt we made a lot of gains. The press

release was meant to capture the gains we made…". She testified that "all" was not said "in reference to destination because it [FOB plant] already referred to all destinations…We said "all" to encompass all 5-8 oz sections regardless of product format".

74. The affidavit evidence of Renae Butler (Manager of Collective Bargaining with ASP) was that the parties' discussions about the use of FOB Plant versus FOB Boston clearly contemplated reliance on 30-lb boxes. When asked about this aspect of Ms. Butler's evidence, Ms. Glynn testified that ASP never discussed "30-lb boxes" and that the words "30-lb cases never came out of anyone's mouth". She acknowledged, however, that during negotiations, there were a lot of references to 5-8 oz sections and that "5-8 oz section" is a term that both parties use.

75. Regarding the position of ASP that the term "FOB Plant" by its nature means only 30-lb boxes, Ms. Glynn stated that this is not FFAW's understanding. Rather, FFAW's understanding is that "FOB Plant" is a shipping term addressing where liability changes hands and that "FOB Plant" does not refer to a product format.

76. During cross-examination, Ms. Glynn testified that as of April 2025, FFAW had no awareness of any dispute about [the inclusion of 5-8 oz sections in] consumer packs. During cross-examination, she confirmed her affidavit evidence that FFAW did not learn that ASP was taking the position that the rebate would only apply to 5-8 oz sections in wholesale 30-lb cases until she reviewed ASP's (April 6, 2025) written submission to the Panel. She testified, "I remember that night I went home with their [ASP's] submission printed and I saw the 30-lb reference and I wrote "WTF" next to it". Ms. Glynn acknowledged, however, that despite making note of this 30-lb reference when reviewing ASP's written submission, this point was not addressed by FFAW during its oral submissions to the Panel.

77. The affidavit evidence of Darrell Roche was put to Ms. Glynn on cross-examination, and she was asked if she disagreed with any of it. Darrel Roche is President and CEO of Whitecap International Seafood Exporters ("Whitecap"), one of the largest global suppliers of North Atlantic snow crab. Ms. Glynn did not reply other than to say she could not comment on Whitecap's line of business or what it buys in the market. Ms. Glynn acknowledged, however, that 30-lb boxes of crab are the industry standard. When it was put to her that Urner Barry only reports on 30-lb boxes when it reports on the price of 5-8 oz sections, Ms.

Glynn acknowledged this point but testified, “we learned that from the [January 20, 2026] email from Janice Schreiber, but that is not what we understood”.

78. Subsequent to each party’s exchange of written submissions in advance of the hearing, the parties submitted a Supplemental Agreed Statement of Facts to clarify what appeared to be a factual disagreement. The FFAW had been of the understanding that a processor’s inability to package crab in 30-lb boxes (or its decision not to do so) meant that the harvester selling crab to that processor would not receive the benefit of the settlement payment. This understanding was, however, incorrect.

79. The parties agree that in 2025: the overall RMP was comprised of the in-season floor price and the settlement payment combined; a harvester’s access to the settlement payment was not contingent on whether the processor that purchased the crab produced 30-lb boxes of 5-8 oz sections; the settlement payment was to be based on the price per pound of raw material purchased from the harvester, not how that raw material was eventually packaged; a processor’s inability to produce bulk 30-lb standard cases (or its decision not to produce bulk 30-lb standard cases) did not impact a harvester’s entitlement to the end-of-season settlement payment; and a processor could not escape the obligation based on its choice of packaging.

***2024 Settlement Price Calculation***

80. When processors provided their receipts to Deloitte for the 2024 season, only receipts for 30-lb boxes of 5-8s were provided for the 2024 settlement price calculation. While ASP says that this limitation is in accordance with the 2024 Panel decision, it acknowledges that FFAW was unaware of that limitation at that time.

81. The receipts/invoices in the hands of Deloitte did not always readily identify product by 30-lb boxes, but it did identify that the product was 5-8 oz sections without reference to volume. As stated by Deloitte:

> In 2024, each processor that provided invoice detail for 5-8 oz sections provided a spreadsheet listing of summary detail by invoice. For each invoice the Invoice Number, Total lbs Shipped, Price per lb and Total Invoice $ was received. This level of detail did not indicate whether the invoice represented 30 lb boxes or another volume configurations. For some sample invoices received, reference to 30 lb boxes was indicated while for other sample invoices received only total volumes were included.

> As our scope was to perform the calculations on all invoices for crab 5-8 oz sections delivered to Boston (FOB Boston) we did not receive information to allow for the segmentation of the population by packing size.

**Summary of FFAW's Arguments at Arbitration**

82. This is not a case requiring an arbitrator to adjudicate a dispute about the meaning of ambiguous or unclear terms in a collective agreement by looking at evidence of negotiations, including collective agreement proposals exchanged by the parties, nor is it a case requiring the Arbitrator to determine the mutual intention of the parties. Any attempt to determine mutual intention would be a fool's errand because there was no mutual intention.

83. Each party has provided evidence of its opposite subjective belief about how the end-of-season rebate was to be calculated. Neither party is lying in terms of the position it now puts forward about its subjective belief when making submissions to the Panel. What cannot be ignored, however, is that the Panel selected FFAW's proposal in a statutory final offer selection process. While FFAW's submission about its subjective expectation is not determinative, the fact that the Panel selected FFAW's submission is relevant. What the arbitrator must do is determine what a reasonable Panel would have interpreted FFAW's price submission to be, because it was FFAW's price submission that was chosen in the statutory final offer selection process.

84. FFAW's position has remained consistent that the end-of-season settlement mechanism was to include all commercially sold 5-8 oz sections of snow crab, regardless of how they were packaged, marketed, or sold by processors. FFAW proposed to the Panel that the settlement calculation be based on "all receipts for 5-8 oz sections, net FOB plant". The reference to "all receipts" was not a reference to destination, as ASP suggests. Rather, it was a reference to all "5-8 oz sections" of crab, no matter how packaged.

85. FFAW did not include any restriction based on packaging format, case size, or product configuration. Paragraph 35 of the 2025 Panel decision reads, "*Using FOB plant or equivalent, ASP argued that all processors will be required to submit their sales invoices for 5-8 oz clusters, in the product form 30 lbs., regardless of destination, for the settlement purposes with the cost of freight deducted.*"

86. Paragraph 35 is the only thing ASP can hang its hat on to support its position that the Panel endorsed the 30lb box restriction. FFAW never endorsed a 30-lb box restriction. If the parties were truly *ad idem* on the 30-lb box restriction, the Panel would not have said "ASP argued". Rather, the Panel would have stated clearly that FFAW had accepted the 30-lb box restriction. What ASP said in its submissions about a 30-lb box restriction matters not because the Panel did not pick ASP's proposal. The Panel selected the FFAW's formula. It outlined the FFAW's formula in paragraph 77 of its decision, and then stated, "all other details are articulated in the FFAW brief from pages 14-16."

87. Under the legislated mandatory final offer selection process, the Panel selected the FFAW submission in its entirety. It did not select – and in fact it could not have selected – any part of ASP's proposal. At page 12 of its proposal, FFAW indicated it was seeking to correct problems from the 2024 fishing season associated with the term "FOB Boston", which term excluded a significant number of receipts from the end-of-season assessment. To correct this problem, FFAW proposed using all receipts for 5-8 oz sections, net "FOB Plant" instead of "FOB Boston". In its proposal FFAW made no mention of 30-lb boxes. To expand the language in FFAW's proposal to impose a restriction of 30-lb cases only would be to imply a new term in the collective agreement, which the Parties did not mutually intend (see *West Fraser Mills and USW, Locals 1-424 and 1-425 (Long Term Disability Contributions), Re* (2017 CarswellBC 3595)).

88. FFAW's submission to the Panel was clear and unambiguous. It was accepted by the Panel wholesale. As a result, no further analysis of the parties' subjective intent, ancillary documents, or surrounding circumstances is required in this arbitration. There was no gap in FFAW's submission. If the Arbitrator determines there is any ambiguity, arbitral principles of interpretation require him to avoid reaching conclusions that result in inconsistencies, anomalies and/or absurdities.

89. The end-of-season rebate/price settlement mechanism was meant to cure problems that had plagued the snow crab fishery in previous years. FFAW's proposal offered protection to harvesters from price manipulation by processors and exporters, preventing them from artificially driving down prices. The FFAW proposal ensured that harvesters would receive a price based on fuller market data and actual sales of all crab. The FFAW's proposal provided the transparency and predictability needed to cure past problems. These purposes

serve as a useful interpretative aid to clarify any potential ambiguity. Arbitrators must be aware of curative and remedial purposes in a collective agreement provision when making interpretative decisions (see *Association of Allied Health Professionals Newfoundland and Labrador and His Majesty the King in right of Newfoundland and Labrador, Newfoundland & Labrador Health Services* (Policy Grievance re Article 25 – Promotions), Arbitrator James Oakley KC, January 12, 2026).

90. It cannot be forgotten that harvesters have no control over how processors package the crab they purchase from harvesters. Processors decide how it is packaged. FFAW acknowledges it did not specifically mention “consumer packs” in its 2025 submissions to the Panel, contrary to its Panel submissions in some prior years. This was, however, a purposeful choice. Given its mistrust of ASP, FFAW did not want to reference specific terms such as “30-lb boxes” or “consumer packs” only to have ASP attempt to avoid paying the end-of-season rebate by packaging 5-8 oz sections in 29-lb boxes or 31-lb boxes, etc. FFAW would never have agreed to language that allowed processors to avoid the rebate in this way. While FFAW is not suggesting that this occurred, it is saying that the possibility exists based on ASP’s argument. No reasonable Panel would have selected a process that would allow ASP to cheat the system in this way. Therefore, for the arbitrator to find in favour of ASP in this case, it would result in an illogical outcome.

91. FFAW’s communications with harvesters following the Panel decision, and throughout the 2025 fishing season, were consistent with its position before the Panel – that “all receipts” captured “all” 5-8 oz sections, regardless of packaging. Harvesters participated in the 2025 snow crab fishery having relied on the pricing framework established by the Panel, which included the end-of-season settlement mechanism set out in FFAW’s accepted proposal.

92. In terms of the FFAW’s November 17, 2025 press release (attached as an Exhibit to Renae Butler’s affidavit) and the reference in it to Panel agreeing [on Friday November 14, 2025] “with ASP’s position that only 30 lb boxes be included” [in the settlement price calculation], any alleged statement by Panel Chair Sheilagh Murphy could not have been a clarification of the three-person Panel Decision. Her statement was made without any procedural safeguards and any reference to it by the arbitrator would result in reliance on several degrees of hearsay. The purported statement should be given zero weight by the Arbitrator.

93. FFAW relies on the following authorities, which I have reviewed and considered: *Canadian Labour Arbitration,* 5th Edition (Brown & Beatty), sections 4:20, 4:23, 4:27; *West Fraser Mills and USW, Locals 1-424 and 1-425 (Long Term Disability Contributions), Re* (2017 CarswellBC 3595); *Association of Allied Health Professionals Newfoundland and Labrador and His Majesty the King in right of Newfoundland and Labrador, Newfoundland & Labrador Health Services* (Policy Grievance re Article 25 – Promotions), Arbitrator James Oakley KC, January 12, 2026; Eastern Regional Integrated Health Authority and NAPE, Re (2020), 2020 CarswellNfld 372, 147 C.L.A.S. 154, 323 L.A.C. (4th) 344 (Arbitrator Peddigrew).

**Summary of ASP's Arguments at Arbitration**

94. Post-processing product forms like consumer packs have never formed part of the computation of the minimum raw material price for crab in the parties' history. While FFAW has sought this outcome in the past, it has never successfully achieved it, either through negotiations or before the Panel. Granting this benefit to FFAW through arbitration would result in FFAW receiving a benefit it has been unable to achieve in negotiations or before the Panel. In addition, it would fundamentally alter the commercial realities of the crab industry.

95. The MCA between the parties regulates the first-hand sale of fish – not the second-hand sale, nor the third-hand sale, nor any other sale. The central bargain between the parties is that harvesters catch raw material, and processors are required to pay a minimum price for that raw material. This transaction occurs at the wharf, based upon the state and value of the raw material at that place and time. To the extent a processor enhances the raw material, whether through a convenient retail consumer pack or otherwise, that enhancement does not form any part of the valuation of the raw material in the first-hand sale of fish by harvesters. It never has.

96. The parties agree that the Urner Barry price index drives the determination of the minimum price. FFAW concedes that the Urner Barry price index is based upon the standard bulk 30-lb case of wholesale 5-8 oz sections of crab (the "Standard Case"). The parties also agree that Standard Cases comprised 92% of sales of 5-8 oz sections of snow crab in 2025.

97. Determination of the minimum price has historically been a contentious issue in the crab fishery. The 2023 Blackwood Report concluded that a settlement price mechanism was

required for the crab fishery. An end-of-season settlement price mechanism ensures that harvesters share in the upside and downside of price changes that occur over a fishing season. The end-of-season settlement price mechanism provides a reality check on Urner Barry's reporting on the sales of Standard Cases through its reference to all actual receipts of all sales of Standard Cases. Despite FFAW's own subjective interpretation of the meaning of "5-8 oz sections", there is no support whatsoever for the proposition that the settlement price mechanism transforms the most critical variable in the formula – sales of 5-8 oz sections – from being based on Standard Cases in the first instance to being based on packaging that includes consumer packs at the settlement price phase.

98. FFAW's argument about the inclusion of consumer packs in the settlement price is contrary to the computation of price in 2024, and in every year before that. In the approximately 2000 pages of documents filed in this arbitration, there is not a single discussion of consumer packs ever forming part of the computation of the RMP, except in the limited circumstances where FFAW has, unsuccessfully, sought it from the Panel in prior years. FFAW is now asking the arbitrator to rely upon two words – "all receipts" – that appear once in its written Panel submission, in order to override its over 30 references to "UB", "Urner Barry" or "5-8 oz sections", as well as decades of past practice, all of which is based upon the industry understanding that sales of "5-8 oz sections" refers to sales of Standard Cases, as confirmed in the unchallenged affidavit evidence of Darrell Roche.

99. FFAW's singular reference to "all receipts" cannot act as a Trojan horse to retroactively import its arguments at this arbitration into its 2025 Panel submissions. If the FFAW had truly been concerned about the price impact of consumer packs back in the spring of 2025, it ought to have presented those arguments to the Panel at that time. Had it done so, based on past Panel decisions, it is clear that the Panel would have rejected those submissions in its 2025 pricing decision.

100. FFAW did not make any submissions to the Panel relating to consumer packs because it was not on their minds, as evidenced by the fact that it was not a consideration in the preceding negotiations between the parties, nor was it addressed in FFAW's written or oral submissions. Not surprisingly, it was therefore not a factor in the Panel's decision making. In the alternative, it was an utterly subjective expectation, known only to Greg Pretty and Sherry Glynn, voiced for the first time well after the Panel's 2025 pricing decision.

101. The text of the Panel decision alone should resolve this arbitration because it is unequivocal. The Panel decision explicitly states that each party's offer was based on "FOB Plant", which was a mutually understood defined term, reflecting all receipts for sales of 5-8 oz sections in Standard Cases, minus freight and duties.

102. In the alternative, if the text of the Panel decision alone does not resolve this arbitration, the interpretation of "all receipts of 5-8 oz sections" is properly done by reference to a myriad of objective considerations, including but not limited to:

a) both parties, as well as the Panel, agreed on the need for "all receipts" to address the formula change in 2025 to "FOB Plant" rather than 2024's "FOB Boston", to rectify FFAW's concern that processors were selling to other delivery points outside Boston;

b) both parties, as well as the Panel, agreed that the settlement price would be computed based upon processors' production of "all receipts", rather than the 2024 initial intention for a "statistically significant sample" of 5-8 oz sections;

c) Deloitte computed the 2024 settlement price using Standard Case sales, without reference to any consumer packs, and without any objection from the FFAW;

d) There is no indication, anywhere, that the historical common understanding of "5-8 oz sections" had changed in the FFAW's submission; and

e) the Panel Chair, as publicly acknowledged by the FFAW, agreed with ASP's position that consumer packs did not form a part of price setting in a 2025 Panel decision.

Collectively, these objective considerations lead to the conclusion that "5-8 oz sections" means those in 30-lb Standard Cases only.

103. FFAW overtly agreed with and bargained for the definition of "FOB Plant". Now, however, through this arbitration, it is attempting to replace that mutually agreed, clear, and deliberately arrived at term as adopted by the Panel, by relying on its singular reference to "all receipts" to purport that the parties had an objective intention to include consumer packs in the settlement price. Its assertion is demonstrably inaccurate. It conflicts with the unequivocal text of the Panel's decision, the whole of the extrinsic evidence in this matter, the past practice of the parties using the Standard Case proxy, and the commercial context

of the crab industry. Taken together, these facts point to an objective intention that "5-8 oz sections" meant those contained in wholesale 30-lb Standard Cases. The FFAW's assertion that "5-8 oz sections" in consumer packs should be part of the settlement price determination cannot stand. It would confer on FFAW and harvesters a financial benefit at arbitration when that financial benefit was not expressly sought during negotiations nor before the Panel. ASP respectfully requests that the Grievance be dismissed.

104. ASP relies on the following authorities, which I have reviewed and considered: *Teamsters, Transport and Allied Workers Union, Local 855 and Agropur Dairy Cooperative*, 2018 CanLII 37249 (NL LA), 290 L.A.C. (4th) 365 (Arbitrator James Oakley); *University of Calgary and AUPE*, 2005 CarswellAlta 2745 (Elliot); *Saatva Capital Corp v Creston Moly Corp*, 2014 SCC 57; *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848; *Prince Edward Island (Department of Health & Wellness) v. C.U.P.E., Local 805*, 2011 PESC 1, 203 L.A.C. (4th) 357 (Taylor); *Kiwanis Villa-Victoria and BCNU*, 1995 CarswellBC 3188 (Ready); *Alberta Union of Provincial Employees v. Alberta Health Services*, 2020 ABCA 4; *Canadian Contractual Interpretation Law*: Commercial Efficacy excerpt; *Dumbrell v. Regional Group of Cos.*, 2007 ONCA 59 (Doherty); *Association of Seafood Producers Inc. and FFAW-Unifor*, 2024 CarswellNfld 54 (Orsborn); *Vancouver (City) Fire and Rescue Services and Vancouver Fire Fighters' Union, Local 18*, 2016 CarswellBC 624, [2016] B.C.W.L.D. 2778 (McPhillips); *Fish Food and Allied Workers/Unifor v. Association of Seafood Producers*, 2024 CanLII 140691 (NL LA) (Oakley); *NAPE and Stephenville Gardens Corp. (Janes)*, 2022 CarswellNfld 326 (Buffett); and *Memorial University of Newfoundland and MUNFA (A-17-10)*, 2020 CarswellNfld 166, 145 C.L.A.S. 1 (Knopf).

**Analysis & Considerations**

105. The Grievance has been filed by FFAW. FFAW bears the onus of establishing that the Panel decided that the end-of-season Settlement Price was to be calculated based on all sales of all 5-8 oz sections of snow crab, regardless of packaging format, including those 5-8 oz sections in consumer packs, versus being based only on sales of 5-8 oz sections in Standard Cases (i.e. wholesale 30-lb cases). For the reasons that follow, FFAW has failed to meet this onus on a balance of probabilities.

106. Section 19.11(1) of the FICBA requires the Panel to decide the price when price is in dispute. Section 4(1) of the FICBA Regulations states that the Panel's decision on price

"shall be in accordance with one of the positions on price…submitted to the panel by the parties at the hearing". Section 4(4) of the FICBA Regulations requires that when making its decision on price for crab, each party shall submit a "proposed formula to be used to determine the price for crab and the panel shall select one party's proposal" (i.e. final offer selection). Therefore, the legislation required the Panel to have selected either ASP's proposed formula or FFAW's proposed formula (section 4(4) of the FICBA Regulations), and its decision had to be "in accordance with" one of the party's positions on price (section 4(1) of the FICBA Regulations).

107. The Panel selected FFAW's proposed formula. FFAW submits that my task as arbitrator is to determine the most objectively reasonable interpretation of FFAW's 2025 Panel submission, because it was FFAW's submission that was selected by the Panel through the final offer selection process. FFAW submits that because its proposal – in its entirety – was selected through the final offer selection process, no aspect of ASP's proposal – including any limitation based on 30-lb standard cases – could have formed part of the Panel's decision on price. For reasons that will be explained in this Award, I disagree with the FFAW's submission on this point.

108. ASP submits that my task as arbitrator requires more than just an interpretation of FFAW's 2025 Panel submission. ASP submits that my task is to decide the Grievance considering: a) the text of the MCA, which pursuant to the FICBA includes the 2025 Panel decision; b) the factual matrix and surrounding circumstances underlying the Panel's decision; and c) the long-standing past practice of the parties to rely on the wholesale, 5-8 oz section proxy to set the raw material minimum price.

109. I agree with ASP that I am required to consider more than just FFAW's written submission to the Panel. To the extent that the FFAW is suggesting that I cannot consider anything other than its written submission because the Panel selected its submission in its "entirety" or "wholesale" through the final offer selection process – resulting in the Panel being unable to consider anything other than FFAW's written submission – the FFAW is overstating the limitations of the final offer selection process contained in section 4 of the FICBA Regulations and section 19.11(1) of the FICBA. The statutory final offer selection process did not require the Panel to accept every aspect of FFAW's written submissions, to the exclusion of every aspect of ASP's written submissions. So long as the Panel selected one

party's "proposed formula", and so long as the Panel's decision on price was "in accordance with" that party's position on price at the hearing, the Panel complied with the legislation.

110. As arbitrator, I am required to review and interpret the applicable collective agreement, which means I am required to review and interpret the Panel's decision on price (because the Panel's decision on price became part of the MCA as per section 19.9(3) of the FICBA). Therefore – at its core – my task as arbitrator in this matter is an exercise in collective agreement interpretation.

111. The modern method of collective agreement interpretation directs me, as arbitrator: (a) to consider the entire context of the collective agreement; and (b) to read the words of the collective agreement in their entire context and in their grammatical and ordinary meaning, within the scheme and object of the collective agreement, and within the intention of the parties (*Teamsters, Transport and Allied Workers Union, Local 855 and Agropur Dairy Cooperative*, 2018 CanLII 37249 (NL LA), 290 L.A.C. (4th) 365, Arbitrator James Oakley ("*Agropur Dairy*").

112. With respect to the "modern method" of collective agreement interpretation, what does "entire context" mean? The meaning is discussed in paragraphs 119 – 121 of *University of Calgary and AUPE* (2005) 80 C.L.A.S. 43 (Elliot). Based on a review of these paragraphs, I am satisfied that the "entire context" can include consideration of the following:

- words that have defined meanings must be applied whenever the defined word is used in a collective agreement, unless a very clear contrary intention is evident;
- the legislative framework within which a collective agreement exists;
- matters external to a collective agreement, including:
    - evidence about what is commonly understood by a technical term or phrase;
    - evidence of the conceptual framework underlying some of the terms of the collective agreement;
    - evidence to resolve an ambiguity; and
    - on occasion, evidence of negotiations may be helpful; and

- generally, any extrinsic evidence that an interpreter of a collective agreement feels is part of the "entire context", with the interpreter then being required to consider its relevance and importance to help interpret the actual collective agreement provision.

113. In addition, the Supreme Court of Canada decision in *Saatva Capital Corp v Creston Moly Corp*, 2014 SCC 57 ("*Saatva*") was relied on by the Alberta Court of Appeal in *Alberta Union of Provincial Employees v. Alberta Health Services*, 2020 ABCA 4, to confirm that evidence of surrounding circumstances, including background facts and proposals exchanged in bargaining, can be considered by an arbitrator. Of particular relevance to the Grievance now before me is the portion of *Saatva, supra*, wherein the SCC states that while the surrounding circumstances must never be allowed to overwhelm the words of an agreement, the goal of examining the "surrounding circumstances" is to deepen a decision maker's understanding of the mutual and objective intentions of the parties as expressed in the words of their contract. The SCC in *Saatva, supra*, states further that while the nature of the evidence that can be relied upon under the rubric of "surrounding circumstances" will necessarily vary from case to case, it should only consist of objective evidence of the background facts that existed at the time of the execution of the contract – that is, knowledge that was, or ought reasonably to have been, known by both parties at or before the date of contracting.

114. Applying these principles to the matter before me, I feel obligated to consider not just the written submission of FFAW, but also the written submission of ASP, the Panel's 2025 decision, and other evidence external to the MCA.

115. ASP's primary argument is that the Panel decided clearly and unequivocally that the parties adopted a mutually agreed definition of "FOB Plant", which each party then relied on to ground its submissions to the Panel, which ASP says – in and of itself – is dispositive of this arbitration. In essence, what ASP argues is that although the Panel selected FFAW's proposed formula, that proposed formula included the definition of FOB Plant that was contained in ASP's submissions.

116. In the Panel's 2025 decision – before setting out each party's price proposal and then its decision on price – the Panel first identified certain defined terms that had been agreed to by the parties:

> 31. Before delving into the proposals, it is important to note some defined terms about which the parties have agreed.
>
> 32. The parties refer to “FOB Boston” and “FOB Plant” in their proposals. “FOB” is “Freight on Board” a legal term used internationally. It requires a seller to deliver goods on board a shipping vessel. The seller is responsible for meeting the obligations relating to the goods to the point of the vessel. These include the costs associated with shipping the goods from the seller’s warehouse to the buyer’s store. There are many ways to calculate FOB to take different costs into account.
>
> 33. In 2024, FFAW and ASP agreed to use “FOB Boston” meaning the market-based price of crab reflected the value of snow crab at a common point of sale in the US market. The location chosen was FOB Boston, and according to the parties, this was done to capture the actual returns by NL processors from the US market for the 5-8 oz section product.
>
> 34. It was determined that FOB Boston pricing only captures product sold directly to the Boston market and not other geographic market segments in the US. Both ASP and FFAW have, for 2025, have each proposed to use net FOB plant, or equivalent, meaning that any freight costs are deducted from the price received by the processor.
>
> 35. Using FOB plant or equivalent to, ASP argued that all processors will be required to submit their sales invoices for 5-8 oz clusters, in the product form 30 lbs., regardless of destination, for the settlement purposes with the cost of freight deducted.

117. ASP submits that these paragraphs establish clearly the Panel’s finding that “FOB Plant” was a provision expressly bargained for by the parties. Further, ASP submits that during bargaining, the parties agreed to define “FOB Plant” based on ASP’s proposal, which meant that processors would submit their sales invoices for Standard Cases (i.e. wholesale 30-lb standard cases) for purposes of the end-of-season Settlement Price calculation, with the cost of freight deducted.

118. In response, FFAW submits that because paragraph 35 of the Panel decision contains the words “ASP argued…”, the Panel was merely pointing out that the 30-lb case restriction was an argument proposed by ASP, versus something the parties had agreed to in bargaining. I disagree with this FFAW submission.

119. First, paragraph 35 is situated within a section of the Panel decision summarizing “defined terms” upon which the parties had agreed. I interpret this to mean that the Panel made a

finding that the 30-lb case restriction is one of the points upon which the parties had agreed during bargaining. To the extent FFAW is suggesting that the words "ASP argued…" illustrates otherwise, and/or that the placement/location of paragraph 35 in the Panel decision is insufficient for me to draw such a conclusion, the additional surrounding circumstances (which I am required to consider as per *Saatva, supra* and the "modern method" of collective agreement interpretation) I reject FFAW's submissions. Considering the surrounding circumstances and applying the modern method of interpretation lead to the conclusion that the Panel never intended for the end-of-season settlement price calculation to be based on anything other than 5-8 oz sections packaged in (wholesale 30-lb) Standard Cases.

120. One of the surrounding circumstances that I find compelling is the FFAW's reference to ASP's definition of "FOB Plant" in its proposal to the Panel on Settlement Price. While FFAW has denied that it relied on ASP's definition of FOB Plant in its written submissions on price, its written submissions suggest otherwise. In the alternative, even if FFAW did not intend to rely on ASP's definition of FOB Plant, I conclude that the Panel would reasonably have understood FFAW to be relying on ASP's definition of FOB Plant. At page 12 of FFAW's submission, it states:

> To start, we learned that FOB Boston limited the receipts available to the third-party auditor to those sales that were delivered to Boston. That limitation excluded a significant number of receipts from the assessment. To correct that, we propose using all receipts for 5-8 oz sections, net FOB plant. ***From the definition provided by ASP during negotiations, we understand that net FOB plant excludes the cost of freight and duties, as compared to FOB Boston (or delivered Boston) which includes these costs***. ***[Emphasis added]***

121. On its face, the clear implication of the above sentence is that FFAW was relying on the definition of "FOB plant" "provided by ASP during negotiations…". While Sherry Glynn denied during cross-examination that FFAW relied on ASP's definition of "FOB Plant", explaining that "FOB Plant" is a shipping term clarifying where liability changes hands versus clarifying a particular packaging format, her explanation did not convince me that the Panel would have understood or believed that FFAW was not relying on ASP's definition of "FOB Plant" in its price proposal to the Panel.

122. ASP's Panel submission states as follows:

> …Using Net FOB Plant, or equivalent to, all crab processors will be required to submit their sales invoices for 5-8 oz clusters, **in the product form 30lbs**, regardless of destination, for the settlement process, with the cost of freight deducted. Tariffs, if any, would also be deducted. [**Emphasis added**]

123. ASP's submission to the Panel regarding the meaning of "FOB Plant" clearly references 5-8 oz sections "in the product form 30lbs", which I have no hesitation concluding meant wholesale 30-lb Standard Cases based on the unchallenged affidavit evidence of Darrell Roche and Renae Butler.

124. To further support FFAW's argument that it never understood the meaning of "FOB Plant" to include only 5-8 oz sections in 30-lb cases, Sherry Glynn testified during cross-examination that there was never any discussion of 30-lb boxes during negotiations – that the words "30-lb cases never came out of anyone's mouth". Ms. Glynn's evidence on this point does not, however, convince me of FFAW's position in this arbitration because I find there was no need for ASP to specifically mention 30-lb cases. Unless FFAW said otherwise, it would have been reasonable for ASP to assume that their discussions pertained to 30-lb cases. As per the Agreed Statement of Facts, 92% of the 5-8 oz sections sold in 2025 were packaged in 30-lb cases. The unchallenged affidavit evidence of Darrell Roche confirms that the wholesale 30-lb cases is the industry norm, that Urner Barry requests price reports from Whitecap based on bulk sales in 30-lb cases, and that a packaging form less than 30 lbs would not be considered a wholesale unit of Canadian snow crab. Given these facts, it is not surprising that ASP would not have specifically mentioned 30-lb cases.

125. Ms. Glynn's evidence about FFAW's price proposal not being based on ASP's definition of "FOB Plant" is difficult to accept because of other evidence she gave during cross-examination. Ms. Glynn confirmed that FFAW did not become aware that ASP was taking the position that the rebate would only apply to wholesale 30-lb case packages of 5-8 oz sections until she reviewed ASP's written submissions to the Panel. She testified, "I remember that night I went home with their [ASP's] submission printed and I saw the 30-lb reference and I wrote "WTF" next to it". Ms. Glynn acknowledged, however, that this issue was not raised by FFAW in oral submissions at the Panel. This evidence is compelling. Despite being surprised or taken aback by the reference to 30-lbs in ASP's written

submission, nobody on behalf of FFAW addressed or even raised this point with the Panel during oral submissions. Surely, if the ASP's position with respect to 30-lb cases elicited this type of reaction in the spring of 2025, and if the issue was as prominent and important as FFAW is now suggesting in this arbitration, one would expect it to have been explicitly addressed with the Panel during oral submissions. It was not, however, addressed.

126. Even if I accepted that when FFAW made its written and oral submissions to the Panel in the spring of 2025, it had an understanding that all 5-8 oz sections were to be included in the settlement price calculation – regardless of packaging format – I would not be satisfied that such an understanding was ever communicated to the Panel. Nowhere in FFAW's written submission – including its reference to "all receipts" on page 12, which I will address in detail in the next paragraph in this Award – is there any reference to anything that would reasonably have led the Panel to understand that FFAW held such a belief or understanding or was asking the Panel to adopt this position. There is nothing in its proposed formula, nor is there anything on pages 14-16 of its written submissions, which the Panel specifically referred as containing "all other details" of FFAW's proposal. Therefore, it is not surprising that nowhere in the Panel's decision is there any reference to consumer packs, nor is there reference to any argument whatsoever advanced by FFAW that product forms other than 5-8 oz sections in 30-lb boxes were intended to be included when calculating the Settlement Price. I conclude, therefore, that when the Panel rendered its 2025 decision, it did not understand FFAW's proposed formula to include any 5-8 oz sections other than those in wholesale 30-lb Standard Cases for purposes of the end-of-season settlement price calculation.

127. I will now address the "surrounding circumstance" arising from the phrase "all receipts for 5-8 oz sections, net FOB plant", which appears on page 12 of FFAW's written submissions. FFAW submits that the words "all receipts" illustrates an intention to have more than just those 5-8 oz sections packed in wholesale 30-lb cases included in the settlement price calculation. This is perhaps the argument FFAW relies on most forcefully to support its position in this arbitration. With respect, however, I disagree with FFAW's submission on the meaning and implications of the words "all receipts".

128. To assess this FFAW submission, it is necessary to look at the entire paragraph within which the words “all receipts” appear, as opposed to reading those two words in isolation. The full paragraph on page 12 of FFAW’s written submission reads as follows:

> To start, we learned that FOB Boston limited the receipts available to the third-party auditor to those sales that were delivered to Boston. That limitation excluded a significant number of receipts from the assessment. To correct that, we propose using all receipts for 5-8 oz sections, net FOB plant. From the definition provided by ASP during negotiations, we understand that net FOB plant excludes the cost of freight and duties, as compared to FOB Boston (or delivered Boston) which includes these costs.

129. The full sentence within which the words “all receipts” appear reads as follows: “To correct that, we propose using all receipts for 5-8 oz sections, net FOB Plant”. The question that arises is as follows – what was it FFAW was looking to correct? It seems obvious to me that FFAW was looking to correct the issue that was identified in the preceding two sentences of that same paragraph, which is the fact that the settlement price calculation in 2024 was based on sales delivered to Boston only, as opposed to sales to all destinations. FFAW was looking to clarify a destination issue, not a product-packaging issue. Nowhere in FFAW’s 2025 written submission to the Panel does it raise concern or pass comment about packaging format. Nowhere in its written submission does FFAW make any reference to the 2025 settlement price being calculated based on the inclusion of 5-8 oz sections in packaging formats other than 30-lb Standard Cases. If FFAW was seeking to ensure that 5-8 oz sections besides those in 30-lb Standard Cases would be included when calculating the end-of-season settlement price, it would or should have said so clearly and explicitly like it did with respect to its clarification about destination (i.e. FOB Plant versus FOB Boston). FFAW’s silence on this matter before the Panel is compelling evidence.

130. FFAW attempts to explain this omission by suggesting that the reason it never specifically mentioned any packaging format – including 30-lb cases or consumer packs – in its submissions to the Panel is because the words “all receipts” were intended to be all-encompassing and were in fact all encompassing. The FFAW submits that “all receipts” covers all 5-8 oz sections of crab, regardless of packaging format. It submits that it made a conscious and deliberate decision to avoid specificity in its submissions with respect to packaging format, so as to avoid any risk that ASP would later attempt to circumvent its

obligations by packaging crab in some other sized format. For example, FFAW reasons that if it had specified that the settlement price applied to 30-lb cases and post-processing consumer packs, ASP could have avoided its obligations by packaging the crab in 29-lb cases or 31-lb cases or some case size other than 30 lbs. FFAW acknowledges that this type of alternate packaging has never happened before. In fact, FFAW presented no evidence of processors attempting to circumvent or subvert its settlement price obligations in this way. Further, the affidavit evidence of Darrell Roche confirms that the wholesale 30-lb Standard Case is the industry standard for snow crab in Canada. Darrell Roche's affidavit confirms he is not aware of any Newfoundland and Labrador processor that Whitecap buys crab from, or any customer that Whitecap sells crab to, that buys crab at the wholesale or bulk level in any packaging form other than a 30-lb case. Therefore, for processors to package wholesale crab in cases other than 30-lbs would fly in the face of accepted industry practices. It must be remembered that 92% of 5-8 oz sections ended up on 30-lb cases in 2025. FFAW's argument about market subversion by ASP is not only hypothetical and speculative – it also ignores industry standards and realities. Moreover, if processors were ever to attempt to circumvent or subvert their end-of-season settlement price obligation in the hypothetical manner suggested by FFAW, I would be surprised if an arbitrator would not see through such an attempt as clear and brazen effort to avoid a contractual obligation to pay an end-of-season settlement price on wholesale 5-8 oz sections. In short, the FFAW's argument on this point does not sway me to accept its argument with respect to the meaning of the words "all receipts".

131. The parties' historical reliance on Urner Barry as a pricing proxy is another "surrounding circumstance" leading me to dismiss the Grievance. Urner Barry collects data from industry participants and reports on sales of Canadian snow crab packaged in 30-lb cases (i.e. caseload pricing). Historically, the parties have tied their pricing offers to the market price for 5-8 oz sections in 30-lb cases. In its written submissions to the Panel in 2025, FFAW pointed out that using Urner Barry 5-8 oz sections as a proxy did not capture other product forms, but it nevertheless accepted the use of 5-8 oz sections as a conservative measure to attempt to capture the preponderance of all Newfoundland and Labrador crab. ASP has submitted that when FFAW relied on the Urner Barry index in its 2025 proposal to the Panel, while expressly noting that the proxy did not include premium products such as crab sections larger than 5-8 oz, it was indicating its understanding that the Urner Barry index reported wholesale market prices of standard 30-lb cases. I agree with ASP on this point.

Even if this was not the FFAW's intent, it is what the Panel would reasonably have understood FFAW's understanding to be.

132. The commercial context of the crab industry and the need for a result that aligns with commercial realities are additional "surrounding circumstances" leading me to dismiss the Grievance. The pricing system relied on by the parties is premised on harvesters receiving a raw material price for their catch upon landing. The historical evidence illustrates that harvesters have never shared in the value of post-processing enhancements such as consumer packs. This is not surprising given that processors – not harvesters – are the ones deciding whether post-processing production is worth the investment in additional costs such as labour, plant operations, packaging, cold storage, freight, inventory holding, exchange rates, market demand, buyer risk, and where available, profit. While harvesters provide the raw material, they bear none of the investment or risk associated with production. There is merit in ASP's submission that including consumer packs in a pricing model would be unfair to those processors that do not produce such products, because it would overstate the importance of such products when determining price.

133. For the reasons discussed in the preceding paragraph, it is therefore not surprising to me that in 2024 – when FFAW attempted to have a representative sample of "all 2024 snow crab products" included in the settlement price calculation, the Panel rejected the attempt. Paragraphs 46 – 49 of the Panel's 2024 decision clearly set out why the Panel rejected the FFAW's attempt to have the post-processing export price factor into the end-of-season settlement price.

134. The Panel's clear rejection of FFAW's 2024 attempt to have "all snow crab products" (and not just 5-8 oz sections in wholesale 30-lb cases) included in the settlement price is another reason I find in favour of ASP in this arbitration. If the Panel had made a decision in 2025 that was materially different than the decision it made in 2024 with respect to the inclusion of premium products and consumer packs in the end-of-season settlement price calculation, it would have said so clearly and explicitly in its 2025 decision and – more likely than not – it would have clearly explained why it was pivoting from the decision it made in 2024.

135. The position of ASP in this arbitration is also consistent with the past practice and negotiating history of the parties prior to 2024. While FFAW unsuccessfully attempted in some prior years to have the Panel include product forms other than 5-8 oz sections in 30-

lb cases when determining the minimum price, the Panel has never set the minimum price based on any other proxy besides the wholesale 5-8 oz section price and has never considered post-processing consumer pack sales when determining the minimum price. Panel decisions over the years have consistently referenced the Urner Barry index or Urner Barry 5-8 oz sections as a proxy for setting the raw material minimum price. Based on the evidence of Renee Butler and Darrell Roach I am satisfied that the Urner Barry prices have always reflected the wholesale trading activity of 5-8 oz sections in 30-lb cases and that FFAW has always been aware of this fact. I accept the submission of ASP that FFAW did not seek to have anything other than 5-8 oz sections in 30-lb cases included in the minimum price (or if it did, it did not make this known to the Panel). I also accept that if FFAW had sought this outcome, ASP would have challenged it and the Panel would have explicitly addressed it like it did in prior years, including 2024, when FFAW made such a submission. The historical evidence clearly establishes that the price has always been based on 5-8 oz sections in 30-lb cases. Changing that in 2025 would have been a material change to the status quo, providing a material financial benefit to FFAW and harvesters. Based on similar reasoning to Arbitrator Oakley's reasoning in *Fish Food and Allied Workers/Unifor v. Association of Seafood Producers*, 2024 CanLII 140691 (NL LA), I am not inclined to find that the Panel reached a conclusion that materially deviated from the status quo in the absence of a clear and explicit statement from the Panel to that effect.

136. My decision in this case is also based on what I see as FFAW's attempt to achieve a material financial benefit through arbitration when it did not seek that benefit during negotiations or before the Panel, and as a result, ASP and no opportunity to respond to it. FFAW cannot attempt to gain a material financial benefit when it was not sought during negotiations or before the Panel (see *Vancouver (City) Fire and Rescue Services and Vancouver Fire Fighters Union, Local 18*, 2016 CarswellBC 624, [2016] B.C.W.L.D. 2778, [2016] B.C.W.L.D. 2784, [2016] B.C.W.L.D. 2785 (Member David C. McPhillips).

137. Another surrounding circumstance I have considered is that the position of ASP in this arbitration is consistent with the purpose of the 2023 Blackwood Report, which recommended a formula pricing system – based on Urner Barry pricing – that would include an end-of-season settlement price calculation to account for the Urner Barry average weekly price over an entire fishing season, aimed at ensuring harvesters receive a price that reflects the price fluctuations over the course of a fishing season.

138. Overall, for the reasons outlined herein, my finding that the Panel's decision on price included reliance on the 30-lb case limitation that was articulated by ASP in its written submissions does not mean that the Panel did not select FFAW's proposed formula or that the Panel's decision was not in accordance with FFAW's position on price. The Panel's decision was consistent with the (final offer selection process) statutory obligations in section 19 of the FICBA and section 4 of the FICBA Regulations.

139. Given the submissions of the parties on the following point, it is important that I not leave it unaddressed even though it was not a factor in my decision. The point to which I am referring arises from a November 17, 2025 FFAW press release, which referred to Panel Chair Sheilagh Murphy purportedly agreeing [on Friday November 14, 2025] "with ASP's position that only 30 lb boxes be included" [in the settlement price calculation]. ASP has alleged that Panel Chair Murphy's purported agreement is evidence in its favour at this Arbitration. I am not inclined to accept ASP's submission on this point. First, I do not agree with ASP's submission that section 19.2(c) of the FICBA provided Panel Chair Murphy with broad discretion to assist the parties in the manner alleged by ASP (i.e. by clarifying the Panel's decision after the fact). Second, based on the evidence before me, I am not prepared to draw conclusions about the alleged communications between the parties and Chair Murphy on November 14, 2025 despite the fact they were referred to in an FFAW press release. Based on the limited evidence before me – which is clearly hearsay evidence – I am not comfortable drawing conclusions about what Chair Murphy may or may not have been asked, what she may or may not have said, and/or any meaning to be attributed thereto. I have no context with respect to the alleged statement and agreement. I acknowledge that I am permitted to consider hearsay evidence, but I am not inclined to rely on the hearsay evidence before me as a basis for supporting ASP's position with respect to the purported statements of Chair Murphy.

140. To be clear, I am not questioning the law set out in the Supreme Court of Canada's decision in *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848, but I am saying that the circumstances in *Chandler*, which provided grounds to allow for the reopening of the tribunal decision so it could properly discharge its function, are materially different than the circumstances in the matter before me. In short, as requested by FFAW, I have given zero weight to the purported support of ASP's position stemming from Chair Murphy's purported comment.

## Decision

141. The Grievance is denied. In accordance with the agreement of the parties, I remain seized with jurisdiction for a period of 60 days following receipt of this Award by the parties to deal with matters of interpretation, application or compensation, provided written notice is given by one party to the other within the 60-day period.

**Dated this 23rd day of March, 2026.**

Respectfully submitted as the decision of the Arbitrator.



Christopher Peddigrew, K.C.