

Exporting to Canada?



Keeping Trade on Track

Education | Mediation | Arbitration | Networking

# Frequently asked questions from **COMPANIES OUTSIDE OF CANADA**



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# Frequently Asked Questions

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# 1. ABOUT DRC

**1. What is DRC?** DRC is a member-based organization whose core work is “business-to-business private commercial dispute resolution”. In other words, DRC is a referee between parties when the purchase and sale do not go according to plan.

DRC was established in February 2000 pursuant to Article 707 of NAFTA, which provided for the creation of a private commercial dispute resolution body for trade in agricultural commodities. DRC works closely with industry associations and governments on behalf of members to reform legislation, make federal inspections more accessible, develop best practices, and level the playing field for participants. DRC is governed by a Board of Directors, and members represent all facets of the produce industry, including transportation, dealing in fresh fruit and vegetables. The DRC is governed by a 12-member Board of Directors from the produce industry: 12 from industry; and 1 (non-voting) ex-officio from each of the three NAFTA countries. A President & CEO, who reports to the Board of Directors, manages the DRC’s day-to-day operations.

**2. Where is DRC located?** DRC offices are located in Ottawa, Ontario, Canada.

**3. What services does DRC offer?** DRC:

- offers a comprehensive and tailored suite of tools that build the knowledge and capacity of members to avoid or resolve disputes
- provides harmonized standards, procedures, services and education tools necessary to avoid and resolve disputes in the produce industry in a timely and cost-effective manner

**Education** Seminars, webinars, and unlimited access to the DRC Help Desk, in addition to checklists and printable educational materials to disperse in your office.

**Mediation** Most disputes are resolved informally through informal consultation or mediation. For those that would prefer a more structure process, we also offer formal mediation.

**Arbitration** Binding arbitration is available for disputes not resolved through the DRC’s mediation process.

**Networking** DRC members have access to the entire DRC directory online. Members are recognized as preferred buyers and vendors.

**4. How do I contact DRC?** DRC offices are open from 8:30 am - 5:00 pm (EST) Monday through Friday and may be reached by calling (+1) 613-234-0982; e-mail ([info@fvdrc.com](mailto:info@fvdrc.com)); or by fax (+1) 613-234-8036. The DRC Team is pleased to provide services in English, French and Spanish. We encourage you to also visit our website at [FVDRC.com](http://FVDRC.com).

## 2. MEMBERSHIP

### 1. Who should be a DRC member and why?

Anyone who grows, buys, sells, brokers or provides transportation services for produce should be a DRC member to reduce risk and improve profitability. Membership is open to all firms who conduct business in a country that is a signatory to an internationally recognized arbitration convention, such as the New York Convention<sup>1</sup>. The DRC's jurisdiction extends to disputes between members who are party to transactions entered into commerce in North America.

### 2. What are some of the benefits of DRC membership?

- greater commercial assurance
- one-on-one professional and confidential consultation, access to DRC's Help Desk, customized seminars, webinars, printable checklists for staff, DRC publications, and more
- improved business networking and access to up to date information on current and potential trading partners
- DRC provides members with fast, fair and enforceable solutions to disputes arising in the course of member-to-member transactions
- for Canadians, a DRC membership fulfills the regulatory requirement for those subject to the Canada Agricultural Products Act (CAP Act) and, upon coming into force, the proposed *Safe Food for Canadians Regulations* (SFCR)
- DRC addresses with all types of disputes, including product quality or condition at destination as well as payment issues that may occur between members internationally and domestically

### 3. Do I have to change my billing, documentation or payment practices in order to use DRC services?

There is no need for changes if the practices have been agreed to by all parties (e.g.: a contractual agreement) or are consistent with DRC's rules. In the event that your contract of sale is vague, ambiguous, or you do not have one, DRC's established Trading Standards and Transportation Standards are the default.

### 4. If I am already a Blue Book or Red Book member, why do I need the DRC?

Unlike the Blue Book or the Red Book, the core business of DRC is dispute resolution. All DRC members are obligated to resolve disputes as per DRC Rules. Arbitration decisions are final and binding.

DRC is a not-for-profit corporation that:

- requires all members to conduct business in accordance with internationally recognized, fair and ethical trading standards
- requires all members to submit to mediation or arbitration to settle disputes, using rules that are also internationally recognized
- provides services up to and including informal mediation at no additional cost beyond the membership fee
- does not collect a percentage of a mediated settlement
- provides court enforceable decisions and awards

DRC does not provide credit information services; both the Blue Book and Red Book provide credit information.

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<sup>1</sup> The June 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the "New York Arbitration Convention" or the "New York Convention", is one of the key instruments in international arbitration and is adhered to in over 140 countries.

**5. What is DRC's jurisdiction?**

DRC has jurisdiction over disputes between members and arbitration awards are court enforceable in countries that are signatories to an internationally recognized mediation and/or arbitration convention, such as the New York Convention. As a result, it is not necessary that DRC offer regulatory support for enforcement. DRC does, however, provide assistance on how to enforce an award.

With respect to member discipline, if a member is not acting in accordance with DRC's By-laws and Operating Rules, the member may be terminated. For Canadian buyers, membership termination limits one's ability to buy from outside of the country.

Any member who does not follow its membership obligations, including payment of an award, will be terminated from membership and DRC members will be advised of the termination.

Under the proposed *Safe Food for Canadians Regulations* (Canada Gazette-Part 1, January 20, 2017) a DRC membership will be a regulatory requirement for Canadian firms who buy, sell, import or export fresh fruits and vegetables.

**6. I am located outside of Canada. Why should I become a DRC member?**

A DRC membership can help you reduce risk and minimize losses through education, common trading standards and the availability of affordable and timely dispute resolution. Before doing business with a new company, contact DRC to determine if additional information is available to assist you to make informed decisions. If you are experiencing a recurring problem or have a question, DRC can provide in-house seminars or webinars to address your specific needs. Should a dispute arise, we can help you avoid the lengthy and costly court process. DRC trading assistance staff and a roster of arbitrators are efficient and knowledgeable about the unique nature of the produce industry. Most disputes are resolved informally and do not escalate to arbitration.

**7. Is a DRC membership mandatory for companies located outside of Canada?**

A DRC membership is not a requirement for a company located outside of Canada. However, if you are selling fresh fruits or vegetables to a company in Canada, the United States or Mexico in order to have access to dispute resolution services you must be a DRC member at the time the dispute arose. If a problem arises and you are not a DRC member at the time of the transaction, your recourse will be the lengthy and expensive court process.

**8. What is the cost of a DRC membership?**

The membership fee for companies located outside of Canada is \$781 USD\*. The fee covers a 12-month period and is paid annually. The fee may increase nominally each year to offset inflation. Complete details are outlined on the application form. (\*January 1, 2018)

**9. What is the application process?**

A membership application is available online (FVDRC.com) or by contacting the Help Desk. After you complete and return the application, including payment, to the DRC office, a member services representative will contact you. Payment must be submitted with a completed application for the review process to begin. If a membership application is not approved or is returned, the fee will not be charged to your credit card. If payment was made by cheque or wire transfer, the fee will be refunded in full.

**10. Once I submit my application, how long does it take for my membership to become active?**

The process to approve and issue a DRC membership generally takes from one (1) week to thirty (30) days. We recommend consideration of this timeline when submitting an application for membership.

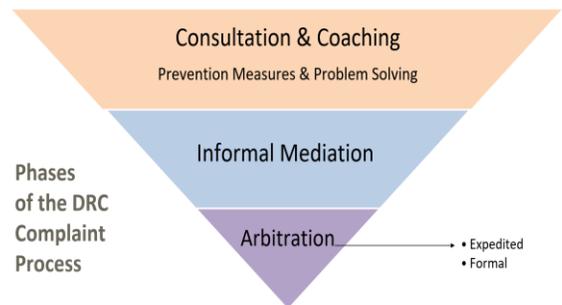
- 11. Can I join DRC after I have a dispute?** You may join at any time; however, DRC only has jurisdiction over transactions which occur following the approval of your membership application. Simply put, if you were not a DRC member at the time of the transaction under dispute, DRC's ability to assist you is more limited than had you been a member.
- 12. Can two legal entities share a DRC membership?** DRC membership is only granted to a single legal entity. Membership may not be shared.

### 3. DISPUTE RESOLUTION

#### 1. What is DRC's Dispute Resolution model?

The dispute resolution model includes numerous components developed and implemented to ensure a timely, efficient and satisfactory resolution. These include:

- **Prevention Measures**  
training, seminars and other informational and educational tools are the foundation of our system
- **Unassisted Problem Solving**  
the parties try to resolve the dispute either on their own or with limited assistance from the DRC Help Desk
- **Consultation & Coaching**  
parties who need additional support may call DRC for specific, confidential guidance
- **Informal Mediation:** an informal exchange of documentation between DRC and the other parties involved; deadlines are imposed to ensure rapid resolution
- **Formal Mediation:** when informal mediation has not resulted in a resolution, parties may agree to use an assigned mediator to help facilitate a voluntary settlement for a nominal fee
- **Expedited Arbitration:** < \$50,000 USD or by agreement of the parties) - a binding settlement is determined by a mutually selected third party for a nominal fee
- **Formal Arbitration:** > \$50,000 USD - a binding settlement is determined by a mutually selected neutral third party following an oral hearing; fees are applicable



- The most frequent and common inquiries:**
- Does product meet or fail grade?
  - Government Inspections (CFIA or USDA)
  - DRC Good Arrival Guidelines Tolerances
  - Non-payment
  - Disagreement over an account of sales or liquidation reports
  - Transportation-related matters
  - DRC Member Standing (Member, Member in Good Standing, etc.)

- 2. Will DRC resolve both domestic and international disputes?** Yes, DRC can resolve domestic disputes provided the companies are within Canada, the United States or Mexico. DRC will resolve international disputes provided the dispute arises in relation to a transaction that has entered into commerce in Canada, the United States or Mexico.
- 3. Do courts recognize DRC arbitration awards?** Yes, outstanding arbitration awards may be registered and enforced in the appropriate court of law or appropriate legal proceedings. Over 168 countries, including Canada, Mexico and the United States, are signatories to the New York Convention which provides for the enforcement of arbitral awards through the courts. Furthermore, failure to honor an arbitration award will result in expulsion from DRC.
- 4. Who mediates and arbitrates disputes brought to DRC?** Experienced, professionally trained DRC staff handle the informal exchange of information between the parties. Once the strengths and weaknesses of the case have been discussed, attempts are made to ensure an amicable, informal settlement.

Should this informal process not result in settlement, the parties participate in selecting a neutral from the DRC-approved list of arbitrators. These individuals are not DRC employees. While DRC staff administer the formal process, the independent neutrals conduct the arbitration and reach their decision without input from DRC staff or access to the informal file.

**5. What do I do if I have a problem?**

Contact DRC's Help Desk. Staff will advise you of the best course of action for your issue. Membership fees cover all DRC services up to the point of formal arbitration. Service is available in English, French and Spanish.

**6. If I am a DRC member, what happens if I have a dispute with a non-member?**

DRC attempts to help its members regardless of whether the dispute is with another DRC member or not. DRC rules have been set up to encourage membership. However, they also provide an opportunity for non-members (for a fee) to use the services of DRC as an effective and efficient alternative to the courts. That said, DRC's recourse is limited when you deal with a non-member, therefore we strongly recommend you encourage your trading partners to join in order to avoid being left without remedy.

**7. Is there a deadline to file a claim with DRC?**

Disputes must be brought to DRC within nine (9) months from the date on which the dispute arose. Unresolved disputes that fall outside of nine months will be deemed to have been abandoned.

**8. What types of disputes are addressed by DRC?**

DRC is able to assist with any dispute arising from the sale of fresh fruits and vegetables, as well issues that arise at shipping point, receiving or even in transit as well as cases of non-payment.

**9. What is the cost of bringing a dispute to DRC?**

Consultations and informal filings are included as part of membership fees. However, if you are unable to resolve your dispute at that point you may choose to proceed to formal mediation or arbitration. Fees apply and are based on a sliding scale to keep costs affordable. Less than 20% of all disputes brought to the DRC proceed to this step. A fixed filing fee of \$600 USD is in place for a claim of less than \$15,000 USD. For claims over \$15,000 USD, please contact the DRC office for a copy of the fee schedule.

**10. Do I need to travel to Ottawa to bring a dispute to DRC?**

Consultations, Coaching and Informal Mediation may be completed over the phone, via e-mail or by fax. All information may be exchanged electronically. During formal arbitration, the parties will likely have to travel for a hearing; however, DRC strives to select a location that is easily accessible for all involved. Disputes very rarely escalate to formal arbitration.

## 4. OTHER FACTS

**1. Does DRC arrange for product inspections?**

DRC does not provide destination inspection services, nor does it accredit any service and policy regarding destination inspection is as noted below. Assuming domestic capacity within a member country, inspection delivery options are, in order of preference:

- a) United States Department of Agriculture (USDA) and Canadian Food Inspection Agency (CFIA) government inspections
- b) USDA/CFIA accredited inspection services
- c) private inspections mutually agreed upon by both parties involved in the dispute

The service that carries the most weight is a government inspection (i.e. a CFIA or USDA inspection). The next best option is a destination inspection service which is accredited by CFIA or USDA, however, at the present time there are none.

In the event of a dispute where a non-government survey or inspection is being submitted as evidence, the burden of proof regarding the agreement, the credibility, and the impartiality of that inspection will rest with the party submitting the inspection. When using a non-government service, it is imperative to demonstrate that the parties discussed, understood and agreed to the use of a non-government survey.

**2. What is DRC's relationship with regulatory bodies such as the CFIA and the USDA?**

Both the CFIA and the USDA are actively engaged with DRC in an advisory capacity and a representative from each body maintains an ex-officio advisory position on the Board of Directors.

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**DRC Team**



**Back (L to R)** Andrea Bernier  
Luc Mougeot  
Jaime Bustamante  
Fred Webber  
Paola Gonzalez

**Front (L to R)** Iryna Romanenko  
Dawn Hughes

The DRC Team is pleased to provide services in English, French and Spanish.

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