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Arbitration not invoked with failed vaccine deal

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Canada's contract to work with a Chinese drug company on its COVID-19 vaccine included an arbitration process for resolving disputes, but as the deal fell apart last year, the National Research Council never used the provision.

The "collaborative research agreement" between the NRC and CanSino Biologics, obtained by the National Post through an access-to-information request, gave both sides the right to ask for binding arbitration, while barring court litigation to settle disagreements.

One expert says the NRC should have gone to arbitration when Chinese customs officials refused to allow samples of the vaccine to be sent here last year – if only to make a point.

"Why did Canada stand idly by when CanSino breached the agreement?" said Amir Attaran, a law professor and health-policy expert at the University of Ottawa.

"We could have sued them, basically, which would have put Beijing in a tough spot to explain its obstruction. That would have been worth doing for rea-

sons of accountability, even if we concluded the vaccine was not a very good one."

But a spokeswoman for the NRC said it had no dispute with CanSino itself, which was prepared to provide vaccine to Canada.

"After some time, it became clear CanSino could not secure the authority to ship the materials to Canada," she said. "The shipment delays did not constitute a termination of the agreement with cause by CanSino."

Another outside expert agreed, saying the Chinese government — as opposed to the company — stopped the vaccine export and it was not a party to the deal.

The vaccine was actually developed jointly with the Academy of Military Medical Sciences, part of China's People's Liberation Army, and an army major general was reportedly the lead researcher. But with only CanSino and the NRC listed as parties, that wouldn't have made a difference in arbitration, said Margaret McCuaig-Johnston, a former senior government official who helped manage scientific links with China.

What's more, other parts of the contract say neither party is liable for problems caused by factors beyond their reasonable control, she noted.