



## Arbitration Rules Application Guidelines

The Yukon Dispute Resolution Board (“DRB”) is constituted and functions under the authority of Chapter 26 of the Umbrella Final Agreement (“UFA”), dated May 29, 1993, between the Yukon First Nations, Canada and the Yukon. Chapter 26 of the UFA has since been incorporated unchanged into the Final Agreements of each of the eleven Yukon First Nations that have concluded settlement agreements. Article 26.5.4.6 of Chapter 26 requires the DRB to establish rules and procedures governing mediation and arbitration. The following provisions establish the procedural rules and guidelines for arbitrations under the authority of the DRB and Chapter 26.

In developing a body of arbitration rules, the DRB intends that there be a standard, well-accepted core body of rules to give relative certainty and predictability to arbitration procedures. At the same time, the DRB recognizes that flexibility may be needed to respect and accommodate particular First Nation traditions and values relative to dispute resolution.

Eleven Yukon First Nations are currently signatories to their respective Final Agreements. Each First Nation has its own values and traditions, some of which may be common to other Yukon First Nations, and some of which may be unique. Thus, no single adaptation to blend a core set of arbitration rules with indigenous traditions and values could be expected to accommodate the cultural diversity of all Yukon First Nations.

### Stipulations and Modifications

1. All arbitrations conducted through the DRB are subject to Chapter 26 of the UFA and the Final Agreement (“FA”) of any Yukon First Nation involved. For greater certainty, the rules of procedure for DRB-facilitated arbitrations shall be interpreted in accordance with and subject to related provisions of the applicable FA. In the case of any conflicting provisions or ambiguity, the provisions of the FA shall prevail.
2. The general rules governing arbitrations under the jurisdiction of the DRB shall be the 2016 edition of the arbitration rules (the “Rules”) published by the ADR Institute of Canada, Inc. (“ADRIC”), subject to the following modifications and stipulations:
  - a. All references in the Rules to ADRIC providing administration services under Article 1.5 and exercising authority elsewhere in the Rules shall be excluded. Arbitrations shall be administered by the DRB in accordance with article 26.5 of Chapter 26.
  - b. The way an arbitrator is chosen shall be in accordance with articles 26.7.1 and 26.7.2 of Chapter 26. When appointing an arbitrator for a dispute involving a Yukon First Nation, the DRB and the arbitrating parties shall give consideration to persons with an understanding of indigenous traditions and values.

- c. If the arbitrator withdraws, or for any other reason the office of arbitrator becomes vacant, the parties may agree on a substitute arbitrator. Failing such agreement within 21 days, either party may apply to the Supreme Court of Yukon to appoint a substitute arbitrator, giving priority to arbitrators on the DRB arbitrators' roster.
  - d. The parties and the arbitrator may at any time agree to alter, waive, add to, or modify the Rules, as they consider appropriate for the circumstances of a given arbitration.
3. Before starting an arbitration, the arbitrator shall consult with all parties involved in the arbitration about how particular indigenous traditions and values may be incorporated or reflected in the arbitration procedures. Following such consultation, the arbitrator may determine the extent to which the Rules for the arbitration may be altered, waived, added to, or modified to accommodate indigenous traditions and values. The arbitrator's determination shall be informed by the principles of respect, reconciliation and the values inherent in the arbitration process.
4. Where the Rules lack any provisions the arbitrator considers advisable for the better management of the arbitration, the arbitrator may, after consulting with the parties, adopt such provisions of the Rules of Court of the Supreme Court of Yukon, or other sources, as the arbitrator considers appropriate.

### **General Principles and Values**

In addition to any specific indigenous traditions and values incorporated following consultation with a First Nation party to an arbitration, arbitrations shall be conducted according to the following traditions and values common to most Yukon First Nations:

- a. Respect;
- b. Honour;
- c. Honesty and integrity;
- d. Accountability, transparency and fairness; and
- e. Community harmony and balance.

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