

Chapter 26 - Dispute Resolution

26.1.0 Objectives

26.1.1 The objectives of this chapter are as follows:

26.1.1.1 to establish a comprehensive dispute resolution process for resolving disputes which arise out of the interpretation, administration or implementation of Settlement Agreements or Settlement Legislation; and

26.1.1.2 to facilitate the out-of-court resolution of disputes under 26.1.1, in a non-adversarial and informal atmosphere.

26.2.0 Definitions

In this chapter, the following definitions shall apply.

"Board" means the Dispute Resolution Board established pursuant to 26.5.1.

"Panel" means the Dispute Resolution Panel appointed pursuant to 26.5.3.

26.3.0 Specific Disputes

26.3.1 A party to a Settlement Agreement may refer any of the following matters to mediation under 26.6.0:

26.3.1.1 any matter which the Umbrella Final Agreement refers to the dispute resolution process;

26.3.1.2 any matter which a Settlement Agreement, a Yukon First Nation self-government agreement or any other agreement between the parties to a Yukon First Nation Final Agreement refers to the dispute resolution process; and

26.3.1.3 any other matter which at any time all parties to a Settlement Agreement agree should be referred to the dispute resolution process whether or not related to a Settlement Agreement.

26.3.2 Each party to a Settlement Agreement has a right to be a party to a dispute described in 26.3.1 arising out of that Settlement Agreement.

26.3.3 Subject to 26.8.0, no party to a Settlement Agreement may apply to any court for relief in respect of any dispute which may be referred to mediation under 26.3.1 except for an application for interim or interlocutory relief where the Board has failed to appoint a mediator under 26.6.2 or an arbitrator under 26.7.2 within 60 days of application by any party to the dispute.

26.3.4 Any Person whose interests, in the opinion of the mediator, will be adversely affected by a dispute referred to mediation under 26.3.1 has a right to participate in the mediation on such terms as the mediator may establish.

26.3.5 A dispute described in 26.3.1 which is not resolved by mediation under 26.6.0 may be referred to arbitration under 26.7.0 by any party to the dispute.

26.4.0 Other Disputes

26.4.1 A party to a Settlement Agreement may refer any of the following matters to mediation under 26.6.0:

26.4.1.1 any matter which the Umbrella Final Agreement refers to mediation under the dispute resolution process;

26.4.1.2 any matter which a Settlement Agreement, a Yukon First Nation self-government agreement or any other agreement between the parties to a Yukon First Nation Final Agreement refers to mediation under the dispute resolution process;

26.4.1.3 any matter which at any time all the parties to a Settlement Agreement agree should be referred to mediation under the dispute resolution process, whether or not related to a Settlement Agreement;

26.4.1.4 any matter which a board listed in 2.12.0 established pursuant to a Settlement Agreement, acting pursuant to its rules and procedures directs to mediation under the dispute resolution process; and

26.4.1.5 any matter arising out of the interpretation administration, or implementation of that Settlement Agreement, with the consent of all the other parties to that Settlement Agreement, whether the dispute is among the parties to the Settlement Agreement or not.

26.4.2 Each party to a Settlement Agreement has a right to be a party to any dispute referred to mediation under 26.6.0.

26.4.3 The parties to a dispute described in 26.4.1 which is not resolved by mediation under 26.6.0 may agree to refer the dispute to arbitration under 26.7.0.

26.4.4 Any Person whose interests, in the opinion of the arbitrator, will be adversely affected by a dispute referred to arbitration under 26.3.5 or 26.4.3 has a right to participate in the arbitration on such terms as the arbitrator may establish.

26.4.5 Subject to 26.8.0, no party to a Settlement Agreement may apply to any court for relief in respect of any dispute which has been referred to arbitration under 26.3.5 or 26.4.3, except for an application for interim or interlocutory relief where the Board has failed to appoint an arbitrator under 26.7.2 within 60 days of an application by any party to the dispute.

26.5.0 Dispute Resolution Board and Panel

26.5.1 A Dispute Resolution Board shall be established comprising three persons appointed jointly by the Council for Yukon Indians and Government in accordance with 26.5.2.

26.5.2 If, upon 30 days notice by a party to the Umbrella Final Agreement of its readiness to establish the Board, the parties to the Umbrella Final Agreement do not jointly agree on the membership of the Board:

26.5.2.1 the Council for Yukon Indians shall appoint one member;

26.5.2.2 Canada and the Yukon shall jointly appoint one member;

26.5.2.3 the members appointed pursuant to 26.5.2.1 and 26.5.2.2 shall select jointly the third member who shall be the chairperson of the Board; and

26.5.2.4 if a chairperson has not been selected pursuant to 26.5.2.3 within 60 days of the appointment of the members pursuant to 26.5.2.1 and 26.5.2.2, the Senior Judge of the Supreme Court of the Yukon, or another Judge designated by the Senior Judge, shall appoint the chairperson upon application by one of the parties to the Umbrella Final Agreement.

26.5.3 The Board may, if, in its opinion, circumstances warrant, appoint persons including its own members to form the Dispute Resolution Panel provided that the total number of persons on the Panel, including members of the Board, does not exceed 15.

26.5.4 The Board appointed under 26.5.1 shall have the following responsibilities:

26.5.4.1 to ensure Panel members have or receive training in mediation and arbitration principles and techniques;

26.5.4.2 to maintain a roster of mediators and a roster of arbitrators from those persons who are appointed members of the Panel;

26.5.4.3 to appoint mediators and arbitrators;

26.5.4.4 to set from time to time the fees to be charged for Panel members' services;

26.5.4.5 to prepare annual budgets for administrative costs of the Board and Panel and to submit such budgets to Government for approval; and

26.5.4.6 after Consultation with the parties to the Umbrella Final Agreement, to establish rules and procedures governing mediation and arbitration.

26.6.0 Mediation

26.6.1 The parties to a dispute referred to mediation shall attempt to choose a mediator within 15 days of the dispute being referred to mediation.

26.6.2 If a dispute cannot be settled informally by the parties and the parties cannot agree on a mediator, the Board shall appoint a mediator from the Panel.

26.6.3 A mediator agreed upon by the parties or appointed by the Board shall promptly meet with the parties to assist them in the resolution of the dispute.

26.6.4 The mediation shall not extend beyond four hours unless the parties to the dispute and the mediator agree.

26.6.5 The mediator, at his own option, may provide a brief non-binding written recommendation to the parties.

26.6.6 The mediator, at the request of the parties to the mediation, shall provide a brief non-binding written recommendation to the parties.

26.6.7 The mediation and any recommendations of the mediator shall be confidential to the parties to the dispute unless the parties otherwise agree.

26.6.8 The costs of the mediator for the first four hours shall be borne by the Board. Thereafter, the costs of the mediator shall be borne equally by the parties to the mediation.

26.6.9 Notwithstanding 26.6.8, the Board shall determine who shall pay the costs of mediation pursuant to 26.4.1.4.

26.7.0 Arbitration

26.7.1 The parties to a dispute referred to arbitration shall attempt to choose an arbitrator within 15 days of the dispute being referred to arbitration.

26.7.2 If the parties do not agree on an arbitrator under 26.7.1, the Board, on application of a party to the dispute, shall appoint an arbitrator from the Panel.

26.7.3 With respect to a dispute referred to arbitration under a Settlement Agreement, the arbitrator shall have the authority to resolve the dispute including the authority:

26.7.3.1 to determine all questions of procedure including the method of giving evidence;

26.7.3.2 to subpoena witnesses and documents;

26.7.3.3 to administer oaths and solemn affirmations to the parties and witnesses;

26.7.3.4 to order a party to cease and desist from activity contrary to the provisions of a Settlement Agreement;

26.7.3.5 to order a party to comply with the terms and conditions of a Settlement Agreement;

26.7.3.6 to make an order determining the monetary value of a loss or injury suffered by a party as a result of contravention of a Settlement Agreement and directing a party to pay all or part of the amount of that monetary value;

26.7.3.7 to declare the rights and obligations of the parties to a dispute;

26.7.3.8 to make an order providing interim relief; and

26.7.3.9 to refer any question of Law to the Supreme Court of the Yukon.

26.7.4 The cost of the arbitration shall be borne equally among the parties to the dispute unless otherwise assigned by the arbitrator.

26.7.5 Subject to 26.8.0, a decision or order of an arbitrator shall be final and binding on the parties to the arbitration.

26.7.6 A party affected by a decision or order of an arbitrator may, after the expiration of 14 days from the date of the release of the decision or order or the date provided in the decision for compliance, whichever is later, file in the Registry of the Supreme Court of the Yukon a copy of the decision and the decision or order shall be entered as if it were a decision or order of the Court, and on being entered shall be deemed, for all purposes except for an appeal from it, to be an order of the Supreme Court of the Yukon and enforceable as such.

26.8.0 Judicial Review

26.8.1 The decision or order of an arbitrator under 26.7.5 is not subject to appeal or to judicial review in any court except on the ground that the arbitrator failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise jurisdiction.

26.8.2 The Supreme Court of the Yukon shall have jurisdiction in respect of an appeal or judicial review pursuant to 26.8.1.

26.9.0 Transitional

26.9.1 Until the Board is appointed, the Arbitration Act, R.S.Y. 1986, c. 7 shall apply to any arbitration under 26.7.0.