



## History of the Dispute Resolution Board

The mandate of the Dispute Resolution Board (DRB) is set out under Chapter 26 of the Umbrella Final Agreement (UFA) and the Yukon First Nation Final Agreements. The jurisdiction of the DRB is set out under the UFA, section 35 of the Constitution Act, the Yukon First Nations Land Claims Settlement Act and the Yukon Act Approving Yukon Land Claim Final Agreements.

The DRB is comprised of three members who are jointly appointed by the Parties to the UFA. The Council of Yukon First Nations (CYFN), Canada and Yukon each nominate one person to serve a three-year term. The UFA legislation effective date was February 14, 1995 and the first DRB members were appointed in April 1996.

The DRB facilitates an out-of-court, non-adversarial alternative dispute resolution process to resolve disputes arising from the interpretation, administration or implementation of the settlement agreements and legislation. The first stage is mediation, where a mediator will guide the parties to a dispute through a series of discussions designed to help them arrive at their own solution – one that is acceptable to each party. Mediation of disputes is a voluntary participation process.

The types of matters which can be referred to mediation within the DRB mandate are:

- any matter which the Umbrella Final Agreement refers to the dispute resolution process (UFA section 26.3.1.1);
- 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 (UFA section 26.3.1.2)
- 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 (UFA section 26.3.1.3)

The mediation proceedings are strictly confidential to the parties of the dispute and the DRB does not receive or retain confidential details. The “DRB Mediation Rules and Procedures” and the “Disclosure Form” are available on the website, [www.drbyukon.ca](http://www.drbyukon.ca) or upon request from the DRB.

The first four hours of the mediator’s fees is the responsibility of the DRB. Thereafter, the mediator’s fees shall be borne equally by the parties to the mediation. A mediation exceeding the initial four hours shall be upon agreement between the parties and the mediator.

When mediation is not successful, the parties may have the opportunity to access the more formal process of arbitration. During this process, an arbitrator reviews the evidence and arguments of each party and makes a final decision that will be binding on each party. The arbitrator’s decision is deemed to be an order of the Supreme Court of the Yukon. A process of judicial review by a court may be possible following arbitration.

## Mediation Referrals

1. In August 1997, a mediation referral was resolved during the pre-hearing meeting and it was not necessary to continue to the mediation process.
2. In December 1998, a mediation referral was received concerning a Renewable Resource Council's inconsistency in the allocation of trap lines. There was a delay in dealing with the referral due to all three DRB member terms expiring on April 18, 1999. DRB members were appointed on November 9, 1999. By January 2001 the new Chair was corresponding on the file.
3. In February 2002, a mediation referral was received having to do with clarifying who is the concession holder of a trap line. The issue was mediated within four hours in January 2003.
4. In 2004 a mediation referral was put forth involving land use overlap. The issue did not proceed to mediation as one party declined participation.
5. In May 2005, a mediation referral was initiated regarding human resources and social development. There were eight parties involved in the mediation and the issue was resolved by April 2006.
6. In 2006 a mediation referral was filed regarding education programs. One party declined stating that, the matter in question is not one which can properly be referred to mediation.
7. In 2007 a mediation referral was received regarding access, however one party identified discrepancies in the information and mapping. The issue did not proceed to mediation.
8. In March 2011, a mediation referral was received regarding the Income Tax Sharing Agreement. One party declined as they were of the view that the obligations were fulfilled.
9. In March 2011, a mediation referral was filed regarding the assumption of responsibility for Child and Family Services. The mediation session consisting of three days was productive.
10. In September 2011, a party to the UFA forwarded a notice of dispute to the DRB regarding resource royalty sharing. The second party stated that it was not a dispute and the third party proposed an alternate process for resolution. The matter did not proceed to mediation through the DRB.
11. In 2012 a mediation referral was filed regarding a financial transfer agreement and obligations concerning it. The parties held the mediation session and agreed to break to conduct further research, information sharing and get further direction before deciding if they will meet for a second session.
12. In 2013 a mediation referral was received regarding the loss of hunting rights under the Indian Act in the Yukon because of the land claim. This matter did not fall within the mandate of the Board.
13. In 2013 a second session was held regarding the 2012 financial transfer agreement mediation referral. The issue was resolved enabling the parties to negotiate an agreement.

## Board Workshops

In August 2010, the DRB held a workshop, with Mr. Dave Joe as the facilitator, for members and staff to explore the history and intent of the UFA with focus on Chapter 26. Mr. Joe is a former Yukon land claims negotiator with the Council of Yukon First Nations and shares his knowledge and expertise with individuals now working to implement the Yukon First Nation's land claim Final Agreements.

In December 2010, the DRB members and staff met with Mr. Barry Stuart to further discuss the history and intent of alternate dispute resolution processes in relation to UFA Chapter 26. Mr. Stuart is a former Yukon land claims negotiator, former Judge of the Yukon Territorial Court and worked with the Yukon First Nations to implement circle sentencing and alternative dispute resolution processes.

In October 2011, the DRB hosted a workshop, with Mr. Dave Joe, for the DRB's mediators, arbitrators, members and staff. The workshop was a walk through of the UFA chapters to discuss the spirit and intent of the negotiated agreement with focus on dispute resolution references. The participants stated they found the workshop to be informative.

In September 2013, the DRB hosted a colloquium, with Mr. Gordon Sloan facilitating, for the Board's mediators, arbitrators, members and staff. The session allowed participants to share experiences, discuss the degree to define issues, shape collegial discussion, intervention skills in emotional issues, dealing with challenging behaviour, addressing transactional power disproportion, enhancing problem solving skills, new approaches and drafting agreements. Mr. Sloan is one of Canada's busiest mediator and dispute resolution trainers with extensive experience working with First Nations to assist in designing culturally consistent and familiar dispute resolution mechanisms.

In September 2015, the DRB hosted a well attended symposium with Mr. Gordon Sloan and Mr. Dave Joe facilitating. The DRB invited employees of the self-governing Yukon First Nations, Canada and Yukon, the three levels of Government in Yukon. Also, in attendance were DRB members, staff, DRB mediators and arbitrators. The discussions spoke to the spirit and intent of the UFA, how to activate mediation under UFA Chapter 26, various dispute resolution methods and values, how to prepare for mediation, building trust, productive communication and a mock mediation session.

In March 2017 the DRB hosted the Enrollment Appeals Process Workshop for the Yukon First Nation enrollment process decision makers. The YFN Citizenship Registrars, Enrollment Committee Members, Judicial employees and members attended. The morning session was facilitated by Mr. Dave Joe who presented the history, spirit and intent of the Yukon land claim agreements. The afternoon session was facilitated by Mr. Rick Buchan who presented common law rules, fair adjudication principles and processes.

## The DRB Assumes Responsibility of Enrollment Appeals and the Enrollment Commission's Records

The UFA Chapter 3, Eligibility and Enrollment determines the criteria and process for enrollment under a Yukon First Nation Final Agreement. The Yukon Enrollment Commission (EC) was the first UFA Board to be established in July 1989 and the only UFA board with a set term of existence.

The Yukon land claim enrollment records contain the files of persons who are enrolled with one of the Yukon First Nations, deceased persons who were enrolled, funeral pamphlets that were provided by individuals, genealogy charts and various lists stored in eight filing cabinets. Further information of the Yukon land claims enrollment process can be found in the report "History of the Yukon First Nations Enrollment Files".

The responsibilities of the EC ceased on February 14, 2005 as per section 3.10.4 of the UFA. Upon dissolution, the EC delivered its documents and records to the DRB who then assumed duties and responsibilities regarding enrollment appeals outlined in UFA section 3.11.0. During this transition time, the DRB retained two EC Commissioners as consultants. The EC's office coordinator continued employment under the direction of the DRB to continue managing the office and complete the enrollment file reviews.

Due to the large volume of enrollment records and office contents, the DRB moved into the office space occupied by the Enrollment Commission. Prior to February 2005 the DRB did not rent commercial office space and was housed within the private homes of the previous chairs in Whitehorse and the executive director living in southern BC.

The EC began the enrollment file review in 2004 and the DRB finished in 2007, with twelve Yukon First Nations participating. The file reviews were a one-time only opportunity and were the last complete set of enrollment files the Yukon First Nations provided. Since then a few of the First Nations have sporadically provided enrollment files to the DRB, except one First Nation who continues to provide copies of their enrollment files.

The enrollment file review was a task undertaken to ensure the enrollment records held by the EC, and later the DRB, were a mirror image reflecting the same documents held by the Yukon First Nations.

The DRB continues to receive and respond to enquiries regarding the Yukon land claims enrollment process and directs enquiries to the appropriate First Nation Citizenship Registry Offices. The DRB will continue the long-term storage of the enrollment files for retrieval of evidence in the event of an enrollment appeal. In the event of an enrollment appeal filed with the DRB, the chairperson will appoint an arbitrator to hear and rule on the appeal.

The DRB office is open 9:00 to 4:00, Monday to Friday and can be contacted by the following ways:

Email:	drb.ufa@northwestel.net
Phone:	(867) 668-3562
Toll Free:	1-866-367-6551
Fax:	(867) 668-4474
Mailing Address:	Box 31675, Whitehorse, YT, Y1A 6L3
Location:	101-166 Titanium Way

Further information and forms are available at the website: [www.drbyukon.ca](http://www.drbyukon.ca)