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# **MEDIATOR ARBITRATOR**

## Terms of Reference

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Dispute Resolution Board  
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101-166 Titanium Way, Whitehorse

## **Mediator and Arbitrator Terms of Reference**

The Dispute Resolution Board (DRB) seeks qualified Mediators and Arbitrators interested in joining the Roster. Interested Mediators and Arbitrators can provide their CVs to the DRB and upon request provide reference letters and/or examples of written decisions.

The DRB will screen potential Mediators and Arbitrators with the discretion of accepting combinations of the following criteria:

- Certification from a National or International institute
- Mediation and/or Arbitration and hearing procedure training
- Experience chairing mediations and/or arbitrations or willingness to gain further experience by observing or assisting
- Experience with, or be agreeable to, working with the parties of a dispute to consider incorporating Yukon First Nation traditional methods and values into the procedures
- Have a working knowledge of the history of Yukon First Nations settlement and self-government agreements or willingness to take the 1-day YFN 101 Yukon College online course

Mediators and Arbitrators will declare any potential conflict of interest to the parties prior to appointment.

To assist individuals in gaining more experience with Yukon land claims settlement issues, the DRB asks the Mediators and Arbitrators to consider allowing less experienced local Mediators and Arbitrators the opportunity to assist with the process where circumstances allow and with the consent of the parties. The trainee mediator or arbitrator will be bound by rules of confidentiality and required to sign a non-disclosure agreement.

The DRB Roster members are required to provide an updated bio and fee ranges yearly to assist the parties of a dispute in choosing a Mediator or Arbitrator suitable for the issues. Roster members may at any time withdraw from the DRB Roster by providing written notice.

The DRB Mediation or Arbitration Rules of Procedure can be found at the website [www.drbyukon.ca](http://www.drbyukon.ca) or by request to email [drb.ufa@northwestel.net](mailto:drb.ufa@northwestel.net).

## **The Dispute Resolution Board**

The mandate and jurisdiction of the DRB is set out under Chapters 26 and 3 of the Umbrella Final Agreement (UFA), the Yukon First Nation Final Agreements (FAs) and the Yukon First Nations Land Claims Settlement Act.

The DRB was established in 1995 upon the UFA effective date with appointed board members in place by April 1996. The DRB is comprised of three members who are appointed jointly by the Council of Yukon First Nations (CYFN), Canada and Yukon to serve three-year terms.

The DRB facilitates a comprehensive process to assist in resolving disputes arising from the interpretation, administration and implementation of settlement agreements, settlement legislation or disputes referred to the board by the Parties to the UFA. Additionally, the boards listed under section 2.12.0 of the UFA may refer issues to the DRB. The DRB administers a two-stage process with mediation as the first stage. If mediation does not lead the parties to a resolution of their dispute the matter might be referred to binding arbitration under Chapter 26 ss 26.3.5 and 26.4.3 of the UFA/FAs.

In 2005, Enrollment Appeals became the responsibility of the DRB under Chapter 3 ss 3.10.2.2 and 3.11.2.2 of the UFA/FAs. The DRB chairperson appoints a single Arbitrator to hear and determine an appeal from any decision of a Yukon First Nation with respect to enrollment. The enrollment records were created by the CYFN in 1973-74, then in 1989 were delivered to the Enrollment Commission and when the Enrollment Commission's term expired in 2005 the records were delivered to the DRB.

### **The Yukon First Nations**

The fourteen Yukon First Nations represent almost twenty-five percent of the Yukon's population with eight First Nation language groups, Southern Tutchone, Northern Tutchone, Gwitch'in, Han, Upper Tanana, Kaska, Tlingit and Tagish.

Eleven Yukon First Nations have Final Agreements and Self-Government Agreements. The first Yukon comprehensive modern treaty came into effect in 1995 and the latest was in 2006.

- Carcross Tagish First Nation
- Champagne and Aishihik First Nations
- First Nation of Nacho Nyak Dun
- Kluane First Nation
- Kwanlin Dun First Nation
- Little Salmon Carmacks First Nation
- Selkirk First Nation
- Ta'an Kwach'an Council
- Teslin Tlingit Council
- Tr'ondek Hwech'in
- Vuntut Gwitch'in First Nation

Three Yukon First Nations do not have settlement agreements and remain as Bands under Canada's Indian Act:

- Liard First Nation
- Ross River Dena Council
- White River First Nation

## **History of the Yukon Land Claims**

Historically the Chiefs of the Yukon First Nation people were the ambassadors, mediators and peacekeepers between their people and the early explorers, trappers, prospectors and the influx of stampedes to the 1898 Klondike gold rush.

In 1902 Chief Jim Boss, the hereditary chief of the Southern Tutchone people, with the assistance of lawyer, T.W. Jackson, wrote a letter to the Canadian government to request compensation for the loss of lands and hunting grounds. The government didn't proceed further with this proposal. Previously, Chief Jim Boss requested 1,600 acres of land be set aside for his people and in 1900 the Canadian government set aside 320 acres for the First Nation people of the area. In 1933 the government denied Chief Joe Squam's claim to land in the Teslin Tlingit traditional area. During the Klondike gold rush Chief Isaac was an effective and well-respected mediator between the Tr'ondek Hwech'in Han people and the gold rush stampedes.

In the 1960s, Elijah Smith began organizing the land claims movement because the Yukon First Nation's cultural identity and the land base were rapidly eroding. He encouraged the Yukon First Nation youth to stay in school and many went on to earn degrees and take up the cause becoming lawyers, negotiators and leaders.

In 1968 the Yukon Native Brotherhood (YNB) was organized to represent the status Indians as defined by Canada's Indian Act. In 1970 the Yukon Association of Non-Status Indians (YANSI) was created to represent the remaining non-status First Nation people.

On February 14, 1973 the document "Together Today for Our Children Tomorrow" was delivered to the Canadian government by Elijah Smith and a delegation of Yukon Chiefs. This restarted the Yukon land claims process resulting in the settlement of most of the Yukon First Nation's land claim negotiations.

In the fall of 1973, the YNB and YANSI amalgamated to form the Council of Yukon Indians (CYI) with the sole purpose of negotiating the Yukon land claim, a united voice for the First Nation concerns and for the recognition of ancestral rights. An advisory council was formed comprised of the Yukon Chiefs and YANSI community presidents to give the negotiators direction. It was important that the First Nations determine their citizenship criteria, not Canada's Indian Act criteria. Decades later the CYI was rebranded as the Council of Yukon First Nations and continues today under the leadership of the Yukon Chiefs.

In 1993 the CYFN and the governments of Canada and Yukon signed the UFA, a framework agreement for the FAs. The Yukon First Nation FAs contain provisions specific to each while remaining within the framework of the UFA. The UFA and FAs are protected under Section 35 of the Canadian Constitution Act. The Yukon First Nations with FAs have in place Self-Government Agreements which also include provisions to refer issues to the DRB.

*Further information can be found at the websites of the DRB, Yukon First Nation governments, CYFN, Canada, Yukon, the UFA Boards and various relevant organizations.*

*April 15, 2019*