

To be discussed December 13-15, 2011 Video Conference

CHAPTER 36: ADMINISTRATION OF JUSTICE

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Definitions to consider:

- Dehcho Justice Council
- Dehcho Law

36.1 GENERAL

36.1.1 The Dehcho Government shall provide for the independence of the Dehcho Justice Council when exercising its jurisdiction under X in the Dehcho Government chapter (*reference to the Dehcho Government being a legal entity with the legal capacity of a natural person*) in relation to the appointment, functions, compensation, accountability and financial management of the Dehcho Justice Council.

36.1.2 Dehcho Law may provide that the Dehcho Justice Council:

- administer sanctions created under 36.3.4;
- administer alternative measures and extra-judicial measures referred to in 36..4;
- perform the dispute resolution functions referred to in 36.6;
- hear appeals and conduct rehearings referred to in 36.11; and
- exercise other duties and functions assigned to it under Dehcho Law.

36.. 2 ENFORCEMENT

- AJ 2.1** Dehcho Law may provide for:
- a) the appointment of officers to enforce Dehcho Law; and
 - b) powers of enforcement, provided such powers shall not exceed, those provided by NWT Law or Federal Law for officers enforcing similar laws in the NWT.

36. 3 SANCTIONS

36.3.1 Subject to 36.3.2, ~~36. 3.3~~ and 36.3.4, the Jurisdictions of the Dehcho Government set out in the Dehcho Agreement include the jurisdiction to provide for the imposition of a term of imprisonment or a fine, or both, as a consequence of a violation of Dehcho Law.

36.3.2 ~~Dehcho Law may provide for maximum fines or penalties that are no greater than those which may be imposed for comparable regulatory offences punishable on summary conviction offenses under Federal Law or Territorial Law.~~

36.3.3 ~~Where there is no comparable regulatory offence under Federal Law or Territorial Law, the Dehcho Law may provide for a maximum fine or penalty that is no more than the greater between the general penalty provision for the summary conviction offences under the Criminal Code of Canada or under NWT Law.~~

36.3.4 ~~Notwithstanding 36.3.2 and 36.3.3, a Dehcho Law in respect of taxation may provide for a fine or penalty that is greater than the limits referred to in 36. 3.2 and 36.3.3 where there is an agreement to that effect made in accordance with 37.3 in the Taxation Chapter.~~

36.3.4 Dehcho Law may provide other sanctions that are consistent with the culture and values of the Dehcho Dene, provided that such sanctions shall not be imposed on an offender without his or her consent. Where a victim's participation is required for the sanction to be carried out, the victim's consent shall be required.

36.4 ALTERNATIVE MEASURES AND EXTRA-JUDICIAL MEASURES

Deleted: ¶

Deleted: Subject to AJ.3.3, the penalties imposed for a violation of Dehcho Law shall not exceed:¶
for a term of imprisonment, the term imposed under the Criminal Code or NWT Law for summary conviction offences for which no specific punishment is provided, whichever is greater;¶
for a fine for an individual, the amount set out in the Criminal Code or in the NWT Law applicable to summary conviction offences for which no specific punishment is provided, whichever is greater; and¶
for a fine for a corporation, \$10,000 or the amount set out in the Criminal Code or in NWT Law applicable to summary conviction offences for which no specific punishment is provided, whichever is greater.

Deleted: AJ 3.3 A Dehcho Law in relation to taxation may provide for a greater fine or longer terms of imprisonment than those provided for under AJ.3.2, where there is agreement to that effect made in accordance with section 4 of the Dehcho Taxation chapter (See end of chapter for provision & similar provision found in Dehcho Taxation).¶

36.4.1 The Dehcho Government may establish with respect to the enforcement of Dehcho Law:

- a) alternative measures similar to those provided for in the Criminal Code; and
- b) extra-judicial measures similar to those provided for in the *Youth Criminal Justice Act* (Canada),

to deal with persons accused of offences created under Dehcho Law.

36.4.2 The Parties may enter into discussions for the participation of the Dehcho Government in the delivery of pre-charge and post-charge alternative measures or extra-judicial measures established pursuant to Federal Law or NWT Law.

36.5 PROSECUTIONS

36.5.1 The Dehcho Government is responsible for the prosecution of violations of a Dehcho Law and the conduct of other matters arising out of a Dehcho Law before the courts of the NWT. The Dehcho Government shall:

- a) appoint persons responsible for the prosecution of violations of Dehcho Law or enter into agreements with existing prosecution services; and
- b) ensure that the prosecutorial services are consistent with standards of a public prosecutor for the prosecution of similar types of offences in Canada.

36.6 ALTERNATIVE DISPUTE RESOLUTION

36.6.1 The Dehcho Government may provide alternative dispute resolution services, including those relying on traditional methods and approaches, as an alternative to litigation in civil matters, on the condition that the parties to the dispute agree to use those services.

36.6.2 Nothing provided in 36.6.1 restricts the right of any person to resolve a dispute through the courts.

36.6.3 Nothing in the Dehcho Agreement precludes a dispute resolution service provided by or for the Dehcho Government from being an

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extra-judicial procedure as contemplated by Part 19 of the Rules of the Supreme Court of the NWT as of November 2002.

36.7 TERRITORIAL COURT

36.7.1 The Territorial Court shall hear and determine civil matters arising under Dehcho Law if the matter would have been within the jurisdiction of the Territorial Court under Federal Law or NWT Law.

36.7.2 A judge of the Territorial Court or a Justice of the Peace shall hear and determine violations of Dehcho Law if the matter would have been within the jurisdiction of the Territorial Court or a Justice of the Peace, as the case may be, under Federal Law or NWT Law.

36.8 SUPREME COURT OF THE NWT

36.8.1 The Supreme Court of the NWT shall hear appeals of decisions of the Territorial Court or Justices of the Peace in relation to Dehcho Law.

36.8.2 The Supreme Court of the NWT shall hear and determine:

- a) civil matters arising under Dehcho Law; and
- b) challenges to Dehcho Law,

if the matter would have been within the jurisdiction of the Supreme Court of the NWT under Federal Law or NWT Law.

36.8.3 In addition to any other remedy available to it, the Dehcho Government may enforce a Dehcho Law by applying to the Supreme Court of the NWT for an injunction in accordance with the Rules of the Supreme Court.

36.9 PROCEDURES

36.9.1 Dehcho Law may provide for procedures to be used in the courts by adopting:

- a) the summary conviction procedures of Part XXVII of the Criminal Code; or
- b) NWT Law relating to proceedings in respect of offences that are established by NWT Law, with such modifications as may be required.

36.9.2 Any proceeding under 36.7 shall follow the procedures of the Territorial Court.

36.9.3 Any proceeding under 36.8 shall follow the Rules of the Supreme Court of the NWT.

36.10 ADMINISTERING SANCTIONS

36.10.1 The GNWT is responsible for administering fines or terms of probation and imprisonment imposed by the Territorial Court or the Supreme Court of the NWT for violations of Dehcho Law in the same manner as those imposed under Federal Laws and NWT Laws.

36.10.2 The GNWT shall pay to the Dehcho Government the proceeds of fines imposed by the Territorial Court or the Supreme Court of the NWT for violations of Dehcho Law.

36.10.3 The Dehcho Government is responsible for administering sanctions created under 36.3.4. and for the alternative measures established under 36.4.1.

36.11 APPEAL, REHEARING AND REVIEW OF DECISIONS

36.11.1 Dehcho Law:

- a) shall provide for a right of appeal, or a right to seek a rehearing, to persons who are directly affected by decisions of the Dehcho Government and Institutions of the Dehcho Government made pursuant to Dehcho Law; and
- b) may establish the appropriate appeal and rehearing procedures and mechanisms.

36.11.2 The Supreme Court of the NWT shall have exclusive jurisdiction to hear applications for judicial review of the decisions of the Dehcho Government or Institutions of the Dehcho Government, except in relation to tax matters where the Parties otherwise agree in a tax agreement concluded pursuant to 37.3 of the Taxation chapter

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