

Dehcho AiP; Without Prejudice; Dec. 9, 2011

Reviewed by Main Table, Nov. 29-30, 2011

CHAPTER DG: DEHCHO GOVERNMENT

DG.1.1 The Dehcho Government will be recognized at the Effective Date. The Constitution of the Dehcho Government will be approved by a DFN Assembly before the Ratification Vote referred to in EE xxx.

DG.1.2 Consistent with the Dehcho Agreement, the Dehcho Constitution shall provide for:

- a) governing bodies and the exercise of their powers and duties and their composition, membership and procedures;
- b) protections for Dehcho Citizens and Residents, and for other persons to whom Dehcho laws apply, by way of rights and freedoms no less than those set out in the *Canadian Charter of Rights and Freedoms*;
- c) a system of political and financial accountability to Dehcho Citizens;
- d) the selection of regional and community leaders through democratic processes;¹
- e) the challenging of the validity of Dehcho laws by any person directly affected by such laws and the striking out of invalid laws;
- f) implementation of the principle that persons directly affected by any programs or services delivered by any Dehcho Government institution should have an opportunity to participate in the decision making process with respect to the management and delivery of those programs and services;
- g) the possibility that persons who are not Dehcho Citizens may be appointed or elected as members of Dehcho Government institutions; and
- h) amendment of the Constitution.

DG.1.3. The governing body of the Dehcho Government that exercises its law making powers and its primary executive functions will include at least ²

¹ DFN want assurance that communities will be able to continue using traditional Dene methods for the selection of community leaders. Canada and GNWT question how persons who are not Dehcho Dene can participate in traditional Dene method of selecting community leaders. DFN are committed to ensuring all residents of Dehcho Ndehe who meet residency requirement have right to fully participate in selection process.

² DFN negotiators are seeking instructions on whether the governing council should have weighted representation, so that large communities have more reps on council than small communities.

Deleted: In addition to anything else necessary in relation to the Dehcho Government

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- a) a Grand Chief, who is a Dehcho Dene, elected at large by eligible Dehcho Residents;³
- b) the Chief of each Dehcho Community Government; and
- c) one representative from each Dehcho Community selected by the residents of that Community.

DG.1.4 A majority of the members of the governing body of the Dehcho Government will be Dehcho Citizens.

DG1.5 To the extent of any conflict between the Dehcho Constitution and the Dehcho Agreement, the Agreement will prevail.⁴

DG.1.6 Every person shall have reasonable access to a copy of the Dehcho Constitution during normal hours, and, upon request, the Dehcho Government shall provide, at cost, copies of the Constitution. In addition, the Dehcho Government will make the Constitution available for viewing at any time on the website of the Dehcho Government.

DG.2 GENERAL POWERS

DG.2.1 The Dehcho Government is a legal entity with the legal capacity of a natural person, including but not limited to, the ability to

- a) enter into contracts or agreements;
- b) acquire and hold property, including real property, and any interest therein, sell or otherwise dispose of property or any interest therein;
- c) raise, invest, expend and borrow money;
- d) sue or be sued;
- e) form corporations or any other legal entities; and
- f) do such other things as may be conducive to the exercise of its rights, powers and privileges.

DG.2.2 For greater certainty, the Dehcho Government may establish trusts and administrative boards, commissions and tribunals and other bodies to perform functions identified in Dehcho laws.

³ DFN seeking instructions on eligibility to vote for GC.

⁴ This provision subject to review by DFN.

DG.3 DELEGATION

DG.3.3.1 The Dehcho Government may delegate any of its powers, except the power to enact laws, to:

- a) a body or official established by Dehcho law;
- b) Canada or the GNWT, including a department, agency or office of either Canada or the GNWT;
- c) a board, or other public body established by federal, territorial or Dehcho legislation; or
- d) a Dehcho Community Government or other municipal government.

DG.3.3.2 A delegation under 3.3.1 must be in writing and, if under 3.3.1 (b), (c) or (d), must be agreed to by the delegate.

DG.3.3.3 The Dehcho Government has the capacity to enter into agreements to receive powers, including powers to enact laws, by delegation.

DG.4 LAW MAKING POWERS

DG.4.1 In addition to its other powers, as set out in the Dehcho Agreement, the Dehcho Government has the exclusive⁵ jurisdiction to enact laws in relation to

- a) the structure of the Dehcho Government and its internal management; and
- b) the management and exercise of rights and benefits provided under the Dehcho Agreement to Dehcho Citizens, to the Dehcho First Nations or to the Dehcho Government, including those relating to the harvesting of Wildlife, Fish, Migratory Birds, Plants and Trees;⁶ and
- c) any matters ancillary to (a) or (b)

DG.4.2 In addition to its other powers, as set out in the Dehcho Agreement the Dehcho Government has the power to enact laws in relation to

- (a) businesses, occupations and activities of a local nature on Dehcho Ndehe;
- (b) the control or prohibition of the transport, sale, manufacture, possession or use of weapons and dangerous substances on Dehcho Ndehe;

⁵ Canada not prepared to recognize any exclusive heads of jurisdiction.

⁶ May need to provide that only reps of Dene vote on matters relating to treaties.

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- (c) the control or prohibition of the transport, sale, possession or use of intoxicants on Dehcho Ndehe;
- (d) guardianship and trusteeship of adult Dehcho Residents on Dehcho lands or in a Dehcho community, except in relation to persons who are subject to the *Mental Health Act*, provided that such laws provide for standards, including standards for the application of the principles of natural justice and the promotion of the safety and well-being of those persons;
- (e) wills, intestacy and administration of estates of Dehcho Residents at the time of death;⁷
- (f) trusts;⁸ and
- (g) solemnization of marriage on Dehcho Ndehe or in a Dehcho community, including conditions under which individuals appointed by the Dehcho Government may solemnize marriages.

DG.4.3 The powers to enact laws in relation to any of the matters set out in 4.1 or 4.2 includes the power to enact laws for the enforcement of those laws, including laws

- (a) establishing powers of search, seizure, arrest and detention;
- (b) providing for the appointment of enforcement officers and identifying their specific duties; and
- (c) providing for the imposition of fines, imprisonment or other sanctions of a type authorized by legislation, or for the imposition of other sanctions consistent with the culture and customs of the Dehcho Dene.

DG.4.4 For greater certainty, the authority of the Dehcho Government to make laws in respect of a subject matter as set out in the Dehcho Agreement includes the authority to make laws and do other things as may be necessarily incidental to exercising that authority.

DG.5 JUDICIAL PROCEEDINGS

DG.5.1 The Dehcho Government will have standing in any judicial proceedings, including any other dispute resolution proceedings, to act on behalf of any individual Dehcho Citizen or Resident, except where that Dehcho Citizen or Resident objects, or on behalf of the Dehcho First Nations with respect to rights or benefits under the Dehcho Agreement.

⁷ May require separate chapter, or clauses. Dehcho Agreement should indicate status of Indian Act provisions on wills and estates.

⁸ Could be tax implications.

DG.5.2 The Dehcho Government will have standing in any judicial proceedings in which custody of a child who is a Dehcho Citizen or Resident is in dispute, and the court will take judicial notice of Dehcho laws and will consider any evidence and representations in respect of the culture and customs of the Dehcho Dene in addition to any other matters it is required by law to consider. The participation of the Dehcho Government in such judicial proceedings will be in accordance with the applicable rules of court and will not affect the ability of the court to control its process.

DG.5.3 In any legal proceedings which could impact on the rights or benefits of Dehcho Citizens or Residents, as set out in the Dehcho Agreement, the courts shall give serious consideration to the culture and customs of the Dehcho Dene.

DG.5.4 The Dehcho Government will be responsible for the prosecution of violations of Dehcho laws and for appeals or other judicial proceedings with respect to such prosecutions, and will ensure that such prosecutions are consistent with the common law standards required for similar types of offences in Canada taking into account the culture and customs of the Dehcho Dene.

DG.5.5 The Dehcho Government is responsible for enforcing sanctions provided for violations of Dehcho laws.

DG.5.6 An agreement may be concluded in respect of the enforcement of Dehcho laws, of legislation in relation to Dehcho Citizens or Residents or of legislation in relation to Dehcho lands by the Dehcho Government, Canada or the GNWT.

DG.6 CONFLICT OF LAWS

DG.6.1 Unless otherwise provided in the Dehcho Agreement, the powers of the Dehcho Government to enact laws will be concurrent with those of Canada or the GNWT, as the case may be.

DG.6.2 Except where the Dehcho Agreement provides otherwise, in the case of conflict between federal legislation and a Dehcho law, the Dehcho law will prevail to the extent of the conflict.⁹

DG.6.3 Except where the Dehcho Agreement provides otherwise, in the case of conflict between territorial legislation of general application and a Dehcho law, the Dehcho law will prevail to the extent of the conflict.

DG.6.4 In the case of conflict between a Dehcho law and a provision of territorial legislation that implements an obligation of the Government of Canada under an international agreement, the provision of the territorial legislation will prevail to the extent of the conflict.

⁹ Canada prefers to address paramountcy on case-by-case basis.

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DG.7 REGISTER OF DEHCHO LAWS

DG.7.1 The Dehcho Government shall maintain, at its main offices and on its website, a register on which it shall enter the text of all Dehcho laws, including any amendment to those laws.

DG.7.2 Every person shall have reasonable access to the register.

DG.7.3 The Dehcho Government upon request shall provide, at cost, hard copies of Dehcho laws.

DG.8 COORDINATION OF PROGRAM AND SERVICE DELIVERY

DG.8.1 The Parties will exercise their respective powers, to the extent practicable, in a manner that coordinates the delivery of programs and services provided to Dehcho Residents, and to all residents of the Northwest Territories.

DG.8.2 Where one of the Parties is of the opinion that there may be or has been a Significant Disruption in the delivery of a program or service on Dehcho Ndehe or in a Dehcho Community, then, on 60 days notice by one of the Parties, the Parties will enter into discussions for the purpose of reaching agreement on whether there has been a disruption and if so, on how best to deal with it, including any cost-sharing arrangements. During the course of these discussions, the Parties will consider

- (a) the impact of the disruption on the delivery of the program or service;
- (b) the options for maintaining the delivery, financing and administration of the program or service; and
- (c) the potential cost implications of such options for each of the Parties.

DG.8.3 The Dehcho Government may enter into agreements with Canada or the GNWT to coordinate the delivery of programs and services or to otherwise harmonize program and service delivery, including arrangements for information sharing, record-keeping, methods of ensuring comparability of standards, cooperation in negotiation of inter-jurisdictional agreements, and any other measures as agreed.

DG.9 INTERNATIONAL LEGAL OBLIGATIONS

DG.9.1 The following definition applies in DG.9:

“international treaty” means an agreement governed by international law and concluded in written form

- (a) between States; or
- (b) between one or more States and one or more international organizations,

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whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation.

DG.9.2 Prior to consenting to be bound by an international treaty that may affect a right of the Dehcho Government, the Dehcho Government or a Dehcho Citizen, the Government of Canada shall provide an opportunity for the Dehcho Government to make its views known with respect to the international treaty.

DG.9.3 Where the Government of Canada informs the Dehcho Government that it considers that a law or other exercise of power of the Dehcho Government causes Canada to be unable to perform an international legal obligation, the Dehcho Government and the Government of Canada shall discuss remedial measures to enable Canada to perform the international legal obligation. Subject to 9.4, the Dehcho Government shall remedy the law or other exercise of power to the extent necessary to enable Canada to perform the international legal obligation.

DG.9.4 Where the Government of Canada and the Dehcho Government disagree over whether a law or other exercise of power of the Dehcho Government causes Canada to be unable to perform an international legal obligation, the dispute shall be resolved pursuant to chapter DR. If the arbitrator, having taken into account all relevant considerations including any reservations and exceptions available to Canada, determines that the law or other exercise of power of the Dehcho Government does not cause Canada to be unable to perform the international legal obligation, the Government of Canada shall not take any further action for this reason aimed at changing the Dehcho Government law or other exercise of power. If the arbitrator, having taken into account all relevant considerations including any reservations and exceptions available to Canada, determines that the Dehcho Government law or other exercise of power causes Canada to be unable to perform the international legal obligation, the Dehcho Government shall remedy the law or other exercise of power to enable Canada to perform the international legal obligation.

DG.9.5 The Government of Canada shall consult the Dehcho Government in the development of positions taken by Canada before an international tribunal where a law or other exercise of power of the Dehcho Government has given rise to an issue concerning the performance of an international legal obligation of Canada. Canada's positions before the international tribunal shall take into account the commitment of the Parties to the integrity of this Agreement.

DG.9.6 Notwithstanding 9.4, if there is a finding of an international tribunal of nonperformance of an international legal obligation of Canada attributable to a law or other exercise of power of the Dehcho Government, the Dehcho Government shall, at the request of the Government of Canada, remedy the law or action to enable Canada to perform the international legal obligation consistent with the compliance of Canada.

DG.9.7 For greater certainty, reference to Canada's international legal obligations in the Agreement includes those that are in force on or after the Effective Date.

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DG.10 TRANSITIONAL

DG.10.1 On the effective date, the Dehcho First Nations and the (list) bands and Metis locals cease to exist and are succeeded by the Dehcho Government and Community Governments.

DG.10.2 On the Effective Date, the assets and liabilities of the bands referred to in 10.1 will become the assets and liabilities of the Dehcho Government and Community Governments.

DG.10.3 Any monies held by the Government of Canada for the use and benefit of the bands referred to in 10.1 will be transferred to the Dehcho Government and Community Governments as soon as practicable after the Effective Date.

DG.10.4 On the effective date,

(a) any assets or liabilities of the Dehcho First Nations become the assets and liabilities of the Dehcho Government; and

(b) the Leadership of the Dehcho First Nations that is in office immediately before that date becomes the governing body of the Dehcho Government until replaced in accordance with the Dehcho Constitution.