

CHAPTER DR: DISPUTE RESOLUTION

DR.1 General

DR.1.1 This Chapter will apply only to the following types of disputes:¹

- a) any matter in the Dehcho Agreement where the wording stipulates that a Party or a person **“may refer the dispute for resolution in accordance with the Dispute Resolution Chapter”**;
- b) any matter in an ancillary agreement between Government and the Dehcho Government where the wording stipulates that a Party or a person ~~may~~ ^{will} **“refer the dispute for resolution in accordance with the Dispute Resolution Chapter”**; or
- c) a dispute between Government and the Dehcho Government concerning the interpretation or application of the Dehcho Agreement.

DR.1.2 Disputes under DR1.1 (a) and DR1.1 (b) referred to this Chapter for resolution or determination will progress through the following steps:

- a) informal discussion;
- b) mediation, unless one of the Disputants elects to proceed directly to binding arbitration; and
- c) binding arbitration.

DR.1.3 Disputes under DR1.1 (c) referred to this Chapter for resolution or determination will progress through the following steps:

- a) informal discussion;
- b) mediation, if agreed to by the Disputants;
- c) binding arbitration, if agreed to by the Disputants; or
- d) court proceedings if initiated by a Disputant or if agreed to by the Disputants.

¹ Canada (LTC) will propose another category of matters in the Dehcho Agreement excluded from the Dispute Resolution process.

- DR.1.4 Disputants may agree to vary a procedural requirement contained in this Chapter, as it applies to a particular dispute.
- DR.1.5 Disputants may at any time resolve their dispute by an agreement in writing. Notification and a copy of any such agreement will be provided to all Parties.
- DR.1.6 Nothing in this Chapter will be construed to prevent the Disputants from agreeing to refer their dispute for a determination under a court process or to an alternate dispute resolution mechanism such as arbitration pursuant to the *Arbitration Act*, R.S.N.W.T.
- DR.1.7 Nothing in this Chapter prevents a Disputant from commencing proceedings with an arbitrator or court at any time:
- a) to prevent the loss of a right to commence proceedings due to the expiration of a limitation period; or
 - b) to obtain interlocutory or interim relief that is otherwise available pending resolution of the dispute under this Chapter.
- DR.1.8 If a dispute has been referred to mediation or arbitration under this Chapter, no other mediation or arbitration process provided by Legislation applies.
- DR.1.9 If a Dehcho Citizen has a right of action in relation to the Dehcho Agreement, the Dehcho Government may, with the consent of the Dehcho Citizen, bring that action on behalf of the Dehcho Citizen.
- DR.1.10 All communications undertaken by a Disputant during an informal discussion or mediation process under this Chapter will be “without prejudice” to any position the Disputant may take in any other legal process, including arbitration pursuant to this Chapter. Unless the Disputants agree otherwise, they will treat all such communications as confidential.
- DR.2 Roster of Mediators and Arbitrators**
- DR.2.1 The Parties will develop and maintain a roster of candidates to act as mediators and arbitrators who have:
- a) a familiarity with the circumstances of the Parties; and
 - b) the skills, abilities and expertise to act as mediators or arbitrators.

DR.3 Informal Discussion

DR.3.1 Upon notice of a dispute from a Disputant, the Disputants will have an informal discussion within 30 days in an attempt to resolve the dispute prior to proceeding to mediation or arbitration.

DR.4 Mediation

DR.4.1 If an agreement has not been resolved through informal discussions within thirty (30) days, or another period agreed to by the Disputants, the Disputants may agree to proceed to mediation.

DR.4.2 The Disputants will agree on a mediator from the roster under DR 2.1 within 10 days. In the absence of agreement, a Disputant may apply to the NWT Supreme Court to appoint a mediator.

DR.4.3 The mediator will, without delay, consult with the Disputants and arrange for the commencement of the mediation.

DR.4.4 Unless the Disputants agree otherwise, the mediation will be held in the Northwest Territories.²

DR.4.5 Each Disputant will bear its own costs to participate in the mediation. All other costs of mediating a dispute, including the remuneration and expenses of the mediator, and costs associated with the process, will be shared equally among the Disputants, unless otherwise provided for in the Dehcho Agreement or the Implementation Plan.

DR.4.6 Upon termination of the mediation proceedings, the mediator will submit a mediation report to the Disputants. Unless the Disputants agree otherwise, the mediation report will be confidential. ~~in accordance with Legislation.~~

DR.5 Binding Arbitration or Court Proceedings

DR.5.1 If the Disputants referred the dispute to mediation and there is no resolution within 60 days, from the date the mediator is appointed, or any other period agreed to by the Disputants or if the Disputants have agreed to go directly to binding arbitration:

² Canada (LTC) suggests adding references to teleconferencing and perhaps other methods.

- a) in the case of a dispute set out in DR1.1 (a) and DR1.1 (b), a Disputant may deliver notice to the other Disputant to proceed to binding arbitration; and
- b) in the case of a dispute set out in DR1.1 (c):
 - i) the Disputants may agree to proceed to binding arbitration, court or another alternative dispute resolution process; or
 - ii) a Disputant may commence court proceedings.

DR.5.2 Where a dispute proceeds to binding arbitration, the Disputants will agree on an arbitrator from the roster under DR.2.1 within 14 days. In the absence of agreement, a Disputant may apply to the NWT Supreme Court to appoint an arbitrator.

DR.5.3 Unless the Disputants agree otherwise, a person who has acted as mediator in a dispute cannot act as an arbitrator for that dispute.

DR.5.4 Any Party has standing in any dispute that is referred to arbitration pursuant to this Chapter.

DR.5.5 On application and on such terms as the arbitrator may order, an arbitrator may allow any person that is not a Disputant to participate as an intervener in an arbitration if, in the opinion of the arbitrator, the interest of that person may be directly affected by the arbitration.

DR.5.6 Subject to the rules established by the Parties, the provisions of the Dehcho Agreement, the provisions of an agreement referred to in DR.1.1(b) and any additional powers provided for in the Dehcho Agreement, the arbitrator may, in relation to any matter before the arbitrator:

- a) determine all questions of procedure, including the method of giving evidence;
- b) make an award, including interim relief;
- c) provide for the payment of interest and costs;
- d) subpoena witnesses;
- e) administer oaths or affirmations to witnesses; and
- f) refer questions of law to the Supreme Court of the Northwest Territories.

DR.5.7 No arbitrator may rule on the validity of the Dehcho Agreement or alter, amend, delete or substitute any provision of the Dehcho Agreement in any manner.

DR.5.8 A decision of an arbitrator will be conclusive and binding on the Disputants and will not be challenged by appeal or review in any court except on the ground that the arbitrator has erred in law or exceeded his or her jurisdiction.

DR.5.9 Each Disputant, and any intervener, will bear their own costs to participate in the arbitration. All other costs of arbitrating a dispute, including the remuneration and expenses of the arbitrator, and costs associated with the process, will be shared equally among the Disputants, unless the arbitrator decides otherwise.

DR.5.10 A Disputant may, after the expiration of fourteen (14) days from:

- a) the date of the release of an arbitration decision or order; or
- b) the date provided in the decision for compliance

whichever is later, file in the Registry of the Supreme Court of the Northwest Territories a copy of the arbitration decision or order and the decision or order will be entered as if it were a decision or order of the Court. On being entered, the arbitration decision or order will be deemed, for all purposes except for an appeal from it, to be an order of the Supreme Court of the Northwest Territories and enforceable as such.

DR.5.11 Prior to the finalizing the Dehcho Agreement, the Parties will establish procedures for arbitration, including confidentiality, which will provide for an expeditious process.