

DISPUTE RESOLUTION GUIDELINES - SAMPLE

Preamble

The *XX First Nation Land Code* establishes the procedure for alternative dispute resolution. These guidelines were developed to establish the procedures for the resolution of disputes and provide parties to a dispute in relation to *XX First Nation Land* with sequential stages for the resolution of disputes by way of negotiation, facilitated discussions, mediation and arbitration.

If there is an inconsistency between these guidelines and the *XX First Nation Land Code* the provisions of *Land Code* **shall** prevail to the extent of the inconsistency.

1. Purpose

Intent

1.1 The intent of this part is to ensure that all persons entitled to reside upon, use or otherwise occupy *XX First Nation Land* do so harmoniously with due respect to the rights of others and of *XX First Nation* and with access to *XX First Nation* procedures to resolve disputes.

Purpose

1.2 The purpose of these guidelines is to enable the parties to a dispute to achieve a just, speedy and inexpensive determination of matters in dispute, taking into account the values which distinguish dispute resolution from litigation.

2. Processes

Dispute Prevention

2.1 The parties **shall** use best efforts to prevent disputes from arising and **shall** consider the use of dispute resolution processes at the earliest possible stage of any conflict.

Disputes Prior to the Land Code

2.2 Disputes that arose before the *Land Code* takes effect could also be referred to the dispute resolution process.

Settle a Dispute

2.3 Nothing in these guidelines **shall** be construed to limit the ability of any person to reach agreement to settle a dispute without recourse to these guidelines.

Settlement Agreement

2.4 Any settlement reached through dispute resolution **shall** not be legally binding until it has been reduced to writing and properly executed by, or on behalf of, the parties.

Staged Processes

2.5 XX First Nation intends that a dispute in relation to XX First Nation Land, except as otherwise provided, progress in sequence through the following stages provided for in these guidelines:

- a) negotiation;
- b) facilitated discussions;
- c) mediation; and
- d) final arbitration by the Dispute Resolution Panel.

Termination of Processes

2.6 Negotiations, facilitated discussions and mediations may be suspended upon any of the following occurrences:

- a) the parties reach an agreement;
- b) one of the parties refuses to continue with the negotiation, facilitated discussion or mediation;
- c) the mediator assesses that nothing meaningful is to be gained in continuing the process; or
- d) upon the request of both parties.

Notice of Termination

2.7 A notice of termination is required when further facilitated discussions or mediation **shall** not resolve the dispute. The dispute may progress to the next stage of the dispute resolution process or to final arbitration.

Dispute Resolution Not Available

2.8 Dispute resolution is not available under these guidelines for disputes in relation to:

- a) the administration or distribution of an estate;
- b) decisions relating to housing allocations;
- c) decisions of Council to grant or refuse to grant an Interest or license in XX First Nation Land to a non-Member;
- d) decisions on expropriation under section xx of the *XX First Nation Land Code*;
- e) prosecution or conviction of an offence under a Land Law or under criminal law; and
- f) challenges to the validity of any Land Law.

Duty of Fairness

2.9 All persons involved in a dispute under these guidelines **shall** be:

- a) treated fairly;
- b) given a full opportunity to present their case; and
- c) given reasons for a decision made under these guidelines.

Rules and Procedures

2.10 Council may prescribe such laws, resolutions, rules, policies, procedures, forms and reasonable fees not inconsistent with this *Land Code*, as may be necessary to give effect to these guidelines including but not limited to:

- a) remuneration of facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in the resolution of disputes under Part xx of the *XX First Nation Land Code*;
- b) disclosure and confidentiality;
- c) implementing recommendations of the Dispute Resolution Panel made under Part xx of the *XX First Nation Land Code*; and
- d) any other matter necessary to give effect to Part xx of the *XX First Nation Land Code*.

Code of Conduct

2.11 Council **shall** establish a code of conduct for facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in the resolution of disputes under Part xx of the *XX First Nation Land Code*.

Waiver of Liability

2.12 By participating in this dispute resolution process, the parties agree that the facilitators, mediators, arbitrators and panelists **shall** not be liable to the parties for any act or omission in connection with the services provided by them in, or in relation to, the dispute resolution processes, unless the act or omission is fraudulent or involves willful misconduct.

Mandatory Application

2.13 Council may establish a Land Law that sets out the mandatory application of Part xx of the *XX First Nation Land Code* in certain circumstances.

Contractual Agreement

2.14 Subject to any Land Law enacted under section 2.13, a contractual agreement made under the *XX First Nation Land Code* may establish that the dispute resolution outlined in Part xx of the *XX First Nation Land Code* and its Land Laws may be mandatory or may to some degree prescribe for alternate arbitration process if there is consensual agreement by the parties involved in that agreement. The dispute resolution clause which forms part of a contract **shall** be treated as an agreement independent of the other terms of the contract.

Variation of Rules

2.15 Subject to any Land Law enacted under section 2.13, the parties to a dispute to which any dispute resolution rules apply may to some degree modify, vary or amend these rules by consensual agreement in writing, and notify the Panel in writing.

Civil Remedies

- 2.16** Notwithstanding section 2.13 and 2.14, nothing in this Part **shall** be construed to prevent a party to a dispute from, at any stage of dispute resolution, applying to have the dispute resolved in a court of competent jurisdiction.

Challenge to Validity of Law

- 2.17** For greater certainty, nothing in these guidelines **shall** be construed to prevent a party to a dispute from challenging the validity of a Land Law, but such a challenge may be heard only in a court of competent jurisdiction.

3. Roster Panel Established

Appointment to Roster Panel

- 3.1** The Roster Panel **shall** be composed of a maximum of twenty (20) Panelists.

Ineligible

- 3.2** Notwithstanding section xx of the *XX First Nation Land Code*, in order to avoid conflict of interest, no Council member, or employee of XX First Nation or person already serving on another board, body, or committee relating to XX First Nation Land **shall** sit on the Roster Panel.

Representation

- 3.3** The Council **shall** appoint the Roster Panelists, and **shall** ensure that the Roster Panelists represent the various elements of the community.

Term of Office

- 3.4** The Roster Panelists hold office for a term of three (3) years, at which time the term of office may be renewed.

No Remuneration

- 3.5** Unless Council by Resolution or law provides otherwise, the Panelists are to act on a volunteer basis and receive no remuneration for their services.

Rules of Roster Panel

- 3.6** The Roster Panel may establish rules for the procedure at its hearings and generally for the conduct of its affairs.

4. Negotiation

Informal Discussions

- 4.1** XX First Nation intends that wherever possible, a dispute in relation to XX First Nation Land **shall** be resolved by negotiation through informal discussion by the parties to the dispute prior to entering the dispute resolution process by filing a notice of dispute.

5. Procedure to File a Dispute

Procedure to File a Dispute

- 5.1** A person who wishes to resolve a dispute with another person or XX First Nation in relation to the use or occupation of XX First Nation Land may file a written notice of dispute with the Lands Department setting out:
- a) the nature of the dispute;
 - b) a statement outlining the facts and supporting arguments of the dispute claim; and
 - c) the relief that is sought.

Limitation Period

- 5.2** The limitation period for submitting a notice of dispute and referring a matter or dispute to the Roster Panel is:
- a) 6 months after the day the decision, act or omission being referred was made;
 - b) thirty (30) consecutive days after the breakdown of negotiation; or
 - c) in the case of a breakdown and termination of facilitated discussions or mediation, thirty (30) consecutive days after the notice of termination.

6. Facilitated Discussion

Procedure

- 6.1** Within thirty (30) consecutive days of receiving a notice of dispute under section 5.1, the Lands Department **shall** prepare and deliver a report on the dispute and a copy of the notice of dispute to the Chair of the Roster Panel.

Notice of Dispute

- 6.2** As soon as practicable after receiving a report and notice of dispute under section 6.1 the Chair of the Roster Panel or another person not affected by the dispute and designated by the XX First Nation Land Committee for that purpose, **shall** make best efforts to meet with the parties and attempt to resolve the dispute through facilitated discussions.

Set Meeting Date and Time

- 6.3** In setting the date and time of the meeting referred to in section 6.2 the Chair of the Roster Panel or other person appointed for the purposes of section 6.2 may consider any need to:
- a) obtain further information;
 - b) give notice of the dispute to others who have or may have an interest in it; or
 - c) obtain professional advice in relation to the dispute.

Other Mechanisms

- 6.4** Where the Chair of the Roster Panel or other person appointed for the purposes of section 6.2 concludes that the dispute cannot be resolved through facilitated discussions, he or she may in his or her sole discretion direct that the dispute proceed to mediation or to the Dispute Resolution Panel.

7. Mediation

Appointment

7.1 A mediator **shall** be selected jointly by the parties to the dispute and the Roster Panel.

Unable to Agree

7.2 If the parties to the dispute and the Roster Panel are unable to agree on a mediator, the Dispute Resolution Panel **shall** hear the dispute.

Authorities

7.3 The mediator has no authority to decide the dispute without the agreement of the parties to the dispute.

Report

7.4 At the conclusion of mediation, the mediator **shall** submit a written report on the mediation proceedings to the parties to the dispute and the Roster Panel.

8. Arbitration by the Dispute Resolution Panel

Disputes

8.1 Any matter or dispute related to XX First Nation Land shall be submitted to the Lands Department but that such matter or dispute shall then be referred to the Roster Panel for resolution.

Panel of Three Chosen From Roster Panel

8.2 Disputes referred to the Roster Panel are to be heard by three (3) Panelists chosen as follows:

- a) one (1) panelist is to be chosen by each of the two (2) parties to the dispute;
- b) one (1) panelist, who is to be the chairperson, **shall** be chosen by the rest of the Panel; and
- c) in the case of situations not adequately covered by section (a) or (b), all three (3) panelists **shall** to be chosen by the Roster Panel as a whole.

Panel Established

8.3 The Panel is hereby established with jurisdiction to resolve disputes in relation to XX First Nation Land. For greater certainty, disputes outlined in section 2.8 **shall** not be heard by the Panel.

9. Impartiality of the Dispute Resolution Panel

Duty to Act Impartially

9.1 The Panel **shall** act impartially and without bias or favour to any party in a dispute.

Offence

9.2 It is an offence for a person to act, or attempt to act, in a way to improperly influence a decision of the Panel.

Rejection of Application

9.3 In addition to any other sanction, the Panel may reject an application without hearing it if the Panel believes that the applicant acted, or attempted to act, in a way to improperly influence its decision.

10. Powers of the Dispute Resolution Panel

Power of the Panel

10.1 The Panel may, after hearing a dispute:

- a) confirm or reverse the decision, in whole or in part;
- b) substitute its own decision for the decision in dispute;
- c) direct that an action be taken or ceased;
- d) refer the matter or dispute back for a new decision; or
- e) make an order to give effect to its decision, including any necessary order for the survey of an interest in XX First Nation Land, the registration of an interest in XX First Nation Land, and the allocation of the costs of any incidental measures to be taken to give effect to such an order.

Recommendations by Panel

10.2 In addition to making a determination under section 10.1, the Panel may:

- a) recommend to Council the suspension of any Land Law or decision made by Council for such period as is necessary for Council to reconsider, amend or repeal such Land Law or decision, provided that any amendment or repeal of a Land Law is made in a manner consistent with this *Land Code*; or
- b) make any other recommendation to Council that it deems reasonable and necessary in the circumstances.

Interim Decisions

10.3 The Panel may, in relation to a dispute over which it has jurisdiction under this Part, make any interim order it considers to be necessary as a matter of urgency to preserve the rights of the parties to the dispute or to preserve or protect an Interest in XX First Nation Land.

Professional Services

10.4 The Panel may obtain the service of professionals to assist it in fulfilling its functions, in which case it **shall** make best efforts to use professional services available in the community.

Written Decisions

10.5 Decisions of the Panel must be in writing, signed by the person chairing the Panel or by an officer designated by the Panel to do so.

Reasons

10.6 The Panel *shall* give reasons for its decision, and *shall* do so in writing if a party to the proceedings requests them before, or within fourteen (14) consecutive days after, the date of the decision.

Appeal of Decision

10.7 A decision of the Panel is binding but, subject to any exception established by a law, may be appealed to the Federal Court (Trial Division).