

Sahtu Dene and Métis Arbitration Panel

***Arbitration (Commencement of
Proceedings) Rules***

(Adopted on 1 August 1996)

Arbitration (Commencement of Proceedings) Rules

Contents

Section

- 1 Definitions
- 2 How to submit a matter to arbitration
- 3 Contents of a submission to arbitration
- 4 Other parties to be served
- 5 Administrative Secretary's responsibilities after receiving submission
- 6 Replying to a submission to arbitration
- 7 What must be included in the reply
- 8 Additional Arbitrator appointments
- 9 Other participants in the arbitration
- 10 When the Arbitrator has jurisdiction
- 11 Preserving the arbitration decision
- 12 Preserving records of appeals and their result
- 13 Administrative Secretary's fees and expenses
- 14 Arbitrator fees and expenses
- 15 Waiver or modification of Rules

Note: For ease of reference, Chapter 6 of the Sahtu Dene and Métis Comprehensive Land Claim Agreement is included as an appendix to the Rules.

Sahtu Dene and Métis Arbitration Panel

Arbitration (Commencement of Proceedings) Rules

Introduction

The *Arbitration (Commencement of Proceedings) Rules* are made under the authority of section 6.2.2¹ of the Sahtu Dene and Métis Comprehensive Land Claim Agreement.

The Land Claim Agreement provides for certain disputes to be referred to arbitration. The Rules which follow describe how to start arbitration proceedings and how to appoint, from members of the Arbitration Panel, an Arbitrator or Arbitrators to rule on the dispute.

The Land Claim Agreement says² that a matter can be referred to the Arbitration Panel when

- (a) the dispute is a matter that must be settled by arbitration in the absence of some other settlement, or
- (b) the parties agree to submit a matter to arbitration and to be bound by the decision.

The Rules cover how to start an arbitration proceeding, whether by one party making a submission to arbitration, or by a joint submission to arbitration by agreement of the parties.

The Rules are annotated with footnoted source references and comments to provide as self contained a document as possible, within the constraints of the Arbitration Panel's mandate. The footnotes are intended as an aid to interpreting the Rules. Words having specially defined meanings are italicized. The *Arbitration (Commencement of Proceedings) Rules* follow.

1 Section 6.2.2. of the *Land Claim Agreement* reads in part:

Subject to section 6.3.5, the panel may establish rules and procedures for the implementation of this chapter.

2 Section 6.1.5 of the *Land Claim Agreement* reads:

6.1.5 The panel described in 6.2 shall have jurisdiction to arbitrate in respect of:

- (a) any matter which this agreement stipulates is to be determined by arbitration; and
- (b) any matter concerning the interpretation or application of this agreement where the parties agree to be bound by an arbitration decision in accordance with this chapter.

Arbitration (Commencement of Proceedings) Rules

1 Definitions

In these Rules

- (a) *Administrative Secretary* means the *Administrative Secretary of the Arbitration Panel*;
- (b) *Arbitration Panel* means the Sahtu Dene and Métis Arbitration Panel established under the *Land Claim Agreement*;³
- (c) *Arbitrator* means the one or more persons appointed as an *Arbitrator* in accordance with the *Land Claim Agreement* to arbitrate a dispute;
- (d) *Land Claim Agreement* means the Sahtu Dene and Métis Comprehensive Land Claim Agreement.

2 How to submit a matter to arbitration

- (1) A party⁴ wishing to submit a matter to arbitration⁵ under section 6.1.5(a) or (b) of the *Land Claim Agreement* must file a written submission to arbitration with the *Administrative Secretary*, together with a filing fee of \$300.00, payable to the *Arbitration Panel*.
- (2) The submission must be filed with the *Administrative Secretary* by delivery, mail, fax or e-mail to the following address:

Administrative Secretary
Sahtu Dene and Métis Arbitration Panel
3200, 10180 - 101 Street
Edmonton, Alberta, T5J 3W8

tel: (403) 497-3388
fax: (403) 429-3044
e-mail: reynolds@law.ualberta.ca

³ See section 6.2 of the *Land Claim Agreement* which created the *Arbitration Panel*.

⁴ A "party" in this context means any of the persons entitled to refer a matter to arbitration under the *Land Claim Agreement*.

⁵ Section 6.3.2 of the *Land Claim Agreement* provides the basic rule for submitting a dispute to arbitration under section 6.1.5(a) of the *Land claim Agreement*.

3 Contents of a submission to arbitration

- (1) A submission to arbitration under section 6.1.5(a) or (b) of the *Land Claim Agreement*⁶ must include⁷
 - (a) the name of the party making the submission and an address for service of documents;
 - (b) the name of the other party or parties to the arbitration;
 - (c) a signed statement that the dispute has not been resolved by discussion and negotiation;⁸
 - (d) a brief description of the nature of the dispute;
 - (e) a summary of the facts;
 - (f) the one or more issues to be arbitrated;
 - (g) the name of the person they appoint as *Arbitrator* from the *Arbitration Panel*;⁹ and
 - (h) a description of the relief sought.
- (2) In addition to the information described in subsection (1), if a submission to arbitration is made by agreement of the parties under section 6.1.5(b) of the *Land Claim Agreement*,
 - (a) the initiating party or parties must send to the *Administrative Secretary* a copy of the parties' agreement to arbitrate and to be bound by the arbitration decision, and
 - (b) the requirements of section 6.3.3 of the *Land Claim Agreement*¹⁰ apply unless the parties specify otherwise.

6 Section 6.1.5 is set out in a footnote on page 1

7 Many of these requirements are specified in section 6.3.2 of the *Land Claim Agreement*. These Rules round out the requirements described in the *Land Claim Agreement* and apply to single or joint submissions to arbitration.

8 Section 6.1.1 of the *Land Claim Agreement* says that Chapter 6, the Dispute Resolution Chapter, applies to a dispute "which is not resolved by discussion and negotiation". The requirement for certification that the dispute has been the subject of discussion directs the parties to this requirement.

9 Copies of the list of arbitrators on the *Arbitration Panel*, with a brief biography of each, are available from the *Administrative Secretary*.

10 Section 6.3.3 of the *Land Claim Agreement* reads:

6.3.3 In the case of an arbitration convened pursuant to 6.3.2, the other party to the dispute shall file a reply within 30 days responding to the submission, agreeing to the arbitrator named in the submission or naming another arbitrator from the panel and describing any relief sought. Where the other party to the dispute fails to file a reply within the prescribed time, that party shall be deemed to have agreed to the arbitrator named in the submission and shall be deemed to be a party to the arbitration.

- (3) If a party considers a submission to arbitration incomplete or deficient, the matter must be raised with the *Arbitrator* at the earliest opportunity after the *Arbitrator* has jurisdiction,¹¹ to be ruled on by the *Arbitrator*.

4 Other parties to be served

Unless the submission to arbitration is a joint submission, the party filing a submission to arbitration with the *Administrative Secretary* must

- (a) serve the submission on the other party or parties to the arbitration,
- (b) serve the submission on any parties to the *Land Claim Agreement* who are not parties to the arbitration,¹² and
- (c) notify the *Administrative Secretary* of the date on which the submission was served on each of the parties.

5 Administrative Secretary's responsibilities after receiving submission

As soon as possible after receiving a submission to arbitration, the *Administrative Secretary* must:

- (a) notify the named *Arbitrator* of the submission and send a copy of the submission to the *Arbitrator*, and
- (b) send to the other party or parties to the arbitration
 - (i) the current biographies of the *Arbitration Panel* members, and
 - (ii) a copy of section 6.3.3 of the *Land Claim Agreement*.

¹¹ Section 10 of these Rules describes when the *Arbitrator* has jurisdiction.

¹² A party to the *Land Claim Agreement* who is not a party to the arbitration has a right to participate by giving notice to the *Arbitrator* under section 6.3.4(a) which reads:

6.3.4 (a) The Sahtu Tribal Council, Canada or the Government of the Northwest Territories may participate in any arbitration as a party on notice to the arbitrator or arbitrators.

Under section 6.3.4(b) of the *Land Claim Agreement* others are entitled to participate in the arbitration if they can show their interests to be affected. See section 9 of these Rules.

6 Replying to a submission to arbitration

Unless a submission is a joint submission to arbitration, the recipient of the submission to arbitration who is a party to the arbitration must, within 30 days of receiving the submission,

- (a) serve a reply on the party who submitted the dispute to arbitration,
- (b) send a copy of the reply to any party to the *Land Claim Agreement* who is not a party to the arbitration, and
- (c) file¹³ a copy of the reply with the *Administrative Secretary* and confirm to the *Secretary* that a copy of the reply has been served on or sent to the parties.

7 What must be included in the reply

The following must be included in a reply to a submission to arbitration:¹⁴

- (a) confirmation or denial of all or any part of the claim,
- (b) a brief summary of any additional facts,
- (c) a brief statement of any counterclaim with a supporting factual summary,
- (d) either agreement to the *Arbitrator* named in the submission acting as sole *Arbitrator*, or the name of another *Arbitrator*, selected from the *Arbitration Panel*, appointed by the replying party,
- (e) a description of any relief sought, and
- (f) an address for service of documents.

8 Additional Arbitrator appointments

- (1) If a replying party does not wish to have a sole *Arbitrator* decide the dispute and appoints a different *Arbitrator* from the *Arbitration Panel*, the two *Arbitrators* selected must, as soon as possible, appoint from the other members of the Panel a third *Arbitrator*.

¹³ The address for filing is in section 2(2) of these Rules.

¹⁴ These requirements are largely contained in section 6.3.3 of the *Land Claim Agreement*.

- (2) If the two *Arbitrators* are unable to agree on a third *Arbitrator*, they must notify the *Administrative Secretary* as soon as possible and the *Administrative Secretary* must apply to a judge, on notice to the parties to the arbitration, for the appointment of a third *Arbitrator*, in accordance with section 6.3.1(b) of the *Land Claim Agreement*¹⁵ and the *Arbitration Act*, R.S.N.W.T. 1988, c.A-5, as amended from time to time.
- (3) The judge may appoint as an *Arbitrator* either a member of the *Arbitration Panel* or some other person.
- (4) As soon as possible after an *Arbitrator* is appointed under these Rules, the *Arbitrator* must notify the parties and the *Administrative Secretary*, in writing, that they accept the appointment.

9 Other participants in the arbitration

In accordance with section 6.3.4(b) of the *Land Claim Agreement*,¹⁶ an *Arbitrator* may, on application, allow any person to participate in an arbitration on such terms as the *Arbitrator* considers necessary if, in the *Arbitrator's* opinion, the interest of that person may be affected by the arbitration.

10 When the Arbitrator has jurisdiction

- (1) An *Arbitrator* has jurisdiction to act when
 - (a) a single *Arbitrator* is agreed on by the parties to the arbitration and the *Arbitrator* accepts the appointment, or
 - (b) all necessary *Arbitrators* have been appointed and have accepted the appointment.

15 Section 6.3.1(b) of the *Land Claim Agreement* reads:

6.3.1 A dispute shall be arbitrated by:

(b) three arbitrators drawn from the panel, one of whom shall be appointed by the party making the submission to arbitration, one by the other party to the submission and the third to be selected by the two appointed arbitrators from the other members of the panel. Failing agreement, the third arbitrator shall be appointed by a judge pursuant to the *Arbitration Act* R.S.N.W.T. 1988, c. A-5, who shall not be restricted to members of the panel when making such appointment.

16 Section 6.3.4(b) of the *Land Claim Agreement* reads:

(b) The arbitrator or arbitrators shall allow any other person, on application and on such terms as the arbitrator or arbitrators in their discretion may order, to participate in an arbitration if in the opinion of the arbitrator or arbitrators the interest of that person may be affected by the arbitration.

- (2) When an *Arbitrator* has jurisdiction, the conduct of the arbitration is, from then on, the responsibility of the *Arbitrator*.
- (3) When three *Arbitrators* are appointed to decide a matter, the *Arbitrator* selected by the two *Arbitrators*, or the *Arbitrator* appointed by the judge, must chair the proceedings, unless the parties to the dispute otherwise agree.

11 Preserving the arbitration decision

- (1) An *Arbitrator* must file one copy of the decision with the *Administrative Secretary*.
- (2) Upon receipt of a decision, the *Administrative Secretary* must
 - (a) place one copy in the records of the *Arbitration Panel*, and
 - (b) file one copy in the public file of arbitration decisions maintained under section 6.3.10 of the *Land Claim Agreement*¹⁷, unless the parties to the arbitration direct otherwise.

12 Preserving records of appeals and their result

- (1) If an *Arbitrator* receives notice that an arbitration decision is being appealed, the *Arbitrator* must send the *Administrative Secretary* a copy of the commencing Court document.
- (2) The *Administrative Secretary* must file the commencing court document in the public file under section 6.3.10 of the *Land Claim Agreement*, and in the records of the *Arbitration Panel*.
- (3) When the Court's decision has been issued, the successful party must send a copy of the decision to the *Administrative Secretary* who must place a copy of it in the public file and in the records of the *Arbitration Panel*.
- (4) The same procedure applies for any further appeal.

¹⁷ Section 6.3.10 of the *Land Claim Agreement* reads:

6.3.10 A public file of arbitration decisions shall be maintained by the panel unless the parties to the arbitration agree that the proceedings, including the decision, shall remain confidential.

13 Administrative Secretary's fees and expenses

- (1) The *Administrative Secretary* must keep a separate record of the *Secretary's* fees, disbursements and expenses related to the administration of an arbitration or proposed arbitration under these Rules and, when possible, give the information to the *Arbitrator*, when the *Arbitrator* is appointed.
- (2) The *Administrative Secretary's* fees, disbursements and expenses are
 - (a) when possible, to be paid out of the filing fee, with any balance being returned to the party paying the fee, and the *Arbitrator* may subsequently determine who is to pay those costs, or
 - (b) when the fees, disbursements and expenses exceed the filing fee
 - (i) the filing fee is to be used to partially pay the costs, and
 - (ii) any balance payable to the *Administrative Secretary* is to be paid
 - (A) if an *Arbitrator* has jurisdiction in respect of the dispute, by one or more of the parties to the arbitration in accordance with a decision of the *Arbitrator*, and the *Arbitrator* may also determine who is to pay the filing fee, or
 - (B) if the dispute is resolved before the *Arbitrator* has jurisdiction, the balance is to be paid by the Implementation Committee.

14 Arbitrator fees and expenses

- (1) An *Arbitrator* appointed under these Rules will charge fees at the following rate:

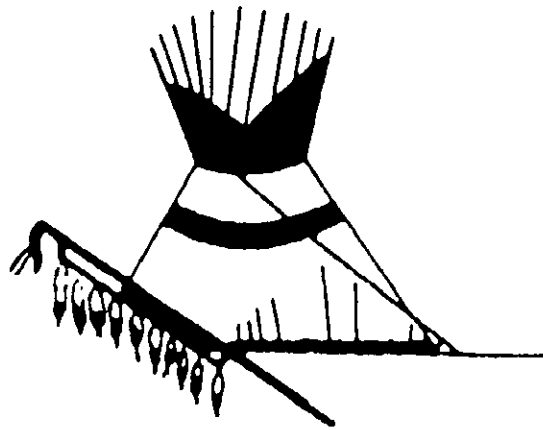
Sole <i>Arbitrator</i>	\$1,500 a day
<i>Arbitrator</i> chairing proceedings	\$1,500 a day
Other <i>Arbitrators</i> , except the chairperson	\$1,000 a day

- (2) Daily fees are payable for all days on which an *Arbitrator* is necessarily occupied in an arbitration, including days of travel, pre-hearing conferences, hearings, visits, decision discussions, and decision writing.
- (3) Actual and reasonable out-of-pocket expenses incurred by an *Arbitrator* in respect of an arbitration are payable in addition to daily fees.

15 Waiver or modification of Rules

By agreement of the parties to an arbitration, and with the consent of the *Arbitrator*, the time limits and provisions of these Rules may be waived or modified for the particular arbitration proceeding to which they apply.

SAHTU DENE AND METIS



COMPREHENSIVE
LAND CLAIM AGREEMENT

VOLUME I

6 DISPUTE RESOLUTION

6.1 GENERAL

6.1.1 The provisions of this chapter apply to any dispute which is not resolved by discussion and negotiation.

6.1.2 Subject to the provisions of this chapter, the Supreme Court of the Northwest Territories has jurisdiction in respect of any action arising out of this agreement including any application for judicial review in respect of any board established pursuant to this agreement.

6.1.3 The Supreme Court of the Northwest Territories shall have jurisdiction to review a decision of the arbitrator or arbitrators in 6.3.7 on a question of law or jurisdiction.

6.1.4 Except in respect of disputes arbitrated under this chapter, nothing in this chapter limits the jurisdiction of any court.

6.1.5 The panel described in 6.2 shall have jurisdiction to arbitrate in respect of:

- (a) any matter which this agreement stipulates is to be determined by arbitration; and
- (b) any matter concerning the interpretation or application of this agreement where the parties agree to be bound by an arbitration decision in accordance with this chapter.

6.1.6 Where a participant has a right of action in relation to this agreement, the Sahtu Tribal Council may bring that action on behalf of such participant with the consent of the participant.

6.1.7 Nothing in this chapter shall prevent parties to a dispute from agreeing to refer it to an alternate dispute-resolution mechanism such as mediation or arbitration pursuant to the *Arbitration Act*, R.S.N.W.T. 1988, c. A-5.

6.2 ARBITRATION PANEL

6.2.1 (a) An arbitration panel ("the panel") shall be established to resolve disputes in accordance with this agreement.

(b) The panel is established when:

- (i) Canada, as represented by the Minister of Indian Affairs and Northern Development, the Government of the Northwest Territories as represented by the Minister of Justice and the Sahtu Tribal Council agree in writing that it is established; or
- (ii) Canada and the Government of the Northwest Territories have each appointed at least one member and the Sahtu Tribal Council has appointed at least two members to the panel,

whichever comes first.

- 6.2.2 The panel shall have eight members including a chairperson and a vice-chairperson, both of which shall be chosen by a majority of the panel. Subject to 6.3.5, the panel may establish rules and procedures for the implementation of this chapter.
- 6.2.3 (a) Canada, the Government of the Northwest Territories and the Sahtu Tribal Council shall consult and attempt to reach consensus as to the persons to be appointed to the panel.
- (b) If a consensus is not reached under (a) within one year of the date of settlement legislation, Canada and the Government of the Northwest Territories may each appoint two members and the Sahtu Tribal Council may appoint four members.
- (c) The term of appointment shall be five years.
- 6.2.4 Upon the departure of a panel member from the panel, the party which appointed the departing member may appoint a new member to the panel and, where the departing member was jointly appointed, Canada, the Government of the Northwest Territories and the Sahtu Tribal Council shall consult and attempt to reach consensus as to the appointment of the new member.
- 6.2.5 A quorum of the panel shall be four members, which in the case of a panel appointed under 6.2.3(b) shall consist of one member appointed by each of Canada and the Government of the Northwest Territories and two members appointed by the Sahtu Tribal Council.
- 6.2.6 Any staff of the panel shall be provided by government. The panel shall prepare an annual budget, subject to review and approval by government. The approved expenses of the panel shall be a charge on government.
- 6.2.7 Appointments by Canada under this chapter shall be made by the Minister of Indian Affairs and Northern Development. Appointments by the Government of the Northwest Territories shall be made by its Minister of Justice.
- 6.3 **PROCEDURE FOR ARBITRATION**
- 6.3.1 A dispute shall be arbitrated by:
- (a) one arbitrator drawn from the panel if agreed to by the parties to the arbitration; or
- (b) three arbitrators drawn from the panel, one of whom shall be appointed by the party making the submission to arbitration, one by the other party to the submission and the third to be selected by the two appointed arbitrators from the other members of the panel. Failing agreement, the third arbitrator shall be appointed by a judge pursuant to the *Arbitration Act*, R.S.N.W.T 1988, c. A-5, who shall not be restricted to members of the panel when making such appointment.
- (c) Unless otherwise agreed, arbitrators shall be selected from the panel
- 6.3.2 An arbitration, in respect of any matter referred to in 6.1.5(a), shall be convened by a submission to arbitration filed with the panel by any person having a right to arbitration under this agreement. The submission shall name the other party to the dispute, set out the nature of the dispute, a summary of the facts, describe the issue to be arbitrated. name an arbitrator from the panel and describe the relief sought

- 6.3.3 In the case of an arbitration convened pursuant to 6.3.2, the other party to the dispute shall file a reply within 30 days responding to the submission, agreeing to the arbitrator named in the submission or naming another arbitrator from the panel and describing any relief sought. Where the other party to the dispute fails to file a reply within the prescribed time, that party shall be deemed to have agreed to the arbitrator named in the submission and shall be deemed to be a party to the arbitration.
- 6.3.4 (a) The Sahtu Tribal Council, Canada or the Government of the Northwest Territories may participate in any arbitration as a party on notice to the arbitrator or arbitrators.
- (b) The arbitrator or arbitrators shall allow any other person, on application and on such terms as the arbitrator or arbitrators in their discretion may order, to participate in an arbitration if in the opinion of the arbitrator or arbitrators the interest of that person may be affected by the arbitration.
- 6.3.5 The arbitrator or arbitrators shall have jurisdiction, after hearing the parties, to determine all questions of procedure, including the method of giving evidence, and to make an award, including interim relief, payment of interest and costs in accordance with this agreement.
- 6.3.6 It is intended that the process of arbitration will resolve disputes submitted to it in an expeditious and, where appropriate, informal manner.
- 6.3.7 The decision of the arbitrator or arbitrators shall be conclusive and binding on the parties to the arbitration and shall not be challenged by appeal or review in any court except on the ground that the arbitrator or arbitrators have erred in law or exceeded their jurisdiction.
- 6.3.8 If the arbitrator or arbitrators make no decision as to costs, each party to an arbitration shall bear its own costs and an equal share of the other costs of the arbitration including the remuneration and expenses of the arbitrator or arbitrators.
- 6.3.9 The *Arbitration Act*, R.S.N.W.T. 1988, c. A-5, shall apply to any arbitration to the extent not inconsistent with this chapter.
- 6.3.10 A public file of arbitration decisions shall be maintained by the panel unless the parties to the arbitration agree that the proceedings, including the decision, shall remain confidential.
- 6.4 TRANSITIONAL
- 6.4.1 Until an arbitration panel is established, the *Arbitration Act*, R.S.N.W.T. 1988, c. A-5, applies to any arbitration described in 6.1.5.