

DISPUTE RESOLUTION POLICY, 2018

PART I PREAMBLE

WHEREAS:

- A. The *First Nations Fiscal Management Act* recognizes First Nation jurisdiction to, among other things, raise revenue through property taxation and other local revenue laws;
- B. Subsection 83(1) of the *Indian Act* recognizes First Nation jurisdiction to raise revenue through property taxation;
- C. First Nation taxation systems can give rise to disputes regarding such issues as tax rates, tax revenue expenditures and the provision of local services;
- D. Disputes between a First Nation and its taxpayers can erode trust, increase costs due to litigation, and decrease the economic and social value of on-reserve leases and other land uses;
- E. Disputes between First Nations and adjacent local governments can erode trust, increase costs due to litigation, and decrease opportunities for the efficient provision of services and economic development;
- F. The First Nations Tax Commission wishes to foster dialogue, effective communication, joint problem solving and conflict resolution among First Nations, their taxpayers and adjacent local governments;
- G. The Commission encourages and supports training, including education and training in conflict resolution, consensus building, facilitation, mediation and negotiation, to increase the skills and abilities of First Nations to prevent disputes from arising and to address disputes that may arise; and
- H. The Commission advocates dispute resolution mechanisms that lead to
 - local resolution – the process should seek to resolve disputes directly with the First Nation;
 - efficient resolution – the process should seek to resolve disputes efficiently and cost-effectively by having in place informal and transparent processes with clear and reasonable deadlines for complaint resolution;
 - cooperative resolution – the process should seek to encourage the cooperative resolution of disputes in order to increase commitment to the resolution, achieve mutual gains, provide effective implementation of the resolution and strengthen relationships;
 - fair resolution – the process should seek to encourage resolutions that are fair and that support First Nation governance and jurisdiction; and
 - stable resolution – the process should seek to encourage resolutions that are viable, long lasting, and conclusive within the property taxation system.

PART II PURPOSE

This Policy provides a framework for supporting, encouraging and facilitating the use of dispute resolution methods to resolve disputes at the earliest possible stage and with mutually beneficial solutions. This Policy is intended to operate within the FMA and *Indian Act* legislative frameworks and to supplement applicable regulations and Commission standards, policies and procedures.

**PART III
AUTHORITY**

This Policy is established pursuant to subsection 1.3 of the Memorandum of Understanding between the Commission and the Minister of Indian Affairs and Northern Development, and paragraph 29(c) of the FMA under which the Commission is mandated to prevent, or provide for the timely resolution of, disputes in relation to the application of local revenue laws.

**PART IV
APPLICATION**

This Policy applies to the resolution of disputes that arise in relation to taxation systems under the FMA and under section 83 of the *Indian Act*. This Policy does not apply to reviews conducted under section 33 of the FMA.

**PART V
CITATION**

This Policy may be cited as the *Dispute Resolution Policy, 2018*.

**PART VI
DEFINITIONS**

In this Policy:

“arbitration” means a process where a neutral third party considers the facts and arguments presented by the parties and renders a decision that is non-binding or binding as determined in advance by the parties;

“Commission” means the First Nations Tax Commission established under the *First Nations Fiscal Management Act*, S.C. 2005, c. 9;

“dispute” means a disagreement concerning a taxation matter in which a claim or assertion of one party is met with refusal, denial or counterclaim by another;

“facilitation” means the collaborative process used to help parties with divergent views reach a goal or complete a task to the mutual satisfaction of the participants;

“First Nation” means a band as defined in subsection 2(1) the *Indian Act*;

“FMA” means the *First Nations Fiscal Management Act*, S.C. 2005, c. 9 and the regulations enacted under that Act;

“mediation” means the process where a neutral third party who has no authoritative decision-making power assists the parties in voluntarily reaching a mutually acceptable resolution of the dispute; and

“roster” means the roster of arbitrators and mediators maintained by the Commission as set out in section 4.

**PART VII
POLICY**

1. Dispute Resolution Mechanisms Supported by the Commission

The Commission encourages and supports the use, as appropriate, of the following dispute resolution mechanisms:

- (a) conflict assessment to identify the parties with a stake in a dispute, their interests, and possible processes and proposals for resolution;

- (b) facilitation to help the parties to come together to discuss issues affecting them, to debate different points of view and to reach consensus on possible solutions;
- (c) consensus building techniques such as advisory groups, joint fact finding, policy dialogues, and focus groups to build understanding, mutual respect, and to reach agreement;
- (d) mediation to assist the parties to reach a mutually acceptable resolution of the dispute; and
- (e) arbitration to provide an independent and informed judgment on one or more substantive or procedural matters in a dispute.

2. Commission's Function in Dispute Resolution

2.1 The Commission's function in dispute resolution includes

- (a) providing facilitation for First Nations and their taxpayers, and First Nations and adjacent local governments, to share information, increase understanding, rebuild relationships and resolve disputes;
- (b) assisting the parties to a dispute in evaluating options for dispute resolution where facilitation has not resolved a dispute; and
- (c) locating professional neutral and experienced dispute resolution services when desired and appropriate.

2.2 Dispute resolution is conducted in compliance with applicable legislation and Commission standards, policies and procedures, as well as the following guidelines:

- (a) dialogue, facilitation, mediation and arbitration are voluntary processes and the Commission will not compel any party to enter into any dispute resolution process;
- (b) a Commission staff member or commissioner who serves as a facilitator in a particular case will not participate in any subsequent Commission proceedings conducted under section 33 of the FMA respecting the matter;
- (c) the content of the dispute must fall within the mandate of the Commission under the FMA or section 83 of the *Indian Act*;
- (d) participation in a dispute resolution process does not affect the ability of a party to pursue a review under section 33 of the FMA; and
- (e) mediation or arbitration will be conducted by an independent mediator or arbitrator selected by the parties.

3. Seeking Commission Assistance in Resolving Disputes

3.1 Where a taxpayer, First Nation member, First Nation or local government has been unable to resolve a dispute at the local level, the taxpayer, First Nation member, First Nation or local government may contact the Commission for assistance in resolving the matter.

3.2 When the Commission receives a request for assistance in resolving a dispute, the request will be referred to a Commission staff person who will

- (a) contact the person requesting assistance to obtain details of the issue and any relevant documents or other material; and
- (b) contact the other party or parties to the dispute to obtain information, discuss the issue, and offer to assist in resolving the issue.

3.3 Where the parties to a dispute agree, the Commission may assist the parties by providing facilitation services to help the parties seek to resolve the issue.

3.4 Where the parties have been unable to resolve a dispute through facilitation, the Commission may recommend that the parties consider mediation as the next step in dispute resolution.

3.5 Where the parties have been unable to resolve a dispute through facilitation and do not wish to engage in mediation, or where mediation has not resolved a dispute, the Commission may recommend that the parties consider arbitration as the next step in dispute resolution.

4. Roster of Arbitrators and Mediators

4.1 The Commission maintains a roster of arbitrators and mediators to enable taxing First Nations and the other parties to a dispute engage arbitrators and mediators with First Nation property taxation experience.

4.2 Individuals practicing in the area of arbitration or mediation who wish to be placed on the roster must

(a) satisfy the Commission in writing that they have

(i) experience in the areas of First Nation property taxation, land use, and development disputes, and

(ii) dispute resolution training and certification in mediation and arbitration;

(b) provide a résumé of experience and a list of professional references; and

(c) provide written evidence that they hold professional liability insurance in an amount of at least one million dollars (\$1,000,000) per claim.

4.3 The Commission may in its sole discretion

(a) determine whether an applicant will be added to the roster; and

(b) delete a name from the roster at any time, without notice.

4.4 The roster is intended to assist the parties in their selection of an arbitrator or mediator and should not be construed as an endorsement by the Commission of the individuals on the roster.

4.5 The selection of an arbitrator or mediator from the roster is the sole responsibility of the parties to the dispute.

4.6 The Commission is not responsible for any errors or omissions committed by arbitrators and mediators selected from the roster.

4.7 First Nations and other parties to a dispute may access the roster by contacting the Commission.

4.8 The Commission will assist parties in accessing and using the roster and will provide the résumés of individuals on the roster where the parties to a dispute wish to consider engaging that individual.

PART VIII

COMING INTO FORCE

This Policy is established and in effect as of August 1, 2018.

PART IX

ENQUIRIES

All enquiries respecting this Policy should be directed to:

First Nations Tax Commission
321 – 345 Chief Alex Thomas Way
Kamloops, BC V2H 1H1
Telephone: (250) 828-9857