



Dispute Resolution Policy

PART I. PREAMBLE

WHEREAS:

- A. The *First Nations Fiscal and Statistical Management Act*, and section 83 (1) of the *Indian Act*, recognize First Nation jurisdiction to raise revenue through property tax;
- B. Taxation can raise disputes regarding such issues as tax rates, tax assessment, tax policy, service provision, and representation by taxpayers in matters directly affecting them;
- C. 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 property arrangements;
- D. Disputes between First Nations and adjacent municipalities can erode trust, increase costs due to litigation, and decrease opportunities for mutual and efficient provision of services and mutual economic development;
- E. The First Nations Tax Commission wishes to foster dialogue, communication, joint problem solving, and conflict resolution among First Nations, adjoining local governments, and residential, commercial, and utility taxpayers; and
- F. The First Nations Tax Commission advocates dispute resolution mechanisms that achieve:
 - (a) Local resolution - The process should seek to resolve disputes as early and at the lowest administrative level as possible.
 - (b) Efficient resolution - The process should seek to resolve disputes efficiently. Processes should have clear and reasonable deadlines for complaint resolution. It should also minimize the cost burden on each party by providing for informal structured and transparent processes. The courts should be a forum of last resort.
 - (c) Cooperative resolution - The process should seek to encourage cooperative resolution of disputes in order to increase commitment to the resolution, achieve mutual gain rather than win/loss, provide effective implementation of the resolution, and preserve relationships.
 - (d) Fair resolution - The process should seek to encourage resolutions that are fair and in keeping with the principles of natural justice.
 - (e) Stable resolution- The process should seek to encourage resolutions that are viable, long lasting, and conclusive.

PART II. PURPOSE

This policy provides a framework for supporting and encouraging the use of dispute prevention and resolution methods to resolve disputes at the earliest possible stage and encourage mutually beneficial solutions. It supplements FNTC standards, and procedures, as well as the FNTC Review Procedures Regulations.

PART III. AUTHORITY

This policy is established pursuant to the FNTC mandate in s.29 of the FSMA which includes to:

- (a) ensure the integrity of the system of first nations real property taxation and promote a common approach to first nations real property taxation nationwide, having regard to variations in provincial real property taxation systems;*
- (b) ensure that the real property taxation systems of first nations reconcile the interests of taxpayers with the responsibilities of chiefs and councils to govern the affairs of first nations;*
- (c) prevent, or provide for the timely resolution of, disputes in relation to the application of local revenue laws;*
- (d) assist first nations in the exercise of their jurisdiction over real property taxation on reserve lands and build capacity in first nations to administer their taxation systems;*
- (e) develop training programs for first nation real property tax administrators;*
- (f) assist first nations to achieve sustainable economic development through the generation of stable local revenues; and*
- (g) promote a transparent first nations real property taxation regime that provides certainty to taxpayers;*

This policy is also established pursuant to section 1.3 of the Memorandum of Understanding between the FNTC and the Minister of Indian Affairs and Northern Development.

PART IV. APPLICATION

This policy applies to FNTC dispute resolution in the context of taxation under the *Indian Act* and the *First Nations Fiscal and Statistical Management Act*.

PART V. DEFINITIONS

In this Policy:

“Alternative dispute resolution” or “Appropriate Dispute Resolution” means any number of techniques such as mutual gains negotiation, facilitation, mediation, conciliation, joint fact finding, and arbitration that seek to help parties resolve disputes prior to or during court proceedings.

“Arbitration” means a process where a neutral party, considers the facts and arguments presented by the parties, and renders a decision that is non-binding or binding as determined beforehand by the parties.

“By-law” means a by-law enacted under section 83 (1) of the *Indian Act*; R.S.C. 1985, c. I-5;

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

“Council” means the same as a Council as defined under the *Indian Act*;

“Dispute” means a disagreement concerning a property tax matter of fact, law, or policy 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 under the *Indian Act* or a band named in the Schedule to the *FSMA*.

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

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

“Mutual Gains Negotiation” means the process in which parties strive to achieve joint gain in their final settlement.

“Negotiation” means the bilateral or multilateral process in which parties differ over an issue, attempt to reach agreement or resolve a dispute through the exchange of statements and representations.

“Settlement Conference” means the process in which the Commission meets with the parties prior to a formal hearing, as appropriate, under s. 33 of the *FSMA*, to discuss, narrow, and possibly resolve issues among the parties.

PART VI. POLICY

1.0 Kinds of Dispute Prevention and Resolution Mechanisms Supported by the FNTC

- 1) FNTC encourages and supports the use, as appropriate, of a variety of dispute prevention and resolution mechanisms, including, but not limited to:
 - a) Education and training in mutual gains negotiation, conflict resolution, and mediation in order to increase the skills and abilities of First Nations to prevent and resolve disputes.
 - b) Conflict assessment to determine the parties with a stake in a dispute, their interests, and possible processes and proposals for resolution.
 - c) Facilitation to help convene parties and to help parties work more effectively in groups.
 - d) The use of consensus building techniques such as advisory groups, joint fact finding, policy dialogues, and focus groups to build understanding, mutual respect, and agreements.
 - e) Mediation to assist parties so that they can more effectively negotiate agreements and resolutions to disagreements.
 - f) Arbitration to provide an independent and informed judgment on one or more substantive or procedural matters in a dispute.

2.0 FNTC Roles and Functions in Dispute Resolution

- 1) FNTC dispute prevention and resolution includes:
 - a) Sponsoring education and training seminars in mutual gains negotiation, conflict resolution, and mediation. FNTC may conduct these by Commission and staff, or seek outside, expert trainers. FNTC may partner with other organizations to financially support such efforts as well as bring the training to a wider and more diverse audience.
 - b) Convening First Nations and their disputing taxpayers to share information, increase understanding, rebuild relationships and resolve disagreements through negotiation.
 - c) Assisting disputants in locating appropriate professional, neutral, and experienced dispute resolution services, when desired and needed.
 - d) Convening taxing First Nations and affected parties, when appropriate, to address general policy questions raised in the implementation of First Nation property taxation.
- 2) FNTC dispute prevention and resolution is subject to applicable legislation, regulations and standards, as well as the following rules:
 - a) Negotiation, dialogue, facilitation, and mediation are voluntary processes and the FNTC will not compel any party to enter into any dispute resolution process.
 - b) Should an FNTC staff member or Commissioner serve as a facilitator in a particular case, that person will not participate in any later FNTC review proceedings respecting the matter.
 - c) The content of the dispute must fall within the mandate of the FNTC, which includes the First Nation property tax system, taxpayer relations, and economic development on First Nation lands.

- d) Participation in a dispute resolution process does not affect the ability any party in pursuing the FNTC review process as set out in s.33 of the FSMA.
- e) Parties to a s.33 review may request that the Commission refer the matter to informal resolution or mediation pursuant to the Review Procedures Regulations at any time before a hearing is held or the Commission issues its decision.
- f) Mediation or arbitration will only be conducted by an independent mediator or arbitrator from the FNTC roster of mediators and arbitrators or a mediator or arbitrator deemed acceptable by the parties.

3.0 Elevating Dispute Resolution Beyond the Local Level

- 1) Disputes concerning Property Taxation under the *First Nations Fiscal and Statistical Management Act*
 - a) Section 33 of the FSMA and the associated Review Procedures Regulations provide for formal dispute resolution procedures. As an alternative to a formal hearing process, the FNTC encourages parties to resolve disputes using any one of the dispute resolution procedures listed in section 1.0 of this Policy.
 - b) At any stage in the formal process, a settlement conference may be conducted by the Commissioner(s) to explore the possibility of informal resolution or resolution through mediation.
- 2) Disputes concerning Property Taxation under section 83 of the *Indian Act*
 - a) Where taxpayers, First Nation members or First Nations have exhausted local efforts available to them to resolve a dispute, the taxpayer, member or First Nation may raise the matter in writing to FNTC for review and assistance in resolution.
 - b) In such cases, the taxpayer, member or First Nation will forward to FNTC:
 - i) a statement that describes the matter(s) in dispute
 - ii) any relevant material.
 - c) A notice of this request including any information forwarded by a party to the FNTC shall be forwarded by the FNTC to the tax administrator for the First Nation with whom the dispute relates.
 - d) The First Nation has 30 days from date of the notice to seek resolution of the dispute with the party or submit a response to the FNTC respecting the dispute.
 - e) Where the parties agree, the FNTC may use one or more of the following approaches to dispute resolution assistance:
 - i) Facilitation by the FNTC to help the parties seek to resolve the issue.
 - ii) Mediation by a practitioner listed on the FNTC roster, or one acceptable to all parties.
 - iii) Arbitration by a practitioner acceptable to all parties.

4.0 FNTC Roster of Arbitrators and Mediators

- 1) Establishment and Maintenance of Roster
 - a) The FNTC maintains a roster of arbitrators and mediators who may assist in resolving differences and disagreements.
 - b) Arbitrators and mediators appearing on the roster must demonstrate:
 - i) experience with property taxation, land use, and development disputes;
 - ii) experience working with First Nations;
 - iii) FNTC training in First Nation taxation and advanced facilitation and mediation skills;
 - iv) experience with dispute resolution in government processes and procedures;
 - v) maintenance of professional liability insurance;
 - vi) adherence to a professional Code of Ethics; and
 - vii) previous professional references.
 - c) Arbitrators and mediators who wish to be placed on the roster must satisfy the Commission in writing that they meet or exceed the requirements listed above in s.4(1) b).
 - d) The FNTC reserves the right to add or delete names appearing on the roster at any time without notice.
 - e) The roster is intended to be an aid to the parties and should not be construed as an endorsement by the FNTC of the arbitrator and mediators on the roster. For greater certainty, the FNTC is not responsible for the errors or omissions committed by persons selected from the roster. Selection of any individual from the roster is the sole responsibility of the parties to the dispute.
- 2) Access to the Roster
 - a) Taxing First Nations, complainants, and the FNTC may access the names and résumés on the roster and may select individuals from it. These parties are not required, however, to use individuals solely from this roster.
 - b) The FNTC will provide assistance in accessing and using the roster.
- 3) Use of Standardized Forms
 - a) The FNTC will provide persons on the roster with models for “Agreement to Mediate” and “Ground Rules”. Arbitrators and mediators will encourage parties to use the “Agreement to Mediate” in all FNTC mediations to ensure consistency and informed consent. Parties may modify or alter the “Ground Rules” by agreement to meet the individual and unique needs of each case.
- 4) Performance Evaluation of Persons on the Roster
 - a) Parties who access roster expertise can provide confidential feedback to the FNTC on the arbitrator’s or mediator’s performance.

PART VII COMING INTO FORCE

This Policy is established and in effect as of December 13, 2007.

PART VIII ENQUIRIES

All enquiries respecting this Policy should be directed to:

First Nations Tax Commission
321 – 345 Yellowhead Highway
Kamloops, BC V2H 1H1
Telephone: (250) 828-9857