



COMMUNITY DISPUTE RESOLUTION
MECHANISM

Four Direction Management Services
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NAAF DISPUTE RESOLUTION MECHANISM (DRAFT)

Forward

Peacemaking is an Aboriginal practise which will be used to resolve disputes in the Delivery of Child and Family Services within the Northern Aboriginal Authority for Families. The Aboriginal Societies held in high regard individuals for their ability to assist individuals with disputes. These practises will be used to promote prevention rather than intervention in the preservation of the aboriginal families. The approach is incorporating traditional knowledge and practise into a modern dispute resolution mechanism. In this case respecting the diverse Aboriginal Cultures, Traditions and Practices to coincide the principle of unity within the Northern Caucus. This is to be a living document and amended to meet the needs of the NAAF.

1.0 Mission

The Northern Aboriginal Authority for Families supports communities to develop and implement strategies to strengthen families within communities and cultures as distinct people.

1.1 Intent

The Northern Aboriginal Authority for Families shall develop an impartial dispute resolution mechanism to ensure families are given fair and equitable treatment in the delivery of child and family services in Northern British Columbia Region.

2.0 Mandate

NAAF ***terms of reference for sub-committees states*** “Each Sub-Committee shall have as their mandate the ability to deal with specific issues as put forth below:

2.1 Section 1 NAAF Governance (d) Dispute Resolution Mechanism

Four Directions Management Services has been mandated with the task of developing the NAAF dispute resolution mechanism.

3.0 Overview of Dispute Resolution Mechanism

“Where there is no Justice there is no Great Spirit” Chief John Snow. Effective governance allows for an organization to deal with disputes internally in an impartial and professional manner. Below proposed is a step by step process to deal disputes impartially as they arise.

The primary objective of the dispute resolution is to assist community based services in dealing with disputes using alternative forms of conflict resolution that incorporates Aboriginal Community Customs to resolve disputes in the best interests of the Child.

4.0 Dispute Resolution Mechanism

4.1 Objectives

- a) To develop procedures consistent with NAAF to deal with disputes as they arise to ensure peace, order, and good governance.
- b) To provide an alternative dispute mechanism when dealing with Aboriginal Child and Family Issues
- c) NAAF Dispute Resolution Mechanism is culturally sensitive, professional, and impartial when dealing with conflict and dispute resolution.
- d) To enhance dispute resolution capacity at local levels.

4.2 Dispute Resolution Authority

The Aboriginal People have distinct forms of justice and own the Aboriginal Dispute Resolution Mechanisms that form the customs of social control. The authorities derive from the perpetual rights of self government, aboriginal title and rights protected by self governing agreements and or Treaties. Dispute resolution is based on aboriginal practices to resolve disputes.

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The custom of peacemaking dates back to pre contact where individuals in the community – member that is respected in the community for their ability to resolve disputes and at times enforce customs. If the dispute continued then the leaders pending the cultural practice and or language group and or nation recognized institutions of governance would intervene and make final decision.

For purposes of this document, NAAF would develop appointment procedures, structure, and implementation.

Below are various options to the evolution of Dispute Resolution that offers insight to a collaborative approach to the administration of Aboriginal Dispute Resolution.

4.3 Structure

Options – In the course of dispute resolution the primary principle is prevention to identify conflict in the early stages to provide alternatives to address child and family matters in holistic and proactive manner. The need to develop systems based on language dialects and community practices in respect of unique governing systems, protocols and process. Finally appreciating that at time people will on consent to mediation and arbitration is required as in the Old systems where the recognized government had the authorities to determine resolution.

a) Council of Elders – consist of one Urban Elder, One Metis Elder, one First Nation Elder appointed by NAAF to hear disputes within the Assembly of the Northern Caucus.

b) 3 Peacemaker(s)

Appointed by NAAF to work with the three sub regions and three Aboriginal Groups including First Nation, Metis, and Urban. Based on principle of mediation allowing for parties

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to present their own their own solutions. Once agreed then contract is signed on the course of action for dispute resolution. Peacemaker shall comply with 4.4 Role of the Peacemaker with the following roles and responsibilities

c) **Tribunal**

Based on the principle of proactive intervention the Tribunal will use culturally appropriate mechanisms to resolve disputes.

Consist of the appointment of one Chief Juror and Two Associate Jurors who are given powers to mediate Arbitrate. Decision is final.

Chief Juror appointed as per NAAF appointment process consistent with applicable Acts legislated by Parliament of Canada and consistent with Section 35 of Constitutional Act 1982.

Appointment to be consistent with First Nation Appointment Processes, and or

Bilateral Appointment Federal Appointment agreed to in a protocol agreement between Aboriginal and Federal Government.

First Nation and the Governor in Council. through section 107 and section 81 of the Indian Act. Within this judicial framework the Chief Juror can use and enforce the Acts applicable to mainstream Justice of Peace to resolve a dispute when mediation is exhausted.

This would also allow for direct law enforcement and engagement.

4.4 Applicable Acts

- Child, Family and Community Service Act

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- Adoption Act
- Mental Health Act
- Community Services Interim Authorities Act (Bill – 65 - 2002)

Federal and Provincial Acts

- Office for Children and Youth Act
- Youth Criminal Justice Act
- Youth Justice (British Columbia) Act
- Correction Act
- Family Relations Act
- Society Act
- Freedom of Information Act and Protection of Privacy Act
- Access to Information Act
- Privacy Act
- Infants Act
- Human Resources Facility Act
- Social Worker Act
- Indian Act

4.5 Accreditation can be established through a certification process sanction by the Sub Committee of NAAF, Mediation and Arbitration Certification process offered through the Mediation and Arbitration Society of BC.

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4.6 Sample Job Description Role of the Peacemaker

EMPLOYMENT OPPORTUNITY NAAF

TITLE: Peacemaker

OFFICE LOCATION: NAAF Head Office Prince George

PHONE: 250 612 0811

GENERAL PURPOSE OF POSITION:

“NAAF place their confidence and beliefs in a judicial mechanism of an impartial nature, developed within the structure of the Northern Caucus to deal with conflicts between members; their government and other governments.” The Peace Maker is responsible to the people of Northern Caucus, and reports directly to the NAAF, and Regional Coordinator. The Peace Maker will be responsible for all aspects of Administration of Dispute Resolution, including the over all supervision, and management of the Dispute Resolution Mechanism.

SPECIFIC DUTIES

1. To consult and take into account the needs, interest of children and families, in reference to the duties, planning, and development of the Dispute Resolution Mechanism
2. To promote consensus and harmony within NAAF.
3. Ensure space, security (records and facility) and equipment management of NAAF.
4. Responsible for public information and report management of the Dispute Resolution Mechanism regarding new initiatives, opportunities, and program enhancement .
5. Required to develop funding proposals, ensure sound fiscal management, reporting to Northern Caucus, and other funding agencies as required.
6. Provide professional ethics and confidentiality in all areas of business, and client records.
7. To consult and take into account the needs, interest Northern Caucus, in reference to the duties, planning, and development of Governance
8. To promote consensus and harmony within Communities and Agencies we serve.
9. Ensure space, security (records and facility) and equipment management of the Governance Project.

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SPECIFIC RESULTS OR OUTCOMES

- Discussions and dispute proceed with due consideration to the NAAF and Aboriginal perspectives in accordance with established policies.
- Emerging governance and self-government issues are identified.
- NAAF and other Programs are appropriately informed and advised of relevant emerging issues with respect to governance capacity building and self-governance.
- New approaches, policies, strategies and initiatives related to self government and governance capacity building are established and evaluated.
- Business and operational plans are completed and monitored according to existing policies and procedures.
- Governance capacity is enhanced for NAAF.

EXPERIENCE AND SKILLS:

1. Ability to create a safe atmosphere to mediate disputes between individuals, families, staff, organizations and or associations of NAAF,
2. Ability to be impartial regarding clients,
3. Ability to maintain client records,
4. Ability to connect with clients and understand their needs and interest,
5. Ability to use mediation as primary tool for dispute resolution,
6. Knowledge of Aboriginal Governing Systems,
7. knowledge of Aboriginal Cultural and Customary Practices,
8. University Degree in Business Administration or related field,
9. Certification in dispute resolution including mediation-arbitration as asset,
10. Ability to communicate in First Nation Language an asset,
11. Knowledge of BC First Nation, Metis Governance,
12. Knowledge of Child Welfare Practices,
13. University Degree in Social Service or related field,
14. A minimum of Three years experience in governance of Child Welfare Programs,
15. Knowledge of Federal and Provincial Legislation regarding Dispute Resolution,
16. Knowledge of First Nations Local, Regional, National and International First Nations Governments regimes,
17. Good Understanding of NAAF current issues,
18. Knowledge of law and history of Treaties,
19. Knowledge of structure and operations of Federal and Provincial Government relating to Child and Family Services,
20. Experience in Federal, Provincial relationships and jurisdictional responsibilities.

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LEADERSHIP AND RESPONSIBILITIES:

1. Ability to establish priorities and to ensure that all unity tasks are accomplished in a timely and accurate manner,
2. Ability to adjust staff assignments to meet Dispute Resolution Administrative objectives,
3. Ability to communicate with other departments and agencies on Dispute Resolution Procedures,
4. Ability to guide the development and implementation of policy, procedure and organizational development,
5. Must have a valid drivers license and own vehicle,
6. Facilitate and guide discussions regarding Disputed Matters,
7. Support the lead negotiators of NAAF,
8. Provide relevant information to the community of NAAF and its' stakeholders regarding governance capacity building and self-government policies pertaining to Dispute Resolution,
9. Liaising between the Ministry, other Ministries, NAAF, community and organizations on topics related to Dispute Resolution Mechanism within a self-government framework,
10. Assist in capacity building to ensure an effective delivery of the dispute resolution mechanisms,
11. Identify emerging trends of Dispute Resolution and report significant impacts on NAAF governance structures, through scanning, consultation and liaison.
12. Participating in the development and implementation of NAAF Governance Framework.
13. Must have a clean criminal record.
14. Must provide three references.

Deadline for Position: _____

Salary: negotiable

Send Resume to: Northern Aboriginal Authority for Families
Suite 462, 1001 4th Avenue
Prince George, BC V2L 3H9

Note: Job Description maybe adjusted upon final approval of Dispute Resolution Mechanism.

- Consist of Senior Peacemaker contracted by NAAF in the central region,
- Two associate Peacemakers contracted in the sub regions.

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- Appeals – One Elder, One Sub Committee Member, One Member of the Community at Large
- Pending DRM preference the structure shall be amended to reflect NAAF service delivery design.

5.0 Dispute Resolution Procedures – below is draft process and will be amended to meet the needs of NAAF.

Step 1 - A dispute form is filled out:

- 1. A party to the dispute must file a dispute form with the Delegated Agency providing the circumstances and other relevant information;**
- 2. The form must be filed within a reasonable time of the dispute's occurrence;**

Step 2 – The form is given to the Delegated Agency:

- 1. The Staff member receives the form, signs it, and stamps the date on it;**
- 2. The Staff Member provides a copy of the form to the other party(s) involved and opens a case file;**

Step 3 – The Staff refers the case to a Peacemaker

- 1. The Staffs' role is administrative only. She/he refers the dispute directly to a Peacemaker, who is appointed by the Board;**

Step 4 – A Peacemaker investigates the dispute

- 2. The Peacemaker's first role is to speak with all parties, and to investigate the facts and issues(drawing assistance from other social services and law enforcement if necessary);**

- 3. After this investigation is complete, the Peacemaker, if satisfied that the dispute should be dealt with under Dispute Resolution, and determines how the case should be resolved;**

Step 5 – Peacemaker role as mediator

- 1. If the dispute is suitable for mediation, then the same Peacemaker (or any other agreed upon Peacemaker) mediates, helping parties to arrive at a Consensus on how to settle the dispute, the terms of which the peacemaker writes down and the parties sign. This consensus is a binding contract.**

Step 6 – The Case is sent back to the Staff

- 1. If the dispute is unsuitable for mediation or the parties do not achieve consensus, the Peacemaker writes a report for the case file, and prepares the case for arbitration;**

Step 7 – The Staff refers the case to a panel of Peacemakers;

- 1. The Staff sets a time and date for the parties to attend a public hearing (if the Panel orders otherwise, the hearing may be private) before a Peacemaker or a Panel consisting of three peacemakers;**
- 2. The panel consists of three Peacemakers;**

Step 8 – The Panel Renders a Decision

- 1. The Panel is vested with the power to decide the dispute resolution by virtue of authority invested to the Peacemakers from NAAF;**
- 2. Parties are given the opportunity to represent themselves and to have supporters appear on their behalf to aid in their respective claims;**

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- 3. The Panel may compel persons to appear before them or to have advisors sit in on the hearing, for the common purpose of arriving at the fairest possible decision;**
- 4. The Disputants determine a Remedy, which may include:**
 - An agreement the parties may have arrived at during the course of the hearing;**
 - Case cannot be resolved and Peacemaker is required to forward it to the board.**

Step 9 – Appeal Panel (Appeal Process)

- 1. NAAF shall appoint three individuals to sit on appeal panel that may include one elder, one board member, one sub committee member.**
- 2. Disputants that believe that the Panel hearing has been unfair or biased may apply within a month to the NAAF Board to be heard before the Appeal Committee. The Disputant must request in writing to NAAF the reason for an appeal.**
 - a) Appeals will be heard when: the disputant can identify that the decision making process of the panel has not being impartial there for favoring the decision;**
 - b) New and prudent information that is directly related to the case impacts the decision;**
 - c) The NAAF Sub Committee is satisfied that there is enough circumstantial cause to grant appeal;**
 - d) Should an appeal be denied then the decision of the panel shall remain binding;**
- 3. The appeal to the Appeal Panel is the final recourse for dispute resolution within the auspices of NAAF.**

6.0 Optional Implementation and Ratification Process

6.1 At a duly convened Sub Committee Meeting on Governance the Dispute Resolution Mechanism shall be presented

6.2 This document shall be used as a consultation document on Dispute Resolution and introduced to the sub regions for input.

6.3 The Northern Caucus Executive would be given an executive summary with recommendation for implementation and ratification.

6.4 Upon approval the Dispute Resolution Mechanism by the executive then the Dispute Resolution Mechanism will be incorporated into the governance structure of NAAF.

6.5 At a duly convened Northern Caucus the board shall:
Through resolution the Northern Caucus endorses the Dispute Resolution Mechanism.

6.6 In order for the NAAF dispute resolution to take effect each community will be given a presentation by NAAF upon their request and endorsed at the community level.

7.0 NAAF Collective Resolution – Partners in dispute resolution

- Chiefs and Councils
- Band Offices
- Aboriginal Delegated Agencies – Administration, Board, Family Preservation, Case Management, Foster Parents,
- Social Services – Administration and Board
- Health – Administration, Board, Healing Center, Home Support

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- Human Resource Development – Administration, Board, Community Improvement Project
- Community Justice – Youth Justice, Boys and Girls Club
- Aboriginal Justice Directorate
- Education – High Schools, Jr. High Schools, Elementary, Head start, Daycare Centers.
- Solicitor General of Canada and BC.
- Legal Council as required.
- Recreation.
- Police Commissions, RCMP Police, Band Police.
- Minister of Justice.
- Minister of Indian and Northern Affairs Canada.
- RCMP – local.

8.0 Types of Issues dealt with:

- Child Custody Disputes
- Housing and Relationship Disputes as it pertains to the kids
- Family Violence
- Peace Bond
- Assaults
- Mischief
- Wills and Estate where children are involved
- Guardianships
- Court Systems
- Restitution
- Maintenance Enforcement
- Personal Grievances
- Internal disputes regarding conflict of interest within NAAF

9.0 Cost Budget Requirement: Budget will be adjusted to final draft of Dispute Resolution Mechanism.

Senior Peacemaker	70 000.
Two Associate Peacemakers \$50k per peacemaker	100 000.
Benefit 12.5%	21 250.
Office Supplies	3 600.
Telephone Fax	3 600.
Copier Rental	4 800.

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Office Rental	7 200.
Training, Travel, Workshops	50 000.
Governance Capacity	<u>50 000</u>
Total Cost	\$310 450

Sources of Information

Northern Aboriginal Authorities for Families
Northern Aboriginal Authorities Governance
Alberta Law Society-Saddle Lake Tribal Justice Research Center that includes research of the Navajo Nation Judicial Systems.
NAAF Legislation Advisory Committee document.

Preliminary Inputs:

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Dan George, Four Nations Management Services
Leigh Ann Edwards, Regional Coordinator NAAF

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