

Fall Consultation Feedback

Area of Discussion: Dispute Resolution (DR)

Dates and Locations that topic was presented / discussed:

-Thunder Bay, October 19, 2010

-Timmins, October 27, 2010

Q: Are there other approaches that would contribute to dispute avoidance?	
Feedback	Multi-Stakeholder Discussion
<ul style="list-style-type: none"> • Consultation – clear process/expectations (i.e. Checklist) • Identification and acknowledgement of impacts on rights • Cultural understanding, relationship-building • Education and capacity • Revenue sharing • Historical grievances 	Thunder Bay/ Timmins
<ul style="list-style-type: none"> • Dispute vs. accommodation? Clear distinction between process vs. business arrangements 	Timmins

Q: Will the proposed Minister’s appointed committee to create a roster of qualified individuals work? Are there any alternative approaches?	
Feedback	Multi-Stakeholder Discussion
<ul style="list-style-type: none"> • Yes, could work • First Nations & Métis and industry should be involved in process to appoint (through nominations / recommendations / proposals) committee members 	Thunder Bay/Timmins

Q: What criteria or qualifications are appropriate to seek in an individual proposed for the roster?	
Feedback	Multi-Stakeholder Discussion
<ul style="list-style-type: none"> • Impartiality and availability • Training/capacity 	Thunder Bay/Timmins
<ul style="list-style-type: none"> • DR/report writing training • Mining, environmental, engineering, judicial • DR skills, w/ ability to tap into technical expertise from Ministry of Northern Development, Mines and Forestry (MNDMF) • Mining & Lands Commissioner 	Thunder Bay
<ul style="list-style-type: none"> • industry experience and First Nations & Métis members w/ industry experience/or not • Industry/First Nation • First Nation lawyer 	Timmins

<ul style="list-style-type: none"> • 3rd party to select (sub-contract) 	
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Q: Once the roster is created, how should individuals be assigned to disputes: on a rotating basis? Geographically? Based on particular qualifications relevant to the specific dispute?	
Feedback	Multi-Stakeholder Discussion
<ul style="list-style-type: none"> • Roster needs to be level playing field and avoid perceived bias • Look to Ministry of Natural Resources / Northern Ontario Heritage Fund processes (district manager sends letter for reps out to various communities to form the committees) • Encourage tribunal process/panel of 3 in case of illness and to balance views (reps from each specialty) • Regionally based to limit cost and travel (and familiarity w/ regional issues) 	Thunder Bay
<ul style="list-style-type: none"> • Skill based (skill level may depend on \$) • Term • Selection by parties involved • Oversight by others in pool for balanced review (3 people) 	Timmins

Q: What timeframes should be put around the processes envisioned?	
Feedback	Multi-Stakeholder Discussion
<ul style="list-style-type: none"> • 15 days to file dispute; 30 to review permit decision; 30+ to review Closure Plans (CP) (still need a target timeline, but may actually run 60-90 days) 	Thunder Bay
<ul style="list-style-type: none"> • Permitted activities are different from CP, DR timeline should be shorter for permit, longer for CP • Dispute has to be vetted before a permit is issued • At least 60 days to engage First Nations & Métis communities • If MNDMF issues a permit and there is a dispute, MNDMF has to support permit and deal w/ consequences 	Timmins

Q: On what basis should disputes be referred to the roster – on any basis, at request of parties? Only on certain issues? Only when all other efforts have been exhausted?	
Feedback	Multi-Stakeholder Discussion
<ul style="list-style-type: none"> • When parties 'agree to disagree' • Fact based (communication) 	Thunder Bay
<ul style="list-style-type: none"> • Unreasonable terms & conditions on a permit • No Environmental Registry input should lead to DR • At request of affected parties • Concern (exhausting efforts) would add to timelines • Can we come up with our own arrangements? (prior to a DR process) • Can it be taken outside of the process? 	Timmins

Q: How should the costs of these processes be managed, minimized and shared?	
Feedback	Multi-Stakeholder Discussion
<ul style="list-style-type: none"> • Ministry b/c Crown's Duty; if Consultation is inadequate • Unreasonable to expect First Nations & Métis to pay • Need a pool of \$/fund 	Thunder Bay/Timmins
<ul style="list-style-type: none"> • If First Nations & Métis has to pay, should get to pick mediator • If fee to file, should be returned to First Nations & Métis if settled in their favor 	Timmins

General comments	Multi-Stakeholder Discussion
<ul style="list-style-type: none"> • Q re: change in leadership of First Nations & Métis voiding the permit 	Timmins
<ul style="list-style-type: none"> • Q re: Can permit be disputed at any time during the issuance period 	Timmins
<ul style="list-style-type: none"> • Q re: why have DR, dispute can be addressed through C and any dispute would then be b/w First Nations & Métis and government 	Timmins
<ul style="list-style-type: none"> • Comments – 'no teeth' to process, and concern about strength of the recommendation to the Minister (could Minister choose not to follow recommendations?); and with respect to historical grievances 	Thunder Bay