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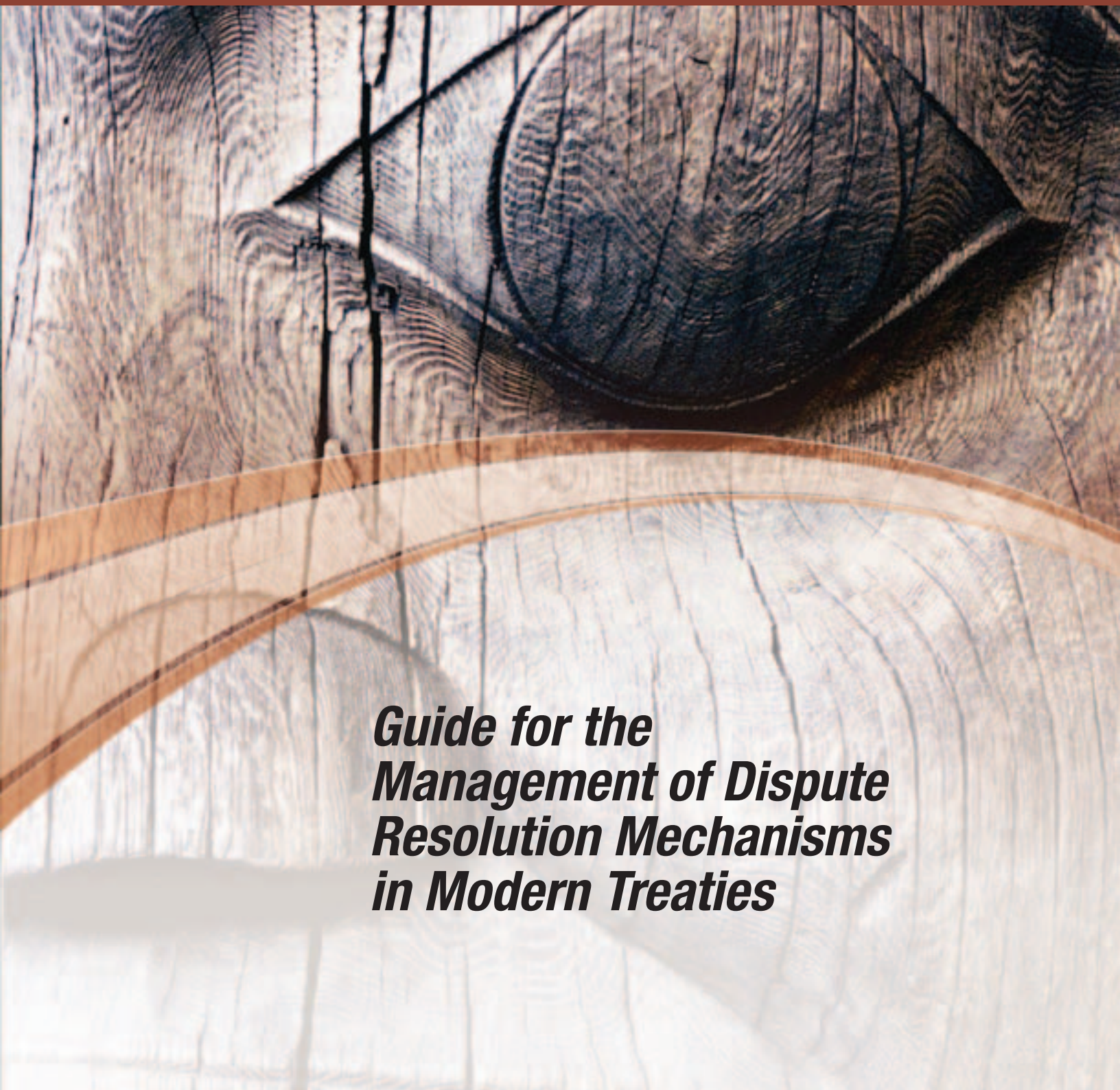
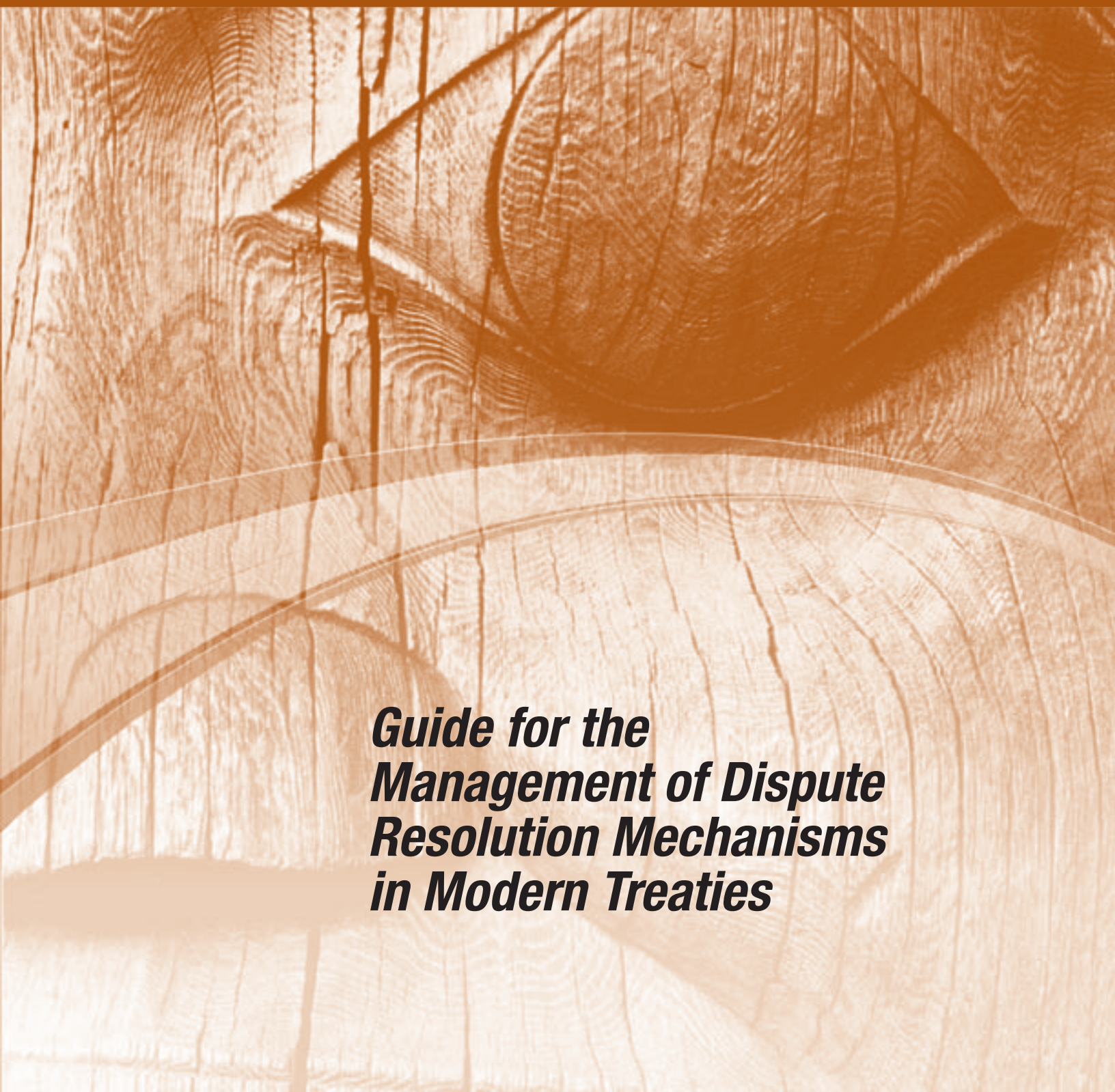


Guide for the Management of Dispute Resolution Mechanisms in Modern Treaties

Canada



Guide for the Management of Dispute Resolution Mechanisms in Modern Treaties

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PART 1

EXECUTIVE SUMMARY

Twenty-five Comprehensive Land Claim Agreements, many of which include self-government arrangements (henceforth, modern treaties), are now in effect. The first modern treaty, the James Bay and Northern Quebec Agreement (JBNQA), was signed in 1975. These agreements, which cover more than 40 percent of Canada's landmass, are documents of fundamental importance for Canada, provinces or territories and the Aboriginal signatories. They describe the rights of Aboriginal people to, and clarify for Canadians and others the ownership of, lands and natural resources in areas where treaties did not previously exist.

After lengthy negotiations between signatories, final agreements represent a balance between the policy and mandate parameters of the federal and territorial/provincial government(s) concerned, and the objectives and aspirations of the Aboriginal group(s). As such, positive on-going intergovernmental relationships are key in exercising rights and responsibilities outlined in the agreements. As the implementation of modern treaties is complex, from time to time, disagreements related to implementation may arise.

Although most modern treaties contain direction on how to resolve disputes, the *Guide for the Management of Dispute Resolution Mechanisms in Modern Treaties* (the Guide) was developed to add clarification for implementers on the Government of Canada's approach to dispute resolution. The Guide is meant to increase transparency and credibility throughout the settlement of implementation disputes and issues, thus improving the relationships among the parties and upholding the honour of the Crown.

The Guide describes the decision-making and approval processes needed to support Stage Three of the dispute resolution process (the use of Arbitration) when a party to the agreement – the federal, provincial/territorial, or Aboriginal – submits a request to arbitrate. The content of the Guide includes:

- background information on provisions and obligations in modern treaties;
- policy considerations and analysis on a range of dispute resolution options with descriptions for advantages and disadvantages of resolution of issues; and
- an outline of dispute resolution in modern treaties agreements through a three-staged approach.

In addition, characteristics of arbitration and a chart outlining the various arbitration provisions in agreements are provided as supporting information.

PART 2

BACKGROUND

The significance of modern treaties cannot be overstated. Many provisions in modern treaties and the rights contained in them are given Canada's highest possible consideration – they are protected under section 35 of the *Constitution Act, 1982*.

Although agreements vary, these documents contain provisions related to ownership, management and use of lands and natural resources, as well as a range of other provisions in areas such as harvesting of wildlife and/or fish, contracting, economic development, resource royalties, taxation, and financial components. Many of these agreements also deal with self-government, either as part of the treaty itself or outlined in separate documents. Self-government arrangements reconcile the jurisdictions and law-making authorities among the federal, the Aboriginal and the relevant provincial/territorial governments. Modern treaties create an on-going intergovernmental relationship and establish venues to work together in exercising these rights and responsibilities.

Since the mid-1980s, the federal government has required that modern treaties be accompanied by an Implementation Plan that sets out the roles and responsibilities of the parties in executing the provisions of the agreement. These plans are generally not contractual in nature but are designed to be flexible documents that guide the parties on taking the necessary steps to ensure everyone is clear on who is doing what once the agreements are in effect. Implementation Plans are generally effective for assisting the parties on the "one-time" aspects of the agreements – e.g., setting up Institutions of Public Government (Boards), as well as identifying ongoing obligations and processes for their implementation. Even with the guidance provided by Implementation Plans, there are differences of opinion about how provisions should be interpreted and implemented, on the actions necessary to address an obligation or on other matters.

PART 3

POLICY CONSIDERATIONS AND ANALYSIS

INTRODUCTION

The Government of Canada generally supports using dispute resolution, including arbitration, to resolve disagreements among parties. While the content of other departmental policies may not be completely relevant to modern treaties, they do, nevertheless, highlight Canada's preferred approach to resolve issues through dispute resolution.

In the preamble to its *Policy on Dispute Resolution*, the Department of Justice articulates a number of important principles in the Government of Canada's approach to dispute resolution generally:

> Dispute resolution (DR) includes all possible processes for resolving conflict, from consensual to adjudicative, from negotiation to litigation. The appropriate method to resolve any given dispute can only be chosen after a careful assessment of the facts and circumstances of the case. In making this evaluation, one must consider the interests of the parties, the nature of the dispute and any statutory or policy restrictions governing the use of a particular DR process. The consensual nature of most DR methods requires that all parties make the choice of process jointly. It is the ability of the parties to choose which DR process best fits the case at hand that will improve the quality of, and access to, justice.

And further, in the stated goals of the policy:

> The Department of Justice affirms the responsibility of all its employees to make every effort to prevent disputes from arising and, where they do arise, to address them as early and effectively as possible in order to avoid the courts becoming our only avenue of recourse. The spectrum of dispute resolution processes is not limited to civil matters, but rather is potentially applicable across the mandate of the Department of Justice. In accordance with government policy, the Department encourages the use of the various DR processes in all appropriate circumstances.[1]

The Treasury Board Secretariat also cites policies which discuss using dispute resolution options ranging from negotiation, including mediation and in some cases arbitration.

[1] Department of Justice (Canada) Policy on Dispute Resolution: http://www.justice.gc.ca/eng/pi/dprs-sprd/pol/policies.html

CONSIDERATION OF DISPUTE RESOLUTION OPTIONS

In addition to its Policy on Dispute Resolution, the Department of Justice has also developed a *Dispute Resolution Reference Guide* (the Justice Guide), which includes a description of a wide range of dispute resolution processes for resolving a conflict, from consensual to adjudicative.

There is little doubt that a resolution to any dispute among parties is best resolved by the parties themselves – on their own or with the help of a third party. The Justice Guide discusses a number of potential benefits of dispute resolution. They include:

- **speed** – a case can be more quickly resolved if the parties do not have to wait for a trial date.
- **choice** – parties can select the people who will assist them in their negotiations (as in mediation), who will provide expert evaluations (in neutral fact-finding) or who will make decisions (in arbitration).
- **flexibility** – many dispute resolution options allow the parties to define the procedures to follow and the parameters of issues to be discussed.
- **informality** – rules of procedure can be adapted to meet the needs of the parties in a particular situation.
- **cost savings** – many of the dispute resolution mechanisms offer the potential to save clients costs by reducing the time employees and lawyers work on the file and by eliminating the costs associated with a trial.
- **durable outcomes** – there may be better compliance and fewer new disputes between the parties after they have arrived at a consensus–based settlement.
- **privacy** – settlements reached outside the courtroom through several of the dispute resolution mechanisms can be kept confidential and are usually private, although the *Access to Information Act* and the *Privacy Act* may bring some government negotiations and settlements under public scrutiny.
- **improved relations** – parties often need to work together after a dispute is over – there is a better chance of a productive on–going relationship when all parties feel that the resolution of a dispute reflects their interests.
- **greater satisfaction with the process** – parties tend to feel more satisfied with the resolution of a conflict over which they have had some control.[2]

[2] Department of Justice (Canada) Dispute Resolution Reference Guide: http://www.justice.gc.ca/eng/pi/dprs-sprd/ref/res/drrg-mrrc/06.html#iv

LEGAL CONSIDERATIONS

On occasion there are disputes that cannot be resolved among the parties. This moves the options to arbitration or the courts. Although not in specific reference to modern treaties, the Justice Guide (in broad terms) discusses the advantages and disadvantages of arbitration and litigation. The following are reasons why the Government of Canada may prefer litigation in some instances:

- The Government wants the case to set a precedent.
- A key element of a statute's interpretation is in dispute.
- An important question of Government policy is at issue.
- The Government requires a full public record of proceedings.
- The dispute involves a public law matter, such as the Charter or Constitution.[3]

The following table illustrates the advantages and disadvantages to both arbitration and litigation based on policies already established by the Department of Justice.

[3] Department of Justice (Canada) Dispute Resolution Reference Guide: http://www.justice.gc.ca/eng/pi/dprs-sprd/ref/res/drrg-mrrc/06.html#iv

DEPARTMENT OF JUSTICE

ARBITRATION		LITIGATION	
ADVANTAGES	DISADVANTAGES	ADVANTAGES	DISADVANTAGES
❖ The parties can select the arbitrator(s) ❖ Arbitrator(s) can be selected on the basis of experience relevant to the issues ❖ The proceedings can be held in private and confidentiality may be preserved, subject to the *Access to Information Act* and *Privacy Act* ❖ The rules of procedure can be as formal or informal as the parties and their counsel determine, subject to any statutory requirements ❖ The cost of the proceedings can often be more easily contained ❖ Due to increased control of the process there can be a greater opportunity for settlement ❖ Arbitral awards are binding	❖ The success of arbitration is largely dependent on the experience of the arbitrator(s) ❖ Arbitral awards are not of legal precedential value ❖ Recourse against an award is very limited ❖ May not suit disputes involving matters of public law, such as constitutional issues ❖ Time and cost can be significantly affected by a lack of co-operation of the parties or poor process design, or by lack of availability of an arbitrator(s) ❖ The parties have to accept a third party's decision about their affairs	❖ Judges have the legal experience that enables them to decide questions of law ❖ The result is a decision in favour of one of the parties ❖ The court process, although sometimes slow, is predictable and provides procedural safeguards	❖ Formality and rules of procedure may not be conducive to settlement ❖ Judges may lack technical expertise and require time to obtain the necessary knowledge at an increased cost to clients ❖ The focus of litigation is often vindication, perhaps increasing tension between the parties in the future ❖ The parties have to accept a third party's decision about their affairs

In general, these would apply to modern treaties. However, depending on the context of a particular treaty provision relating to the arbitrational process, some may not apply.

In addition to the various advantages and disadvantages of the arbitrational process outlined by the Department of Justice, The Treasury Board Contracting Policy also states that "[c]ontracting authorities, with the advice of their legal advisor, may refer all questions of fact and certain questions of law to arbitration without the formal concurrence of the Department of Justice"[4]. While this policy only applies to contracts and does not include modern treaties, it is included here for illustrative purposes demonstrating the use of arbitration across the federal government. The policy goes on to note that questions of law which can be the subject of arbitration include, among others:

a. the creation, validity, interpretation, application or enforceability of the contract;

b. the performance, breach, termination or other discharge of the contract;

c. the rights, duties, obligations or remedies of the parties created by or pursuant to the contract;

d. any other issue of private law that may arise between the parties relative to the performance of the contract; and

e. the interpretation and application of statutes that relate primarily or solely to commercial transactions.[5]

SUMMARY

The decision to arbitrate or not will be made on the basis of clear criteria, using a range of formal and informal mechanisms and processes. The purpose of the following portion of this document is to apply the general policy principles and approaches to the resolution of disputes in a modern treaty context.

[4] Treasury Board Contracting Policy, 12.8.6: http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14494&section=text

[5] *Ibid*

PART 4

DISPUTE RESOLUTION IN A MODERN TREATY CONTEXT

From time to time, disputes may arise among the parties to modern treaties. This possibility was foreseen by the parties (federal and provincial/territorial governments and Aboriginal groups), and as a result all modern treaties now include some form of dispute resolution process (see Annex B).

The details of dispute resolution approaches vary from one agreement to another. Many of the earlier agreements in Québec and those in the North (Yukon, Northwest Territories and Nunavut) include provisions calling for various committees, boards and associations to facilitate discussion and resolution of issues and binding arbitration provisions to resolve disputes. Since 1999, agreements have generally included a staged approach to resolving implementation-related disputes.

It should be emphasized that nothing in this document is intended to interpret or modify anything in any modern treaty. Reference should always be made to the particular agreement in question before decisions on appropriate dispute resolution processes are considered. This document is intended only to clarify the decision-making process the Government of Canada would undertake when considering exercising its discretion to participate in voluntary dispute resolution, subject to the requirements of the relevant agreement. It is not intended to represent or reflect the views that other parties to modern treaties may have in approaching dispute resolution.

STAGED APPROACH

As noted above, the Government of Canada believes that, to the greatest extent possible, disputes are best resolved among the parties themselves. It is acknowledged, however, that this may not always be possible. Consistent with the general policy approach, the Government of Canada believes that a staged approach is preferred in a modern treaty context. Indeed, most agreements allude to this approach either implicitly or explicitly.

These stages roughly stated are:

a. informal discussions;

b. assisted or facilitated negotiations, including mediation; and

c. arbitration.

This progression of dispute resolution approaches reflects the belief that resolution of an issue by the parties themselves (with or without the assistance of a neutral third party) leads to a preferable outcome to one that is imposed by a third party, as would be the case in arbitration. These stages will be described in more detail below.

In the majority of agreements, these processes are voluntary, requiring the consent of all parties before submitting an issue to arbitration. In most cases, the Government of Canada would, as a matter of policy, consider submitting an issue for arbitration, or committing to a request to arbitrate, only after the parties have taken all reasonable steps (e.g. informal discussions and/or facilitated negotiations) to resolve an issue.[6]

STAGE ONE – INFORMAL DISCUSSIONS

In all cases, the parties to modern treaties have formed an implementation committee or panel of some type, whether as a requirement of the treaty or by agreement among parties, to address implementation issues, among other things. The Government of Canada's representative is an official from Aboriginal Affairs and Northern Development Canada (AANDC). These committees or panels play a crucial role in dispute resolution. It is here that issues are raised and differences of opinion or interpretation are identified and discussed. They also provide a forum for the parties to bring their respective experts to speak to the matters in dispute. In the case of the federal government, its representatives would be responsible for involving other government departments on those issues which affect their operations. Similarly, other government departments are responsible for informing Canada's representative when issues arise within their area of responsibility. The Government of Canada believes that the vast majority of issues are, and will continue to be, resolved at this stage.

[6] This would be the case even in agreements that do not require a staged approach e.g., Chapter 18 of the Inuvialuit Final Agreement contains mandatory arbitration for resolution of certain issues. In such cases, the Government of Canada would follow the rules and procedures set out in the relevant agreement.

STAGE TWO – ASSISTED NEGOTIATIONS

Where the implementation committee/panel members agree that the issues cannot be resolved through informal discussions, the next step should be some form of assisted negotiations, including mediation. Assisted negotiations generally involve the use of a neutral third party to aid the parties in identifying possible solutions to contentious issues.

There is a range of possibilities contained within the concept of assisted negotiations, including facilitation, mediation, and neutral third party evaluation. A number of agreements mention these options and processes[7], all of which are non-binding. Where the agreement is silent on the assisted negotiation options available, then the parties may agree on a process. Where agreement is not possible, it is recommended that mediation, the most common form of assisted negotiation, be used by default.

Many agreements establish a series of steps and timeframes for assisted negotiations, including:

- **Notification** – The Party that wishes to invoke the process must provide written notice to the other Party(ies). Notification should identify those directly involved, and provide a brief summary of the disagreement and efforts made to resolve the issue(s).
- **Representation** – As per the terms of agreement or as agreed upon by the parties.
- **Meetings** – The first meeting will take place as per the terms of the agreement or as agreed upon by the parties.
- **Duration** – Parties will have a specific number of days to negotiate an aspect of the agreement.
- **Resolution** – If the dispute is resolved the parties will sign a written agreement that acknowledges the resolution of the disagreement.

Where an agreement is silent on process requirements, the parties, at a minimum, should keep a record of the decision to proceed to assisted negotiation (Stage Two) and of the outcome of the process.

Neutral third party involvement generally brings a technical (e.g. contracting, wildlife management) or dispute resolution or legal expert, who can suggest techniques or options for resolving issues. This expertise brings an objective viewpoint to a dispute in which parties have reached a point where further informal discussions would be unproductive. While there is a wide range of tools available under the heading of "assisted negotiations", the common feature is a neutral third party who mediates discussions between the disagreeing parties with aims to reach a mutually agreed-upon solution.

It should be noted that many agreements establish formal bodies for dispute resolution. These bodies, often called Dispute Resolution Boards or Panels, may have a role to play in Stage Two processes.[8] As such, Parties should refer to the agreement in question before engaging in Stage Two activities.

[7] See the Nisga'a Final Agreement, Chapter 19 as an example.

[8] See for example Chapter 26 of the Yukon Umbrella Final Agreement.

STAGE THREE – ARBITRATION

The decision whether to arbitrate or not would occur at Stage Three of the process. This decision would be taken when informal discussions (Stage One) and assisted negotiations (Stage Two) have not provided a resolution to the dispute.

Most modern treaties provide that the parties may agree to submit an issue to arbitration. They also set out details on the powers of an arbitrator or panel and the processes to be followed. Arbitration represents a significant departure from Stage One and Two processes in that an arbitrator (or arbitration panel) is able to impose a binding and, in most cases, final[9] resolution on the parties.

The relative advantages and disadvantages of arbitration and a court process have been discussed in the "Policy Consideration and Analysis" section. Although arbitration is the most adversarial of the dispute resolution approaches, the Government of Canada recognizes that there will be cases where the parties are unable, despite best efforts, to resolve an issue amongst themselves. In these situations, arbitration would be indicated as the appropriate option.

Where the Government of Canada has the discretion to agree or not to agree to an arbitration process under modern treaties, it would consider the following questions.

1. Have the parties attempted to resolve the issue(s) themselves through an existing implementation apparatus?
2. In the event that the issue was not resolved through existing implementation processes, have the parties given reasonable consideration to attempting to resolve it with the assistance of a neutral third party, and, if not, was there a mutual agreement that such an approach would not be appropriate under the circumstances?
3. Even if the answer to the first two questions is "yes", are there reasons for refusing to take the issue in question to binding arbitration?

[9] For example, in the Yukon Final (Land Claim) Agreements, section 26.7.5 provides a decision or order of an arbitrator shall be final and binding on the parties to the arbitration. There is, however, a limited ability to request an appeal or judicial review of an arbitrator's decision on the ground that the arbitrator failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise jurisdiction (section 26.8.1). In Tsawwassen, some provisions stipulate that they are to be 'finally determined by arbitration.'

Decisions on the third element of the analysis will be made on a case-by-case basis; however, deliberations will be guided by the general considerations discussed in the "Range of Dispute Resolution Options" above.[10] For example, questions of a constitutional nature or those for which a binding precedent would be considered appropriate may indicate a preference for a formal court process. That said, there are two areas for which Canada, as a matter of policy, will not submit to binding arbitration:

1. **Funding levels**: Canada will not consent to arbitrate the determination of funding levels, as agreements state that these are to be determined through negotiations.

   Negotiation funding mandates are greatly influenced by fiscal policy considerations. Clearly, the development of financial mandates must be done in a way that respects the provisions and requirements of the agreement in question. However, such mandates must also be considered in the context of the Government of Canada's overall management of its social and economic priorities. Questions of consistency in approach among arrangements and affordability are key components of the policy discussion. The Government of Canada would not agree to put these fundamental issues to binding arbitration as it would result in an unacceptable loss of policy discretion and would be inconsistent with how Canada approaches inter-governmental transfer payments generally (in provincial or territorial arrangements).

   This is not to say that all issues with a potential financial impact on Canada would fall into this category; most of the issues that are difficult to resolve have financial implications. There are matters relating to financial arrangements that could properly be put to arbitration. For example, a number of modern treaties call for arbitration to determine the level of compensation for expropriated land where agreement cannot be reached through negotiation.[11] Another example would be where agreements require that certain factors should or must be considered when negotiations of funding levels are taking place. A determination of whether those factors have been correctly applied or considered could be an appropriate matter for arbitration.

2. **Public Law**: Canada will not consent to the arbitration of matters of law or mixed fact and law that have general application to Canadian society, such as constitutional law issues, general principles of the law of contract, tort, tax law issues or pure questions of law.

When a party submits a request to arbitrate, the Government of Canada will assess the request against the criteria outlined in this document.

In the event that the Government of Canada receives a written request to submit an issue(s) to arbitration, it will respond in writing indicating either its agreement or its refusal to agree to arbitration.

[10] See pages 4-8 of this document.

[11] See chart of specific provisions in Annex B.

PART 5

CONCLUSION

Modern treaties set out the framework for new intergovernmental relationships between the federal, provincial/territorial and Aboriginal governments. To ensure these relationships are established and continue to work effectively, these agreements include a number of structures and processes to facilitate dialogue and resolve contentious issues which may arise. These guidelines are intended to outline the staged approach to dispute resolution called for in most modern treaties and articulate the principles the federal government will rely on for its participation in dispute resolution processes, including arbitration, to ensure a high degree of clarity and transparency. The objective of dispute resolution is to find ways of resolving challenges and conflicts in a way that respects the agreements, strengthens these important relationships and maintains the honour of the Crown. The federal government is committed to implementing modern treaties and to resolving any challenges that arise in their implementation in cooperation with the other signatories.

PART 6

ANNEXES

ANNEX A – CHARACTERISTICS OF ARBITRATION

Taken from:
http://www.justice.gc.ca/eng/pi/dprs-sprd/ref/res/drrg-mrrc/06.html#ii

Arbitration is:

Voluntary: Parties must expressly agree to arbitration in writing, or fall within the ambit of legislation that mandates arbitration in a given situation. If the parties have agreed to arbitrate, the court, on the motion of one of the parties to the agreement, will generally require the parties to submit the dispute to arbitration, unless it is found that the arbitration agreement is null and void, inoperative or incapable of being performed.

Controlled: The parties and their counsel are able to control procedural aspects of the process, namely the choice of arbitrator, the location of the hearing, as well as who, other than the parties themselves, may be present.

Private: Arbitration is usually conducted in private.

Informal: The rules of procedure are established by the adoption of existing rules, by a negotiated arbitration agreement between the parties, or by the parties and the arbitrator.

Adjudicative: As in litigation, once each side has presented a case, the arbitrator issues a decision. Article 31 of the Code requires that an arbitral award shall be in writing, and that reasons be provided unless the parties have agreed that no reasons are required.

Binding/Non-Binding: Judicial review of an arbitral award is available only on limited grounds such as incapacity of a party; invalidity of an arbitration agreement; or that the award is in violation of law or public policy.

Confidential: Arbitration is generally confidential, if the parties so elect. In the federal context, the restrictions on divulging information and the requirement to disclose information pursuant to the *Privacy Act* and the *Access to Information Act* must be upheld.

Adversarial: While the arbitration process is based on the adversarial style of the litigation model, the demeanour and nature of the hearing are determined by the parties, their counsel and the arbitrator.

Flexible: The parties have discretion in choosing an arbitrator and the procedure to be followed in resolving the dispute.

ANNEX B – CHART OF ARBITRATION PROVISIONS

DISPUTE RESOLUTION – PROCESSES WITHIN THE AGREEMENTS				
YEAR (legislation, not effective date)	**FINAL AGREEMENTS**	**CHAPTER**	**PROCESS TO INVOKE ARBITRATION**	**WHO CAN INVOKE VOLUNTARY ARBITRATION**
2009	Maa-nulth First Nations Final Agreement	Chapter 25 Dispute Resolution Disagreements not resolved informally will progress, following initial identification of the Parties, until resolved, through the following stages (25.3.2): **a. Stage One:** formal, unassisted efforts to reach agreement among the Participating Parties, in collaborative negotiations (25.5.0); **b. Stage Two:** structured efforts to reach agreement among the Participating Parties with the assistance of a Neutral (25.6.0); **c. Stage Three:** final adjudication in arbitral proceedings (25.9.0).	If Stages 1 and 2 have failed, the Parties directly engaged in the disagreement provide written notice for the issue to be referred to, and finally resolved by, arbitration in accordance with Appendix Y-6 (25.9.2)	Needs consent of all Parties to initiate the arbitration process except as otherwise provided in the Agreement.

DISPUTE RESOLUTION – PROCESSES WITHIN THE AGREEMENTS

YEAR (legislation, not effective date)	FINAL AGREEMENTS	CHAPTER	PROCESS TO INVOKE ARBITRATION	WHO CAN INVOKE VOLUNTARY ARBITRATION
2007	Tsawwassen Final Agreement	Chapter 22 Disagreements to go through stages: **Stage 1** – Collaborative Negotiations **Stage 2** – Facilitated process **Stage 3** – Adjudication/ Arbitration Specific references 2.32 – ILO 4.70 – Comparable value (land) *4.82 – Expropriation 7.21 & 7.23 – Public Utility 9.32 – Non-allocated species fish *9.40 – non allocated species *10.38 – Wildlife * 'Finally determined by arbitration' provisions	No party may refer a disagreement to final arbitration without first proceeding through stages 1 and 2. Parties must give written notice requiring participation in a process as described in Chapter 22 to resolve the disagreement.	Needs consent of all parties to initiate the arbitration process except for 'finally determined by arbitration' provisions (chapters 4, 9, 10) where consent is not required. Also note reference to 'determined by arbitration' s.8.32

DISPUTE RESOLUTION – PROCESSES WITHIN THE AGREEMENTS

YEAR (legislation, not effective date)	FINAL AGREEMENTS	CHAPTER	PROCESS TO INVOKE ARBITRATION	WHO CAN INVOKE VOLUNTARY ARBITRATION
2006	Nunavik Inuit Land Claim Agreement	Article 24 ❖ Arbitration Specific Provisions 12.3.4 & 12.3.7 12.4.4 12.5.1 14.22 20.4.6	Parties can take the dispute to mediation but is not mandatory that they explore this option first.	Needs consent of all parties to initiate the arbitration process.

DISPUTE RESOLUTION – PROCESSES WITHIN THE AGREEMENTS

YEAR (legislation, not effective date)	FINAL AGREEMENTS	CHAPTER	PROCESS TO INVOKE ARBITRATION	WHO CAN INVOKE VOLUNTARY ARBITRATION
2005	Labrador Inuit Land Claim Agreement	Chapter 21 ❖ Dispute Resolution Board ❖ Mediation ❖ Arbitration Specific Provisions 2.10.3 – Overlap 4.7.5 – Subsurface non-renewable 4.9.9 – Public Utility 4.11.9 – Quarry 4.11.19 – Exploration 4.15.19 – Exploration 5.4.14 – Water 6 – IBA Development 9.4.16 – Protected Area Agreements 12.13.7 – Access 12.7 – Fair market value 15.8.7 – Burial 17.43.3 – Burial sites	Parties must make good faith efforts to resolve disputes promptly through discussions or negotiations before seeking Arbitration.	Each party may initiate mediation or arbitration.

DISPUTE RESOLUTION – PROCESSES WITHIN THE AGREEMENTS

YEAR (legislation, not effective date)	FINAL AGREEMENTS	CHAPTER	PROCESS TO INVOKE ARBITRATION	WHO CAN INVOKE VOLUNTARY ARBITRATION
2003	Tlicho Final Agreement	Chapter 6 (6.5.2. B) ❖ Discussions ❖ Mediation ❖ Arbitration Specific Provisions 6.81 – Expropriation 6.71 – Band 20.49 – Land	Must participate in mediation prior to invoking arbitration.	Needs consent of all parties to initiate the arbitration process.

DISPUTE RESOLUTION – PROCESSES WITHIN THE AGREEMENTS

YEAR (legislation, not effective date)	FINAL AGREEMENTS	CHAPTER	PROCESS TO INVOKE ARBITRATION	WHO CAN INVOKE VOLUNTARY ARBITRATION
1999	Nisga'a Final Agreement	Chapter 19 Disagreements to go through stages: **Stage 1** – Collaborative Negotiations **Stage 2** – Facilitated process **Stage 3** – Adjudication/ Arbitration Specific Provisions 2.43.ii 3.26 & 3.55 – Land 3.86, 3.118, 3.133 – Expropriation compensation 5.38 – Boundaries 6.27 – Access compensation 7.2, 7.9, 7.36 8.59 – Non-salmon fish 9.27 – Wildlife	No party may refer a disagreement to final arbitration without first proceeding through stages 1 and 2. Parties must give written notice requiring participation in a process as described in Chapter 19 to resolve the disagreement.	19.29 Needs written agreement of all the Parties directly engaged in the disagreement.

DISPUTE RESOLUTION – PROCESSES WITHIN THE AGREEMENTS

YEAR (legislation, not effective date)	FINAL AGREEMENTS	CHAPTER	PROCESS TO INVOKE ARBITRATION	WHO CAN INVOKE VOLUNTARY ARBITRATION
1994	Sahtu Dene and Métis Comprehensive Land Claim Agreement	Chapter 6, art 6.1.5 ❖ Mediation (Amended in 2003 to add this) ❖ Arbitration Specific Provisions 13.4.13 – Land use 18.1.6 – Wildlife/ Development 21.2, 21.3, 21.4 – Access 24.4.11, 24.1.15 – Expropriation Compensation 29.2.3 – IC, Unresolved Implementation Disputes.	Must go to Implementation Committee for resolution first. Land Use provision includes mandatory arbitration in some circumstances. 6.1.7 – Parties can take the dispute to mediation but is not mandatory that they explore this option first. Amendment If the outstanding dispute cannot be resolved through further discussion and negotiation, the Implementation Committee may use mediation as a next step.	Needs consent of all parties to initiate the arbitration process.

DISPUTE RESOLUTION – PROCESSES WITHIN THE AGREEMENTS

YEAR (legislation, not effective date)	FINAL AGREEMENTS	CHAPTER	PROCESS TO INVOKE ARBITRATION	WHO CAN INVOKE VOLUNTARY ARBITRATION
1993	Umbrella Final Agreement between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon	Chapter 26.4.3 ❖ Mediation ❖ Arbitration Specific Provisions 13.9.3 – Burial C.16 – Schedule A Fish Study Also individual treaties: Carcross Tagish 12.12 – Campgrounds	Parties can take the dispute to mediation but it is not mandatory that they explore this option first.	Needs consent of all parties to initiate the arbitration process.
1993	Nunavut Land Claims Agreementvut	Article 38.2.1 ❖ Arbitration Specific provisions 19.9.3 – Non-renewable 25.5.5 & 25.5.9 – Access 25.7.15 – Access 21.9.4 & 21.9.8 – Expropriation 19.6.2 – Easement	Parties can take the dispute to mediation but it is not mandatory that they explore this option first.	Needs consent of all parties to initiate the arbitration process.

DISPUTE RESOLUTION – PROCESSES WITHIN THE AGREEMENTS

YEAR (legislation, not effective date)	FINAL AGREEMENTS	CHAPTER	PROCESS TO INVOKE ARBITRATION	WHO CAN INVOKE VOLUNTARY ARBITRATION
1992	The Gwich'in Comprehensive Land Claim Agreement	Chapter 6.1.5 (b) ❖ Implementation Committee (1st step) ❖ Mediation (Amended in 2003 to add this) ❖ Arbitration Specific Provisions 12.4.13 – Wildlife Harvesting 17.1.4 – Harvesting compensation 20.1.7 – Access 22.3.4 – Gwich'en mineral land 23.1.13 – Expropriation Compensation 28.2.3 – IC Arbitration	Must go to Implementation Committee for resolution first for Interpretation issues Surface Rights Board provisions calls for mandatory arbitration in certain circumstances. 6.1.7 – Parties can take the dispute to mediation but is not mandatory that they explore this option first. Annex E – Amendment 16. If the outstanding dispute cannot be resolved through further discussion and negotiation, the Implementation Committee may use mediation as a next step.	Needs consent of all parties to initiate the arbitration process.

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YEAR (legislation, not effective date)	FINAL AGREEMENTS	CHAPTER	PROCESS TO INVOKE ARBITRATION	WHO CAN INVOKE VOLUNTARY ARBITRATION
1984	Inuvialuit Final Agreement	Section 18.15 ❖ Arbitration Specific Provisions 5.7 – Enrolment 7.12 – Subsurface 7.27-42 – Sand and Gravel 7.50-57 – Expropriation 7.61-87 – Land related S.10 – Participation S.13 – Wildlife	Parties can take the dispute to mediation but it is not mandatory that they explore this option first.	Canada, the Inuvialuit or industry may initiate arbitration.

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YEAR (legislation, not effective date)	FINAL AGREEMENTS	CHAPTER	PROCESS TO INVOKE ARBITRATION	WHO CAN INVOKE VOLUNTARY ARBITRATION
1978	The Northeastern Quebec Agreement ❖ IP - 1990 ❖ Naskapi Final Implementation Agreement - 1990	**NEQA** S.5.1.6.3 – (Compensation in Land or Money) **Naskapi Final Implementation Agreement** S. 5 and Annex A Staged Approach ❖ Consultations ❖ Meditation ❖ Arbitration	**NEQA** Compensation to be in land, or if there is no agreement, then in money. If there is no agreement, dispute is referred to the *Tribunal d'Expropriation du Québec* or to arbitration. **Final Implementation Agreement** Must participate in mediation prior to invoking arbitration.	Requires consent of all parties to initiate the arbi-tration process.

DISPUTE RESOLUTION – PROCESSES WITHIN THE AGREEMENTS

YEAR (legislation, not effective date)	FINAL AGREEMENTS	CHAPTER	PROCESS TO INVOKE ARBITRATION	WHO CAN INVOKE VOLUNTARY ARBITRATION
1975	James Bay and Northern Quebec Agreement ❖ Inuit Final Implementation Agreement – 1990 ❖ New Relationship Agreement – 2008	**JBNQA** Specific Provisions S. 5.1.7c – Compensation S. 7.1.10 – Expropriation S. 8.9.2 – SOTRAC Resolutions (energy developments), S. 8.16 – Arbitration Process S. 30.7.9b – Access to programs **Final Implementation Agreement** S. 6 and Annex H Staged Approach ❖ Consultation ❖ Meditation ❖ Arbitration **NRA** Chapters 8 & 9 staged approach	**Final Implementation Agreement** Must participate in mediation. If mediation fails, parties may refer dispute to a panel or experts or to arbitration. **NRA** Disputes are first referred to the Cree-Canada Standing Liaison Committee. If the dispute is not resolved, the parties may refer it to mediation, and then, if necessary, to arbitration.	General provisions require consent of all parties to initiate the arbitration process (NRA excludes funding levels).