

Yukon Heritage Resources Board

Rules of Procedure for Determining Ownership of Heritage Resources under Chapter 13 of Yukon First Nation Final Agreements

Whereas the Government of Canada, the Government of Yukon and certain Yukon First Nations have entered into land claims agreements that include provisions respecting the ownership and management of heritage resources;

Whereas the parties to those land claims agreements have agreed that if a dispute arises about the ownership of certain heritage resources the matter shall be resolved by the Yukon Heritage Resources Board; and

Whereas it is in the interest of the parties to the land claims agreements and in the public interest that the Board have a fair and efficient process for resolving the disputes that are referred to it;

The Board hereby makes the following rules of procedure:

Part 1

General

Citation

- 1 These rules may be referred to as the “*Yukon Heritage Resources Board Rules of Procedure*”.

Application

- 2 These rules apply to disputes referred to the Board for determination under 13.3.2.1 and 13.3.6 of a Final Agreement.

Interpretation

- 3 These rules shall be interpreted liberally to achieve a fair and efficient determination of every matter before the Board.

Headings

- 4 The headings preceding each rule are included for convenience only and do not form part of the rules.

Defined terms

- 5 Any word or term defined in a Final Agreement has the same meaning when used in these rules.

Definitions

- 6 In these rules,

“applicant” means a person who files an application under rule 23;

“Board” means the Yukon Heritage Resources Board referred to in 13.5.1 of a Final Agreement;

“day” means a calendar day;

“document” has an extended meaning and includes a printed record and a record fixed in a magnetic or digital form;

“Executive Director” means the Executive Director of the Board, or such other person as the Board may designate for the purposes of these rules;

“Final Agreement” means a Yukon First Nation Final Agreement;

“party” means an applicant or a respondent, or both;

“respondent” means a person who files a response under rule 25 to an application.

Technical defects

- 7 No step in a proceeding before the Board is invalid because of an objection based only on a technical irregularity or defect in form.

Direction on procedure

- 8 The Board may, on its own initiative, or on the request of a party in a proceeding, issue a direction on procedure dispensing with, varying or supplementing these rules as it considers necessary for the efficient conduct of a proceeding or to ensure procedural fairness in a proceeding.

Direction prevails

- 9 Where there is a conflict between the rules and a direction on procedure, the direction on procedure prevails over the rules.

Non-compliance

- 10 Where a party has not complied with these rules or a direction on procedure, the Board may adjourn the proceeding until satisfied that the requirement has been complied with or take such other steps as it considers just and reasonable.

Extending or abridging time

- 11 Where considerations of procedural fairness so require, the Board may issue a direction on procedure extending or abridging the time fixed by these rules or by a previous direction on procedure, and may do so on its own initiative or on the request of a party, whether or not the request to extend or abridge the time is made after the time so fixed has expired.

On-site visit

- 12 The Board may conduct an on-site visit of the heritage resource that is the subject matter of an application to better determine any matter relevant to resolving the dispute before the Board.

Forms

- 13 The Board may specify that a document must be in a particular form and such forms will from time to time be appended to these rules.

Computing time

- 14 In these rules,
- (a) if a period of time is expressed as a number of “days”, the first day is excluded and the last day included; and
 - (b) if the time for doing an act falls or expires on a Saturday, Sunday or holiday, the time is extended to the next day that is not a Saturday, Sunday or holiday.

Part 2

Filing and Delivering Documents

Methods of filing

15 Subject to any direction on procedure issued by the Board, a party may file a document with the Board by hand delivery, fax, mail or email.

Filing by fax

16 A document filed with the Board by fax shall be considered to have been received only if the sender confirms by telephone with the Executive Director that the document was received, or the sender receives confirmation in writing from Executive Director that the document was received.

Filing by email

17 A document filed with the Board by email shall be considered to have been received only if the sender confirms by telephone with Executive Director that the document was received, or the sender receives confirmation in writing from the Executive Director that the document was received.

Date fax or email received

18 A document filed with the Board by fax or email shall be deemed to have been received as of the date it is confirmed received under rule 16 or 17, as the case may be.

Date hand delivery or mail received

19 A document filed with the Board by hand delivery or mail shall be deemed to have been received as of the date it is marked received at the Board's office.

Board directions for filing documents

20 The Board may issue a direction on procedure specifying

- (a) the number of copies of a document that must be filed;
- (b) the dimensions of particular documents; and
- (c) the software formats and media storage requirements for documents that are filed in a digital form.

Frivolous or vexatious material not accepted

21 The Board may refuse to accept any document that contains material that, in the opinion of the Board, is frivolous or vexatious.

Delivering documents to other parties

22 Unless the Board directs otherwise in a direction on procedure, documents filed with the Board shall be delivered by the Board to the other parties to the proceeding.

Part 3

Application and Response

Application

23 A party may refer a dispute under 13.3.2.1 or 13.3.6 of a Final Agreement to the Board for resolution by filing an application with the Board.

Application in Form 1

24 An application shall be in Form 1 and shall include a concise statement of the matter in dispute, the relevant facts relied on to support the application, and the names and contact information for any other party to the dispute.

Response

25 A person named in an application as a party to the dispute shall file with the Board a response to the application within 30 days after a copy of the application is delivered to them by the Board.

Response in Form 2

26 A response shall be in Form 2 and shall include a concise statement responding to the application and the relevant facts relied on to support the response.

Reply

27 The applicant may file with the Board a reply to a response within 15 days after a copy of the response is delivered to them by the Board.

Reply in Form 3

28 A reply shall be in Form 3 and shall include a concise statement responding to the response and the relevant facts relied on to support the reply.

No further reply

29 After the expiry of the 15-day period referred to in rule 27, a party shall not file a further reply or response without leave of the Board.

Consent to extend time

30 The period fixed by these rules or a direction on procedure for filing a response or a reply may be extended by consent of the parties in writing, provided that a copy of the consent is filed with the Board.

Part 4

Pre-hearing Conference and Hearing

Notice of pre-hearing conference or hearing

31 Within 14 days after the time for filing a reply under rule 27 has expired, the Board shall issue a notice to the parties either

- (a) setting a date, time and place for a pre-hearing conference, unless in the opinion of the Board a pre-hearing conference is not necessary in the circumstances; or
- (b) setting a date, time and place for a hearing.

Notice periods

32 Unless the Board directs otherwise, there shall be at least 14 days notice of a pre-hearing conference and at least 30 days notice of a hearing.

Purposes

33 The purposes of a pre-hearing conference include:

- (a) clarifying and where possible narrowing the issues in dispute;
- (b) clarifying the evidence to be presented at the hearing and estimating the time required to present the evidence;
- (c) identifying the need for additional information to be exchanged between the parties prior to the hearing and, if required, setting a timetable for information to be exchanged;
- (d) identifying any legal or jurisdictional issues to be addressed as preliminary matters at the outset of the hearing;
- (e) setting the date, time, and place for the hearing and fixing the time to be allotted to each party for presenting evidence and making other submissions;

- (f) reviewing the procedures to be followed at the hearing; and
- (g) considering any other matter that may aid in simplifying the hearing or resolving the dispute.

Chair to preside

- 34 The Chair of the Board shall preside at the hearing, and if the Chair is unable to act, the Board shall designate another member of the Board to chair the hearing.

Order at hearing

- 35 The Board shall issue a direction on procedure specifying the order at the hearing for parties to present evidence, call or question witnesses, and make opening and closing submissions.

Admissibility of evidence

- 36 The Board may accept information in a hearing that would not be admissible as evidence in a court of law.

Delivery at hearing

- 37 Despite Part 2, the Board may allow a party to file a document at a hearing by making copies of the document available at the hearing. In deciding whether to allow a party to file a document at a hearing the Board shall consider whether the filing may result in significant prejudice to any party or cause undue delays in the hearing.

Translation

- 38 At the request of a party, the Board shall make every reasonable effort to provide interpretation or translation services to enable the use of aboriginal languages at a pre-hearing conference or hearing.

Participation by telephone, etc.

- 39 A hearing of the Board may be conducted with one or more of the parties participating by means of telephone or other communications facilities, providing that such facilities will enable all persons participating in the hearing to hear each other.

Persons subject to questioning

40 Any person presenting evidence in a hearing may be subject to questioning by the parties or members of the Board.

Adjournments

41 The Board may, on its own initiative or at the request of a party, adjourn a hearing on any terms the Board considers appropriate.

Failing to disclose information

42 Failure to disclose or provide information as required by these rules or a direction on procedure, may result in the Board ruling that the information is inadmissible as evidence in the proceeding.

Record of hearing

43 Unless the Board directs otherwise, a hearing shall be recorded by the Board and the recording or any part of it may be made available to the parties on terms and conditions as may be fixed by the Board.

Publish notice of hearing

44 Unless it directs otherwise, the Board shall publish a notice of a hearing by such methods as the Board considers reasonable and effective.

Hearings public

45 Unless the Board directs otherwise, a hearing shall be open to the public.

Written submissions only

46 The Board may consider and decide an application by written submissions providing the Board is satisfied that doing so will not cause any party significant prejudice and the Board notifies the parties in writing accordingly.

Part 5

Board Appointed Experts

Appointment by Board

47 On written request of a party, or on its own initiative, the Board may, at any time, appoint one or more independent experts to inquire into and report on any question of fact or opinion relevant to an issue in the dispute.

Selection

48 The selection of an independent expert may be agreed upon by the parties, but where the parties cannot agree the Board shall make the selection.

Directions to expert

49 The Board, after seeking input from the parties, shall settle the questions to be submitted to the expert and shall give the expert appropriate directions.

Expert may inspect the heritage resource

50 The Board may direct the expert to inspect the heritage resource that is the subject of the dispute, and set terms and conditions for the inspection.

Report

51 An expert appointed by the Board shall prepare a report and provide it to the Board within such time as the Board directs. A copy of the report will be provided by the Board to each of the parties.

Report entered as evidence

52 Unless the Board directs otherwise, the report of an expert appointed by the Board shall be entered as evidence at the hearing.

Questioning expert

53 Any party may require the attendance of the expert at the hearing for questioning.

Further reports

54 The Board may direct the expert to make a further or supplementary report and rules 49 to 52 apply to that report.

Part 6

Considering Scientific Information, Traditional Knowledge and other Information

Relevance and weight

55 The Board shall determine the relevance and weight to be given to any information entered as evidence at a hearing, and there shall be no presumption that scientific information or traditional knowledge, as the case may be, should be accorded greater weight based solely on the fact that the information is, respectively, scientific information or traditional knowledge.

Part 7

Proceeding in Private

Application to prevent disclosure

56 If a party intending to enter evidence at a hearing wishes the evidence to be kept from disclosure to the public, the party may apply to the Board requesting a direction on procedure be issued to prevent the evidence from being disclosed to the public.

Direction to prevent disclosure

57 The Board may issue a direction on procedure to prevent evidence from being disclosed publicly if it is satisfied that public disclosure would:

- (a) result in a material increased risk of damage to the heritage resource in dispute, or to related heritage resources, or
- (b) constitute a material violation of the cultural value system of the affected Yukon First Nation.

Private hearings, etc.

58 A direction on procedure issued under rule 57 may provide for the conduct of private hearings and the restriction of public access to evidence, and such other matters as the Board determines appropriate.

Burden of proof

- 59 On an application under this Part the burden of proof lies on the applicant to establish that public disclosure of the evidence should be prevented.

Part 8**Decisions and Referrals****Decisions by consensus or majority**

- 60 The Board shall seek to make its decisions by consensus, but in the absence of consensus, decisions will be by a majority of the members hearing the matter.

Reasons

- 61 Decisions of the Board shall be made as soon as is practicable and shall be in writing with reasons.

Interim order

- 62 The Board may make an interim order requiring a party or parties to take reasonable measures to safeguard or preserve the heritage resource that is the subject of the dispute pending the Board making its final decision on the application.

Referral to Dispute Resolution Board

- 63 If the Board is unable to reach a majority decision in the circumstances referred to in 13.3.7 of a Final Agreement, the Board shall notify the parties and the Dispute Resolution Board in writing accordingly, and the matter shall be referred to the Dispute Resolution Board for resolution.



YHRB Application #: _____

Yukon Heritage Resources Board

Yukon Heritage Resources Board Rules of Procedure

Form 1

APPLICATION

PART 1: APPLICANT INFORMATION

APPLICANT: _____

CONTACT INFORMATION

Mailing Address:

Street Address or P.O. Box _____

City/Town/Village _____

Postal Code _____

Contact Person: _____

Position: _____

Phone: _____ Fax: _____

Alternate Phone: _____ Email: _____

Contact Method Preference: email fax mail

PART 2: HERITAGE RESOURCE INFORMATION

Note: Confidential information in support of the application should be described separately in Schedule A.

Name/Type of Heritage Resource(s) in dispute: _____

Please provide a description of the Heritage Resource(s):

Please provide information on how the heritage resource(s) was acquired

Common or Traditional Location Name _____

Was object found in an area of overlapping traditional territories? If yes, please list the other traditional territories: _____

National Topographic Series Map Sheet #: _____

Has the object been moved from where it was found? If yes, please provide current location:

Please provide a concise statement of the relevant facts relied on to support this application.

ADD ADDITIONAL SPACE TO THIS PART OF THE FORM (if required)

Traditional knowledge and scientific information is encouraged to support this application

Are you providing supporting documentation? If yes, please attach the documents.

PART 3: RESPONDENT INFORMATION

Please provide the names and contact information for all other parties to the dispute:

RESPONDENT: _____

CONTACT INFORMATION

Mailing Address

Street Address or P.O. Box: _____

City/Town/Village: _____

Postal Code: _____

Contact Person: _____

Position: _____

Phone: _____ Fax: _____

Alternate Phone _____

CERTIFICATION

I certify that the information provided is true and correct to the best of my knowledge and belief.

Signature - Authorized
Representative for the Applicant

Date

YHRB Application #: _____

APPLICATION – SCHEDULE A

CONFIDENTIAL INFORMATION



YHRB Application #: _____

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Form 2

RESPONSE

PART 1: RESPONDENT INFORMATION

RESPONDENT: _____

CONTACT INFORMATION

Mailing Address:

Street Address or P.O. Box _____

City/Town/Village _____

Postal Code _____

Contact Person: _____

Position: _____

Phone: _____ Fax: _____

Alternate Phone: _____ Email: _____

Contact Method Preference: email fax mail

PART 2: HERITAGE RESOURCE INFORMATION

Note: Confidential information in support of the response should be described separately in Schedule A.

Please provide any supplementary information relating to the description of the Heritage Resource(s) in dispute:

YHRB Application #: _____

Please provide a concise statement responding to the application.

Traditional knowledge and scientific information is encouraged to support this application

Are you providing supporting documentation? If yes, please attach the documents.

PART 3: CERTIFICATION

I certify that the information provided is true and correct to the best of my knowledge and belief.

Signature – Authorized Representative
for the Respondent

Date

YHRB Application #: _____

RESPONSE – SCHEDULE A

CONFIDENTIAL INFORMATION



YHRB Application #: _____

Yukon Heritage Resources Board

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Form 3

REPLY

PART 1: **REPLY**

Name of Party submitting the Reply: _____

CONTACT INFORMATION

Mailing Address:

Street Address or P.O. Box _____

City/Town/Village _____

Postal Code _____

Contact Person: _____

Position: _____

Phone: _____ Fax: _____

Alternate Phone: _____ Email: _____

Contact Method Preference: email fax mail

PART 2: **HERITAGE RESOURCE INFORMATION**

Note: Confidential information in support of the reply should be described separately in Schedule A.

Please provide a concise statement in reply to the response set out in Form 2.

YHRB Application #: _____

PART 3: CERTIFICATION

I certify that the information provided is true and correct to the best of my knowledge and belief.

Signature - Authorized
Representative for the Applicant

Date

YHRB Application #: _____

REPLY – SCHEDULE A

CONFIDENTIAL INFORMATION