

CHAPTER 36: ADMINISTRATION OF JUSTICE

- 36.1 GENERAL
 - 36.2 ENFORCEMENT
 - 36.3 SANCTIONS
 - 36.4 ALTERNATIVE MEASURES AND EXTRA-JUDICIAL MEASURES
 - 36.5 PROSECUTIONS
 - 36.6 ALTERNATIVE DISPUTE RESOLUTION
 - 36.7 TERRITORIAL COURT
 - 36.8 SUPREME COURT OF THE NWT
 - 36.9 PROCEDURES
 - 36.10 ADMINISTERING SANCTIONS
 - 36.11 APPEAL, REHEARING AND REVIEW OF DECISIONS
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36.1 GENERAL¹

36.1.1 The Dehcho Government shall provide for the independence of the Dehcho Justice Council² when exercising its jurisdiction under X in the Dehcho Government chapter (*reference to the Dehcho Government being a legal entity with the legal capacity of a natural person*) in relation to the appointment, functions, compensation, accountability and financial management of the Dehcho Justice Council.

36.1.2 Dehcho Law may provide that the Dehcho Justice Council:

- a) administer sanctions created under 36.3.4;
- b) administer alternative measures and extra-judicial measures referred to in 36.4;
- c) perform the dispute resolution functions referred to in 36.6;
- d) hear appeals and conduct rehearings referred to in 36.11; and
- e) exercise other duties and functions assigned to it under Dehcho Law.

36.2 ENFORCEMENT

3

36.2.1 Dehcho Law may provide for:

- a) the appointment of officers to enforce Dehcho Law; and

¹ This section is not in the GNWT proposed draft.

² DFN requesting a Dehcho Court. Government reviewing option,

³ GNWT proposes new clause: 36.1.1 The Dehcho Government is responsible for the enforcement of Dehcho Laws.

- b) powers of enforcement, provided such powers shall not exceed, those provided by NWT Law or Federal Law for officers enforcing similar laws in the NWT.

4

5

36.3 SANCTIONS

- 36.3.1 Subject to 36.3.2, 36.3.3 and 36.3.4, the Jurisdictions of the Dehcho Government set out in the Dehcho Agreement include the jurisdiction to provide for the imposition of a term of imprisonment or a fine, or both, as a consequence of a violation of Dehcho Law.
- 36.3.2 Dehcho Law may provide for maximum fines or penalties that are no greater than those which may be imposed for comparable regulatory offences punishable on summary conviction offenses under Federal Law or Territorial Law.
- 36.3.3 Where there is no comparable regulatory offence under Federal Law or Territorial Law, the Dehcho Law may provide for a maximum fine or penalty that is no more than the greater between the general penalty provision for the summary conviction offences under the Criminal Code of Canada or under NWT Law.
- 36.3.4 Notwithstanding 36.3.2 and 36.3.3, a Dehcho Law in respect of taxation may provide for a fine or penalty that is greater than the limits referred to in 36.3.2 and 36.3.3 where there is an agreement to that effect made in accordance with 37.3 in the Taxation Chapter.
- 36.3.5 Dehcho Law may provide other sanctions that are consistent with the culture and values of the Dehcho Dene, provided that such sanctions shall not be imposed on an offender without his or her consent. Where a victim's

⁴ GNWT proposes new clause: 36.1.3 Any Dehcho Law pursuant to 36.1.2 shall provide for training standards and accountability standards for enforcement officers that are in accordance with generally recognized standards for enforcement officers in other Canadian jurisdictions.

⁵ GNWT proposed clause:

36.2 LEGAL AID

36.2.1 The Dehcho Government has Jurisdiction in the Settlement Area with respect to the provision of Legal Aid to persons accused of violating Dehcho Laws.

36.2.2 A Dehcho Law pursuant to 36.2.1 shall include criteria for determining who is eligible to receive Legal Aid from the Dehcho Government.

“Legal Aid” means a program providing access to legal services [by lawyers].

participation is required for the sanction to be carried out, the victim's consent shall be required.⁶

36.4 ALTERNATIVE MEASURES AND EXTRA-JUDICIAL MEASURES

- 36.4.1 The Dehcho Government may establish with respect to the enforcement of Dehcho Law:
- a) alternative measures similar to those provided for in the Criminal Code; and
 - b) extra-judicial measures similar to those provided for in the *Youth Criminal Justice Act* (Canada),
- to deal with persons accused of offences created under Dehcho Law.
- 36.4.2 The Parties may enter into discussions for the participation of the Dehcho Government in the delivery of pre-charge and post-charge alternative measures or extra-judicial measures established pursuant to Federal Law or NWT Law.

36.5 PROSECUTIONS

- 36.5.1 The Dehcho Government is responsible for the prosecution of violations of a Dehcho Law and the conduct of other matters arising out of a Dehcho Law before the courts of the NWT.⁷ The Dehcho Government shall:
- a) appoint persons responsible for the prosecution of violations of Dehcho Law or enter into agreements with existing prosecution services; and
 - b) ensure that the prosecutorial services are consistent with standards of a public prosecutor for the prosecution of similar types of offences in Canada.

36.6 ALTERNATIVE DISPUTE RESOLUTION

- 36.6.1 The Dehcho Government may provide alternative dispute resolution services, including those relying on traditional methods and approaches, as an alternative to litigation in civil matters, on the condition that the parties to the dispute agree to use those services.
- 36.6.2 Nothing provided in 36.6.1 restricts the right of any person to resolve a dispute through the courts.

⁶ GNWT propose this last sentence as a separate clause.

⁷ Highlighted text not in GNWT draft

36.6.3 Nothing in the Dehcho Agreement precludes a dispute resolution service provided by or for the Dehcho Government from being an extra-judicial procedure as contemplated by Part 19 of the Rules of the Supreme Court of the NWT as of November 2002.

36.7 TERRITORIAL COURT⁸

36.7.1 ⁹The Territorial Court shall hear and determine civil matters arising under Dehcho Law if the matter would have been within the jurisdiction of the Territorial Court under Federal Law or NWT Law.

36.7.2 ¹⁰A judge of the Territorial Court or a Justice of the Peace shall hear and determine violations of Dehcho Law if the matter would have been within the jurisdiction of the Territorial Court or a Justice of the Peace, as the case may be, under Federal Law or NWT Law.

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⁸ GNWT will require language in the Implementation Plan to consider potential future incremental costs of making use of the NWT court system when adjudicating Dehcho Laws.

⁹ GNWT propose additional wording: Where no Dehcho Court has been established pursuant to 36.7.1,

¹⁰ Same as above

¹¹ GNWT propose new section:

36.7 DEHCHO COURT

36.7.1 Subject to 36.7.5, the Dehcho Government has the Jurisdiction in the Settlement Area to establish, maintain, organize and operate a Dehcho Court to:

- a) adjudicate prosecutions of violations of Dehcho Laws;
- b) adjudicate civil disputes arising under Dehcho Laws provided the matter would be within the jurisdiction of the Territorial Court if a similar dispute arose under NWT Law; and
- c) review administrative decisions of Dehcho Government or Dehcho Government institutions.

36.7.2 Nothing in Chapter 36 provides the Dehcho Court established pursuant to 36.7.1 with inherent jurisdiction.

36.7.3 Dehcho Laws pursuant to 36.7.1 shall:

- a) require that the Dehcho Court and its adjudicators adhere to the principles of judicial independence, impartiality and fairness;
- b) set out the qualifications, that have been approved by the GNWT, for adjudicators;
- c) set out the procedures for the appointment, supervision, discipline and removal of adjudicators in the Dehcho Court; and
- d) set out the remuneration of Dehcho adjudicators.

36.7.4 For greater certainty, nothing in 36.7.3, provides the GNWT a role in the appointment of Dehcho adjudicators.

36.7.5 The Dehcho shall obtain the GNWT's approval of the structure and procedures of the Dehcho Court prior to enacting a Dehcho Law pursuant to 36.7.1.

36.8 SUPREME COURT OF THE NWT

36.8.1 The Supreme Court of the NWT shall hear appeals of decisions of the Territorial Court or Justices of the Peace in relation to Dehcho Law.

36.8.2 ¹²The Supreme Court of the NWT shall hear and determine:
a) civil matters arising under Dehcho Law; and
b) challenges to Dehcho Law,
if the matter would have been within the jurisdiction of the Supreme Court of the NWT under Federal Law or NWT Law.

36.8.3 In addition to any other remedy available to it, the Dehcho Government may enforce a Dehcho Law by applying to the Supreme Court of the NWT for an injunction in accordance with the Rules of the Supreme Court.

36.9 PROCEDURES

36.9.1 Dehcho Law may provide for procedures to be used in the courts by adopting:¹³

- a) the summary conviction procedures of Part XXVII of the Criminal Code; or
- b) NWT Law relating to proceedings in respect of offences that are established by NWT Law, with such modifications as may be required.

36.9.2 Any proceeding under 36.7 shall follow the procedures of the Territorial Court.

36.9.3 Any proceeding under 36.8 shall follow the Rules of the Supreme Court of the NWT.

14

36.7.6 Notwithstanding 36.7.1.a) where a Dehcho Law provides a term of imprisonment as a sanction for the violation of that Dehcho Law, a person accused of violating that Dehcho Law can choose to be tried in the NWT court system rather than the Dehcho Court for the alleged offence.

36.7.7 The Supreme Court of the NWT or the Territorial Court, as appropriate, shall have exclusive jurisdiction to hear appeals of decisions from the Dehcho Court.

¹² GNWT propose new wording: Where no Dehcho Court has been established pursuant to 36.7.1,....

¹³ GNWT alternate wording: Dehcho Law shall adopt:

¹⁴ GNWT proposes new section:

36.11 DEHCHO CORRECTION SERVICES

36.11.1 The Dehcho Government has Jurisdiction in the Settlement Area for the establishment, maintenance, organization, administration and regulation of Correction Services for individuals convicted of offences under Dehcho Law.

36.10 ADMINISTERING SANCTIONS¹⁵

- 36.10.1 The Government of the Northwest Territories is responsible for administering fines or terms of probation and imprisonment imposed by the Territorial Court or the Supreme Court of the NWT for violations of Dehcho Law in the same manner as those imposed under Federal Laws and NWT Laws.
- 36.10.2 The Government of the Northwest Territories shall pay to the Dehcho Government the proceeds of fines imposed by the Territorial Court or the Supreme Court of the NWT for violations of Dehcho Law.
- 36.10.3 The Dehcho Government is responsible for administering sanctions created under 36.3.4. and for the alternative measures established under 36.4.1.

36.11 APPEAL, REHEARING AND REVIEW OF DECISIONS

- 36.11.1 Dehcho Law:
- a) shall provide for a right of appeal, or a right to seek a rehearing, to persons who are directly affected by decisions of the Dehcho Government and

36.11.2 The provision of Correction Services pursuant to a Dehcho Law pursuant to 36.11.1 shall comply with generally accepted Canadian Correction Service standards.

36.11.3 For greater certainty, where an individual has been convicted of the violation of a Dehcho Law in Territorial Court or Supreme Court of the NWT, and the Dehcho Government has enacted Laws pursuant to 36.11.1 that provides Correction Services to administer sanctions involving a term of imprisonment, Dehcho Correction Services will be used to administer the sanction.

“Correction Services” means services provided to administer sanctions pursuant to a Dehcho Law and includes the establishment of Correctional Facilities and the provision of probation services.

“Correctional Facilities” means facilities used to administer sanctions pursuant to Dehcho Laws and includes healing centres, group homes, and half-way houses.

¹⁵ GNWT proposes alternative clauses: 36.12 ADMINISTERING SANCTIONS

36.12.1 The Dehcho Government is responsible for administering sanctions pursuant to 36.3.5.

36.12.2 Where no Dehcho Court has been established pursuant to 36.7.1, the GNWT is responsible for collecting fines imposed for a violation of Dehcho Law, and the GNWT shall pay to the Dehcho Government the proceeds of such fines.

36.12.3 If a Dehcho Court is established pursuant to 36.7.1, the Dehcho Court is responsible for collecting fines imposed for a violation of Dehcho Law.

36.12.4 Where no Dehcho Correction Services has been established pursuant to 36.11.1, the GNWT will administer probation and imprisonment sanctions for a violation of Dehcho Law, in accordance with Territorial Law or Federal Law. ¹⁵

36.12.5 If Dehcho Correction Services have been established pursuant to 36.11.1, the Dehcho Correction Services will administer probation and imprisonment sanctions for violations of Dehcho Law.

Institutions of the Dehcho Government made pursuant to Dehcho Law¹⁶;
and

- b) may establish the appropriate appeal and rehearing procedures and mechanisms.

36.11.2 The Supreme Court of the NWT shall have exclusive jurisdiction to hear applications for judicial review of the decisions of the Dehcho Government or Institutions of the Dehcho Government, except in relation to tax matters where the Parties otherwise agree in a tax agreement concluded pursuant to 37.3 of the Taxation chapter

¹⁶ The DFN agrees with the basic concept but questions why this clause is so broad. Canada to consider.