

Dehcho Government Jurisdiction over Lands and Resources

Exclusive Jurisdiction: General

The Dehcho Agreement will provide that the Dehcho Government will have exclusive power to enact laws in relation to the following matters:

- (a) administration of Dehcho affairs and operation and internal management of the Dehcho Government;
- (b) management and administration of rights or benefits which are realized pursuant to the Dehcho Agreement by persons enrolled under the Dehcho Agreement, and which are to be controlled by the Dehcho Government; and
- (c) matters ancillary to the foregoing.

Jurisdiction on Dehcho Ndehe

The Dehcho Agreement will provide that the Dehcho Government will have jurisdiction in relation to the management, administration, government, control, regulation, use and protection of Dehcho Ndehe. This jurisdiction includes jurisdiction over foreshore and waterbeds where these areas form part of Dehcho Ndehe.

For clarity, jurisdiction on Dehcho Ndehe includes:

- a. the creation of interests in Dehcho Ndehe;
- b. procedures for the transfer or disposition of interests in Dehcho Ndehe;
- c. procedures for encumbering interests in Dehcho Ndehe;
- d. expropriation of interests in Dehcho Ndehe for community purposes;
- e. zoning and community land use planning;
- f. access to Dehcho Ndehe subject to article __ ;
- g. trespass on Dehcho Ndehe;
- h. negotiation of impact benefit agreements;
- i. surface and sub-surface resources, including royalties;
- j. renewable and non-renewable resources, including mineral claims;

- k. rivers, lakes and waters;
- l. deposit of waste, pollution control and enforcement;

The Dehcho Agreement will provide that the Dehcho Government may cause surveys to be made of Dehcho Ndehe in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*.

Renewable Resources:

The Dehcho Agreement will provide that the Dehcho Government will have jurisdiction in relation to renewable resources situated on, under or above Dehcho Ndehe, including protection, conservation, management, use, development, and disposition of renewable resources;

This jurisdiction includes:

- a. preservation and management of wildlife, including game, birds, fur bearing animals, and their natural habitat;
- b. preservation and management of fish and their natural habitat;
- c. hunting and trapping of wildlife; and
- d. preservation and management of the forest resource, including forest enhancement and pest control.

With respect to migratory birds, the Dehcho Government and Canada shall cooperate to establish appropriate co-management arrangements to address conservation concerns.

Non-Renewable Resources:

The Dehcho Agreement will provide that the Dehcho Government will have jurisdiction on Dehcho Ndehe in relation to non-renewable resources, including but not limited to:

- a. coal, native sulphur, construction stone, carving stone, limestone, soapstone, marble, gypsum, shale, clay, sand, gravel, volcanic ash, earth, ochre, marl or peat;
- b. all substances regulated under the *Territorial Coal Regulations*, the *Territorial Dredging Regulations* or the *Territorial Quarrying Regulations*;
- c. oil and oil shales;
- d. natural gas and includes all substances, other than oil, that are produced in association with natural gas;
- e. crude petroleum regardless of gravity produced at a well-head in liquid form; and

- f. any other hydrocarbons, including hydrocarbons that may be extracted or recovered from surface or subsurface deposits, including deposits of oil sand, bitumen, bituminous sand, oil shale and other types of deposits.

Without limiting the generality of the above, the jurisdiction referred to above includes the authority to make laws in relation to the non-renewable resources listed therein respecting:

- a. management, exploration, exploitation, use, development and disposition of those resources;
- b. issuance of permits and leases for development in accordance with the Dehcho Land Use Plan and disposition of those resources and regulation of conditions, including suspension and revocation of those permits or leases; and
- c. control of administrative functions including revenue collection in relation to permits or leases for exploration, development and disposition of resources.

Conflict of Laws

Except as otherwise provided in this Agreement, in the event of a conflict between Dehcho laws in relation to Dehcho Ndehe and other laws, Dehcho law shall prevail to the extent of the conflict.

Jurisdiction Outside Dehcho Ndehe

Consistent with the Dehcho Government's generalized interest of xx% in Settlement Area lands outside of Dehcho Ndehe, the Dehcho Government and the Crown will have shared management and administration of surface and subsurface lands and resources in the Dehcho Settlement Area, including land use planning, environmental assessment, and regulatory approval. The management and administration of lands and resources in Dehcho Ndehe and off Dehcho Ndehe will be the responsibility of the Dehcho Resource Management Authority (DCRMA).

For transboundary purposes, the functions of the DCRMA will be harmonized with the Mackenzie Valley Environmental Impact Review Board (MVEIRB) and the Mackenzie Valley Land and Water Board (MVLWB), established under the *Mackenzie Valley Resource Management Act*.

General Provisions:

The Dehcho Agreement and corresponding legislation, the *Dehcho Act*, will establish a DCRMA, which will be an independent quasi-judicial body of public government.¹ The primary purpose and function of the DCRMA shall be the integrated management, administration and regulation of land use planning, environmental assessment and environmental impact review, and land and water regulation in the Dehcho Settlement Area, outside of community municipal boundaries.

Transboundary development means: developments that are located within the Dehcho Settlement Area and an adjacent management area(s); are wholly located within the Dehcho Settlement Area but may have an impact on an adjacent management area(s); or, are located wholly located outside the Dehcho Settlement Area but may have an impact on the Dehcho Settlement Area, as determined by the DCRMA and government.

The DCRMA will exclusively manage, administer, and regulate lands, resources and developments that occur wholly within the Dehcho Settlement Area, and which do not have an impact on adjacent management areas.

The DCRMA will not participate in the management, administration and regulation of lands and resources wholly located outside the Dehcho Settlement Area, and which have no effect on the Dehcho Settlement Area.

While primary jurisdiction will remain with the Dehcho Government with respect to lands and resources within Dehcho Ndehe, and with Canada with respect to lands and resources outside Dehcho Ndehe, the DCRMA will have authority to manage and administer the following surface and subsurface lands and resources:

¹ Government refers to the Dehcho Government and the Government of Canada.

Land Use Planning: 5-year review and approval cycle; monitoring for conformity, enforcement, amendments and exceptions;
Oil and gas;
Mines and minerals;
Leases and dispositions;
Environmental Assessment and Regulatory Approval;
Wildlife and wildlife habitat;
Renewable Resources;
Tourism authorizations;
Cultural and Heritage Resources;
Water;
Fisheries;
Existing surface and subsurface third-party interests;
Parks;
Regional protected areas

CHAPTER GP: GENERAL PROVISIONS

To be Reviewed by Main Table Feb. 4, 2010

GP.1 PURPOSE AND SCOPE OF THE AGREEMENT-IN-PRINCIPLE

GP.1.1

This agreement is an Agreement-in-Principle in which the Parties agree upon the structure, the general direction and the principles that will guide the drafting of the Dehcho Agreement. It is also an agreement, where specified, that certain actions will be taken by the Parties.

GP.1.2

The Dehcho Agreement will not be limited to the provisions of this Agreement but will remain substantially in conformity with this Agreement.

GP.1.3

This Agreement does not create legal obligations binding the Parties, nor does it infringe on the obligations or existing rights of the Parties and will not be construed so as to abrogate, derogate or recognize any aboriginal, treaty or any other right.

GP.2 NATURE OF THE DEHCHO AGREEMENT

GP.2.1 On the Effective Date the Dehcho Agreement will be a treaty and will have the legal protection of a “land claims agreement” under sections 25 and 35 of the *Constitution Act, 1982*. The term “land claims agreement” is used herein because that term is used in the *Constitution Act, 1982*, and not because the Dehcho Dene “claim” any land within the Dehcho Territory.

GP.3 RECOGNITION OF ABORIGINAL AND TREATY RIGHTS AND CERTAINTY

GP.3.1

The Aboriginal and Treaty rights of the Dehcho Dene, including Aboriginal title and rights under Treaties 11 and 8, will be recognized, affirmed and continued by the Dehcho Agreement and the implementation legislation. The Dehcho Agreement will clarify and build upon Treaties 8 and 11, but will not replace them or result in the restriction or extinguishment of any Treaty or Aboriginal rights. From then on, these rights will also be protected by the Dehcho Agreement. They will have the effects and will be exercised in the manner provided for in the Dehcho Agreement.

GP.3.2

The historical and cultural importance of Treaties 11 and 8 will be recognized in the Dehcho Agreement. The Dehcho Agreement will provide that annual meetings will be

held to affirm this importance, to make treaty payments, and to recognize and affirm the importance of the Dehcho Agreement.

GP.3.3

The Dehcho Agreement will provide that Dehcho Dene will continue to hold Treaty and Aboriginal harvesting rights throughout their respective Treaty areas and traditional harvesting areas.²

GP.3.4

The rights of the Crown covered by the Dehcho Agreement will, from then on, be exercised with respect to the lands and resources of the Dehcho in accordance with the provisions of the Dehcho Agreement.

GP.3.6

The Dehcho Agreement will not seek to exhaustively enumerate or replace the Aboriginal and treaty rights, including Aboriginal title and rights under Treaties 11 and 8, of the Dehcho Dene with Dehcho Agreement rights. It will ensure that these rights, as well as the rights it creates, receive protection under section 35(1) of the *Constitution Act, 1982*.

GP.3.7

Self-government, as an inherent right, is included among the Aboriginal rights of the Dehcho Dene. It will have the effect and be exercised collectively by the Dehcho Dene and by each Dehcho First Nation community according to the manner set out in the Dehcho Agreement within the Dehcho Settlement Area and, when the Dehcho Agreement so provides, outside of the Dehcho Settlement Area.

GP.3.8

Self-determination as an inherent right, is also included among the Aboriginal rights of the Dehcho Dene. It will have the effect and be exercised collectively by the Dehcho Dene according to the manner set out in the Dehcho Agreement within the Dehcho Settlement Area and, when the Dehcho Agreement so provides, outside of the Dehcho Settlement Area.

GP.4 DEHCHO DENE RIGHTS AND BENEFITS

GP.4.1

The Dehcho Agreement will include measures for the protection and promotion of the Dene and Metis cultures and languages, including Dene Zhatie.

GP.4.2

Nothing in the Dehcho Agreement will prevent a Dehcho First Nation community or their Citizens from participating in the programs of the governments of Canada and the NWT

² Canada says this provision may be too broad.

or from benefiting from them in accordance with the general criteria established for these programs, except where the Dehcho Agreement provides otherwise.

GP.4.3

Nothing in the Dehcho Agreement will prevent the Dehcho Government or a Community Government from participating in the programs of the governments of Canada and the NWT or from benefiting from them in accordance with the general criteria established for these programs, except where the Dehcho Agreement provides otherwise.

GP.4.4

The *Indian Act* will not apply to Dehcho Citizens, except for the purpose of determining whether or not a Dehcho Citizen is an “Indian” under that Act and for the administration of the property of any person where it was being administered by the Minister of Indian Affairs and Northern Development under that Act before the effective date.

GP.4.5

Nothing in the Dehcho Agreement will be construed to affect hunting, trapping or fishing rights under a Natural Resources Transfer Agreement, or under treaty, or pursuant to custom, in British Columbia of any person who is eligible to be enrolled as a Dehcho Citizen.

GP.4.6

Nothing in the Dehcho Agreement will be interpreted so as to limit or extend any authority of the Parties to negotiate and enter into international, national, interprovincial, and inter-territorial agreements, but this will not prevent the Dehcho Government from entering into agreements with a federal, provincial or territorial government for the provision of specific programs and services.

GP.5 TERRITORIAL APPLICATION

GP.5.1

The provisions of the Dehcho Agreement will apply in the Northwest Territories, except where otherwise provided in the Agreement.

GP.5.2

Neither the Dehcho Agreement nor the implementation legislation will have the effect of infringing on the rights of the Dehcho Dene as regards land located outside of the limits of the Northwest Territories.

GP.5.2

The status of Dehcho Dene rights and interests in the Yukon Territory, British Columbia and Alberta will be addressed prior to the signing of the Dehcho Agreement.

GP.5.3

The boundary and overlap issues between the Dehcho First Nations and the Acho Dene Koe, Sahtu, Akaitcho and Dene Tha' will be considered prior to the signing of the Dehcho Agreement.

GP.6 CHARTER OF RIGHTS AND FREEDOMS

GP.6.1

The *Canadian Charter of Rights and Freedoms* will apply to the Dehcho Government in respect of all matters within its authority.

GP.7 OTHER ABORIGINAL PEOPLES

GP.7.1

No provision in the Dehcho Agreement will be construed to

- (a) recognize or provide any Aboriginal or treaty rights for any Aboriginal people other than Dehcho Dene; or
- (b) affect
 - (i) any treaty right of any Aboriginal people other than the Dehcho Dene, where the right existed before the provision of the Agreement was in effect, or
 - (ii) any Aboriginal rights of any Aboriginal people other than the Dehcho Dene..

GP.7.2

Despite any other provision in the Dehcho Agreement, the Dehcho Government may, pursuant to an agreement with another Aboriginal people, agree to share with that Aboriginal people rights held by Dehcho Citizens, the Dehcho Dene or the Dehcho Government under the Dehcho Agreement, provided that no such sharing agreement will affect the rights held by persons or peoples who are not party to that sharing agreement.

GP.8 CONSULTATION ON LEGISLATION

GP.8.1

Canada and the GNWT will consult the Dehcho First or, when it is established, the Dehcho Government, in the planning of the institutions established by or under the Dehcho Agreement and the preparation of the settlement legislation and other legislation proposed to implement the provisions of the Agreement, including the preparation of any amendments to such legislation.

CHAPTER HC: HARVESTER COMPENSATION¹

HC.1 DEFINITIONS

HC.1.1 The following definitions apply in this chapter.

“compensation” means a cash payment, either lump sum or a periodic payment, or non-monetary compensation such as replacement or substitution of damaged or lost land use², property or equipment, or relocation or transportation of Dehcho Citizens or equipment to a different harvesting locale or a combination of such elements.

“developer” means a Person or government engaged in a project, including a community, Aboriginal, territorial or federal government.

“project” does not include a wildlife harvesting or cultural activity.

“Person” means an individual, sole proprietorship, partnership, corporation, cooperative or a limited company.

“Traditional Activities Advocate” means a person, funded by the Parties³, to act as an independent advocate for the protection and enhancement of Dehcho Citizens’ harvesting activities.

“harvesting activities”⁴ means the following sustainable, traditional⁵, and renewable resource harvesting activities by Dehcho Citizens:

- a) hunting of mammals and birds;
- b) trapping of fur-bearing animals;
- c) fishing for freshwater and anadromous fish;
- d) gathering of traditional Dehcho Dene foods;
- e) gathering of plants, fish or wildlife used for medicinal or ceremonial purposes;⁶

¹ GNWT feels that the focus of the chapter is on wildlife harvesting and the difficulties proving damages etc. concerning that resource. Other matters such as damage to plants, cultural activities, etc. may still be pursued – but do not think they should enjoy the advantage of absolute liability. The chapter was designed to assist, for the most part, trappers in pursuit of their livelihood.

² Canada considers including land as compensation problematic and inconsistent with other agreements.

³ Canada and GNWT are not yet prepared to commit to funding for this position.

⁴ Canada asks whether the protection of sacred and cultural sites cannot be achieved through land selection and/or land use planning.

⁵ Canada suggests replacing “sustainable, traditional” with “Subsistence”.

⁶ Canada sees this as unacceptable.

- f) use or construction of shelter or facilities essential to the pursuit of the above activities, but not including Parks Canada operational facilities; or
- g) access to lands or waters for any of the above activities.⁷

HC.2 GENERAL

HC. 2.1 The purpose⁸ of this chapter is to provide for the protection and enhancement of harvesting activities by Dehcho Citizens, and to compensate persons who practice harvesting activities in circumstances where loss or damage has occurred in an area used for such activities as a result of actions or omissions by a Developer.

HC. 2.2 A Developer is liable absolutely, without proof of fault or negligence, for the following losses and damage, suffered by a Dehcho Citizens or a Dehcho First Nation community as a result of a project wholly or partly in the Dehcho Settlement Area in which that Developer is engaged:

- (a) loss or damage to personal property or equipment used in harvesting activities, or to wildlife harvested;
- (b) present and future loss of income from harvesting activities; and
- (c) present and future loss of harvesting⁹ activities.

HC. 2.3 Notwithstanding section H.2.2, a Developer is not liable where that Developer establishes that the loss or damage was wholly the result of an Act of God, war, hostilities, civil war or insurrection.

HC. 2.4 Dehcho Citizens, Regulatory Authorities¹⁰ and the Dehcho Government shall make reasonable efforts to mitigate any losses or damage referred to in XX.2.1.

HC. 2.5 A claim for compensation under this chapter shall be drafted by a Dehcho Citizen, who may request the assistance of the Traditional Activities Advocate.

HC. 2.6 If agreement has not been reached between a Developer and a Dehcho Citizen or the Dehcho Government with respect to a claim for compensation within 30 days of the submission of a claim in writing by the Dehcho Citizen or the Dehcho Government, either party may refer the dispute for resolution in accordance with chapter DR xx¹¹.

⁷ Is this dealt with in Access?

⁸ Canada prefers not to have ‘purpose’ sections in AiP chapters.

⁹ Canada suggests “harvested” instead of “harvesting”.

¹⁰ Canada questions whether Regulatory Authorities should be included. They are not included in other agreements.

¹¹ Need to clarify whether a party could still litigate or whether DR is only option.

HC. 2.7 Following a reference under XX2.4, if an arbitrator is appointed under XXX, and that arbitrator determines the Developer is liable under HC.2.2, that arbitrator shall determine what compensation to award, and may also

- (a) provide for future review of the compensation award, if appropriate;
- (b) recommend that the Developer, the Dehcho Citizen or the Dehcho Government¹² take or refrain from taking certain action in order to mitigate further loss or damage; and
- (c) on review of a previous award, determine whether the Developer, the Dehcho Citizen or the Dehcho Government has adopted adequate mitigative recommendations made under that previous award.

HC. 2.8 A Dehcho Citizen or the Dehcho Government that refers a dispute respecting a claim for compensation under this chapter for resolution in accordance with chapter xxx, cannot exercise any right they might have otherwise had to resolve the dispute in a court.

HC. 2.9 The Dehcho Government and a Developer may enter into an agreement that replaces or modifies the Developer's liabilities and obligations under this chapter. Any such agreement will be binding on Dehcho Citizens.

13

HC. 2.10 A Developer will not be liable under HC. X for losses suffered by a Dehcho Citizen or the Dehcho Government as a result of the establishment of a National Park, National Park Reserve, or Protected Area or any lawful activity within the National Park or Protected Area, except for direct loss or damage to property or equipment in X (Wildlife Harvesting chapter) pursuant to the Final Agreement.

HC. 3 TRADITIONAL ACTIVITIES ADVOCATE

HC.3.1 In addition to the duties described in HC.2.4, the Traditional Activities Advocate will issue annual reports on the state of harvesting and traditional activities in the Dehcho Settlement Area. The reports will identify threats and potential threats to harvesting and traditional activities and will make recommendations to Developers and the appropriate Governments for reducing, mitigating or eliminating such threats. The TAA will issue at least one such report per year.¹⁵

¹² Note that Regulatory Authorities are not mentioned in this clause.

¹³ Canada wants to add: "Legislation may provide for limits of liability of Developers, the burden of proof on claimants, limitation periods for making claims and any other matters not inconsistent with the Final Agreement."

¹⁵ This clause may be more appropriate in a different chapter of the AiP.

To be reviewed by Main Table - November, 2009

CHAPTER W: WILDLIFE HARVESTING

W.1.0	GENERAL
W.2.0	GIFTING AND TRADING
W.3.0	ACCESS
W.4.0	CONSULTATION
W.5.0	WILDLIFE MANAGEMENT
W.6.0	EMERGENCIES

W.1.0	GENERAL
W.1.1	Dehcho Citizens have ² the right to Harvest all species of Wildlife ³ , including Furbearers, throughout their respective treaty areas ⁴ at all times of the year. ⁵
W.1.2	Dehcho Citizens have the exclusive right to harvest Furbearers in Dehcho Ndehe and Dehcho community lands at all times of the year. This right does not preclude the right of others to harvest Furbearers in Dehcho Ndehe or Dehcho community lands with the consent of the Dehcho Government.
W.1.3	The right of the Dehcho Citizens under W.1.1 does not deny any right under a land claims agreement of another Aboriginal people to harvest Furbearers outside Dehcho Ndehe or on lands vested in that other Aboriginal people. ⁶
W.1.4	Subject to W.1.5 and W.1.6, the right recognized in W.1.1 may be limited or restricted ⁷ : a) by provisions of the Final Agreement; or b) for purposes necessary for public health and public safety. ⁸

² Everywhere the chapter uses “Dehcho Citizens have the right” Canada prefers “The Dehcho Agreement will recognize that”.

³ Wildlife to be defined to include eggs of non-migratory birds.

⁴ Respective treaty areas will be delineated by maps. “Respective treaty areas” is DFN’s preferred wording. Canada prefers “Dehcho Settlement Area” instead of “respective treaty areas” throughout chapter.

⁵ Wildlife harvesting by Dehcho Dene and management of wildlife and wildlife habitat by the Dehcho Government in a National Park and National Park Reserve will be set out in the National Parks chapter.

⁶ LTC not sure if this clause is necessary given that there will be a general non-derogation clause.

⁷ DFN: Dehcho Citizens will have exclusive jurisdiction to limit or restrict harvesting in Dehcho Ndehe and on Dehcho community lands. This entire clause (W.1.4 may be moved to after W.1.6 for clarity in interpretation).

- W.1.5 Within the Dehcho Settlement Area, and subject to the terms of the Dehcho Agreement, the Minister will have the authority to manage and conserve wildlife outside of Dehcho Ndehe and Dehcho community lands. This authority is subject to the guaranteed rights of the Dehcho Government to manage wildlife and wildlife habitat in the Dehcho Settlement Area, as set out in the Agreement.⁹
- W.1.6 Within Dehcho Ndehe the Dehcho Government retains the authority to manage and conserve wildlife and will exercise that authority in a manner that is consistent with the Dehcho Agreement. On Dehcho community lands, local Dehcho community governments retain these authorities.¹⁰
- W.1.7 Pursuant to W.1.5, Canada or the Government of the Northwest Territories, as applicable, will Consult the Dehcho Government prior to imposing a limitation or restriction pursuant to W.1.4.
- W.1.8 In the event of an Emergency, Canada or the Government of the Northwest Territories, as applicable, may impose an interim limitation or restriction pursuant to W.1.4 and W.1.5 without prior Consultation but will Consult¹¹ the Dehcho Government as soon as possible thereafter, demonstrating¹² the necessity of the action taken, and addressing the terms and conditions to be attached to any limitation or restriction imposed.
- W.1.9 Nothing in the Dehcho Agreement will be construed to:¹³
- a) confer rights of ownership in wildlife; or
 - b) guarantee the supply of wildlife.
- W.1.10 Dehcho Citizens will not be subject to any tax¹⁴, fee or requirement for license for the harvesting of wildlife in their respective treaty areas.

⁸ GNWT want “Conservation” added to list of restrictions.

⁹ GNWT: W.1.5, W.1.6, W.2.4, W.4.3, W.5.2 and W.5.3 are related in these ways: 1) they relate to management harvesting issues whereas the focus of the chapter is on the harvesting of wildlife for subsistence purposes. DFN response: they relate to jurisdiction, not management, of wildlife harvesting. Management is to be developed. 2) GNWT: these do not reflect the GNWT position that the Minister has jurisdiction over wildlife on a regional basis because of the nature of the resource. That jurisdiction is informed by a regional resource management board comprised of all stakeholders on the Dehcho region. DFN response: the DCRMA will manage and administer wildlife management.

¹⁰ GNWT prefers co-management throughout the Dehcho Settlement Area.

¹¹ Canada and GNWT uncomfortable with ‘consult’.

¹² Canada and GNWT prefer “regarding” instead of “demonstrating”.

¹³ Canada and GNWT want to add “recognize the rights to commercial harvest or sale” to the list.

¹⁴ Is there a reason that “tax” is here – Canada notes that it is not necessary – they may be right.

Chris to review. DFN LTC understand the word “tax” is inserted to foreclose on the possibility on a future ‘fee’ in the form of a ‘tax’ on any aspect of Dehcho harvesting.

- W.1.11 Prior to Dehcho Agreement, the Parties will address the issue of documentation or identification for Dehcho Citizens exercising their right to harvest wildlife as set out in the Dehcho Agreement.
- W.1.12 Dehcho Citizens have the right to utilize any method, and to possess and use any equipment, for the purpose of wildlife harvesting. The Dehcho Government retains the right to impose restrictions on this right for reasons related to the humane harvesting of wildlife.¹⁵
- W.1.13 Dehcho Citizens have the right to possess and transport anywhere in Canada the Edible and Non-Edible Parts of wildlife harvested pursuant to W.1.1. When exercising this right, Dehcho Citizens will not be required to obtain a licence from the Government of Canada or the Government of the Northwest Territories, nor be subject to any tax or fee.
- W.2.0 **GIFTING AND TRADING**
- W.2.1 Dehcho Citizens have the right to Gift:
- a) the Non-Edible Parts of wildlife harvested to any individual for Subsistence¹⁶ or for their personal use¹⁷; and
 - b) the Edible Parts of wildlife to any individual for Subsistence or for their personal consumption.
- W.2.2 Dehcho Citizens have the right to Trade:
- a) the Non-Edible Parts of wildlife harvested by any individual for Subsistence or for their personal use; and
 - b) the Edible Parts of wildlife harvested by:
 - i) other Dehcho Citizens (or Dehcho Dene); and

¹⁵ Canada has proposed this alternative wording to clarify that general laws of application respecting the humane harvesting of wildlife still apply: "The Dehcho Agreement will recognize that Dehcho Citizens have the right to utilize any method, and to possess and use any equipment, for the purpose of the Harvesting of Wildlife pursuant to W.1.1, subject to Legislation respecting the humane Harvesting of Wildlife and public safety. Subject to Legislation, the Dehcho Government may impose restrictions on (the right to utilize any method, and to possess and use any equipment, for the purpose of the Harvesting of Wildlife) OR (the right to Harvest by any means) for reasons necessary for the humane Harvesting of Wildlife." DFN noted that it may be redundant given that there will be a general clause on laws of general application.

¹⁶ To be defined such that Dehcho Citizens retain traditional harvesting rights activities including food, clothing, shelter, spiritual and cultural purposes, medicine, ceremonies, handicrafts and tools.

¹⁷ LTC: do we need 'for their personal use' and 'personal consumption' given the definition of 'Subsistence'?

- ii) members of a neighbouring¹⁸ Aboriginal group with whom the Dehcho First Nations have traditionally traded.

for Subsistence.

W.2.3 The Dehcho Government may formalize relationships¹⁹ for the harvesting of wildlife with other Aboriginal groups through the negotiation of overlap or shared use agreements. With the agreement of all Parties, overlap agreement provisions pertaining to wildlife harvesting completed prior to the Dehcho Agreement may be incorporated into the Dehcho Agreement.

W.2.4 The Dehcho Government retains the authority to control and manage commercial trade in wildlife and wildlife harvesting on Dehcho Ndehe and in Dehcho community lands.

W.2.5 The Dehcho Government has the right to manage commercial trade in wildlife and wildlife harvesting in the Dehcho Settlement Area outside of Dehcho Ndehe, and will exercise that right as set out in the Dehcho Agreement.

W.3.0 ACCESS²⁰

W.3.1 Subject to W.1.2, Dehcho Citizens have a right of access to all land and water within their respective treaty areas for the purposes of wildlife harvesting under W.1.1.

W.3.2 Subject to 3.3, within their respective treaty areas Dehcho Citizens may establish and use Camps on lands outside Dehcho Ndehe and community lands, provided such Camps are reasonably incidental to wildlife harvesting under W.1.1.

W.4.0 CONSULTATION

W.4.1 Pursuant to W.1.5, Canada or the Government of the Northwest Territories, as applicable will Consult the Dehcho Government prior to introducing new Legislation, or amending existing Legislation, that could adversely affect the exercise of the right to harvest wildlife set out in the Dehcho Agreement.

W.4.2 Pursuant to W.1.5, Canada or the Government of the Northwest Territories, as applicable, will Consult the Dehcho Government prior to:

¹⁸ Change: inserted ‘neighbouring’ to address GNWT concerns that this clause refers to historical trading partners.

¹⁹ Canada prefers “may enter into Agreements” or “may address reciprocal opportunities rather than “may formalize relationships”.

²⁰ Restrictions on Access to be developed, needs discussion among the parties.

- a) amending the terms of an existing commercial authorization to harvest wildlife;
- b) subject to W.4.3, issuing a new commercial authorization to harvest wildlife;
- c) permitting any commercial activity for the husbandry of a species of wildlife.

that could adversely affect the exercise of the right to harvest wildlife as set out in the Dehcho Agreement.²¹

W.4.3 Pursuant to W.1.5, no new commercial activity for the harvesting of wildlife in the Dehcho Settlement Area will be authorized by Canada and the Government of the Northwest Territories without the consent of the Dehcho Government.²²

W.5.0 **WILDLIFE MANAGEMENT**

W.5.1 Prior to Dehcho Agreement, the Parties will address wildlife management within the Dehcho Settlement Area.

W. 5.2 The Agreement will recognize the guaranteed right of the Dehcho Government to manage and conserve wildlife and wildlife habitat in the Dehcho Settlement Area outside Dehcho Ndehe.

W.5.3 The Agreement will recognize the guaranteed exclusive right of the Dehcho Government to manage and conserve wildlife and wildlife habitat in Dehcho Ndehe and community lands.

W.6.0 **EMERGENCIES**

W.6.1 Nothing in the Dehcho Agreement will prevent any individual from killing wildlife in the Dehcho Settlement Area for survival in an emergency or to defend or protect persons or property.

²¹ Note that other Agreements restrict the duty to consult within Settlement Areas.

²² GNWT okay with Dehcho consent on Dehcho Ndehe but not entire Settlement Area. GNWT wants co-management throughout Settlement Area. Canada agrees.

CHAPTER _ : HARVESTING OF PLANTS

1.0 GENERAL

- 1.1 With the exception of provisions set out in subsection 5.0 Plant Management, this chapter does not apply to Dehcho Settlement Land or to the Harvesting of Plants on Dehcho Settlement Land¹.
- 1.2 Dehcho Citizens will have the right to harvest Plants throughout the Dehcho Settlement Area² at all seasons of the year for:
- a) the making of handicrafts by Dehcho Citizens;
 - b) use or consumption by Dehcho Citizens for food, medicinal or cultural purposes;
 - c) purposes ancillary to Wildlife Harvesting under *<foundation clause – Wildlife Harvesting>*.
- 1.3 The right provided for in 1.2 may be limited or restricted:
- a) by provisions of the Final Agreement; or
 - b) for purposes related to:
 - i) Conservation;
 - ii) public health;
 - iii) public safety;
 - iv) land management within Community boundaries; and
 - v) protection of the Environment from significant damage.
- 1.4 The Minister retains the authority to manage and conserve Plants and Plant habitat in the Settlement Area and will exercise that authority in a manner that is consistent with the Final Agreement.

¹ "Dehcho Settlement Land" will be a defined term and will also be replaced by Dehcho nomenclature.

² "Dehcho Settlement Area" will be a defined term (Crown Land minus Dehcho Settlement Land within a defined area) and will also be replaced by Dehcho nomenclature.

- 1.5 To the extent reasonable, Government will Consult the Dehcho Government prior to imposing a limitation or restriction under 1.3 (b).
- 1.6 In the event of an emergency, Government may impose an interim limitation or restriction under 1.3(b) without prior Consultation but will confer with the Dehcho Government, as soon as possible thereafter, regarding the necessity of the action taken and the terms and conditions to be attached to any limitation or restriction imposed.
- 1.7 Nothing in the Final Agreement will be construed to:
- a) recognize a right to harvest Plants for commercial purposes or sale;
 - b) confer rights of ownership in Plants;
 - c) guarantee the supply of Plants;
 - d) entitle Dehcho Citizens to any compensation for damage to or loss of Plants or Plant Harvesting opportunities within the Dehcho Settlement Area; or
 - e) preclude individuals who are not Dehcho Citizens from Harvesting Plants, except that they may be precluded from doing so by Legislation.
- 1.8 Dehcho Citizens will not be subject to any fee for the Harvesting of Plants pursuant to 1.2.
- 1.9 Prior to Final Agreement, the Parties will address the issue of documentation or identification for Dehcho Citizens exercising their right to harvest Plants as set out in the Final Agreement.
- 1.10 Dehcho Citizens will have the right to utilize any method, and to possess and use any equipment, for the purpose of the Harvesting of Plants pursuant to 1.2.

2.0 GIFTING AND TRADING

- 2.1 Dehcho Citizens will have the right to gift Plants harvested under 1.2 to any individual for Domestic Purposes.
- 2.2 Dehcho Citizens will have the right to Trade Plants harvested under 1.2 with:
- a) other Dehcho Citizens; and
 - b) members of other Aboriginal groups in the NWT, *<insert agreed description of traditional domestic trading areas in Yukon and British Columbia>*,
- for Domestic Purposes.
- 2.3 Prior to Final Agreement, the Dehcho First Nation may address reciprocal opportunities for the Harvesting of Plants with other Aboriginal groups through the negotiation of overlap agreements. With the agreement of all Parties, overlap agreement provisions pertaining to the Harvesting of Plants may be incorporated into the Final Agreement.³

3.0 ACCESS

- 3.1 Dehcho Citizens will have a right of access to all land and Water within the Dehcho Settlement Area for the purpose of the Harvesting of Plants under 1.2.
- 3.2 This right of access does not apply:
- a) on Indian reserve lands;
 - b) on lands held in fee simple, lands subject to an agreement for sale or lands subject to a surface lease;
 - c) where it conflicts with any activity carried out under an authorization granted by Government such as a timber licence or permit, a forest management agreement or land use permit; and
 - d) where lands are dedicated to military or national security purposes pursuant to Legislation, or to areas temporarily

³ Note: GNWT is currently conducting a mandate review of “gifting and trading” provisions in wildlife, tree and plant harvesting chapters which will conclude shortly and may.

being used for military exercises for the period of such temporary use, after notice of such dedication or use has been provided to the Dehcho Government.

- 3.3 An Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Government, as the case may be, regarding the right to access lands described in 3.2 for the purposes of the Harvesting of Plants under 1.2.

4.0 CONSULTATION

- 4.1 Government will Consult the Dehcho Government prior to introducing new Legislation, or amending existing Legislation, that could adversely affect the exercise of the right to harvest Plants as set out in the Final Agreement.

- 4.2 Government will Consult the Dehcho Government prior to:

- a) amending the terms of an existing commercial authorization to harvest Plants;
- b) authorizing a new commercial activity to harvest Plants; or
- c) permitting any commercial activity for the propagation or cultivation of a species of Plants,

within the Dehcho Settlement Area that could adversely affect the exercise of the right to harvest Plants as set out in the Final Agreement.

5.0 PLANT MANAGEMENT

- 5.1 Prior to Final Agreement, the Parties will address aspects of Plant management within the Dehcho Settlement Area.

6.0 EMERGENCIES

- 6.1 Nothing in the Final Agreement will prevent any individual from Harvesting Plants for survival in an emergency.

CHAPTER __ : TREE HARVESTING

1 OWNERSHIP OF TREES ON DEHCHO SETTLEMENT LAND

- 1.1 The Dehcho Government owns the Trees on Dehcho Settlement Land.
- 1.2 This chapter does not apply to 1.1 other than: [insert reference to those provisions of regional Forest management applicable in (a), (b) (c) format].

2 GENERAL

- 2.2 Dehcho Citizens will have the right to harvest all species of Trees throughout the Dehcho Agreement Area¹ at all times of the year for the following purposes:

- (a) firewood;
- (b) construction or maintenance of hunting, trapping and fishing Camps;
- (c) the making of handicrafts;
- (d) traditional or medicinal purposes;
- (e) construction of boats and rafts; and
- (f) house building for personal use.

- 2.3 The right provided for in 2.2 may be limited or restricted:

- (a) by provisions of the Final Agreement; or
- (b) for purposes related to:
 - (i) Conservation;
 - (ii) public health;
 - (iii) public safety;
 - (iv) Forest Management provisions²;
 - (v) land management within the Dehcho Agreement Area; and

1 Any tree harvesting opportunities in Nahanni would be set out in a National Parks chapter.

2 Would be identified.

(vi) protection of the Environment from significant damage.

- 2.4** The Minister retains the authority to manage and conserve Trees and Tree habitat in the Dehcho Agreement Area and will exercise that authority in a manner that is consistent with this Agreement.
- 2.5** To the extent reasonable, Government will Consult the Dehcho Government prior to imposing a limitation or restriction pursuant to 2.3 (b) where applicable.
- 2.4** In the event of an emergency, Government may impose an interim limitation or restriction set out in 2.3 (b) without prior Consultation but will Consult the Dehcho Government , as soon as possible thereafter, regarding the necessity of the action taken and the terms and conditions to be attached to any limitation or restriction imposed.
- 2.5** Nothing in the Final Agreement will be construed to:
- (a) recognize a right to harvest Trees for commercial purposes or sale;
 - (b) confer rights of ownership in Trees in the Dehcho Agreement Area;
 - (c) guarantee the supply of Trees;
 - (d) preclude individuals who are not Dehcho Citizens from Harvesting Trees in the Dehcho Agreement Area , except that they may be precluded from doing so by Legislation;
 - (e) entitle Dehcho Citizens to any compensation for damage to or loss of Trees or Tree Harvesting opportunities within the Dehcho Agreement Area; or
 - (f) affect any responsibility of Government for the fighting of forest fires.
- 2.6** Dehcho Citizens will not be subject to any fee for Harvesting of Trees pursuant to 2.2.
- 2.7** Prior to Final Agreement, the Parties will address the issue of documentation regarding Dehcho Citizens exercising their right to Harvest Trees set out in 2.2.
- 2.8** Dehcho Citizens will have the right to utilize any method, and to possess and use any equipment, for the purpose of the Harvesting of Trees pursuant to 2.2.

3 GIFTING AND TRADING

- 3.1 Dehcho Citizens will have the right to gift Trees harvested pursuant to 2.2 to any individual.
- 3.2 Dehcho Citizens will have the right to Trade Trees harvested pursuant to 2.2 with other Dehcho Citizens for the purposes set out in 2.2.
- 3.3 Prior to Final Agreement, the Dehcho First Nation may address reciprocal opportunities for the Harvesting of Trees with other aboriginal groups through the negotiation of overlap agreements. With the agreement of all Parties, overlap agreement provisions pertaining to opportunities for the Harvesting of Trees for Dehcho Citizens may be incorporated into the Final Agreement.

4 ACCESS

- 4.1 Subject to 4.2, Dehcho Citizens will have a right of access to all land within the Dehcho Agreement Area for the purpose of Harvesting of Trees under 2.2.
- 4.2 This right of access does not apply:
 - (a) on Indian reserve lands;
 - (b) on lands held in fee simple, lands subject to an agreement for sale or lands subject to a surface lease;
 - (c) where it conflicts with any activity carried out under an authorization granted by Government such as a timber licence or permit, a Forest Management agreement or land use permit; and
 - (d) where lands are dedicated to military or national security purposes pursuant to Legislation, or areas temporarily being used for military exercises for the period of such temporary use, after notice of such dedication or use has been provided to the Dehcho Government .
- 4.3 An Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Government, as the case may be, regarding access to lands described in 4.2 for the purposes of Harvesting of Trees under 2.2.

5 CONSULTATION BY GOVERNMENT

- 5.1 Government will Consult the Dehcho Government prior to introducing new Legislation, or amending existing Legislation, that could adversely affect the exercise of the right to harvest Trees as set out in this Agreement.
- 5.2 Government will Consult the Dehcho Government prior to:
- (a) amending the terms of an existing commercial authorization to harvest Trees;
 - (b) authorizing a new commercial activity to harvest Trees, or
 - (c) permitting any commercial activity for the propagation or cultivation of a species of Tree,

within the Dehcho Agreement Area that could adversely affect the exercise of the right to harvest Trees as set out in this Agreement.

6 TREE MANAGEMENT

- 6.1 Prior to Final Agreement, the Parties will address aspects of Tree Management [Forest Management] within the Dehcho Agreement Area.³

7 EMERGENCIES

- 7.1 Nothing in the Final Agreement will prevent any individual from harvesting Trees for survival in an emergency.

³ This may end up as a standalone “Forest Management” chapter to be negotiated among the Parties.

Reviewed by LTC Jan. 22, 2010; To be Reviewed by Main Table Feb. 4, 2010

CHAPTER MB: MIGRATORY BIRDS HARVESTING¹

MB.1.0	GENERAL
MB.2.0	GIFTING AND TRADING
MB.3.0	ACCESS
MB.4.0	CONSULTATION
MB.5.0	MIGRATORY BIRDS MANAGEMENT
MB.6.0	EMERGENCIES

DEFINITIONS

In this chapter, “Migratory Bird” means a migratory bird referred to in the Migratory Birds Convention, and includes the eggs, embryos and parts of the bird.

MB.1.0 GENERAL

MB.1.1 Dehcho Citizens have the right² to harvest Migratory Birds³ throughout the area shown in Appendix A at all times of the year.

MB.1.2 The right provided for in MB.1.1 may be limited or restricted:

- a) by provisions of the Dehcho Agreement⁵; or
- b) for purposes necessary⁶ for:
 - i) Conservation;
 - ii) public health; or
 - iii) public safety.

MB.1.3 The Dehcho Agreement will provide that Canada will have the authority to manage and conserve Migratory Birds and Migratory Bird Habitat and

¹ In other land claim agreements migratory birds are addressed in general wildlife harvesting chapters. Canada prefers the DFN AiP and final agreement have a separate chapter on migratory birds.

² Canada prefers this sentence with “The Dehcho Agreement will recognize that...”

³ DFN are consulting with membership with respect to the scope of harvesting which this chapter should cover.

⁵ May need reference to Migratory Birds Convention.

⁶ Canada prefers “related to” rather than “necessary”.

will exercise that authority in a manner that is consistent with the Dehcho Agreement.

- MB.1.4** Canada⁷ will Consult the Dehcho Government prior to imposing a limitation or restriction necessary for Conservation, public health or public safety.
- MB.1.5** In the event of an Emergency, Canada may impose an interim limitation or restriction necessary for Conservation, public health or public safety without prior Consultation, but will Consult⁸ the Dehcho Government as soon as possible thereafter, demonstrating⁹ the necessity of the action taken and the terms and conditions to be attached to any limitation or restriction imposed.
- MB.1.6** Nothing in the Final Agreement will be construed to:
- a) recognize a right to harvest Migratory Birds for commercial purposes or sale;
 - b) confer rights of ownership in Migratory Birds; or
 - c) guarantee the supply of Migratory Birds.
- MB.1.7** Dehcho Citizens will not be subject to any tax¹⁰, fee or requirement for a license for Migratory Bird Harvesting pursuant to MB.1.1.
- MB.1.8** Prior to Final Agreement, the Parties will address the issue of documentation or identification for Dehcho Citizens exercising their right to harvest Migratory Birds set out in the Final Agreement.
- MB.1.9** Dehcho Citizens have the right to utilize any method, and to possess and use any equipment, for the purpose of Migratory Bird Harvesting pursuant to MB.1.1.
- MB.1.10** Dehcho Citizens have the right to possess and transport anywhere in Canada¹¹ the Edible and Non-Edible Parts of Migratory Birds harvested pursuant to MB.1.1, subject to any identification requirements agreed to by the Parties. When exercising this right, Dehcho Citizens will not be required to obtain a licence from Canada, nor be subject to any fee.

MB.2.0 GIFTING AND TRADING

⁷ Canada proposes: “To the extent reasonable, Canada will Consult with...”

⁸ Canada prefers not to use “consult” when describing discussions after the fact.

⁹ Canada prefers “regarding” rather than “demonstrating”.

¹⁰ Is “tax” necessary here?

¹¹ May need to be subject to provincial laws restricting transport.

MB.2.1 The Dehcho Agreement will recognize that Dehcho Citizens have the right to gift:

- a) the Non-Edible Parts of Migratory Birds harvested pursuant to MB.1.1 to any individual for Subsistence¹² or for their personal use; and
- b) the Edible Parts of Migratory Birds harvested pursuant to MB.1.1 to any individual for Subsistence or for their personal consumption.

MB.2.2 Dehcho Citizens have the right to Trade:

- a) the Non-Edible Parts of Migratory Birds harvested pursuant to MB.1.1 with any individual for Subsistence or for their personal use; and
- b) the Edible Parts of Migratory Birds harvested pursuant to MB.1.1 with:
 - i) other Dehcho Citizens; and
 - ii) members of another Aboriginal group with whom the Dehcho Dene have traditionally traded¹³

for Subsistence or for their personal consumption.

MB.2.3 Prior to Final Agreement, the Dehcho First Nations may address reciprocal opportunities¹⁴ for Migratory Bird Harvesting with other Aboriginal groups through the negotiation of overlap agreements. With the agreement of Canada and the DFN, overlap agreement provisions pertaining to Migratory Bird Harvesting may be incorporated into the Final Agreement.

MB.3.0 **ACCESS**

MB.3.1 ¹⁵Dehcho Citizens have a right of access to all land and Water within the area shown in Appendix A for the purpose of Migratory Bird Harvesting under MB.1.1.

¹² Add “for their personal use”?

¹³ This provision may be too narrow as it would not allow trade with members of First Nations at conferences etc... with whom there is no “tradition” of trading.

¹⁴ Alternative wording for this clause is being considered in similar clause in Wildlife Harvesting.

¹⁵ Canada prefers to begin this sentence with: “The Dehcho Agreement will recognize that...”

MB.3.2 Dehcho Citizens may establish and use Camps on Crown Land within the area shown in Appendix A, subject to limitations on access set out in MB.3.3, provided such Camps are reasonably incidental to Migratory Bird Harvesting harvesting under MB.1.1.

MB.3.3 This right of access does not apply on:¹⁸

- a) lands held in fee simple¹⁹ or lands subject to a surface lease:
- b) within Community boundaries;
- c) outside Community boundaries where the land is less than ten (10) hectares²⁰ in area and is fenced²¹; or
- d) where Migratory Bird Harvesting would be wholly²² incompatible with the use of the land.

MB.3.4 Where Dehcho Citizens have the right to access lands held in fee simple or lands subject to a surface lease for the purpose of Migratory Birds Harvesting under the Final Agreement they will not:

- a) unreasonably interfere with an occupier's use and peaceable enjoyment of the land; or

¹⁸ Canada proposes:

“MB 3.3 This right of access does not apply:

- a) on Indian reserve lands;
- b) on lands held in fee simple, lands subject to an agreement for sale or lands subject to a surface lease:
 - i) within Community boundaries;
 - ii) outside Community boundaries where the land is less than ten (10) hectares in area and is fenced or otherwise identifiable;
 - iii) where the Harvesting of Migratory Birds would be visibly incompatible with the use of the land; or
- c) where lands are dedicated to military or national security purposes pursuant to Legislation, or to areas temporarily being used for military exercises for the period of such temporary use, after notice of such dedication or use has been provided to the Dehcho Government.

¹⁹ This is not intended to include Dehcho Ndehe, which may be fee simple lands.

²⁰ 10 hectares is a very large area.

²¹ Canada wants “...fenced or otherwise identifiable;”

²² Canada may prefer “visibly” rather than “wholly”. Other option: use neither wholly nor visibly; just “incompatible”.

- b) establish a Camp, Cabin or any structure, or cut or use any wood other than dead wood, without Consulting²³ with the owner, lessee or Government, as the case may be.

MB.3.5 A Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Government, as the case may be, regarding the right to access lands described in MB.3.3 for the purpose of Migratory Birds harvesting under MB.1.1.

MB.4.0 CONSULTATION

MB.4.1 Canada will Consult the Dehcho Government prior to introducing new Legislation, or amending existing Legislation, that could adversely affect the exercise of the right to harvest Migratory Birds set out in this Agreement.

MB.4.2 Canada will Consult the Dehcho Government prior to:

- a) amending the terms of an existing commercial authorization to harvest Migratory Birds;
- b) authorizing a new commercial activity to harvest Migratory Birds;
or
- c) permitting any commercial activity for the propagation or husbandry of a species of Migratory Birds

that could adversely affect the exercise of the right to harvest Migratory Birds as set out in the Final Agreement.²⁴

MB.5.0 MIGRATORY BIRDS MANAGEMENT

MB.5.1 Prior to Final Agreement, the Parties will address:

- a) the manner in which Migratory Birds will be managed²⁵; and
- b) the participation of the Dehcho Government in the management of Migratory Birds²⁶

²³ Other land claim agreements require Consent of owners.

²⁴ Other land claim agreements only require governments to consult with respect to proposed activities within Settlement Area.

²⁵ Canada wants "...managed within the Dehcho Settlement Area;"

²⁶ Canada proposes:

"MB 5.1

- a) the manner in which Migratory Birds will be managed within the Dehcho Settlement Area; and
- b) the participation of the Dehcho First Nations Government in the management of Migratory Birds within the Dehcho Settlement Area."

if the harvesting rights recognized in this chapter could be affected.²⁷

MB.6.0 EMERGENCIES

MB.6.1 Nothing in the Final Agreement will prevent any individual from killing Migratory Birds for survival in an Emergency.

²⁷ Other land claim agreements only purport to include First Nations in management regimes wholly within respective Settlement Areas.

Amber Tremblay initial comments Jan 5, 2010

CHAPTER EX: EXPROPRIATION

Definitions

Expropriating Authority: an authority with power of expropriation under federal, territorial or Dehcho legislation of general application, the Dehcho Agreement, or an Act giving legal effect to the Dehcho Agreement.

Ex.1.0 General Principles

Ex.1.1 The Dehcho First Nations, Canada and the Government of the Northwest Territories¹:

- a) agree that the Dehcho Agreement will recognize that the Dehcho Government, the Government of Canada and the Government of the Northwest Territories will have the power to expropriate portions of Dehcho Ndehe, Crown land, Commissioner’s Land and privately held fee simple lands, as set out herein;
- b) acknowledge the interest of the parties in maintaining the size and integrity of Dehcho Ndehe;
- c) will make all reasonable efforts² to reach agreement regarding expropriated lands; and,
- d) agree that expropriation of Dehcho Ndehe, Crown land or Commissioner’s Land will occur only as necessary for a Public Purpose.³

Ex.1.2 Canada or the GNWT, prior to making a decision to expropriate any part of Dehcho Ndehe, shall:

¹ Canada suggests the following wording for 1.1:

“Canada and the GNWT acknowledge:

- a) the interest of the Dehcho Government in maintaining the quantum and integrity of the Dehcho Ndehe;
- b) that as a general principle they will attempt to acquire lands for public purposes through agreement with the Dehcho Government; and
- c) that expropriation of Dehcho Ndehe will be avoided as a general principle, but if expropriation is necessary, the minimum interest required will be taken.”

² Canada and DFN appear to agree on the intent of 1.1 (b), Canada’s suggested wording includes “as a general principle they will attempt to acquire lands...through agreement.”

³ Canada’s suggested wording: “will be avoided unless the lands are necessary...”

- a) ensure that lands other than Dehcho Ndehe are used, if other lands are available for the purpose for which the Dehcho Ndehe lands are intended to be expropriated; and
- b) make best efforts to acquire the Dehcho Ndehe lands through a negotiated land transfer agreement with the Dehcho Government, rather than by expropriation.

Ex.1.3 The Dehcho Government, prior to making a decision to expropriate any Crown land, private fee simple land or Commissioner’s land, shall:

- a) ensure that the lands to be expropriated are necessary for a public purpose; and
- b) make best efforts to acquire the lands through a negotiated land transfer agreement with the land owner rather than by expropriation.

Ex.2.0 Expropriation

The Dehcho Agreement will provide that,

Ex.2.1 any person or authorized representative of any person, who has power of expropriation under legislation (Expropriating Authority), will exercise that power of expropriation in accordance with applicable laws, subject to the Dehcho Agreement and implementing legislation.⁴

Ex.2.2 The size of Dehcho Ndehe, as of the effective date, inclusive of surface and subsurface lands, will be maintained and will not be reduced through expropriation or other means, but may be enlarged.⁵

Ex.2.3 Any federal or territorial expropriation legislation coming into force after the date of ratification of the Dehcho Agreement shall, insofar as it applies to Dehcho Ndehe, conform to this Agreement and provide for the following minimum procedures:

- a) notice of intention to expropriate served on the Dehcho Government;
- b) an opportunity for the Dehcho Government to object to the expropriation on the basis that the expropriation is not necessary for a public purpose, or that the expropriating authority has not complied with the expropriation legislation, and an opportunity to be heard on that objection, including public hearings; and
- c) the determination of compensation by negotiation or mediation or, failing that, by reference to arbitration, as set out in chapter DR xx.⁶

⁴ 2.1 is consistent with 12.4.1 of Nunavik Inuit Land Claims Agreement (NILCA), except for the “and implementing legislation”. The provision, however, is not found in NWT agreements.

⁵ This is a core principle for DFN. In Canada’s tabled expropriation chapter, Dehcho Ndehe could be reduced through expropriation, as ‘replacement lands’, ‘money’, or a combination of both, are compensation options. Needs main table discussion.

- Ex.2.4 Any Dehcho Government expropriation legislation coming into force after the date of ratification of the Dehcho Agreement shall, insofar as it applies to Crown land or Commissioner's land, conform to this Agreement and provide for the following minimum procedures:
- a) notice of intention to expropriate served on the Government of Canada or the GNWT, as the case may be;
 - b) an opportunity for the affected Government to object to the expropriation on the basis that the expropriating authority has not complied with the expropriation legislation, and an opportunity to be heard on that objection, including public hearings; and
 - c) the determination of compensation by negotiation or mediation or, failing that, by reference to arbitration, as set out in chapter DR xx.
- Ex.2.5 Compensation for lands expropriated from Dehcho Ndehe will be an exchange of lands, and will include an exchange of lands plus a cash component where the exchanged lands are of lesser market value or of lesser Traditional Value to the Dehcho Government or Dehcho Citizens than the expropriated lands.⁷
- Ex.2.6 Where a federal or territorial expropriating authority offers exchanged lands the subsurface of which is held by Canada or the GNWT, Canada or the GNWT, as the case may be, shall offer both the surface and the subsurface to the Dehcho Government.⁸
- Ex.2.7 Where determined by the Dehcho Government, lands acquired by the Dehcho Government in exchange for expropriated lands will, whenever possible, be contiguous with Dehcho Ndehe.⁹
- Ex.2.8 Dehcho Ndehe and interests in Dehcho Ndehe may be expropriated for public purposes in accordance with this Agreement, legislation, and under the following conditions:
- a) The relevant federal or territorial Minister has reached agreement with the Dehcho Government for the expropriation of the lands, or

⁶ This entire section is consistent with 12.4.4 of the NILCA except for b) "including public hearings". The provision, however, is not found in other NWT agreements.

⁷ As noted above, compensation for DFN must include the same quantum of lands, but may include lands plus money where lands are of lesser value. There is a fundamental disagreement on this core issue, as Canada has suggested that either lands or money can be compensation for expropriated lands.

⁸ Consistent with Tlicho 20.4.1.

⁹ Consistent with Tlicho 20.4.1, although Canada notes that "it is important to note that this clause was acceptable in Tlicho because they selected one contiguous block of land, equal surface and subsurface. Also, the language in Tlicho is that the expropriating authority shall offer available lands that are adjacent to Tlicho lands. Key words here being 'offer' and 'available'. Dehcho's 2.6 does not have either of those, therefore limiting the possibility of finding suitable replacement lands."

failing agreement between the parties, agreement has been reached or a decision made in accordance with chapter DR xx;¹⁰ and

- b) compensation is provided to the Dehcho Government in the form of exchanged lands, or in exchanged lands plus a cash component, as agreed to by Canada or the GNWT, as the case may be, and the Dehcho Government.¹¹

Ex.2.9 Crown land, Commissioner’s Land and privately held fee simple lands, and interests in Crown land, Commissioner’s Land and privately held fee simple lands, may be expropriated by the Dehcho Government for public purposes in accordance with this Agreement and Dehcho Government legislation. In such cases expropriation may occur after the Dehcho Government has reached agreement with the Government of Canada, the GNWT or the private landowner, as the case may be, for the expropriation of the lands, or failing agreement between the parties, agreement or has been reached or a decision made in accordance with chapter DR xx.

Ex.2.10 Where an expropriation authority expropriates Dehcho Ndehe and the exchanged lands are acceptable to the Dehcho Government, the authority shall acquire and offer as partial or full compensation for the expropriation of Dehcho Ndehe exchange lands in the Dehcho Settlement Area.¹²

Ex.2.11 Where an expropriation authority expropriates Dehcho Ndehe, if no exchange lands are available in the Dehcho Settlement Area, exchange lands shall be in the Dehcho First Nations’ asserted traditional territory, as shown in Appendix A of the Dehcho First Nations Framework Agreement, and these lands will become Dehcho Ndehe, and be subject to the Dehcho Agreement.¹³

Ex.2.12 Expropriated lands shall only include the minimum interest required for the intended purpose of expropriation.¹⁴

¹⁰ Canada says: “An agreement is not required in order for the Minister to expropriate. The Minister and the Dehcho Government will first attempt to come to a land exchange/transfer agreement and then if that fails, the parties will reach an agreement on compensation. If an agreement cannot be reached on compensation, the parties will go to Dispute Resolution.”

¹¹ Same issue as above regarding the size and integrity of Dehcho Ndehe and compensation.

¹² Same language in federal draft tabled February 2008.

¹³ This is not something Canada can agree to for two reasons. First, the Dehcho’s asserted traditional territory, as identified in Appendix A of the Framework Agreement, falls into jurisdictions outside of the NWT and this agreement will only address DFN assertions in the NWT. Secondly, the assertions identified in the map overlap into other Aboriginal groups’ settled areas, Sahtu for example, and again Canada cannot guarantee that lands in another Aboriginal group’s settled area will be available as exchange lands. The federal position is to say that exchange lands will be provided in the Dehcho’s settlement area. The Dehcho’s settlement area will be defined as the area in which the Final Agreement will apply, which does not include areas outside of the NWT or areas that overlap with other Aboriginal groups.

¹⁴ Consistent with Tlicho 20.1.1 and other agreements.

Ex.2.13 The total value of compensation, whether exchanged lands or exchanged lands¹⁵ and a cash component, for an expropriated interest in Dehcho Ndehe will be determined by taking into account the following factors:

- a) the market value of the expropriated interest at the time the notice of expropriation is made;¹⁶
- b) the replacement value of any improvement to Dehcho Ndehe in which an interest has been expropriated;
- c) any expenses or losses resulting from a disturbance directly attributable to the expropriation;
- d) any reduction in the value of any interest in the Dehcho Ndehe that is not expropriated which results from the expropriation;
- e) any adverse effect on any cultural or other special value of Dehcho Ndehe in which an interest has been expropriated;¹⁷
- f) the value of any special economic advantage arising out of or incidental to the occupation or use of Dehcho Ndehe by Dehcho Citizens or the Dehcho Government, to the extent that the value is not otherwise compensated for.

2.14 Where lands or an interest in Dehcho Ndehe which have been expropriated are, in the opinion of the expropriating authority, no longer required:

- a) the Dehcho Government will have first right of refusal to re-acquire the expropriated lands;
- b) they may not be alienated to any party other than the Dehcho Government, where such lands are wholly surrounded by Dehcho Ndehe, without the consent of the Dehcho Government;¹⁸
- c) the expropriating authority may not dispose of those lands for a price less than the price offered to the Dehcho Government;¹⁹ and
- d) subject to ___, the Dehcho Government may offer to return exchanged lands for expropriated lands, or may offer a

¹⁵ Same issue raised previously. Canada's position is that compensation will be exchanged lands or exchanged lands and a cash component or a cash component.

¹⁶ Same as in fed draft tabled Feb. 2008 except "at the time notice of expropriation is made" added.

¹⁷ Requires discussion. Canada suggests "recognized in law and held by the Dehcho First Nations, and provided that there will be no increase in the total value of compensation on account of any Section 35 Rights stemming from the Constitution Act, 1982".

¹⁸ Concept introduced by DFN to help maintain the original integrity of Dehcho Ndehe. Canada cannot agree to this provision as this allows for a veto for the DFN.

¹⁹ Consistent with Tlicho 20.4.11 and other agreements.

combination of exchanged lands and a cash component for expropriated lands;²⁰

- e) the price for the Dehcho Government to re-acquire expropriated lands shall take into account:²¹
 - i) degradation to the economic or cultural value or utility of the lands to Dehcho Citizens or the Dehcho Government arising from the expropriation;
 - ii) outstanding liability to restore or reclaim the integrity of the lands to pre-expropriation conditions;
 - iii) an annual ___ % cap on the increase in monetary value from the time of expropriation;
 - iv) lands offered by the Dehcho Government to the expropriating authority in exchange for the return of expropriated lands.

2.15 Where an expropriating authority expropriates a fee simple interest in Dehcho Ndehe, those lands will no longer be Dehcho Ndehe.²²

2.16 Where the Dehcho Government expropriates Crown land, Commissioner's Land and privately held fee simple lands, those lands will become part of Dehcho Ndehe.

2.16 Where an expropriating authority expropriates less than a fee simple interest in Dehcho Ndehe,

- a) those lands will remain Dehcho Ndehe;
- b) those lands remain subject to Dehcho Government laws, except to the extent those laws are inconsistent with the use of the lands for the purpose of expropriation;²³ and
- c) the Dehcho Government or any person authorized by the Dehcho Government may continue to use the lands unless that use is inconsistent with the purpose of expropriation.²⁴

²⁰ Ibid.

²¹ Canada sees a number of problems of listing the considerations in 2.14 e), primarily because it is the Expropriating Authority who will determine the price for the reacquisition of the lands. Also, how would the parties determine an appropriate annual % increase? What would this be based on? What if the value of land takes a FALL in monetary value? Would the Dehcho be expected to accept less as a result?

²² Consistent with Tlicho 20.4.11 and other agreements.

²³ Preferred federal language to replace “for the purpose of expropriation” with “federal or territorial public purposes as determined by the Federal or Territorial Expropriating Authority”.

²⁴ Similar language is found in Lheidli T'enneh s.125 c) but “as determined by the Expropriating Authority” would need to be added. The provision, however, is not found in NWT agreements.

3.0 Emergencies

3.1 Nothing in the Agreement will affect or limit the application to Dehcho Ndehe of the *Emergencies Act (Canada)* or any successor legislation.

4.0 Conflict

4.1 In the event of an inconsistency or conflict between this Chapter and federal or territorial laws of general application, this Agreement is paramount to the extent of the conflict.

Canada also proposes adding the following text:

5.0 Replacement (or exchange) Lands

- 5.1 Land is not available to be provided as replacement land if it is
- a) subject to a lease or an agreement for sale unless the Federal or Territorial Expropriation Authority and the person holding that interest consent;
 - b) occupied or used by the Federal or Territorial Expropriation Authority, a Dehcho Community Government, or required for such future occupation or use;
 - c) part of a public road;
 - d) within 31 metres of a boundary of the Dehcho Settlement Area; or
 - e) for any other reason considered unavailable by an arbitrator under the Dispute Resolution chapter

6.0 Public Roads

- 6.1 Any Legislation, a Federal or Territorial Expropriating Authority may expropriate Dehcho Ndehe in accordance 1.1 for use as a public road or public road allowance without compensation to the Dehcho Government
- 6.2 No lands expropriated under 6.1 may be used for any purpose other than a public road or public road allowance without the payment of compensation.
- 6.3 Any dispute between a Federal or Territorial Expropriating Authority and the Dehcho Government as to the location of a public road for which Dehcho Ndehe are to be expropriated under 6.1 may be referred by a Party for resolution in accordance with the Dispute Resolution chapter.

- 6.4 Where any lands expropriated under 6.1 or conveyed without compensation to Government for a public road are no longer needed for a public road, Government will grant back to the Dehcho Government the fee simple interest in those lands and those lands become Dehcho Ndehe.

- 6.5 The amount of land expropriated under 6.1 or conveyed without compensation to Government for a public road and not granted back to the Dehcho Government will not exceed, at any time, X square kilometres.

To be reviewed at Main Table session Nov 30 – Dec 2, 2009

CHAPTER A: ACCESS

PART I	GENERAL
PART II	PUBLIC ACCESS
PART III	ACCESS BY HOLDERS OF EXISTING INTERESTS
PART IV	COMMERCIAL ACCESS
PART V	GOVERNMENT ACCESS
PART VI	ACCESS TO CONSTRUCTION MATERIAL
PART VII	ACCESS TO CONTAMINATED SITES
PART VIII	WINTER ROAD ACCESS
PART IX	LINEAR PROJECTS¹
PART X	ACCESS BY OTHER ABORIGINAL PEOPLE²

PART I GENERAL³

- A.1.1 “**Dehcho Ndehe**” means, for the purposes of this chapter, the Dehcho Settlement Land and waters overlying such land.
- A.1.2 Where a Person may exercise access under more than one provision in this chapter, that Person may have access pursuant to the least restrictive provision.
- A.1.3 Nothing in this Agreement affects the public right of navigation.⁴
- A.1.4 Any Person may access the Dehcho Ndehe without prior notice in an emergency.⁵

PART II PUBLIC ACCESS

¹ Need to address access to Dehcho Ndehe for purposes of planning, constructing, operating and maintaining linear projects. For greater certainty, a linear project means a pipeline, communication or electrical transmission line, railway, all season public highway or other linear infrastructure, including all necessary ancillary works.

² To be discussed given Dehcho and ADK overlapping areas.

³ The DFN believe that the provisions of this chapter should reference the Dehcho Land Use Plan.

⁴ Will Navigation be a defined term? If so, how?

⁵ Will Emergency be a defined term? If so, need consistency with respect to other chapters including harvesting chapters.

A.2.0 GENERAL

- A.2.1 The Dehcho Government will allow any Person to enter, cross or stay temporarily on the Dehcho Ndehe subject to:
- a) conditions and restrictions set out in A.3.0;
 - b) additional conditions which may be made in accordance with A.4.0;
 - c) conditions which result from a resolution or determination under the Dispute Resolution chapter; and
 - d) Legislation.⁶
- A.2.2 Any Person exercising access to the Dehcho Ndehe under A.2.1 may⁷:
- a) harvest Wildlife and Fish; and
 - b) employ any ⁸mode of transport.
- A.2.3 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:
- a) access under A.2.1; and
 - b) any cost incurred by the Dehcho Government in relation to access under A.2.1.
- unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.⁹
- A.2.4 There is no permitting, licensing or screening required for access under A.2.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.¹⁰

⁶ DFN propose: "...Legislation enacted by the Dehcho Government after consultation with Canada".

⁷ DFN suggest "...under A.2.1 may, with the consent of the Dehcho Government, ..."

⁸ DFN propose: "...any *necessary* mode of transport."

⁹ DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after consultation with Canada".

¹⁰ The DFN propose the following alternative wording: "...unless otherwise provided by Legislation enacted by the Dehcho Government after consultation with Canada."

A.2.5 Any Person exercising access under A.2.1 who does not comply with a provision of this chapter will be considered a trespasser and the common law¹¹ applying to trespassers on fee simple land will apply to such Person.

A.3.0 CONDITIONS AND RESTRICTIONS

A.3.1 Unless otherwise agreed to by the Dehcho Government, Persons accessing the Dehcho Ndehe under A.2.1 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising therefrom, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent¹² action of the Dehcho Government or any Dehcho Citizen.

A.3.2 Access under A.2.1 will, where practicable¹³, be exercised:

- a) upon prior notice to the Dehcho Government;
- b) on a route identified for that purpose by the Dehcho Government; or
- c) on an existing route used regularly for such access¹⁴.

A.3.3 Unless otherwise agreed to by the Dehcho Government, a Person exercising access under A.2.1 is subject to conditions that the Person:

- a) does not cause unnecessary damage to the Dehcho Ndehe or structures on the Dehcho Ndehe, and is responsible for any such damage; and
- b) does not unnecessarily interfere with the use and peaceable enjoyment of the Dehcho Ndehe by the Dehcho Government or a Dehcho Citizen.

A.3.4 The access allowed by the Dehcho Government under A.2.1 does not include the right to:

¹¹ Or Trespass Act enacted by the Dehcho Government.

¹² The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard.

¹³ DFN suggest "possible" instead of "practicable".

¹⁴ DFN believe this wording creates uncertainty and suggest that "existing routes" be identified on a map to be attached to the Dehcho Agreement.

- a) engage in any commercial activity;
- b) establish any permanent or seasonal Camp¹⁵; or
- c) establish any permanent or seasonal¹⁶ structure.

A.3.5 The right of access under A.2.1 is subject to any restrictions or prohibitions established by Legislation.¹⁷

A.4.0 ADDITIONAL CONDITIONS BY AGREEMENT¹⁸

A.4.1 The Dehcho Government may propose to the Government of Canada and the Government of the Northwest Territories additional conditions on access to the Dehcho Ndehe under A.2.1 provided such conditions pertain only to:

- a) requirements for notice or registration by Persons accessing Dehcho Ndehe; or
- b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:
 - i) protect the environment;
 - ii) conserve Wildlife, Fish, Migratory Birds or their habitats;
 - iii) avoid conflict with Harvesting by Dehcho Citizens or with other uses of the Dehcho Ndehe by Dehcho Citizens; and
 - iv) protect Camps or structures.

A.4.2 Upon proposal by the Dehcho Government of an additional condition in accordance with A.4.1, the Parties will enter into negotiations with respect to the proposed additional condition.

A.4.3 If the Dehcho Government and the Government of Canada and the Government of the Northwest Territories do not reach agreement

¹⁵ Is Camps intended to include Dene hunting camps?

¹⁶ Is this intended to prohibit temporary seasonal Camps, or permanent Camps?

¹⁷ DFN proposed: "... by Legislation enacted by the Dehcho Government."

¹⁸ Sections 4.1 – 4.4 are unnecessary if, as the DFN propose, the Dehcho Government has exclusive or paramount jurisdiction to enact legislation governing access to Dehcho Ndehe.

on an additional condition proposed under A.4.1, any party may at any time refer the dispute for resolution or determination under the Dispute Resolution chapter.

A.4.4 The Dehcho Government will take reasonable measures to notify the public of additional conditions which may be established under A.4.1 or A.4.3.

A.4.5 Additional conditions on access under A.2.1 may be established by agreement between the Dehcho Government and the Person with whom such conditions would apply.

PART III ACCESS BY HOLDERS OF EXISTING INTERESTS

A.5.0 GENERAL

A.5.1 The holder of:

- a) an interest¹⁹ in an excluded parcel set out in Appendix “X” including its renewal or replacement;
- b) an interest set out in Appendix “X”, including its renewal or replacement; or
- c) a land use permit granted by the Mackenzie Valley Land and Water Board before the Effective Date,

has a right of access to the Dehcho Ndehe to allow the exercise of that interest, subject to the conditions and restrictions set out in A.6.0.

A.5.2 The right of access under A.5.1 extends to any employee, client, agent or guest of the interest holder.

A.5.3 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:

- a) access under A.5.1; and
- b) any cost incurred by the Dehcho Government in relation to access under A.5.1,

unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.²⁰

¹⁹ “Interest” should be defined. Does it include prospecting permits and mineral claims?

²⁰ DFN propose instead: “...provided by Legislation enacted by the Dehcho Government after

- A.5.4 There is no additional permitting, licensing or screening required for access under A.5.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.
- A.5.5 An interest holder exercising access to the Dehcho Ndehe under A.5.1 may employ any²¹ mode of transport.
- A.5.6 An interest holder exercising access under A.5.1 who does not comply with a provision of this chapter will be considered a trespasser and the common law applying to trespassers on fee simple land will apply to such Person.²²

A.6.0 CONDITIONS AND RESTRICTIONS

- A.6.1 Unless otherwise agreed to by the Dehcho Government, holders of existing interests who access the Dehcho Ndehe under A.5.1 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising therefrom, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent²³ action of the Dehcho Government or any Dehcho Citizen.
- A.6.2 Access under A.5.1 will be exercised in a manner that is consistent with the terms and conditions of the existing interest.
- A.6.3 Where the exercise of the right of access under A.5.1 involves any activity of a type or in a location not authorized by the existing interest on the Effective Date of the Final Agreement, the exercise of that right of access is subject to the agreement of the Dehcho Government.²⁴
- A.6.4 Where an agreement is not reached under A.6.3, the holder of the existing interest may refer the dispute for resolution or determination under the Dispute Resolution chapter, but may not

consultation with Canada”.

²¹ DFN propose: “...any *reasonable* mode of transport”.

²² DFN propose also to make unauthorized access subject to prosecution under any *Trespass Act* enacted by the Dehcho Government.

²³ The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. “Gross negligence” may be a more appropriate standard.

²⁴ Or “subject to terms imposed by the DCRMA.”

exercise access until the dispute has been resolved or determined.²⁵

A.6.5 The right of access under A.5.1 is subject to any restrictions or prohibitions established by Legislation.²⁶

PART IV COMMERCIAL ACCESS

A.7.0 GENERAL

A.7.1 In this subsection, “Dehcho Ndehe” means:

- a) Dehcho Ndehe²⁷ and Waters overlying such lands;
- b) Navigable rivers and other Navigable Waters that can be entered from such rivers where such Waters overlie Dehcho Ndehe;
- c) portages on Dehcho Ndehe associated with Navigable rivers and other Navigable Waters that can be entered from such rivers; and
- d) Waterfront Lands within Dehcho Ndehe associated with Navigable rivers and other Navigable Waters that can be entered from such rivers.

A.7.2 The Dehcho Government will allow any Person who requires access to Dehcho Ndehe to reach adjacent lands or Waters for commercial purposes.

A.7.3 Access under A.7.2 is subject to:

- a) conditions and restrictions set out in A.8.0;
- b) additional conditions which may be made in accordance with A.9.0;
- c) additional conditions resulting from a resolution or determination under the Dispute Resolution chapter; and
- d) Legislation²⁸.

²⁵ DFN propose to reference DCRMA.

²⁶ DFN propose: “Legislation enacted by the Dehcho Government”.

²⁷ DFN propose to define Dehcho Ndehe as including water and water beds.

²⁸ DFN propose: “Legislation enacted by the Dehcho Government”.

A.7.4 Any Person exercising access under A.7.2 may employ any²⁹ mode of transport.

A.7.5 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:

- a) access under A.7.2; and
- b) any cost incurred by the Dehcho Government in relation to access under A.7.2.

unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.³⁰

A.7.6 There is no permitting, licensing or screening required for access under A.7.2 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.³¹

A.7.7 Any Person exercising access under A.7.2 who does not comply with a provision of this chapter will be considered a trespasser and the common law applying to trespassers on fee simple land will apply to such Person.³²

A.8.0 CONDITIONS AND RESTRICTIONS

A.8.1 Unless otherwise agreed to by the Dehcho Government, Persons accessing the Dehcho Ndehe under A.7.2 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising therefrom, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent³³ action of the Dehcho Government or any Dehcho Citizen.

A.8.2 Access under A.7.2 must be exercised:

²⁹ DFN propose: "...any *reasonable* mode of transport".

³⁰ DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after Consultation with Canada".

³¹ DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after Consultation with Canada".

³² DFN propose also to make unauthorized access subject to prosecution under any *Trespass Act* enacted by the Dehcho Government.

³³ The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard.

- a) by using the most direct route³⁴; and
- b) by minimizing use of portages and Waterfront Lands.

A.8.3 Access to portages and Waterfront Lands under A.7.2:

- a) is subject to prior notice being given to the Dehcho Government; and
- b) does not include the right:
 - i) to engage in any commercial activity, other than an activity that is necessarily incidental to travel; or
 - ii) to establishing any permanent or seasonal³⁵ Camp or structure.

A.8.4 Access to Dehcho Ndehe under A.7.2 is subject to:

- a) the access being of a casual and insignificant nature;
- b) prior notice given to the Dehcho Government;
- c) the route having been previously used for similar commercial access on a regular basis, whether year round or intermittently; and
- d) the access not resulting in a significant alteration in the use of the route.

A.8.5 Unless otherwise agreed to by the Dehcho Government, a Person exercising access under A.7.2 is subject to conditions that the Person:

- a) does not cause unnecessary damage to Dehcho Ndehe or structures on the Dehcho Ndehe, and is responsible for any such damage;
- b) does not unnecessarily interfere with the use and peaceable enjoyment of Dehcho Settlement Land by the Dehcho Government or a Dehcho Citizen.

A.9.0 ADDITIONAL CONDITIONS BY AGREEMENT

³⁴ DFN propose: "...most direct *existing* route."

³⁵ Is this intended to restrict temporary and permanent seasonal Camps?

- A.9.1 Where a Person exercising access under A.7.2 is unable to comply with the conditions set out in A.8.0, that Person requires the agreement of the Dehcho Government as to any variation of those conditions.
- A.9.2 A Person requiring variation of any condition will propose that variation in writing to the Dehcho Government. Upon proposal of a variation in accordance with this section, the Person proposing the variation and the Dehcho Government will enter into negotiations with respect to the proposed variation.³⁶
- A.9.3 If the Person exercising access under A.7.2 and the Dehcho Government cannot agree on a variation to the conditions set out in A.8.0, the Person with the right of access may refer the dispute for resolution under the Dispute Resolution chapter, but may not exercise access until the dispute has been resolved or determined.³⁷
- A.9.4 The Dehcho Government may propose³⁸ to the Government of Canada and the Government of the Northwest Territories additional conditions on access to Dehcho Ndehe under A.7.2 provided such conditions pertain only to:
- a) requirements for notice or registration by Persons accessing Dehcho Ndehe; or
 - b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:
 - i) protect the environment;
 - ii) conserve Wildlife, Fish Migratory Birds or their habitats;
 - iii) avoid conflict with Harvesting by Dehcho Citizens or with other uses of Dehcho Ndehe by Dehcho Citizens; and
 - iv) protect Camps or structures.

³⁶ This clause is presently silent with respect to the role of the DCRMA.

³⁷ Ditto.

³⁸ 9.3 and 9.4 are unnecessary if the Dehcho Government has exclusive or paramount jurisdiction to enact Legislation

- A.9.5 If the Dehcho Government and the Government of Canada and the Government of the Northwest Territories do not reach agreement on an additional condition proposed under A.9.3, the Dehcho Government may refer the dispute for resolution in accordance with the Dispute Resolution chapter.
- A.9.6 The Dehcho Government will take reasonable measures to notify the public of any additional conditions which may result under A.9.1 or A.9.4.
- A.9.7 Additional conditions under A.9.1 may be established by agreement between the Dehcho Government and the Person with whom such conditions on access would apply.

PART V GOVERNMENT ACCESS

A.10.0 GENERAL

- A.10.1 ³⁹Agents, employees, contractors of the Government of Canada and the Government of the Northwest Territories, including Law Enforcement and Peace Officers, members of the Canadian Forces including any non-Canadian military member attached to a Canadian Forces Unit, hereafter referred to as “government representatives”, have a right to enter, cross or stay on the Dehcho Ndehe and to use natural resources incidental⁴⁰ to such access to:
- a) deliver and manage Government of Canada and Government of the Northwest Territories programs and services;
 - b) carry out duties under the Laws of Canada and the Northwest Territories including law enforcement, investigations, inspections and crime prevention;
 - c) respond to emergencies; or
 - d) address other public safety and security matters.
- A.10.2 When exercising access under A.10.1 b), the Government of Canada and the Government of the Northwest Territories may establish on the Dehcho Ndehe:

³⁹ DFN propose: “Following Consultation with the Dehcho Government agents, employees, contractors ...”

⁴⁰ DFN propose: “...*necessary* to such access...” rather than “... incidental to...”.

- a) navigational aids and safety devices along the shorelines of Navigable Waters prior to the start of a navigation season, provided that the area occupied by each such navigational aid or safety device does not exceed:
 - i) two hectares, for range markers and buoy transits; or
 - ii) 0.1 hectare, for single beacons;
 - b) stream gauges; and
 - c) fuel caches.
- A.10.3 The Government of Canada or the Government of the Northwest Territories will inform⁴¹ the Dehcho Government prior to establishing any structures referred to in A.10.2.
- A.10.4 The Department of National Defence and the Canadian Forces⁴² have a right of access to the Dehcho Ndehe for military manoeuvres⁴³ with the agreement of the Dehcho Government or, failing an agreement, on conditions established in accordance with the Dispute Resolution chapter. Where the Minister of National Defence and the Dehcho Government do not reach agreement on conditions for the exercise of that right of access, the Minister of National Defence may refer the dispute for resolution in accordance with the Dispute Resolution chapter, but that Department and those Forces may not exercise it until the dispute has been resolved or determined.
- A.10.5 The Final Agreement will not limit the authority of Canada or the Minister of National Defence to carry out any and all activities related⁴⁴ to national defence and national security⁴⁵ nor limit the authority of the Minister of National Defence under section 257 of the *National Defence Act, R.S.C. 1985, c. N-5*.
- A.10.6 Any government representative authorized under Legislation to provide to the public electrical power, telecommunications services or similar public utilities, other than pipelines for the transmission of hydrocarbons, will have a right of access to Dehcho Ndehe to carry out assessments, surveys and studies in relation to the proposed

⁴¹ DFN propose to replace “inform” with “Consult”.

⁴² DFN propose: “...*will* have a right of access...”

⁴³ DFN propose that “military manoeuvres” be a defined term.

⁴⁴ DFN propose “...*necessary* to National Defence” rather than “related to...”.

⁴⁵ Should “national security” be a defined term?

services, provided they Consult with Dehcho Government prior to exercising such right.

A.10.7 Any government representative exercising access to Dehcho Ndehe under A.10.1, A.10.4 or A.10.6 may employ any mode of transport.

A.10.8 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:

- a) access under A.10.1, A.10.4 or A.10.6; and
- b) any cost incurred by the Dehcho Government in relation to access under A.10.1, A.10.4 or A.10.6⁴⁶

unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.

A.10.9 There is no permitting, licensing or screening required for access under A.10.1, A.10.4 or A.10.6 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.

A.10.10 Access under A.10.1, A.10.4 or A.10.6 is subject to:

- a) applicable conditions and restrictions set out in A.11.0;
- b) specific additional conditions which may be made in accordance with A.12.0;
- c) additional conditions resulting from a resolution or determination under the Dispute Resolution chapter; and
- d) Legislation⁴⁷.

A.11.0 CONDITIONS AND RESTRICTIONS

A.11.1 Unless otherwise agreed to by the Dehcho Government, government representatives accessing Dehcho Ndehe under A.10.1, A.10.4 or A.10.6 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for

⁴⁶ DFN believe the Dehcho Government should be compensated for any damage to Dehcho Ndehe.

⁴⁷ DFN propose that the Agreement require Consultation with the Dehcho Government with respect to any Legislation.

loss suffered or damage arising therefrom, except for death or injury to such government representative or for damage to the property of such government representative that results from a danger arising from the wilful or reckless conduct or by the negligent⁴⁸ action of the Dehcho Government or any Dehcho Citizen.

- A.11.2 Unless otherwise agreed to by the Dehcho Government, access under A.10.1, A.10.4 or A.10.6 is subject to conditions that the government representative exercising the access:
- a) does not cause unnecessary significant⁴⁹ damage to the Dehcho Ndehe or structures on the Dehcho Ndehe, and is responsible for any such damage; and
 - b) does not unnecessarily interfere with the use and peaceable enjoyment of the Dehcho Ndehe by the Dehcho Government or a Dehcho Citizen.
- A.11.3 Prior to accessing the Dehcho Ndehe under A.10.1, A.10.4 or A.10.6, the Government of Canada or the Government of the Northwest Territories, as applicable, will give prior notice⁵⁰ of such access to the Dehcho Government when it is reasonable to do so except no notice⁵¹ will be given when:
- a) the access concerns an activity related to law enforcement, investigations, inspections or crime prevention; or
 - b) notice would be contrary to the interests of national defence and national security.
- A.11.4 Excepting the establishment of structures under A.10.2, if the Government of Canada or the Government of the Northwest Territories requires the continuous use or occupancy of any part of the Dehcho Ndehe for more than two years, the Dehcho Government may require the Government of Canada or the Government of the Northwest Territories to acquire an interest in the lands for that purpose by agreement or under the Expropriation chapter.

⁴⁸ The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard.

⁴⁹ DFN propose to delete "significant".

⁵⁰ DFN propose: "...will Consult with the Dehcho Government...", rather than "give prior notice..."

⁵¹ DFN propose: "except Consultation will modified as necessary when:"

A.12.0 ADDITIONAL CONDITIONS BY AGREEMENT

- A.12.1 Subject to A.12.2, the Dehcho Government may propose to the Government of Canada and the Government of the Northwest Territories additional conditions on access to the Dehcho Ndehe under A.10.1 provided such conditions pertain only to:
- a) requirements for notice or registration by government representatives accessing the Dehcho Ndehe; or
 - b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:
 - i) protect the environment;
 - ii) conserve Wildlife, Fish, Migratory Birds or their habitats;
 - iii) avoid conflict with Harvesting by Dehcho Citizens or with of the Dehcho Ndehe by Dehcho Citizens; and
 - iv) protect Camps or structures.
- A.12.2 For greater clarity, additional conditions may not be established in accordance with A.12.1, whether through agreement with Government of Canada and the Government of the Northwest Territories or the process set out in the Dispute Resolution chapter, for the exercise of access rights in relation to law enforcement, investigations, inspections or crime prevention under the Laws of Canada or the Northwest Territories or for access by the Department of National Defence and the Canadian Forces under A.10.4.⁵²
- A.12.3 Upon proposal by the Dehcho Government of an additional condition in accordance with A.12.1, the Parties will enter into negotiations with respect to the proposed additional condition.
- A.12.4 If the Dehcho Government and the Government of Canada and the Government of the Northwest Territories do not reach agreement on a further condition proposed under A.12.1, the Dehcho Government may refer the dispute for resolution in accordance with the Dispute Resolution chapter.

⁵² DFN may propose to delete 12.2. Further discussion required.

- A.12.5 The Dehcho Government will take reasonable measures to notify the public of the further conditions which may result from a resolution or a determination under A.12.4.
- A.12.6 Further conditions on access under A.10.1, A.10.4 and A.10.6 may be established by agreement between the Dehcho Government and the Person with whom such conditions would apply.

PART VI ACCESS TO CONSTRUCTION MATERIALS

A.13.0 GENERAL

- A.13.1 The Dehcho Government will provide to any Person, the Government of Canada, the Government of the Northwest Territories or Dehcho Community Government:
- a) supplies of Construction Materials in the Dehcho Ndehe; and
 - b) access to the Dehcho Ndehe for the purpose of obtaining the supplies of Construction Materials,

where the Construction Materials are to be used on lands other than the Dehcho Ndehe or Dehcho Community Land and where there is no alternative supply within a reasonable proximity to the location of the proposed use.⁵³

- A.13.2 Excepting A.13.3, the Dehcho Government is entitled to be paid for:
- a) the value of Construction Materials supplied under A.13.1; and
 - b) the exercise of access under A.13.1.

- A.13.3 The Dehcho Government is not entitled to be paid for:
- a) the value of Construction Materials supplied under A.13.1;
 - b) the exercise of access under A.13.1; or
 - c) any cost incurred by the Dehcho Government in relation to those Construction Materials or for the access,

⁵³ The DFN question whether other governments, including Canada and the GNWT, are subject to similar legal requirements to provide construction materials to other governments and private interests.

if the materials are to be used, for a public purpose, or used in the Dehcho Ndehe or used for a public road proximate to the Dehcho Ndehe or Dehcho Community Land where such road will provide access to the Dehcho Ndehe or Dehcho Community Land.⁵⁴

A.13.4 Any dispute arising under A.13.1, A.13.2 or A.13.3 may be referred to dispute resolution in accordance with the Dispute Resolution chapter.

A.14.0 CONDITIONS AND RESTRICTIONS

A.14.1 Unless otherwise agreed to by the Dehcho Government, Persons accessing the Dehcho Ndehe under A.13.1 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising there from, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent⁵⁵ action of the Dehcho Government or any Dehcho Citizen.

PART VII ACCESS TO CONTAMINATED SITES

A.15.0 GENERAL

A.15.1 Agents, employees and contractors of the Government of Canada and the Government of the Northwest Territories have a right of access to the Dehcho Ndehe to:

- a) conduct Remediation under [Chapter]; or
- b) use Specified Substances or other natural resources on Dehcho Ndehe to the extent necessary to conduct the Remediation.

A.15.2 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:

- a) access under A.15.1;
- b) the use of Specified Substances or other natural resources⁵⁶ under A.15.1; or

⁵⁴ DFN believe the Dehcho Government should be compensated, at least in some circumstances.

⁵⁵ The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard.

⁵⁶ DFN question whether the Dehcho Government should be paid for the use of its natural

- c) any cost incurred by the Dehcho Government in relation to the access or Specified Substances and natural resources under A.15.1.

A.15.3 There is no permitting, licensing or screening required for access under A.15.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.⁵⁷

A.15.4 Agents, employees and contractors of the Government of Canada and the Government of the Northwest Territories exercising access to the Dehcho Ndehe under A.15.1 may employ any⁵⁸ mode of transport.

A.16.0 CONDITIONS AND RESTRICTIONS

A.16.1 Unless otherwise agreed to by the Dehcho Government, Persons accessing the Dehcho Ndehe under A.15.1 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising there from, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent⁵⁹ action of the Dehcho Government or any Dehcho Citizen.

A.16.2 Prior to accessing the Dehcho Ndehe under A.15.1, the Government of Canada or the Government of the Northwest Territories, as applicable, shall give prior notice of such access to the Dehcho Government when it is reasonable to do so.

PART VIII WINTER ROAD ACCESS

A.17.0 GENERAL

A.17.1 Agents, employees, and contractors of the Government of the Northwest Territories⁶⁰ have a right of access to the Dehcho Ndehe to:

resources in Remediation.

⁵⁷ DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after consultation with Canada".

⁵⁸ DFN propose: "... any *necessary* mode of transport."

⁵⁹ The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard.

⁶⁰ Will the Dehcho Government have similar access to Crown land and GNWT land for building and managing roads deemed necessary by the Dehcho Government?

- a) establish and build the Winter Roads shown on the map in Appendix “Y”; and
 - b) manage, control, vary or close up those Winter Roads.
- A.17.2 Any Person has a right to travel on the Winter Roads referred to in A.17.1 in accordance with Legislation in respect of Public Highways.⁶¹
- A.17.3 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:
- a) access under A.17.1 or A.17.2; and
 - b) any cost incurred by the Dehcho Government in relation to access under A.17.1 or A.17.2,
- unless otherwise provided by Legislation enacted after Consultation with the Dehcho.⁶²
- A.17.4 There is no permitting, licensing or screening required for access under A.17.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.⁶³
- A.17.5 Agents, employees and contractors of Government of the Northwest Territories exercising access to the Dehcho Ndehe under A.17.1 may employ any ⁶⁴mode of transport.
- A.17.6 Access under A.17.1 or A.17.2 is subject to:
- a) applicable conditions and restrictions set out in A.18.0;
 - b) specific additional conditions which may be made in accordance with A.19.0;
 - c) additional conditions resulting from a resolution or determination under the Dispute Resolution chapter; and

⁶¹ The DFN propose that the Dehcho Government will have jurisdiction to restrict use of Winter Roads on Dehcho Ndehe.

⁶² DFN propose instead: “...provided by Legislation enacted by the Dehcho Government after consultation with Canada (or the GNWT)”.

⁶³ DFN propose instead: “...provided by Legislation enacted by the Dehcho Government after consultation with Canada (or the GNWT)”.

⁶⁴ Or “...any *necessary* mode of transport.”

- d) Legislation.⁶⁵

A.18.0 CONDITIONS AND RESTRICTIONS

A.18.1 Unless otherwise agreed to by the Dehcho Government, Persons accessing the Dehcho Ndehe under A.17.1, or A.17.2 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising there from, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent⁶⁶ action of the Dehcho Government or any Dehcho Citizen.

A.18.2 Prior to accessing the Dehcho Ndehe under A.17.1, the Government of Canada or the Government of the Northwest Territories, as applicable, shall give prior notice⁶⁷ of such access to the Dehcho Government when it is reasonable to do so.

A.19.0 ADDITIONAL CONDITIONS BY AGREEMENT⁶⁸

A.19.1 Subject to A.19.2, the Dehcho Government may propose to the Government of Canada and the Government of the Northwest Territories additional conditions on access to the Dehcho Ndehe under A.17.1 or A.17.2 provided such conditions pertain only to:

- a) requirements for notice or registration by Persons accessing the Dehcho Ndehe; or
- b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:
 - i) protect the environment;
 - ii) conserve Wildlife, Fish Migratory Birds or their habitats;

⁶⁵ DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after consultation with Canada (or the GNWT)".

⁶⁶ The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard.

⁶⁷ DFN propose a duty to Consult rather than merely give notice to the Dehcho Government.

⁶⁸ Sections 19.1 and 19.2 may be unnecessary if other DFN proposals respecting Winter Roads are agreed to.

- iii) avoid conflict with Harvesting by Dehcho Citizens or with other uses of the Dehcho Ndehe by Dehcho Citizens; and
- iv) protect Camps or structures.

A.19.2 If the Dehcho Government and the Government of Canada and the Government of the Northwest Territories do not reach agreement on a further condition proposed under A.19.1, the Dehcho Government may refer the dispute for resolution in accordance with the Dispute Resolution chapter.

A.19.4 The Dehcho Government will take reasonable measures to notify the public of the further conditions which may result from a resolution or a determination under A.19.2.

A.19.5 Further conditions on access under A.17.1 or A.17.2 may be established by agreement between the Dehcho Government and the Person with whom such conditions would apply.

Note: This example is provided to show how concurrent jurisdictions in the area of Out of School Care would work.

In this example, a public Dehcho Government exercises the jurisdiction. If the Dehcho Government was an exclusive Aboriginal Government that represents and serves only Dehcho Participants, the jurisdiction of the Dehcho Government would be restricted to Dehcho Participants and the GNWT will continue to be responsible for other residents of the Dehcho region.

CHAPTER X OUT OF SCHOOL CARE

DEFINITIONS

X.1 In this chapter

“Children” means individuals who reside in the <region name> and, at the beginning of the school year, have attained the age of 5 years and are not older than 12 years.

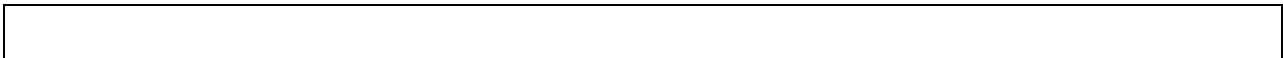
X.1 JURISDICTION

X.1.2 The Dehcho Government has Jurisdiction in the <region name> with respect to:

- (a) out of school care of Children;
- (b) licensing and regulation of facilities providing out of school care; and
- (c) certification of out of school caregivers.

X.2 CONFLICT OF LAWS

X.2.1 In the event of a conflict between a Dehcho Government Law made pursuant to this chapter and a Federal Law or NWT Law, the Dehcho Government Law prevails to the extent of the conflict.



Note: This example is provided to show how concurrent jurisdictions in the area of Early Childhood Education would work.

In this example, a public Dehcho Government exercises the jurisdiction. If the Dehcho Government was an exclusive Aboriginal Government that represents and serves only Dehcho Participants, the jurisdiction of the Dehcho Government would be restricted to Dehcho Participants and the GNWT will continue to be responsible for other residents of the Dehcho region.

CHAPTER X EARLY CHILDHOOD EDUCATION AND CHILDCARE

DEFINITIONS

“Pre-school Child” means an individual who resides in the <region name> and is not older than 6 years at the beginning of the school year and is not a Student

X.1 JURISDICTION

X.1.1 The Dehcho Government has Jurisdiction in the <region name> with respect to:

- (a) early childhood education and childcare of Pre-school Children who are not Students;
- (b) licensing and regulation of facilities providing early childhood education and childcare; and
- (c) certification of early childhood educators and childcare providers.

X.2 STANDARDS¹

¹ For greater certainty, any facility used to deliver early childhood programs and services would be required to comply with National Building Code and other health and safety standards. The standards referred to here refer to the actual delivery of early childhood programs and services.

X.2.1 Dehcho Government Laws made pursuant to X.1.1 shall provide for standards compatible with NWT early childhood education core principles and objectives.

X.3 CONFLICT OF LAWS

X.3.1 In the event of a conflict between a Dehcho Government Law made pursuant to this chapter and a Federal Law or NWT Law, the Dehcho Government Law prevails to the extent of the conflict.

X.3.2 Notwithstanding X.3.1, in the event of a conflict between a Dehcho Government Law made pursuant to X.1.1 (c) and a NWT Law in relation to certification of early childhood educators and childcare providers, the NWT Law prevails to the extent of the conflict.

Relevant Definitions

Dehcho Government; GNWT; Canada; Jurisdiction; Student; Consultation; Dehcho Government Law; Federal Law; NWT Law

CHAPTER K KINDERGARTEN TO GRADE 12 EDUCATION¹

DEFINITIONS

“Student” means a person enrolled in kindergarten to grade 12 in the <region name>.

“Curriculum Framework” means the desired learning outcomes for primary (kindergarten – grade 3), intermediate (grades 4 – 6), junior (grades 7 – 9) and senior (grades 10 – 12) grade levels.

K.1 JURISDICTION

K.1.1 The Dehcho Government has Jurisdiction in the <region name> with respect to:

- (a) the kindergarten to grade 12 education of Students residing in the <region name>; and ²
- (b) the certification of kindergarten to grade 12 teachers.

K.1.2 The Jurisdiction set out in **K.1.1** does not include:

- (a) the development of the Curriculum Framework as set by the GNWT;³ and
- (b) setting the requirements for grade 12 graduation.

K.1.3 When exercising its Jurisdiction pursuant to **K.1.1**, the Dehcho Government shall ensure that:

¹ This Chapter is based on the assumption that the Dehcho Government is a public government.

² Dehcho suggests that the age requirements should be removed.

³ LTC suggests that more discussion is need at the table concerning the “Curriculum Framework” concept (minimum learning objectives may be a way to address this). See also, K.1.3 (a) and K.4.1(a).

Draft Chapter for Discussion Purposes – Dehcho Table

Prepared by the GNWT - Without Prejudice - April, 2009 – Rev Oct 14 09

- (a) the method of delivering kindergarten to grade 12 education is consistent with achieving the prescribed learning outcomes set out in the Curriculum Framework; and
- (b) all persons aged 5 years by December 31 of the school year and not older than 21 years have access to kindergarten to grade 12 education in a **regular instructional setting** in the <region name>.

K.1.4 The Dehcho Government may create exemptions to **K.1.3 (b)** where:

- (a) a Student has reached the age of sixteen (16) years and has been expelled from school;
- (b) the health, safety or delivery of education to that Student or other Students would be jeopardized by the presence of that Student in a regular instructional setting; and
- (c) there are other reasons as determined by the Dehcho Government in Consultation with the GNWT.

K.2 ASSESSMENT TOOLS

K.2.1 The GNWT may develop means of assessment for the purpose of determining Student achievement in relation to the Curriculum Framework. The Dehcho Government shall use these assessment tools, if any, when assessing a Student's level of achievement when transferring to a school system operated by the Dehcho Government. Decisions regarding a Student's placement in the school system operated by the Dehcho Government shall be in accordance with Dehcho Government policies.

K.3 AGREEMENTS

Draft Chapter for Discussion Purposes – Dehcho Table

Prepared by the GNWT - Without Prejudice - April, 2009 – Rev Oct 14 09

K.3.1 The GNWT retains the right to represent the NWT in discussions and enter into agreements with other territories, provinces or Canada on behalf of the NWT with respect to kindergarten to grade 12 education. Such agreements shall not affect the Dehcho Government's Jurisdiction pursuant to **K.1.1**.

K.3.2 The Dehcho Government may enter into agreements with a territory, province or Canada, a school board in a territory or province, or any independent school accredited by a territory or province, for the delivery of kindergarten to grade 12 education within the <region name>, or for Students receiving kindergarten to grade 12 education outside of the <geographical description>.

K.4 CONSULTATION

K.4.1 The GNWT shall Consult the Dehcho Government with respect to changes to:

- (a) the Curriculum Framework;
- (b) requirements for grade 12 graduation; and
- (c) teacher certification.

K.5 INFORMATION SHARING

K.5.1 When the Dehcho Government exercises its Jurisdiction pursuant to **K.1.1**, the Dehcho Government and the GNWT may enter into agreements on information sharing, including information on Student enrollment and Student records.

K.6 CONFLICT OF LAWS

K.6.1 In the event of a conflict between a Dehcho Government Law made pursuant to this chapter and a Federal Law or NWT Law, the Dehcho Government Law prevails to the extent of the conflict.

K.6.2 Notwithstanding **K.6.1**, in the event of a conflict between a Dehcho Government Law made pursuant to **K.1.1 (b)** and a NWT Law in relation to teacher certification, the NWT Law prevails to the extent of the conflict.

Note: This example is provided to show how Post-Secondary Education may be addressed in a Dehcho Agreement.

In this example, a public or Aboriginal Dehcho Government has the ability to establish a post-secondary institution under applicable territorial or federal laws. It is not a law-making authority.

CHAPTER X POST SECONDARY EDUCATION

X.1 AUTHORITY

X.1.1 The Dehcho Government has the authority in the <region name> with respect to the establishment by the Dehcho Government of post secondary educational institutions in the <region name>.

X.1.2 The authority set out in X.1.1 does not include:

- (a) restricting the establishment of post secondary institutions in the <region name>; or
- (b) the authority to certify, license or regulate occupations, trades, professionals, or professional organizations and societies.

X.1.3 For greater certainty, any post secondary educational institutions established pursuant to section X.1.1 are subject to NWT Laws that apply to post secondary educational institutions in the Northwest Territories.

<p style="text-align: center;">Relevant Definitions</p>
--

<p style="text-align: center;">Dehcho Government; GNWT; Canada; NWT Law</p>

CHAPTER DR: DISPUTE RESOLUTION

DR.1.0	GENERAL
DR.2.0	INFORMAL DISCUSSIONS
DR.3.0	MEDIATION
DR.4.0	ARBITRATION

DR.1.0 GENERAL

DR.1.1 The Dispute Resolution chapter of the Dehcho Agreement applies to the following types of disputes:

- a) any matter which the Dehcho Agreement stipulates may be resolved in accordance with its Dispute Resolution chapter;
- b) a dispute between the Government of Canada, the Government of the Northwest Territories or the Dehcho Government concerning the interpretation or application of the Dehcho Agreement; or
- c) any matter upon which Government of Canada, the Government of the Northwest Territories or the Dehcho Government have agreed to be resolved in accordance with the Dispute Resolution chapter of the Dehcho Agreement.

DR.1.2 A dispute arising under DR.1.1 will progress through the following sequential steps:

- a) informal discussions;
- b) mediation, if agreed to by the parties to the dispute; and
- c) arbitration.

DR.1.3 The parties to a dispute arising under DR.1.1 may at any time resolve their dispute by an agreement in writing. Notification of any such agreement will be provided to all parties.

DR.1.4 During informal discussions under DR.2.0 and mediation under DR.3.0, all communications concerning the dispute will be without prejudice.

DR.1.5 Except as otherwise provided, parties to a dispute may agree to vary a procedural requirement contained in this chapter, as it applies to a particular dispute.

DR.1.6 If a Dehcho Citizen¹ has the right to refer a matter to dispute resolution as set out in the Dehcho Agreement, , the Dehcho Government may, with the consent of the Dehcho Citizen , refer the dispute on behalf of the Dehcho Citizen and represent the Decho Citizen accordingly. .

DR.1.7 For the purposes of informal discussions or mediation, the parties to a dispute will treat documents or communications as confidential unless agreed otherwise. The report of the mediator will be confidential unless agreed otherwise.

DR.1.8 If the parties choose to mediate the dispute under DR.3.0, no other mediation process provided by law applies.

DR.1.9 If the parties choose to refer the dispute to arbitration under DR.5.0, no other arbitration process provided by law applies.

DR.2.0 **INFORMAL DISCUSSIONS**

DR.2.1 Upon notification of a dispute, the parties to the dispute will have informal discussions in an attempt to resolve the dispute prior to it being referred to mediation or arbitration, as the case may be.

DR.3.0 **MEDIATION**

DR.3.1 If a dispute has not been resolved by informal discussions under DR.2.0, the parties may choose to refer the dispute to mediation.

DR.3.2 The parties will select a mediator. In the event the parties are unable to agree upon the selection of a mediator, an application will be made to the Supreme Court of the Northwest Territories to appoint a mediator.

DR.3.3 The mediator will, without delay, consult with the parties to the dispute and arrange for the commencement of the mediation.

DR.3.4 Unless the parties to the dispute agree otherwise, the mediation will be held in the Northwest Territories.

DR.3.5 Costs of mediating a dispute, including the remuneration and expenses of the mediator, will be shared equally amongst the parties to the dispute,

¹ DFN is still considering this terminology.

unless provided otherwise in the Dehcho Agreement or in the Dehcho Implementation Plan. Each party to the dispute will bear its own costs to participate in the mediation.

DR.3.6 Upon termination of the mediation proceedings, the mediator will submit a mediation report to the parties to the dispute.

DR.4.0 ARBITRATION

DR.4.1 If a dispute has not been resolved by informal discussions or mediation, a party may refer the dispute to arbitration.

DR.4.2 The parties will select an arbitrator. In the event the parties are unable to agree upon the selection of an arbitrator, an application will be made to the Supreme Court of the Northwest Territories to appoint an arbitrator.

DR.4.3 Unless the parties to the dispute otherwise agree, a person who has acted as mediator in a dispute cannot act as an arbitrator for that dispute.

DR.4.4 A Party to the Dehcho Agreement that is not a party to the dispute may participate in any arbitration as a party to the dispute.

DR.4.5 An arbitrator may allow any person that is not a party to the dispute, on application and on such terms as the arbitrator may order, to participate as an intervener in an arbitration if, in the opinion of the arbitrator, the interest of that person may be directly affected by the arbitration.

DR.4.6 Subject to provisions of the Dehcho Agreement and to any provisions of an agreement between the parties to the dispute concerning the arbitration, the arbitrator may:

- a) determine all questions of procedure, including the method of giving evidence;
- b) make an award, including interim relief;
- c) provide for the payment of interest and costs;
- d) subpoena witnesses;
- e) administer oaths or affirmations to witnesses; and
- f) refer questions of law to the Supreme Court of the Northwest Territories,

in addition to any other powers specifically provided by the Dehcho Agreement.

DR.4.7 A decision of an arbitrator will be conclusive and binding on the parties to the dispute and will not be challenged by appeal or review in any court except on the ground that the arbitrator has erred in law or exceeded his or her jurisdiction.

DR.4.8 Each party to a dispute will bear its own costs and an equal share of the other costs of the arbitration including the remuneration and expenses of the arbitrator, except if the arbitrator decides to impose the responsibility for costs on just one or some of the parties to the dispute or to distribute it amongst those parties in a different manner.

DR.4.9 Any intervener will bear its own costs.

DR.4.10 A party to the dispute may, after the expiration of 14 days from the date of the release of an arbitration decision or order, or from the date provided in the decision for compliance, whichever is later, file in the Registry of the Supreme Court of the Northwest Territories a copy of the decision or order. The decision or order will be entered as if it were a decision or order of the Court-. Upon being entered, the decision or order will be deemed, for all purposes except for an appeal from it, to be an order of the Supreme Court of the Northwest Territories and enforceable as such.

DR.4.11 If requested by a party to a dispute, any information provided by that party will be kept confidential among the parties to the dispute and the arbitrator.

Draft to be reviewed by Main Table Feb. 4

CHAPTER E: ELIGIBILITY & ENROLMENT

- E.1.0 ELIGIBILITY CRITERIA**
- E.2.0 ENROLMENT COMMITTEE**
- E.3.0 REGISTRAR**
- E.4.0 APPEAL BOARD**
- E.5.0 ENROLMENT RESONSIBILITIES AFTER THE INITIAL ENROLMENT PERIOD**
- E.6.0 COSTS**

DEFINITIONS

In this chapter,

“Dehcho Dene” means: a person who is a descendant of a Dene who resided on, used or occupied land in the Dehcho Asserted Territory (as shown in Appendix A) prior to December 31, 1922, and who identifies as a Dene or as a Métis, or a person who was adopted as a child under laws recognized in Canada or by Dehcho Dene custom by a Dehcho Dene who resided on, used or occupied land in the Dehcho Asserted Territory prior to December 31, 1922, or is a descendant of a person so adopted.

“Spouse” means: a person who (a) is married to another person; or (b) has been cohabiting with another person in a marriage-like relationship for a period of three years.

E.1.0 ELIGIBILITY CRITERIA

E.1.1 An individual will be eligible to be enrolled as a Dehcho Citizen in the Final Agreement if he or she is a Canadian Citizen, or permanent resident of Canada who is:

- a) a Dehcho Dene;
- b) a spouse of a Dehcho Dene¹;
- c) registered, or entitled to be registered, as an Indian on a DFN Band Membership List maintained by the Department of Indian Affairs and Northern Development;

¹ Canada continues internal discussions on whether they can agree to include spouses of Dehcho Dene.

- d) ordinarily resident in the Dehcho Settlement Area, who is accepted as a Dehcho Citizen pursuant to the Community Acceptance process set out in the Dehcho Constitution;
- e) adopted as a child under laws recognized in Canada or by Dehcho Dene custom by an individual eligible for Enrolment; or
- f) a direct descendant of an individual eligible for Enrolment.

E.1.2 An individual will also be eligible to be enrolled as a Dehcho Citizen in the Final Agreement if he or she is a Dehcho Dene who as a result of adoption as a child became a citizen of a country other than Canada.

E.1.3 An individual is not eligible to be enrolled as a Dehcho Citizen while:

- a) that individual is enrolled in another Land Claims Agreement, Lands and Resources Agreement or Self Government Agreement, unless he or she opts to be removed from that other agreement; or
- b) that individual's name is entered on a non-DFN Band Membership List, unless he or she opts to be removed from the other Band Membership List or withdraws an application for Band Membership; or
- c) that individual's name is entered on a Métis Local Membership List other than the Fort Simpson or Fort Providence Métis Local Membership Lists, unless he or she provides notice of intention to be removed from the other Membership List or withdraws an application for membership.

E.1.4 A Dehcho Citizen may not enroll in another Land Claims Agreement, Lands and Resources Agreement or Self Government Agreement or make application to be on a non-DFN Band Membership List or a Métis Local Membership List unless he or she provides notice to withdraw as a beneficiary under the Final Agreement.

E.1.5 Upon applying to be enrolled as a Dehcho Citizen, an individual must notify the Enrolment Committee if he or she is a beneficiary or has applied for enrolment under another Land Claims Agreement, Lands and Resources or Self Government Agreement or if the

individual's name is entered on a non-DFN Band Membership List or a Métis Local Membership List.

E.1.6 Within 120 days of the Effective Date or the date of notification of acceptance of enrolment, an individual referred to in E.1.5 who meets the eligibility criteria set out in E.1.1 and E.1.2, as applicable, and whose application for enrolment has been accepted, must provide written evidence to the Enrolment Committee demonstrating:

- a) that he or she has ceased to be a beneficiary, or has withdrawn his or her application for Enrolment under another Land Claims Agreement, Lands and Resources Agreement or Self Government Agreement; or
- b) has withdrawn his or her application or has been removed from a non-DFN Band Membership List or a Métis Local Membership List, other than the Fort Simpson or Fort Providence Métis Local Membership Lists.

E.1.7 If an individual accepted for enrolment fails to provide the required written evidence under E.1.6, his or her name will be removed from the Dehcho Register.

E.1.8 Until the requirements of E.1.6 have been satisfied, an individual is not entitled to exercise any rights or receive any benefits under the Final Agreement.

E.1.9 The burden of demonstrating eligibility will be on the applicant.

E.1.10 Enrolment will not confer or deny any rights of entry into Canada, Canadian citizenship or the right to be registered under the *Indian Act* or any rights or benefits under the *Indian Act* or, except as set out under the Final Agreement, Federal or Territorial law, impose any obligation on Canada or the GNWT to provide rights or benefits.

E.2.0 ENROLMENT COMMITTEE

E.2.1 The Enrolment Committee will be established no later than 60 days following the signing of this Agreement.

E.2.2 The Enrolment Committee will be composed of four individuals appointed by the DFN and two individuals appointed by Canada .

E.2.3 The Enrolment Committee will, as soon as practicable after it is established:

- a) take reasonable steps to prepare information respecting eligibility to be enrolled as a Dehcho Citizen, including application forms, publicize the information, and make the information and forms available to eligible individuals; and
 - b) set all dates for applications and reviews of rejected applications concerning the Preliminary Enrolment List.
- E.2.4 The Enrolment Committee will establish its own procedures and time limits in accordance with the principles of natural justice.
- E.2.5 As soon as possible following its establishment, but in any event no later than eighteen months thereafter, the Enrolment Committee will create and publish the Preliminary Enrolment List, using existing Dehcho Band lists and Metis membership lists as supporting documents.
- E.2.6
- E.2.7 If the Enrolment Committee rejects an application, the applicant may request a review of the application by the Enrolment Committee. An applicant may only submit a rejected application for review by the Enrolment Committee once and if the application is again rejected, may appeal the decision rendered by the Enrolment Committee to the Appeal Board as per 2.17.
- E.2.8
- E.2.9 At least six months prior to the initialling of the Final Agreement, the Enrolment Committee will publish the Preliminary Enrolment List. For a period of six (6) months after the list is published, the Enrolment Committee may receive and review applications by individuals to be enrolled based on the eligibility criteria set out in E.1.0. An individual whose name already appears on the Preliminary Enrolment List need not apply except to have his or her name removed from the Preliminary Enrolment List.
- E.2.10 At the end of the Preliminary Enrolment Period, including the completion of appeals with respect to Preliminary Enrolment, the Enrolment Committee will cease all activity and will reconvene at such time as agreed to by the Parties.
- E.2.11 At the end of the period established under E.2.9, the Enrolment Committee shall provide the Preliminary Enrolment List to the Ratification Committee, as set out in R.1.5.

- E.2.12 Following the initialling of the Final Agreement, the Enrolment Committee will initiate the Enrolment Period.
- E.2.13 The names of individuals on the Preliminary Enrolment List provided to the Ratification Committee will be automatically transferred to the Dehcho Citizenship Register and no individual whose name so appears will be required to make application for enrolment during the Enrolment Period except to have his or her name removed from the Dehcho Citizenship Register.
- E.2.14 During the Enrolment Period, the Enrolment Committee will, based on the Preliminary Enrolment List:
- a) prepare information respecting eligibility to be enrolled as a Dehcho Citizen and make that information available to eligible individuals,
 - b) set all dates for applications and review of rejected applications concerning the Dehcho Citizenship Register,
 - c) receive applications from those who have not yet applied for enrolment and consider them based on the eligibility criteria set out in E.1.0;
 - d) review once a rejected application for enrolment at the request of the applicant whose application was rejected; and
 - e) after all reviews have been determined, prepare a list of applicants to the Dehcho Citizenship Register who:
 - i) are eligible for enrolment; and
 - ii) have applied to be placed on the Dehcho Citizenship Register.
- E.2.15 An individual will not appear on the Dehcho Citizenship Register if they are:
- a) enrolled under another Land Claims Agreement, Land and Resources Agreement or Self Government Agreement;
 - b) on a Band Membership List other than a Dehcho Band Membership List; or

- c) on a Métis Local Membership List other than the Fort Simpson or Fort Providence Métis Local Membership list.
- E.2.16 Where the individual to be enrolled in the Dehcho Citizenship Register is a child or is legally incompetent, the application must be made by that person's parent, guardian or legal representative.
- E.2.17 An individual whose application is rejected by the Enrolment Committee following review may make an appeal in writing to the Appeal Board within a set timeframe to be established by the Parties.
- E.2.18 Prior to the Effective Date, the Enrolment Committee will publish the Dehcho Citizenship Register and, as soon as practicable, provide copies of the Dehcho Citizenship Register to the Dehcho First Nations, GNWT and the Government of Canada.
- E.2.19 No action may be commenced against the Enrolment Committee or any member of the Enrolment Committee for anything said or done, or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this Chapter.
- E.3.0 REGISTRAR**
- E.3.1 Before the end of the Enrolment Period, the Dehcho First Nations will designate an individual or group of individuals as the Registrar. The Registrar will be established as soon as practicable after the Effective Date of the Final Agreement.
- E.3.2 As soon as possible after the Effective Date, the Registrar will prepare information respecting the Dehcho Citizenship Register and the eligibility criteria required to be enrolled as a Dehcho Citizen and make that information available to individuals eligible to be enrolled as Dehcho Citizens.
- E.3.3 The Registrar will establish its own procedures and time limits for applications in accordance with the principles of natural justice.
- E.3.4 The Registrar will:
- (a) add to the Register the names of each individual eligible to be enrolled as a Dehcho Citizen; and
 - (b) remove the names of the following individuals from the Dehcho Citizenship Register:

- i) an individual who is deceased;
- ii) subject to E.1.2, an individual who is not a Canadian citizen or permanent resident of Canada;
- iii) an individual enrolled under another Land Claims Agreement, Lands and Resource or Self Government Agreement;
- iv) an individual who is entered on a Band Membership List other than a DFN Band Membership List;
- v) an individual who is entered on a Métis Local Membership List other than the Fort Simpson or Fort Providence Métis Local Membership List respectively;
- vi) an individual enrolled by mistake or on the basis of false or misleading documentation;
- vii) an individual who applies to be removed from the Dehcho Citizenship Register; or
- viii) in the case of a minor or a person whose affairs are handled by a guardian or legal representative, an individual whose parent, guardian or legal representative applies to have him/her removed from the Dehcho Citizenship Register.

E.3.5 The Registrar will make corrections to the name of an individual on the Dehcho Citizenship Register upon application and where appropriate.

E.3.6 An individual whose application to be added to the Dehcho Citizenship Register is rejected or whose name is removed may, within 60 days of receipt of notice of such decision, appeal in writing to the Registrar. The notice of decision will be in writing, will contain reasons and will inform the individual of the right to appeal.

E.3.7 The Registrar will maintain a record of every person whose application to be added to the Dehcho Citizenship Register is rejected or whose name is removed from the Dehcho Citizenship Register.

E.3.8 The Registrar will provide each Dehcho Citizen with proof of enrolment on the Dehcho Citizenship Register.

- E.3.9 The Registrar will publish the Dehcho Citizenship Register at least once a year.
- E.3.10 The Registrar will send to the Dehcho Government, GNWT and the Government of Canada, a copy of each annual publication of the Dehcho Citizenship Register as well as notice of any additions to or subtractions from the Dehcho Citizenship Register.
- E.3.11 The Registrar will provide to every person reasonable access to examine the Dehcho Citizenship Register and upon request provide a copy or excerpt. A fee for copies that are requested may be imposed.
- E.3.12 No action may be commenced against the Registrar or any member of the Registrar for anything said or done, or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this Chapter.

E.4.0 APPEAL BOARD

- E.4.1 Any final decision of the Enrolment Committee may be appealed to an Appeal Board to be established by the Parties no later than six months following the establishment of the Enrolment Committee.
- E.4.2 The Appeal Board will be composed of three individuals, one appointed by the DFN, one appointed by the Government of Canada and one jointly appointed by the DFN and the Government of Canada.
- E.4.3 The Appeal Board will:
- a) establish its own procedures applying the principles of natural justice; and
 - b) set time limits for appeals.
- E.4.4 An individual may apply to the Supreme Court of the NWT for judicial review of decisions of the Appeal Board.
- E.4.5 No action may be commenced against the Appeal Board, or any member of the Appeal Board, for anything said or done or omitted to be said or done in good faith in the performance, or intended performance, of a duty or in the exercise of a power under this chapter.

E.5.0 ENROLMENT RESPONSIBILITIES AFTER THE ENROLMENT PERIOD

E.5.1 The Enrolment Committee and the Appeal Board will be dissolved when they have rendered decisions in respect of those applications or appeals commenced before the end of the Enrolment Period and will provide those results to the Dehcho Registrar after the Ratification Vote.

E.5.2 After the Enrolment Period, the Dehcho Government will be responsible for Enrolment procedures, including appeal procedures, and will maintain an enrolment register and ensure that the Registrar provides a copy of the Dehcho Citizenship Register annually or at another time agreed by the Parties.

E.5.3 On dissolution, the Enrolment Committee and Appeal Board will provide their records to the Registrar upon request.

E.6.0 COSTS

E.6.1 The Government of Canada will pay the reasonable and necessary costs in relation to activities associated with Enrolment and appeals, in accordance with an approved budget, and the Dehcho Government will be responsible for ongoing Enrolment costs thereafter, including the costs of its appeal process.

To be reviewed at main table session Feb. 4, 2010

CHAPTER R: RATIFICATION

R.1.0 RATIFICATION OF THE FINAL AGREEMENT
R.2.0 COSTS

R.1.0 RATIFICATION OF THE FINAL AGREEMENT

General

- R.1.1 The chief negotiators will initial the Final Agreement when they are prepared to submit it for approval.
- R.1.2 After the Final Agreement has been initialed by the chief negotiators, it will be submitted to the Parties for the consideration of ratification as set out in this chapter.
- R.1.3 The Final Agreement will be legally binding once ratified by all Parties in accordance with the ratification provisions set out in this chapter.
- R.1.4 Ratification of the Final Agreement by one party does not obligate any of the other parties to ratify the Final Agreement.

Ratification Committee

- R.1.5 The Parties will establish a Ratification Committee as soon as practicable but no later than 60 days after the initialing of the Final Agreement, consisting of one representative appointed by each Party, to be responsible for the DFN ratification process, as set out in this chapter.
- R.1.6 The Ratification Committee will:
- a) ensure that the Eligible Voters have a reasonable opportunity to review the Final Agreement;
 - b) ensure that the DFN has provided Eligible Voters a reasonable opportunity to review the DFN Constitution;

- c) organize community meetings to provide Eligible Voters an opportunity to review the substance of the Final Agreement;
- d) establish and publish its procedures;
- e) set its time limits, including the date or dates of the Ratification Vote;
- f) prepare and publish a Preliminary Voters List in each Dehcho Dene Community and elsewhere as required based on the Preliminary Enrolment List provided by the Enrolment Committee under E.2.11 within 90 days of receiving the list;
- g) publish the Official Voters List in accordance with R.1.12;
- h) update the Official Voters List by
 - i) removing from the Official Voters List the name of each individual who died on or before the last day of voting without having voted;
 - ii) removing from the Official Voters List the name of each individual who did not vote and who provides, within 4 days of the last day of voting, certification by a qualified medical practitioner that the individual was physically or mentally incapacitated to the point that they could not have voted on the dates set for voting; and¹
 - iii) removing from the Official Voters List the name of each individual who has applied, or on whose behalf application has been made, by the close of polls on the last day of voting, to have his or her name removed from the Enrolment by the Enrolment Committee, provided the individual has not already voted;²

¹ Canada examining whether any additional/alternative procedures are required with respect to mentally incompetent individuals

² Should be deadline for publication of Ratification Vote.

- j) approve the form and content of the ballots;
 - j) authorize and provide general direction to voting officers to be employed in the conduct of the votes;
 - k) establish polling stations;
 - l) oversee the conduct of the votes on the dates established by the Ratification Committee;
 - m) ensure that information about the dates set for voting and location of the polling stations be made publicly available;
 - n) oversee tabulation of the results of the votes;
 - o) provide the Parties with the result of the votes;
 - p) publish the result of the vote to ratify the Final Agreement;
- and
- q) prepare and provide to the Parties a written report on the outcome of the vote to ratify the Final Agreement within 90 days of the last day of voting.

R.1.7 The Ratification Committee will be dissolved upon submitting to the Parties the written report as referred to in R.1.6 (p).

Appeals

R.1.8 Appeals from decisions of the Ratification Committee with respect to the Preliminary Voters List will be made to the Appeal Board established under E.4.1.

R.1.9 After the publication of the Preliminary Voters List, a written appeal may be submitted to the Appeal Board within a period established by the Ratification Committee by an individual:

- a) whose name is not on the Preliminary Voters List; or

- b) who would like to have their name removed from the Preliminary Voters List.

R.1.10

R.1.11 Decisions of the Appeal Board in respect of an appeal will be by a majority of voting members and will be final. The Appeal Board will notify the appellant, any person whose eligibility to vote has been challenged and the Ratification Committee, of its decision.

R.1.12 Within 30 days of the Appeal Board rendering its decisions on applications, the Ratification Committee will forward an amended Preliminary Voters List to all Parties. Upon receipt and approval of this list by the parties, the Ratification Committee will publish this list as the Official Voters List.

Ratification Vote

R.1.13 The Dehcho First Nations ratification vote will be held no earlier than 30 days after the publication of the Official Voters List on such date(s) as may be agreed to by the Ratification Committee.

R.1.14 An Eligible Voter will be an individual who:

- a) is eligible to be enrolled under the eligibility and enrolment provisions of the Final Agreement subject to R.1.15 and whose name appears on the Official Voters List;
- b) is at least 18 years of age on the day of voting; and
- c) is not enrolled in another Land Claims Agreement, Lands and Resources Agreement or Self Government Agreement.³

³ The DFN express the view that the only agreement that should prevent otherwise eligible individuals from voting is the Tlicho Agreement as it is currently the only land claim agreement in the NWT that has self government. Canada's response is that land and governance issues are inherently linked and that the comprehensive claims policy clearly states that in order to vote for ratification of one agreement an individual cannot belong to another agreement – an individual has to elect at the time of voting.

- R.1.15 Notwithstanding the eligibility and enrolment provisions of the Final Agreement, an individual is not ineligible to vote for Ratification where the individual is on a non-DFN Band Membership List or on a non-DFN Métis Local Membership list.⁴

Ratification by DFN

- R.1.16 Ratification of the Final Agreement by the DFN will require:
- a) that Eligible Voters have a reasonable opportunity to review the Final Agreement;
 - b) approval by a Dehcho Assembly;
 - c) a vote by Eligible Voters, by way of a secret ballot;
 - d) that at least fifty percent plus one of individuals on the List of Eligible Voters vote in favour of the Final Agreement;
 - e) ratification of the DFN Constitution through the process set out in the Final Agreement; and
 - f) the Final Agreement being signed by the authorized representative of the DFN.

Ratification by the Government of the Northwest Territories

- R.1.17 Ratification of the Final Agreement by the Government of the Northwest Territories will require:

⁴ This new R.1.15 is intended to address the following concern expressed by the DFN: (a) Band membership is distinct from membership under an agreement (a band being an Indian Act creation and membership under an agreement generally based on inherent characteristics vs. residence). As discussed above, Canada does not accept that a member of another agreement can vote on the Dehcho final agreement. Canada also argues that the “no man’s land” concern would only apply where an individual came into the agreement under a community acceptance process because he or she is not eligible as contemplated under the E&E provisions of whatever other agreement. If an individual is, for example, an eligible Tlicho under the Tlicho Agreement’s E&E provisions then arguably he or she would have to be let back in based on the inherent characteristics that make him or her eligible.

- a) ratification of the Final Agreement by the Dehcho First Nations pursuant to R.1.16
- b) approval of the Final Agreement by the Executive Council;
- c) signing of the Final Agreement by the Minister authorized by the Executive Council; and
- d) the coming into force of territorial Settlement Legislation.

Ratification by Government of Canada

R.1.18 Ratification of the Final Agreement by the Government of Canada will

require:

- a) approval of the Final Agreement by the Executive Council of the Government of the Northwest Territories pursuant to R.1.17 b) and ratification of the Final Agreement by the Dehcho First Nation pursuant to R.1.16.
- b) that the Final Agreement be signed by the Minister of Indian and Northern Affairs Canada as authorized by federal Cabinet; and
- c) the coming into force of federal Settlement Legislation giving effect to the Final Agreement.

R.2.0 COSTS⁵

R.2.1 The Government of Canada will provide an amount of funding agreed upon by the Parties for the Ratification Committee to carry out the duties and responsibilities as set out in this chapter and in the Final Agreement.

⁵ DFN requesting clarification on what Canada pays for the Ratification Committee Canada looking into it.

CHAPTER EM - ECONOMIC MEASURES

EM.1.0	GENERAL
EM.2.0	PROGRAMS FOR ECONOMIC DEVELOPMENT
EM.3.0	CONTRACTING BY THE GOVERNMENT OF CANADA
EM.4.0	CONTRACTING BY THE GOVERNMENT OF THE NORTHWEST TERRITORIES

EM.1.0 GENERAL

EM.1.1 The provisions of this chapter are intended to be implemented through programs and policies in place from time to time without imposing any additional financial obligations on Government.

EM.2.0 PROGRAMS FOR ECONOMIC DEVELOPMENT

EM.2.1 When implementing Government Economic Development Programs in the Dehcho Settlement Area, Government will take measures, as it considers reasonable in light of its fiscal responsibility and economic objectives, to:

- a) promote opportunities for :
 - i) Dehcho Citizens to pursue traditional harvesting activities; and
 - ii) the marketing of renewable resource products and goods manufactured by Dehcho Citizens and Dehcho Enterprises; and
- b) assist Dehcho Citizens to participate in economic activities by:
 - i) providing assistance in the development of Dehcho Enterprises, utilizing training plans and when necessary, identifying possible sources of financial assistance;
 - ii) encouraging capacity building, training and educational assistance for Dehcho Citizens;

- iii) encouraging the employment of Dehcho Citizens in major projects and developments;
- iv) promoting opportunities for the employment of qualified Dehcho Citizens in the Federal Public Service within the Dehcho Settlement Area by reviewing job qualifications and recruitment procedures within existing policies to ensure appropriate integration of cultural factors, experience, or education; and
- v) encouraging the employment of qualified Dehcho Citizens in the Government of the Northwest Territories Public Service within the Dehcho Settlement Area by reviewing job qualifications and recruitment procedures within existing policies in order to remove inappropriate requirements in respect of cultural factors, experience or education.

EM.2.2 Where Government proposes a new Economic Development Program relating to the measures set out in EM 1.1, it will Consult with the Dehcho Government.

EM.2.3 Government will meet with the Dehcho Government at least once every three (3) years to review the effectiveness of any measures developed pursuant to EM.1.1.

EM.2.4 Nothing in this chapter affects the eligibility of Dehcho Citizens, Dehcho Enterprises or the Dehcho Government to participate in or benefit from Government economic development programs that are generally available to residents of the Northwest Territories, residents of Canada, or other Aboriginal groups in Canada.

EM.3.0 CONTRACTING BY THE GOVERNMENT OF CANADA

EM.3.1 Government of Canada will provide reasonable support and assistance to Dehcho Enterprises as set out in this chapter to enable them to compete for Government Contracts.

EM.3.2¹

EM.3.3 The Dehcho Government will prepare, maintain and update annually a comprehensive inventory of Dehcho Enterprises, together with information on the goods and services they would be in a position to supply in relation to Contracts tendered by Canada, and will make this inventory available to Canada.

EM.4.0 CONTRACTING BY THE GOVERNMENT OF THE NORTHWEST TERRITORIES

EM.4.1 When the Government of the Northwest Territories intends to carry out Public Activities on Dehcho Settlement Area which give rise to employment or other economic opportunities, and the Government of the Northwest Territories elects to enter into Contracts with respect to those activities without going to public tender, Dehcho Citizens or Dehcho Enterprises will be given the first opportunity to negotiate such Contracts, provided they satisfy all requirements particular to the Contract including price.

EM.4.2 Should negotiations referred to in EM.4.1 not result in a Contract within a reasonable time, the Government of the Northwest Territories may take the Contract to a public process, including public tender, at its discretion and Dehcho Citizens or Dehcho Enterprises will be permitted to bid on the Contract.

EM.4.3 Where the Government of the Northwest Territories carries out Public Activities within the Dehcho Settlement Area which give rise to employment or other economic opportunities and the Government of the Northwest Territories elects to enter into Contracts with respect to those activities, the Government of the Northwest Territories preferential contracting policies and procedures intended to encourage local, regional and northern employment and business opportunities will be followed.

EM.4.4 The Government of the Northwest Territories will Consult the Dehcho Government when developing modifications to its preferential contracting policies and procedures.

¹ The Government of Canada is currently reviewing contracting regarding the acquisition of goods and services for First Nations.

EM.4.5 For greater certainty, nothing in this chapter will be construed to diminish the ability of the Government of the Northwest Territories to publicly tender Contracts.