IRC
Inuvialuit Regional Corporation

Land Claims Agreements Coalition
Modern Treaty Training Workshop
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Ottawa, Ontario

Presentation on the Inuvialuit Arbitration Process

IRC
Inuvialuit Regional Corporation

Presentation includes:

1.Inuvialuit Final Agreement Provisions on Arbitration

2.Summary of Arbitration Cases

3.What has been learned by Inuvialuit concerning Arbitration

Western Arctic Claim - Inuvialuit Final Agreement

The Inuvialuit Final Agreement was officially signed June 5th, 1984

Chapter 18 contains the provisions of the Arbitration Board and Process:

- Structure of the board;
- Formation of arbitration panels;
- how disputes are initiated;
- Procedure and Evidence;
- Award and Costs;
- Review provision by the federal court of appeal and the jurisdiction of the Board.

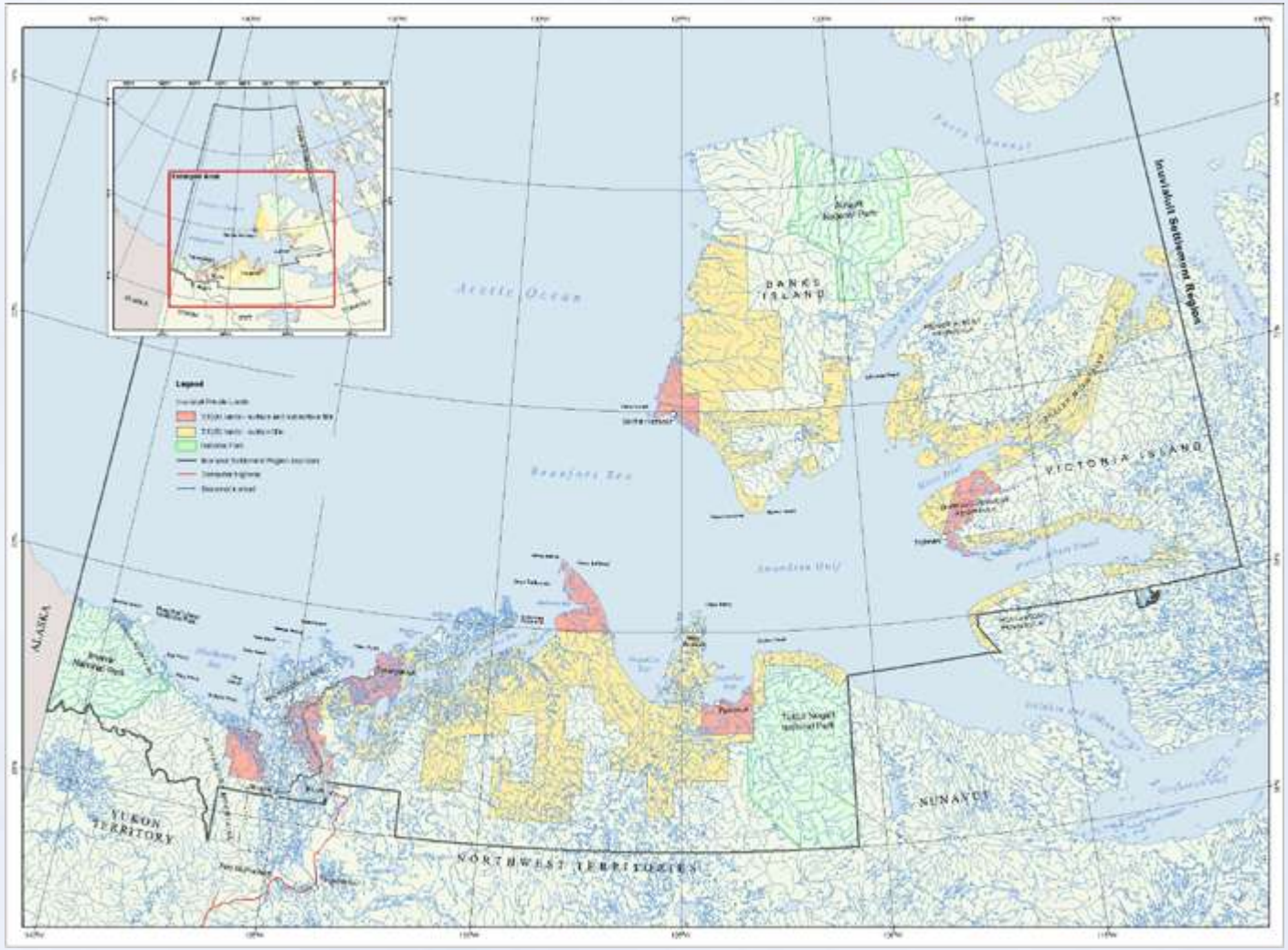
Inuvialuit Settlement Region relative to the rest of Canada

(Inuvialuit Joint Secretariat, 2004)

Map of the Inuvialuit Settlement Region (ISR)

There are six
Communities
In the ISR:

Aklavik, NT
Inuvik, NT
Paulatuk, NT
Sachs Harbour, NT
Tuktoyaktuk, NT
Ulukhaktok, NT



Inuvialuit Arbitration Chapter

ARBITRATION BOARD

The Arbitration Board shall have eleven (11) members, including a Chairman and a Vice-Chairman.

18.(4) Canada shall appoint five (5) members of the Arbitration Board, among whom shall be the Chairman and the Vice-Chairman. The Chairman and Vice-Chairman must, however, be acceptable to the Inuvialuit and Industry. Of the three (3) other members appointed by Canada, each of the Government of the Northwest Territories and the Government of the Yukon Territory shall designate one. Where the parties cannot agree on a Chairman or Vice-Chairman or both, the Chief Justice of either of the Territories may appoint a Chairman or Vice-Chairman or both at the request of one of the parties.

Inuvialuit Arbitration Chapter

ARBITRATION BOARD

18.(5) Each of the Inuvialuit and Industry shall appoint three (3) members of the Arbitration Board.

18.(6) For the purposes of subsections (4) and (5), "Industry" means the five (5) largest commercial and industrial entities in the Inuvialuit Settlement Region from time to time with regard to assets in the region, but not more than two (2) of such entities shall be controlled by Inuvialuit.

Inuvialuit Arbitration Chapter

18.(8) A register shall be kept of all decisions of the Arbitration Board. The data used by the Arbitration Board shall be retained and made available to the public on request.

18.(9) The Arbitration Board may establish and adopt by-laws and rules for its internal management and its procedures.

18.(10) Canada shall provide the Arbitration Board with the staff required to enable it to fulfill its functions.

Inuvialuit Arbitration Chapter

Formation of Panels:

18.(12) Any issue for arbitration involving the Inuvialuit and Industry or the Inuvialuit and Canada shall be referred to a panel of five (5) members of the Arbitration Board, two (2) of whom shall be designated by each of the interested parties, and the Chairman or Vice-Chairman, as designated by the Chairman. If one of the interested parties is Canada, one of its panel members shall be designated by the Territorial Government in whose jurisdiction the matter arose.

Inuvialuit Arbitration Chapter

INITIATION OF ARBITRATION

18.(15) Except as otherwise provided by this Agreement, Canada, the Inuvialuit or Industry may initiate arbitration by giving notice to the other party to the dispute and a copy to the Chairman of the Arbitration Board for circulation to all members of the Board. Where a matter for arbitration is within the jurisdiction of the Government of the Northwest Territories or Yukon Territory, Canada agrees to initiate arbitration on request by the Territorial Government.

18.(16) Any party may intervene to participate in an arbitration after giving written notice to the Chairman, if it satisfies the Chairman that its interests are affected.

Inuvialuit Arbitration Chapter

INITIATION OF ARBITRATION

18.(17) Within fifteen (15) days after receipt by the Chairman of a copy of the notice referred to in subsection (15), the Chairman shall:

(a) name the interested parties to the dispute and by written notice require each of them to designate panel members; and

(b) name any other participants in the arbitration process and define their status.

18.(18) Where any interested party fails to nominate its members within fifteen (15) days after receipt of the notice of the Chairman referred to in subsection (17), the arbitration may commence and proceed without those members and the panel has the like power to act and to make an award as if it were fully constituted.

18.(19) The hearing of the Arbitration Board shall commence within thirty (30) days after receipt by the Chairman of the notice referred to in subsection (15).

Inuvialuit Arbitration Chapter

PROCEDURE AND EVIDENCE

18.(21) The hearing of the Arbitration Board shall commence with the party initiating the arbitration presenting its case summarized in writing and supported by witnesses available for cross- examination. The other party or parties shall similarly present their cases followed by any intervenor. The claimant shall have a final right of rebuttal after which argument shall be made by the parties in the same order, consisting of a summary of the facts alleged and an explanation of any legal propositions advanced.

18.(22) Where a member of the Arbitration Board refuses to act or is incapable of acting, the party by whom the member was appointed shall appoint a member in his stead. Where the Chairman of Vice-Chairman refuses to act or is incapable of acting, Canada shall promptly appoint a replacement.

Inuvialuit Arbitration Chapter

AWARD AND COSTS

18.(27) The panel shall make its award in writing within three (3) months after the hearing or at any other date to which all the parties to the arbitration agree in writing.

18.(28) Notice of the award shall be delivered to all parties to the arbitration and shall be enforced in the same manner as a judgement or an order of a Court.

Inuvialuit Arbitration Chapter

AWARD AND COSTS

18.(29) Subject to subsection (31), the award of the Arbitration Board is final and binding on all parties and on any persons claiming under the parties.

18.(30) The costs of the arbitration are at the discretion of the Arbitration Board and the Board may direct by whom and in what manner the costs or any part thereof shall be paid.

REVIEW

18.(31) The award of the Arbitration Board is subject to review by the Federal Court of Appeal under section 28 of the Federal Court Act.

Inuvialuit Arbitration Chapter

JURISDICTION OF BOARD

18.(32) The Arbitration Board shall have jurisdiction to arbitrate any difference between the Inuvialuit and Industry or Canada as to the meaning, interpretation, application or implementation of this Agreement.

18.(33) It is agreed that this arbitration process shall not apply to the rights of any other native group confirmed by any other settlement legislation without their consent. It is further agreed that the arbitration process is without prejudice to the right of other native peoples to determine, in their land claims settlements, the appropriate mechanism for resolving disputes involving their rights.

Inuvialuit Arbitration

- There have been four Arbitration Board decisions rendered to date.
- Three other matters have been referred to arbitration but have settled before going to hearing.
- There are no arbitrations currently outstanding
- The next slides briefly explain the four arbitration board decisions and the three settlements

1. Inuvialuit Regional Corporation and the Inuvialuit Land Corporation v. Her Majesty in Right of Canada as represented by the Minister of National Defense and the Minister of Indian Affairs and Northern Development, Award No. 001/94 (s. 18 and the NWT)

This arbitration dealt with two distinct disputes; namely:
a)the DEW-Line Request for Proposal – Canada required to meet IFA Economic Measures;
b)the Horton River clean-up – Canada required to meet IFA Economic Measures.

a) Award No. 001/94

Issues

•Does the RFP properly come within the ambit of s.16(8)(b) or s.16(8)(c) of the IFA?;

•What is the nature of Canada's obligations set out in s.16(8) of the IFA?; and

•What was the effect Canada's failure to notify the Inuvialuit about the RFP?

Decision

Canada ordered to pay IRC nominal damages for the Government's failure to provide IRC with proper notice of the RFP and the Subsequent Contract, as per their s.16(8)(c) obligations.

b) Award No. 001/94

Issues

•what is the proper meaning of the term “remove”, as used in the Settlement Agreement;

•do the obligations contained in the Settlement Agreement extend beyond the reservation area; and

•would the obligations imposed by the Settlement Agreement apply in the event that the clean-up were completed by another federal agency?

Decision

The panel declared that:

•Canada was in breach of the terms of the Settlement Agreement for not having completed the clean-up within a reasonable period of time;

•the term ‘remove’, as used in the Settlement Agreement, means to physically transport materials out of the area;

•Canada’s obligations under the Settlement Agreement extended to some areas outside of the reservation area; and

•any clean up of the Horton River site is subject to the DND-IRC Cooperation Agreement and Settlement Agreement.

2. Inuvialuit Regional Corporation and the Inuvialuit Land Corporation v. Her Majesty in Right of Canada as represented by the Minister of National Defense and the Minister of Indian Affairs and Northern Development, Award No. 002/94 (s. 18 and Yukon)

With the exception of the members appointed by the territories, the panel for arbitral award No. 002/94 was comprised of the same members as that for Award No.001/94. The two arbitrations dealt with much of the same evidence, and decided many of the same points of law.

Issues

The issues brought forth by this dispute included:

- has Canada breached its obligation to use its best efforts to add Komakuk Beach to Ivvavik National Park?; and
- has Canada breached its obligation to clean-up the Komakuk DEW-line site?

Decision

Canada had breached its obligations in regards to the Komakuk Beach DEW-line clean-up, and adding Komakuk to Ivvavik National Park.

3. Inuvialuit Regional Corporation and the Inuvialuit Land Corporation v. Her Majesty in Right of Canada as Represented by the Minister of Indian and Northern Affairs, Award No. 1 of 2004 regarding: gas royalties from Exploration Agreement No.224 (the "Ikhil Land").

Issues

The major issues raised through this dispute were:

- whether the IFA creates a guarantee with regards to the royalties from s.7(93) lands; and
- whether money is to be remitted by Canada following receipt of royalty payments from the Interest holders or once production commenced by regardless of any money actually received by the Respondent.
- There was also a subsidiary issue as per whether Canada's obligations in this regard were terminated when IPC acquired 100% of SDL No. 29.

Decision

Canada ordered to remit all royalties obtained from the Ikhil lands, calculated at the 1983 COGA rate, to the Inuvialuit as these are received from interest holders.

4. Regarding GNWT Procurement Practices

In April 2005, IRC Issued a Notice of Arbitration under the Inuvialuit Final Agreement ("IFA") respecting the implementation of procurement policies by the Government of the Northwest Territories ("GNWT") in the Inuvialuit Settlement Region ("ISR").

Issue:

- The GNWT did not consult with the Inuvialuit before entering into the MOU,
- did not negotiate with the Inuvialuit regarding implementation of the MOU in Aklavik and Inuvik, and
- did not offer to enter a similar MOU with the Inuvialuit.

Decision

The substance of the decision was as follows:

- Section 16(6)(c) of the IFA imposes obligations on GNWT with respect to government contracting.
- The GNWT needs to consult with IRC before it takes steps in the ISR that might affect the Inuvialuit.
- GNWT is obligated to enter into a similar MOU with the Inuvialuit.

Arbitration disputes that were settled before it went to formal arbitration:

1. Canada v. Inuvialuit Regional Corporation, Inuvialuit Land Administration and Inuvialuit Land Corporation (Airport Lands)

2. Inuvialuit Regional Corporation v. Government of the Northwest Territories (Kudlak Lake)

3. POJE v. Inuvialuit Regional Corporation (Enrolment)

Inuvialuit Arbitration

Observations:

•The IFA has other provisions that provide direction and guidance when required.

•Disputes settled by Arbitration or between the Parties outside of Arbitration provide clarity for IFA implementation.

•Parties are more willing to seek resolution of implementation issues and seek remedies that meet each other`s interests.

•Working relationship between the Parties has improved.

Inuvialuit Arbitration

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Thank you…